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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FELIPE SANTIAGO DOMINGUEZ-MONTOYA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-1277 Agency No. A213-016-503 MEMORANDUM*

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

Submitted September 12, 2024**
Pasadena, California

Before: SCHROEDER, R. NELSON, and MILLER, Circuit Judges.

Petitioner Felipe Dominguez-Montoya, a citizen of Honduras, petitions for review of a decision by the Board of Immigration Appeals (BIA) affirming the

* 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).

Immigration Judge's (IJ) decision denying cancellation of removal, asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252. We review an agency's factual findings for substantial evidence. *Angov v. Lynch*, 788 F.3d 893, 898 (9th Cir. 2015). We must uphold the findings unless the record compels a contrary conclusion. *Id.* We review de novo whether a statutory provision is constitutional. *Vilchez v. Holder*, 682 F.3d 1195, 1198 (9th Cir. 2012). We deny the petition.

1. Substantial evidence supports the BIA's determination that Petitioner is ineligible for asylum. To qualify for asylum, Petitioner needed to demonstrate "a well-founded fear of future persecution" in Honduras on account of a protected ground. 8 U.S.C. § 1101(a)(42); *see also Sarkar v. Garland*, 39 F.4th 611, 622 (9th Cir. 2022). The BIA reasonably determined that Petitioner did not establish a well-founded fear of future persecution based on membership in his proposed particular social group defined as "father[s] of child[ren] who [were] threatened with violence and death due to refusal to participate in drug activities." Petitioner failed to demonstrate that this proposed particular social group was socially distinct and defined with particularity. *See Reyes v. Lynch*, 842 F.3d 1125, 1135–36 (9th Cir. 2016). So, Petitioner's claim on appeal fails.

For the same reason, substantial evidence also supports the BIA's determination that Petitioner is ineligible for withholding of removal. This is

because "where, as here, . . . the petitioner has not shown *any* nexus whatsoever" between a particular social group and his fear of persecution, "then the petitioner fails to establish past persecution for both asylum and withholding." *Rodriquez-Zuniga v. Garland*, 69 F.4th 1012, 1018 (9th Cir. 2023).

2. Substantial evidence also supports the BIA's determination that Petitioner is ineligible for CAT protection. A noncitizen seeking protection under the CAT bears the burden of showing "that it is more likely than not that he will be tortured upon removal, and that the torture will be inflicted at the instigation of, or with the consent or acquiescence of, the government." *Arteaga v. Mukasey*, 511 F.3d 940, 948 (9th Cir. 2007); *accord* 8 C.F.R. §§ 1208.16(c)(2)–(4). The BIA reasonably determined that Petitioner failed to do this.

3. The BIA correctly determined that the Petitioner is ineligible for cancellation of removal. An application for cancellation of removal is a "continuing" application. *See, e.g.*, *In re Isidro-Zamorano*, 25 I&N Dec. 829, 831 (BIA 2012). A qualifying relative is required for cancellation of removal, 8 U.S.C. § 1229b(b)(D), and thus the BIA properly stated that the Petitioner needed to maintain a qualifying relative until "the application [was] finally resolved by an Immigration Judge or the Board," AR 5 (quoting *In re Ortega-Cabrera*, 23 I&N Dec. 793, 797 (BIA 2005)). Petitioner's qualifying relative—his daughter—turned twenty-one years old during the pendency of the appeal. Given this, the BIA

properly denied Petitioner's application for cancellation because he no longer had a qualifying relative. *See Isidro-Zamorano*, 25 I&N at 831; *see also* 8 U.S.C. § 1101(b)(1). Because Petitioner was ineligible for relief, the BIA was not required to address the contention that the daughter should have been permitted to testify as a qualifying relative.

4. Finally, Petitioner raises claims about the constitutionality of the definition of "child" under 8 U.S.C. § 1101(b)(1), as applied by the BIA. The Immigration and Nationality Act defines "child" as "an unmarried person under twenty-one years of age." *Id.* The BIA correctly applied that definition. And the definition does not violate equal protection because it is not irrational to base a child's dependency on age and marital status. *See Ledezma-Cosino v. Sessions*, 857 F.3d 1042, 1048 (9th Cir. 2017) (en banc). Congress rationally could have determined that older children and married children are sufficiently independent that they do not require preferential treatment.

PETITION DENIED.