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U.S. COURT OF APPEALS

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

VILMA MILAGRO BENITEZ-GONZALEZ; Y.A.G.B., a minor, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-72114 Agency Nos. A209-903-336 A209-903-335 MEMORANDUM[*]

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

Submitted November 16, 2022[**]
Pasadena, California

Before: NGUYEN and FORREST, Circuit Judges, and FITZWATER,[***] 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 Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

Vilma Milagro Benitez-Gonzalez ("Benitez-Gonzalez") petitions for review of a decision of the Board of Immigration Appeals ("BIA") affirming the immigration judge's ("IJ's") order denying her and her daughter's applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. Reviewing the BIA's factual findings for substantial evidence and any legal questions and constitutional claims de novo, *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003), we deny the petition.

1. Benitez-Gonzalez first challenges the decision denying her and her daughter's applications for asylum. To be eligible for asylum, Benitez-Gonzalez must show that she and her daughter are unable or unwilling to return to El Salvador because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). It is sufficient to prove "[e]ither past persecution or a well-founded fear of future persecution" on account of a protected ground enumerated in § 1101(a)(42)(A). *Ratnam v. INS*, 154 F.3d 990, 994 (9th Cir. 1998).

Persecution is "an 'extreme concept,'" *Gu v. Gonzales*, 454 F.3d 1014, 1019 (9th Cir. 2006) ((quoting *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995)), such that threats alone will amount to persecution "in only a small category of cases," *Lim v.*

INS, 224 F.3d 929, 936 (9th Cir. 2000). "[W]e have been most likely to find persecution where threats are repeated, specific and combined with confrontation or other mistreatment." *Sharma v. Garland*, 9 F.4th 1052, 1062 (9th Cir. 2021) (quoting *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019)).

As to past persecution, Benitez-Gonzalez relies on one phone call that she received one year before leaving El Salvador. The caller demanded that she pay a certain sum of money, which her boyfriend paid on her behalf. Since then, neither she nor her daughter has received any threats or been harmed in anyway. This is not sufficient to constitute past persecution. *See id*. And while Benitez-Gonzalez and her daughter have demonstrated subjective fear, they have not provided any specific evidence demonstrating "an objectively 'reasonable possibility'" of future persecution. *Recinos De Leon v. Gonzales*, 400 F.3d 1185, 1190 (9th Cir. 2005) (quoting 8 C.F.R. § 1208.13(b)(2)(i)(B)).

Without a sufficient showing of either past persecution or a reasonable likelihood of future persecution, Benitez-Gonzalez and her daughter did not carry their burdens of establishing eligibility for asylum, and the BIA did not err in affirming the IJ's decision to deny their applications.

Because the standard for proving persecution is more stringent for withholding of removal than it is for asylum, Benitez-Gonzalez and her daughter's applications for

withholding of removal also necessarily fail. *Silva v. Garland*, 993 F.3d 705, 719 (9th Cir. 2021).

2. Benitez-Gonzalez and her daughter contend that the IJ violated their due process rights by, *inter alia*, declining to grant them a continuance, failing to acknowledge their Particular Social Group Statement in the final order, and neglecting to schedule a separate merits hearing at which Benitez-Gonzalez could testify in a less-crowded courtroom. In immigration proceedings, "an alien [must be] given a full and fair opportunity to be represented by counsel, to prepare an application for . . . relief, and to present testimony and other evidence in support of [that] application." *Go v. Holder*, 640 F.3d 1047, 1055 (9th Cir. 2011) (cleaned up) (quoting *Vargas–Hernandez v. Gonzales*, 497 F.3d 919, 926 (9th Cir. 2007)). To successfully establish that such process was not afforded, a petitioner must show error and substantial prejudice. *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000).

The IJ did not commit reversible error. Petitioners were represented by counsel, given the opportunity to testify, and provided time both to submit their application forms and to supplement the record with additional evidence after the hearing adjourned. Furthermore, petitioners have not shown "that the alleged violation affected the outcome of the proceedings." *Id.* Petitioners point to no additional evidence or argument that might have come in had the proceedings below been

conducted differently and that would have altered the outcome of the proceedings. In short, petitioners have failed to demonstrate either that their due process rights were violated or that any such violation changed the outcome of their removal proceedings. Accordingly, their due process claims do not establish reversible error.

3. Finally, petitioners challenge the denial of their requests for protection under the CAT. "In order to present a prima facie case for relief under the [CAT], the burden of proof is on the petitioner to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." *Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001) (quoting 8 C.F.R. § 208.16(c)(2)). The threat of torture must be particularized: "[g]eneralized evidence of violence and crime" in the proposed country of removal is not a sufficient basis for granting protection under the CAT. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (per curiam).

Here, petitioners did not prove that they are at a particularized risk of being tortured upon their return to El Salvador. Petitioners' evidence of indiscriminate violence and crime in El Salvador and of one threatening phone call that occurred one year before they left El Salvador is insufficient to establish a likelihood of future torture. And the fact that their family members have remained safely in El Salvador

supports the denial of protection under the CAT. *See Santos-Lemus v. Mukasey*, 542 F.3d 738, 748 (9th Cir. 2008).

PETITION DENIED.