NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted April 10, 2024*
Decided May 2, 2024

Before

KENNETH F. RIPPLE, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 23-3278

JAVIER CARMONA-ALBARRAN,
Petitioner,

v.

MERRICK B. GARLAND, Attorney General of the United States,
Respondent.

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

A206-788-960

O R D E R

Javier Carmona-Albarran, a native of Mexico, last entered the United States without inspection in 2006. In 2006 and 2015 he was convicted of felony offenses for driving under the influence. After his second arrest, the Department of Homeland Security commenced removal proceedings against Carmona-Albarran by serving and

* The panel granted the parties' joint motion to waive oral argument per Federal Rule of Appellate Procedure 34 and Circuit Rule 34(e). App. Dkt. 17, 18.

filing a Notice to Appear charging him with removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act). 8 U.S.C. § 1182(a)(6)(A)(i). Carmona-Albarran conceded his removability but applied for withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A), as well as protection under regulations implementing the Convention Against Torture, 8 C.F.R. § 1208.16(c).

Regarding withholding of removal, Carmona-Albarran claimed he was a member of a particular social group whose mistreatment could amount to persecution—specifically, individuals returning from the United States who are perceived to be wealthy. He also asserted that he would be persecuted in the future based on his political opinions in opposition to gangs. He asserted that he had been persecuted in the past and feared further persecution in the future because of his membership in this social group and his political opinions.

Carmona-Albarran identified two instances of past persecution. The first incident occurred in 1999, when he was beaten by three unidentified people. He did not know to what group or gang they may have belonged. The second incident took place in 2001 when a drunk drug-cartel hitman pointed a pistol at Carmona-Albarran. He explained that the man had a lot of problems and that "if he didn't like a person, he would just pull out the gun." Carmona-Albarran was never again threatened by this man, who later got into a fight in which he was killed.

The immigration judge denied Carmona-Albarran's application in all respects. Regarding withholding of removal, the judge concluded that he failed to establish a nexus between past persecution or the risk of future persecution and a statutorily protected ground. Instead, his evidence showed he was, and fears becoming again, a victim of general criminal violence, which is not a ground for relief. The immigration judge also found that Carmona-Albarran had not provided any evidence that he expressed an anti-gang political opinion or that anyone in Mexico did or would impute one to him. The immigration judge also denied Carmona-Albarran's request for relief under the Convention Against Torture because he failed to show that he would more likely than not be tortured if he returned to Mexico.

Carmona-Albarran appealed the immigration judge's decision to the Board of Immigration Appeals. The Board agreed with the judge's reasoning and dismissed the appeal. Carmona-Albarran filed a timely petition for judicial review in this court.

The principal question for us is whether substantial evidence supports the administrative decision. *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); 8 U.S.C. § 1252(b)(4)(B). Carmona-Albarran argues first that the Board and immigration judge erred in finding he was not a member of a particular social group. Second, he argues the Board and the judge erred in finding he did not establish that he had an imputed anti-gang political opinion. Finally, he argues that that the Board and judge erred in finding he failed to show that he would more likely than not be tortured if he returned to Mexico. We find the Board's and judge's decisions were supported by substantial evidence. We therefore reject Carmona-Albarran's arguments and deny the petition for review.

I. *Particular Social Group*

At the immigration hearing, Carmona-Albarran defined his particular social group as "individuals who are imputed to be American citizens or individuals recently deported who are wealthy, or who are viewed as wealthy." AR 93.[1] We have previously rejected the proposed particular social group "individuals deported from the United States who have money or who are perceived to have money, and who have family members in the United States who could pay ransom." *Dominguez-Pulido v. Lynch*, 821 F.3d 837, 844–45 (7th Cir. 2016). We have also declined to recognize the proposed particular social group "Mexican nationals who have lived in the U.S. for many years and are perceived as wealthy upon returning to Mexico." *Gutierrez v. Lynch*, 834 F.3d 800, 805–06 (7th Cir. 2016). We do not see any meaningful difference between the particular social groups proposed in *Dominguez-Pulido* and *Gutierrez* and Carmona-Albarran's proposed particular social group. All revolve around "wealth or perceived wealth," which is not an immutable characteristic of a cognizable social group. *Dominguez-Pulido*, 821 F.3d at 845. We find no error in the Board's and the judge's

[1] On judicial review, Carmona-Albarran now claims his particular social group is "those who are returning to Mexico and being perceived by gangs who act as a quasi-government and with government acquiescence, as having money or being a Permanent Resident or United States Citizen." Pet. Br. at 16–17. To the extent this proposed group is meaningfully different from the groups proposed in the administrative proceedings, we do not consider new arguments raised for the first time on judicial review. *Duarte-Salagosa v. Holder*, 775 F.3d 841, 845 (7th Cir. 2014) (declining to consider new particular social group raised for the first time before court of appeals).

finding that Carmona-Albarran has failed to establish a risk of future persecution on the basis of membership in a particular social group.

II. *Political Opinion*

The immigration judge's findings of fact are conclusive unless a reasonable adjudicator would be compelled to conclude to the contrary. See *Molina-Avila v. Sessions*, 907 F.3d 977, 981 (7th Cir. 2018). Here, the judge found that Carmona-Albarran did not provide any evidence that he expressed an anti-gang political opinion or that anyone else had imputed or would in the future impute such an opinion to him. Nothing in the record compels a different conclusion. Petitioner's counsel's bare assertion in the opening brief that Carmona-Albarran had previously rejected gang membership without any evidence to support this claim does not provide a basis for granting the petition for judicial review. See *Bueso-Avila v. Holder*, 663 F.3d 934, 937 (7th Cir. 2011) (proof of persecution requires direct or circumstantial evidence that gang was motivated by protected factor). The Board's and the judge's finding that Carmona-Albarran failed to establish any nexus between past persecution or a risk of future persecution and a protected ground is supported by substantial evidence.

III. *Risk of Torture upon Return*

Carmona-Albarran has not shown he is entitled to relief under the Convention Against Torture. The immigration judge's finding that the 1999 and 2001 incidents described by Carmona-Albarran did not rise to the level of torture was supported by substantial evidence. See *Meraz-Saucedo v. Rosen*, 986 F.3d 676, 686 (7th Cir. 2021) ("'Torture' is defined as 'severe pain or suffering' or an 'extreme form of cruel and inhuman treatment' that is intentionally inflicted with the consent or acquiescence of a public official." (quoting 8 C.F.R. § 208.18(a)(1)–(2))); *Shkulaku-Purballori v. Mukasey*, 514 F.3d 499, 501, 503 (6th Cir. 2007) (multiple beatings resulting in fainting and a broken finger did not require finding of past torture). Cf. *Orellana-Arias v. Sessions*, 865 F.3d 476, 487, 490 (7th Cir. 2017) (gang attacking petitioner by throwing him to the ground, kicking him, and twisting his ankle did not require finding of past persecution, let alone torture); *Zhu v. Gonzales*, 465 F.3d 316, 318, 319–20 (7th Cir. 2006) (beating, including being hit on the head with a brick resulting in cut requiring seven stitches, did not compel finding of past persecution).

Under the Convention Against Torture, it also is not enough for a petitioner to show a risk of generalized violence. The petitioner must show "a substantial risk that

the petitioner will be targeted specifically." *Bernard v. Sessions*, 881 F.3d 1042, 1047 (7th Cir. 2018). Here, as the immigration judge recognized, evidence showed general gang violence in Carmona-Albarran's town in Mexico and the government's failure to prevent it, but petitioner did not provide evidence that he specifically would be targeted by such violence. See *Orellana-Arias*, 865 F.3d at 490 (country condition reports describing "violence in the country and the government's inability to control it, including its acquiescence that results from corruption," did not establish that petitioner "*specifically* would be targeted for torture by the government or due to its acquiescence" (emphasis added)). Accordingly, substantial evidence supported the Board's and immigration judge's finding that Carmona-Albarran failed to show he would more likely than not be tortured if he returned to Mexico.

The petition for review of the decision of the Board of Immigration Appeals is DENIED.