

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

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

ALMA DELIA FIGUEROA-ROJAS,

No. 16-73702

Petitioner,

Agency No. A205-714-102

v.

MEMORANDUM\*

MERRICK B. GARLAND, Attorney  
General,

Respondent.

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

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Alma Delia Figueroa-Rojas, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ's") decision denying her applications for asylum, withholding of removal, and protection under the Convention Against

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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).

Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s factual findings. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241 (9th Cir. 2020). We deny in part and dismiss in part the petition for review.

In her opening brief, Figueroa-Rojas does not contest, and therefore waives, the BIA’s determination that she did not challenge the IJ’s denial of her asylum claim as time barred. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party’s opening brief are waived).

Substantial evidence supports the agency’s finding that although Figueroa-Rojas established past persecution, the government rebutted Figueroa-Rojas’s presumed clear probability of future persecution with evidence that she could safely and reasonably relocate within Mexico to avoid harm. *See Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995, 999, 1001 n.5 (9th Cir. 2003) (because petitioners failed to establish a well-founded fear of persecution, it necessarily follows they do not qualify for withholding of removal). Thus, Figueroa-Rojas’s withholding of removal claim fails.

Substantial evidence also supports the agency’s denial of CAT protection because Figueroa-Rojas failed to show it is more likely than not she will be tortured by or with the consent or acquiescence of the government if returned to

Mexico. *See Aden v. Holder*, 589 F.3d 1040, 1047 (9th Cir. 2009); *see also Wakkary v. Holder*, 558 F.3d 1049, 1067-68 (9th Cir. 2009) (no likelihood of torture).

We reject as unsupported by the record Figueroa-Rojas's contentions that the BIA ignored evidence or otherwise erred in the analysis of her claims.

To the extent Figueroa-Rojas asserts a new particular social group and new fear claims, we lack jurisdiction to consider these issues. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

We do not consider the materials Figueroa-Rojas references in her opening brief that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc) (court's review is limited to the administrative record).

The temporary stay of removal remains in place until the mandate issues.

**PETITION FOR REVIEW DENIED in part; DISMISSED in part.**