

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

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

GAMALIEL CRUZ JIMENEZ,

No. 17-71454

Petitioner,

Agency No. A205-316-441

v.

MEMORANDUM\*

MERRICK B. GARLAND, Attorney  
General,

Respondent.

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

Submitted November 15, 2022\*\*  
San Francisco, California

Before: RAWLINSON and HURWITZ, Circuit Judges, and CARDONE,\*\*  
District Judge.

Gamaliel Cruz Jimenez, a citizen of Mexico, petitions for review of an order  
of the Board of Immigration Appeals (“BIA”) dismissing his appeal from the

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\* 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 Kathleen Cardone, United States District Judge for the  
Western District of Texas, sitting by designation.

denial by an Immigration Judge (“IJ”) of his applications for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. We deny the petition for review in part and dismiss it in part.

Because the BIA adopted and affirmed the IJ’s decision under *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994), “we review the IJ’s order as if it were the BIA’s.” *See Kwong v. Holder*, 671 F.3d 872, 876 (9th Cir. 2011) (citing *Abebe v. Gonzales*, 432 F.3d 1037, 1040–41 (9th Cir. 2005) (en banc)). “We review for substantial evidence the [agency’s] factual findings.” *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241–42 (9th Cir. 2020) (citing *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc)). We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Id.* (citations omitted).

1. Substantial evidence supports the agency’s conclusion that Cruz Jimenez did not show he suffered past persecution in Mexico. “Persecution is an extreme concept and has been defined as the infliction of suffering or harm . . . in a way regarded as offensive.” *Kaur v. Wilkinson*, 986 F.3d 1216, 1222 (9th Cir. 2021) (quoting *Guo v. Sessions*, 897 F.3d 1208, 1213 (9th Cir. 2018)). At most, the record shows that Cruz Jimenez suffered harassment and name-calling in Mexico

because of his indigenous background. This discriminatory treatment, while offensive, does not rise to the level of persecution. *See Sharma v. Garland*, 9 F.4th 1052, 1060–63 (9th Cir. 2021) (collecting cases).

2. Substantial evidence also supports the agency’s conclusion that Cruz Jimenez did not establish a clear probability of future persecution. Though the record indicates that indigenous individuals face discrimination in Mexico, this evidence falls well short of compelling the conclusion that Cruz Jimenez is likely to face persecution upon removal. *See Sharma*, 9 F.4th at 1060. Likewise, the generalized crime and violence in Mexico that Cruz Jimenez cites do not indicate that he, personally, is likely to suffer persecution on account of a protected ground. *See Flores-Vega v. Barr*, 932 F.3d 878, 887 (9th Cir. 2019) (citations omitted).

3. The agency also did not err by rejecting Cruz Jimenez’s proposed particular social group, “Mexicans of perceived wealth.” We have repeatedly rejected proposed social groups materially indistinguishable from this group. *See Barbosa v. Barr*, 926 F.3d 1053, 1059–60 (9th Cir. 2019) (first citing *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (per curiam); and then citing *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016)).

4. Substantial evidence supports the agency’s denial of CAT relief. The generalized evidence of crime and violence that Cruz Jimenez cites does not compel the conclusion that he is more likely than not to be tortured upon returning

to Mexico. *See Flores-Vega*, 932 F.3d at 887 (citing *Delgado-Ortiz*, 600 F.3d at 1152). Nor has Cruz Jimenez provided evidence showing he faces a particularized risk of torture. *See Dhital v. Mukasey*, 532 F.3d 1044, 1051–52 (9th Cir. 2008) (first citing *Lanza v. Ashcroft*, 389 F.3d 917, 936 (9th Cir. 2004); and then citing *Almaghzar v. Gonzales*, 457 F.3d 915, 922–23 (9th Cir. 2006)).

5. Finally, Cruz Jimenez failed to present his due process claim to the BIA in the first instance, even though the BIA could have addressed the procedural deficiencies he alleges. We therefore lack jurisdiction to address the claim. *See Sola v. Holder*, 720 F.3d 1134, 1135–36 (9th Cir. 2013) (per curiam); *Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED IN PART AND DISMISSED IN PART.**