

JAN 24 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESUS MENJIVAR MONTOYA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-73667

Agency No. A072-112-044

MEMORANDUM*

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

Submitted January 17, 2012**

Before: LEAVY, TALLMAN, and CALLAHAN, Circuit Judges.

Jesus Menjivar Montoya, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, relief under the Convention Against Torture ("CAT"), and

* 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).

cancellation of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence factual findings, *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006), and we review de novo due process claims, *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's finding that the threats directed at Menjivar Montoya did not rise to the level of past persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000). Substantial evidence also supports the agency's finding that Menjivar Montoya failed to establish a well-founded fear of future persecution because he failed to demonstrate a specific threat to him now that the guerrillas and the government are no longer at war. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003).

Because Menjivar Montoya failed to meet the lower burden of proof for asylum, it follows he has not met the higher standard for withholding of removal. *See Zehatye*, 453 F.3d at 1190.

Substantial evidence also supports the agency's denial of CAT relief because Menjivar Montoya failed to establish it is more likely than not he will be tortured by or with the acquiescence of the government of El Salvador. *See Silaya v. Mukasey*, 524 F.3d 1066, 1073 (9th Cir. 2008).

Finally, we lack jurisdiction to review the agency’s discretionary determination that Menjivar Montoya failed to demonstrate exceptional and extremely unusual hardship to a qualifying relative in support of his application for cancellation of removal. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005). We also lack jurisdiction to consider Menjivar Montoya’s non-colorable due process challenge to that denial. *See id.*; *DeMercado v. Mukasey*, 566 F.3d 810, 816 (9th Cir. 2009) (concluding no jurisdiction over a similar fundamental right to “family unity” due process contention).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.