

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 14 2023

FOR THE NINTH CIRCUIT

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

Hugo Hernandez Jimenez,

No. 22-780

Petitioner,

Agency No. A098-177-413

v.

MEMORANDUM*

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

Respondent.

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

Submitted April 12, 2023**
Seattle, Washington

Before: McKEOWN, BYBEE, DESAI, Circuit Judges.

Hugo Hernandez Jimenez, a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals (“BIA”) decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. The BIA’s denial of asylum, withholding of removal, and CAT claims is reviewed for substantial evidence. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028

* 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).

(9th Cir. 2019). We “must uphold the agency determination unless the evidence compels a contrary conclusion.” *Id.* Pure legal issues are reviewed de novo. *Rivera-Peraza v. Holder*, 684 F.3d 906, 909 (9th Cir. 2012).

We dismiss Mr. Hernandez Jimenez’s petition as to his untimely and unexhausted asylum claim, and deny it on his withholding of removal claim and request for CAT protection.

First, the Immigration Judge (“IJ”) denied Mr. Hernandez Jimenez’s asylum claim because he sought asylum after the one-year deadline and no extraordinary circumstances justified the late filing. *See* 8 U.S.C. § 1158(a)(2)(B), (D). Mr. Hernandez Jimenez failed to challenge the IJ’s timeliness determination, and the BIA found any challenge waived on appeal. Therefore, Mr. Hernandez Jimenez did not exhaust “all administrative remedies available to [him] as of right,” and we lack jurisdiction to review the denial of his asylum claim. 8 U.S.C. § 1252(d)(1); *see Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013) (*per curiam*). We therefore dismiss the petition as to Mr. Hernandez Jimenez’s asylum claim.

Second, substantial evidence supports the BIA’s decision to deny Mr. Hernandez Jimenez’s application for withholding of removal. To qualify for withholding of removal, an applicant must establish either past persecution or a clear probability of future persecution because of a protected ground. *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1163–64 (9th Cir. 2013). An applicant who can safely and reasonably relocate within his native country does not have a well-

founded fear of future persecution. *Duran-Rodriguez*, 918 F.3d at 1029; 8 C.F.R. § 1208.16(b)(2). The BIA properly concluded that Mr. Hernandez Jimenez could reasonably relocate within Mexico because, in the past, Mr. Hernandez has safely relocated to live with family in other cities in Mexico. Evidence of generalized violence in Mexico does not establish that relocation is unreasonable. *Hussain v. Rosen*, 985 F.3d 634, 648–49 (9th Cir. 2021).

Finally, substantial evidence supports the BIA’s finding that Mr. Hernandez Jimenez was ineligible for protection under CAT. To qualify for CAT protection, a movant bears the burden of proving that it is more likely than not that he would be tortured by or with the acquiescence of the government if removed. *See Santos-Ponce v. Wilkinson*, 987 F.3d 886, 891 (9th Cir. 2021). “Evidence that [an] applicant could relocate to a part of the country of removal where he or she is not likely to be tortured” may demonstrate it is not more likely than not that an applicant will be tortured. 8 C.F.R. § 1208.16(c)(3)(ii); *see Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 704–05 (9th Cir. 2022). For the same reasons relevant to his withholding claim, there is substantial evidence that Mr. Hernandez Jimenez can relocate to a part of Mexico where he is not likely to be tortured. Evidence of generalized crime and violence in Mexico is insufficient show a particularized likelihood of torture. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010).

On this record, the BIA’s decision to deny withholding of removal and CAT protection was supported by substantial evidence. We therefore deny the

petition as to these claims.

The petition for review is **DISMISSED IN PART** and **DENIED IN PART**.