[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-10239
Non-Argument Calendar

Agency No. A201-343-777

MOHAMMED DUKUREH,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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

(April 23, 2021)

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Mohammed Dukureh, a native and citizen of the Gambia, petitions for review of a decision of the Board of Immigration Appeals ("BIA") affirming an

Immigration Judge's ("IJ") denial of his application for asylum, withholding of removal, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). In particular, he argues that he "was never given an interpreter at the border or during [his] master hearing and . . . never understood what credible fear [was] and was not able to properly defend [him]self in subsequent hearings." As a result, he claims, he was not "able to explain the persecution [he] suffered because [he] was not a practicing Muslim." The government, in turn, moves for summary denial of the petition.

Summary denial is appropriate where the government's position "is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where . . . the [petition] is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1162 (5th Cir. 1969). In general, we review "the decision of the BIA, except to the extent that it adopts the IJ's decision or expressly agrees with the IJ's reasoning." *Garcia-Simisterra v. U.S. Att'y Gen.*, 984 F.3d 977, 980 (11th Cir. 2020). Where the BIA adopts the IJ's reasoning, we will also review the IJ's decision to that extent. *See id.* Here, the BIA expressly adopted the IJ's decision. Thus, we will review both decisions. *See Garcia-Simisterra*, 984 F.3d at 980.

On appeal from the BIA, we review legal questions *de novo*. *Zhou Hua Zhu v. U.S. Att'y Gen.*, 703 F.3d 1303, 1307 (11th Cir. 2013). We review factual determinations under the substantial evidence test, which requires us to "view the record evidence in the light most favorable to the agency's decision and draw all reasonable inferences in favor of that decision." *Adefemi v. Ashcroft*, 386 F.3d 1022, 1027 (11th Cir. 2004) (*en banc*). "We must affirm the BIA's decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Id.* (quotation omitted). To reverse factual findings, we must find that the record not only supports a different conclusion but also compels it. *Id.* The BIA is not required to "address specifically each claim the petitioner made or each piece of evidence the petitioner presented." *Ayala v. U.S. Att'y Gen.*, 605 F.3d 941, 948 (11th Cir. 2010) (quotation omitted). Further, the BIA is not required to make findings on issues unnecessary to the decision it reaches. *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam).

An applicant for asylum must meet the Immigration and Nationality Act's definition of a refugee. 8 U.S.C. § 1158(b)(1). That definition includes:

> 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 establish asylum eligibility, the petitioner must, with specific and credible evidence, demonstrate (1) past persecution on account of a statutorily listed factor, or (2) a 'well-founded fear' that the statutorily listed factor will cause future persecution." *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1257 (11th Cir. 2006).

"[P]ersecution is an extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation, and . . . mere harassment does not amount to persecution." *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1231 (11th Cir. 2005) (alteration adopted; quotation omitted) (concluding that evidence of the bombing of the petitioner's workplace, menacing telephone calls, and threats made to the petitioner did not compel a finding of past persecution). In determining whether a petitioner has suffered past persecution, the factfinder "must consider the cumulative effects of the incidents." *Delgado v. U.S. Att'y Gen.*, 487 F.3d 855, 861 (11th Cir. 2007).

A well-founded fear of persecution may be established by showing (1) past persecution, which creates a presumption of a "well-founded fear" of future persecution; (2) a reasonable possibility of being singled out for persecution that cannot be avoided by relocating within the subject country, if such relocation would be reasonable; or (3) a pattern or practice in the subject country of persecuting members of a group of which the petitioner is a part such that his fear

of persecution is reasonable. 8 C.F.R § 1208.13(b)(1), (2), (3)(i). To establish eligibility for asylum based on a well-founded fear of future persecution, the petitioner must prove that he has a "subjectively genuine and objectively reasonable" fear of persecution because of a protected ground. *Silva v. U.S. Att'y Gen.*, 448 F.3d 1229, 1236 (11th Cir. 2006) (quotation omitted). A petitioner's credible testimony generally establishes that his fear is "subjectively genuine." *De Santamaria v. U.S. Att'y Gen.*, 525 F.3d 999, 1007 (11th Cir. 2008).

To establish eligibility for asylum, an applicant must show that he is unable to avail himself of the protection of his home country. *Lopez v. U.S. Att'y Gen.*, 504 F.3d 1341, 1345 (11th Cir. 2007). If the asylum applicant alleges persecution by a private actor, rather than by the government, failure to seek protection from his home country is generally fatal to his claim. *Id.*; *see Ayala*, 605 F.3d at 950. The failure to seek protection in the home country is excused, though, if the applicant "convincingly demonstrates that [home-country] authorities would have been unable or unwilling to protect" him, such that he could not rely on them. *Ayala*, 605 F.3d at 950.

Here, substantial evidence supports the IJ's finding that Dukureh failed to establish his eligibility for asylum because he failed to allege discrimination based on a protected ground, as his claim was based on individual disputes with private actors, and because he failed to demonstrate that the government would be

unwilling or unable to protect him from harm, as he failed to report any incident to the police. *See Silva*, 448 F.3d at 1236.

The BIA also properly rejected Dukureh's attempt on appeal to assert a new ground for asylum, specifically his religion. Dukureh had the opportunity to present this protected ground during his initial merits hearing and he did not. This failure was not the fault of the IJ as the IJ properly advised Dukureh of his right to apply for asylum or withholding, provided Dukureh with an asylum application, and asked Dukureh open-ended questions during the merits hearing, giving Dukureh the opportunity to assert religion as a ground for asylum. Moreover, even if Dukureh had asserted this protected ground, he still failed to show that he reported any incident to the police and, thus, could not show the police would be unwilling or unable to protect him. *See Lopez*, 504 F.3d at 1345 (reasoning that a failure to report harm by a private actor to police is "generally . . . fatal" to an asylum claim); *Ayala*, 605 F.3d at 950. Lastly, the record shows that Dukureh was provided an interpreter at six of his master calendar hearings and at his individual calendar hearing. Thus, there is no substantial question as to the outcome of the case, and the government's position is clearly right as a matter of law. *See Groendyke*, 406 F.2d at 1162.

Accordingly, the government's motion for summary denial is GRANTED and the government's motion to stay the briefing schedule is DENIED as moot. All other pending motions are DENIED as moot.