

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

ELMER FLORES-ZUNIGA, AKA Elmer
Rolando Flores,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 17-72956

Agency No. A205-315-475

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.

Petitioner Elmer Flores-Zuniga seeks review of a Board of Immigration

* 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.

Appeals (BIA) decision finding that his conviction for a particularly serious crime rendered him ineligible for withholding of removal under both the Immigration and Naturalization Act (INA) and the Convention Against Torture (CAT). He also challenges the denial of his applications for withholding of removal and for deferral of removal under CAT on the merits. When, as here, the BIA conducts its own review of the evidence and law, we must limit our review to the BIA's decision "except to the extent that the [immigration judge's] opinion is expressly adopted." *Shrestha v. Holder*, 590 F.3d 1034, 1039 (9th Cir. 2010) (quoting *Hosseini v. Gonzales*, 471 F.3d 953, 957 (9th Cir. 2006)). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. ***Forfeiture.*** Flores-Zuniga does not challenge in his opening brief the BIA's dispositive findings related to his two asserted grounds for withholding of removal. He argues that if removed to Guatemala, he will be persecuted by his father's killer, but he does not challenge the BIA's conclusion that he failed to establish that the motive for his father's killing was related to a protected ground or that he failed to establish that the Guatemalan government is unable or unwilling to protect him. Flores-Zuniga also argues that he will be targeted and persecuted because he is a convicted sex offender, but again he does not challenge the BIA's dispositive findings that he failed to establish a clear probability of future persecution or that he had the ability to relocate within Guatemala. Therefore, any

challenge to these dispositive determinations is forfeited. *Nguyen v. Barr*, 983 F.3d 1099, 1102 (9th Cir. 2020); *see also Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1029 n.2 (9th Cir. 2019) (refusing to address “additional arguments about a well-founded fear of future persecution because the internal relocation issue is dispositive”).

2. *Particularly Serious Crime Determination.* “[W]e lack jurisdiction over the BIA’s ultimate determination that [Flores-Zuniga] committed a particularly serious crime,” but “we retain jurisdiction to ‘determine whether the BIA applied the correct legal standard.’” *Flores-Vega v. Barr*, 932 F.3d 878, 884 (9th Cir. 2019) (quoting *Anaya-Ortiz v. Holder*, 594 F.3d 673, 676 (9th Cir. 2010)); 8 U.S.C. § 1252(a)(2)(B)(ii). The BIA’s decision in *In re Frentescu*, 18 I. & N. Dec. 244 (B.I.A. 1982), sets out the applicable legal standard for the particularly serious crime determination. *Flores-Vega*, 932 F.3d at 884.

The BIA applied the *Frentescu* factors in determining that Flores-Zuniga’s California Penal Code § 647(a) conviction is a particularly serious crime. Along with concluding that the elements of this statute—engaging in lewd or dissolute conduct—constitute a particularly serious crime, the BIA engaged in the required “case-specific factual analysis.” *Flores-Vega*, 932 F.3d at 885. It considered the victim’s age, that sexual crimes committed against minors are exceptionally serious crimes, and it examined the circumstances of the allegations against Flores-Zuniga. *See Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078 (9th Cir. 2015).

Accordingly, we conclude that the agency “relie[d] on the appropriate factors and proper evidence” in determining that Flores-Zuniga’s “conviction constitutes a particularly serious crime” and that he is not eligible for withholding of removal under either the INA or CAT for that reason. *Flores-Vega*, 932 F.3d at 885–86 (quoting *Avendano-Hernandez*, 800 F.3d at 1077).

3. CAT Protection. Finally, Flores-Zuniga has not established that the record compels reversal of the agency’s denial of deferral of removal under CAT. *See Dawson v. Garland*, 998 F.3d 876, 885 (9th Cir 2021). The only evidence that Flores-Zuniga submitted in support of his claim that the Guatemalan government would torture him or acquiesce in his torture is a country conditions report showing that Guatemala suffers from generalized violence and civil unrest. This evidence does not compel the conclusion that he faces a particularized risk of torture in Guatemala. *See* 8 C.F.R. § 1208.16(c)(2); *Dawson*, 998 F.3d at 885.

PETITION DENIED.