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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANGEL JAVIER MEJIA-LOBO, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73396 Agency No. A206-766-742 MEMORANDUM*

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

Argued and Submitted October 7, 2022
Seattle, Washington

Before: MURGUIA, Chief Judge, and W. FLETCHER and BENNETT, Circuit Judges.

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

Petitioner Angel Mejia-Lobo, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' ("BIA") denial of his applications for asylum, protection under the Convention Against Torture ("CAT"), and withholding of removal. We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition in part and dismiss it in part.

Petitioner entered the United States as an unaccompanied minor without being admitted or paroled on May 28, 2014. He applied for asylum, withholding of removal, and CAT relief on February 1, 2016. Petitioner's claims are largely based on the fact that his neighborhood in Honduras was controlled by the MS-13 criminal gang. Petitioner testified that "everyone in the neighborhood" was afraid of being recruited or targeted by the gang.

The BIA found that Petitioner waived his withholding of removal claim because he "d[id] not meaningfully challenge the [IJ's] determination that he did not establish eligibility for withholding of removal." We agree. *See Alanniz v. Barr*, 924 F.3d 1061, 1069 & n.8 (9th Cir. 2019) (finding failure to exhaust where "CAT was mentioned only twice in [petitioner's] brief to the BIA, in the introduction and in the conclusion"). Thus, we lack jurisdiction to review this unexhausted claim. *See Taniguchi v. Schultz*, 303 F.3d 950, 955–56 (9th Cir. 2002) (noting jurisdictional effect of failing to exhaust pursuant to § 1252(d)(1)).

As to asylum, Petitioner claims he was persecuted based on his political opinions and on account of his family membership. Petitioner claims that his gang resistance and refusal to join MS-13 "constitutes expression of a political opinion." By Petitioner's own account, the gang beat him and threatened to "kill [him] for not paying" in response to extortion attempts. But substantial evidence supports the BIA's finding that Petitioner did not show that "his opposition to gang activity constituted a political opinion, or that he had been or would be harmed on account of his political opinion." *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 746–47 (9th Cir. 2008), *abrogated in part on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093 (9th Cir. 2013).

As part of his asylum claim, Petitioner claims that MS-13 exists as a de facto government in Honduras, and thus "statements against and actions in defiance of the gang are inherently political in nature." But Petitioner's evidence is insufficient to show that his opposition to gangs constituted a political opinion. *Regalado-Escobar v. Holder*, 717 F.3d 724 (9th Cir. 2013), on which Petitioner relies, held that "even if the BIA had correctly held that opposition to a political organization's violent activities can constitute a political opinion," the petitioner in that case failed to show that he "was attacked on account of any principled opposition to the [armed group acting as a political party] or its violence, rather than on account of his failure to cooperate in the [group's] recruitment efforts." 717 F.3d at 730. Here, Petitioner

also failed to show that his opposition went beyond resisting the gang's extortion and recruitment.

Additionally, while Petitioner argues that his membership in the particular social group of his family was "one central reason" for his persecution by MS-13, substantial evidence supports the BIA's affirmance of the IJ's determination that "the central reason that the gang targeted [Petitioner] initially was because he stopped paying the war tax they imposed . . . , and then because he refused to join" the gang.[1] Substantial evidence also supports the BIA's determination that Petitioner "did not establish that the motivation of the gang members for harming members of his family was on account of animus against his family as a whole," because "gangs targeted anyone who interfered with their criminal initiative."

Because Petitioner has not established that his past persecution was related to his membership in a particular social group, he bears the burden to establish a well-founded fear of future persecution. *See Nahrvani v. Gonzales*, 399 F.3d 1148, 1152 (9th Cir. 2005) (past persecution or objectively reasonable fear of future persecution, and nexus to a protected ground are elements of asylum claim). Petitioner has not

[1] Petitioner argues that the IJ and the BIA "both misapplied the mixed-motive standard for asylum cases by requiring that the protected ground be *the* reason for the persecution." But the record does not support this claim.

done so, and has waived any argument that he did. *See Garcia v. Lynch*, 786 F.3d 789, 793 (9th Cir. 2015).[2]

Finally, as to Petitioner's Convention Against Torture claims, substantial evidence supports the agency's determination that he would not be tortured by or with the acquiescence of the Honduran government. *See Lopez v. Sessions*, 901 F.3d 1071, 1078 (9th Cir. 2018). First, the record lacked particularized evidence that the police or other government officials in Honduras would acquiesce or be willfully blind to Petitioner's torture, and Petitioner has not shown it is more likely than not that he would be tortured if removed. *See Akosung v. Barr*, 970 F.3d 1095, 1104 (9th Cir. 2020) ("Under the CAT regulations, the applicant bears the burden of establishing that 'it is more likely than not that he or she would be tortured if removed.'" (quoting 8 C.F.R. § 1208.16(c)(2)). Substantial evidence supports the agency's finding that Petitioner did not show the Honduran government would consent or acquiesce in his torture, as opposed to just being generally ineffective at preventing crime.

PETITION DENIED IN PART AND DISMISSED IN PART.

[2] While evidence of past persecution creates the rebuttable presumption of future persecution, *see Aden v. Wilkinson*, 989 F.3d 1073, 1085 (9th Cir. 2021), Petitioner has not separately argued that he will suffer future persecution.