

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 7 2023

FOR THE NINTH CIRCUIT

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

YASMIN AYALA SALAS; GUADALUPE
VALENCIA AYALA; CARLOS
VALENCIA AYALA,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-2093

Agency Nos.
A216-626-301
A216-626-302
A216-626-303

MEMORANDUM*

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

Submitted December 5, 2023**
San Francisco, California

Before: S.R. THOMAS and BRESS, Circuit Judges, and EZRA, District Judge.***

Yasmin Ayala Salas and her minor son and daughter (collectively, “Ayala

* 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 David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

Salas”), natives and citizens of Mexico, petition for review of a Board of Immigration Appeals (BIA) decision dismissing their appeal of an Immigration Judge (IJ) order denying their applications for asylum and withholding of removal. 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). Further, “[w]here, as here, the BIA adopts and affirms the IJ’s order pursuant to *Matter of Burbano*, 20 I. & N. Dec. 872, 874 (BIA 1994), and expresses no disagreement with the IJ’s decision, we review the IJ’s order as if it were the BIA’s.” *Chuen Piu Kwong v. Holder*, 671 F.3d 872, 876 (9th Cir. 2011). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.¹

Substantial evidence supports the denial of asylum and withholding of removal. “To be eligible for asylum, a petitioner has the burden to 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 be eligible for withholding of removal, a petitioner must show a “clear probability” of such

¹ Ayala Salas did not raise before the BIA or this court any challenge to the IJ’s denial of relief under the Convention Against Torture (CAT). We thus do not consider that issue.

harm. *Id.* (quoting *Alvarez-Santos v. INS*, 332 F.3d 1245, 1255 (9th Cir. 2003)). “Absent evidence of past persecution, [a petitioner] must establish a well-founded fear of future persecution by showing both a subjective fear of future persecution, as well as an objectively reasonable possibility of persecution upon return to the country in question.” *Duran-Rodriguez*, 918 F.3d at 1029 (quotation omitted).

In this case, substantial evidence supports the IJ’s determination that Ayala Salas failed to show past harm rising to the level of persecution. Persecution “is an extreme concept that means something considerably more than discrimination or harassment.” *Sharma*, 9 F.4th at 1060 (quoting *Donchev v. Mukasey*, 553 F.3d 1206, 1213 (9th Cir. 2009)). In this case, a local vigilante group in December 2013 tried to take Ayala Salas’s partner away, shot at Ayala Salas, and threatened her. Although this incident was deplorable, Ayala Salas suffered only a blister. This “isolated incident” that did not cause “significant physical harm” does not rise to the level of persecution. *Sharma*, 9 F.4th at 1061–62. And although the vigilante group threatened Ayala Salas, it never followed through on those threats. *See Hussain v. Rosen*, 985 F.3d 634, 647 (9th Cir. 2021) (“Unfulfilled threats are very rarely sufficient to rise to the level of persecution.”).

Ayala Salas also points to a second incident that occurred in December 2017, when her partner’s nephew was threatened and shot. But Ayala Salas was not present during this incident and was not harmed. Because the record does not show

that this incident was “part of a pattern of persecution closely tied to the petitioner” herself, it does not suffice to show past persecution. *Sharma*, 9 F.4th at 1062 (quoting *Wakkary v. Holder*, 558 F.3d 1049, 1060 (9th Cir. 2009)) (alterations and quotation marks omitted).

In addition, substantial evidence supports the IJ’s determination that Ayala Salas’s fear of future harm in Mexico was not objectively reasonable. *See Duran-Rodriguez*, 918 F.3d at 1029. Ayala Salas did not receive any further threats after the first incident, and she remained in Mexico for approximately four more years unharmed. Harm to Ayala Salas’s partner’s nephew also did not establish an objectively reasonable fear of future persecution when the harm was directed to the nephew and not to Ayala Salas. Though Ayala Salas’s partner’s nephew’s “family” was threatened, nothing in the record suggests that threat encompassed her or her children. Ayala Salas’s evidence of generalized violence in Mexico likewise does not show a particularized risk of future harm to her.

Considered as a whole, the record does not compel a finding of past persecution or a well-founded fear of future persecution. And because substantial evidence supports the denial of asylum, Ayala Salas necessarily failed to meet the higher standard for withholding of removal. *See Sharma*, 9 F.4th at 1066.

PETITION DENIED.²

² The temporary stay of removal remains in place until issuance of the mandate. The motion for a stay of removal is otherwise denied.