**NOT FOR PUBLICATION**

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| JAIME ELADIO ESQUEN-ROJAS; KATIA MARILYN RIOS-VILLANUEVA; N. F. E.-R.; M. E.-R.,<br><br>Petitioners,<br><br>v.<br><br>TODD BLANCHE, Attorney General,<br><br>Respondent. | No. 25-7570<br><br>Agency Nos.<br>A241-711-757<br>A241-711-758<br>A241-711-759<br>A241-711-760<br><br>MEMORANDUM* |

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

Submitted October 30, 2026**
Seattle, Washington

Before: CHRISTEN and MILLER, Circuit Judges, and SYKES, District Judge.***

Jaime Eladio Esquen-Rojas, his wife Katia Marilyn Rios-Villanueva, and their children (N.F.E.-R. and M.E.-R.), all citizens of Peru, petition for review of a

* 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).

*** The Honorable Sunshine Suzanne Sykes, United States District Judge for the Central District of California, sitting by designation.

decision of the Board of Immigration Appeals (BIA) dismissing their appeal from an immigration judge's (IJ) order denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

Where the BIA affirms the IJ's determinations and cites *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994), and also provides its own review of the evidence and law, we review both the IJ's and BIA's decisions. *Ali v. Holder*, 637 F.3d 1025, 1028 (9th Cir. 2011). "We review factual findings for substantial evidence and legal questions de novo." *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020). Under the substantial evidence standard, we uphold the BIA's determinations if they are supported "by reasonable, substantial, and probative evidence on the record considered as a whole." *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021) (quoting *Zhao v. Mukasey*, 540 F.3d 1027, 1029 (9th Cir. 2008)).

1. We agree that the particular social group (PSG) of "business owners in Chiclayo, Peru" is not cognizable. A cognizable PSG must share a common immutable characteristic, be defined with particularity, and be socially distinct within the relevant society. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020). An immutable characteristic is one which members cannot or should not be

required to change because it is fundamental to their identity or conscience. *Plancarte Sauceda v. Garland*, 23 F.4th 824, 833 (9th Cir. 2022).

The IJ concluded that business ownership was not immutable because Petitioners could cease operating the business, and the record did not establish that their ownership involved skills or a reputation extending beyond employment. *See Macedo Templos v. Wilkinson*, 987 F.3d 877, 882-83 (9th Cir. 2021) (rejecting PSG of "wealthy business owners" as not fundamental to identity). By contrast, in *Plancarte Sauceda*, a nurse's specialized training remained with her even if she changed occupations, and she was targeted because of those enduring skills. 23 F.4th at 834. Here, Petitioners operated a business manufacturing and selling shopping bags, and the IJ found no comparable enduring characteristic underlying the identified group.

Independently, substantial evidence supports the IJ's finding that the business-owner group lacks social distinction. Social distinction refers to recognition by society, not merely by the persecutor. *Conde Quevedo*, 947 F.3d at 1242. In *Macedo Templos*, the evidence did not show Mexican society perceived wealthy business owners as distinct, and similarly, the country reports here establish no societal recognition of business owners in Chiclayo as a group. 987 F.3d at 882.

Petitioners described widespread extortion affecting all businesses

throughout the market, supported by evidence describing extortion affecting small traders and other economic sectors, but such evidence does not compel the conclusion that Peruvian society recognizes business owners as a distinct group.

Petitioners' failure to establish a cognizable PSG is dispositive of their asylum and withholding of removal claims.

2. Petitioners' alternative family-based or retaliation-based PSG theories were not exhausted before the BIA. Pro se submissions must be construed liberally but must sufficiently identify the reasons for appeal. *See Nolasco-Amaya v. Garland*, 14 F.4th 1007, 1014 (9th Cir. 2021). Petitioners' filings described their family-operated business, the attacks, and police inaction, but even liberally construed, did not present family membership or retaliation as distinct grounds for relief or as theories overlooked by the IJ. Because Petitioners did not give the BIA an opportunity to consider these theories, they failed to exhaust them. *See* 8 U.S.C. § 1252(d)(1); *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024). We therefore decline to consider these theories.

3. Petitioners similarly failed to exhaust their claim that the IJ violated a statutory duty or due process by failing to develop the record regarding a family-based PSG. Procedural challenges that the BIA could remedy must first be presented administratively. *See Santana-Gonzalez v. Bondi*, 172 F.4th 736, 744 (9th Cir. 2026). Petitioners' filings challenged the IJ's denial of relief and

described their experiences but did not allege that the IJ failed to fully develop the record; thus, we decline to reach the merits of this procedural claim.

4. Petitioners' remaining arguments concerning mixed motives, future persecution, and internal relocation do not overcome the dispositive nature of the PSG cognizability determination. The record does not compel reversal of the IJ's findings. The IJ's finding that harm rose to the level of persecution did not independently require the Government to rebut a regulatory presumption of future persecution, as the regulatory presumption requires a nexus to a protected ground. *See* 8 C.F.R. §§ 1208.13(b)(1), 1208.16(b)(1)(i). Because the group was not cognizable, we need not otherwise reach Petitioners' nexus or internal relocation arguments. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010).

5. Even assuming Petitioners preserved their CAT claim, substantial evidence supports the denial of CAT protection. Petitioners must establish that they would more likely than not be tortured by, at the instigation of, or with the consent or acquiescence of a public official or another person acting in an official capacity. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1).

The IJ considered Petitioners' individualized history of threats and physical attacks, but found the record did not establish that future torture is more likely than not. Esquen-Rojas's mother continued to operate a smaller business without harm, and family members living in Chiclayo were unharmed.

The IJ also considered evidence of crime and violence in Peru, but generalized evidence does not suffice for CAT relief. *See Delgado-Ortiz*, 600 F.3d at 1152. Because this finding independently supports denial of CAT protection, we need not reach the question of government acquiescence.

The motion to stay removal (Dkt. No. 3) is denied.

**PETITION DENIED**.