

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 16 2026

FOR THE NINTH CIRCUIT

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

YUKO SHIMANO,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 22-682

Agency No.
A216-204-483

MEMORANDUM*

YUKO SHIMANO,

Petitioner,

v.

TODD BLANCHE, Attorney General,

Respondent.

No. 23-605

Agency No.
A216-204-483

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

Submitted September 14, 2026**
Phoenix, Arizona

* 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).

Before: BADE and TUNG, Circuit Judges, and KANE, District Judge.***

In this consolidated appeal, Yuko Shimano, a Japanese national, petitions for review of (1) a decision from the Board of Immigration Appeals (BIA) affirming an immigration judge’s (IJ) denial of Shimano’s applications for asylum, withholding of removal, and Convention Against Torture (CAT) protection; and (2) the BIA’s denial of Petitioner’s motion to reopen and a related motion to reopen and dismiss. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Petitioner claims she is entitled to asylum and withholding of removal because she was persecuted on account of her membership in the particular social group—“[f]amily members, including ex-family members” of Petitioner’s ex-husband. Even assuming that Petitioner’s proposed particular social group is cognizable, she must still “show a causal nexus between [her] past or feared future harm” and her membership in that group. *Corpeno-Romero v. Garland*, 120 F.4th 570, 580 (9th Cir. 2024).

Substantial evidence supports the BIA’s conclusion that Petitioner did not establish a nexus between the alleged harm and her membership in this group. As the BIA stated, agreeing with the IJ, “the ex-husband’s actions were consistent

*** The Honorable Yvette Kane, United States District Judge for the Middle District of Pennsylvania, sitting by designation.

with private violence amounting to criminal activity,” not a specific targeting of Petitioner because she was part of his family unit. This is supported by Petitioner’s testimony that her ex-husband’s actions were typically influenced by drugs and alcohol, as well as his statements to her that he hurt her because he was “angry,” “mad,” and “upset.”

2. Substantial evidence also supports the BIA’s determination that Petitioner was not eligible for CAT protection. To obtain relief under CAT, a petitioner must prove that it is “more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R.

§ 1208.16(c)(2); *see also Parada v. Sessions*, 902 F.3d 901, 914 (9th Cir. 2018).

Petitioner has not met that bar. After divorcing her ex-husband, but before leaving Japan, Petitioner lived with her parents without experiencing any additional violence from her ex-husband. Petitioner would not live with him if she returned to Japan. Also, Petitioner’s ex-husband has not contacted her in nearly ten years. Petitioner has failed to prove that she is likely to be tortured if she returns to Japan. Thus, substantial evidence supports the BIA’s affirmance of the IJ’s denial of CAT relief.

3. The BIA did not abuse its discretion in denying both Petitioner’s standalone motion to reopen and a “Joint Motion to Reopen and the Department [of Homeland Security]’s Unopposed Motion to Dismiss Proceedings.” Petitioner

entered the United States through the Visa Waiver Program (VWP). “Admission under the VWP is subject to numerous restrictions,” including the requirement “that the alien agree not to review or appeal . . . an immigration officer’s determination as to the admissibility of the alien . . . or to contest, other than on the basis of an application for asylum, any action for removal of the alien.” *Riera-Riera v. Lynch*, 841 F.3d 1077, 1079 (9th Cir. 2016) (quoting 8 U.S.C. § 1187(b)) (internal quotation marks omitted and second ellipses added). In both her individual motion to reopen and the joint motion, Petitioner explained that she sought reopening in order to seek adjustment of status. This relief was not available to her based on the plain language of the VWP statute and our precedent. *See Momeni v. Chertoff*, 521 F.3d 1094, 1097 (9th Cir. 2008) (limiting adjustment of status for VWP applicants to those applying within 90 days of entry). Accordingly, the BIA did not abuse its discretion in holding that it could not reopen proceedings to assess claims not permitted under the VWP.

The BIA also did not abuse its discretion in denying the Department’s unopposed motion to dismiss. The Department does not have the statutory authority to request dismissal. *See* 8 C.F.R. § 239.2(a). And nowhere in the joint motion or Petitioner’s standalone request to reopen does Petitioner express an intent to withdraw her asylum claim.

PETITION DENIED.¹

¹ Petitioner's motion to stay removal (22-682, Dkt. No. 3) is DENIED.