

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 19 2021

FOR THE NINTH CIRCUIT

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

MACDONAL YANEIRON GOMEZ
HERRERA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 20-73414

Agency No. A208-583-380

MEMORANDUM*

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

Submitted November 8, 2021**

Before: CANBY, TASHIMA, and MILLER, Circuit Judges.

Macdonal Yaneiron Gomez Herrera,¹ a native and citizen of Guatemala,
petitions pro se for review of the Board of Immigration Appeals' order dismissing

* 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).

¹ Although petitioner's name appears as "Gomez Herrera" in the I-589
Application, Petition for Review, and Opening Brief, his name appears as "Gomez-
Herrera" in the agency decisions, Answering Brief, and Notice to Appear.

his appeal from an immigration judge’s decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252. 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. *Conde Quevedo v. Barr*, 947 F.3d 1238, 1241-42 (9th Cir. 2020). We review for substantial evidence the agency’s factual findings. *Id.* at 1241. We deny the petition for review.

The agency did not err in concluding that Gomez Herrera did not establish membership in a cognizable particular social group. *See Reyes v. Lynch*, 842 F.3d 1125, 1131 (9th Cir. 2016) (in order 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))).

Substantial evidence supports the agency’s determination that Gomez Herrera failed to establish that he was or would be persecuted on account of a protected ground. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (an applicant “must provide *some* evidence of [motive], direct or circumstantial”); *see also Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (a petitioner’s “desire

to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground”). Thus, Gomez Herrera’s asylum and withholding of removal claims fail.

In his opening brief, Gomez Herrera does not raise any argument challenging the agency’s denial of CAT relief. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079-80 (9th Cir. 2013) (issues not specifically raised and argued in a party’s opening brief are waived).

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

PETITION FOR REVIEW DENIED.