

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 24 2015

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ADOLFO ORTIZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 13-74296

Agency No. A029-236-106

MEMORANDUM*

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

Submitted November 18, 2015**

Before: TASHIMA, OWENS, and FRIEDLAND, Circuit Judges.

Adolfo Ortiz, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals (“BIA”) order dismissing his appeal from the decision of an immigration judge denying his applications for suspension of deportation, asylum, withholding of deportation, and protection under the

* 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).*

Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings, and de novo questions of law and due process challenges. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009); *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001) (due process challenges). We dismiss in part, deny in part, and grant in part the petition for review, and we remand.

Ortiz’s contention that the agency misapplied its precedent with respect to the hardship determination is not a colorable question of law or constitutional challenge that would invoke our jurisdiction. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1270 (9th Cir. 2001); *Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). Thus, we dismiss the petition as to his NACARA claim.

Substantial evidence supports the BIA’s denial of Ortiz’s CAT claim because he failed to establish it is more likely than not he will be tortured by or with the consent or acquiescence of a public official in El Salvador. *See Silaya v. Mukasey*, 524 F.3d 1066, 1073 (9th Cir. 2008).

Finally, in denying Ortiz’s asylum and withholding of deportation claims, the agency found Ortiz failed to establish a nexus to a protected ground. When the BIA issued its decisions in this case, it did not discuss this court’s decisions in

Henriquez-Rivas v. Holder, 707 F.3d 1081 (9th Cir. 2013) (en banc) or *Cordoba v. Holder*, 726 F.3d 1106 (9th Cir. 2013), and it did not have the benefit of this court's decision in *Pirir-Boc v. Holder*, 750 F.3d 1077 (9th Cir. 2014), or the BIA's decisions in *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014). Thus, we remand Ortiz's asylum and withholding of deportation claims to determine the impact, if any, of these decisions. See *INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam). In light of this remand, we do not reach Ortiz's remaining challenges to the agency's denial of his asylum and withholding of deportation claims.

Each party shall bear its own costs for this petition for review.

**PETITION DISMISSED in part; DENIED in part; GRANTED in part;
REMANDED.**