

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 16 2023

FOR THE NINTH CIRCUIT

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

JOSE MANUEL MORAN-CHOTO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-1359

Agency No. A216-381-565

MEMORANDUM*

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

Submitted May 9, 2023**
Seattle, Washington

Before: HAWKINS, TALLMAN, and IKUTA, Circuit Judges.

Jose Manuel Moran-Choto, a native and citizen of El Salvador, seeks review of the Board of Immigration Appeals’ (“BIA”) decision affirming an Immigration Judge (“IJ”) order denying his applications for asylum, withholding of removal, and

* 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).

protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

We review the denial of asylum, withholding of removal, and CAT protection for substantial evidence. *Flores Molina v. Garland*, 37 F.4th 626, 632 (9th Cir. 2022). Under that standard, the agency’s action should be upheld “unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Id.* (citation omitted).

To qualify for asylum, Moran-Choto must establish that he is a refugee within the meaning of 8 U.S.C. § 1101(a)(42)(A). *See Garcia v. Wilkinson*, 988 F.3d 1136, 1142–43 (9th Cir. 2021). He thus bears the burden of proving that he is unable or unwilling to return to El Salvador because of past persecution or a well-founded fear of future persecution on account of a protected ground. *See id.* Substantial evidence does not compel a finding that Moran-Choto qualifies as a refugee under either prong.

Substantial evidence supports the BIA’s determination that Moran-Choto did not suffer past persecution on account of his statutorily protected ground despite threatening remarks from the 18th Street Gang. *See Sharma v. Garland*, 9 F.4th 1052, 1064 (9th Cir. 2021) (“While no doubt ‘unpleasant,’ the threats evidently did not cause ‘significant actual suffering or harm.’”) (quoting *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000)). The agency found Moran-Choto testified credibly that he was

threatened by the 18th Street Gang on two occasions. In the first instance, gang members told him “they knew that [he] was the brother of the person who had killed a gang member” and they would kill him, his wife, and his two children unless he agreed to distribute drugs for their criminal enterprise. Second, Moran-Choto was abducted by gang members and held at gunpoint for two hours, and the gang similarly threatened the lives of his family unless he agreed to distribute drugs. In both instances, he was released without any injuries. Substantial evidence supports the BIA’s holding that the two encounters with the gang that Moran-Choto described did not rise to the level of persecution. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1027–28 (9th Cir. 2019).

Moran-Choto testified that he remained near his hometown from approximately April 2016, when he was last threatened by gang members, until November 2017, when he departed for the United States. During that nearly sixteen-month period, he had no further contact with the gang despite his refusal to join their criminal enterprise distributing drugs.

Further, since late 2017, his family—wife, two children, parents, and nine siblings—has continued to reside in El Salvador without any further gang contact. *See Tamang v. Holder*, 598 F.3d 1083, 1094 (9th Cir. 2010) (“[A] petitioner’s fear of future persecution is weakened, even undercut, when similarly-situated family members living in the petitioner’s home country are not harmed.”) (cleaned up); *see*

also Sharma, 9 F.4th at 1066 (“The ongoing safety of family members in the petitioner’s native country undermines a reasonable fear of future persecution.”) (citation omitted). We reject Moran-Choto’s argument that he is not similarly situated to his wife and children in El Salvador because they were also threatened by gang members. Thus, the BIA’s determination that Moran-Choto is ineligible for asylum is supported by substantial evidence.¹

Next, to qualify for withholding of removal, Moran-Choto must demonstrate a “clear probability” of persecution because of a protected ground. *See Tamang*, 598 F.3d at 1091. This standard “is more stringent than the well-founded fear standard for asylum.” *Id.* Here, substantial evidence supports the agency’s conclusion that Moran-Choto failed to demonstrate the lower burden required for asylum. Consequently, his withholding of removal claim also fails. *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).²

Finally, substantial evidence supports the agency’s finding that Moran-Choto failed to demonstrate an individualized risk of torture if he were returned to his home country. *See Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183–84 (9th Cir. 2020). He

¹ Because Moran-Choto fails to establish past persecution or a well-founded fear of future persecution, we decline to address his challenge to the agency’s nexus determination. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004).

² Therefore, we need not address Moran-Choto’s argument that the BIA failed to apply the correct nexus standard for withholding of removal. *See Simeonov*, 371 F.3d at 538.

has not been tortured in the past, nor has he shown that it is more likely than not he will be subjected to torture by or with the acquiescence of a Salvadoran public official. *See id.* Therefore, the BIA did not err in denying Moran-Choto's application for protection under the CAT.

Moran-Choto's motion for a stay of removal [Docket Entry No. 3] is denied as moot.

PETITION DENIED.