

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 18 2022

FOR THE NINTH CIRCUIT

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

EDGAR ALFREDO CORREA-VALLEJO,

No. 18-71557

Petitioner,

Agency No. A200-884-166

v.

MEMORANDUM\*

MERRICK B. GARLAND, Attorney  
General,

Respondent.

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

Submitted October 21, 2022\*\*  
Seattle, Washington

Before: R. NELSON, FORREST, and SUNG, Circuit Judges.

Edgar Correa Vallejo, a native and citizen of Mexico, petitions for review of an order of the Board of Immigration Appeals (BIA) affirming an immigration judge's (IJ) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under

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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).

8 U.S.C. § 1252. We dismiss the petition for review as to the denial of asylum and deny the petition as to the denial of withholding of removal and CAT protection.

When the BIA adopts some of the IJ’s reasoning and adds its own further analysis, we review both decisions. *Vahora v. Holder*, 641 F.3d 1038, 1042 (9th Cir. 2011) (citation omitted). “We review the BIA’s denials of asylum, withholding of removal, and CAT relief for ‘substantial evidence.’” *Garcia-Milian v. Holder*, 755 F.3d 1026, 1031 (9th Cir. 2014) (quoting *Kamalyan v. Holder*, 620 F.3d 1054, 1057 (9th Cir. 2010)). “In order to reverse the BIA, we must determine ‘that the evidence not only supports [a contrary] conclusion, but compels it—and also compels the further conclusion’ that the petitioner meets the requisite standard for obtaining relief.” *Id.* (correction in original) (quoting *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992)).

1. The IJ granted the government’s motion to pretermite Correa Vallejo’s asylum claim because the asylum application arrived after the one-year deadline and there were no extraordinary circumstances justifying the late filing. *See* 8 U.S.C. § 1158(a)(2)(B). Because Correa Vallejo failed to challenge the IJ’s timeliness determination, the BIA deemed any challenge waived on appeal. Correa Vallejo’s failure to challenge the IJ’s dispositive determination about timeliness amounts to a failure to exhaust the asylum claim before the BIA and deprives this court of jurisdiction to consider it. *See Sola v. Holder*, 720 F.3d 1134, 1135 (9th Cir. 2013)

(per curiam). We therefore dismiss the petition as to Correa Vallejo's asylum claim.

2. The BIA concluded that Correa Vallejo was ineligible for withholding of removal because, even assuming he "established a particular social group based on his and his wife's family, he did not meet his burden to establish a nexus between any past or feared future harm and his membership in the group."

The BIA did not fail to mention "potentially dispositive evidence" in reaching its conclusion, *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011), and Correa Vallejo does not dispute the IJ's finding that he "still has immediate family members residing in Mexico" who "have not had any problems of any kind." *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 743–44 (9th Cir. 2008) (that a "family member has remained unharmed" in home country is substantial evidence that petitioner "lacks a well-founded fear of future persecution based on family membership"), *overruled on other grounds by Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc).

Nothing in the record compels the contrary conclusion that Correa Vallejo's membership in his family, or his connection to his wife's family, was or would be "a reason" for any persecution. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017); *see also Ramadan v. Gonzales*, 479 F.3d 646, 658 (9th Cir. 2007) (threats "at best" supported—but did not compel—conclusion that petitioner would more likely than not be persecuted). We therefore deny Correa Vallejo's petition as

to his application for withholding of removal.

3. The BIA determined that Correa Vallejo was ineligible for CAT relief, and substantial evidence supports that conclusion. Correa Vallejo's generalized evidence of violence and crime in Mexico does not compel the conclusion that he, in particular, is more likely than not to be tortured there. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam). We therefore deny Correa Vallejo's petition as to his application for CAT protection.

**PETITION DISMISSED in part; DENIED in part.**