

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 21 2023

FOR THE NINTH CIRCUIT

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

BENJAMIN GOMEZ HERNANDEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-274

Agency No.
A208-184-420

MEMORANDUM*

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

Submitted June 15, 2023**
Pasadena, California

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

Benjamin Gomez Hernandez, a native and citizen of Guatemala, petitions
for review of the Board of Immigration Appeals' (BIA) decision denying his
application for asylum, withholding of removal, and protection under the

* 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 Eric N. Vitaliano, United States District Judge for
the Eastern District of New York, sitting by designation.

Convention Against Torture (CAT). We review de novo questions of law. *Ahmed v. Holder*, 569 F.3d 1009, 1012 (9th Cir. 2009). “We review for substantial evidence factual findings underlying the BIA’s determination that a petitioner is not eligible for asylum, withholding of removal, or CAT relief.” *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022). “Where, as here, the BIA cites *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994) and also provides its own review of the evidence and law, we review both the IJ’s and the BIA’s decisions.” *Cordoba v. Barr*, 962 F.3d 479, 481 (9th Cir. 2020) (internal quotation marks, alterations, and citation omitted). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

Gomez Hernandez was born in Guatemala in 1980 and grew up there. As a child, he faced discrimination because he is of Mayan descent. In 1999, he entered the United States, and he remained in the country until 2014. In 2014, he returned to Guatemala, where he faced threats and was beaten by gang members. While back in Guatemala, Gomez Hernandez briefly operated a small business selling clothing at a market. In 2015, he returned to the United States, entering without inspection.

The BIA did not err by affirming the IJ’s denial of asylum and withholding of removal. Substantial evidence supports the agency’s finding that Gomez Hernandez failed show that his alleged particular social group of “young indigenous business owners,” is cognizable. Gomez Hernandez made no showing that his status as a business owner is an immutable characteristic,

particularly given that he operated his clothing business for only a brief period.

Cf. Macedo Templos v. Wilkinson, 987 F.3d 877, 882–83 (9th Cir. 2021)

(“[B]eing a wealthy business owner is not an immutable characteristic . . .”).

Gomez Hernandez failed to make any argument or cite any authority regarding CAT protection in his appellate brief before the BIA. The BIA deemed the issue abandoned. On appeal, the Government argues that the claim is unexhausted. In his petition for review, Gomez Hernandez fails to raise any meaningful challenge to the BIA’s determination that he abandoned his CAT claim. Pursuant to 8 U.S.C. § 1252(d)(1), we therefore deny the claim as unexhausted.

The motion for a stay of removal (Dkt. No. 3) is denied.

PETITION DENIED.