

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 16 2023

FOR THE NINTH CIRCUIT

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

SALVADOR ENRIQUE CHIGUILA  
SANTOS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 18-73007

Agency No. A202-086-299

MEMORANDUM\*

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

Submitted February, 16 2023\*\*  
San Francisco, California

Before: FRIEDLAND, BADE, and KOH, Circuit Judges.

Salvador Enrique Chiguila Santos (“Petitioner”), a native and citizen of El Salvador, seeks review of a decision of the Board of Immigration Appeals (“BIA”) affirming the denial by an immigration judge (“IJ”) of his applications for asylum,

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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).

withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252, and we dismiss in part and deny in part the petition.<sup>1</sup>

First, we do not have jurisdiction to address Petitioner’s claim that the BIA and IJ misstated his particular social group as “members of a family owned business” rather than “former members of a family owned business.” Before the BIA, Petitioner did not challenge the IJ’s classification of his particular social group as “members of a family owned business.” His passing references in his brief to “previously being a family business owner,” were insufficient to put the BIA on notice that he was challenging the IJ’s description of his particular social group. *See Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004). Because Petitioner failed to raise this argument to the BIA, we do not have jurisdiction to address it here. *See Barron v. Ashcroft*, 358 F.3d 674, 678 (9th Cir. 2004).

Second, we reject Petitioner’s argument that “members of a family owned business” qualifies as a particular social group. Substantial evidence supports the BIA and IJ’s determination that this group is not socially distinct. *See Conde Quevedo v. Barr*, 947 F.3d 1238, 1242 (9th Cir. 2020) (“The BIA’s conclusion regarding social distinction—whether there is evidence that a specific society

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<sup>1</sup> Petitioner does not present any arguments challenging the denial of CAT protection and, thus, has waived that claim. *See Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 889 (9th Cir. 2018).

recognizes a social group—is a question of fact that we review for substantial evidence.”). The record here does not compel the conclusion that “members of a family owned business” are recognized by Salvadoran society as distinct from other business owners, merchants, or, more broadly, people with money. Because Petitioner is unable to show membership in a particular social group or persecution based on another protected category, he does not qualify for asylum and withholding of removal. *See* 8 U.S.C. § 1101(a)(42); *id.* § 1231(b)(3)(A).

Finally, because the BIA properly denied Petitioner’s asylum and withholding claims on the merits and did not consider the IJ’s findings related to the one-year filing bar, we do not consider Petitioner’s challenges to those findings. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1088 (9th Cir. 2020) (“A panel may only affirm on the grounds set forth in the BIA's decision.”).

**PETITION DISMISSED in part and DENIED in part.<sup>2</sup>**

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<sup>2</sup> In light of our ruling, the motion for a stay of removal is denied as moot. *See Dkt. 1*. The temporary stay of removal will remain in place until the mandate issues.