

NOT FOR PUBLICATION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

MIGUEL CARRASCO-PALMA,

No. 14-70371

Petitioner,

Agency No. A200-627-085

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.

Miguel Carrasco-Palma, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's decision denying cancellation of removal, withholding of removal, and relief under the Convention Against Torture ("CAT"). Our

* 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 is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination, *Serrano Gutierrez v. Mukasey*, 521 F.3d 1114, 116 (9th Cir. 2008), and the agency's factual findings, *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency's determination that Carrasco-Palma failed to establish ten years of continuous physical presence for cancellation of removal, where the record includes a signed Form I-826 in Spanish indicating that he accepted administrative voluntary departure in lieu of removal proceedings in 2008. *See* 8 U.S.C. § 1229b(b)(1)(A); *Serrano Gutierrez*, 521 F.3d at 1117-18 (requiring some evidence that alien was informed of and accepted the terms of the voluntary departure agreement); *Vasquez-Lopez v. Ashcroft*, 343 F.3d 961, 974 (9th Cir. 2003) (alien's acceptance of administrative voluntary departure interrupts the accrual of continuous physical presence).

Substantial evidence supports the agency's determination that Carrasco-Palma failed to establish that any harm he experienced or fears in Mexico was or would be on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) ("An [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 Ramirez-Munoz v. Holder*, 816 F.3d 1226, 1228-29 (9th Cir. 2016) (concluding “imputed wealthy Americans” returning to Mexico did not constitute a particular social group); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (concluding “returning Mexicans from the United States” did not constitute a particular social group). We lack jurisdiction to consider Carrasco-Palma’s new social group that he raises for the first time in his opening brief. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). Thus, we deny the petition as to Carrasco-Palma’s withholding of removal claim.

Substantial evidence also supports the agency’s denial of CAT relief because Carrasco-Palma failed to show it is more likely than not that he would be tortured by or with the consent or acquiescence of the government of Mexico. *See Aden v. Holder*, 589 F.3d 1040, 1047 (2009).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.