

NOT FOR PUBLICATION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

GERMAN FAVELA-OROZCO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1701

Agency No.
A089-927-219

MEMORANDUM*

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

Submitted August 22, 2023**
Portland, Oregon

Before: BENNETT, VANDYKE, and H.A. THOMAS, Circuit Judges.

Petitioner German Favela-Orozco is a native and citizen of Mexico. He petitions for review of a Board of Immigration Appeals (“BIA”) order dismissing his appeal from an Immigration Judge’s (“IJ”) decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). Exercising jurisdiction pursuant to 8

* 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).

U.S.C. § 1252, we **DENY** the petition for review.

We review the agency’s factual determinations under the highly deferential substantial evidence standard. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022). “To prevail under the substantial evidence standard, the petitioner ‘must show that the evidence not only supports, but *compels* the conclusion that these findings and decisions are erroneous.’” *Davila v. Barr*, 968 F.3d 1136, 1141 (9th Cir. 2020) (quoting *Cordon-Garcia v. INS*, 204 F.3d 985, 990 (9th Cir. 2000)) (emphasis added). We review questions of law de novo. *Ruiz-Colmenares*, 25 F.4th at 748.

1. The BIA did not err in rejecting Favela-Orozco’s asylum claim. “To be eligible for asylum, a petitioner has the burden to demonstrate a likelihood of ‘persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021) (quoting 8 U.S.C. § 1101(a)(42)(A)).

Favela-Orozco claimed persecution on account of his membership in a particular social group (“PSG”) consisting of “close family members of Favela, or the Favela family.” To be legally cognizable, a PSG must be “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (B.I.A. 2014); *see also Reyes v. Lynch*, 842 F.3d 1125, 1135–37 (9th Cir. 2016) (upholding the BIA’s definition). The BIA

agreed with the IJ that Favela-Orozco’s “formulation lacked particularity because the group is too amorphous and lacking in outer limits that provide a clear benchmark for determining who falls within the family group.”

Favela-Orozco testified that the only member of his family to have experienced any direct harm is a cousin, who was kidnapped in 2011.¹ Therefore, the PSG would have to extend to his cousins to support his claim for asylum. But, as the BIA determined, Favela-Orozco did not “provide a clear benchmark for determining who falls within the group.” *Nguyen v. Barr*, 983 F.3d 1099, 1103 (9th Cir. 2020) (internal quotation marks and citation omitted). Favela-Orozco seems to argue in part that his family’s perceived wealth and educational status establish his proposed PSG’s particularity. But “[t]he ultimate question [in the particularity inquiry] is whether a group ‘can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.’” *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1091 (9th Cir. 2013) (en banc) (citation omitted). And the record does not compel the conclusion that members of Favela-Orozco’s family would be recognized as a “discrete class of persons” in Mexican society.

Substantial evidence also supports the BIA’s conclusion that Favela-Orozco has not established a nexus between his proposed PSG and his feared

¹ The hospital that Favela-Orozco’s sister works at was also threatened.

harm. Favela-Orozco testified that his parents, sister, aunts, and uncles have not experienced direct harm in Mexico. Favela-Orozco has not testified or otherwise established that his family suffered any threats or harm in the years since his cousin's kidnapping. Favela-Orozco has also failed to establish that the kidnapping was due to family ties; his cousin's colleague was kidnapped in the same incident, undermining the claimed familial motivation and raising the possibility of a professional-status motivation. *Cf. Pedro-Mateo v. INS*, 224 F.3d 1147, 1150 (9th Cir. 2000) ("Under the substantial evidence standard of review, the court of appeals must affirm when it is possible to draw two inconsistent conclusions from the evidence."). And Favela-Orozco's arguments that his family's perceived wealth makes his family a target bolsters the conclusion that any future persecution would be based on economic reasons and not a protected ground. *See Barrios v. Holder*, 581 F.3d 849, 856 (9th Cir. 2009) (holding that there was no nexus where the evidence instead supported the conclusion that the gang victimized Petitioner "for economic and personal reasons"), *abrogated on other grounds by Henriquez-Rivas*, 707 F.3d 1 at 1093.

2. For similar reasons, we also hold that the BIA did not err in rejecting Favela-Orozco's withholding of removal claim. First, a withholding of removal applicant must prove that a "*cognizable* protected ground is 'a reason' for future persecution," *Garcia v. Wilkinson*, 988 F.3d 1136, 1146 (9th Cir. 2021) (emphasis added), which Favela-Orozco has failed to do. Second, while the standard for withholding of removal is not as demanding as that for

asylum, *see Barajas-Romero v. Lynch*, 846 F.3d 351, 358–60 (9th Cir. 2017) (explaining that the withholding statute requires that the protected ground only be “a reason” for feared harm, unlike the asylum statute which requires it be “one central reason”), a finding of *no* nexus between the alleged protected ground and any feared harm means that a petitioner cannot make the *prima facie* case for either asylum or withholding, *see Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019).

3. Substantial evidence supports the BIA’s determination that Favela-Orozco is not eligible for CAT protection. An applicant must establish both that it is more likely than not that he will be tortured upon return to his native country, and that there is “sufficient state action involved in that torture.” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1033 (9th Cir. 2014) (quoting *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 351 (5th Cir. 2006)). Favela-Orozco did not claim to have experienced any past harm—much less torture—in Mexico. 8 C.F.R. § 1208.18(a)(2) (defining torture as “an extreme form of cruel and inhuman treatment”). His family has largely been living in Mexico safely. He did not establish that he would be risk of kidnapping. As Favela-Orozco has not shown that he faces any personalized risk of torture beyond general societal violence and official corruption, the record does not compel the conclusion that he faces a clear probability of torture in Mexico.

PETITION FOR REVIEW DENIED.