

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 15 2023

FOR THE NINTH CIRCUIT

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

HUGO ERNESTO GONZALEZ MEJIA,

No. 21-496

Petitioner,

Agency No. A075-606-109

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Argued and Submitted March 6, 2023
San Francisco, California

Before: FRIEDLAND and R. NELSON, Circuit Judges, and CARDONE,**
District Judge.

Petitioner Hugo Ernesto Gonzalez-Mejia, a native and citizen of El Salvador, petitions for review of two decisions by the Board of Immigration Appeals (“BIA”). The first order terminated Gonzalez-Mejia’s withholding of removal, and the second order affirmed an Immigration Judge’s (“IJ”) denial of

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

deferral of removal under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

1. The BIA terminated Petitioner’s withholding of removal because it determined that his 2019 assault conviction constituted a particularly serious crime. Our review of this determination “is limited to ensuring that the agency relied on the appropriate factors and proper evidence to reach this conclusion.” *Bare v. Barr*, 975 F.3d 952, 966 (9th Cir. 2020) (cleaned up) (quoting *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1077 (9th Cir. 2015)). We review the BIA’s determination for abuse of discretion. *Id.* at 963 (citing *Arbid v. Holder*, 700 F.3d 379, 385 (9th Cir. 2012) (per curiam)).

The BIA did not abuse its discretion in holding that Petitioner’s assault conviction constituted a particularly serious crime. It properly considered all of the appropriate factors, including the nature of Petitioner’s conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction. *See id.* at 961 (citing *In re N-A-M-*, 24 I. & N. Dec. 336, 342 (BIA 2007)). The BIA did not abuse its discretion by failing to explicitly consider that Petitioner’s sentence was on the low end of the statutory range. *See Hernandez v. Garland*, 52 F.4th 757, 768 (9th Cir. 2022). Nor did the BIA abuse its discretion by omitting a discussion of the credits for “good time/work time” and time served that were applied to Petitioner’s sentence. *Cf. Pepper v. United States*, 562 U.S. 476, 501 n.14 (2011) (“An award of good time credit . . . does not affect the length of a court-imposed sentence . . .”); *Burr v.*

Edgar, 292 F.2d 593, 594–95 (9th Cir. 1961) (concluding that work time and good time credits did not affect the length of a petitioner’s sentence for the purpose of assessing deportability based on the commission of a “crime involving moral turpitude”). Finally, the BIA did not abuse its discretion by crediting the victim’s account of the assault over Petitioner’s, to the extent that it did so, in assessing the circumstances and underlying facts of the conviction. *See Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021).

The BIA also considered proper evidence while making its determination. The BIA primarily relied on Petitioner’s 2019 probation report, which contained accounts of the assault from both Petitioner and the assault victim. We have upheld the BIA’s reliance on similar materials where, as here, the information in those materials was uncontested at the time the BIA made its decision. *See Bare*, 975 F.3d at 964–65; *Hernandez*, 52 F.4th at 767.¹

2. The agency also denied Petitioner’s application for CAT deferral, because he failed to demonstrate that he would be tortured with the consent or acquiescence of the Salvadoran government. We review this factual finding for substantial evidence, meaning “we treat [the finding] as ‘conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.’” *B.R. v. Garland*, 26 F.4th 827, 835 (9th Cir. 2022) (quoting *Velasquez-Gaspar v.*

¹ Because the record does not indicate that the BIA ignored Petitioner’s evidence or arguments while making its particularly serious crime determination, Petitioner has not established a due process violation. *See Najmabadi v. Holder*, 597 F.3d 983, 990–91 (9th Cir. 2010).

Barr, 976 F.3d 1062, 1064 (9th Cir. 2020)).

Substantial evidence supports the agency’s conclusion that Salvadoran officials will not acquiesce in any future torture Petitioner might face. Like the IJ below, we acknowledge that conditions for LGBTQ individuals in El Salvador are “far from ideal.” But the record shows that El Salvador has laws in force protecting LGBTQ individuals, and the record contains examples of the Salvadoran government enforcing those laws, albeit imperfectly. *Cf. Del Cid Marroquin v. Lynch*, 823 F.3d 933, 937 (9th Cir. 2016) (per curiam) (upholding a denial of CAT relief where “Salvadoran law prohibits extrajudicial killings and violence, and there is substantial evidence that the government enforces those laws—albeit imperfectly—against both gang members and rogue police officers”). While Petitioner cites some instances where Salvadoran officials have themselves tortured LGBTQ individuals, this generalized evidence, on its own, does not compel the conclusion that the Salvadoran government will turn a blind eye to Petitioner’s uncle’s threats to torture him. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam).²

3. The stay of removal remains in place until the mandate issues. The supplemental motion to stay removal is otherwise denied.

PETITION FOR REVIEW DENIED.

² Because substantial evidence supports the agency’s conclusion that the Salvadoran government will not acquiesce in future torture, we need not address Petitioner’s arguments regarding the agency’s relocation analysis. *See, e.g., B.R.*, 26 F.4th at 845.