

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 30 2023

FOR THE NINTH CIRCUIT

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

JENNIFER OROZCO BISOZO, et al.,

No. 22-1059

Petitioner,

Agency Nos.

v.

A208-929-883

A208-929-884

MERRICK B. GARLAND, Attorney
General,

A208-929-885

MEMORANDUM*

Respondent.

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

Submitted October 4, 2023**
Pasadena, California

Before: BYBEE, BENNETT, and DESAI, Circuit Judges.

Jennifer Orozco Bisozo (Orozco) and her minor children, natives and citizens of Mexico, petition for review of the Board of Immigration Appeals's (BIA's) order affirming denial of asylum, withholding of removal, and protection under the United Nations Convention Against Torture (CAT). Exercising

* 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).

jurisdiction under 8 U.S.C. § 1252, we deny the petition.

Petitioners entered the United States in April 2016, shortly after Orozco was threatened at a grocery store she owned and operated in her hometown. Orozco testified that armed gang members entered her store and demanded 20,000 pesos. After she responded that she did have any way to get that money, the gang members told her they would return in two weeks and kill Orozco and her family if she did not have the money. Orozco testified that she left the country before the two weeks was up and did not pay the money. She also testified that her family experienced no other threats or harm in Mexico, and that her parents still live in the town and have not experienced threats or violence.

The government began removal proceedings in June 2018. Petitioners conceded removability but applied for asylum, withholding of removal, and CAT protection. An Immigration Judge (IJ) determined that Orozco testified credibly, but denied all relief. In part, the IJ concluded that the harm experienced by Petitioners did not rise to the level of past persecution or torture, and that Petitioners did not establish a likelihood of future harm based on a protected ground. The BIA affirmed.

We review the agency's findings of fact for substantial evidence and its conclusions of law de novo. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (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 [the agency’s] 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)).

1. Substantial evidence supports the agency’s asylum determination.

“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)).¹ The agency determined that those who threatened her were motivated by economic gain, and thus that there was no nexus to a protected ground.²

On appeal, Petitioners point to nothing in the record establishing a nexus between their harm and membership in a protected group. Instead, they argue that the agency violated its “duty to fully develop the record” because the IJ did not specifically question Orozco about a nexus between the harm she experienced and

¹ Petitioners asserted membership in two claimed protected particular social groups: (1) Mexican small business owners opposing gang dominance and violence and extortion; and (2) the Orozco Bisoza family fleeing gang violence.

² The IJ made this finding explicitly. The BIA found no “clear error” in the IJ’s finding.

membership in a protected group.³ But because Orozco was represented by counsel, it is not clear that the IJ was obligated to independently question her about each element of relief. *See Jacinto v. I.N.S.*, 208 F.3d 725, 734 (9th Cir. 2000).

The record does not compel a conclusion contrary to the agency's determination that Petitioners were targeted for economic reasons. *See Barrios v. Holder*, 581 F.3d 849, 856 (9th Cir. 2009) (economic motive for harm is not persecution on account of a protected ground). In both Orozco's testimony and written declaration, she explained that she was extorted only for money and identified no other reason why the gang members may have targeted her or her family. Moreover, the fact that her parents continue to live in the same town without threats or violence undercuts the suggestion that Petitioners were targeted because of their family membership.

2. Substantial evidence supports the agency's withholding of removal determination for the same reason. "To succeed [on a withholding claim], an applicant must show a 'clear probability' of persecution because of a protected ground." *Garcia v. Wilkinson*, 988 F.3d 1136, 1146 (9th Cir. 2021) (citation omitted). Withholding of removal requires a lesser connection between

³ Petitioners also contend that the agency failed to give sufficient weight to a 2017 State Department report establishing that gang violence is prevalent in Mexico and that government officials are sometimes complicit in gang activity. But Petitioners do not argue that this evidence is relevant to the agency's dispositive nexus determination.

persecution and a protected ground than asylum. *Barajas-Romero v. Lynch*, 846 F.3d 351, 358-60 (9th Cir. 2017) (asylum claims require a protected ground to be “one central reason” for persecution, whereas withholding claims require that a protected ground be “a reason” for persecution). But both forms of relief require at least some nexus, and Petitioners have not presented any evidence of such a nexus here. *See Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019) (per curiam).⁴

3. Substantial evidence also supports the agency’s CAT determination. “To qualify for relief under CAT,” an applicant “must establish it is more likely than not that he or she would be tortured if returned to the proposed country of removal.” *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1089 (9th Cir. 2020). We have held that past death threats are insufficient to compel a finding of likely future torture. *See Garcia*, 988 F.3d at 1139-40, 1148. Petitioners also point to generalized reports about the prevalence of gang violence in Mexico to substantiate their fear of torture, but we have held that such reports are also insufficient to compel a finding of likely future torture. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (“[G]eneralized evidence of violence and crime in Mexico is not particular to Petitioners and is insufficient to meet [the CAT] standard.”).

⁴ Because we uphold the agency’s nexus determination as to both asylum and withholding, we need not reach the agency’s determination that the harm Petitioners suffered did not rise to the level of persecution.

PETITION DENIED.