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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JESSICA JANETH ECHEVERRIA-DE ESCOBAR; et al., Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-72426 Agency Nos. A209-288-765 A209-288-766 MEMORANDUM*

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

Submitted December 8, 2022**

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

Jessica Janeth Echeverria-De Escobar and her minor son, natives and citizens of El Salvador, petition pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing their appeal from an immigration judge's ("IJ") decision denying their application for asylum, and denying Echeverria-De

* 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).

Escobar's applications for withholding of removal and protection under the Convention Against Torture ("CAT"). Our jurisdiction is governed by 8 U.S.C. § 1252. We review factual findings for substantial evidence. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny in part and dismiss in part the petition for review.

In their opening brief, petitioners do not raise, and therefore waive, any challenge to the BIA's determinations that their proposed particular social group was not cognizable and that they failed to establish a nexus to a family-based particular social group. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party's opening brief are waived). Substantial evidence supports the BIA's determination that petitioners are not members of a particular social group analogous to the group analyzed in *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1091-92 (9th Cir. 2013) (en banc) (individuals who testify against gang members can constitute a particular social group).

We do not address petitioners' contentions as to whether the harm they suffered rose to the level of persecution and whether the Salvadoran government is unable or unwilling to protect them because the BIA did not deny relief on these grounds. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011)

("In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency." (citation and internal quotation marks omitted)).

Thus, petitioners' asylum claim, and Echeverria-De Escobar's withholding of removal claim fail.

Substantial evidence also supports the denial of CAT protection because Echeverria-De Escobar failed to show it is more likely than not she will be tortured by or with the consent or acquiescence of the government if returned to El Salvador. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

We lack jurisdiction to consider petitioners' contention that the IJ violated their right to due process or incorrectly interpreted the law because they failed to raise the issue 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).

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.