FILED
United States Court of Appeals
Tenth Circuit

October 1, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

SAYED MD-ABU,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 20-9594
(Petition for Review)

ORDER AND JUDGMENT*

Before **HARTZ**, **PHILLIPS**, and **EID**, Circuit Judges.

Petitioner Sayed Md-Abu is a native and citizen of Bangladesh. An Immigration Judge (IJ) denied his application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT), and ordered his removal to Bangladesh. The Board of Immigration Appeals (BIA) dismissed his appeal of the IJ's decision, and Petitioner has filed a petition for review. Our jurisdiction arises under 8 U.S.C. § 1252(a). We deny the petition for review because (1) Petitioner has

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

waived any challenge to the determination that he could avoid persecution by relocating in Bangladesh, which is an independently dispositive basis for the denial of asylum and withholding of removal; and (2) he fails to show that the denial of CAT relief is not supported by substantial evidence.

I. BACKGROUND

The Department of Homeland Security issued Petitioner a Notice to Appear, charging him with removability from the United States for entering this country without a visa or other entry document, *see* 8 U.S.C. § 1182(a)(7)(A)(i)(I), and for being present in this country without being admitted or paroled, *see id.* § 1182(a)(6)(a)(i). Petitioner conceded the charges of removability and applied for asylum, statutory withholding of removal, and protection under the CAT.

Before the IJ, Petitioner testified that he was a member of the Liberal Democratic Party (LDP) and was persecuted by members of Bangladesh's ruling political party, the Awami League, on account of his political opinion.[1] He described several such incidents. The first occurred in late November 2017, when two Awami League members, Anwar and Arif, called Petitioner and threatened to kill him because he had recruited some Awami League members to the LDP.

The second incident occurred at the end of December 2017. Anwar, Arif, and five of their friends came to Petitioner's workshop and told him to join the Awami

[1] Petitioner has never contended that any of his persecutors were government actors or acting in an official capacity.

League. When Petitioner refused and said he liked the LDP, they hit him and threatened to kill him if he did not give them money. Petitioner refused, so they ransacked his shop and took motor parts and money. Petitioner did not sustain any significant injuries, and LDP leaders told him not to report the incident to the police because it would only put him and his family in danger. Later that day, a friend told Petitioner that "they're going to kill you tonight." Admin. R. at 130. Assuming that "they" meant Anwar, Arif, and Awami League members, Petitioner fled to a friend's house in Comilla[2] some 25 kilometers away and stayed there about a month and a half. In Comilla, "people would stare at [him]," but no Awami League members approached him and "nothing bad happened" to him. *Id.* at 145.

Soon after Petitioner's return home, unknown people started watching him at his shop and following him when he would go out. In mid-February 2018, he tried to report this and the December incident to the police, but the police said they could not accept any charges against the perpetrators because they were Awami League members, and Anwar and Arif were respectable people. Two days later, Petitioner returned to the police with a witness and family members, but still the police declined to accept any charges, adding that if he tried again, he would be arrested.

The next day, Anwar, Arif, and seven other Awami League members attacked and beat Petitioner while he was shopping. They said, "[H]ow dare you, you went to

[2] In the Administrative Record, the name of this city is spelled both "Camila" and "Comilla." *See, e.g.*, Admin. R. at 130:23 (transcript of hearing testimony noting that the spelling "Camila" was "phonetic"), 383 ¶ 7 (Petitioner's affidavit in support of his application for relief identifying it as "Comilla").

the police station to file charges against us," and told him that if he did it again, they would kill him. *Id.* at 136. At the hospital Petitioner received bandages and a painkiller for bruises and cuts.

The last incident occurred on June 22, 2018. Anwar fired two shots at Petitioner through the window of his shop while others tried to enter. Petitioner escaped and fled to a friend's house in Dhaka, more than 200 kilometers away. He did not report the incident to the police because of the prior police threat to arrest him. While Petitioner was in Dhaka, he learned from his friend that Awami League members from "that neighborhood" (apparently meaning his friend's neighborhood) came looking for him. *Id.* at 140. Petitioner left his friend's place and went to a hotel in Dhaka until August 31, 2018, when he left Bangladesh. Petitioner arrived in the United States five months later. While he was traveling to this country, Awami League members went to his house and threatened his family.

II. THE AGENCY'S DECISIONS

The IJ first found that Petitioner was less than fully credible and that the documentary evidence he submitted to corroborate his account was suspect. Based in large part on the adverse credibility finding, the IJ found that Petitioner had not demonstrated persecution-level harm and that the harm he allegedly experienced was not on account of his political opinion or another protected ground but was motivated by monetary gain through robbery and retaliation for reporting to the police. The IJ also found Petitioner had not demonstrated that the Bangladeshi government is unable or unwilling to control the actors he fears. And the IJ further found he could

avoid future harm by internally relocating in Bangladesh, given that he successfully did so when he went to Comilla, he did not leave Bangladesh for over two months after the June 22 incident, and he left his family in Bangladesh. Accordingly, the IJ determined Petitioner had not demonstrated a well-founded fear of future persecution and denied his asylum application. Because Petitioner could not meet the burden of proof for asylum, the IJ found that he necessarily failed to meet the higher burden of proof for statutory withholding of removal and denied his application for withholding of removal.

Finally, the IJ denied CAT relief because Petitioner lacked credibility, he had not experienced past torture, he had successfully relocated in Bangladesh and could do so if he were to return, the human rights situation in Bangladesh does not make it more likely than not that he would be tortured, and he had not shown that any torture he might experience would be by, at the instigation of, or with the consent or acquiescence of a government official or other person acting in an official capacity.

The BIA dismissed Petitioner's appeal. The BIA found no clear error in the IJ's findings regarding credibility and corroborating evidence. It affirmed the IJ's determination that Petitioner had not shown that any past or future harm was or would be by the Bangladeshi government or by private actors the government was or is unable or unwilling to control. The BIA also affirmed the IJ's determination regarding fear of future persecution, specifically recounting that Petitioner had twice relocated in Bangladesh without incident and pointing out that he had not met his burden of presenting evidence that internal relocation would be unreasonable, such as

by showing a restriction on moving, an inability to speak the language outside his village, or an inability to make a living elsewhere in Bangladesh. Finally, the BIA affirmed the IJ's denial of CAT relief, stating there was no clear error in the IJ's finding that Petitioner had not established it was more likely than not that he would be tortured by or at the instigation of a public official or other person acting in an official capacity, or that any such person would consent or acquiesce in any torture.

III. PETITION FOR REVIEW; VENUE

Petitioner filed a petition for review in the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit granted the government's motion to transfer because the IJ who completed Petitioner's removal proceedings was located in Chaparral, New Mexico, and 8 U.S.C. § 1252(b)(2) provides that a "petition for review shall be filed with the court of appeals for the judicial circuit in which the immigration judge completed the proceedings."

The government now argues, however, that because the Notice to Appear directed Petitioner to appear before an Immigration Judge in Louisiana, Tenth Circuit law directs that the United States Court of Appeals for the Fifth Circuit, which includes Louisiana, is the proper venue for this petition. But the government also suggests the interests of justice would best be served by retaining the petition in this circuit. Petitioner has expressed no opinion on the matter.

As is obvious from the government's change of position on the venue issue, the determination of venue for appeals of removals can be subtle and intricate. *See, e.g.*, *Lee v. Lynch*, 791 F.3d 1261, 1266 (10th Cir. 2015); *Medina-Rosales v. Holder*,

778 F.3d 1140, 1143 (10th Cir. 2015). Fortunately, we need not decide where venue properly lies for the petition before us. Even if the proper judicial venue is the Fifth Circuit, we may still exercise jurisdiction over this case. *See Lee*, 791 F.3d at 1264 (holding that § 1252(b)(2) is nonjurisdictional and a circuit court may exercise jurisdiction over a petition for review even when venue is improper). For several reasons, we agree with the government that the interests of justice are best served if we retain the petition for review in this circuit and address it on the merits. First, transfer would delay resolution of this matter, which has been pending in this court for more than a year, and therefore inconvenience the parties. Second, transfer would waste judicial resources because, as we will discuss, the petition wholly lacks merit. *See id.* at 1266 (considerations in deciding whether to transfer to the proper venue a petition for review in an immigration case include delay, inconvenience, and whether a transfer would waste judicial resources because the petition is meritless). And third, like both the IJ and the BIA, neither party relies on any Fifth Circuit law. *See id.* (petitioner's reliance on the law of the circuit where venue was proper is an important factor in the transfer calculus). Accordingly, we proceed to the merits.

IV. DISCUSSION

Where, as here, a single BIA member issues a brief order deciding the merits of an appeal, the BIA's order is the final order of removal we review, but we may consult the IJ's decision if necessary to understand the grounds for the BIA's decision. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1204 (10th Cir. 2006). We review legal conclusions de novo and factual findings for substantial evidence. *See*

Vicente-Elias v. Mukasey, 532 F.3d 1086, 1091 (10th Cir. 2008). Under the substantial-evidence standard, "administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B).

A. Asylum

An asylum applicant has the burden of proving his eligibility for asylum by establishing that he is a refugee as defined in 8 U.S.C. § 1101(a)(42). *Yuk v. Ashcroft*, 355 F.3d 1222, 1232 (10th Cir. 2004). As relevant to the petition for review here, an asylum applicant can establish refugee status by demonstrating that he has a well-founded fear of future persecution or that he has suffered past persecution, which gives rise to a rebuttable presumption that he has a well-founded fear of future persecution. *See id.* at 1232–33; *see also* 8 C.F.R. § 1208.13(b) (explaining eligibility requirements). The persecution must be "on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42). And the persecution must have been "committed by the government or forces the government is either unable or unwilling to control." *Orellana-Recinos v. Garland*, 993 F.3d 851, 854 (10th Cir. 2021) (internal quotation marks omitted). Significantly, "[a]n applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality . . . if under all the circumstances it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(2)(ii). If the applicant establishes refugee status, "the Attorney General exercises discretionary

judgment in either granting or denying asylum." *Yuk*, 355 F.3d at 1233 (internal quotation marks omitted).

Petitioner makes several arguments germane to the BIA's denial of asylum, but as the government points out, he has not specifically challenged the BIA's finding that he could avoid persecution by relocating internally in Bangladesh. Petitioner does state, as part of his credibility argument, that he cannot escape the reach of the Awami League because it "is a national organization," Pet'r's Br. at 23. But that undeveloped, isolated, conclusory statement is insufficient to avoid waiver of the internal-relocation issue. *See Sawyers v. Norton*, 962 F.3d 1270, 1286 (10th Cir. 2020) (issues "presented only in a perfunctory manner" in an opening brief are waived (bracket and internal quotation marks omitted)). Because of this waiver, he cannot succeed on his asylum claim regardless of whether the BIA erred in other respects. *See Tulengkey v. Gonzales*, 425 F.3d 1277, 1282 (10th Cir. 2005) (because of failure to challenge relocation finding, a "claim of a well-founded fear of future persecution necessarily fails"); *Murrell v. Shalala*, 43 F.3d 1388, 1390 (10th Cir. 1994) (failure to challenge an agency finding that is an independently sufficient basis for the denial of relief forecloses success on appeal regardless of the merits of an alternative ground).

B. Statutory Withholding of Removal

Petitioner's waiver of a challenge to the BIA's relocation finding is also dispositive of his request for withholding of removal under 8 U.S.C. § 1231(b)(3), regardless of whether he established past persecution. *See Uanreroro*, 443 F.3d

at 1202 (failure to meet asylum standards necessarily results in failure to meet higher standard for withholding of removal under § 1231(b)(3)); 8 C.F.R. § 1208.16(b)(1)(i)(B), (b)(2) (discussing internal relocation in the context of withholding of removal).

C. CAT Relief

To be eligible for CAT relief, an applicant must "establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). The torture must be "inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity." *Id.* § 1208.18(a)(1). Petitioner argues that he satisfied this burden, but he asserts only that "he faces torture and death if he returns to Bangladesh" because he "was threatened with death, shot at, and assaulted repeatedly." Pet'r's Br. at 28. This argument is unpersuasive because it fails to address two significant components of the IJ's CAT findings (which the BIA affirmed): (1) Petitioner had successfully avoided the individuals he fears by relocating internally and could do so again if he returns to Bangladesh and (2) country conditions do not support finding that it is more likely than not that he would be tortured. Absent any challenge to these findings, we cannot say that any reasonable adjudicator would be compelled to conclude that Petitioner established eligibility for CAT relief, so the denial of CAT relief is supported by substantial evidence. *See Birhanu v. Wilkinson*, 990 F.3d 1242, 1265 (10th Cir. 2021) ("We review the agency's determination of a CAT claim for substantial evidence.").

V. CONCLUSION

The petition for review is denied.

Entered for the Court

Harris L Hartz
Circuit Judge