

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 6 2022

FOR THE NINTH CIRCUIT

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

GASPAR DIEGO-ANTONIO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 20-73706

Agency No. A216-268-941

MEMORANDUM\*

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

Submitted November 15, 2022\*\*  
San Francisco, California

Before: McKEOWN and PAEZ, Circuit Judges, and MOLLOY,\*\*\* District Judge.

Petitioner Gaspar Diego-Antonio, a native and citizen of Guatemala,  
petitions for review of the Board of Immigration Appeals' ("BIA") order

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\* 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 Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

dismissing his appeal of an Immigration Judge’s (“IJ”) decision denying his application for asylum and withholding of removal.<sup>1</sup> Where, as here, the BIA affirmed the IJ’s decision without issuing an opinion, “we treat the IJ’s statement of reasons as the BIA’s and review the IJ’s decision.” *Gonzalez v. I.N.S.*, 82 F.3d 903, 907 (9th Cir. 1996). We have jurisdiction under 8 U.S.C. § 1252. The agency’s factual findings supporting its legal conclusions are reviewed for substantial evidence. *Singh v. Holder*, 656 F.3d 1047, 1051 (9th Cir. 2011). We review de novo questions of law. *Id.* We deny the petition for review.

1. The IJ denied Diego-Antonio’s application for asylum and withholding of removal because he failed to establish that his proposed particular social group—“young men who refuse to join gangs to commit illegal acts”—was cognizable. *See* 8 U.S.C § 1158(b)(1); 8 U.S.C. § 1231(b)(3)(A). Substantial evidence supports this determination. To be cognizable, a particular social group must be “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question.” *Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (citing *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (B.I.A. 2014)). As the IJ correctly determined, “young men who refuse to join gangs to commit illegal acts” is not sufficiently

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<sup>1</sup> Diego-Antonio does not challenge the agency’s denial of his claim for relief under the Convention Against Torture. He has therefore waived this ground for relief. *See Husyev v. Mukasey*, 528 F.3d 1172, 1183 (9th Cir. 2008).

particularized because there is no evidence that it is a discrete class of persons in Guatemalan society. Nor is such a group socially distinct, because there is no evidence that Guatemalan society recognizes the young men in question. We have rejected similar proposed social groups on the same bases. *See Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009) (rejecting “young men in Guatemala who resist gang recruitment”); *Ramos-Lopez v. Holder*, 563 F.3d 855, 858-62 (9th Cir. 2009) (rejecting “young Honduran men who have been recruited by the MS-13 [gang], but who refuse to join”).

2. Furthermore, substantial evidence supports the IJ’s determination that Diego-Antonio did not establish a nexus between the persecution he suffered and his proposed social group. *See* 8 U.S.C. § 1158(b)(1)(B)(i) (a protected ground must “be at least one central reason” for persecuting the applicant); 8 U.S.C. § 1231(b)(3)(C) (a protected ground must be “a reason” for future persecution). The IJ determined that Mara 18 gang members harmed Diego-Antonio “because and on account of his refusal to join their gang.” Indeed, Diego-Antonio testified that Mara 18 members harmed him “because they wanted to recruit [him].” Thus, the IJ correctly held that he was persecuted for his resistance to joining the gang, rather than for a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (holding that a noncitizen’s desire to avoid gang violence “bears no nexus to a protected ground”).

**PETITION FOR REVIEW DENIED.**