NOT FOR PUBLICATION

FILED

MAR 16 2023

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOEL ANTONIO ARGUETA, Petitioner, v. MERRICK B. GARLAND, U.S. Attorney General, Respondent.	No. 21-849 Agency No. A094-311-557 MEMORANDUM[*]

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

Submitted March 14, 2023[**]
Pasadena, California

Before: BRESS and MENDOZA, Circuit Judges, and ERICKSEN,[***] District Judge.

Joel Antonio Argueta, a native and citizen of El Salvador, petitions for review of a Board of Immigration Appeals (BIA) decision dismissing his appeal of an Immigration Judge (IJ) order denying his application for protection under

[*] 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 Joan N. Ericksen, United States District Judge for the District of Minnesota, sitting by designation.

the Convention Against Torture (CAT).[1] We review de novo the BIA's determinations on questions of law. *Cordoba v. Holder*, 726 F.3d 1106, 1113 (9th Cir. 2013). The BIA's factual findings are reviewed for substantial evidence. *Sharma v. Garland*, 9 F.4th 1052, 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). Because the BIA conducted "its own review of the evidence and law, rather than adopting the IJ's decision, our review is limited to the BIA's decision." *Mareina v. Barr*, 917 F.3d 1119, 1123 (9th Cir. 2019) (quoting *Zumel v. Lynch*, 803 F.3d 463, 471 (9th Cir. 2015)). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

1. Substantial evidence supports the BIA'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 [his] 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 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)).

[1] Argueta did not contest before the BIA or this Court the IJ's determination that Argueta is ineligible for asylum, withholding of removal, or cancellation of removal due to a conviction for possession for sale of methamphetamine.

Neither the country condition reports—which the BIA specifically considered—nor any other evidence in the record compels the conclusion that Argueta more likely than not will be tortured if he is removed to El Salvador. The BIA reasoned that the record did not support that the government of El Salvador condoned attacks on Christians or that Argueta faced a risk of torture for being Christian. In addition, the BIA found that because Argueta did not identify himself as a member of the LGBTI community, did not claim he was perceived as such except during one attack, and did not indicate he feared future harm on the basis of this perception, Argueta did not establish a likelihood of torture on this basis. Substantial evidence supports the BIA's determinations.

2. The BIA did not adopt the IJ's adverse credibility determination, and it therefore falls outside the scope of our review. *Mareina*, 917 F.3d at 1123.

PETITION DENIED.