

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

MARCIAL LOPEZ AGUILAR, AKA
Webster Marshall Lopez Fernandez,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

No. 15-72970

Agency No. A097-547-434

MEMORANDUM*

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Marcial Lopez Aguilar, a native and citizen of Mexico, petitions for review the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for relief under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C.

* 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).

§ 1252. We review for substantial evidence the BIA’s factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We deny in part and dismiss in part the petition for review.

Although Aguilar failed to raise his CAT claim to the BIA, the BIA addressed CAT with regards to the kidnapping of Aguilar. *See Rodriguez-Castellon v. Holder*, 733 F.3d 847, 852 (9th Cir. 2013) (court “may review any issue addressed on the merits by the BIA, regardless whether it was raised to the BIA by the petitioner.”). Substantial evidence supports the BIA’s denial of CAT relief because Aguilar failed to establish that it is more likely than not that he will be tortured by or with the consent or acquiescence of the government of Mexico. *See Garcia-Milian v. Holder*, 755 F.3d 1026, 1033-35 (2014) (concluding that petitioner did not establish the necessary “state action” for CAT relief). We lack jurisdiction to consider Aguilar’s childhood sexual assault as a basis for his CAT claim because he did not raise this assault as part of a CAT claim to the BIA, and the BIA did not consider it in denying his CAT claim. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). We reject Aguilar’s contention that the BIA’s analysis of CAT was insufficient.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.