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DEC 13 2022

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SALVADOR JUAN-TOMAS; URSULA TOMAS-MIGUEL, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-72404 Agency Nos. A200-883-205 A208-598-215 MEMORANDUM*

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

Submitted December 9, 2022**
San Francisco, California

Before: BRESS and VANDYKE, Circuit Judges, and RESTANI,*** Judge.

Petitioners Salvador Juan-Tomas and his daughter Ursula Tomas-Miguel petition for review of a decision of the Board of Immigration Appeals (BIA) denying

* 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 Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

their claims for withholding of removal and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252(a), and we deny the petition.[1]

Petitioners are natives and citizens of Guatemala, and members of the Kanjobal tribe. They last entered the United States unlawfully on December 13, 2015. On August 9, 2016, Petitioners were each served with a Notice to Appear (NTA) that lacked a date or time for the removal hearing. Petitioners sought asylum, withholding of removal, and CAT protection. They claimed that Juan-Tomas's father, Pedro, had been beaten in Guatemala because of Pedro's political beliefs. Juan-Tomas's cousin had also been beaten because she was accused of kidnapping a child. Although Juan-Tomas testified that people "sometimes" threatened "to do the same thing to [him]," he admitted that he never suffered any harm in Guatemala.

On July 24, 2018, the Immigration Judge (IJ) ordered Petitioners' removal to Guatemala, and denied their requests for asylum, withholding of removal, and CAT protection. Because Petitioners' asylum applications were untimely and an exception did not exist, the IJ found Petitioners ineligible for asylum. The IJ also found that Petitioners failed to establish past persecution or a fear of future persecution. Accordingly, Petitioners were ineligible for withholding of removal.

[1] Although Petitioners submitted separate applications for withholding of removal and CAT protection, their claims are substantively the same.

And because Petitioners failed to establish that they would be tortured by or with the consent of Guatemalan officials, they also failed to qualify for CAT protection.

Petitioner appealed to the BIA, and the BIA dismissed Petitioners' appeal on July 17, 2020. Petitioners did not challenge the IJ's denial of asylum before the BIA; they only challenged the IJ's denial of withholding of removal and CAT protection. As to withholding of removal, the BIA found that Petitioners had not suffered persecution; they failed to adequately support their alleged fear based on an imputed political opinion; their proposed social group (PSG) of "perceived wealthy long-term United States residents returning to Guatemala" was not cognizable; and even assuming their family-based PSG was cognizable, there was no nexus between it and any claimed persecution. Regarding CAT protection, the BIA agreed with the IJ that Petitioners failed to meet the "more likely than not" standard. Petitioners timely petitioned for review.

"We review the denial of asylum, withholding of removal and CAT claims for substantial evidence." *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). "Under this standard, we must uphold the agency determination unless the evidence compels a contrary conclusion." *Id.* (citing *INS v. Elias-Zacarias*, 502 U.S. 478, 481 & n.1 (1992)). "Whether a group constitutes a 'particular social group' … is a question of law we review de novo." *Perdomo v. Holder*, 611 F.3d 662, 665 (9th Cir. 2010).

Petitioners raise four arguments. First, Petitioners argue that the immigration court lacked jurisdiction because the NTAs they received were defective under *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), and *Pereira v. Sessions*, 138 S. Ct. 2105 (2018). This argument is, however, foreclosed by our precedent. *See United States v. Bastide-Hernandez*, 39 F.4th 1187, 1193 (9th Cir. 2022) (en banc).

Second, Petitioners argue that the agency erred in denying their withholding of removal claims. But the record does not compel a finding that Petitioners suffered past persecution. And substantial evidence supports the BIA's determination that Petitioners failed to establish a nexus between any past or feared future persecution and any imputed political opinion. *See Sagaydak v. Gonzales*, 405 F.3d 1035, 1042 (9th Cir. 2005). No record evidence supports a conclusion that Petitioners were politically active or that they received threats because of Juan-Tomas's father's political beliefs.

Further, neither of Petitioners' proposed PSGs qualifies them for withholding of removal. Their PSG of "perceived wealthy long-term United States residents returning to Guatemala" is too broad to be cognizable. *See, e.g.*, *Barbosa v. Barr*, 926 F.3d 1053, 1059–60 (9th Cir. 2019); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016). And even assuming that Petitioners' family is a cognizable social group, there is nothing in the record that compels a finding of a nexus between their family and any future persecution.

Third, Petitioners argue that the agency erred by denying their CAT protection claim. But substantial evidence supports the BIA's denial of CAT relief because the record does not compel the conclusion that it is more likely than not that they will be tortured by or with the consent or acquiescence of the government if returned to Guatemala. *See* 8 C.F.R. § 1208.18(a)(1).

Lastly, Petitioners assert that the BIA and IJ violated their due process rights "by failing to act as a neutral fact finder and by failing to consider uncontested evidence." The record, however, contains no evidence that the BIA or IJ failed to act as a neutral fact finder, and Petitioners have failed to overcome the presumption that the agency reviewed all the evidence. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095–96 (9th Cir. 2000).

In short, the record does not compel reversal of the BIA's determination.

PETITION DENIED.