

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 2 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

RANJIT SINGH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 13-74311
14-70700

Agency No. A078-368-364

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted October 17, 2022
Portland, Oregon

Before: PAEZ and BADE, Circuit Judges, and R. COLLINS,** District Judge.
Partial Concurrence and Partial Dissent by Judge PAEZ.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Raner C. Collins, United States District Judge for the District of Arizona, sitting by designation.

Ranjit Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") dismissal of his appeal from an immigration judge's ("IJ") decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). He also petitions for review of the BIA's denial of his motion for reconsideration. We have jurisdiction under 8 U.S.C. § 1252(a)(1). We review the agency's "legal conclusions de novo and its factual findings for substantial evidence." *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1059 (9th Cir. 2017) (en banc) (citations omitted). We deny the consolidated petition for review.

1. First, substantial evidence supports the agency's finding that Singh is not eligible for asylum or withholding of removal. *Ghaly v. INS*, 58 F.3d 1425, 1429 (9th Cir. 1995) ("[F]ailure to satisfy the lesser standard of proof required to establish eligibility for asylum necessarily results in a failure to demonstrate eligibility for withholding of deportation as well."). The evidence presented by the government demonstrates that individuals like Singh are no longer targeted in India, and the BIA did not err in granting less weight to Singh's testimony and the letter from his wife. Because the evidence does not "compel[] a contrary conclusion" to the one reached by the BIA, *see Bolshakov v. INS*, 133 F.3d 1279, 1281 (9th Cir. 1998), substantial evidence supports the BIA's denial of Singh's claims for asylum and withholding of removal.

2. Second, substantial evidence supports the agency’s finding that Singh is not eligible for CAT relief. While Singh asserts that he was clearly the victim of torture during his prior police detentions, the country reports provided substantial evidence to find that conditions have changed such that the likelihood that people like Singh would continue to be seriously pursued by police is low. Singh also cursorily asserts on appeal that he would face torture from militants. Even assuming this argument was properly presented, Singh fails to provide substantial evidence to support this assertion. *See United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010) (explaining that arguments “made in passing and not supported by citations to the record or to case authority are generally deemed waived”).

3. Finally, Singh argues that he is eligible for discretionary relief based on the atrocity of his past persecution and the risk of other serious harm if he is returned to India. But at no point did Singh argue that the IJ or the BIA erred by failing to consider whether Singh’s past persecution compared to the treatment in *Matter of Chen*, Int. Dec. 3104 (BIA 1989). Nor did Singh argue for “other serious harm” before the BIA. Because Singh failed to present these claims for review by the BIA, we lack jurisdiction to hear his appeal on these claims. *See, e.g., Honcharov v. Barr*, 924 F.3d 1293, 1296 n.2 (9th Cir. 2019) (noting that the exhaustion requirement “is jurisdictional and therefore generally bars [the court], for lack of subject-matter jurisdiction, from reaching the merits of a legal claim not presented

in the administrative proceedings below” (internal quotation marks omitted)).

PETITION FOR REVIEW DENIED.

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Singh v. Garland, Nos. 13-74311 & 14-70700

Paez, J., concurring in part and dissenting in part:

I concur in the majority's disposition of Singh's Convention Against Torture and humanitarian asylum claims, but I respectfully dissent from the majority's decision to uphold the agency's denial of Singh's claims for asylum and withholding of removal. In my view, the agency failed properly to consider whether the government rebutted the presumption of future persecution due to changed circumstances. Thus, I would remand Singh's asylum and withholding of removal claims to the BIA for further proceedings. *See Ali v. Holder*, 637 F.3d 1025, 1031 (9th Cir. 2011).

1. An asylum applicant who establishes past persecution is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The IJ must explicitly apply the presumption. *Matter of D-I-M-*, 24 I. & N. Dec. 448, 451 (BIA 2008). The government may rebut the presumption by making either of two showings by a preponderance of evidence: (1) that "there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution" on the basis of the original claim, or (2) that the applicant could avoid persecution by relocating within the applicant's home country. 8 C.F.R. § 1208.13(b)(1).

To determine whether circumstances have fundamentally changed under the

first prong, the agency must conduct an “individualized analysis that focuses on the specific harm suffered and the relationship to it of the particular information contained in the relevant country reports.” *Chand v. INS*, 222 F.3d 1066, 1079 (9th Cir. 2000); *see also Ali v. Holder*, 637 F.3d 1025, 1030 (9th Cir. 2011). This analysis of the circumstances *as they relate to the applicant’s past experience of harm* is important because the presumption of future persecution recognizes that an individual who has been singled out in the past may be more likely than the general population of individuals within the protected group to be singled out in the future. *See Chand*, 222 F.3d at 1078–79; *Ali*, 637 F.3d at 1030 (discussing *Lal v. INS*, 255 F.3d 998, 1010 (9th Cir. 2001)).

2. Here, the BIA purported to adopt the IJ’s “alternative conclusion that that the presumption of future persecution . . . is rebutted by the evidence submitted by the Department of Homeland Security (“DHS”) reflecting a fundamental change in country conditions.” While the BIA provided a brief discussion of the country conditions evidence, it relied entirely on the IJ’s decision for the analysis of this evidence as related to the circumstances of Singh’s case. As the BIA stated, “the [IJ] conducted an individualized analysis in determining that there were fundamental changes in conditions in India since the respondent’s last arrest . . . , evaluating the respondent’s specific claim in light of evidence of country conditions and other submitted evidence.” Because the IJ neither made nor

conducted the analysis required to support such a finding, and the BIA did not conduct its own analysis, the BIA erred.

The IJ's alternative holding makes only a single reference to the presumption of future persecution and does not explain the basis for finding that: "[Singh] is not entitled to the rebuttal presumption, and this Court finds that even if he were entitled to the rebuttable presumption, [the] Government has established that the presumption is rebutted. See Exhibit 3." Exhibit 3 refers to the government's submission of Indian Background Materials, consisting of two country condition reports. "See Exhibit 3" does not constitute an analysis of Singh's individualized circumstances. Moreover, the IJ does not say whether the presumption is rebutted on the basis of fundamentally changed circumstances or on the basis of feasible internal relocation. *See* 8 C.F.R. § 1208.13(b)(1). The IJ's subsequent discussion of country conditions concludes that Singh could internally relocate and that Singh did not establish an independent well-founded fear of future persecution, but does not analyze whether or make a finding that the presumption was rebutted by a showing of a fundamental change in circumstances.

Neither the internal relocation nor the well-founded fear analysis can suffice to replace a finding that circumstances have fundamentally changed such that someone who suffered Singh's specific past harms would no longer have a well-founded fear of future persecution. Indeed, permitting an analysis of whether an

applicant has met *his* burden to show an objectively reasonable fear of future persecution to substitute for an analysis of whether the government has met *its* burden to show fundamentally changed circumstances undermines the presumption required by the regulation, the BIA's own precedent, and Ninth Circuit case law. *See* 8 C.F.R. § 208.13(b)(1); *Matter of D-I-M-*, 24 I. & N. Dec. 448, 451 (BIA 2008) (remanding to IJ for failure to explicitly apply the presumption where the IJ instead "concluded, without specific reference to the voluminous background materials in the record," that the applicant could safety relocate); *Ali v. Holder*, 637 F.3d 1025, 1031 (9th Cir. 2011).

3. The agency's finding that the presumption of future persecution was rebutted by fundamentally changed circumstances required an analysis that considered the country conditions evidence in light of Singh's specific past harms, including arrests, beatings, and false accusations of affiliation with a terrorist organization. *Ali*, 637 F.3d at 1031. Because neither the BIA nor the IJ undertook this analysis, the BIA's decision as to asylum and withholding of removal cannot be sustained on its own reasoning. I respectfully dissent.