

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 27 2023

FOR THE NINTH CIRCUIT

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

MARCO ANTONIO RAMIREZ MACIAS,

No. 16-73923

Petitioner,

Agency No. A077-975-869

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted January 18, 2023**

Before: GRABER, PAEZ, NGUYEN, Circuit Judges.

Marco Antonio Ramirez Macias, 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 decision denying his applications for withholding of removal and protection under the Convention Against Torture

* 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).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny in part and dismiss in part the petition for review.

Substantial evidence supports the agency’s determination that Ramirez Macias failed to establish he would be persecuted on account of a protected ground. *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”).

Because Ramirez Macias does not challenge the agency’s determination that his returnee-based particular social group is not cognizable, this issue is waived. *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).

We lack jurisdiction to consider Ramirez Macias’s particular social group related to gang opposition because the BIA did not err in declining to consider it. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below).

We lack jurisdiction to consider Ramirez Macias’s contentions regarding his religion because he failed to exhaust them before the agency. *See id.* Thus, Ramirez Macias’s withholding of removal claim fails.

Substantial evidence also supports the agency's denial of CAT protection because Ramirez Macias failed to show it is more likely than not he will be tortured if returned to Mexico. *See Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009) (no likelihood of torture).

We reject Ramirez Macias's contention that the agency erred in its legal analysis or ignored evidence or arguments in denying his CAT claim.

The stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.