

FILED

MAY 16 2023

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSARIO TOMAS-TOMAS; PABLO
ALFREDO PABLO-TOMAS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-677

Agency Nos.
A202-070-114
A202-070-115

MEMORANDUM*

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

Submitted May 12, 2023**
Seattle, Washington

Before: HAWKINS, W. FLETCHER, and IKUTA, Circuit Judges.

Rosario Tomas-Tomas, and her son Pablo Alfredo Pablo-Tomas, seek review of an order of the Board of Immigration Appeals (BIA) affirming the decision of an Immigration Judge (IJ) denying her application for asylum,

* 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).

withholding of removal, and relief under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition for review.

Tomas-Tomas did not challenge the BIA's determination that she failed to establish that the Guatemalan government was or would be "unable or unwilling" to protect her from persecution. Therefore, Tomas-Tomas has forfeited any such argument, *see Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079–80 (9th Cir. 2013), and her asylum and withholding of removal claims fail as a result, *see Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010) (asylum); *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 788 (9th Cir. 2004) (withholding of removal).

Alternatively, Tomas-Tomas's asylum and withholding of removal claims fail because substantial evidence supports the BIA's holding that the harm Tomas-Tomas suffered did not rise to the level of persecution. We reject Tomas-Tomas's argument that the death threats she and her son received rose to the level of persecution because they were not "so menacing as to cause significant actual suffering or harm." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (citation and quotation marks omitted). Here the BIA could have reasonably concluded that Juan Pablo's threats were not credible given the "surrounding circumstances," *id.*, including the "unfulfilled" nature of the threats, *Hoxha v.*

Ashcroft, 319 F.3d 1179, 1182 (9th Cir. 2003). Further, the physical violence Tomas-Tomas endured was not significant enough to compel a conclusion that the violence rose to the level of persecution. *See Nagoulko v. I.N.S.*, 333 F.3d 1012, 1016–17 (9th Cir. 2003). Therefore, the BIA did not err in affirming the IJ’s denial of asylum and withholding of removal.

The BIA’s determination that it was not more likely than not that Tomas-Tomas would be tortured upon return to Guatemala by or with the acquiescence or willful blindness of a public official was also supported by substantial evidence. The record shows that the treatment Tomas-Tomas received did not rise to the level of torture, because it did not rise to the level of persecution, which is less severe. *See Guo v. Sessions*, 897 F.3d 1208, 1217 (9th Cir. 2018). Nor has Tomas-Tomas shown the likelihood of government acquiescence or willful blindness, given the steps the Guatemalan government has taken to combat violence against women, regardless whether it has fully achieved its goals. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1033–35 (9th Cir. 2014). Therefore, the BIA did not err in affirming the IJ’s denial of Tomas-Tomas’s request for relief under the CAT.

PETITION DENIED.