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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIGUEL JIMENEZ MIRELES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney  
General,

Respondent.

No. 21-70871

Agency No. A205-465-493

MEMORANDUM\*

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

Submitted November 17, 2022\*\*  
San Francisco, California

Before: LINN,\*\* RAWLINSON, and HURWITZ, Circuit Judges.

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\* 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 Richard Linn, United States Circuit Judge for the U.S. Court of Appeals for the Federal Circuit, sitting by designation.

Petitioner Miguel Jimenez Mireles (Jimenez Mireles), a native and citizen of Mexico, petitions for review of a decision of the Board of Immigration Appeals (BIA) dismissing his appeal of the denial of asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252 and we **DENY** the petition.

“Where, as here, the BIA cites *Matter of Burbano* and also provides its own review of the evidence and law, we review both the IJ’s and the BIA’s decisions. . . .” *Cordoba v. Barr*, 962 F.3d 479, 481 (9th Cir. 2020) (citation and alteration omitted). We review factual findings for substantial evidence and legal conclusions de novo. *See Mukulumbutu v. Barr*, 977 F.3d 924, 925 (9th Cir. 2020).

1. Even assuming we have jurisdiction to review the BIA’s ruling that no changed circumstances excused the late filing of the asylum application, that ruling was supported by substantial evidence. *See Sumolang v. Holder*, 723 F.3d 1080, 1083 (9th Cir. 2013). The extortion at gunpoint that Jimenez Mireles allegedly experienced in 2004 was no different in degree from the robbery his wife allegedly experienced in 2017. *See id.*

2. Jimenez Mireles argues that the IJ violated his right to due process by

misapplying the facts in considering whether Jimenez Mireles adequately demonstrated changed circumstances. This challenge does not raise a colorable due process claim because the “assertion is nothing more than an argument that the IJ abused his discretion, a matter over which we have no jurisdiction.” *Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005) (citation omitted).

3. In making an adverse credibility determination, the IJ may consider “demeanor, candor, responsiveness, plausibility, inconsistency, inaccuracy, and falsehood.” *Shrestha v. Holder*, 590 F.3d 1034, 1044 (9th Cir. 2010) (citation and internal quotation marks omitted).

The IJ determined that when Jimenez Mireles testified, he was vague, nonresponsive, and not plausible. Jimenez Mireles was also inconsistent regarding the alleged past persecution he encountered, the dates the events occurred, and his previous entries into the United States. He also failed to provide requested corroboration about a bank withdrawal allegedly made by his wife. Finally, Jimenez Mireles completely omitted from his application the events he described in his testimony. The BIA adopted the IJ’s findings. On this record, substantial evidence supports the adverse credibility determination and the denial of withholding of removal. *See id.* at 1048 n.6.

4. Substantial evidence supports the denial of CAT relief. While an adverse credibility determination is not necessarily dispositive of a CAT claim, Jimenez Mireles identified no other evidence in the record demonstrating that it is more likely than not that he will be tortured if removed. *See id.* at 1048. The country reports describing generalized violence and theft do not compel a contrary conclusion. *See id.* at 1049.

The motion for stay of removal (Ninth Cir. Dkt. #1) is denied. The temporary stay of removal is lifted.

**PETITION DENIED.**