

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 24 2023

FOR THE NINTH CIRCUIT

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

RICARDO ANTONIO DE PAZ-
PORTILLO; et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1027

Agency Nos.
A215-894-417
A215-894-418

MEMORANDUM*

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

Submitted August 15, 2023**

Before: TASHIMA, S.R. THOMAS, and FORREST, Circuit Judges.

Ricardo Antonio De Paz-Portillo and his minor daughter, natives and
citizens of El Salvador, petition for review of the Board of Immigration Appeals'
("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision

* 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).

denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”), and denying their motion to continue removal proceedings. We have jurisdiction under 8 U.S.C. § 1252. We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review for substantial evidence the agency’s factual findings. *Id.* at 1241. We review for abuse of discretion the denial of a continuance. *Arrey v. Barr*, 916 F.3d 1149, 1158 (9th Cir. 2019). We deny the petition for review.

The BIA did not err in concluding that De Paz-Portillo failed to establish membership in a cognizable particular social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (to demonstrate membership in a particular social group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014))); *see also Conde Quevedo*, 947 F.3d at 1243 (proposed particular social group not cognizable given absence of society-specific evidence of social distinction). Because petitioners do not challenge the agency’s determination that minor petitioner’s proposed particular social groups are not

cognizable, we do not reach it. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013). Thus, petitioners' asylum and withholding of removal claims fail.

Substantial evidence supports the agency's denial of CAT protection because petitioners failed to show it is more likely than not they will be tortured by or with the consent or acquiescence of the government if returned to El Salvador. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

The agency did not abuse its discretion in denying a continuance for lack of good cause, where there was no indicia of mental incompetency. *See* 8 C.F.R. § 1003.29 (an IJ may grant a continuance for good cause shown); *Singh v. Holder*, 638 F.3d 1264, 1274 (9th Cir. 2011) (IJ not required to grant a continuance).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED.