

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 21 2019

FOR THE NINTH CIRCUIT

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

ROGELIO MENDOZA-CRUZ,

No. 13-74064

Petitioner,

Agency No. A087-595-662

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted February 19, 2019**

Before: FERNANDEZ, SILVERMAN, and WATFORD, Circuit Judges.

Rogelio Mendoza-Cruz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his 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. *Zetino v. Holder*, 622 F.3d 1007, 1012 (9th Cir. 2010). We deny the petition as to the asylum and CAT claims, grant the petition as to the withholding of removal claim, and remand.

Even if his asylum application was timely, substantial evidence supports the agency's finding that Mendoza-Cruz failed to establish that his family membership was "at least one central reason" for his alleged persecution. *See Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009) (explaining "one central reason" standard). Thus, we deny his petition as to asylum.

Substantial evidence also supports the agency's denial of CAT relief because Mendoza-Cruz failed to show it is more likely than not that he will be tortured by the government of Mexico, or with its consent or acquiescence. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009); *Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009) (no likelihood of torture). Thus, we deny his petition as to CAT.

As to withholding of removal, the BIA did not have the benefit of this court's decision in *Barajas-Romero v. Lynch*, 846 F.3d 351, 356-60 (9th Cir. 2017), when it issued its order. Thus, we grant the petition for review and remand

Mendoza-Cruz’s withholding of removal claim to the BIA to determine the impact of this decision. *See INS v. Ventura*, 537 U.S. 12, 16-18 (2002) (per curiam); *see also Barajas-Romero*, 846 F.3d at 360 (“‘[A] reason’ is a less demanding standard than ‘one central reason.’”).

Each party shall bear its own costs for this petition for review.

**PETITION FOR REVIEW DENIED in part, GRANTED in part, and
REMANDED.**