

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 19 2018

FOR THE NINTH CIRCUIT

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

MARIO A. REGALADO,

Petitioner,

v.

MATTHEW G. WHITAKER, Acting
Attorney General,

Respondent.

Nos. 15-70650
15-73513

Agency No. A094-461-265

MEMORANDUM*

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

Submitted December 17, 2018**

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

Mario A. Regalado, 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") (petition No.

* 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).

15-70650) and of the BIA's order denying his motion to reopen (petition No. 15-73513). Our 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 review for abuse of discretion the BIA's denial of a motion to reopen. *Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010). We dismiss in part and deny in part the petitions for review.

As to petition No. 15-70650, we lack jurisdiction to consider Regalado's contention that his mental disability constitutes an extraordinary circumstance excusing his untimely asylum application. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). Apart from this argument, Regalado does not challenge the agency's dispositive conclusion that he failed to establish any changed or extraordinary circumstances to excuse his untimely asylum application. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259-60 (9th Cir. 1996) (issues not specifically raised and argued in a party's opening brief are waived). Thus, we deny the petition as to his asylum claim.

We also lack jurisdiction to consider the proposed social groups that Regalado raises for the first time in his opening brief. *See Barron*, 358 F.3d at

677-78. Regalado does not otherwise challenge the agency's conclusion that he did not establish membership in a cognizable social group. *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 as to Regalado's withholding of removal claim.

Substantial evidence also supports the agency's denial of CAT relief because Regalado failed to show it is more likely than not he would be tortured by or with the consent or acquiescence of the Salvadoran government. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009).

Finally, we lack jurisdiction to review Regalado's contentions regarding due process, voluntary departure, and cancellation of removal. *See Barron*, 358 F.3d at 677-78.

As to petition No. 15-73513, Regalado does not challenge the BIA's conclusion that he failed to demonstrate material changed country conditions in El Salvador to qualify for an exception to the time limitations for motions to reopen. *See Corro-Barragan*, 718 F.3d at 1177 n.5.

**No. 15-70650: PETITION FOR REVIEW DISMISSED in part;
DENIED in part.**

No. 15-73513: PETITION FOR REVIEW DENIED.