

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 23 2022

FOR THE NINTH CIRCUIT

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

FRANCISCO GUZMAN LOPEZ,

No. 17-70377

Petitioner,

Agency No. A205-536-243

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.

Francisco Guzman Lopez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture

* 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).

(“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.

Because Guzman Lopez does not challenge the BIA’s determination that he waived challenge to the IJ’s determination that he failed to establish changed or extraordinary circumstances to excuse his untimely asylum application, this issue is waived, *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), and we lack jurisdiction to consider the merits of the IJ’s time bar determination, *see Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency). Thus, we deny the petition for review as to Guzman Lopez’s asylum claim.

We do not disturb the agency’s determination that Guzman Lopez failed to establish he suffered harm that rises to the level of persecution. *See Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003) (persecution is “an extreme concept that does not include every sort of treatment our society regards as offensive” (internal quotation marks and citation omitted)); *see also Flores Molina v. Garland*, 37 F.4th 626, 633 n.2 (9th Cir. 2022) (court need not resolve whether de novo or substantial evidence review applies, where result would be the same under either

standard). Substantial evidence supports the agency's determination that Guzman Lopez failed to establish a clear probability of future persecution in Mexico. *See Tamang v. Holder*, 598 F.3d 1083, 1094-95 (9th Cir. 2010) (fear of future persecution was not objectively reasonable). To the extent Guzman Lopez raises a new proposed particular social group in his opening brief, we lack jurisdiction to consider it. *See Barron*, 358 F.3d at 677-78. Thus, Guzman Lopez's withholding of removal claim fails.

Guzman Lopez does not raise, and therefore waives, any challenge to the agency's denial of CAT protection. *See Lopez-Vasquez*, 706 F.3d at 1079-80.

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

PETITION FOR REVIEW DENIED in part; DISMISSED in part.