

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-11197
Non-Argument Calendar

Agency No. A202-012-748

BENJAMINA LOPEZ-FRANCISCO,
ALICIA DE LEON LOPEZ,
EVELIN DAMARIS DE LEON LOPEZ,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(February 12, 2019)

Before MARTIN, NEWSOM and HULL, Circuit Judges.

PER CURIAM:

Benjamina Lopez-Francisco and two of her children, all citizens and natives of Guatemala, petition for review of the Board of Immigration Appeals' ("BIA") decision denying their asylum and withholding of removal claims. After careful review, we deny the petition.

I.

Ms. Lopez-Francisco was married to her husband when she was just fourteen years old.¹ The two of them lived in a fairly remote village in Guatemala and had eight children. Although Ms. Lopez-Francisco endured some mistreatment by her husband, her situation worsened after he passed away in 2012. Shortly after her husband's passing, his brother, Catarino De Leon-Gomez, began to harass and physically and verbally abuse Ms. Lopez-Francisco. He would come to her house and "pick[] fights," claiming now that his brother was dead, both the house and Ms. Lopez-Francisco rightfully belonged to him. During these occasions, he would bring a machete with him and threaten to kill Ms. Lopez-Francisco and her children if she did not agree to "become his wom[a]n." He would also attempt to sexually abuse Ms. Lopez-Francisco.

This happened five times over the course of a year. Fortunately, Ms. Lopez-Francisco and her children were able to outrun him each time, and no one was ever

¹ These facts are taken from Ms. Lopez-Francisco's testimony before the immigration judge ("IJ"), who found her credible.

harmed during these incidents. After 2012, Ms. Lopez-Francisco began to bar the door so he could not come inside. She also stopped giving him food. As a result, he stopped coming over. Ms. Lopez-Francisco never reported the incidents to the police because she didn't think they would listen to her. She thought the police would brush off his behavior as just the actions of a "sick" man. She eventually fled to the United States with some of her children in 2015. Soon after, she applied for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") on her own behalf and on behalf of two of her children.

Following a hearing, the IJ denied all three claims and ordered her and her children removed to Guatemala. Ms. Lopez-Francisco unsuccessfully appealed the IJ's decision to the BIA. The BIA agreed with the IJ that Ms. Lopez-Francisco failed to demonstrate she suffered harm rising to the level of persecution or had an objectively reasonable fear of persecution. In the alternative, the BIA agreed with the IJ that even if Ms. Lopez-Francisco satisfied the persecution requirement, she was nonetheless ineligible for asylum and withholding because she failed to show she suffered harm on account of a cognizable particular social group.

Ms. Lopez-Francisco timely petitioned this Court for review of her asylum and withholding claims.²

² Because Ms. Lopez-Francisco does not challenge the agency's decision to deny her CAT claim, she has abandoned that claim on appeal. See Sepulveda v. U.S. Att'y Gen., 401 F.3d 1226, 1228 n.2 (11th Cir. 2005) (per curiam).

II.

“When the BIA issues a decision, we review only that decision, except to the extent the BIA expressly adopts the IJ’s decision.” Lopez v. U.S. Att’y Gen., 504 F.3d 1341, 1344 (11th Cir. 2007). “[A]ny factual determinations are reviewed under the substantial evidence test,” meaning “we must affirm the decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole.” Id. (quotation marks and alteration omitted).

III.

On the record before us, we cannot say the BIA’s determination that Ms. Lopez-Francisco failed to show harm rising to level of persecution is unsupported by substantial evidence. Ordinarily, repeated machete attacks and attempted sexual abuse would qualify as persecution. See, e.g., Mejia v. U.S. Att’y Gen., 498 F.3d 1253, 1257 n.7 (11th Cir. 2007) (“[A]n attack can be ‘physical’ and constitute a form of persecution even if the intended target of the attack is not actually struck by the attacker’s projectile.”); Vasquez v. U.S. Att’y Gen., 556 F. App’x 926, 931 (11th Cir. 2014) (per curiam) (unpublished) (“[S]erious physical injury is not required to demonstrate past persecution, when there are physical threats combined with other forms of mistreatment such as kidnapping.”). Here, however, there was evidence that Ms. Lopez-Francisco was able to prevent the attacks and further visits by her brother-in-law simply by closing the door to her home. Because this

action alone was enough to deter Mr. De Leon-Gomez, the BIA's determination that Ms. Lopez-Francisco did not demonstrate past persecution was supported by reasonable evidence on the record. See, e.g., Pyakurel v. Lynch, 630 F. App'x 852, 856 (10th Cir. 2015) (unpublished) (concluding substantial evidence supported the BIA's finding of no past persecution because the harassment and threats "decreased over time" and "all but stopped" at some point).³

Ms. Lopez-Francisco has not challenged on appeal the BIA's determination that she failed to establish an objectively reasonable fear of future persecution. Absent a finding of persecution, a petitioner cannot satisfy the requirements for either asylum or withholding of removal. 8 C.F.R. § 1208.13(b). We therefore affirm the BIA's decision and deny Ms. Lopez-Francisco's petition.

PETITION DENIED.

³ We recognize the BIA found, and the Respondent argues on appeal, that Ms. Lopez-Francisco failed to show she suffered or feared harm on account of her membership in a cognizable particular social group because she was not in a domestic relationship with her brother-in-law and there was no evidence that Guatemalan authorities could not intervene and protect her if she contacted them. Because the persecution issue alone is dispositive here, we do not reach these issues.