

NOT FOR PUBLICATION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

SEBASTIANA DIEGO PABLO
AGUIRRE; OSBALDO LOPEZ DIEGUEZ,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-499

Agency Nos.
A206-462-736
A206-462-737

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.

Sebastiana Pablo-Aguirre and Osbaldo Lopez-Dieguez, natives and citizens
of Guatemala, timely petition for review of the Board of Immigration Appeals'

* 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).

(BIA) dismissal of their appeal from the immigration judge’s (IJ) denial of their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction pursuant to 8 U.S.C. § 1252. We review the BIA’s legal conclusions de novo and its factual findings for substantial evidence. *See Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1016 (9th Cir. 2023). We deny the petition.

Substantial evidence supports the BIA’s and the IJ’s¹ finding that the Petitioners did not establish a nexus between any past harm or well-founded fear of future harm and a protected ground. The “desire to be free from . . . random violence by” gangs does not provide a requisite nexus to a protected ground. *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010); *see also Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 250 (BIA 2014) (“Although he was subjected to one of the many different criminal activities that the gang used to sustain its criminal enterprise, he did not demonstrate that he was more likely to be persecuted by the gang on account of a protected ground than was any other member of the society.”). Moreover, while the gang members made some disparaging comments about the Petitioners’ religion, the evidence before the agency does not compel the conclusion that the Petitioners were “specifically sought out” and persecuted because of their religious beliefs or

¹ Where the BIA “adopts the IJ’s decision while adding some of its own reasoning, we review both decisions.” *Lopez-Cardona v. Holder*, 662 F.3d 1110, 1111 (9th Cir. 2011).

membership in any other particular social group. *Garcia v. Wilkinson*, 988 F.3d 1136, 1145 (9th Cir. 2021), *quoting Parada v. Sessions*, 902 F.3d 901, 910 (9th Cir. 2018); *see also Rodriguez-Zuniga*, 69 F.4th at 1019–20 (“Where the record indicates that the persecutor’s actual motivation for threatening a person is [general criminal activity], the record does not compel finding that the persecutor threatened the target because of a protected characteristic[.]”).

The agency did not err in denying relief under CAT. Substantial evidence supports the BIA’s determination that the Petitioners did not establish that it is more likely than not that, if removed, public officials would acquiesce to harm to the Petitioners amounting to torture. *See Garcia*, 988 F.3d at 1147. While the Petitioners argue that the Guatemalan government is “in league with the gangs[.]” the Petitioners did not present “significant evidence establishing government complicity” in gang-related criminal activity. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016); *see also id.* (“[A] general ineffectiveness on the government’s part to investigate and prevent crime will not suffice to show acquiescence.”).

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

PETITION DENIED.