

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>JOSE PABLO GODOY ACOSTA,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MERRICK B. GARLAND, Attorney General,</p> <p style="text-align: center;">Respondent.</p> |
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No. 17-72088

Agency No. A205-714-671

MEMORANDUM*

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

Submitted November 15, 2022**
San Francisco, California

Before: RAWLINSON and HURWITZ, Circuit Judges, and CARDONE,***
District Judge.

* 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).

*** The Honorable Kathleen Cardone, United States District Judge for the Western District of Texas, sitting by designation.

Jose Pablo Godoy Acosta (Godoy Acosta), a native and citizen of Guatemala, petitions for review of a decision of the Board of Immigration Appeals (BIA) dismissing his appeal of the denial by an Immigration Judge (IJ) of withholding of removal and relief under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252(a), and we deny the petition.

We review the denials of withholding of removal and CAT relief for substantial evidence. *See Yali Wang v. Sessions*, 861 F.3d 1003, 1007 (9th Cir. 2017). Under substantial evidence review, findings of fact “are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Id.* (citation omitted). When, as here, “the BIA agrees with the IJ decision and also adds its own reasoning,” we review the BIA’s decision and “those parts of the IJ’s decision upon which it relies.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1027-28 (9th Cir. 2019) (citation omitted).

An applicant for withholding of removal must establish that his or her life or freedom would be threatened in the proposed country of removal “because of . . . race, religion, nationality, membership in a particular social group, or political opinion.” *Barajas-Romero v. Lynch*, 846 F.3d 351, 356 (9th Cir. 2017) (footnote reference omitted).

Godoy Acosta testified that a gang member named Paco persecuted Godoy Acosta and his nephew because Godoy Acosta refused to join Paco's gang, asserting that this persecution was because of Godoy Acosta's membership in a particular social group consisting of his family. The BIA determined that "[t]he fact that Paco knows who [Godoy Acosta's] family members are, specifically his nephew, and threatened his nephew because of his relationship with [Godoy Acosta] does not mean that the familial relationship is a reason for Godoy Acosta being targeted." Substantial evidence supports the BIA's conclusion that the harm experienced by Godoy Acosta was because of his refusal to join the gang and not because of his family membership. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010), *as amended*.

An applicant who fails to establish past persecution because of a protected ground, may nevertheless qualify for withholding of removal by showing "a well-founded fear of future persecution." *Sharma v. Garland*, 9 F.4th 1052, 1065 (9th Cir. 2021) (citation omitted). "To satisfy this standard, a petitioner must demonstrate that his . . . fear is both subjectively genuine and objectively reasonable. . . ." *Tamang v. Holder*, 598 F.3d 1083, 1094 (9th Cir. 2010) (citation and internal quotation marks omitted). An applicant who can safely relocate within his native country "does not have a well-founded fear of [future]

persecution.” *Duran-Rodriguez*, 918 F.3d at 1029 (citation omitted). And when “similarly-situated family members living in the petitioner’s home country are not harmed,” fear of future persecution is reduced. *Tamang*, 598 F.3d at 1094 (citation, emphasis, and internal quotation marks omitted).

Godoy Acosta testified that he could relocate to a city where he could avoid interacting with Paco. Also, Godoy Acosta’s nephews, sisters, cousin, and mother remain in Guatemala unharmed. This substantial evidence supports the BIA’s determination that Godoy Acosta did not establish a clear probability of fear of future persecution. *See id.*

To demonstrate eligibility for CAT relief, a petition must establish that “it is more likely than not that he would be tortured in his country of removal.” *See Flores-Vegas v. Barr*, 932 F.3d 878, 887 (9th Cir. 2019) (citation and internal quotation marks omitted). Torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for any reason based on discrimination of any kind.” *Id.* (citation and alteration omitted). The torture “must be inflicted by or at the instigation of or with the consent or acquiescence of a public official.” *Id.* (citation and internal quotation marks omitted).

The BIA determined that Godoy Acosta failed to demonstrate that he would more likely than not be tortured in Guatemala. The BIA found that Godoy Acosta was not previously tortured, that his family remains in Guatemala unharmed, and that the country reports provided were general and did not identify a specific risk of torture. Substantial evidence supports the BIA's determination. *See Singh v. Garland*, 48 F.4th 1059, 1073-74 (9th Cir. 2022) (denying petition when petitioner could have relocated and the country reports demonstrated generalized risks rather than individualized risks).

PETITION DENIED.