

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

DEC 9 2022

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

LUIS ALBERTO VEGA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 17-72461

Agency No. A077-348-545

MEMORANDUM\*

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

Submitted November 14, 2022\*\*  
Pasadena, California

Before: NGUYEN and FORREST, Circuit Judges, and FITZWATER,\*\* District  
Judge.

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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).

\*\*\* The Honorable Sidney A. Fitzwater, United States District Judge for the  
Northern District of Texas, sitting by designation.

Luis Alberto Vega (“Vega”) petitions for review of a decision by the Board of Immigration Appeals (“BIA”) affirming the immigration judge’s (“IJ’s”) order denying asylum and withholding of removal.<sup>1</sup> We have jurisdiction under 8 U.S.C. § 1252. Reviewing the agency’s factual determinations for substantial evidence, *see Singh v. Holder*, 638 F.3d 1264, 1268–69 (9th Cir. 2011), we deny the petition for review.

1. The BIA properly found that Vega’s application for asylum was untimely and therefore must be denied. Absent an exception, an alien must apply for asylum within one year of arriving in the United States. 8 U.S.C. § 1158(a)(2)(B); 8 C.F.R. § 208.4(a)(2). Here, although Vega arrived in the United States in 1992, he did not apply for asylum until 2017. The IJ found that Vega’s application was inexcusably untimely, and Vega made no argument regarding the timeliness of his application to the BIA or to this court. Because Vega’s application for asylum was untimely, substantial evidence supports the BIA’s decision affirming the denial of Vega’s application for asylum.

2. Substantial evidence supports the BIA’s decision affirming the denial of withholding of removal. “Withholding of removal requires the petitioner to

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<sup>1</sup> Although Vega initially applied for protection under the Convention Against Torture (“CAT”), Vega did not appeal the IJ’s decision denying CAT protection to the BIA and does not petition for review of this decision.

demonstrate his or her ‘life or freedom would be threatened in that country because of the petitioner’s race, religion, nationality, membership in a particular social group, or political opinion.’” *Tamang v. Holder*, 598 F.3d 1083, 1091 (9th Cir. 2010) (alterations adopted) (quoting 8 U.S.C. § 1231(b)(3)). “A withholding of removal applicant . . . must prove . . . that a cognizable protected ground is ‘a reason’ for future persecution.” *Garcia v. Wilkinson*, 988 F.3d 1136, 1146 (9th Cir. 2021) (quoting *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017)).

In his petition, Vega argues that he is a member of a particular social group consisting of members of his father’s family. Vega testified before the IJ that he fears persecution because his father was killed by members of the drug cartel. Vega further testified that his cousins are members of the cartel, and he fears they will attempt to recruit him into the cartel, and Vega or his sister, who has resided unharmed in Mexico since Vega’s father was killed, might come to harm if Vega denies his cousins.

The BIA found that “[e]ven assuming the immediate family of the respondent’s father is accepted as a cognizable particular social group,” Vega had “not established that his family membership, which he evidently shares with his cousins, would be a reason” for any feared persecution. The BIA noted that the cousins Vega fears persecution from are members of Vega’s purported social group, and Vega’s sister,

who would also be a member of the social group, has “continued to live in Mexico unharmed since the murder of the father.” Based on these facts, substantial evidence supports the BIA’s decision that Vega failed to establish the requisite nexus between his purported social group and feared future persecution.

**PETITION DENIED.**