

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 13 2017

FOR THE NINTH CIRCUIT

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

ANNE WANGARI MWAGIRU,

No. 14-71487

Petitioner,

Agency No. A200-754-599

v.

MEMORANDUM *

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

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

Submitted December 14, 2016**

Before: WALLACE, LEAVY, and FISHER, Circuit Judges.

Anne Wangari Mwangiri, a native and citizen of Kenya, petitions for review of the Board of Immigration Appeals' order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Wakkary v. Holder*, 558 F.3d 1049, 1056 (9th Cir. 2009). We deny the petition for review.

Substantial evidence supports the agency's determination that Mwangiri failed to demonstrate changed or extraordinary circumstances to excuse her untimely-filed asylum application. *See* 8 C.F.R. §§ 1208(a)(4), (5). Thus, we deny the petition for review as to Mwangiri's asylum claim, including her claim to a humanitarian grant of asylum.

As to Mwangiri's withholding of removal claim, the record does not compel the conclusion that she was harmed on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (petitioner failed to establish the harm he feared bore any nexus to a protected ground); *cf. Barajas-Romero v. Lynch*, 846 F.3d 351, 359-60 (9th Cir. 2017) (discussing *Zetino*). Substantial evidence supports the agency's conclusion that Mwangiri failed to establish a clear probability of future persecution because she did not demonstrate it would be unreasonable for her to relocate within Kenya. *See Gomes v. Gonzales*, 429 F.3d 1264, 1267 (9th Cir. 2005) (fear of future persecution undermined by prior successful internal relocation). Thus, we deny the petition for review as to withholding of removal.

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

because Mwangi failed to show it is more likely than not that she would be tortured by or with the consent or acquiescence of the Kenyan government. *See Silaya v. Mukasey*, 524 F.3d 1066, 1073 (9th Cir. 2008).

PETITION FOR REVIEW DENIED.

RAYMOND C. FISHER, Circuit Judge, concurring in part and dissenting in part:

I agree with the majority in most respects but would grant the petition on Mwangiri's withholding of removal claim. Women or girls who reasonably fear the gender-based persecution of FGM qualify as members of a particular social group. *See Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005). Here, the BIA concluded the past harm Mwangiri suffered "was not inflicted on account of a protected ground but rather based on a personal dispute she had with her husband." But the timing of the beating – immediately after Mwangiri told her husband she opposed FGM and would not be subjected to it, in part because she was a Christian – and the context of his having previously and repeatedly complained about her not being circumcised, compels the conclusion that her expressed opposition to FGM was "a reason," even if not the "one central reason," for the beating. *See Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017). I therefore respectfully dissent from this portion of the majority's disposition.