

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 26 2020

FOR THE NINTH CIRCUIT

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

BENEDICTO MIGUEL HERNANDEZ-
TORREZ,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 15-70440

Agency No. A072-990-055

MEMORANDUM*

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

Submitted August 24, 2020**

Before: SCHROEDER, TROTT, and SILVERMAN, Circuit Judges.

Benedicto Miguel Hernandez-Torrez, a native and citizen of Mexico,
petitions pro se for review of the Board of Immigration Appeals’ (“BIA”) order
dismissing his appeal from an immigration judge’s decision denying his

* 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).

application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”).¹

Our jurisdiction is governed by 8 U.S.C. § 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 interpretation 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. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We dismiss the petition for review in part and deny it in part.

To the extent that Hernandez-Torrez’s proposed particular social group differs in his petition from the definition of that group he presented to the BIA, we lack jurisdiction to review his claim. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004). As to the remainder of his claim, the BIA did not err in finding that he did not 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

¹ Hernandez-Torrez does not contest the agency’s conclusion that his asylum application was time barred.

question’’) (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)).

Substantial evidence supports the BIA’s conclusion that Hernandez-Torrez otherwise failed to establish that he would be persecuted on account of a protected ground. He did not present any evidence that his cousin’s assaults were motivated by the petitioner’s membership in any group or on account of any protected status. *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”). Thus, Hernandez-Torrez’s withholding of removal claim fails.

Substantial evidence supports the agency’s denial of CAT protection because Hernandez-Torrez 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 DISMISSED in part; DENIED in part.