

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 12 2020

FOR THE NINTH CIRCUIT

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

CARLOS ARTURO MENDOZA LOPEZ,

No. 17-71888

Petitioner,

Agency No. A208-121-649

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted May 6, 2020**

Before: BERZON, N.R. SMITH, and MILLER, Circuit Judges.

Carlos Arturo Mendoza Lopez, 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 withholding of removal and relief under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence

* 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).

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 in part and dismiss in part the petition for review.

Substantial evidence supports the agency’s finding that Mendoza Lopez did not establish past persecution where he was not harmed or threatened in Mexico. *See Nagoulko v. INS*, 333 F.3d 1012, 1017-18 (9th Cir. 2003) (finding no past persecution where petitioner did not suffer significant physical violence).

The agency did not err in determining that a proposed particular social group based on Mendoza Lopez’s status as a returnee with perceived wealth is not cognizable. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (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 Barbosa v. Barr*, 926 F.3d 1053, 1059-60 (9th Cir. 2019) (concluding that “individuals ‘returning to Mexico from the United States who are believed to be wealthy’” did not constitute a particular social group);

Ramirez-Munoz v. Lynch, 816 F.3d 1226, 1229 (9th Cir. 2016) (concluding that “imputed wealthy Americans” returning to Mexico did not constitute a particular social group).

Substantial evidence also supports the agency’s finding that Mendoza Lopez failed to establish a nexus between the harm he fears and a family-based particular social group. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant “must provide *some* evidence of [motive], either direct or circumstantial”); *see also Pagayon v. Holder*, 675 F.3d 1182, 1191 (9th Cir. 2011) (a personal dispute, standing alone, does not constitute persecution on account of a protected ground); *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”).

Thus, Mendoza Lopez’s withholding of removal claim fails.

To the extent Mendoza Lopez proposes new particular social groups in his opening brief, we lack jurisdiction to consider them because he failed to raise them before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

Substantial evidence supports the agency’s denial of CAT relief because Mendoza Lopez 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).

PETITION FOR REVIEW DENIED in part; DISMISSED in part.