

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 15 2024

FOR THE NINTH CIRCUIT

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

FERNANDO CONTRERAS
VILLANUEVA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-958

Agency No.
A206-430-612

MEMORANDUM*

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

Submitted February 12, 2024**
Pasadena, California

Before: TASHIMA, CALLAHAN, and JOHNSTONE, Circuit Judges.

Petitioner Fernando Contreras Villanueva (Contreras), a citizen and native of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) decision dismissing his appeal of the Immigration Judge's (IJ) denial of asylum,

* 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).

withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and we deny the petition.

The court reviews asylum, withholding of removal, and CAT claims under the deferential substantial evidence standard, and “must uphold the agency determination unless the evidence compels a contrary conclusion.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). Where, as here, “the BIA expressed agreement with the reasoning of the IJ, this court reviews both the IJ and the BIA’s decisions.” *Kumar v. Holder*, 728 F.3d 993, 998 (9th Cir. 2013).

1. To qualify for asylum, Contreras must “demonstrate that he has suffered past persecution or has a well-founded fear of future persecution.” *Duran-Rodriguez*, 918 F.3d at 1028 (citing 8 U.S.C. § 1101(a)(42)). The BIA agreed with the IJ’s determination that Contreras had not established harm rising to the level of past persecution and found no clear error in the IJ’s finding of no well-founded fear of future persecution. Contreras challenges these findings.¹ Contreras argues the harm he suffered in the past cumulatively rises to the level of persecution because he faced repeated and specific threats that were combined with confrontation, and the fact he was beaten repeatedly shows that the alleged

¹ Contreras also challenges the IJ’s findings regarding his proposed social groups and ability to relocate internally. However, the BIA did not rely on these grounds in denying his appeal and therefore those arguments are not properly before the court. See *Zarate v. Holder*, 671 F.3d 1132, 1138 (9th Cir. 2012) (“[O]ur review is limited to the grounds actually relied upon by the BIA.”).

persecutors had the ability to carry out their threats. However, under the substantial evidence standard,² Contreras does not adequately challenge the agency's finding that the threats were not sufficiently menacing in light of the fact that the injuries he suffered were relatively minor. *See Duran-Rodriguez*, 918 F.3d at 1026–29; *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003). And Contreras does not address the agency's reliance on his continued presence in Mexico for a year after the second attack without incident before leaving to the United States or the fact that his son (who was also involved in both confrontations) currently lives in Mexico apparently without incident. *See id.* (noting petitioner lived in the same city for six months following a physical attack without additional harm which cut against a finding of past persecution); *Sharma v. Garland*, 9 F.4th 1052, 1066 (9th Cir. 2021) (“The ongoing safety of family members in the petitioner’s native country undermines a reasonable fear of future persecution.”). Overall, the evidence does not compel a finding of persecution or otherwise indicate the agency’s findings were not supported by substantial evidence.

² The Government argues that substantial evidence review applies to the BIA’s conclusion that the harm suffered by a noncitizen is insufficient to rise to the level of persecution. Contreras does not dispute that substantive evidence review applies. Accordingly, we apply it here.

2. Because Contreras failed to establish persecution under his asylum claim, his claim for withholding of removal also fails. *Silva v. Garland*, 993 F.3d 705, 719 (9th Cir. 2021) (“The ‘more likely than not’ standard for withholding of removal is ‘more stringent’ than the ‘reasonable possibility’ standard for asylum, and therefore an applicant who is unable to show a ‘reasonable possibility’ of future persecution ‘necessarily fails to satisfy the more stringent standard for withholding of removal.’” (quoting *Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir. 2004))).

3. To qualify for CAT protection, Contreras must show it is more likely than not he would be tortured upon his return to Mexico. Torture is defined as “any act by which severe pain or suffering . . . is intentionally inflicted on” another person “by or at the instigation of or with the consent or acquiescence of a public official.” *Sharma*, 9 F.4th at 1067 (quoting 8 C.F.R. § 208.18(a)(1)). Contreras, citing a 2019 Mexico Country Report, argues that the Mexican government’s willful blindness and refusal to protect its citizens from violence is tantamount to acquiescence of a public official. However, Contreras does not challenge the agency’s finding that there was not a clear probability he would face harm rising to the level of torture. In any event, that argument would be unavailing as “the BIA could reasonably conclude that [where] past harm did not rise to the level of

persecution, it necessarily falls short of the definition of torture.” *Id.* (citing *Hussain v. Rosen*, 985 F.3d 634, 650 (9th Cir. 2021)).

The petition is **DENIED**.