

MAR 17 2011

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION  
UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

NELSON ALBERTO ALAS-LEMUS,  
  
Petitioner,  
  
v.  
  
ERIC H. HOLDER, Jr., Attorney General,  
  
Respondent.

No. 09-70401

Agency No. A098-350-934

MEMORANDUM\*

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

Submitted March 8, 2011\*\*

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Nelson Alberto Alas-Lemus, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from the immigration judge's decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review de novo the BIA's legal conclusions and review for substantial evidence factual findings. *Barrrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009). We deny the petition for review.

Alas-Lemus has waived any challenge to BIA's finding that his asylum application was untimely by failing to argue the issue in his opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (holding that issues not specifically raised and argued in a party's opening brief are waived).

Even if Alas-Lemus testified credibly, substantial evidence supports the BIA's denial of Alas-Lemus' withholding of deportation claim because the threats made against him did not rise to the level of persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000). Substantial evidence also supports the BIA's determination that Alas-Lemus failed to demonstrate a well-founded fear of future persecution because it is too speculative he will be persecuted in El Salvador on account of a protected ground. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (record evidence did not show petitioner had objectively reasonable basis for future fear).

Finally, substantial evidence supports the BIA's denial of CAT relief because Alas-Lemus did not establish a likelihood of being tortured in El Salvador. *See Arteaga v. Mukasey*, 511 F.3d 940, 948-49 (9th Cir. 2007).

**PETITION FOR REVIEW DENIED.**