

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 20 2023

FOR THE NINTH CIRCUIT

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

JOSE JUAN DE JUAN ANDRES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-731

Agency No.
A213-078-819

MEMORANDUM*

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

Submitted October 17, 2023**
San Francisco, California

Before: BEA, CHRISTEN, and JOHNSTONE, Circuit Judges.

Jose Juan de Juan Andres, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") dismissal of his appeal of the Immigration Judge's ("IJ") decision denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT").

* 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).

We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition.

1. The IJ did not err in finding that Petitioner’s asylum application was time-barred under 8 U.S.C. § 1158(a)(2)(B), and Petitioner failed to exhaust this dispositive issue on appeal before the BIA. Exhaustion, as required by 8 U.S.C. § 1252(d)(1), is a “claim-processing rule.” *Santos-Zacaria v. Garland*, 598 U.S. 411, 416–19 (2023). The Court will deny a petition for failure to exhaust an issue below if a party properly raises the failure to exhaust. *See Fort Bend County v. Davis*, 139 S. Ct. 1843, 1849 (2019); *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023). Petitioner de Juan Andres failed to challenge the IJ’s determination that his claim was time-barred and that no exception applied before the BIA, and Respondent properly raises the failure to exhaust here. Consequently, the Court denies the asylum portion of the petition.

2. Substantial evidence supports the IJ’s and BIA’s conclusions that Petitioner was not eligible for withholding of removal. Petitioner did not experience past persecution on account of being Mayan, and his family has remained in Guatemala without incident. Further, his proposed particular social group—“those who are perceived to have amassed significant wealth during their time in the United States”—is not cognizable. *See* 8 U.S.C. § 1231(b)(3)(A); *Barbosa v. Barr*, 926 F.3d 1053, 1059–60 (9th Cir. 2019); *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016).

3. Substantial evidence supports the IJ's and BIA's conclusions that Petitioner is not entitled to CAT relief because he failed to establish a likelihood of torture with government participation or acquiescence. Petitioner failed to establish a particularized risk of torture. Though he fears generalized crime in Guatemala based on reports of discrimination and a girl's kidnapping, this evidence does not compel the Court to conclude the IJ or BIA erred in deciding that Petitioner failed to establish a likelihood of torture with government participation or acquiescence. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151–52 (9th Cir. 2010) (per curiam). Petitioner therefore failed to demonstrate eligibility for CAT relief. 8 C.F.R. § 1208.16(c).

PETITION DENIED.