

NOT FOR PUBLICATION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

MARCOS JUAN-ESTEBAN,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-70745

Agency No. A074-115-940

MEMORANDUM*

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

Submitted December 7, 2022**
Pasadena, California

Before: BERZON, R. NELSON, and BADE, Circuit Judges.

Petitioner Marcos Juan-Esteban (Juan-Esteban), a native and citizen of Guatemala, seeks review of the Board of Immigration Appeals' (BIA) affirmance of an immigration judge's (IJ) denial of his application for withholding of removal and protection under the Convention Against Torture (CAT). *See* 8 U.S.C §

* 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).

1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18. We have jurisdiction under 8 U.S.C. § 1252.

We review de novo the BIA’s “determination of purely legal questions regarding the requirements of the Immigration and Nationality Act,” *Arrieta v. INS*, 117 F.3d 429, 430 (9th Cir. 1997) (citation and internal quotation marks omitted), including whether a group constitutes a “particular social group,” *Perdomo v. Holder*, 611 F.3d 662, 665 (9th Cir. 2010). We review the BIA’s factual findings as to the existence of torture for substantial evidence. *Avendano-Hernandez v. Lynch*, 800 F.3d 1072, 1078 (9th Cir. 2015). Substantial evidence means the factual finding is “supported by reasonable, substantial and probative evidence on the record considered as a whole.” *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1163 (9th Cir. 2013) (citation and internal quotation marks omitted). We review claims asserting a due process violation de novo. *Mukulumbutu v. Barr*, 977 F.3d 924, 925 (9th Cir. 2020). We deny the petition.

1. Juan-Esteban argues that, if he returns to Guatemala, it is more likely than not that he will be persecuted on account of his family ties and his diabetes.¹

¹ Juan-Esteban also argued before the IJ that he was a member of the particular social group he defined as “persons who return to Guatemala after spending a prolonged period of time outside the country and will be perceived as wealthy.” He failed to challenge the IJ and BIA’s rejection of that purported particular social group in his opening brief, so he has waived any such challenge. *See Lopez-Vasquez v. Holder*, 706 F.3d 1072, 1079–80 (9th Cir. 2013).

Juan-Esteban failed to raise his family-based particular social group before the IJ, and the BIA deemed it waived. It did not err in doing so. *See Honcharov v. Barr*, 924 F.3d 1293, 1297 (9th Cir. 2019). The BIA also did not err in rejecting Juan-Esteban’s application for relief based on his fear of inadequate medical treatment in Guatemala for his diabetes. *See Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1164–65 (9th Cir. 2013) (per curiam) (rejecting proposed group of “all insulin-dependent diabetics” and holding that the Mexican government’s failure to provide adequate medical care to insulin-dependent diabetics does not establish persecution). Therefore, Juan-Esteban failed to demonstrate any nexus to a protected social group that would support his application for withholding of removal.

2. Substantial evidence supports the BIA’s conclusion that Juan-Esteban failed to show that he is more likely than not to be tortured by or with the acquiescence of the Guatemalan government. The record indicates that Juan-Esteban was never tortured in Guatemala and supports the BIA’s conclusion that his fear of torture is “based on a series of assumptions and speculation” arising from past incidents involving his family and a generalized fear of violence. A generalized fear of violence in Guatemala is insufficient to meet the standard for CAT protection. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010). The evidence Juan-Esteban submitted of general corruption in Guatemala and the government’s

ineffectiveness in combatting crime also does not compel the conclusion the government would acquiesce to his torture.

3. As to Juan-Esteban's due process claim, he cannot demonstrate either a violation of rights or prejudice. *See Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014). The record indicates that Juan-Esteban declined the Q'anjob'al interpreter and elected to proceed in Spanish, and he does not identify any part of the proceedings that he failed to understand. Juan-Esteban also fails to make a cognizable claim for ineffective assistance of counsel based on his counsel's alleged failure to investigate whether he could make a claim for relief on account of his indigenous status. The BIA rejected Juan-Esteban's ineffective assistance of counsel claim because he failed to comply with the requirements of *Matter of Lozada*, 19 I. & N. Dec. 637 (BIA 1988), and Juan-Esteban fails to challenge that determination in any way.

PETITION DENIED.