

DEC 18 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OVIDIO DIMAS MONTEROSO-
BARILLAS, a.k.a. Ovidio Monterroso,
a.k.a. Ovidio Dimas Monterroso,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 12-71473

Agency No. A029-133-595

MEMORANDUM*

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

Submitted December 17, 2013**

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Ovidio Dimas Monteroso-Barillas, a native and citizen of Guatemala,
petitions pro se for review of the Board of Immigration Appeals' ("BIA") order
dismissing his appeal from an immigration judge's order of removal. We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006).

In his opening brief, Monteroso-Barillas does not challenge the agency's denial of his asylum claim as untimely, or its adverse credibility determination. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in an opening brief are waived). In the absence of credible testimony, substantial evidence supports the BIA's conclusion that Monteroso-Barillas failed to establish eligibility for withholding of removal. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003). Further, because Monteroso-Barillas' claim for relief under the Convention Against Torture ("CAT") was based on the same testimony, and he does not point to any evidence in the record indicating it is more likely than not he will be tortured if he returns to Guatemala, substantial evidence also supports the BIA's denial of his CAT claim. *See id.* at 1156-57.

PETITION FOR REVIEW DENIED.