

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2023

FOR THE NINTH CIRCUIT

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

ELMER ALEXANDER FUENTES-
CARRION,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-70222

Agency No. A212-952-448

MEMORANDUM*

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

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Elmer Alexander Fuentes-Carrion, a native and citizen of El Salvador, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ's") decision denying his applications for asylum, withholding of removal, and protection under the

* 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).

Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C.

§ 1252. We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review for substantial evidence the agency’s factual findings. *Id.* at 1241. We deny the petition for review.

Because Fuentes-Carrion does not challenge the agency’s denial of asylum based on a determination that he was not credible, we do not address this issue. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013).

The BIA did not err in concluding that Fuentes-Carrion failed to establish membership in a cognizable particular social group of “witnesses to gang violence.” *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (to demonstrate membership in a particular social group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014))); *see also Villegas Sanchez v. Garland*, 990 F.3d 1173, 1180 (9th Cir. 2021) (“Social distinction requires ‘those with a common immutable characteristic [to be] set apart, or distinct, from other persons within the society in some significant way.’” (internal quotations and citations omitted)). Thus,

Fuentes-Carrion's withholding of removal claim fails.

Because Fuentes-Carrion does not contest the BIA's determination that he did not challenge the IJ's denial of CAT protection, we do not address it. *See Lopez-Vasquez*, 706 F.3d at 1079-80.

Fuentes-Carrion also does not contest, and we do not address, the BIA's denial of his motion to terminate. *See id.*

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

PETITION FOR REVIEW DENIED.