

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 22 2023

FOR THE NINTH CIRCUIT

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

RITA GUADALUPE ROBLES NEVAREZ,

No. 20-72506

Petitioner,

Agency No. A208-968-277

v.

MEMORANDUM*

MERRICK B. GARLAND, Attorney
General,

Respondent.

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

Submitted February 14, 2023**

Before: FERNANDEZ, FRIEDLAND, and H.A. THOMAS, Circuit Judges.

Rita Guadalupe Robles Nevarez, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's ("IJ") decision denying her applications for asylum, withholding of removal, and protection under the Convention Against

* 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).

Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence the agency’s determination regarding social distinction.

Conde Quevedo v. Barr, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review de novo the legal question of whether a particular social group is cognizable, except to the extent that deference is owed to the BIA’s interpretation of the governing statutes and regulations. *Id.* We deny in part and dismiss in part the petition for review.

In her opening brief Robles Nevarez does not contest, and therefore forfeits the BIA’s determination that she waived any challenge to the IJ’s denial of asylum. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013). We do not address Robles Nevarez’s contentions as to her credibility, past persecution, or whether she has a well-founded fear of persecution because the BIA did not deny relief on these grounds. *See Santiago-Rodriguez v. Holder*, 657 F.3d 820, 829 (9th Cir. 2011) (“In reviewing the decision of the BIA, we consider only the grounds relied upon by that agency.” (citation and internal quotation marks omitted)).

The BIA did not err in concluding that Robles Nevarez did not establish membership in a cognizable particular social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (to demonstrate membership in a particular social group, “[t]he applicant must ‘establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and

(3) socially distinct within the society in question” (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 237 (BIA 2014)); *see also Conde Quevedo*, 947 F.3d at 1243 (proposed social group not cognizable because of the absence of society-specific evidence of social distinction). Thus, Robles Nevarez’s withholding of removal claim fails.

In her opening brief Robles Nevarez does not contest, and therefore forfeits, the BIA’s determination that she did not challenge the IJ’s denial of CAT protection. *See Lopez-Vasquez*, 706 F.3d at 1079-80. Thus, Robles Nevarez’s CAT claim fails.

To the extent Robles Nevarez contends the IJ erred in denying her application for voluntary departure, we lack jurisdiction to consider the contention because she did not apply for this relief. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004) (court lacks jurisdiction to review claims not presented to the agency).

The temporary stay of removal remains in place until the mandate issues.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.