

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 24 2024

FOR THE NINTH CIRCUIT

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

JUAN MANUEL MIRANDA-SOTO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

Nos. 23-678

23-1235

Agency No.
A207-694-807

MEMORANDUM*

On Petition for Review of Orders of the
Immigration Judge and Board of Immigration Appeals

Submitted January 17, 2024**

Before: S.R. THOMAS, McKEOWN, and HURWITZ, Circuit Judges.

Juan Manuel Miranda-Soto, a native and citizen of Mexico, petitions pro se for review of an immigration judge’s (“IJ”) order affirming an asylum officer’s negative reasonable fear determination (petition No. 23-678), and the Board of Immigration Appeals’ (“BIA”) order affirming an IJ’s denial of his motion to

* 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).

reopen (petition No. 23-1235). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the agency's reasonable fear determination.

Orozco-Lopez v. Garland, 11 F.4th 764, 774 (9th Cir. 2021). We review for abuse of discretion the denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We deny the petitions for review.

As to petition No. 23-678, substantial evidence supports the agency's determination that Miranda-Soto failed to show a reasonable possibility that the harm he fears would be on account of a protected ground. *See Bartolome v. Sessions*, 904 F.3d 803, 814 (9th Cir. 2018) (record did not compel conclusion that petitioner established a reasonable fear of persecution for withholding of removal where he did not show a nexus to a protected ground).

As to protection under the Convention Against Torture, substantial evidence supports the agency's determination that Miranda-Soto failed to show a reasonable possibility of torture by or with the consent or acquiescence of the government if returned to Mexico. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836-37 (9th Cir. 2016) (petitioner failed to demonstrate government acquiescence sufficient to establish a reasonable possibility of future torture).

We reject as unsupported by the record Miranda-Soto's contentions that the IJ violated his right to due process.

As to petition No. 23-1235, because a prior removal order that has been reinstated “is not subject to being reopened or reviewed,” 8 U.S.C. § 1231(a)(5), the agency lacked jurisdiction to consider Miranda-Soto’s motion to reopen. *See Gutierrez-Zavala v. Garland*, 32 F.4th 806, 811 (9th Cir. 2022) (“When the BIA denies a motion to reopen a reinstated removal order on grounds other than a lack of jurisdiction, we may deny a petition challenging that ruling based on the BIA’s lack of jurisdiction under 8 U.S.C. § 1231(a)(5).”); *Cuenca v. Barr*, 956 F.3d 1079, 1084 (9th Cir. 2020) (“[T]his Court repeatedly has interpreted [8 U.S.C.] § 1231(a)(5) as divesting the BIA of jurisdiction to reopen a removal proceeding after reinstatement of the underlying removal order.”).

Because this determination is dispositive of his claim, we do not address Miranda-Soto’s remaining contentions regarding his motion to reopen. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts are not required to decide issues unnecessary to the results they reach).

The temporary stay of removal remains in place until the mandate issues. The motion for a stay of removal is otherwise denied.

No. 23-678: PETITION FOR REVIEW DENIED.

No. 23-1235: PETITION FOR REVIEW DENIED.