

NOT FOR PUBLICATION

FILED

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

APR 3 2023

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

Hugo Jimenez-Perez,

Petitioner,

v.

Merrick B. Garland, U.S. Attorney
General,

Respondent.

No. 21-70

Agency No. A206-412-228

MEMORANDUM*

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

Argued and Submitted March 17, 2023
Pasadena, California

Before: PAEZ, MILLER, and VANDYKE, Circuit Judges.

Hugo Jimenez-Perez, a citizen and native of Mexico, petitions for review of the Board of Immigration Appeals' decision affirming an immigration judge's denial of his applications for cancellation of removal, asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

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

We review “legal questions de novo, and the agency’s factual findings . . . for substantial evidence.” *Kumar v. Holder*, 728 F.3d 993, 998 (9th Cir. 2013). Under the substantial-evidence standard, we must accept the agency’s factual findings “unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Garland v. Ming Dai*, 141 S. Ct. 1669, 1677 (2021) (quoting 8 U.S.C. § 1252(b)(4)(B)). Because the Board “expressed agreement with the reasoning of the [immigration judge],” we review both decisions. *Kumar*, 728 F.3d at 998.

1. The Board denied Jimenez’s application for cancellation of removal because his daughter was over 21 at the time the agency issued its decision. *See* 8 U.S.C. §§ 1229b(b)(1)(D), 1101(b)(1). Jimenez contends that the unavailability of cancellation of removal for those with adult children violates the Equal Protection Clause. Because age is not a suspect class, *Massachusetts Bd. of Ret. v. Murgia*, 427 U.S. 307, 313–14 (1976) (per curiam), we apply rational-basis review, under which we must uphold the challenged classification “so long as there is a plausible policy reason for the classification . . . and the relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational,” *Fitzgerald v. Racing Ass’n of Cent. Iowa*, 539 U.S. 103, 107 (2003) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 11–12 (1992)). The government has a plausible interest in cancelling the removal of parents on whom young children depend, and setting an age threshold is rationally related to that goal.

2. Jimenez sought asylum and withholding of removal on the basis of his membership in two proposed particular social groups: Catholic Mexican males and returnees to Mexico from the United States. The immigration judge found that Jimenez had conceded the untimeliness of his asylum application. The immigration judge then explained that eligibility for asylum and withholding of removal would require that Jimenez establish persecution on the basis of a protected ground, and that neither Jimenez's Catholic faith nor his status as a returnee met this standard.

Relying on those findings, the Board determined that Jimenez's asylum application was untimely and alternatively rejected it because Jimenez had not "demonstrated that any feared harm would be on account of a protected ground." The Board rejected Jimenez's application for withholding of removal for failing to establish the requisite likelihood of harm on the basis of a protected ground. We conclude that substantial evidence supports the Board's denials of both applications on the merits, so we need not consider whether the asylum application was timely.

As to the first proposed group, Catholic Mexican males, substantial evidence supports the agency's determination that the "record does not establish [that Jimenez] would be targeted based on his Catholic faith." Although Jimenez produced evidence that Catholic "priests and religious leaders" were targeted for violence, Jimenez is not a priest or religious leader. The Board was not obligated to conclude that Jimenez's faith alone would make him a target.

As for the second proposed group, returnees to Mexico from the United States, the Board did not err in deeming this group not cognizable. We have repeatedly held that proposed groups centering on returnees to Mexico from the United States are not cognizable. *E.g.*, *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (concluding that petitioner’s “proposed social group, ‘returning Mexicans from the United States,’ is . . . too broad to qualify as a cognizable social group”); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016). Jimenez presents no evidence compelling a different conclusion here. Although he argues that migrants passing through Mexico suffer violence, he has not shown that returnees from the United States, in particular, are socially distinct or targeted with violence. Because Jimenez has not demonstrated a connection between the harm he fears and a protected ground, the Board appropriately denied his applications for asylum and withholding of removal.

3. Jimenez also seeks protection under the CAT on the theory that there is widespread cartel and gang violence in Mexico in which the government willfully cooperates. But the CAT requires that Jimenez demonstrate that he faces a “particular threat of torture beyond that of which all citizens of [Mexico] are at risk,” which Jimenez has not done. *Dhital v. Mukasey*, 532 F.3d 1044, 1051–52 (9th Cir. 2008). Substantial evidence therefore supports the denial of the CAT claim.

The motions to stay removal (Dkt. Nos. 4, 10) are denied.

PETITION DENIED.