NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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No. 10-1191

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HANG WANG,
Petitioner

v.

ATTORNEY GENERAL OF THE UNITED STATES

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On Petition for Review of an Order of the
Board of Immigration Appeals
(Agency No. A088-379-287)
Immigration Judge: Honorable Eugene Pugliese

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Submitted Pursuant to Third Circuit LAR 34.1(a)
June 1, 2010

Before: RENDELL, HARDIMAN and ALDISERT, *Circuit Judges*

(Opinion filed June 2, 2010)

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OPINION

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PER CURIAM

Hang Wang petitions for review of the Board of Immigration Appeals' ("BIA") final order of removal. We will deny the petition.

I.

Wang is a citizen of the People's Republic of China from Changle City, Tantou Town, in Fujian Province. He entered the United States without inspection in 1999, and the Government charged him as removable on that basis. Wang concedes removability, but seeks asylum, statutory withholding of removal, and relief under the Convention Against Torture. Wang married another Chinese national in the United States, and the couple has two children. Wang fears that, if he returns to China, the Chinese government will forcibly sterilize him or impose an oppressive fine for violating Chinese family planning policies.

Wang testified before the Immigration Judge ("IJ") and submitted general background evidence. He also submitted individualized evidence in the form of: (1) a notification purportedly from his home town family planning office stating that "Sterilization procedures are required after the birth of the second child and there will be a Huge fine (around RMB 10,000-20,000) along with the operation" (A.R. 171); (2) an affidavit from his mother stating that she obtained the document from the family planning office (A.R. 174); (3) affidavits from three of Wang's friends living in his home town stating that they were forcibly sterilized after the birth of their second children (A.R. 181-91); and (4) an affidavit from Wang's wife stating her understanding of the policy and that her father too was forcibly sterilized (A.R. 198).

The IJ assumed that Wang's testimony was credible (IJ Dec. at 5; A.R. 32), but

denied relief, concluding that he had not shown a well-founded fear of persecution either in the form of sterilization or a fine and had not shown a likelihood of torture. The BIA dismissed Wang's appeal essentially for the same reasons. Wang was represented by counsel before the IJ and BIA, but he petitions for review *pro se.*[1]

II.

The BIA relied in large part on its precedential opinions addressing claims and evidence similar to those presented by Wang. *See In re S-Y-G-*, 24 I. & N. Dec. 247 (BIA 2007); *In re J-H-S-*, 24 I. & N. Dec. 196 (BIA 2007); *In re J-W-S-*, 24 I. & N. Dec. 185 (BIA 2007); *In re C-C-*, 23 I. & N. Dec. 899 (BIA 2006).[2] As the BIA explained, it concluded on the basis of much the same background evidence presented by Wang that China does not engage in a pattern or practice of forcible sterilization in Fujian Province or of Chinese nationals returning with children born in the United States. *See, e.g., J-W-S-*, 24 I. &. N. Dec. at 190-91. Instead, the BIA treats claims such as Wang's on a case-by-case basis to determine whether the alien has "(1) identified the government policy

[1] Wang filed his petition in the United States Court of Appeals for the Second Circuit, which transferred it here because the IJ completed proceedings in Newark, New Jersey. *See* 8 U.S.C. § 1252(b)(2). We have jurisdiction under 8 U.S.C. § 1252(a)(1). "Because the BIA issued its own decision, we review that decision, and not that of the IJ." *Sheriff v. Att'y Gen.*, 587 F.3d 584, 588 (3d Cir. 2009). "Under the substantial evidence standard, the BIA's determinations 'must be upheld unless the evidence not only supports a contrary conclusion, but compels it.'" *Id.* (citations omitted). "'[W]e exercise plenary review of the BIA's legal determinations, subject to established principles of deference.'" *Cospito v. Att'y Gen.*, 539 F.3d 166, 171 (3d Cir. 2008) (citation omitted).

[2] The Second Circuit denied petitions for review of *S-Y-G-*, *J-H-S* and *J-W-S-* in *Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008).

implicated by the births at issue, (2) established that government officials would view the births as a violation of the policy, and (3) demonstrated a reasonable possibility that government officials would enforce the policy through means of persecution[.]" *Shao*, 546 F.3d at 143 (summarizing BIA precedent).

Both the IJ and BIA applied this framework in this case, and the BIA concluded that Wang showed neither that he violated the family planning policy of his home province nor that he had a well-founded fear that the consequences of any such violation would rise to the level of persecutions. Wang did not challenge this framework before the BIA and does not challenge it on review, so we have no occasion to determine whether it is permissible (though we note that the Second Circuit has held that it is, *see id.* at 156-57, 174). Wang also does not challenge the BIA's assessment of his background evidence or argue that the BIA failed to consider any evidence that it had not already considered in its precedential opinions. *Cf. Zheng v. Att'y Gen.*, 549 F.3d 260, 268-69, 270 n.7 (3d Cir. 2008).

Instead, Wang takes issue with the BIA's assessment of his individualized evidence and raises what we construe as three arguments. First, the BIA concluded that the affidavits from Wang's friends do not support his claim because, "[w]hile he claims to know people from China who were forcibly sterilized, since the record does not contain all the underlying facts of these cases, [Wang] has not shown that these procedures were in fact a form of 'persecution.'" (BIA Dec. at 2; A.R. 4.) Wang challenges this

conclusion by asking "How can forcible sterilization *not* be a form of persecution?!" (Petr.'s Br. ¶ 5.) The BIA's conclusion was perhaps inartfully phrased, but its point is valid.

The BIA clearly was aware that forced sterilization constitutes persecution. Its point was that Wang's affidavits do not provide sufficient detail to determine whether the sterilizations asserted therein were "forced." 8 U.S.C. § 1101(a)(42). The BIA has held that to be "forced" within the meaning of the statute means to be threatened with mistreatment that itself would constitute persecution, and not merely to bow to coercive pressure that does not rise to that level (such as certain economic disincentives). *See In re T-Z-*, 24 I. & N. Dec. 163, 168-69 (BIA 2007); *see also Xia v. Mukasey*, 510 F.3d 162, 166 (2d Cir. 2007) ("The distinction drawn by *In re T-Z-* between 'submission to pressure' and 'force,' 24 I. & N. Dec. at 169-70, requires evidence as to the pressure actually exerted on a particular petitioner.").

The BIA cited *T-Z-* in this case for the related proposition that Wang had not shown that any threatened fine would rise to the level of persecution. (BIA Dec. at 3; A.R. 5.) Thus, the BIA evidently concluded that Wang's affidavits did not provide enough information to determine whether his friends had undergone "forced" sterilization, and consequently whether they supported Wang's claim that he fears "forced" sterilization himself. Our review of the affidavits confirms that each affiant asserted merely that he or she was "forced" to become sterilized without stating how.

(A.R. 181-91.) We cannot say that the BIA was required to conclude that these cursory and conclusory affidavits describe actual persecution.[3]

Second, the BIA treated as individualized evidence affidavits that Wang submitted from two people who claimed to be forcibly sterilized after returning to China with children born in Japan. (A.R. 393, 407-08.) These affidavits, however, were included in Wang's background materials and were prepared for a different case. In any event, the BIA did not err in rejecting them. The BIA did so because Wang made no showing regarding the effect of Japanese law. Wang argues that the Chinese government "doesn't care" about children's legal status in Japan or the United States and considers them all Chinese. Again, although the BIA could have explained its rationale more clearly, its point is valid.

The BIA has concluded that United States-born children generally do not "count" for Chinese family planning purposes because the Chinese government, like the United States government, considers them United States citizens. *See J-W-S-*, 24 I. & N. Dec. at 190-91; *see also Liu v. Att'y Gen.*, 555 F.3d 145, 150 n.5 (3d Cir. 2009) ("It is significant that Chinese officials correctly understand that children born in the United States to Chinese parents are United States citizens.") Wang presented no evidence that children born in Japan receive the same treatment.

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[3] Wang's counsel attempted to elicit greater detail regarding these incidents at Wang's hearing, but Wang did not provide any additional detail and instead merely referred to his friends' "letters." (A.R. 84-86.)

Finally, Wang argues that he has a well-founded fear of returning to China in part because "I clearly violated the family planning laws of my village in China." (Petr.'s Br. ¶ 5.) Wang apparently refers to the family planning notice he claims his mother obtained from their local family planning office. (A.R. 171.) The BIA concluded that this document was entitled to "limited weight" for several reasons. As the Government argues, Wang has raised no challenge on review to the BIA's rejection of this document or to any of its reasons for rejecting it, and thus has waived any such challenge. *See Voci v. Gonzales*, 409 F.3d 607, 610 n.1 (3d Cir. 2005). We have the discretion to address issues that have been waived. *See Bagot v. Ashcroft*, 398 F.3d 252, 256 (3d Cir. 2005). We decline to do so here, however, because the notice says nothing about children born in the United States. Moreover, although it states that sterilization is "required" after the birth of a second child, it does not indicate that the requirement will be enforced by actions rising to the level of persecution. *See J-W-S-*, 24 I. & N. Dec. at 190.[4]

Accordingly, we will deny the petition for review.

[4] Wang's brief includes a caption, which is not followed by any argument, that reads: "The [BIA] did not apply all the cases and statutes that were submitted by my previous attorney in the appellate brief." (Petr.'s Br. ¶ 6.) Wang has not raised any specific argument in this regard. Cognizant of his *pro se* status, however, we have reviewed the brief that his former counsel submitted to the BIA. (A.R. 7-23.) Most of the arguments raised therein assert alleged errors by the IJ that are not relevant in light of the BIA's issuance of its own opinion, and the remaining arguments provide no basis to disturb the BIA's ruling.