

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 3 2023

FOR THE NINTH CIRCUIT

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

Maria Del Carmen Chavez Soto; Antonia
Guadalupe Gomez Chavez; Eduardo
Gomez Chavez,

Petitioners,

v.

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

Respondent.

No. 22-22

Agency Nos. A216-267-791
 A216-267-792
 A216-267-793

MEMORANDUM*

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

Submitted March 30, 2023**
San Francisco, California

Before: M. SMITH and OWENS, Circuit Judges, and RODRIGUEZ,*** District
Judge.

Petitioners Maria Del Carmen Chavez Soto and her two children, Antonia
Guadalupe Gomez Chavez and Eduardo Gomez Chavez, petition for review of

* 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 Xavier Rodriguez, United States District Judge for
the Western District of Texas, sitting by designation.

the Board of Immigration Appeals’ (“BIA”) dismissal of their appeal of the immigration judge’s (“IJ”) denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). Petitioners are natives and citizens of Mexico. As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 8 U.S.C. § 1252 and dismiss the petition.

1. The IJ denied Petitioners’ asylum and withholding of removal claims based on their arguments that they would be persecuted in Mexico on account of: (1) imputed political opinion; (2) the particular social group of “Mexican witnesses who report serious gang crimes to law enforcement” (the “witness-based group”); and (3) the particular social group of “family members of Uriel Chavez” (the “family-based group”). On appeal to this court, Petitioners argue that substantial evidence does not support the IJ’s finding as to the family-based group. However, Petitioners did not raise this objection before the BIA, explicitly stating that they were only challenging the IJ’s findings as to the witness-based group. Accordingly, we lack jurisdiction to review Petitioners’ unexhausted claim.¹ See *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020) (“Exhaustion requires a non-constitutional legal claim to the court on appeal to have first been raised in the administrative proceedings below.”).

¹ Although Petitioners exhausted their claim as to the witness-based group, they do not raise it in their briefing in this court, thereby waiving any objection to the BIA’s decision on this ground. See *Cui v. Holder*, 712 F.3d 1332, 1338 n.3 (9th Cir. 2013).

Because Petitioners' failure to show a cognizable particular social group is dispositive to their eligibility for asylum and withholding of removal, we need not reach the remaining issue of whether their past harm rose to the level of persecution. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (“[C]ourts . . . are not required to make findings on issues the decision of which is unnecessary to the results they reach.”).

2. Petitioners also did not exhaust their CAT claim by failing to raise it with the BIA. We therefore also lack jurisdiction over the CAT claim. *See Bare*, 975 F.3d at 960.

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

PETITION DISMISSED.