

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 29 2024

FOR THE NINTH CIRCUIT

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

HECTOR RODRIGO TORRES-ZEPEDA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-2696

Agency No.
A094-966-240

MEMORANDUM*

On Petition for Review of an Order of the
Immigration Judge

Submitted February 21, 2024**

Before: FERNANDEZ, NGUYEN, and OWENS, Circuit Judges.

Hector Rodrigo Torres-Zepeda, 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. We have jurisdiction under 8 U.S.C. § 1252. We review an IJ’s negative reasonable fear determination for substantial

* 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).

evidence. *Andrade-Garcia v. Lynch*, 828 F.3d 829, 833 (9th Cir. 2016). We review de novo questions of law and claims of due process violations in immigration proceedings. *Lopez-Urenda v. Ashcroft*, 345 F.3d 788, 791 (9th Cir. 2003). We deny the petition for review.

We do not disturb the IJ's determination that Torres-Zepeda failed to establish a reasonable possibility that he suffered harm that rises to the level of persecution. *See Wakkary v. Holder*, 558 F.3d 1049, 1059-60 (9th Cir. 2009) (petitioner's past experiences, including two beatings, even considered cumulatively, did not compel a finding of past persecution); *see also Flores Molina v. Garland*, 37 F.4th 626, 633 n.2 (9th Cir. 2022) (court need not resolve whether de novo or substantial evidence review applies, where result would be the same under either standard).

Substantial evidence supports the agency's determination that Torres-Zepeda failed to show a reasonable possibility of future persecution because he failed to establish he could not safely and reasonably relocate within Mexico. *Akosung v. Barr*, 970 F.3d 1095, 1101 (9th Cir. 2020) (asylum unavailable if applicant can avoid persecution by relocating to another part of the applicant's country of nationality and it would be reasonable to expect the applicant to do so).

Substantial evidence supports the agency's determination that Torres-Zepeda 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*, 828 F.3d at 836-37 (petitioner failed to demonstrate government acquiescence sufficient to establish a reasonable possibility of future torture).

To the extent Torres-Zepeda claims the IJ violated due process by making an incorrect factual finding, we reject the contention as unsupported by the record. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014) (“To prevail on a due-process claim, a petitioner must demonstrate both a violation of rights and prejudice.”).

Torres-Zepeda’s contentions regarding reopening his proceedings and his eligibility for cancellation of removal are not properly before the court because he failed to raise them before the agency. *See* 8 U.S.C. § 1252(d)(1) (exhaustion of administrative remedies required); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 417-19 (2023) (section 1252(d)(1) is a non-jurisdictional claim-processing rule).

The motion for summary disposition (Docket Entry No. 12) is denied as moot.

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

PETITION FOR REVIEW DENIED.