

NOT FOR PUBLICATION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

JORGE ESCUTIA-BALDERAS,

No. 14-71195

Petitioner,

Agency No. A200-884-235

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.

Jorge Escutia-Balderas, 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 request for administrative closure, and his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. §

* 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).

1252. We review de novo questions of law, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), except to the extent that deference is owed to the BIA's determination of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We review for substantial evidence the agency's factual findings. *Silaya v. Mukasey*, 524 F.3d 1066, 1070 (9th Cir. 2008). We review de novo claims of due process violations. *Jiang v. Holder*, 754 F.3d 733, 738 (9th Cir. 2014). We deny the petition for review.

Escutia-Balderas establishes no error in the agency's denial of administrative closure under the factors applicable at the time of the BIA's decision. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 891 (9th Cir. 2018).

The record does not compel the conclusion that Escutia-Balderas established changed circumstances to excuse his untimely asylum application. *See* 8 C.F.R. § 208.4(4); *Ramadan v. Gonzalez*, 479 F.3d 646, 657-58 (9th Cir. 2007) (per curiam) (affirming BIA's determination as to changed circumstances where record did not compel a contrary result). Thus, his asylum claim fails. We reject Escutia-Balderas's humanitarian asylum contention because it is foreclosed by the agency's time-bar determination.

The agency did not err in determining that Escutia-Balderas failed to establish membership in a cognizable social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (in order to demonstrate membership in a particular

group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)). Substantial evidence also supports the agency’s finding that Escutia-Balderas otherwise failed to establish that he was or would be harmed on account of a protected ground. See *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant “must provide *some* evidence of [motive], direct or circumstantial”) (emphasis in original); see also *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”). Thus, his claim for withholding of removal fails.

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

We reject Escutia-Balderas’s contention that the agency failed to consider all of the evidence, or otherwise violated his due process rights. See *Lata v. INS*, 204 F.3d 1241, 1246 (9th Cir. 2000) (petitioner must show error and prejudice to prevail on a due process claim).

PETITION FOR REVIEW DENIED.