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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VICTOR HUGO VALIENTE
CALDERON,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-72560

Agency No. A075-246-048

MEMORANDUM*

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

Submitted June 26, 2012**

Before: SCHROEDER, HAWKINS, and GOULD, Circuit Judges.

Victor Hugo Valiente Calderon, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for

* 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).

withholding of removal. Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence, *Molina-Estrada v. INS*, 293 F.3d 1089, 1093 (9th Cir. 2002), and we deny in part and dismiss in part the petition for review.

We reject Valiente Calderon's contention that the agency erred in finding no past persecution because he had not been physically harmed, because this was not the basis for the agency's past persecution finding. Valiente Calderon's claim that he was persecuted on account of a particular social group – namely, his family – fails because he failed to exhaust this contention before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004). With respect to future fear, we reject Valiente Calderon's contention that the agency erred in failing to apply the rebuttable presumption that his life or freedom would be threatened, because Valiente Calderon did not establish past persecution. *See* 8 C.F.R. § 1208.16(b)(1). Accordingly, Valiente Calderon's withholding of removal claim fails.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.