

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 16 2020

FOR THE NINTH CIRCUIT

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

MARIO GARCIA-CAMEY,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 16-70075

Agency No. A095-757-415

MEMORANDUM*

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

Submitted November 9, 2020**

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

Mario Garcia-Camey, native and citizen of Guatemala, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 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. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Id.* at 1241-42. We deny the petition for review.

Garcia-Camey does not raise, and has thus waived, any challenge to the agency’s dispositive determination that his asylum application was untimely. *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 Garcia-Camey failed to establish he was persecuted 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”); *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”).

The BIA did not err in finding that Garcia-Camey 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)); see also *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1080 (9th Cir. 2020) (particular social group must exist independently of the harm asserted). Thus, Garcia-Camey’s withholding of removal claim fails.

Substantial evidence also supports the agency’s denial of CAT relief because Garcia-Camey 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 Guatemala. See *Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009) (no likelihood of torture). We reject Garcia-Camey’s contention that the agency applied the wrong standard in analyzing his CAT claim.

As stated in the court’s May 10, 2016 order, the temporary stay of removal remains in place until issuance of the mandate.

PETITION FOR REVIEW DENIED.