

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 9 2023

FOR THE NINTH CIRCUIT

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

RUBEN ANTONIO CARDONA-
GUZMAN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 17-72270

Agency No. A206-460-459

MEMORANDUM*

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

Submitted November 15, 2022**
Pasadena, California

Before: WARDLAW and W. FLETCHER, Circuit Judges, and KORMAN,**
District Judge.

* 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 Edward R. Korman, United States District Judge for the Eastern District of New York, sitting by designation.

Ruben Antonio Cardona-Guzman (Cardona), a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' (BIA) decision dismissing his appeal from an Immigration Judge's (IJ) denial of his petitions for asylum, 8 U.S.C. § 1158(b)(1), withholding of removal, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petition.

1. Substantial evidence supports the BIA's conclusion that Cardona failed to establish eligibility for asylum. The BIA found that Cardona "ha[d] not established a nexus between his past or future harm and an enumerated ground" because "[t]here is insufficient evidence in the record to demonstrate that gang members were or would be motivated to harm [Cardona] for any reason other than to increase their wealth through extortion efforts."

An applicant "bears the burden of proving eligibility for asylum and must demonstrate that he has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019).

Cardona was threatened with extortion in person one time by the Mara Salvatrucha (MS) gang in El Salvador and he received threats via Facebook messenger while in the United States. This evidence is insufficient to show that

Cardona was threatened *because of* his status as a “perceived property owner.”

And Cardona’s testimony that he lived in a nice house in a nice neighborhood is insufficient to provide a nexus between the extortion attempts and his status as a “perceived property owner.”

“An [immigrant’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.” *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010). The record simply supports that Cardona was targeted for extortion due to his perceived wealth in general, not due to his status as a perceived property owner. And we have held that wealth on its own is not a protected ground. *See, e.g., id.* at 1015–16. Therefore, the BIA did not err in finding that there is insufficient evidence to conclude that Cardona was or would be mistreated on account of a statutorily protected ground if he returned to El Salvador.

2. The BIA also did not err in finding that Cardona failed to qualify for withholding of removal, even though withholding of removal has a less demanding nexus requirement. To be eligible for withholding of removal, an applicant must show that the evidence in the record demonstrates a “clear probability” of persecution. *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021). For the same reasons as stated above, Cardona has failed to establish that his status as a property owner is even “a reason” that he was extorted, *Barajas-Romero v. Lynch*, 846 F.3d

351, 359 (9th Cir. 2017), which made him ineligible for withholding of removal.

Accordingly, substantial evidence supports the BIA's determination that Cardona has failed to establish a nexus between any harm or fear of harm and a protected ground, making him ineligible for asylum or withholding of removal.

3. Nor has Cardona demonstrated that the evidence compels reversal of the BIA's decision that Cardona failed to establish eligibility for protection under CAT. To establish eligibility for CAT protection, an applicant must show "it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F. R. § 1208.16(c)(2).

Neither Cardona's testimony nor documentary evidence submitted in support of his application speak to past torture or a likelihood of future torture, in which the Salvadoran government acquiesced. While the 2015 U.S. State Department Country Reports for El Salvador "mention principal human rights problems," Cardona's statement that "the police could have helped him if the MS [gang] was going to hurt him and if the police knew beforehand" shows that public officials did not consent or acquiesce to extortion here. Therefore, Cardona cannot show that torture would be "inflicted by or at the instigation of or with the consent or acquiescence of a public official." *B.R. v. Garland*, 26 F.4th 827, 844 (9th Cir. 2022) (quoting 8 C.F.R. § 208.18). Accordingly, the BIA's determination that Cardona cannot establish eligibility for CAT protection is supported by substantial

evidence.

PETITION DENIED.