

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 14 2022

FOR THE NINTH CIRCUIT

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

LUIS MANUEL MARQUEZ,

No. 17-72493

Petitioner,

Agency No. A075-595-930

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted December 8, 2022**

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

Luis Manuel Marquez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's ("IJ") decision denying his applications for 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”). We have jurisdiction under 8 U.S.C. § 1252. We review factual findings for substantial evidence, applying the standards governing adverse credibility determinations under the REAL ID Act. *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). We review the denial of a motion to remand for abuse of discretion. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We review de novo claims of due process violations in immigration proceedings. *Simeonov v. Ashcroft*, 371 F.3d 532, 535 (9th Cir. 2004). We deny the petition for review.

Substantial evidence supports the adverse credibility determination based on an inconsistency regarding how Marquez discovered that the police were assisting the drug cartel, and implausibilities regarding Marquez’s uncle’s cartel membership in 1980 and the cartel’s ability to recognize Marquez’s relationship to his uncle from his name alone. *See id.* at 1048 (adverse credibility determination reasonable under “the totality of circumstances”); *Lalayan v. Garland*, 4 F.4th 822, 838 (9th Cir. 2021) (implausibility findings were supported by record evidence and were based on reasonable assumptions). Marquez’s explanations do not compel a contrary conclusion. *See Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000). Thus, in the absence of credible testimony in this case, Marquez’s asylum and withholding of removal claims fail. *See Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Substantial evidence also supports the denial of Marquez's CAT claim because it was based on the same evidence found not credible, and Marquez does not point to any other record evidence that compels the conclusion that it is more likely than not he would be tortured by or with the consent or acquiescence of the government if returned to Mexico. *See Shrestha*, 590 F.3d at 1048-49.

The BIA did not abuse its discretion in denying Marquez's motion to remand, where he failed to demonstrate that the evidence was previously unavailable and where he failed to demonstrate prima facie eligibility for discretionary relief. *See* 8 C.F.R. § 1003.2(c)(1); *see also Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008) (applicants seeking remand "bear a 'heavy burden' of proving that, if proceedings were reopened, the new evidence would likely change the result in the case."); *Movsisian* 395 F.3d at 1097-98 (motion to reopen filed while appeal is pending before the BIA is treated as a motion to remand).

We reject Marquez's contentions that the IJ violated his due process rights. *See Lata*, 204 F.3d at 1246.

We do not consider Marquez's contentions regarding his former detention because they are not properly before this court. *See Leonardo v. Crawford*, 646 F.3d 1157, 1160 (9th Cir. 2011) (eligible detainees may seek a bond hearing from an IJ, appeal to the BIA, and then seek review of the determination by filing a

habeas corpus petition in district court).

PETITION FOR REVIEW DENIED.