

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 3 2020

FOR THE NINTH CIRCUIT

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

JOSE CARLOS ALEGRIA-BERIA, AKA
Jose Carlos Alegria-Barillas,

Petitioner,

v.

WILLIAM P. BARR, Attorney General,

Respondent.

No. 13-72229

Agency No. A078-192-957

MEMORANDUM*

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

Submitted December 31, 2019**

Before: FARRIS, TROTT, and SILVERMAN, Circuit Judges.

Jose Carlos Alegria-Beria, a native and citizen of El Salvador, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT").

* 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).

Our jurisdiction is governed by 8 U.S.C. § 1252. We review questions of law de novo, *Cerezo v. Mukasey*, 512 F.3d 1163, 1166 (9th Cir. 2008), except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations, *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We review for substantial evidence the agency’s factual findings. *Garcia-Milian v. Holder*, 755 F.3d 1026, 1031 (9th Cir. 2014). We deny in part and dismiss in part the petition for review.

The BIA correctly held that Alegria-Beria’s twenty-one-year late application for asylum was untimely. The record does not compel the conclusion that Alegria-Beria established changed or extraordinary circumstances to excuse its untimeliness. *See* 8 C.F.R. §§ 1208.4(a)(4)-(5). To the extent Alegria-Beria raises new arguments concerning extraordinary circumstances, we lack jurisdiction to consider them. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

In connection with his application for withholding of removal, the agency did not err in determining that Alegria-Beria failed to establish membership in a cognizable social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (in order to demonstrate membership in a particular group, “[t]he applicant must

‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question’” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014))). Thus, Alegria-Beria’s withholding of removal claim fails.

Substantial evidence supports the agency’s denial of CAT relief because Alegria-Beria failed to show it is more likely than not he will be tortured by or with the consent or acquiescence of the government if returned to El Salvador. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009); *Garcia-Milian*, 755 F.3d at 1033-35 (concluding that petitioner did not establish the necessary state action for CAT relief).

We reject Alegria-Beria’s contention that the agency applied incorrect legal standards.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.