

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 14 2017

FOR THE NINTH CIRCUIT

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

LUIS ALBERTO OCHOA-GRAMAJO,

No. 15-73429

Petitioner,

Agency No. A205-711-098

v.

MEMORANDUM*

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted August 9, 2017**

Before: SCHROEDER, TASHIMA, and M. SMITH, Circuit Judges.

Luis Alberto Ochoa-Gramajo, 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 ("IJ") decision denying his application for asylum, withholding of removal, and protection under the Convention Against

* This disposition is not appropriate for publication and is not precedent except as 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).

Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider the particular social group Ochoa-Gramajo raises in his opening brief, because he failed to raise it to the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below).

The IJ denied Ochoa-Gramajo’s asylum claim as time-barred, and the BIA deemed the issue waived on appeal. Although Ochoa-Gramajo raises arguments regarding the merits of his asylum claim, he does not challenge the agency’s dispositive determinations as to asylum in his opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party’s opening brief are waived). Thus, we deny the petition for review as to his asylum claim.

As to withholding of removal, Ochoa-Gramajo similarly does not challenge the BIA’s dispositive determinations that he failed to establish the harm he suffered and fears was or is on account of a protected ground. *See id.* Thus, we deny the petition for review as to Ochoa-Gramajo’s withholding of removal claim.

Finally, substantial evidence supports the agency’s denial of CAT relief

because Ochoa-Gramajo failed to show it is more likely than not that he would be tortured by or with the consent or acquiescence of the Guatemalan government. *See Silaya*, 524 F.3d at 1073. We reject Ochoa-Gramajo's contention that the agency erred in its analysis.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.