

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

OCT 23 2023

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

DIEGO SANTIAGO-DIEGO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-974

Agency No.
A213-083-446

MEMORANDUM*

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

Submitted October 19, 2023**
San Francisco, California

Before: BEA, CHRISTEN, and JOHNSTONE, Circuit Judges.

Diego Santiago-Diego, a native and citizen of Guatemala, petitions for review of an order denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The Immigration Judge (IJ) issued a final order of removal denying his applications, and the Board of Immigration Appeals (BIA) affirmed without issuing a separate

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concluded this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

opinion. When the BIA affirms without a separate opinion, as here, we review the IJ's decision as the final agency determination. *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 849 (9th Cir. 2003). We have jurisdiction to review final orders of removal pursuant to 8 U.S.C. § 1252. We review questions of law de novo, including whether a particular social group is cognizable. *Nguyen v. Barr*, 983 F.3d 1099, 1101 (9th Cir. 2020). We review the IJ's factual findings for substantial evidence, which "should be upheld 'unless the evidence compels a contrary result.'" *Budiono v. Lynch*, 837 F.3d 1042, 1046 (9th Cir. 2016) (quoting *Hernandez-Mancilla v. Holder*, 633 F.3d 1182, 1184 (9th Cir. 2011)).

The IJ did not err by denying withholding of removal and asylum on the basis that Santiago-Diego did not demonstrate that his proposed particular social group of "persons whose spouses were killed in Guatemala" is legally cognizable. A valid particular social group 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 (BIA 2014). Santiago-Diego's proposed group shares an immutable characteristic because its members cannot change that their spouses died in Guatemala. However, the group is not defined with particularity because it is not "discrete," and its boundaries are vague. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 239; *see also Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1083 (9th Cir. 2020). Santiago-Diego contends that his testimony clearly

indicated that “killed” meant murdered, and thus the group is defined with sufficient particularity. However, the group still includes persons whose spouses were killed for any motive, political or otherwise, in Guatemala. And Santiago-Diego presented no evidence to prove that a person whose spouse is killed in Guatemala is recognized in Guatemalan society as part of a socially distinct group.

The IJ did not err by denying protection under the CAT. The IJ concluded that the evidence Santiago-Diego presented did not show he was tortured, nor did it show “gross, flagrant, or mass violations of human rights” in Guatemala. Additionally, the IJ pointed to the police investigation into Santiago-Diego’s wife’s death as evidence the government would not acquiesce to torture. Santiago-Diego argues “the government of Guatemala has a long history of failing to help persons such as [Santiago-Diego],” and thus he is entitled to protection under the CAT. Absent evidence that Santiago-Diego’s spouse was killed for a reason that would also apply to Santiago-Diego, this falls short of showing that Santiago-Diego faces a particularized risk of torture if he is returned to Guatemala.

PETITION DENIED.