

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 3 2018

FOR THE NINTH CIRCUIT

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

JOSE LUIS CUEVAS-AVENDANO,

No. 13-74170

Petitioner,

Agency No. A200-565-905

v.

MEMORANDUM*

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

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

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

Jose Luis Cuevas-Avendano, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' 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"). Our

* 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).

jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency's factual findings. *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006). We dismiss in part and deny in part the petition for review.

Cuevas-Avendano fails to challenge the agency's dispositive finding that his asylum application was untimely and that he failed to establish changed or extraordinary circumstances to excuse his untimely filing. *See Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 n.5 (9th Cir. 2013) (failure to contest issue in opening brief resulted in waiver). Thus, we deny the petition for review as to Cuevas-Avendano's asylum claim.

We lack jurisdiction to review Cuevas-Avendano's claim for relief based on a new social group or alleged political opinion that he proposed for the first time in his opening brief. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

Substantial evidence supports the agency's finding that Cuevas-Avendano failed to establish that he was or would be persecuted on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground"). Thus, Cuevas-Avendano's withholding of removal claim fails.

Finally, substantial evidence supports the agency's denial of CAT relief

because Cuevas-Avendano failed to show it is more likely than not that he would be tortured by the Mexican government, or with its consent or acquiescence. *See Aden v. Holder*, 589 F.3d 1040, 1047 (2009); *see also Garcia-Milian v. Holder*, 755 F.3d 1026, 1033-35 (9th Cir. 2014) (concluding that petitioner did not establish the necessary state action for CAT relief).

PETITION FOR REVIEW DISMISSED in part; DENIED in part.