

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 07 2016

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

JOSE LUIS RAMIREZ MEJIA,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 14-73909

Agency No. A093-323-519

MEMORANDUM*

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

Argued and Submitted August 31, 2016
Pasadena, California

Before: WARDLAW and NGUYEN, Circuit Judges, and ZIPPS,** District Judge.

Jose Luis Ramirez Mejia, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) order affirming the Immigration Judge's (IJ) denial of withholding of removal and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252.

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

** The Honorable Jennifer G. Zipps, United States District Judge for the District of Arizona, sitting by designation.

We grant the petition for review on the issue of withholding of removal, deny on the issue of the CAT, and remand.

With regard to withholding of removal, we conclude that the BIA erroneously engaged in factfinding when it upheld the IJ decision denying withholding of removal based on the BIA's own finding that the record contained no evidence of a motive for the abuse suffered by patients in Mexican mental institutions. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *Vitug v. Holder*, 723 F.3d 1056, 1062-63 (9th Cir. 2013) (“Whether the BIA applied the correct standard of review to the IJ’s decision is a question of law, and is thus reviewed de novo.”); *see also Rodriguez v. Holder*, 683 F.3d 1164, 1172-73 (9th Cir. 2012) (BIA improperly resolved issues of fact that were unaddressed by the IJ). The IJ did not make an express finding on this question. To the extent the BIA believes that this factual information is material, it must remand to the IJ to make the finding. 8 C.F.R. § 1003.1(d)(3)(iv); *Rodriguez*, 683 F.3d at 1173. Accordingly, we remand to the BIA to review the IJ’s denial of withholding of removal under the correct standard of review.

With regard to the CAT claim, Mejia did not establish that it is more likely than not that he would be tortured with the consent or acquiescence of a Mexican official if removed to Mexico. *See Villegas v. Mukasey*, 523 F.3d 984, 989 (9th

Cir. 2008) (finding that the conditions in the Mexican mental health system did not exist out of a deliberate intent to inflict harm). Accordingly, we affirm the BIA's denial of relief under the CAT.

Petition for Review GRANTED and REMANDED in part; DENIED in part.

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Wardlaw, J., concurring in part and dissenting in part.

I would also remand Mejia’s CAT claim to the BIA to allow the agency, in the first instance, to conduct an individualized review of the administrative record, rather than rejecting this claim based solely on the almost decade-old decision in *Villegas v. Mukasey*, 523 F.3d 984 (9th Cir. 2008). While “specific intent” is the correct legal standard, the BIA must conduct an individualized inquiry to determine whether such “specific intent” currently exists. *See Villegas*, 523 F.3d at 989 (“We agree with *Villegas* that we must assess the conditions as they currently exist.”).