

NOT FOR PUBLICATION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

JUAN RAMIRO GIL SIERRA,

No. 21-755

Petitioner,

Agency No. A206-547-562

v.

MEMORANDUM*

MERRICK B. GARLAND, UNITED
STATES ATTORNEY GENERAL,

Respondent.

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

Submitted on April 19, 2023 **
Portland, Oregon

Before: RAWLINSON and SUNG, Circuit Judges, and MORRIS,*** District
Judge.

Juan Ramiro Gil Sierra (“Gil Sierra”), born in and a citizen of Mexico,
petitions for review of a decision of the Board of Immigration Appeals (“BIA”)
dismissing his appeal of an Immigration Judge’s (“IJ”) order. Gil Sierra seeks

* 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 Brian M. Morris, United States District Judge for
the District of Montana, sitting by designation.

review of the denial of his applications for cancellation of removal, asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We lack jurisdiction to review the claim regarding cancellation of removal, 8 U.S.C. § 1252(a)(2)(B)(i), and the claim regarding the timeliness of Gil Sierra’s asylum application, 8 U.S.C. § 1158(a)(3), and we dismiss the petition as to those claims. We retain jurisdiction over the withholding and CAT claims, 8 U.S.C. § 1252, and we deny the petition as to those claims.

1. Gil Sierra challenges the denial of his application for cancellation of removal on the ground that he is statutorily ineligible because he is not a person of good moral character. Gil Sierra also challenges the IJ’s determination that he did not warrant relief as a matter of discretion. Gil Sierra does not argue that the BIA or IJ applied an incorrect legal standard. Gil Sierra instead contends that the IJ based the good moral character and ultimate discretionary decision upon an incomplete review of the “positive factors in the record” and an erroneous review of the facts underlying Gil Sierra’s criminal and arrest history, leading to an improper finding that the adverse factors outweighed the evidence that would support an exercise of the IJ’s discretion. We lack jurisdiction to review the merits of a discretionary decision, but we may review whether an IJ considered relevant evidence in making this decision. *Szonyi v. Barr*, 942 F.3d 874, 896 (9th Cir. 2019) (citing *Vilchez v. Holder*, 682 F.3d 1195 (9th Cir. 2012)). The record reveals that the IJ provided a thorough review of the facts relevant to Gil Sierra’s application, including a discussion of Gil

Sierra's employment and family circumstances. The IJ's consideration of the evidence in Gil Sierra's case does not constitute the type of failure we contemplated in *Szonyi*. We accordingly do not have jurisdiction to review the IJ's decision that Gil Sierra did not merit cancellation of removal. *Id.* The IJ's finding that Gil Sierra abused alcohol and engaged in sometimes violent behavior toward family members represents a factual determination that underlies the denial of discretionary relief that 8 U.S.C. § 1229b authorizes. Section 1252(a)(2)(B)(i) "strips courts of jurisdiction to review 'any judgment regarding the granting of relief'" under the specified provisions, including 8 U.S.C. § 1229b. *Patel v. Garland*, 142 S. Ct. 1614, 1621 (2022). We lack jurisdiction to review this contested factual determination. *Id.* We therefore dismiss the petition as to Gil Sierra's claim regarding cancellation of removal.

2. Gil Sierra next argues that the IJ erred in determining that Gil Sierra had failed to establish any exception that would render his asylum application timely. The IJ determined that Gil Sierra had failed to establish a changed or extraordinary circumstance that would justify Gil Sierra's late-filed application. The BIA dismissed the appeal of this decision. Gil Sierra offers only conclusory arguments that the IJ failed to consider his proffered evidence. Gil Sierra has not raised a question of law or a mixed question of law and fact that would allow review of the timeliness of Gil Sierra's asylum application. *Gasparyan v. Holder*, 707 F.3d 1130, 1134 (9th Cir. 2013); 8 U.S.C. § 1158(a)(3). We dismiss the petition as to Gil Sierra's asylum claim.

3. Gil Sierra argues that the IJ erred in denying his application for withholding of removal. He contests the denial in part based upon the determination that his proposed social group of recent deportees who came to the United States as minors and have spent significant portions of their lives in the United States was not cognizable. “Whether a group constitutes a ‘particular social group’ under the [Immigration and Nationality Act] is a question of law we review de novo.” *Perdomo v. Holder*, 611 F.3d 662, 665 (9th Cir. 2010). Gil Sierra has articulated a fear that, as a member of his proposed social group of recent deportees, he would be perceived as wealthy. We previously have rejected the cognizability of social groups comprised of various categories of recent deportees, including groups of “imputed wealthy Americans.” *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151 (9th Cir. 2010). Substantial evidence supports the denial of Gil Sierra’s application for withholding of removal. We deny Gil Sierra’s petition as to his withholding claim.

4. Gil Sierra finally contends that it was error to deny his CAT claim. Substantial evidence supports the determination that Gil Sierra is not eligible for CAT relief. Eligibility for CAT relief required Gil Sierra to show “it is more likely than not that he . . . would be tortured if removed to the proposed country of removal.” *Plancarte Saucedo v. Garland*, 23 F.4th 824, 834 (9th Cir. 2022) (quoting 8 C.F.R. § 1208.16(c)(2)). Gil Sierra has failed to identify any evidence specific to him. Gil Sierra instead articulates fears of general violence,

criminality, and corruption in Mexico. Evidence of generalized violence fails to establish a sufficiently particularized risk of torture to Gil Sierra. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 895 (9th Cir. 2018). We deny Gil Sierra's petition as to his CAT claim.

PETITION DISMISSED IN PART, DENIED IN PART.