[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 20-14306

Non-Argument Calendar

AMBER MICHELLE SANCHEZ-RODRIGUEZ,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A206-793-572

Before JORDAN, GRANT, and TJOFLAT, Circuit Judges.

PER CURIAM:

Ambar Sanchez-Rodriguez, a native and citizen of Honduras, seeks review of the Board of Immigration Appeals' ("BIA") decision, affirming the Immigration Judge's ("IJ") denial of her applications for asylum, withholding of removal, and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). On petition to this Court, Sanchez-Rodriguez argues that the IJ failed to analyze her gender-based fear of persecution and ignored evidence that she cannot reasonably relocate within Honduras. Because of a lack of administrative exhaustion and failure to challenge factual findings on appeal, this petition must be dismissed.

I.

Sanchez-Rodriguez entered the United States on May 30, 2014, without inspection. In July 2014, she was served with a Notice to Appear at a deportation proceeding for her inadmissibility. After initially being deemed removable by an IJ, she filed a petition for asylum. In a September 2015 proceeding related to her asylum claim, she conceded removability. She stated that she was entitled to asylum, withholding of removal, and CAT protection based on threats and actual harm suffered based on refused recruitment into a gang.

In her declarations to the IJ, Sanchez-Rodriguez claimed that she faced violence in early 2014, because a man named Christian tried to recruit her to a gang so that she could sell drugs at a local college. She refused several times. On March 15, 2014, Christian called her and said that he had a "business proposal" for her. She hung up the phone but was threatened the next day. On April 5, 2014, gang members accosted Sanchez-Rodriguez and her sister, and stole their belongings. On April 7, 2014, Sanchez-Rodriguez again refused recruitment and several gang members beat her unconscious. Sanchez-Rodriguez's sister stated in a declaration that on April 8, she was chased and beaten by the other gang members. Sanchez-Rodriguez later stated in a hearing that the gang shot at her home and left dead animals in front of the house, and that her grandmother had to move because the gang pursued her as well for information on Sanchez-Rodriguez. None of these incidents were reported to the police for fear of retaliation. Family members also submitted declarations to similar effects, and indicating that several members of the family were forced to pay a "war tax" to the gang. She argued at her hearing that she was being persecuted based on her membership in two groups: (1) "young women who refuse to join gangs who are without protection;" and (2) "women who are without protection."

The IJ denied the application and ordered removal. He found Sanchez-Rodriguez credible but ultimately also found that that (1) there was no nexus between the alleged harm and any protected ground, and (2) the attacks did not rise to the level of past

persecution. In finding her credible, he noted minor inconsistencies, which included that in her application Sanchez-Rodriguez had claimed that Christian wanted to marry her, but at the hearing testified that he had merely made a business proposal to her. In assessing the nexus, the IJ found that Sanchez-Rodriguez's persecution was based on her refusal to join a gang, rather than her status in a particular social group. Further, the IJ found that the proposed groups were not "particular social groups," under the Immigration and Nationality Act ("INA") because they lacked particularity, encompassed large segments of society, and were not socially distinct within Honduran society. In other words, the IJ found that this case boiled down to a refusal to join a gang claim—which is insufficient to establish asylum. Moreover, she had not established that she could not get protection from Honduran authorities, because she refused to contact them. Further, the requirement for her family to pay a war tax was not an enumerated ground for asylum. Because she had failed to meet the lower burden for asylum, she also failed to meet the higher burden for withholding of removal; and because Sanchez-Rodriguez had no problems with the police or government authority or government-related torture, her CAT relief claim was also denied. The BIA affirmed without opinion.

II.

A. Standards of Review

We generally review only the BIA's decision. *Perez-Zenteno v. U.S. Att'y Gen.*, 913 F.3d 1301, 1306 (11th Cir. 2019). But

where (as in this case) the BIA adopted or agreed with the reasoning of the IJ's decision, we review the decisions of both the BIA and the IJ. *Id.* We review any constitutional claim or question of law *de novo*. *Scheerer v. U.S. Att'y Gen.*, 513 F.3d 1244, 1252 (11th Cir. 2008). We review factual determinations, however, under the substantial evidence test. *Gonzalez v. U.S. Att'y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016). Under this test, "we view the record evidence in the light most favorable to the agency's decision and draw all reasonable inferences in favor of that decision." *Sanchez Jimenez v. U.S. Att'y Gen.*, 492 F.3d 1223, 1230 (11th Cir. 2007) (quotation marks omitted). The record must compel a contrary conclusion to warrant reversal, and the mere fact that the record may support a different conclusion is not sufficient to justify a reversal of administrative findings. *Id.*

We review our subject matter jurisdiction *de novo*. *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1297 (11th Cir. 2015). We lack jurisdiction to review final orders in immigration cases unless the applicant has exhausted all administrative remedies available as of right. Immigration and Nationality Act ("INA") § 242(d)(1), 8 U.S.C. § 1252(d)(1); *Indrawati*, 779 F.3d at 1297. This exhaustion requirement is not stringent but requires that a petitioner provide sufficient information to allow the BIA an opportunity to address an issue. *See Indrawati*, 779 F.3d at 1297. The exhaustion requirement is not satisfied by "[u]nadorned, conclusory statements," although it does not require "precise legal terminology" or "a well-developed argument." *Id.* (quotation marks and brackets omitted).

Unless a petitioner raises a purely legal question, she fails to exhaust an argument when she does not provide her argument's relevant factual underpinnings. *Id.* at 1298.

We will not review a decision by the BIA if there remains an alternative holding that serves as a reason to dismiss the petition because reviewing an alternative ground would amount to rendering an advisory opinion. *Malu v. U.S. Att'y Gen.*, 764 F.3d 1282, 1290–91 (11th Cir. 2014). Where a judgment is based on multiple independent grounds, an appellant must challenge every stated ground for the decision, and if he fails to challenge one ground, he is deemed to have abandoned that challenge, which will result in the judgment being affirmed. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) (non-immigration context).

B. General Legal Principles

To establish asylum eligibility, the non-citizen bears the burden of proving that she meets the INA's definition of "refugee." § 1101(a)(42)(a); § 1158(b)(1)(B)(i). A "refugee" is defined as:

> any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A). To meet this burden, the non-citizen generally must show four things: (1) past persecution or a well-founded fear of future persecution, (2) on account of (or at least in part because of), (3) a protected ground, (4) by her home government or forces the government is unwilling or unable to control.

Persecution includes (1) past persecution on account of a statutorily listed protected ground, or (2) a well-founded fear that the statutorily protected ground will cause future persecution. *Diallo v. U.S. Att'y Gen.*, 596 F.3d 1329, 1332 (11th Cir. 2010). A well-founded fear means a reasonable possibility of future persecution. *Li Shan Chen v. U.S. Att'y Gen.*, 672 F.3d 961, 965 (11th Cir. 2011). Protected grounds include "race, religion, nationality, membership in a particular social group, or political opinion." *See* INA § 101(a)(42)(B), 8 U.S.C. § 1101(a)(42)(B). An applicant does not have a well-founded fear of future persecution if she could "avoid persecution by relocating to another part of the applicant's [home] country," where such relocation is reasonable. 8 C.F.R. § 1208.13(b)(2)(ii); *see also Arboleda v. U.S. Att'y Gen.*, 434 F.3d 1220, 1223–24 (11th Cir. 2006). Where an applicant has not established past persecution, the burden is on the applicant to show that she could not avoid persecution by relocating to another part of her home country. 8 C.F.R. § 1208.13(b)(3)(i).

The requirement that such persecution be "on account of" is called the nexus requirement, and an applicant must show that "persecution is, at least in part, motivated by a protected ground." *Ayala v. U.S. Att'y Gen.*, 605 F.3d 941, 949 (11th Cir. 2010).

While the INA does not define "particular social group," we have applied *Chevron*[1] deference to the BIA's formulation of the criteria that must be satisfied. *Castillo-Arias v. U.S. Att'y Gen.*, 446 F.3d 1190, 1196–97 (11th Cir. 2006). A "particular social group" is a group of persons all of whom share a "common, immutable characteristic." *Perez-Zenteno*, 913 F.3d at 1308–09. The characteristic must be unchangeable or fundamental to "individual identities or consciences," and the group must be socially distinct within the relevant society and defined with particularity, not overbroadly or amorphously. *Id.* at 1309. The common characteristic must be something other than the risk of being persecuted. *See Rodriguez v. U.S. Att'y Gen.*, 735 F.3d 1302, 1310 (11th Cir. 2013) (per curiam); *see also Matter of E-A-G-*, 24 I. & N. Dec. 591, 594–95 (BIA 2008) (finding that people who resist joining gangs are not part of a socially distinct group within Honduran society).

To establish asylum eligibility, the applicant "must show not only past persecution or a well-founded fear of future persecution, but also that she is unable to avail herself of the protection of her home country." *Lopez v. U.S. Att'y Gen.*, 504 F.3d 1341, 1345 (11th Cir. 2007). "In all cases, the persecution must be by government forces or by non-government groups that the government cannot control." *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1331 (11th Cir. 2019) (internal quotations omitted). Thus, "[a]n applicant for

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[1] *Chevron, U.S.A., Inc. v. Nat. Res. Defense Council, Inc., 467 U.S. 837 (1984).*

asylum who alleges persecution by a private actor must prove that his home country is unable or unwilling to protect him." *Ayala v. U.S. Att'y Gen.*, 605 F.3d 941, 950 (11th Cir. 2010).

To qualify for withholding of removal, an applicant must establish that his life or freedom would be threatened in his country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A). The applicant must show that it is more likely than not that he will be persecuted on account of a protected ground if returned to his home country. *Rodriguez*, 735 F.3d at 1308. Generally, where an applicant fails to establish eligibility for asylum, he necessarily fails to establish eligibility under the more stringent standard for withholding of removal. *Zheng v. U.S. Att'y Gen.*, 451 F.3d 1287, 1292 (11th Cir. 2006).

III.

On appeal, Sanchez-Rodriguez raises issues with two factual findings by the IJ: (1) that the IJ failed by ignoring the gendered element of the persecution against her, and (2) the IJ ignored critical facts demonstrating unreasonableness of Sanchez-Rodriguez's safety in relocating in Honduras. As to the first, Sanchez-Rodriguez argues that she presented evidence that part of her fears stemmed from being forced to marry Christian, a gang leader, and the IJ erred by addressing this evidence under credibility.[2] As to

[2] She initially had framed Christian's proposition as a marriage proposal, but at her hearing, stated this was a business proposal to have her sell

the second, she argues that the IJ ignored evidence that the gangs were continuing to stalk and harass her family members even when they moved within Honduras. She argues that this demonstrates that relocation within Honduras was not reasonable for her. Still, we must dismiss her claim.

As a threshold matter, we note that Sanchez-Rodriguez waived any CAT relief determination by not raising it. Moreover, where an asylum claim is made about the conduct of private parties, a litigant must make a showing that the government is "unable and unwilling" to assist her. *See Ayala*, 605 F.3d at 950. Sanchez-Rodriguez never provided argument of this issue to our court.[3] *See Hamilton v. Southland Christian Sch., Inc.*, 680 F.3d 1316, 1318 (11th Cir. 2012); *Hartsfield v. Lemacks*, 50 F.3d 950, 953 (11th Cir. 1995) ("We note that issues that clearly are not designated in the initial brief ordinarily are considered abandoned."). Sanchez-Rodriguez claims in her reply brief that the Government wrongfully treats the "unable or unwilling finding as untethered from the nexus element of asylum," and that she raised the nexus determination. In other words, she argues that raising the nexus

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drugs. As noted earlier, the IJ noted Sanchez-Rodriguez's inconsistency when assessing her credibility. She states that the IJ should have seen this as a part of a mixed motive for her fear that qualifies for a nexus.

[3] In her initial brief, Sanchez-Rodriguez states in her facts section that it was "common knowledge" that Christian bought the police. But without further argumentation, such a passing reference is insufficient to raise the issue. *Lapaix v. U.S. Att'y Gen.*, 605 F.3d 1138, 1145 (11th Cir. 2010).

determination raises the "unable or unwilling" issue. But these are two separate findings, as an applicant can show a nexus between persecution and membership in a protected class without showing that a government would be unwilling or unable to assist an applicant, and vice versa. *See Ayala*, 605 F.3d at 949–51 (treating these two factual findings as separate). Because this is a dispositive finding, her failure to appeal it dooms her asylum claim and thus her withholding of removal claim as well. *See Zheng*, 451 F.3d at 1292.

Sanchez-Rodriguez also did not challenge specific findings before the BIA that are critical to her claim on appeal. An applicant must exhaust her administrative remedies to the BIA before we can assume jurisdiction. *Sundar v. INS*, 328 F.3d 1320, 1323 (11th Cir. 2003) (opining that the exhaustion requirement is jurisdictional). We have stated that "unadorned, conclusory statements" are not sufficient argumentation for exhaustion purposes. *See Indrawati*, 779 F.3d at 1297. A petitioner must do more than "merely identif[y] an issue to" the BIA; the petitioner must "raise[] the "core issue" before the BIA, and also set out any discrete arguments he relies on in support of that claim." *Jeune v. U.S. Att'y Gen.*, 81 F.3d 792, 800 (11th Cir. 2016) (citations omitted). Before the BIA, Sanchez-Rodriguez did not challenge the findings that (1) her proposed social groups were not cognizable, and (2) that she failed to show that it was unreasonable to relocate within Honduras. Neither were argued in her briefs before the BIA. The relocation issue was only referenced in her notice of appeal, stating that the IJ "erred by denying relief because respondent never attempted to

relocate." But this is an "unadorned, conclusory statement" that does not suffice for exhaustion. *See id.* The IJ's reliance on Sanchez-Rodriguez's failure to attempt to relocate is different from (and less specific than) the evidence she said the IJ failed to consider on appeal—that her family members were continuously stalked after they moved within Honduras. This method of presentation hardly gives the BIA a "full opportunity" to consider the issue. *See Amaya–Artunduaga*, 463 F.3d at 1250. Accordingly, we lack jurisdiction to review her arguments on these points—and these points are also dispositive of her claim. *See Sapuppo*, 739 F.3d at 680.

Finally, we need not remand this case for further proceedings. *See Amaya-Artunduaga*, 463 F.3d at 1250 (dismissing a petition based on a failure to exhaust).[4] Accordingly, the petition is

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[4] Sanchez-Rodriguez argues that remand is appropriate with respect to these three issues because she claims that she exhausted at the administrative level unlike the petitioner in *Amaya-Artunduaga*. 463 F.3d at 1250. She argues that she always argued about the IJ's nexus analysis, and that this is broad enough to encompass all of the factual findings addressed here. *See Montano Cisneros v. U.S. Att'y Gen.*, 514 F.3d 1224, 1228 n.3 (11th Cir. 2008) (noting the difference between abandoning an issue at the administrative level for remand or dismissal purposes). It is true that where the BIA fails to consider an issue *before it*, we usually must remand unless there are exceptional circumstances. *INS v. Ventura*, 537 U.S. 12, 16–17, 123 S. Ct. 353, 355 (2002). This argument ignores, however, that these factual findings were not actually briefed to the BIA, unlike the petitioner in *Montano Cisneros* who argued that there was ineffective assistance of counsel before the BIA. 514 F.3d at 1228 n.3. Rather, her brief to the BIA simply sets out the governing law, then recites Sanchez-Rodriguez's testimony at length, without providing any further legal argument. As noted above, her passing references to relocation in her notice

DISMISSED.

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of appeal are insufficient to raise these issues. *Lapaix*, 605 F.3d at 1145. As a result, the proper disposition is to dismiss this petition, not to remand. *See Amaya-Artunduaga*, 463 F.3d at 1250.