NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE ESTEBAN-VICENTE, AKA Jose Esteban-Vincente, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 17-72961 Agency No. A206-354-194 MEMORANDUM[*]

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

Submitted November 10, 2022[**]
Seattle, Washington

Before: IKUTA and COLLINS, Circuit Judges, and FITZWATER,[***] District Judge.

Jose Esteban-Vicente, a citizen and native of Guatemala, petitions for review of the decision of the Board of Immigration Appeals ("BIA") upholding the order of the Immigration Judge ("IJ") denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("Torture

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes that this case is suitable for decision without oral argument. *See* FED. R. APP. P. 34(a)(2)(C).

[***] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

Convention"). We have jurisdiction under § 242 of the Immigration and Nationality Act. *See* 8 U.S.C. § 1252. We review the agency's legal conclusions de novo and its factual findings for substantial evidence. *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc). Under the substantial evidence standard, "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). We deny the petition.

1. In his opening brief in this court, Esteban-Vicente did not challenge the BIA's conclusion that his asylum application was untimely and that he had failed to establish grounds for a late filing. Accordingly, Esteban-Vicente has forfeited any challenge to the agency's denial of his asylum application. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079–80 (9th Cir. 2013).

2. Substantial evidence supports the agency's conclusion that Esteban-Vicente was not eligible for withholding of removal because he failed to show that he suffered past persecution or that it is more likely than not that he would face future persecution on account of a protected ground. On the record in this case, the agency reasonably concluded that the harms visited on Esteban-Vicente by "Francisco" and Francisco's fellow gang members were attributable to a purely personal dispute over a woman in whom both men were interested, rather than to Esteban-Vicente's membership in any particular social group. Esteban-Vicente

testified that his problems with Francisco started when Francisco became jealous that the woman in question would talk to Esteban-Vicente more than she would to him. When asked if Francisco wanted to harm him "for any other reason," Esteban-Vicente merely repeated that the harm was due to their mutual interest in the same woman. In light of this testimony, the agency reasonably concluded that the attacks on Esteban-Vicente, and any future harm he feared from Francisco and his gang associates, was based on "personal retribution." And because "'[p]urely personal retribution' is not persecution 'on account of' a protected ground," *Garcia v. Wilkinson*, 988 F.3d 1136, 1144–45 (9th Cir. 2021) (alteration in original) (citation omitted), the agency properly concluded that Esteban-Vicente had failed to establish his eligibility for withholding of removal.[1]

3. Substantial evidence also supports the agency's denial of relief under the Torture Convention. To qualify for such relief, "an applicant bears the burden of establishing that she [or he] will more likely than not be tortured with the consent or acquiescence of a public official if removed to her [or his] native country." *Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020). The IJ concluded

[1] Substantial evidence also supports the BIA's determination that Esteban-Vicente's proposed social group of "men who become involved with women of known gang members in Guatemala" did not satisfy the requirements for a cognizable particular social group, because Esteban-Vicente failed to establish that this group is "socially distinct within the society in question." *Diaz-Torres v. Barr*, 963 F.3d 976, 980 (9th Cir. 2020) (citation omitted).

that Esteban-Vicente had failed to show that "any harm that he may suffer is with the consent or acquiescence" of the Guatemalan government. The IJ also concluded that, given the passage of time since the threats and abuse from Francisco and his associates occurred in 2007, Esteban-Vicente's "claim of potential future harm" with such consent or acquiescence was "too speculative." The BIA affirmed this reasoning and result. The agency's conclusion that Esteban-Vicente had failed to demonstrate that it was more likely than not that he would be tortured with the consent or acquiescence of the Guatemalan government is based on a permissible reading of the evidence, and we cannot say that the record compels a contrary conclusion. *See* 8 U.S.C. § 1252(b)(4)(B); *see also Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016) ("We have stated that a general ineffectiveness on the government's part to investigate and prevent crime will not suffice to show acquiescence.").

The petition for review is **DENIED**.