NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INGRIS NOHEMI MELENDEZ BURGOS; AURI MILAGRO AGUILAR MELENDEZ, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 23-1697 Agency Nos. A240-085-775 A240-085-776 MEMORANDUM[*]

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

Submitted January 16, 2025[**]
Pasadena, California

Before: TALLMAN, FRIEDLAND, and BENNETT, Circuit Judges.

Ingris Nohemi Melendez Burgos ("Melendez Burgos"), a native and citizen of Honduras, petitions for review of an order by the Board of Immigration Appeals

[*] 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).

("BIA") affirming an immigration judge's ("IJ") decision denying her claims for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").[1] Melendez Burgos's daughter, Auri Milagro Aguilar Melendez, also petitions for review of the BIA order as a derivative beneficiary of Melendez Burgos's asylum application. *See* 8 U.S.C. § 1158(b)(3). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

When, as in this case, "the BIA adopts the decision of the IJ, we review the IJ's decision as if it were that of the BIA." *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005) (en banc) (quoting *Hoque v. Ashcroft*, 367 F.3d 1190, 1194 (9th Cir. 2004)). We review for substantial evidence the BIA's denial of asylum, including its determination that a petitioner's proposed particular social group ("PSG") lacks social distinction. *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1181 (9th Cir. 2021); *Ahmed v. Keisler*, 504 F.3d 1183, 1191 (9th Cir. 2007). We also review the BIA's denial of CAT relief for substantial evidence. *Ahmed*, 504 F.3d at 1191. Under the substantial evidence standard, the BIA's determinations "are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary."

[1] Melendez Burgos's opening brief makes no specific and distinct argument challenging the BIA's denial of withholding of removal. She did not file a reply brief. She has therefore forfeited any challenge to the BIA's denial of withholding of removal. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005). Even if not forfeited, "[b]ecause she failed to establish eligibility for asylum," as discussed below, we would "also deny her petition for review of the denial of her claim for withholding of removal." *Id.*

8 U.S.C. § 1252(b)(4)(B).

1. To qualify for asylum, an applicant must establish (1) past persecution or a well-founded fear of future persecution, (2) on account of a protected ground, and (3) that such persecution was or will be committed by the government, or by forces that the government is unable or unwilling to control. *Ahmed*, 504 F.3d at 1191.

The BIA, adopting the IJ's decision, denied asylum on two separate, dispositive grounds. First, Melendez Burgos's proposed PSGs lacked social distinction.[2] *See Villegas Sanchez*, 990 F.3d at 1180–81 ("[S]ocial distinction requires 'evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.'" (quoting *Matter of W-G-R-*, 26 I. & N. Dec. 208, 217 (BIA 2014))). Second, even if her PSGs were cognizable, Melendez Burgos did not show that her past persecution was on account of her membership in these groups or that the government would be unable or unwilling to control any future persecution against her.

[2] Melendez Burgos describes her PSGs as: (1) "Honduran wom[e]n who fled [their] country for [their] safety and who w[ere] previously raped by individuals in organized criminal groups in [their] country that have influence on the government police to not help victims to not be sexually abused or killed later," and (2) "Honduran wom[e]n who w[ere] previously raped by individuals in a Honduran organized criminal group and who fled [their] country to avoid being abused again since the individuals threatened [their] li[ves] if [they] reported it to the government, [who is] in alliance with the organized group."

Because Melendez Burgos fails to challenge the BIA's second dispositive ruling, she has forfeited her challenge to the BIA's denial of asylum. *See Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005). But even were we to reach the merits of the asylum denial, the BIA's denial is supported by substantial evidence.

As to the finding that her proposed PSGs lacked social distinction, Melendez Burgos points to Honduran laws that protect women from rape and other crimes. But that does not show that Honduran society views women who have been previously raped as a distinct group. Without a cognizable PSG or another protected ground, her asylum claim fails. *See Garcia v. Wilkinson*, 988 F.3d 1136, 1142–43 (9th Cir. 2021).

2. For CAT protection, an applicant must show that the torture "is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1). Substantial evidence supports the IJ's determination that Melendez Burgos failed to make this showing, which the BIA adopted.

The IJ relied on country conditions evidence that the government criminalizes rape and prosecutes some people for that crime. The IJ noted that Melendez Burgos did not report the rape to the authorities and a lack of any direct evidence showing the government consented or acquiesced to Melendez Burgos's rape. Melendez

Burgos points us to the country conditions evidence that violence is widespread in Honduras and the government is generally ineffective in preventing crime. But such generalized evidence is not enough to compel the conclusion that the government would consent or acquiesce to Melendez Burgos's torture. *See B.R. v. Garland*, 26 F.4th 827, 845 (9th Cir. 2022) ("Generalized evidence of violence in a country is itself insufficient to establish that anyone in the government would acquiesce to a petitioner's torture."); *Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016) ("[G]eneral ineffectiveness on the government's part to investigate and prevent crime will not suffice to show acquiescence.").

PETITION DENIED.