

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 14 2023

FOR THE NINTH CIRCUIT

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

MARICELA BALDERRABANO-
VIDAL; GABRIEL ISAIAS
VALDERRABANO RIVERA; GILBERTO
CRUZ VALDERRABANO; ALONDRA
CRUZ VALDERRABANO,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-291

Agency Nos.
A089-269-669
A205-059-341
A205-059-338
A205-059-339

MEMORANDUM*

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

Submitted September 12, 2023**
San Francisco, California

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

* 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).

Maricela Balderrabano-Vidal, her two children, and one nephew¹ (Petitioners), natives and citizens of Mexico, seek review of the Board of Immigration Appeals' (BIA) decision dismissing their appeal of the Immigration Judge's (IJ) denial of asylum and withholding of removal. Petitioners also assert that the BIA erred by not analyzing their claim for protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252. We review the BIA's "legal conclusions de novo . . . and its factual findings for substantial evidence." *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc). We deny the petition for review.

1. ***Asylum and Withholding of Removal.*** Substantial evidence supports the BIA's conclusion that Petitioners failed to establish that the harm that Vidal experienced was on account of her proposed particular social group (PSG)—"family of her deceased brother," Isais—and accordingly was not eligible for asylum and withholding from removal. *See Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1018 (9th Cir. 2023) (discussing nexus requirement). While Vidal testified credibly that a cartel looked for her and threatened her with harm after her brother's murder, the record contains no evidence that her familial relationship to Isais was one central reason, or even a reason, that the cartel targeted her. *See Barajas-Romero v. Lynch*,

¹Petitioners are a family unit, and the children are derivative beneficiaries of the lead petitioner Vidal's application. Petitioners are referred to by their individual names when needed.

846 F.3d 351, 360 (9th Cir. 2017) (where “there was no nexus at all,” we draw “no distinction between the ‘one central reason’ phrase in the asylum statute and the ‘a reason’ phrase in the withholding statute”); *Garcia v. Wilkinson*, 988 F.3d 1136, 1143–44 (9th Cir. 2021) (an asylum applicant must prove that family relationship was “one central reason” for the persecution that she experienced). Instead, Vidal’s testimony establishes that the cartel targeted her because she *witnessed* her brother’s execution. That Vidal’s other family members live unthreatened and unharmed in Mexico in the same city where her brother was murdered undermines her claim that the cartel members targeted her and her family because of their relationship to Isaias. *See Santos-Ponce v. Wilkinson*, 987 F.3d 886, 890–91 (9th Cir. 2021). Accordingly, the evidence in the record does not compel us to conclude the BIA’s determination was incorrect. *See Aden v. Wilkinson*, 989 F.3d 1073, 1079 (9th Cir. 2021) (if the evidence in the record does not compel a reasonable adjudicator to reach a contrary conclusion, substantial evidence supports the BIA’s factual finding).

The BIA and IJ also correctly determined that Petitioners’ secondary proposed PSG—“witnesses to crimes in Mexico”—is not socially distinct based on the evidence presented. The agency must perform an “evidence-based inquiry” to “make a case-by-case determination as to whether the group is recognized by the particular society in question.” *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). Substantial evidence supports the agency’s determination that Mexican society

would not recognize such a group because nothing in the record, including the country reports and news articles submitted by Petitioners, discusses witnesses to crimes or asserts that Mexican society recognizes witnesses to crimes as a distinct group. *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1243 (9th Cir. 2020) (people who report gang violence to the police in Guatemala are not socially distinct where none of the documents provided “discusse[d] *reporting* gang violence to police” or “assert[ed] that Guatemalan society recognizes those who, without more, report gang violence as a distinct group.”).

2. **CAT Claim.** The BIA correctly concluded that Petitioners waived their CAT claim by failing to meaningfully challenge the IJ’s rejection of this claim. “[T]he BIA is entitled to look to the [petitioner’s] brief for an explication of the issues that petitioner is presenting to have reviewed.” *Alanniz v. Barr*, 924 F.3d 1061, 1069 (9th Cir. 2019), *quoting Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc). A petitioner waives issues that are “not specifically and distinctly argued” in the petitioner’s brief. *Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079–80 (9th Cir. 2013). Our review of Petitioners’ brief to the BIA confirms that while they mentioned their CAT claim in their introduction, headings, and conclusion, they did not argue that they were entitled to CAT protection. Accordingly, Petitioners have not shown that the BIA erred in concluding that they had not challenged the IJ’s denial of CAT relief.

PETITION DENIED.