

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 8 2024

FOR THE NINTH CIRCUIT

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

CARLOS ALEXANDER CALDERON-
SANCHEZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-2006

Agency No.
A208-749-765

MEMORANDUM*

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

Submitted March 4, 2024**
Pasadena, California

Before: CLIFTON, H.A. THOMAS, and DESAI, Circuit Judges.

Carlos Alexander Calderon-Sanchez, a native and citizen of El Salvador,
petitions for review of a Board of Immigration Appeals (“BIA”) decision affirming

* 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).

an immigration judge’s (“IJ”) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”).

We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence the BIA’s conclusion that a petitioner is ineligible for asylum, withholding of removal, or CAT protection. *Sharma v. Garland*, 9 F.4th 1052, 1060 (9th Cir. 2021); *Garcia v. Wilkinson*, 988 F.3d at 1136, 1147 (9th Cir. 2021). We deny the petition.

1. Substantial evidence supports the BIA’s finding that Mr. Calderon-Sanchez is ineligible for asylum and withholding of removal because he failed to establish a viable particular social group (“PSG”). On appeal to the BIA, Mr. Calderon-Sanchez proposed three PSGs: (1) prosecutorial witnesses who testify against gangs or who the gangs think have testified against them; (2) young El Salvadoran males who refuse to cooperate with the Mara 13 gang¹; and (3) El Salvadoran witnesses who gang members believe reported their crimes to law enforcement.

There is no evidence that Mr. Calderon-Sanchez was a member of the PSG, “prosecutorial witnesses who testify against gangs or who gangs think have testified

¹ Because Mr. Calderon-Sanchez’s opening brief does not challenge the BIA’s finding that his proposed PSG, “young El Salvadoran males who refuse to cooperate with the Mara 13 gang,” is not cognizable, the issue is forfeited. See *Hernandez v. Garland*, 47 F.4th 908, 916 (9th Cir. 2022).

against them.” *Reyes v. Lynch*, 842 F.3d 1125, 1132 n.3 (9th Cir. 2016) (holding that membership in a PSG is required to establish an asylum or withholding of removal claim). Indeed, Mr. Calderon-Sanchez admits he never testified against the gangs, and there is no evidence to suggest that the gangs believed he had testified against them.

Furthermore, we may not consider the merits of the PSG, “El Salvadoran witnesses who gang members believe reported their crimes to law enforcement,” because the BIA did not rely on this PSG when denying relief. *See Garcia*, 988 F.3d at 1142 (holding that this court’s review is limited to grounds BIA relied on). The BIA expressly declined to review the PSG because it had not been presented to the IJ, and Mr. Calderon-Sanchez does not challenge this finding on appeal.

2. Substantial evidence also supports the BIA’s finding that Mr. Calderon-Sanchez failed to establish eligibility for CAT protection. To be eligible for CAT protection, a petitioner must show that it is more likely than not that he will be subjected to torture by or with the acquiescence of a public official if removed to his native country. *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020). Here, Mr. Calderon-Sanchez did not testify that he was tortured while in El Salvador, and his country conditions evidence only provided “generalized evidence of violence and crime.” *See, e.g., Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (finding generalized evidence of violence insufficient to establish particularized

likelihood of torture). Moreover, although he testified that a gang might kill him if he returned to El Salvador, Mr. Calderon-Sanchez failed to provide evidence beyond his own speculation that the alleged harm would take place with the acquiescence of a public official.

The petition is **DENIED**.