

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 13 2023

FOR THE NINTH CIRCUIT

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

CESAR GALINDO GONZALEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-764

Agency No.
A215-561-732

MEMORANDUM*

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

Submitted April 11, 2023**
San Francisco, California

Before: PAEZ, CLIFTON, and H.A. THOMAS, Circuit Judges.

Petitioner Cesar Galindo Gonzalez, a native and citizen of Mexico, seeks review of the Board of Immigration Appeals's (BIA) dismissal of his appeal of an Immigration Judge's (IJ) decision denying his applications for withholding of removal and for protection under the Convention Against Torture (CAT).

We have jurisdiction under 8 U.S.C. § 1252(a)(1). We deny the petition.

* 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).

When as here, the BIA adopts the decision of the IJ, this court reviews the IJ's decision as if it were that of the BIA. *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005). "We review purely legal questions de novo, and the agency's factual findings for substantial evidence." *Perez-Portillo v. Garland*, 56 F.4th 788, 792 (9th Cir. 2022). Motions to remand are reviewed under an abuse of discretion standard. *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 702 (9th Cir. 2022). "Under that standard, this court defers to the Board's decision unless it acted arbitrarily, irrationally, or contrary to law." *Id.*

The BIA properly affirmed the IJ's determination that Petitioner was ineligible for withholding of removal because his proposed social group of returning Mexican immigrants is not cognizable. *See, e.g., Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (Mexicans returning home from the United States were too broad to constitute a cognizable social group); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016) (Claimed social group of "imputed wealthy Americans" was insufficiently particular to constitute a discrete class of persons.). Petitioner's proposed social group is therefore foreclosed by this court's precedents, and he fails to show any reasons to depart from them.

As for the CAT claim, Petitioner does not discuss the IJ's denial of his application with any elaboration. The claim is therefore waived. *See Cui v. Holder*, 712 F.3d 1332, 1338 n.3 (9th Cir. 2013) (Petitioner waived any objection to denial of CAT relief by failing to address issue in his brief); *Husyev*

v. Mukasey, 528 F.3d 1172, 1183 (9th Cir. 2008) (Because petitioner failed to advance argument in support of CAT claim, the issue was waived).

In any event, Petitioner's CAT claim fails on the merits because he did not meet his burden of showing that it was more likely than not that he would be tortured if returned to Mexico. *Akosung v. Barr*, 970 F.3d 1095, 1104 (9th Cir. 2020) ("Under the CAT regulations, the applicant bears the burden of establishing that 'it is more likely than not that he or she would be tortured if removed.'" (quoting 8 C.F.R. § 1208.16(c)(2))). Petitioner presented neither evidence of past torture nor evidence that he would be sought out for torture by the Mexican authorities or those acting with their acquiescence.

The BIA did not abuse its discretion in denying Petitioner's motion to remand. Petitioner's argument that he was "eligible for cancellation of removal" because of his marriage to a U.S. citizen, required him to establish a prima facie case for the relief sought. *See Tzompantzi-Salazar*, 32 F.4th at 703. Eligibility for cancellation of removal requires, among other things, showing that Petitioner's "removal would impose an 'exceptional and extremely unusual' hardship on a close relative who is either a citizen or permanent resident of this country." *Pereida v. Wilkinson*, 141 S. Ct. 754, 759 (2021) (quoting 8 U.S.C. § 1229b(b)(1)). Yet Petitioner offered no evidence or argument that his U.S. citizen wife would suffer "an exceptional and extremely unusual hardship" if he were removed. In the alternative, the BIA also construed Petitioner's motion for remand as an argument stating that he was eligible for adjustment of status

under 8 U.S.C. § 1255 through his marriage to a U.S. citizen. Yet as the BIA determined, Petitioner presented no evidence to indicate that he is the beneficiary of an approved visa petition, nor did he present evidence showing that he had a visa petition pending. Accordingly, the BIA properly determined that Petitioner had not established a prima facie case for cancellation of removal or adjustment of status.

PETITION DENIED.