

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

OSWALDO MARTINEZ-AGUILAR,

No. 17-72086

Petitioner,

Agency No. A096-470-581

v.

MEMORANDUM\*

MERRICK B. GARLAND, Attorney  
General,

Respondent.

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

Submitted December 8, 2022\*\*

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Oswaldo Martinez-Aguilar, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for withholding of removal and protection under the Convention Against Torture

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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).

(“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review de novo questions of law. *Mohammed v. Gonzales*, 400 F.3d 785, 791-92 (9th Cir. 2005). We review for substantial evidence factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We dismiss in part and deny in part the petition for review.

We lack jurisdiction to consider Martinez-Aguilar’s contentions that he established eligibility for withholding of removal or CAT protection based on past harm or fear of future harm by his father because he failed to raise them before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (petitioner must exhaust issues or claims in administrative proceedings below).

As to his fear of criminals other than his father, substantial evidence supports the BIA’s determination that Martinez-Aguilar failed to establish he was or would be persecuted on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant “must provide *some* evidence of [motive], direct or circumstantial”); *see also Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant’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”). We reject as unsupported by the record Martinez-Aguilar’s contentions that the IJ and BIA misapplied the law or otherwise erred in the nexus analysis. In light of this disposition, we need not reach Martinez-Aguilar’s

contentions regarding the determination that he failed to establish a cognizable particular social group. *See Simeonov v. Ashcroft*, 371 F.3d 532, 538 (9th Cir. 2004) (courts and agencies are not required to decide issues unnecessary to the results they reach). We lack jurisdiction to consider Martinez-Aguilar's contentions as to the particular social groups he raises in the first instance in his opening brief because he failed to raise them to the BIA. *See Barron*, 358 F.3d at 677-78. Thus, Martinez-Aguilar's withholding of removal claim fails.

Substantial evidence supports the BIA's denial of CAT protection because Martinez-Aguilar failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of the government if returned to Mexico. *See Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009) (no likelihood of torture). We reject as unsupported by the record Martinez-Aguilar's contentions that the IJ and BIA failed to consider evidence or otherwise erred in the analysis of his CAT claim.

The temporary stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**