

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 20 2020

FOR THE NINTH CIRCUIT

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

MIGUEL PIO-DIAZ, AKA Octavio Oros,

No. 16-72866

Petitioner,

Agency No. A205-699-958

v.

WILLIAM P. BARR, Attorney General,

MEMORANDUM*

Respondent.

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

Submitted April 7, 2020**

Before: TASHIMA, BYBEE, and WATFORD, Circuit Judges.

Miguel Pio-Diaz, 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"), and his request for administrative closure. We have jurisdiction under 8 U.S.C. § 1252. We

* 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).

review for substantial evidence the agency’s factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). 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 interpretation of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We deny the petition for review.

Substantial evidence supports the agency’s determination that Pio-Diaz failed to establish the harm he experienced or fears was or would be on account of a protected ground, including his family membership. *See Ayala v. Holder*, 640 F.3d 1095, 1097 (9th Cir. 2011) (even if membership in a particular social group is established, an applicant must still show that “persecution was or will be *on account of* his membership in such group”); *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”).

In addition, the BIA did not err in finding that Pio-Diaz’s proposed social group of “Mexican returnees from the United States perceived as wealthy” was not cognizable. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (in order to demonstrate membership in a particular social 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)); see also *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016) (concluding that “imputed wealthy Americans” returning to Mexico does not constitute a particular social group). The BIA also did not err in declining to consider Pio-Diaz’s arguments regarding a social group that was not proposed to the IJ. See *Honcharov v. Barr*, 924 F.3d 1293, 1297 (9th Cir. 2019) (BIA did not err in declining to consider social group that was not raised to IJ).

Thus, Pio-Diaz’s asylum and withholding of removal claims fail. In light of this disposition, we need not reach Pio-Diaz’s remaining contentions concerning asylum and withholding of removal. See *Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach).

Substantial evidence supports the agency’s denial of CAT relief because Pio-Diaz failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of the government if returned to Mexico. See *Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009); see also *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (generalized evidence of violence and crime in petitioner’s home country insufficient to meet standard for CAT relief).

Pio-Diaz 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).

We reject Pio-Diaz's contentions that the agency failed to consider evidence or otherwise erred in its analysis of his claims.

Finally, we deny Pio-Diaz's request to file a document that is not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963 (9th Cir. 1996) (en banc) (court's review is limited to the administrative record).

PETITION FOR REVIEW DENIED.