

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2021

Lyle W. Cayce
Clerk

No. 19-60637
Summary Calendar

BERTHA ELIZABETH HERNANDEZ-HUINAC; ANDERSON
EDUARDO COTI-HERNANDEZ,

Petitioners,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A209 167 024
BIA No. A209 167 025

Before JOLLY, WILLETT, and ENGELHARDT, *Circuit Judges.*

PER CURIAM:*

Bertha Elizabeth Hernandez-Huinac and her derivative beneficiary, Anderson Eduardo Coti-Hernandez, are natives and citizens of Guatemala. They petition for review of the decision of the Board of Immigration Appeals

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 19-60637

(BIA) dismissing their appeal of the denial by an Immigration Judge (IJ) of their application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). They argue that the BIA erroneously determined that they failed to show a nexus between the alleged persecution and Hernandez-Huinac's proposed family-based particular social group (PSG) without first analyzing whether the PSG was cognizable. They further contend that the IJ applied an incorrect legal standard in finding that they failed to show the Guatemalan government would acquiesce to Hernandez-Huinac's torture and that the BIA did not fully consider documentary evidence that they assert proves government acquiescence.

We review the BIA's decision and will also consider the IJ's ruling to the extent it affects the BIA's decision. *Wang v. Holder*, 569 F.3d 531, 536 (5th Cir. 2009). We review factual findings for substantial evidence and legal questions de novo. *Iruegas-Valdez v. Yates*, 846 F.3d 806, 810 (5th Cir. 2017). Under substantial evidence review, reversal is improper unless we conclude "not only that the evidence supports a contrary conclusion, but also that the evidence *compels* it." *Chen v. Gonzales*, 470 F.3d 1131, 1134 (5th Cir. 2006) (internal quotation marks and citation omitted).

We disagree with the petitioners' assertion that the BIA was required to analyze the cognizability of Hernandez-Huinac's proposed family-based PSG before addressing the nexus issue. See *Vazquez-Guerra v. Garland*, 7 F.4th 265, 268-69 (5th Cir. 2021), *petition for cert. filed* (U.S. Oct. 27, 2021) (No. 21-632) (upholding lack-of-nexus finding notwithstanding the BIA's failure to first address whether a nuclear family constituted a PSG). Substantial evidence supports the BIA's finding that Hernandez-Huinac was not persecuted on account of her membership in her husband's family, as she testified that gang members threatened to kill her if she refused to pay them and she did not testify that other members of her husband's family received

No. 19-60637

similar threats. *See Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015); *Ontunex-Tursios v. Ashcroft*, 303 F.3d 341, 350 (5th Cir. 2002).

To the extent that the IJ applied an incorrect legal standard in its analysis of the government's acquiescence to torture, the BIA did not adopt or rely on the allegedly incorrect standard. Thus, our review is confined to the BIA's decision on this issue. *See Wang*, 569 F.3d at 536. The BIA recognized that acquiescence can include the government's willful blindness of torturous activity, but the evidence does not compel a conclusion that the Guatemalan government, through willful blindness or otherwise, would acquiesce to Hernandez-Huinac's torture, as the record indicates it is working to combat corruption and gang violence. *See Martinez-Lopez v. Barr*, 943 F.3d 766, 772 (5th Cir. 2019).

Accordingly, the petition for review is DENIED.