

JUN 20 2023

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SAINVILIA BENJAMIN, ET AL,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General

Respondent.

No. 22-428

Agency No.  
A209-939-224  
A209-939-225

MEMORANDUM\*

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

Submitted June 12, 2023\*\*  
Pasadena, California

Before: BYBEE and CHRISTEN, Circuit Judges, and FITZWATER,\*\* District  
Judge.

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\* 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 Sidney A. Fitzwater, Senior United States District  
Judge for the Northern District of Texas, sitting by designation.

Sainvilia Benjamin, a citizen of Haiti, petitions for review of the Board of Immigration Appeals' (BIA) decision affirming the Immigration Judge's (IJ) decision denying her applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT).<sup>1</sup> We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petition.

We review the BIA's legal conclusions de novo and its factual findings for substantial evidence. *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021). "Substantial evidence review means that the BIA's determinations will be upheld 'if the decision is supported by reasonable, substantial, and probative evidence on the record considered as a whole.'" *Id.* (quoting *Zhao v. Mukasey*, 540 F.3d 1027, 1029 (9th Cir. 2008)).

1. Substantial evidence supports the BIA's decision that Benjamin failed to establish eligibility for asylum and statutory withholding of removal. 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3)(C); *see also Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1230 (9th Cir. 2016) ("A petitioner who fails to satisfy . . . asylum necessarily fails to satisfy the more stringent standard for withholding of removal."). The BIA and IJ concluded that there was no nexus between the

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<sup>1</sup> Benjamin's asylum application included her minor daughter as a derivative beneficiary.

potential harm and her proposed particular social group (PSG).<sup>2</sup> Benjamin's proposed PSG was "Haitian landowners who suffered violence at the hands of other family members who target them due to their status as landowners." The BIA upheld the IJ's determination that Benjamin did not establish that she would be persecuted *because of* her PSG instead of because her family members wanted to obtain the land. *See* 8 C.F.R. §§ 1208.13(b), 1208.16(b).

The record supports the BIA's conclusion. Benjamin's own testimony describes a personal family drama, not persecution because of a PSG. Benjamin testified that Uncle Antoine never beat her. She also said that her uncle wanted to kill her "because he has more children than my father had. . . so he thinks that he—that I could inherit everything that belonged to my father," and that he "does not recognize [Benjamin] as being part of the family." This "record does not 'compel' us to conclude that [Benjamin] has been the victim of past persecution or faces a clear probability of future persecution."

*Gutierrez-Alm v. Garland*, 62 F.4th 1186, 1199 (9th Cir. 2023).

2. The BIA's denial of Benjamin's CAT claim is also supported by substantial evidence. 8 U.S.C. § 1229a(c)(4)(A). Benjamin argued that the Haitian

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<sup>2</sup> The IJ and BIA also found that Benjamin failed to establish membership in her proposed social group. We do not address this contention because it is not necessary to uphold the BIA's decision.

government would acquiesce to her torture because her uncle, who has ties to the Haitian police, suffered no consequences for his attack on her father. However, under our law acquiescence requires that the official be aware of the torture “prior to the activity constituting torture” and then breach the legal duty to intervene.

*Ornelas Chavez v. Gonzales*, 458 F.3d 1052, 1059 (9th Cir. 2006) (citing 8 C.F.R. § 208.18(a)(7)). Further, “threats from private actors” and “the existence of generalized violence” do not constitute torture. *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1029 (9th Cir. 2019); *Santos-Ponce v. Wilkinson*, 987 F.3d 886, 891 (9th Cir. 2021).

Benjamin’s contentions that the Haitian government is corrupt and that police fail to protect citizens from violence do not rise to the level of torture. Because Benjamin never reported her uncle’s deeds to Haitian authorities and has not otherwise been targeted by government officials, substantial evidence supports the BIA’s conclusion that it is not “more likely than not” she will be tortured with government approval if removed to Haiti. *Duran-Rodriguez*, 918 F.3d at 1029. Thus, Benjamin has not met her burden to demonstrate that Haitian officials would acquiesce to her torture. *See* 8 C.F.R. § 208.16(c)(2).

**PETITION DENIED.**