

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2022

FOR THE NINTH CIRCUIT

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

OMAR MORALES GARCIA,

No. 17-70039

Petitioner,

Agency No. A205-722-048

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted November 18, 2022**
San Francisco, California

Before: S.R. THOMAS and BENNETT, Circuit Judges, and DORSEY,*** District
Judge.

Omar Raymundo Morales Garcia, a native and citizen of Mexico, petitions

* This disposition is not appropriate for publication and is not
precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concluded that this case is suitable for
decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Jennifer A. Dorsey, United States District Judge for
the District of Nevada, sitting by designation.

for review of the Board of Immigration Appeals' (BIA) dismissal of his appeal of an immigration judge's (IJ) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252. "We review factual findings for substantial evidence and legal questions de novo." *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020). We deny the petition for review.

1. The BIA did not err in affirming the IJ's denial of asylum and withholding of removal. To qualify for asylum, Garcia must demonstrate that he has suffered "persecution or [has] a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Garcia v. Wilkinson*, 988 F.3d 1136, 1142–43 (9th Cir. 2021) (quoting 8 U.S.C. § 1101(a)(42)(A)). To qualify for withholding of removal, Garcia must demonstrate that his "life or freedom would be threatened 'because of [his] race, religion, nationality, membership in a particular social group, or political opinion.'" *Id.* at 1146 (quoting 8 U.S.C. § 1231(b)(3)(A)). The past or feared harm must have a nexus with the applicant's protected ground under the Immigration and Nationality Act (INA). *Barajas-Romero v. Lynch*, 846 F.3d 351, 359–60 (9th Cir. 2017).

The BIA did not err in concluding that Garcia's proposed social group (based on his friendship with his late friend who was allegedly killed by drug

traffickers) is not cognizable. For a particular social group to qualify under the INA, this court has outlined a set of factors including, among others, “social visibility—a group’s ‘perception by a society’—and particularity—the ability to describe a group ‘in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.’” *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016) (quoting *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1089–91 (9th Cir. 2013) (en banc)). Nothing in the record supports Garcia’s contention that his friend group is recognized by Mexican society as a distinct group. And we have previously rejected social groups based on friendships. *See Donchev v. Mukasey*, 553 F.3d 1206, 1220 (9th Cir. 2009) (holding that the record did not compel a conclusion that friends of Roma individuals are a particular social group).

Even if Garcia’s proposed social group were cognizable, substantial evidence also supports the BIA’s determination that Garcia did not show the necessary nexus between his fear of future harm and his social group. For asylum claims, the applicant must prove that his protected ground is “at least one central reason for persecuting [him].” 8 U.S.C. § 1158(b)(1)(B)(i). For withholding of removal, however, this court applies the a-reason standard, which is “a less demanding standard than ‘one central reason.’” *Barajas-Romero*, 846 F.3d at 360. The record does not show that the drug traffickers that Garcia fears have any

knowledge of his identity or his friendship with his late friend. And substantial evidence also supports the BIA's conclusion that Garcia's fears are due to non-protected reasons such as "greed or criminal avarice" rather than membership with a social group. So, under either the asylum or withholding-of-removal standard, the facts do not compel the conclusion that Garcia's friendship with his late friend is "one central reason" or even "a reason" for the harms he fears.

2. The BIA did not err in concluding that Garcia was ineligible for CAT relief. To qualify for such relief, an applicant "bears the burden of establishing that 'it is more likely than not that he or she would be tortured if removed.'" *Akosung v. Barr*, 970 F.3d 1095, 1104 (9th Cir. 2020) (quoting 8 C.F.R. § 1208.16(c)(2)). The torture "must be 'inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.'" *Garcia-Milian v. Holder*, 755 F.3d 1026, 1033 (9th Cir. 2014) (quoting *Zheng v. Ashcroft*, 332 F.3d 1186, 1188 (9th Cir. 2003)). While Garcia presented evidence pointing to pervasive violence and crime in Mexico, the record does not show that he faces a particularized threat of violence. Nor does it compel the conclusion that the Mexican government or its public officials would participate in, consent in, or acquiesce to Garcia's torture upon his return to Mexico.

PETITION DENIED.