

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 30 2020

FOR THE NINTH CIRCUIT

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

NOE ANTUNEZ-BARRERA,

No. 19-71856

Petitioner,

Agency No. A208-312-181

v.

MEMORANDUM*

WILLIAM P. BARR, Attorney General,

Respondent.

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

Submitted October 26, 2020**

Before: McKEOWN, RAWLINSON, and FRIEDLAND, Circuit Judges.

Noe Antunez-Barrera, 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 ("IJ") decision denying his applications for withholding of removal, relief under the Convention Against Torture ("CAT"), and cancellation of removal, and his request to terminate proceedings. Our jurisdiction is governed by

* 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).

8 U.S.C. § 1252. We 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. *Bonilla v. Lynch*, 840 F.3d 575, 581 (9th Cir. 2016). We deny in part and dismiss in part the petition for review.

Antunez-Barrera does not challenge the agency’s determination that his proposed social group of “individuals who return to Mexico after living in the United States” was not cognizable. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party’s opening brief are waived).

Substantial evidence supports the agency’s determination that Antunez-Barrera failed to establish he would be persecuted in Mexico on account of his family social group. *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”). Thus, Antunez-Barrera’s withholding of removal claim fails.

Substantial evidence also supports the agency’s denial of CAT relief because Antunez-Barrera failed to show it is more likely than not he would be tortured by

or with the consent or acquiescence of the government if returned to Mexico. *See Zheng v. Holder*, 644 F.3d 829, 835-36 (9th Cir. 2011) (possibility of torture too speculative); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (generalized evidence of violence and crime in Mexico is insufficient to meet standard for CAT relief).

We lack jurisdiction to review the agency's denial of cancellation of removal because Antunez-Barrera raises no colorable legal or constitutional claim. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 929-30 (9th Cir. 2005) (the court's jurisdiction over challenges to the agency's discretionary determination is limited to colorable constitutional claims or questions of law).

The BIA properly denied Antunez-Barrera's request to terminate, because Antunez-Barrera's contention that the IJ lacked jurisdiction over his proceedings is foreclosed by *Aguilar Fermin v. Barr*, 958 F.3d 887, 895 (9th Cir. 2020) (omission of certain information from notice to appear can be cured for jurisdictional purposes by later hearing notice).

As stated in the court's September 18, 2019 order, the temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.