[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13025
Non-Argument Calendar

Agency No. A088-071-485

ABEDNEGO DELA CRUZ MENDOZA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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

(July 16, 2019)

Before WILLIAM PRYOR, GRANT, and ANDERSON, Circuit Judges.

PER CURIAM:

Abednego Dela Cruz Mendoza ("Mendoza") petitions for review of the Board of Immigration Appeals' ("BIA") order affirming an immigration judge's ("IJ") denial of his claims for withholding of removal and relief under the Convention Against Torture ("CAT"). Mendoza conceded his asylum application was untimely but contends that he is entitled to withholding of removal because he experienced past persecution when local police in Mexico briefly detained and threatened him after he reported that two officers were involved in drug and prostitution activities. He also argues he will suffer future persecution on account of his membership in a particular social group of "witnesses of police corruption in Mexico that report the crimes and are threatened by the perpetrators and/or whistleblowers." Finally, Mendoza contends that he is entitled to CAT relief because he will be tortured by or with the acquiescence of the government if he is returned to Mexico. Following a close review of the parties' briefs, relevant portions of the record,[1] and applicable law, we deny Mendoza's petition.

I.

We review only the BIA's decision, except to the extent the BIA adopts the IJ's opinion or expressly agrees with its reasoning. Seck v. U.S. Att'y Gen., 663 F.3d 1356, 1364 (11th Cir. 2011). We review de novo the BIA's legal conclusions,

[1] We assume the parties are familiar with the factual and procedural background of this case. Therefore, we recount relevant portions of the record in this opinion only to the limited extent necessary to provide context for our decision.

including whether an alleged group qualifies as a "particular social group" under the Immigration and Nationality Act ("INA"). Gonzalez v. U.S. Att'y Gen., 820 F.3d 399, 403 (11th Cir. 2016). Factual findings are reviewed under the substantial evidence test. Sanchez Jimenez v. U.S. Att'y Gen., 492 F.3d. 1223, 1230 (11th Cir. 2007). Under the substantial evidence 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. Id. We should affirm the BIA's decision if, considering the record as a whole, it is supported by reasonable, substantial, and probative evidence. Id. To reverse the agency's factual findings, we must determine that the record compels reversal, not that it merely supports a different conclusion. Id.

II.

To qualify for withholding of removal under the INA, an applicant must show that his life or freedom would be threatened in the proposed country of removal because of his race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1231(b)(3)(A). The applicant bears the burden of showing that he "more-likely-than-not would be persecuted or tortured" if he returned to his home country. Seck, 663 F.3d at 1364.

An alien may satisfy his burden of proof for withholding of removal in two ways. First, an alien may establish past persecution based on a protected ground. Rodriguez v. U.S. Att'y Gen., 735 F.3d 1302, 1308 (11th Cir. 2013). Second, an

alien who cannot demonstrate that he has suffered past persecution may demonstrate that it is more likely than not that his life or freedom would be threatened in the future in the country of removal based on a protected ground. Id.

Persecution is an extreme concept that requires evidence of more than a few isolated incidents of harassment or intimidation. Sama v. U.S. Att'y Gen., 887 F.3d 1225, 1232 (11th Cir. 2018); see also Djonda v. U.S. Att'y Gen., 514 F.3d 1168, 1170–72, 1174 (11th Cir. 2008) (concluding that the record did not compel finding that persecution occurred when an alien was detained for thirty-six hours and beaten by the police after participating in a political rally, requiring a two-day hospital stay, several medications, and two weeks of rest). On the other hand, we have held that an alien who had been stopped by armed men at gunpoint, received threatening calls, and was also later severely beaten had suffered persecution. Delgado v. U.S. Att'y Gen., 487 F.3d 855, 861–62 (11th Cir. 2007); see also De Santamaria v. U.S. Att'y Gen., 525 F.3d 999, 1009–10 (11th Cir. 2008) (holding that being dragged out of a car by the hair and threatened with death, in combination with other death threats, a violent kidnapping, and other threatening actions, constituted past persecution). In determining past persecution, the alien's mistreatment is considered cumulatively. De Santamaria, 525 F.3d at 1008.

Both past and future persecution must be on account of race, religion, nationality, membership in a particular social group, or political opinion. Sanchez

Jimenez, 492 F.3d. at 1231–32. The BIA, interpreting the INA, has held that a "particular social group" must be (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. See Matter of M-E-V-G-, 26 I. & N. Dec. 227, 237 (BIA 2014) (three-member panel); see also Gonzalez, 820 F.3d at 404 (affording deference to the BIA's interpretation of the phrase "particularized social group"). To be socially distinct, a group must be perceived as a group by the relevant society. Matter of M-E-V-G-, 26 I. & N. Dec. at 240. The group must not be "too numerous or inchoate." Rodriguez, 735 F.3d at 1310. We have cautioned that a "'particular social group' should not be a 'catch all' for all persons alleging persecution who do not fit elsewhere" within the protected grounds, as that would "render the other four categories meaningless." Castillo-Arias v. U.S. Att'y Gen., 446 F.3d 1190, 1197–98 (11th Cir. 2006). Thus, "[t]he risk of persecution alone does not create a particular social group." Id. at 1198.

The record in this case does not compel reversal of the BIA's finding that Mendoza did not suffer past persecution when the officers detained and threatened him. For starters, Mendoza appears to have been detained for a far shorter time than the applicant in Djonda, whose petition was denied despite being physically beaten and held by police for up to thirty-six hours. Moreover, Mendoza was never physically harmed by the police officers. In fact, the record reveals that

when Mendoza suffered a seizure at the police station, he was taken to the hospital where he received medical care. This is easily distinguishable from the severe physical beatings suffered by the applicants in Delgado, De Santamaria, and Djonda. Finally, the false charges against Mendoza were dropped and he was "free to go" within a short time after the incident began. Viewed cumulatively, this case clearly involves only a "few isolated incidents of harassment or intimidation," and not the kind of extreme mistreatment our cases require to establish past persecution. Sama, 887 F.3d at 1232. The BIA's finding that Mendoza did not suffer past persecution is supported by substantial evidence, and we will not disturb that finding on appeal.

Nor do we find that the BIA erred in concluding that the group defined as "witnesses of police corruption in Mexico that report the crimes and are threatened by the perpetrators and/or whistleblowers" does not constitute a particular social group under the INA. Following an independent review of the record, we agree with the IJ and the BIA that, even assuming Mendoza's proposed group is defined with sufficient particularity and its members share immutable characteristics, the proposed group is not viewed as socially distinct within Mexican society. Although the State Department 2016 country report for Mexico does state that there is general police corruption in Mexico, it does not indicate that police officers there specifically target whistleblowers who report police corruption for

retribution. Moreover, the State Department report identifies other groups that are likely targets for intimidation and violence in Mexico (e.g., journalists, indigenous peoples, and LGBTI persons, among others), but it does not even suggest that those who report police corruption are viewed (or targeted) as a potentially distinct segment of Mexican society. The same can be said for the remainder of the documentary evidence before us. Indeed, it is likely that the officers in this case were acting only to protect their own personal interest—and not out of any animus toward a distinct social group—when they attempted to discourage Mendoza from reporting the unlawful acts he witnessed. See Ruiz v. U.S. Att'y Gen., 440 F.3d 1247, 1258 (11th Cir. 2006) ("[E]vidence that . . . merely shows that a person has been the victim of criminal activity[] does not constitute evidence of persecution based on a statutorily protected ground."). In this sense, it is clear that Mendoza's proposed group was circularly and impermissibly defined by the risk of persecution alone. See Castillo-Arias, 446 F.3d at 1197–98. We agree with the IJ and the BIA that Mendoza has failed to establish that the group comprised of whistleblowers who report police corruption is "highly visible and recognizable by others" in Mexican society such that it should be treated as a particular social group under the INA.[2] Id. at 1194.

[2] Our conclusion should not be read to suggest that whistleblowers who report police corruption can never be treated as a particular social group under the INA. Rather, we merely

III.

An applicant seeking CAT relief must establish that it is more likely than not that he would be tortured by or with the acquiescence of a public official if removed to his home country. Gonzalez, 820 F.3d at 406 (citing 8 C.F.R. § 1208.16(c), 1208.18(a)(7)). In assessing whether it is more likely than not that an applicant would be tortured in the country of removal, all evidence relevant to the possibility of torture should be considered, including, but not limited to: (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal, where applicable; and (4) other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3).

Substantial evidence supports the BIA's finding that Mendoza did not demonstrate he more likely than not would be subjected to torture if he returned to Mexico. First, as noted by the BIA, the incident at issue in this appeal occurred more than ten years ago, and there is no evidence that the officers are still active in the police force or that they are otherwise interested in pursuing Mendoza for the purpose of torturing him. Although not dispositive, Mendoza's friend went to the

conclude that the BIA did not err in finding that Mendoza failed to establish that to be so in the relevant society based on the record in this particular case.

police station seeking a record of Mendoza's whistleblower complaint and was told "that there was nothing there." Second, even assuming the officers are still interested in pursuing Mendoza, there is evidence that he is capable of relocating to other parts of Mexico where he would be able to avoid torture. In particular, Mendoza spent a month living and working in Matamoros, near the United States border, without incident. Finally, although Mendoza may have been subjected to a "few isolated incidents of harassment or intimidation," we find no evidence of past torture in the record. See 8 C.F.R. § 208.18(2) ("Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture."). The record does not compel a conclusion that Mendoza will be tortured by or with the acquiescence of the government if returned to Mexico, and we therefore deny his request for CAT relief.

IV.

In conclusion, we decline to disturb the BIA's decision dismissing Mendoza's appeal. As to Mendoza's withholding of removal claim, substantial evidence supports the BIA's determination that the verbal threats and detainment he experienced did not rise to the level of persecution, and the BIA did not err in finding that his proposed particular social group lacked the requisite social distinction to be cognizable. As to Mendoza's CAT claim, substantial evidence

supports the BIA's determination that Mendoza did not show that he would, more likely than not, be subject to torture by or with the acquiescence of the Mexican government if he were returned to Mexico. Accordingly, we deny the petition.

PETITION DENIED.[3]

[3] Any other arguments asserted on appeal by Mendoza are rejected without need for further discussion.