

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 25 2024

FOR THE NINTH CIRCUIT

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

OSCAR DANIEL ORTIZ ALVAREZ,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1705

Agency No.
A202-017-686

MEMORANDUM*

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

Submitted April 8, 2024**
Phoenix, Arizona

Before: HAWKINS, BADE, and DESAI, Circuit Judges.

Oscar Daniel Ortiz-Alvarez (“Ortiz”), a native and citizen of Mexico, petitions for review of a Board of Immigration Appeals (“BIA”) decision affirming the denial of his applications for asylum, withholding of removal, and Convention

* 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).

Against Torture (“CAT”) protection. Ortiz filed his claims after cartel members kidnapped and beat him, and threatened him for several months after releasing him. Ortiz alleges a fear of persecution on account of his status as a relative of a clergy member, a practicing Christian, and his anti-cartel political opinion. The IJ denied Ortiz’s claims for asylum and withholding of removal on the grounds that Ortiz was not credible and, alternatively, that he failed to demonstrate a nexus between harm and a protected ground. The IJ denied Ortiz’s CAT claim on the grounds that he was not credible and did not provide independent evidence to prove that he would be tortured in Mexico by or with the acquiescence of the government. The BIA affirmed on the asylum and withholding of removal claims and concluded that Ortiz waived his CAT claim.

We review denials of asylum and withholding of removal for substantial evidence, *Yali Wang v. Sessions*, 861 F.3d 1003, 1007 (9th Cir. 2017), and we review de novo whether a petitioner exhausted his administrative remedies, *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 961 (9th Cir. 2006). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Substantial evidence supports the denial of Ortiz’s asylum and withholding of removal claims because Ortiz did not prove a nexus between alleged harm and a protected ground. For asylum and withholding of removal claims, a petitioner must show that a protected ground is “one central reason” or “a reason”

for persecution, respectively. 8 U.S.C. § 1158(b)(1)(B)(i); *Barajas-Romero v. Lynch*, 846 F.3d 351, 358 (9th Cir. 2017). Ortiz alleges that the cartel members' mention of his father's role in the church during the attack and subsequent threats establishes a nexus between his clergy-related particularized social groups and the harm he suffered. But the mention of Ortiz's alleged protected ground does not establish a motive to harm him on account of that ground. *See Rodriguez-Zuniga v. Garland*, 69 F.4th 1012, 1019 n.2 (9th Cir. 2023) (explaining that a protected characteristic does not "intrinsically motivate[]" a persecutor when it is merely "an instrumentality for the persecutor to accomplish his goals"). Here, the agency held that the cartel members' attack and threats were motivated by financial gain. Ortiz agreed the cartel members believed he was selling drugs within their territory and knew his father would have money based on his role in the church. The IJ's finding that the cartel members were motivated only by financial gain is thus supported by substantial evidence.

2. Ortiz argues the IJ erroneously denied his CAT claim and the BIA should have reviewed the merits of the claim. To exhaust a claim, a petitioner must sufficiently put the BIA on notice of his challenge. *See Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020); *Alanniz v. Barr*, 924 F.3d 1061, 1069 & n.8 (9th Cir. 2019). Here, Ortiz's brief to the BIA did not adequately put the BIA on notice of his challenge to the IJ's denial of his CAT claim. The BIA thus did not err by concluding

Ortiz waived his challenge to the CAT claim.

The petition is **DENIED**.