

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

August 27, 2021

Christopher M. Wolpert
Clerk of Court

FARID AHMED,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 20-9640
(Petition for Review)

ORDER AND JUDGMENT*

Before **McHUGH, BALDOCK**, and **MORITZ**, Circuit Judges.

Farid Ahmed is a native and citizen of Bangladesh who entered the United States without permission. An immigration judge (IJ) found him removable and ineligible for asylum, withholding of removal, or protection under the Convention Against Torture (CAT), and ordered that he be returned to his home country. The Board of Immigration Appeals (BIA) dismissed his appeal. Ahmed now petitions for

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, *res judicata*, and collateral estoppel.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.

review of the BIA's decision. We have jurisdiction under 8 U.S.C. § 1252(a), and we deny the petition.

I. BACKGROUND & PROCEDURAL HISTORY

In July 2019, the government served Ahmed with a notice to appear, alleging he had entered the United States without permission the previous month. An IJ found him removable as charged, and Ahmed then applied for asylum, withholding of removal, and CAT protection. He claimed the Awami League Party (the current ruling party in Bangladesh) persecuted him for his membership in an opposition party known as the "LDP."

At his asylum hearing, Ahmed testified about his LDP membership and four events between December 12 and 25, 2018, during which he was either attacked or threatened by persons he recognized as Awami party members. The IJ and the government's attorney questioned him about discrepancies between the story he recounted at the hearing as compared to the story told in his asylum application and supporting affidavits. Five of those discrepancies remain relevant here.

First, Ahmed stated in his asylum application that he worked for the LDP from January 2017 to December 2017, but at the asylum hearing he testified that his employment lasted from January 2017 to December 2018. When asked about the discrepancy, Ahmed distinguished between joining the party and working for it, and eventually settled on December 2017 to December 2018 as the term of his employment. Later in the hearing, however, he equated joining the party with receiving his job and reverted to January 2017 as the beginning of his term.

Second, Ahmed's asylum application described a December 12, 2018, attack on the LDP office in his village. Ahmed recounted that Awami party members entered the office, vandalized office equipment, and then beat him up with their bare hands. By contrast, he testified at the asylum hearing that his attackers entered the office, beat him up with their bare hands and with bamboo sticks, and then vandalized the equipment. When asked about the differences between these accounts, he stated that the credible fear interviewer had not asked him to break down his story into a precise chronology.

Third, Ahmed's asylum application described a December 21, 2018, attack by seven or eight Awami members as he walked to the market in his village. At one point, his attackers were kicking him as he lay on the ground and asking him why he continued to work for the LDP. He responded that he would not go back to work for the LDP, but they continued to beat him. Eventually they walked away, after which unnamed others found him and brought him home. When recalling the same incident at the asylum hearing, however, Ahmed denied saying anything to his attackers, but instead testified that he screamed for help, causing people from the market to come and rescue him. Neither the IJ nor the government asked Ahmed to explain the latter discrepancy. As for the former, Ahmed explained that when he testified he had said nothing to his attackers, he meant he had not used foul language.

Fourth, Ahmed's asylum application described a December 23, 2018, attack outside a local mosque by a group of Awami members. Ahmed stated that none of his attackers said anything specifically to him, but they were telling each other to

attack Ahmed wherever they might find him. When he recalled the same event at his asylum hearing, he testified that, “right before [his attackers] left, . . . one of [them] told me that next time when we will find you, that we will kill you. And then after that, he kicked me once [and departed].” R. at 223. The government confronted him with the difference between the two versions of the story and Ahmed responded that the credible fear interviewer “didn’t ask the questions like today.” R. at 244.

Fifth, Ahmed testified at his asylum hearing about a December 25, 2018, incident where some of his previous attackers, joined by others, pelted his house with rocks and demanded that he come outside. His mother told them he was not home, although he was actually hiding inside the house. The attackers then damaged a bench and some chairs outside the house and left. No one was harmed. That was when Ahmed decided to flee his village, beginning the journey that eventually brought him to the United States. But an affidavit from Ahmed’s mother said that these attackers entered the house looking for Ahmed, destroyed furniture in the process, and severely beat Ahmed’s younger brother, requiring his hospitalization. An affidavit from a neighbor similarly recalled that the assailants severely beat Ahmed’s brother. When asked why he did not recall the attack on his brother, Ahmed explained that he never saw his brother that day, did not know his brother had been attacked, and speculated that his family never told him because they did not want him to fear his pursuers even more.

At the conclusion of the hearing, the IJ announced that it found Ahmed incredible based on the foregoing discrepancies. The IJ in turn found that Ahmed

had not been persecuted or tortured in Bangladesh. On this basis, the IJ denied Ahmed's applications for asylum, withholding of removal, and CAT protection. The BIA affirmed the IJ's decision in a single-member summary disposition that relied on the reasons given by the IJ, mostly without elaboration.¹ Ahmed then filed a timely petition for review.

II. STANDARD OF REVIEW

A single-member BIA order "constitutes the final order of removal" and "we will not affirm on grounds raised in the IJ decision unless they are relied upon by the BIA in its affirmance." *Uanreroro v. Gonzales*, 443 F.3d 1197, 1204 (10th Cir. 2006). "However, when seeking to understand the grounds provided by the BIA, we are not precluded from consulting the IJ's more complete explanation of those same grounds." *Id.* For example, we will consult the IJ's decision "where the BIA incorporates by reference the IJ's rationale or repeats a condensed version of its reasons while also relying on the IJ's more complete discussion," or "where the BIA reasoning is difficult to discern and the IJ's analysis is all that can give substance to the BIA's reasoning in the order of affirmance." *Id.*

"[W]here the BIA determines a petitioner is not eligible for relief, we review the decision to determine whether the record on the whole provides substantial

¹ The IJ alternatively assumed that Ahmed testified credibly but found that the attacks and harassment he experienced did not amount to persecution; and, regardless, he could relocate within Bangladesh to avoid his attackers. The BIA affirmed these alternative rulings, but the government does not rely on them to defend the agency's decision, so we do not address them further.

support for that determination.” *Id.* In so doing, we must treat “administrative findings of fact [as] conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B).

III. ANALYSIS

The government asks us to dispose of Ahmed’s petition at the outset by finding that his opening brief fails to challenge the not-credible finding that underlays the agency’s decision in this case. Ahmed appears pro se, so we construe his filings liberally but do not serve as his advocate. *See Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005). Under that standard, we conclude Ahmed’s opening brief contemplates an attack on the credibility finding. *See* Pet’r Opening Br. at 4 (requesting protection from removal “after [having] been granted credible fear positive”); *id.* (arguing the agency erred because it found “inconsist[encies] where [they are] not important”). Even so, Ahmed’s minimal arguments are not enough to overturn the agency’s decision.

In the asylum context, and in removal proceedings generally, Congress requires the agency to judge credibility under “the totality of the circumstances,” specifically to include “the consistency between the applicant’s or witness’s written and oral statements . . . without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim.” 8 U.S.C. § 1158(b)(1)(B)(iii) (governing asylum); *id.* § 1229a(c)(4)(C) (setting the same standard for removal proceedings generally). The agency’s credibility findings, “like other findings of fact, are subject to the substantial evidence test.” *Elzour v. Ashcroft*, 378 F.3d 1143,

1150 (10th Cir. 2004). We require the agency to give “specific, cogent reasons for disbelieving [the applicant’s] testimony.” *Id.* (internal quotation marks omitted). An adverse credibility determination “may not be based upon speculation, conjecture, or unsupported personal opinion.” *Id.* at 1153.

Here, the agency carried out its statutory duty and adequately explained why it found Ahmed incredible. Ahmed’s argument on this point does not establish that “any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B). The finding that Ahmed did not experience persecution or torture is therefore “conclusive,” *id.*, and the agency appropriately denied relief.

IV. CONCLUSION

We deny the petition for review.²

Entered for the Court

Bobby R. Baldock
Circuit Judge

² We grant Ahmed’s motion to proceed on appeal without prepayment of costs or fees.