

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 13 2022

FOR THE NINTH CIRCUIT

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

DAVID JAUREGUI-LOZANO,

No. 17-72337

Petitioner,

Agency No. A095-809-680

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted December 7, 2022**
San Francisco, California

Before: NGUYEN and SANCHEZ, Circuit Judges, and BOUGH,** District
Judge.

David Jauregui-Lozano, a native and citizen of Mexico, petitions for review
of a decision by the Board of Immigration Appeals (“BIA”) affirming the

* 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 Honorable Stephen R. Bough, United States District Judge for the
Western District of Missouri, sitting by designation.

immigration judge’s (“IJ”) order denying asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. Reviewing the agency’s factual findings for substantial evidence and its legal conclusions de novo, *see Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022), we deny the petition for review.

1. Jauregui-Lozano challenges the agency’s determination that his untimely application rendered him statutorily ineligible for asylum on the ground that the BIA failed to consider how changed country conditions affected his individual case. *See* 8 U.S.C. § 1158(a)(2)(D) (excusing compliance with the one-year filing requirement where the petitioner demonstrates “changed circumstances which materially affect the applicant’s eligibility for asylum”). The BIA affirmed the IJ’s decision, in which the IJ made an individualized assessment of the changed country conditions to which Jauregui-Lozano testified. *Alaelua v. I.N.S.*, 45 F.3d 1379, 1382 (9th Cir. 1995) (“When the BIA clearly incorporates the IJ’s opinion . . . we treat the IJ’s statement of reasons as the BIA’s and review the IJ’s decision for abuse of discretion.”). And substantial evidence supports the IJ’s determination that rising violence and crime in Mexico did not “materially affect” Jauregui-Lozano’s eligibility for asylum. *See* 8 U.S.C. § 1158(a)(2)(D).

2. Jauregui-Lozano next challenges the agency’s determination that he failed to establish a cognizable particular social group for his withholding of

removal claim. Reviewing the agency’s legal conclusion de novo, we agree that Jauregui-Lozano’s proposed social group—individuals who are well dressed, and/or individuals who speak English or speak with an American accent—is not cognizable.¹ The Ninth Circuit has previously rejected a similar proposed social group based on perceived wealth and American mannerisms as lacking in social visibility and particularity. *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228 (9th Cir. 2016) (rejecting proposed PSG of “imputed wealthy Americans” that are “light-skinned, fit, and have American mannerisms or accents”). Jauregui-Lozano adduces no evidence that would compel the panel to decide differently in this case. And substantial evidence supports the agency’s conclusion that individuals in this proposed category are not perceived as a discrete and distinct group in Mexico. *See Reyes v. Lynch*, 842 F.3d 1125, 1131–32, 1135 (9th Cir. 2016).

3. Finally, Jauregui-Lozano challenges the agency’s denial of his claim for CAT relief. Substantial evidence supports the agency’s determination that Jauregui-Lozano is not entitled to CAT relief because he has failed to show that he is more likely than not to suffer torture in Mexico. *See* 8 C.F.R. § 208.16(c)(2).

¹ Jauregui-Lozano also raises two new proposed social groups on appeal: “male individuals unwilling to cooperate with cartel members” and “Mexican males, who support the rule of law, refuse participation with the ‘Gang’ criminal organizations and refuse to pay criminal organizations money.” Because Jauregui-Lozano did not raise those particular social groups before the agency, this court lacks jurisdiction to consider them. *See Barron v. Ashcroft*, 358 F.3d 674, 677–78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

Jauregui-Lozano offers no evidence of past torture in Mexico. The police officers' interrogation and tasing of Jauregui-Lozano did not rise to the level of torture. And "generalized evidence of violence and crime in Mexico is not particular to [Jauregui-Lozano] and is insufficient to meet [the CAT relief] standard." *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). Nor does Jauregui-Lozano adduce evidence that the government, or any entity with the acquiescence of the government, would torture him upon return to Mexico. *See Wakkary v. Holder*, 558 F.3d 1049, 1067–68 (9th Cir. 2009).

PETITION DENIED.