

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

August 24, 2018

Lyle W. Cayce
Clerk

No. 18-60355
Summary Calendar

SANDRA LETICIA FLORES-DE RIVAS,

Petitioner

v.

JEFFERSON B. SESSIONS, III, U. S. ATTORNEY GENERAL,

Respondent

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A208 901 895

Before JONES, HAYNES, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Sandra Leticia Flores-De Rivas, a native and citizen of El Salvador, petitions for review of the decision of the Board of Immigration Appeals (BIA) dismissing her appeal of the Immigration Judge's denial (IJ) of her application for asylum, withholding of removal, and protection under the Convention

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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Against Torture (CAT). Citing 8 U.S.C. § 1252(b)(4)(A), the Respondent moves to strike “Exhibit A” of Petitioner’s brief because the document was not submitted to the agency and was not part of the administrative record. The Respondent also moves for summary disposition, asserting that Flores-De Rivas failed to exhaust her administrative remedies and that there is no substantial question as to the outcome of this case.

IT IS ORDERED that Respondent’s motion to strike additional evidence attached to Petitioner’s brief is GRANTED.

As an initial matter, Flores-De Rivas did not raise before the BIA any argument regarding the IJ’s adverse credibility and corroboration findings. Moreover, Flores-De Rivas did not challenge to the BIA—nor does she adequately address it before this court—the IJ’s determination that she failed to prove that any past or future harm was or would be on account of her membership in a particular social group. We lack jurisdiction to consider any issues that Flores-De Rivas failed to raise to the BIA, and, thus, this portion of her petition for review is DISMISSED. *See Omari v. Holder*, 562 F.3d 314, 318-19, 323 (5th Cir. 2009) (Parties must “fairly present” an issue to the BIA to satisfy 8 U.S.C. § 1252(d)’s administrative exhaustion requirement.); *Kane v. Holder*, 581 F.3d 231, 237, 239 (5th Cir. 2009) (“Failure to exhaust an issue through administrative proceedings creates a jurisdictional bar, preventing our review of [an] issue... raised for the first time in [a] petition [for review], which the BIA did not have the opportunity to consider in the first instance.”).

We review for substantial evidence the findings that the petitioner was not eligible for asylum, withholding of removal, and relief under CAT. *Zhang v. Gonzales*, 432 F.3d 339, 344 (5th Cir. 2005). “We will affirm the Board’s decision unless the evidence compels a contrary conclusion.” *Carbajal-Gonzalez v. INS*, 78 F.3d 194, 197 (5th Cir. 1996); *see* U.S.C. § 1252(b)(4)(B).

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The petitioner has “the burden of showing that the evidence is so compelling that no reasonable factfinder could reach a contrary conclusion.” *Orellana-Monson v. Holder*, 685 F.3d 511, 518 (5th Cir. 2012). “It is the factfinder’s duty to make credibility determinations, and this court cannot substitute its judgment for that of the BIA or IJ with respect to witnesses’ credibility.” *Id.* We review the final decision of the BIA and will also review the ruling of the IJ insofar as it affected the BIA’s decision. *Zhu v. Gonzales*, 493 F.3d 588, 593 (5th Cir. 2007).

We conclude that the BIA’s and the IJ’s ruling is supported by substantial evidence and Flores-De Rivas’ conclusory allegations—to the extent these issues are not waived for inadequate briefing—are insufficient to compel a contrary conclusion. *See Chen v. Gonzales*, 470 F.3d 1131, 1134 (5th Cir. 2006); *Zhang*, 432 F.3d at 344. Because “there is no substantial question as to the outcome” of this case, respondent’s motion for summary disposition is GRANTED. *See Seddoh v. Holder*, 395 F. App’x 137, 139 (5th Cir. 2010) (citing *United States v. Holy Land Found. For Relief & Dev.*, 445 F.3d 771, 781 (5th Cir. 2006)).

Accordingly, Flores-De Rivas’ petition for review is DISMISSED in part and DENIED in part.