

NOT FOR PUBLICATION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

ELSA MARINA CALDERON; et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-999

Agency Nos.
A209-399-948
A209-399-949

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.

Elsa Marina Calderon and her son, natives and citizens of Honduras, petition pro se for review of the Board of Immigration Appeals' order affirming without opinion an immigration judge's decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture

* 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).

(“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny the petition for review.

Substantial evidence supports the agency’s determination that petitioners failed to establish they were or would be persecuted on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant “must provide some evidence of [motive], direct or circumstantial”). Thus, petitioners’ asylum and withholding of removal claims fail.

Substantial evidence also supports the agency’s denial of CAT protection because petitioners failed to show it is more likely than not they would be tortured by or with the consent or acquiescence of the government if returned to Honduras. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009). Petitioners’ contention that the agency applied the incorrect CAT standard is not properly before the court because they failed to raise it before the BIA. *See* 8 U.S.C. § 1252(d)(1) (exhaustion of administrative remedies required); *see also Santos-Zacaria v. Garland*, 143 S. Ct. 1103, 1113-14 (2023) (section 1252(d)(1) is a non-jurisdictional claim-processing rule).

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

PETITION FOR REVIEW DENIED.