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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GALDINO CORIA-VEGA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 15-72969 Agency No. A098-176-807 MEMORANDUM[*]

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

Submitted November 10, 2022[**]
Seattle, Washington

Before: IKUTA and COLLINS, Circuit Judges, and FITZWATER,[***] District Judge.

Galdino Coria-Vega petitions for review of a decision of the Board of Immigration Appeals ("BIA") affirming the immigration judge's ("IJ's") order

[*] 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 Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

denying Coria-Vega's applications for withholding of removal and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252 to conduct judicial review, and we deny the petition.

We review factual findings for substantial evidence and any legal questions and constitutional claims de novo. *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003).

1. Coria-Vega contends that the BIA erred in affirming the IJ's decision denying withholding of removal. To establish eligibility for withholding of removal, a non-citizen must demonstrate that it is more likely than not that he will be subject to persecution on the basis of one of the protected grounds enumerated in 8 U.S.C. § 1231(b)(3)(A). The petitioner here rests his application for withholding of removal on the protected grounds of political opinion and membership in a particular social group.

The IJ found that armed men threatened Coria-Vega and his coworkers for "financial gain, not on account of a protected ground." The BIA affirmed the IJ's determination, and substantial evidence in the record supports the BIA's conclusion because Coria-Vega acknowledged that all three incidents were motivated by financial gain. The agency could rely on Coria-Vega's testimony to find that he was subjected to threats of violence at the hand of the gangs for financial gain, not by reason of a

protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) ("An alien's desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground."). The record thus indicates that Coria-Vega failed to meet his burden of establishing that any purported persecution occurred "because of" his political opinion or his membership in a particular social group. 8 U.S.C. § 1231(b)(3)(A).

This conclusion disposes of Coria-Vega's withholding of removal application in its entirety. The agency thus appropriately denied his application for such relief.[1]

2. Coria-Vega challenges the denial of protection under the CAT. The CAT prevents the United States from removing a non-citizen when it is more likely than not that the non-citizen will be tortured upon arriving in the country of removal. 8 C.F.R. § 1208.16(c)(2). Torture is defined by regulation as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person" for an unlawful purpose. 8 C.F.R. § 1208.18(a)(1). A petitioner must show that he is subject

[1] The BIA relied on the wrong nexus standard in affirming the IJ's rejection of Coria-Vega's withholding claim because he had not established that "at least one central reason" for his persecution was a protected ground. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (holding that the "a reason" standard applies to withholding applications). However, no remand is required because the agency's decision makes clear that it found "no nexus" to any protected ground. *See Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019).

to a particularized risk of torture. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). And the act of torture must be acquiesced in by a public official, meaning that the public official must be aware of or willfully blind to it. *Hernandez v. Garland*, 52 F.4th 757, 770 (9th Cir. 2022). The burden of proof is on the applicant. 8 C.F.R. § 1208.16(c)(2).

Coria-Vega has not established that he is at a particularized risk of being tortured upon his return to Mexico. The record certainly demonstrates that petitioner is genuinely fearful of the indiscriminate gang activity and violence that is ubiquitous in Mexico. But this is insufficient. The record evidence does not compel the conclusion that Coria-Vega *himself* is more likely than not to be tortured. Additionally, Coria-Vega has not established that any torture to which he fears he would be subjected would occur with the acquiescence of a public official. While the record contains evidence that the police are generally distrusted by the Mexican citizenry, the agency permissibly concluded that Coria-Vega had failed to show that Mexican officials would acquiescence in torture of him. For these reasons, the agency correctly denied Coria-Vega's application for protection under the CAT.

Coria-Vega also challenges the agency's CAT ruling on the basis that the IJ neglected to consider all evidence relevant to his application. Applicable regulations do require that an immigration judge consider all evidence relevant to the issue of

CAT eligibility. 8 C.F.R. § 208.16(c)(3). And this is precisely what the IJ did here. The IJ explicitly stated in the final decision that all evidence relevant to the issue of Coria-Vega's eligibility for relief had been considered. That the IJ did not expressly rely upon each and every piece of evidence in pronouncing the decision was not reversible error.

Finally, Coria-Vega contends that the agency erred because it did not properly apply intervening law. He maintains that the BIA neglected to apply *Maldonado v. Lynch*, 786 F.3d 1155 (9th Cir. 2015) (en banc), to his appeal before that tribunal. The extent to which an applicant for CAT protection would be able to relocate to a safer part of the country of removal is a relevant factor in determining eligibility. 8 C.F.R. § 208.16(c)(3). In *Maldonado*, the court clarified the burden of proof regarding the issue of relocation, obligating immigration judges to consider that issue as simply another part of the multi-factor analysis regarding the ultimate issue of likelihood of being tortured in the future. 786 F.3d at 1163-64. But the court also noted that "no one factor is determinative." *Id*.

Here, although one portion of the IJ's decision arguably did reference the pre-*Maldonado* standard—an error that properly could have been addressed by the BIA had Coria-Vega cited *Maldonado* to the BIA—the IJ's decision, as a whole, confirms that the IJ properly considered all relevant factors in finding Coria-Vega ineligible for

CAT relief. The IJ found that the three incidents that Coria-Vega described did not rise to the level of torture, that it is not more likely than not that Coria-Vega will be identified in Mexico as anti-gang, and that fear of general violence is insufficient for relief under the CAT. Therefore, the IJ did not base his decision solely on the fact that relocation within Mexico had not been shown to be impossible, which would have been contrary to *Maldonado*. The BIA did not commit reversible error in affirming the IJ's CAT ruling.

PETITION DENIED.