

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2022

FOR THE NINTH CIRCUIT

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

VITAL ANTONIO BARREIRO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-72125

Agency No. A094-302-316

MEMORANDUM*

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

Submitted November 17, 2022**
San Jose, California

Before: SCHROEDER, GRABER, and FRIEDLAND, Circuit Judges.

Petitioner Vital Antonio Barreiro, a native and citizen of El Salvador, timely seeks review of the Board of Immigration Appeals' ("BIA") dismissal of his appeal of an immigration judge's entry of a final order of removal. For the reasons that follow, we dismiss in part and deny in part the petition.

* 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).

1. Because Petitioner failed to exhaust to the BIA his new claim that the immigration judge denied him a full and fair hearing, we lack jurisdiction to consider the argument. Brezilien v. Holder, 569 F.3d 403, 412 (9th Cir. 2009).

2. Because Petitioner failed to exhaust to the BIA his argument that the notice to appear was defective and therefore deprived the agency of jurisdiction, we lack jurisdiction to consider the argument. Ruiz-Colmenares v. Garland, 25 F.4th 742, 748 (9th Cir. 2022); see also United States v. Bastide-Hernandez, 39 F.4th 1187, 1190–94 (9th Cir. 2022) (en banc) (holding that a defective notice to appear does not deprive the agency of jurisdiction).

3. Substantial evidence supports the BIA’s ruling that Petitioner failed to establish past persecution or a well-founded fear of future persecution on account of a protected ground. Gang members harmed Petitioner’s uncle, but no evidence suggests that they harmed him because of his membership in the family.¹ The record does not compel the conclusion that Petitioner showed a nexus between his

¹ In his opening brief, Petitioner’s lawyer asserts that, in addition to Petitioner’s uncle being harmed, Petitioner’s cousin also was harmed. That assertion contradicts the record. Petitioner testified that his female cousin is the one who told him about the harm that Petitioner’s uncle suffered. But nothing in the record suggests that anyone other than his uncle was harmed. All the testimony about harm uses male pronouns, and Petitioner’s response to whether anyone else other than his uncle was harmed removes all doubt: “Just him, just him.” The government pointed out this misreading in the answering brief, Petitioner’s lawyer did not respond in the reply brief. Instead, the reply brief simply repeats the same assertions, citing the same pages of the record.

feared harm and a protected ground. See Zetino v. Holder, 622 F.3d 1007, 1015–16 (9th Cir. 2010) (upholding the BIA’s determination that the petitioner failed to show a nexus to a protected ground where bandits harmed the petitioner’s family members for economic reasons). We therefore deny the petition to the extent that it challenges the agency’s denial of asylum and withholding of removal.

4. Substantial evidence supports the denial of relief under the Convention Against Torture. The record does not compel the conclusion “that it is more likely than not that [Petitioner] would be tortured” if returned to El Salvador. 8 C.F.R. § 1208.16(c)(2).

PETITION DISMISSED IN PART AND DENIED IN PART.