

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 12 2022

FOR THE NINTH CIRCUIT

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

JUAN OLIVEROS-PEREZ; ADOLFO
ANTONIO RODAS-GARCIA,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-70732

Agency Nos. A077-216-139
A209-171-012

MEMORANDUM*

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

Submitted December 8, 2022**
San Francisco, California

Before: BRESS and VANDYKE, Circuit Judges, and RESTANI,*** 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 Jane A. Restani, Judge for the United States Court of International Trade, sitting by designation.

Juan Oliveros-Perez and his minor son, Adolfo Antonio Rodas-Garcia, citizens of Guatemala, seek review of a Board of Immigration Appeals (BIA) decision dismissing their appeal of an Immigration Judge (IJ) order denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).¹ We review the BIA’s decision for substantial evidence. *Sharma v. Garland*, 9 F.4th 1052, 1060, 1066 (9th Cir. 2021). “Under this standard, we must uphold the agency determination unless the evidence compels a contrary conclusion.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019). Questions of law are reviewed de novo. *Retuta v. Holder*, 591 F.3d 1181, 1184 (9th Cir. 2010). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

1. Substantial evidence supports the Board’s denial of asylum and withholding of removal. To be eligible for asylum, a petitioner must 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*, 9 F.4th at 1059 (quoting 8 U.S.C. § 1101(a)(42)(A)). To establish eligibility for withholding of removal, the petitioner must show a “clear probability” of such harm. *Id.* For both forms of relief, the petitioner must show a nexus between the feared harm and a protected ground. *Id.* Attacks based on personal or pecuniary

¹ Because the son’s petition depends on the father’s, we refer only to Oliveros-Perez.

motives therefore do not provide a basis for asylum or withholding of removal. *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010); *Gormley v. Ashcroft*, 364 F.3d 1172, 1177 (9th Cir. 2004).

The BIA concluded that Oliveros-Perez failed to establish the required nexus between the harm that he suffered or will suffer and his membership in the particular social group of “indigenous Mayans living in San Pedro Soloma in Guatemala.” Substantial evidence supports this conclusion. Oliveros-Perez acknowledged that the two attacks he suffered in Guatemala were primarily motivated by a desire for general pecuniary gain, and he testified that the alleged gang members expressed that they were attacking him out of a desire to gain control of his home. Oliveros-Perez offers no evidence that compels a conclusion contrary to that of the BIA, and his claims for asylum and withholding of removal therefore fail.²

2. Substantial evidence supports the Board’s denial of CAT relief. “To qualify for CAT relief, a petitioner must show that []he more likely than not will be tortured if []he is removed to h[is] native country.” *Vitug v. Holder*, 723 F.3d 1056, 1066 (9th Cir. 2013). Torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the

² Oliveros-Perez also sought humanitarian asylum. See 8 C.F.R. § 1208.13(b)(1)(iii)(A); *Singh v. Whitaker*, 914 F.3d 654, 661–62 (9th Cir. 2019). This claim, too, fails for lack of nexus to a protected ground.

instigation of or with the consent or acquiescence of a public official.” *Sharma*, 9 F.4th at 1067 (quoting 8 C.F.R. § 208.18(a)(1)). Neither the country condition reports, nor any other evidence Oliveros-Perez has submitted, compels the conclusion that he more likely than not will be tortured by or with the acquiescence of the Guatemalan government if he is removed to Guatemala.

3. Finally, contrary to Oliveros-Perez’s argument, we need not remand merely because the IJ and the Board cited *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018) (“*A-B- I*”), a decision that has since been vacated. *See Matter of A-B-*, 28 I. & N. Dec. 307 (A.G. 2021). The IJ and the Board cited *A-B- I* only for uncontroversial propositions that are supported by other precedent from this Court and the BIA.

PETITION DENIED.