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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE FRANCISCO CALDERON-
MONROY,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 09-70667

Agency No. A098-120-256

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 12, 2011**

Before: SCHROEDER, ALARCÓN, and LEAVY, Circuit Judges.

Jose Francisco Calderon-Monroy, a native and citizen of El Salvador, petitions pro se for review of the decision of the Board of Immigration Appeals (“BIA”), affirming the immigration judge’s denial of his application for asylum, withholding of removal, and protection under the Convention Against Torture

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), except to the extent that deference is owed to the BIA’s determination of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We review for substantial evidence factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny the petition for review.

We reject Calderon-Monroy’s claim that he is eligible for asylum based on his anti-gang political opinion and membership in a particular social group. *See Barrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009) (refusal to join gangs does not constitute a political opinion or membership in a particular social group); *Santos-Lemus v. Mukasey*, 542 F.3d 738, 745-46 (9th Cir. 2008) (“young men in El Salvador resisting gang violence” does not constitute a particular social group). Accordingly, because Calderon-Monroy failed to establish that he was persecuted or fears persecution on account of a protected ground, his asylum and withholding of removal claims fail. *See Barrios*, 581 F.3d at 856.

Substantial evidence supports the agency’s denial of CAT relief, because Calderon-Monroy did not establish a likelihood of torture by, at the instigation of, or with the consent or acquiescence of the El Salvadorean government. *See Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009).

Finally, Calderon-Monroy's due process claim fails because not only did he fail to raise this before the BIA, but the record also shows that he did, in fact, testify.

PETITION FOR REVIEW DENIED.