

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2023

FOR THE NINTH CIRCUIT

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

GABRIEL SALINAS SALGADO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1530

Agency No.
A205-711-957

MEMORANDUM*

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

Submitted November 14, 2023**
Seattle, Washington

Before: McKEOWN and GOULD, Circuit Judges, and BAKER, International Trade
Judge.***

Gabriel Salinas Salgado petitions for review of a Board of Immigration
Appeals decision dismissing his appeal from an Immigration Judge's denial of

* 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).

*** The Honorable M. Miller Baker, Judge for the United States Court of
International Trade, sitting by designation.

statutory withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture.¹

The Board “adopt[ed] and affirm[ed] the Immigration Judge’s decision,” citing *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994). “When the BIA adopts and affirms an IJ’s decision and cites its *Burbano* decision, we will review the IJ’s decision as if it were that of the BIA.” *Tista v. Holder*, 722 F.3d 1122, 1125 (9th Cir. 2013) (cleaned up).

1. Salinas Salgado seeks statutory withholding of removal based on membership in a particular social group composed of “returning immigrants resisting a criminal organization in Mexico.” An applicant seeking withholding based on membership in a particular social group must “establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)). “Defined with particularity” means that the proposed group must be “defined by characteristics that provide a clear benchmark for determining who falls within the group.” *Acevedo Granados v. Garland*, 992 F.3d 755, 762 (9th Cir. 2021). “In other words, the group must be

¹ Salinas Salgado does not dispute his ineligibility for asylum due to such relief being time-barred.

discrete and have definable boundaries.” *Id.* “[T]he critical question is whether the group ‘would be recognized, in the society in question, as a discrete class of persons.’ ” *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228 (9th Cir. 2016) (quoting *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1091 (9th Cir. 2013) (en banc)).

Citing *Ramirez-Munoz* and *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (rejecting the social group formulation “returning Mexicans from the United States”), the IJ found that Salinas Salgado’s proposed social group possesses neither the requisite particularity nor the social distinction to qualify as a particular social group for purposes of statutory withholding and further noted the group’s similarity “to other particular social groups the Ninth Circuit has previously considered and rejected.” Salinas Salgado acknowledges the similarity of his proposed social group to the ones we rejected in *Ramirez-Munoz* and *Delgado-Ortiz* and admits that he “recognizes the impact of these decisions on his case.” In response, he simply argues that State Department records show that “individuals returning from abroad are at particular risk of being unduly targeted, and so are visible in society due to their status as refugees.”

As the government correctly notes, a showing of “particularity” is an essential part of establishing “membership in a particular social group.” While Salinas Salgado’s argument could *support* a conclusion contrary to the IJ’s, he has failed to offer evidence that would *compel* such a conclusion. *INS v. Elias-Zacarias*, 502 U.S.

478, 481 & n.1 (1992) (“To reverse the BIA finding we must find that the evidence not only *supports* that conclusion, but *compels* it”) (emphasis in original). That failure defeats his challenge to the IJ’s ruling, and we therefore need not, and do not, address his other theories regarding statutory withholding of removal.

2. As to the Convention Against Torture, the IJ found there is no claim nor evidence that Salinas Salgado ever suffered past harm—much less torture—in Mexico and that there was no claim nor evidence that he would be targeted for such harm in the future. The IJ further emphasized that Salinas Salgado admitted that he could live safely in Tijuana, where his brother resides.

A petitioner seeking Convention relief has the burden of demonstrating that it is more likely than not that he will be tortured if removed, and an IJ assessing whether the petitioner has carried that burden must consider the possibility of relocation within the country of removal. *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 705 (9th Cir. 2022). Salinas Salgado fails to adequately address his admission that he could live safely in Tijuana, and that failure dooms his challenge to the IJ’s decision.

PETITION DENIED.