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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AUDIE ISRAEL MEZA AGUILAR, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-71068 Agency No. A205-317-423 MEMORANDUM[*]

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

Submitted December 8, 2022[**]
Pasadena, California

Before: R. NELSON, BADE, and FORREST, Circuit Judges.

Audie Israel Meza Aguilar (Meza Aguilar) challenges the Board of Immigration Appeals' (BIA) denial of his claims for withholding of removal and

[*] 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).

protection under the Convention Against Torture (CAT).[1] We have jurisdiction over the appeal under 8 U.S.C. § 1252(a), and we deny the petition.

To the extent the BIA adopts part of the Immigration Judge's (IJ) decision, we review both. *See Jie Cui v. Holder*, 712 F.3d 1332, 1336 (9th Cir. 2013). Otherwise, our review is "limited to the BIA's decision." *Garcia v. Wilkinson*, 988 F.3d 1136, 1142 (9th Cir. 2021) (citation omitted). Legal conclusions are reviewed de novo and factual findings for substantial evidence. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc). Under substantial evidence review, the BIA's determination may be reversed only "where the evidence compels a contrary conclusion." *Garcia*, 988 F.3d at 1142 (internal quotation marks and citation omitted).

1. ***Withholding of Removal.*** An applicant is entitled to withholding of removal if 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

[1]Meza Aguilar does not provide any argument to support a challenge to the BIA's denial of asylum in his opening brief. Accordingly, we decline to reach the BIA's asylum determination. *See Brown v. Rawson-Neal Psychiatric Hosp.*, 840 F.3d 1146, 1148 (9th Cir. 2016); *Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996) ("Issues raised in a brief that are not supported by argument are deemed abandoned."). To the extent that the opening brief can be construed as challenging the denial of asylum, we deny relief for the same reasons we deny the petition as to Meza Aguilar's claim for withholding of removal.

(internal quotation marks and citations omitted). An applicant has the burden of "show[ing] a 'clear probability' of persecution because of a protected ground." *Id*.

Meza Aguilar's family has long owned land—including a coffee plantation—in Honduras. Shortly before Meza Aguilar made his withholding claim, he contends a prominent gang placed a "tax" on his family in Honduras. Meza Aguilar's family lapsed on their payment to the gang. Later, Meza Aguilar's brother was assaulted at gunpoint and robbed, allegedly by that same gang.

In assessing Meza Aguilar's claim for withholding of removal, the BIA adopted the IJ's finding that Meza Aguilar asserted a cognizable particular social group (PSG): "Honduran families that own land and are perceived to have money." *See Cordoba v. Holder*, 726 F.3d 1106, 1114 (9th Cir. 2013). Substantial evidence supports the BIA's determination that there is no nexus between Meza Aguilar's feared persecution and this PSG. Other than conclusory assertions, Meza Aguilar fails to explain whether and how the gang was aware of the family's land ownership or the relationship between the tax and the robbery of his brother. None of Meza Aguilar's family in Honduras worked on the plantation when the extortion began. And, as the BIA observed, there is no evidence as to where the extortion demands took place, whether the family's home was near the plantation, or whether the gang made any reference to the family or their wealth or land ownership during any encounters.

To the extent Meza Aguilar argues that he belongs to a PSG consisting simply of his family and asserts a nexus between his membership in that group and any alleged harm, we decline to consider this claim because Meza Aguilar did not exhaust this argument in the proceedings before the agency. *See Barron v. Ashcroft*, 358 F.3d 674, 677–78 (9th Cir. 2004) (holding that § 1252(d)(1) mandates exhaustion and, thus, this court generally lacks jurisdiction over "the merits of a legal claim not presented in the administrative proceedings below").[2]

2. ***CAT claim.*** Meza Aguilar also challenges the BIA's finding that he failed to demonstrate it was more likely than not he faced torture "by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity." 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). Substantial evidence supports the BIA's CAT denial because there is no evidence in the record compelling the conclusion that the Honduran government would participate in or acquiesce to torture at the hands of the gang. Indeed, the country conditions evidence introduced by Meza Aguilar and the testimony of Meza Aguilar's expert witness demonstrate that the Honduran government has made attempts to control gang violence.

[2]Meza Aguilar's argument that the Honduran government will not be able to protect him if he were removed was properly not addressed by the BIA as to Meza Aguilar's withholding claim. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) ("[A]gencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

PETITION DENIED.