

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 21 2023

FOR THE NINTH CIRCUIT

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

SANTOS ISRAEL CARIAS-BACA,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-140

Agency No.
A201-747-406

MEMORANDUM*

On Petition for Review of an Order of the
Immigration Judge

Submitted November 14, 2023**

Before: SILVERMAN, WARDLAW, and TALLMAN, Circuit Judges.

Santos Israel Carias-Baca, a native and citizen of Honduras, petitions for review of an immigration judge's ("IJ") determination under 8 C.F.R.

§ 1208.31(a), that he did not have a reasonable fear of persecution or torture in Honduras and is not entitled to relief from his reinstated removal order. We have

* 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).

jurisdiction under 8 U.S.C. § 1252. We review an IJ’s negative reasonable fear determination for substantial evidence. *Andrade-Garcia v. Lynch*, 828 F.3d 829, 833 (9th Cir. 2016). We deny the petition for review.

Substantial evidence supports the agency’s determination that Carias-Baca failed to show a reasonable possibility that the harm he suffered or fears would be on account of a protected ground. *See Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010) (an applicant’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”).

Carias-Baca’s contentions regarding his proposed particular social group are not properly before the court because he failed to raise the particular social group before the IJ. *See* 8 U.S.C. § 1252(d)(1) (exhaustion of administrative remedies required); *see also Santos-Zacaria v. Garland*, 598 U.S. 411, 417-19 (2023) (section 1252(d)(1) is a non-jurisdictional claim-processing rule).

Substantial evidence supports the agency’s determination that Carias-Baca failed to show a reasonable possibility of torture by or with the consent or acquiescence of the government if returned to Honduras. *See Andrade-Garcia*, 828 F.3d at 836-37 (petitioner failed to demonstrate government acquiescence sufficient to establish a reasonable possibility of future torture).

We do not consider the materials Carias-Baca references in his opening brief

that are not part of the administrative record. *See Fisher v. INS*, 79 F.3d 955, 963-64 (9th Cir. 1996) (en banc).

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

PETITION FOR REVIEW DENIED.