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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL ANGEL HERNANDEZ-LOPEZ,
also known as Jose Martinez Cuevas, also
known as Luis Montes-Perez,

Petitioner,

v.

JEFFERSON B. SESSIONS III,* Attorney
General,

Respondent.

No. 13-73617

Agency No. A095-774-388

MEMORANDUM**

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

Submitted July 14, 2017***
Seattle, Washington

Before: FARRIS, MURPHY,**** and NGUYEN, Circuit Judges.

*Jefferson B. Sessions III is substituted for his predecessor as Attorney General of the United States, pursuant to Fed. R. App. P. 43(c).

**This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

***The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

****The Honorable Michael R. Murphy, Senior Circuit Judge for the U.S. Court of Appeals, Tenth Circuit, sitting by designation.

Miguel Angel Hernandez-Lopez, a native and citizen of Mexico, petitions for review of an order of the Board of Immigrations Appeals (“BIA”) denying his request for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). This court has jurisdiction under 8 U.S.C. § 1252(a)(1). The BIA’s determinations that a claimant has not established eligibility for asylum, withholding of removal, or relief under CAT are reviewed under the deferential substantial-evidence standard. *Arteaga v. Mukasey*, 511 F.3d 940, 944 (9th Cir. 2007). Applying that standard, we deny the petition for review.

In denying his application for asylum, the BIA relied exclusively on the fact that Hernandez-Lopez’s application was untimely and not excused by changed or extraordinary circumstances. *See* 8 U.S.C. § 1158(a)(2)(B), (a)(2)(D).¹ In his brief on appeal, however, Hernandez-Lopez does not address this issue, focusing instead on the merits of his asylum claim. Because he failed to brief the untimeliness of his application, Hernandez-Lopez has waived

¹To preserve the issue for further review, the government asserts this court lacks jurisdiction over Hernandez-Lopez’s appeal of the timeliness of his asylum application. As the government recognizes, however, this court has concluded we have jurisdiction over all aspects of such an appeal. *See Ramadan v. Gonzales*, 479 F.3d 646, 653-54 (9th Cir. 2007) (holding that the court had jurisdiction to review the BIA’s “changed circumstances” decision); *see also Khunaverdians v. Mukasey*, 548 F.3d 760, 765-66 (9th Cir. 2008) (same as to predicate fact question of timeliness); *Husyev v. Mukasey*, 528 F.3d 1172, 1180-82 (9th Cir. 2008) (same as to BIA’s “extraordinary circumstances” decision).

appellate review of the issue. *See Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 n.5 (9th Cir. 2013). The BIA's determination that Hernandez-Lopez failed to demonstrate it is more likely than not he will be persecuted or tortured upon a return to Mexico is supported by substantial evidence. On that basis alone, he is not entitled to withholding of removal or relief under CAT. Thus, there is no need for this court to consider the BIA's nexus determinations (i.e., that any persecution Hernandez-Lopez might suffer upon a return to Mexico would not be based on a protected ground and any torture he might suffer would not be at the hands of, or with the acquiescence of, the government of Mexico) in resolving Hernandez-Lopez's petition for review.

PETITION FOR REVIEW DENIED.