

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 8 2022

FOR THE NINTH CIRCUIT

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

<p>JOSE MANUEL FLORES-GIRON,</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>MERRICK GARLAND,</p> <p style="text-align: center;">Respondent.</p>
--

No. 20-71209

Board of Immigration Appeals No.
A089-100-377
San Francisco, California

MEMORANDUM*

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

Submitted December 6, 2022**
San Francisco, California

Before: BRESS, LUCERO,*** and VANDYKE, Circuit Judges.

Juan Manuel Giron-Flores, a citizen of El Salvador, petitions for review of the Board of Immigration Appeals (“BIA”) decision, adopting the Immigration Judge’s (“IJ”) denial of asylum, withholding of removal, and protection under the

* 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. 34(a)(2).

*** The Honorable Carlos F. Lucero, United States Senior Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

Convention Against Torture (“CAT”). He contends he was subject to past persecution and has a well-founded fear of future persecution because of his political opinion (“opposition to gang violence”) and membership in a particular social group (“individuals who have taken active steps to oppose gangs”).

Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

Substantial evidence supports the BIA’s denial of asylum and withholding of removal. “To be eligible for asylum, a petitioner has the burden to demonstrate a likelihood of ‘persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.’” *Sharma v. Garland*, 9 F.4th 1052, 1059 (9th Cir. 2021) (quoting 8 U.S.C. § 1101(a)(42)(A)). An asylum seeker alleging past persecution must demonstrate that (1) his treatment rises to the level of persecution; (2) his treatment was based on one or more protected grounds; and (3) the government committed or acquiesced in the persecution. *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000).

The agency’s conclusion that Petitioner failed to show past persecution is supported by substantial evidence. The IJ found that Giron-Flores did not proffer evidence that any threats he faced were severe or specific enough to constitute past persecution. Giron-Flores also failed to establish that he held the political opinion he proposed. The IJ appropriately declined to make a ruling on the legal sufficiency of his proposed political opinion when it found he never expressed this

opinion, nor did anyone impute one to him. Similarly, the IJ declined to make a ruling on the legal sufficiency of his proposed social group. Substantial evidence supports the finding that Giron-Flores failed to take active steps to oppose gangs.

Substantial evidence also supports the finding that Petitioner failed to show a fear of future persecution. To demonstrate a well-founded fear of future persecution, an applicant must show that their fear is “both subjectively genuine and objectively reasonable,” *Gormley v. Ashcroft*, 364 F.3d 1172, 1180 (9th Cir. 2004) (citation and quotation marks omitted), “by credible, direct, and specific evidence in the record,” *Agbuya v. INS*, 241 F.3d 1224, 1228 (9th Cir. 2001) (citation and quotation marks omitted). Substantial evidence supports the IJ’s finding that Giron-Flores failed to demonstrate that his fear, while subjectively valid, was objectively reasonable. Giron-Flores’s assertions were too generalized and too remote.

Because substantial evidence supports the denial of asylum, Giron-Flores necessarily failed to meet the higher standard for withholding of removal. *See Sharma*, 9 F.4th at 1066.

To qualify for CAT protection, an applicant must prove there is more than a fifty percent chance they would be tortured upon removal. 8 C.F.R. § 1208.16(c)(2). Amongst other requirements, an applicant’s asserted torture must be particularized. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 751 (9th Cir. 2022).

Substantial evidence supports the IJ's decision to deny CAT protection because Petitioner failed to show a particularized risk of torture.

Accordingly, the petition for review is **DENIED**.