

MAR 31 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSE LUCIANO ORDINOLA
HERNANDEZ;
JOSE JAVIER ORDINOLA JUAREZ,

Petitioners,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 05-72639

Agency Nos. A075-304-146
A075-304-147

MEMORANDUM*

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

Submitted March 18, 2009**

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Jose Luciano Ordinola Hernandez and his son, natives and citizens of
Mexico, petition for review of the Board of Immigration Appeals' ("BIA") order

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. See Fed. R. App. P. 34(a)(2).

dismissing their appeal from an immigration judge's ("IJ") decision denying their application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We review for substantial evidence, *Zehatye v. Gonzales*, 453 F.3d 1182, 1184-85 (9th Cir. 2006), and we deny the petition for review.

Ordinola's contention that the BIA lacked authority to deny his asylum application on a different ground from that relied upon by the IJ lacks merit because the BIA has authority to review de novo "questions of law, discretion, and judgment and all other issues in appeals from decisions of immigration judges." 8 C.F.R. § 1003.1(d)(3)(ii). In addition, the BIA provided the required reasoned analysis of the legal basis for its holding and specification of the particular facts on which it relied. *See Stoyanov v. INS*, 172 F.3d 731, 735-36 (9th Cir. 1999) (court may affirm BIA's decision on alternative ground when BIA adequately analyzes claim).

Substantial evidence supports the BIA's determination that the harm Ordinola suffered in Mexico did not rise to the level of past persecution, *see Prasad v. INS*, 47 F.3d 336, 339-40 (9th Cir. 1995), and its determination that Ordinola failed to establish that the police targeted him on account of a protected ground, *see Molina-Estrada v. INS*, 293 F.3d 1089, 1094-95 (9th Cir. 2002).

Because Ordinola's fear of future harm similarly is not on account of a protected ground, substantial evidence supports the BIA's finding that he does not have a well-founded fear of future persecution. Accordingly, Ordinola's asylum claim fails.

Because Ordinola failed to demonstrate eligibility for asylum, he necessarily failed to satisfy the more stringent standard for withholding of removal. *See Zehatye*, 453 F.3d at 1190.

Substantial evidence supports the BIA's denial of CAT relief because Ordinola failed to demonstrate that it was more likely than not that he would be tortured if he returns to Mexico. *See Singh v. Gonzales*, 439 F.3d 1100, 1113 (9th Cir. 2006).

PETITION FOR REVIEW DENIED.