

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 16 2023

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

JUAN DIMAS MARTINEZ-HENRIQUEZ,
et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-674

Agency Nos.

A208-756-974

A206-801-238

A208-756-975

MEMORANDUM*

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

Submitted May 12, 2023**
San Francisco, California

Before: FRIEDLAND and BENNETT, Circuit Judges, and BENNETT,***
Senior 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 Richard D. Bennett, United States Senior District Judge for the District of Maryland, sitting by designation.

The Petitioners in this case, all natives and citizens of El Salvador,¹ seek review of a decision of the Board of Immigration Appeals (“BIA”) upholding the denial of their application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

Petitioners entered the United States in 2016,² and filed a consolidated application for asylum, withholding removal, and CAT protection in 2019. At a hearing before an Immigration Judge (“IJ”), Petitioners testified that they had entered the United States fleeing gang violence in El Salvador. According to their testimony, five Mara 18 gang members attempted to extort Juan for \$10,000, and separately attempted to extort Jaqueline. Both refused, and the gang attempted to kill Juan and kidnap his children. Jaqueline further claims that she was physically and sexually abused by a former partner. The IJ denied all forms of relief, and the BIA upheld the IJ’s decision.

“We review denials of asylum, withholding of removal, and CAT relief for substantial evidence,” *Wang v. Sessions*, 861 F.3d 1003, 1007 (9th Cir. 2017) (internal quotation omitted), and affirm “unless the evidence in the record

¹ The lead petitioner is Juan Dimas Martinez-Hernandez (“Juan”). His children, Henry Samuel Martinez-Perez (“Henry”), and Jacqueline Estefany Martinez-Perez (“Jaqueline”), are derivative beneficiaries on his application. Petitioners shall be referred to collectively unless noted otherwise.

² Juan and Henry entered the United States together on March 27, 2016. Jacqueline entered earlier on August 19, 2014, and filed her own application for asylum. These applications were consolidated at a master calendar hearing on April 4, 2017.

compels a contrary conclusion,” *Arteaga v. Mukasey*, 511 F.3d 940, 944 (9th Cir. 2007). “Where the BIA issues its own decision but relies in part on the immigration judge’s reasoning, we review both decisions.” *Flores-Lopez v. Holder*, 685 F.3d 857, 861 (9th Cir. 2012).

Nexus. To qualify for asylum or withholding of removal, “[t]he applicant must demonstrate a nexus between her past or feared harm and a protected ground.” *Garcia v. Wilkinson*, 988 F.3d 1136, 1143 (9th Cir. 2021) (citing *Barajas-Romero v. Lynch*, 846 F.3d 351, 359–60 (9th Cir. 2017)). To sustain a claim for asylum, the protected ground must be “at least one central reason” for the alleged persecution. *Zetino v. Holder*, 622 F.3d 1007, 1015 (9th Cir. 2010) (quoting 8 U.S.C. § 1158(b)(1)(B)(i)). Comparatively, withholding of removal requires only that the protected ground be “a reason” for the persecution. *Barajas-Romero*, 846 F.3d at 360. We review the BIA’s nexus determination for substantial evidence. *Zetino*, 622 F.3d at 1016.

Even assuming that the harm Petitioners suffered in El Salvador amounts to past persecution,³ the IJ determined, and the BIA affirmed, that this harm was attributable to criminal activity unconnected to any protected ground. *See id.* (“An

³ The IJ also denied asylum and withholding of removal after finding that the harm Petitioners suffered did not rise to the level of past persecution. As the BIA reached its decision on the basis of the nexus and relocation issues, it declined to address “the [IJ’s] past persecution determination, including the validity and cognizability of the particular social groups.” Accordingly, we are precluded from addressing those issues. *See Hernandez-Cruz v. Holder*, 651 F.3d 1094, 1110 (9th Cir. 2011) (“[W]e cannot deny a petition for review on a ground that the BIA itself did not base its decision.”).

alien's desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground.”). The evidence on the record does not compel a conclusion that the gang targeted Petitioners for any reason other than a desire to obtain money through extortion, or that the violence Jaqueline suffered at the hands of her former partner was on account of any protected ground. *Cf. Ayala v. Holder*, 640 F.3d 1095, 1097–98 (9th Cir. 2011). Accordingly, substantial evidence supports the BIA's finding that Petitioners failed to establish a nexus between the alleged persecution and a protected ground. This determination is fatal to their asylum and withholding claims. *See Riera-Riera v. Lynch*, 841 F.3d 1077, 1081 (9th Cir. 2016).

Internal Relocation. To qualify for asylum or withholding of removal based on a reasonable fear of future persecution, the applicant must show that he could not reasonably relocate within the country of removal. 8 C.F.R. § 1208.13(b)(3)(iii); 8 C.F.R. § 1208.16(b)(2); *Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021). In this case, the BIA adopted the IJ's finding that the Petitioners could relocate safely within El Salvador, as no harm has come to other family members who reside elsewhere in the country. Although Petitioners challenge this finding in their opening brief, they did not raise the issue before the BIA. Accordingly, this issue is not properly exhausted, and we lack jurisdiction to address it. *Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020); *Honcharov v. Barr*, 924 F.3d 1293, 1296 n.2 (9th Cir. 2019).

Convention Against Torture. To qualify for CAT protection, the applicant must show that “it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” *Hamoui v. Ashcroft*, 389 F.3d 821, 826 (9th Cir. 2004) (quoting 8 C.F.R. § 208.16(c)(2)); *Khup v. Ashcroft*, 376 F.3d 898, 906–07 (9th Cir. 2004) (requiring 51% chance of torture). The applicant must also show that he or she would be tortured “with the consent or acquiescence of a public official.” *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020); *see* 8 C.F.R. § 208.18(a)(1). Acquiescence may be established by “awareness and willful blindness,” but requires more than “ineffectiveness on the government’s part to investigate and prevent crime.” *Xochihua-Jaimes*, 962 F.3d at 1184 (citations omitted).

Petitioners offer only “generalized evidence of violence and crime” at the hands of criminal gangs. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). Although they note that the Salvadoran government has struggled to prevent gang violence, it is well established that a government’s failure to control criminal gangs does not constitute consent or acquiescence in torture. *See, e.g., Xochihua-Jaimes*, 962 F.3d at 1184; *Garcia-Milan v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014). As the record does not compel a contrary conclusion, substantial evidence supports the BIA’s denial of CAT relief.

PETITION DENIED.