

FILED

MAY 13 2016

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSUE DANIEL LARA-SOTO,

Petitioner,

v.

**LORETTA E. LYNCH, Attorney
General,**

Respondent.

Nos. 13-72075
13-74023

Agency No. A095-797-258

MEMORANDUM*

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

Argued and Submitted May 3, 2016
Pasadena, California

Before: **KOZINSKI, W. FLETCHER** and **GOULD**, Circuit Judges.

1. Substantial evidence supports the BIA's determination that Lara-Soto is unlikely to be persecuted if he returns to Guatemala. Pagayon v. Holder, 675 F.3d 1182, 1190 (9th Cir. 2011). Lara-Soto testified that the police apprehended and arrested individuals who tried to kill him. The record therefore does not compel

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

the conclusion that the government was “unable or unwilling to control private persecutors.” Afriyie v. Holder, 613 F.3d 924, 936 (9th Cir. 2010). And any proclaimed fear of persecution on the basis of family membership was undermined by Lara-Soto’s testimony that his parents and child live in Guatemala.

Accordingly, Lara-Soto is not entitled to withholding of removal.

2. The BIA didn’t abuse its discretion by denying Lara-Soto’s motion to reopen and reconsider. Lara-Soto didn’t establish any error of law or fact based on the existing record that would justify reconsideration. Iturribarria v. INS, 321 F.3d 889, 895 (9th Cir. 2003). And the BIA properly declined to reopen proceedings because Lara-Soto didn’t show prejudice from his counsel’s failures to contact Lara-Soto’s cousin and provide evidence of Oscar Cabrera’s notoriety. See Singh v. Holder, 658 F.3d 879, 885 (9th Cir. 2011) (“When considering the merits of a motion to reopen premised on ineffective assistance of counsel, the BIA asks whether counsel’s performance was deficient, and whether the alien suffered prejudice.”). Lara-Soto’s cousin had told him that she wouldn’t testify on his behalf. And neither her testimony nor the proffered evidence about Cabrera would have shown that Lara-Soto would more likely than not suffer persecution.

PETITION DENIED.