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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Celestina De Los Angeles Corvera-
Manzanarez; Jefferson Antonio Corvera-
Manzanarez,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-633

Agency No. A215-702-734
A215-702-735

MEMORANDUM*

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

Submitted April 12, 2023**
San Francisco, California

Before: S.R. THOMAS and H.A. THOMAS, Circuit Judges, and RAKOFF,***
District Judge.

* 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 Jed S. Rakoff, United States District Judge for the
Southern District of New York, sitting by designation.

Celestina and Jefferson Corvera-Manzanarez, natives and citizens of El Salvador, petition for review of the Board of Immigration Appeals’ (“BIA”) denial of their applications for asylum, withholding of removal, and Convention Against Torture (“CAT”) relief. We have jurisdiction under 8 U.S.C. § 1252(a)(1). We review questions of law de novo. *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020). We review factual findings for substantial evidence. *Id.* “Under this standard, we must uphold the agency determination unless the evidence compels a contrary conclusion.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). We deny the petition. Because the parties are familiar with the factual and procedural history of the case, we need not recount it here.

I

In an asylum claim, the applicant “must demonstrate that he has suffered past persecution or has a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* Substantial evidence supports the BIA’s determinations that the petitioners did not suffer past persecution, do not have an objectively reasonable fear of future persecution, and could safely relocate within El Salvador.

“An applicant alleging past persecution has the burden of establishing that . . . his treatment rises to the level of persecution.” *Baghdasaryan v. Holder*, 592

F.3d 1018, 1023 (9th Cir. 2010). Substantial evidence supports the BIA’s determination that petitioners did not suffer past persecution, because the threat made to petitioners was not repeated or combined with other significant mistreatment. Although “[d]eath threats alone can constitute persecution,” *Kaur v. Wilkinson*, 986 F.3d 1216, 1227 (9th Cir. 2021), this court has “been most likely to find persecution where threats are repeated, specific and combined with confrontation or other mistreatment.” *Sharma v. Garland*, 9 F.4th 1052, 1062 (9th Cir. 2021) (citation omitted). The gang did not directly threaten, harm, or contact Celestina at all, and threatened Jefferson once. This single threat is like the majority of cases in which “threats do not rise to the level of persecution.” *Nahrvani v. Gonzales*, 399 F.3d 1148, 1153 (9th Cir. 2005).¹

Substantial evidence supports the BIA’s determination that petitioners did not establish an objectively reasonable fear of future persecution. Members of the gang MS-13 never attempted to contact petitioners at home, either when they lived there or after they left. Accordingly, there is an insufficient basis in the record to conclude that MS-13 would have a “continuing interest” in petitioners. *Sharma*, 9

¹ Because substantial evidence supports the BIA’s determination that petitioners did not suffer past persecution, the BIA properly determined that petitioners are also ineligible for humanitarian asylum. *See* 8 C.F.R. § 1208.13(b)(1)(i), (iii).

F.4th at 1065. Substantial evidence also supports the BIA’s determination that petitioners could safely relocate within El Salvador, because there is not an MS-13 presence in the areas where Celestina’s mother and uncle live.²

II

Substantial evidence supports the BIA’s determination that petitioners are ineligible for withholding of removal. “To be eligible for withholding of removal, an applicant must show that the evidence in the record demonstrates a ‘clear probability of persecution.’” *Aden v. Wilkinson*, 989 F.3d 1073, 1085–86 (9th Cir. 2021) (citation omitted). The BIA properly determined that because petitioners have not “met the lesser burden” of establishing asylum eligibility, they “necessarily [have] failed to meet the more stringent ‘clear probability’ burden required for withholding.” *Sharma*, 9 F.4th at 1066 (citation omitted).

III

Substantial evidence supports the BIA’s determination that petitioners are ineligible for CAT relief. Torture is “more severe than persecution,” *Davila v. Barr*, 968 F.3d 1136, 1144 (9th Cir. 2020) (citation omitted), and requires the

² Remanding for reconsideration in light of *Rodriguez-Tornes v. Garland*, 993 F.3d 743 (9th Cir. 2021), and *Matter of A-B-*, 28 I. & N. Dec. 307 (A.G. 2021), as petitioners request, would be inappropriate here. Those cases address the particular social group and nexus analysis. Because the BIA did not reach those issues, those cases are irrelevant.

infliction of “severe pain or suffering . . . inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity,” 8 C.F.R. § 208.18(a)(1). “Because the BIA could reasonably conclude that [petitioners’] past harm did not rise to the level of persecution, it necessarily falls short of the definition of torture.” *Sharma*, 9 F.4th at 1067.

PETITION DENIED.