NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Wendy Veronica Rosales-Barillas; Daniela Alejandra Lezama-Rosales, Petitioners, v. Merrick B. Garland, U.S. Attorney General, Respondent.	No. 21-915 Agency Nos. A213-081-190 A213-081-191 MEMORANDUM*

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

Submitted March 15, 2023**
Pasadena, California

Before: TASHIMA, CHRISTEN, and MILLER, Circuit Judges.

Wendy Veronica Rosales-Barillas, a native and citizen of El Salvador, petitions for review of a decision of the Board of Immigration Appeals affirming an immigration judge's denial of her applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Rosales's adult daughter, Daniela Alejandra Lezama-Rosales, was

* 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).

included in Rosales's asylum application. We review "the agency's factual findings . . . for substantial evidence." *Kumar v. Holder*, 728 F.3d 993, 998 (9th Cir. 2013). Under that standard, we must accept the agency's factual findings "unless any reasonable adjudicator would be compelled to conclude to the contrary." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1677 (2021) (quoting 8 U.S.C. § 1252(b)(4)(B)). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

1. Rosales sought asylum and withholding of removal on the basis of her membership in the proposed particular social groups of Salvadoran women, single Salvadoran women, Salvadoran female supervisors, and Salvadoran female factory supervisors. Regardless of whether those groups are cognizable, Rosales has not demonstrated that she suffered or would suffer any harm on the basis of her membership in them.

"Purely personal retribution is, of course, not persecution on account of political opinion" or other protected grounds. *Antonyan v. Holder*, 642 F.3d 1250, 1256 (9th Cir. 2011) (quoting *Grava v. INS*, 205 F.3d 1777, 1181 n.3 (9th Cir. 2000)). The Board affirmed the immigration judge's finding that the threats against Rosales and her daughter were acts of "purely personal retribution" by a coworker, and substantial evidence supports that finding. After Rosales appeared to take part in a coworker's firing, the coworker told Rosales that she "was going to pay for it." Rosales testified that a man later told her, "because [you] fired" the coworker, "something might happen to [your] daughter." When

the immigration judge asked whether the threat to Rosales was "simply on account of a personal dispute," Rosales, through counsel, said "[i]t very well may be." Substantial evidence therefore supports the agency's denial of the asylum and withholding of removal claims.

2. Applicants for protection under the CAT must demonstrate that they will be tortured "with the consent or acquiescence of a public official." 8 C.F.R. § 208.18(a)(1). Substantial evidence supports the Board's affirmance of the immigration judge's finding that Rosales did not make the requisite showing here. Rosales argues that her "attempts to obtain assistance from the police were rejected," because she could not provide an address for the woman who threatened her. But "[e]vidence that the police were aware of a particular crime, but failed to bring the perpetrators to justice, is not in itself sufficient to establish acquiescence in the crime. Instead, there must be evidence that the police are unable or unwilling to oppose the crime." *Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014). The Board reasonably concluded that Rosales did not present such evidence.

3. Rosales also argues that she received ineffective assistance of counsel during proceedings before the agency. Rosales did not raise this claim before the Board, so we lack jurisdiction to consider it. *Ontiveros-Lopez v. INS*, 213 F.3d 1121, 1124 (9th Cir. 2000); *see Benedicto v. Garland*, 12 F.4th 1049, 1062 (9th Cir. 2021) ("The proper way to raise and exhaust an ineffective assistance of counsel claim in this situation is through a motion to reopen before the

agency.”).

The motion to stay removal (Dkt. No. 2) is denied.

PETITION DENIED.