

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 22 2018

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

WALFRE RAFAEL SIS CHOCOJ,

Petitioner,

v.

JEFFERSON B. SESSIONS III, Attorney
General,

Respondent.

No. 13-73830

Agency No. A095-758-153

MEMORANDUM*

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

Submitted February 13, 2018**

Before: LEAVY, FERNANDEZ, and MURGUIA, Circuit Judges.

Walfre Rafael Sis Chocoj, 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 relief under the Convention Against Torture ("CAT").

* 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).

Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We dismiss in part and deny the petition for review.

We lack jurisdiction to consider Sis Chocoj's asylum claim where he failed to exhaust any challenge the IJ's determination that his asylum application was untimely. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below). Thus, we dismiss the petition for review as to Sis Chocoj's asylum claim.

As to Sis Chocoj's withholding claim, we lack jurisdiction to review the social group claim raised for the first time in the opening brief because he did not exhaust it before the BIA. *See id.* Substantial evidence supports the agency's determination that Sis Chocoj failed to demonstrate a nexus between the harm he suffered and fears and a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground"); *see also Molina-Morales v. INS*, 237 F.3d 1048, 1052 (9th Cir. 2001) (harm based on personal retribution is not persecution on account of a protected ground). Thus, we deny the petition for review as to Sis Chocoj's withholding claim.

In Sis Chocoj's opening brief, he does not make any arguments challenging

the agency's dispositive conclusion that he failed to demonstrate that he would be tortured by or with the consent or acquiescence of the government of Guatemala. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned."). Thus, we deny the petition for review as to Sis Chocoj's CAT claim.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.