

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2022

FOR THE NINTH CIRCUIT

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

MIGUEL ANGEL MOLINA BERBER,

No. 18-73093

Petitioner,

Agency No. A072-440-709

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted November 14, 2022**
San Francisco, California

Before: McKEOWN and PAEZ, Circuit Judges, and MOLLOY,*** District Judge.

* 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 Donald W. Molloy, United States District Judge for the District of Montana, sitting by designation.

Miguel Molina Berber, a native of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from the Immigration Judge's ("IJ") denial of his applications for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). "Where, as here, the BIA agrees with the IJ's reasoning, we review both decisions." *Garcia-Martinez v. Sessions*, 886 F.3d 1291, 1293 (9th Cir. 2018). We review factual findings for substantial evidence. *See Singh v. Holder*, 753 F.3d 826, 830 (9th Cir. 2014) (reviewing asylum and withholding); *see also Xochihua-Jaimes v. Barr*, 962 F.3d 1175, 1183 (9th Cir. 2020) (reviewing CAT relief). "[F]or this court to reverse the BIA with respect to a finding of fact, the evidence must compel a different conclusion from the one reached by the BIA." *Zheng v. Holder*, 644 F.3d 829, 835 (9th Cir. 2011). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

First, substantial evidence supports the BIA's conclusion that the harm Molina Berber suffered did not rise to the level of past persecution under 8 U.S.C. § 1158(b)(1)(A). Molina Berber described guerillas pursuing him on four to six occasions as a young man and once stealing his fish. While this harassing conduct was undoubtedly frightening, it does not meet the high threshold of establishing past persecution. *See Donchev v. Mukasey*, 553 F.3d 1206, 1213 (9th Cir. 2009) ("Persecution is an extreme concept that means something considerably more than

discrimination or harassment.”) (internal quotation marks and citation omitted)).

Likewise, substantial evidence supports the BIA’s affirmance of the IJ’s finding that, because the Guatemalan civil war concluded more than twenty years ago, and because Molina Berber once lived safely in a different part of Guatemala, his fear of future persecution by guerillas was not objectively reasonable. The BIA correctly reasoned that Molina Berber failed to provide evidence of objectively reasonable fear of future persecution because (1) too much time had passed since the end of the civil war without evidence of current violence against those who opposed the guerillas; and (2) his stated fear of gangs due to his ties to the United States did not include a valid protected basis. Because Molina Berber’s asylum claim fails, his withholding claim under 8 U.S.C. § 1231(b)(3)(A) necessarily fails. *See Dai v. Garland*, 9 F.4th 1142, 1145 (9th Cir. 2021). Therefore, the asylum and withholding petition was properly denied.

Finally, substantial evidence supports the BIA’s denial of Molina Berber’s CAT claim because he failed to establish that it is more likely than not he will be tortured by or with government acquiescence upon return to Guatemala. On appeal, Molina Berber fails to provide any responsive arguments that would compel a contrary conclusion; instead, he provides a history of CAT, argues without citation that this court has remanded “identical” cases, and summarily claims the IJ did not analyze “the merits of his CAT claim.” The BIA’s denial of

CAT relief was not erroneous.

PETITION DENIED.