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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SOHAN LAL, Petitioner, v. MERRICK B. GARLAND, U.S. Attorney General, Respondent.	No. 17-71088 Agency No. A205-929-441 MEMORANDUM*

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

Argued and Submitted October 17, 2022
San Francisco, California

Before: S.R. THOMAS and M. SMITH, Circuit Judges, and WU,** District Judge.

Sohan Lal, a native and citizen of India, petitions for review of the Board of Immigrations Appeals' ("BIA") dismissal of his appeal from an Immigration Judge's ("IJ") denial of his application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction

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

** The Honorable George H. Wu, United States District Judge for the Central District of California, sitting by designation.

pursuant to 8 U.S.C. § 1252. We review questions of law de novo and factual determinations for substantial evidence. *Amaya v. Garland*, 15 F.4th 976, 986 (9th Cir. 2021).

In his immigration proceedings, Lal – a member of the minority Indian National Lok Dal Party ("INLD") – testified *inter alia* that he had been attacked and beaten twice by members of the Congress Party within his home state of Haryana after attending an INLD rally and an INLD-sponsored blood drive. He reported the first assault to local police who accused him of lying, threatened him, and ordered him out of the station. He did not report the second incident because he feared reprisal from the police. Lal claimed that, should he be returned to India, he will be persecuted by Congress Party members because of his support of the INLD and his intention to proselytize for the INLD wherever he would reside in India.

The IJ denied relief to Lal after concluding that: (1) Lal's testimony was credible; (2) Lal established past persecution on account of his political opinion by persons that the government (at least in Haryana) was unwilling or unable to control; and (3) the Department of Homeland Security ("DHS") had established that Lal could reasonably relocate within India because the INLD operates (and Lal suffered persecution) only in Haryana. In reaching the third conclusion, the IJ specifically considered the evidence as to the country conditions submitted by the

parties and Lal's testimony. The BIA affirmed the IJ's decision on Lal's asylum and withholding of removal claims but declined to reach Lal's claim for protection under the CAT because he had not briefed or otherwise argued it on appeal.

Because Lal established past persecution, he was entitled to the rebuttable presumption of a well-founded fear of future persecution. *Singh v. Whitaker*, 914 F.3d 654, 659 (9th Cir. 2019). Thus, the burden was on the government to "show by a preponderance of the evidence that the applicant either no longer has a well-founded fear of persecution in the country of his nationality, or that he can reasonably relocate internally to an area of safety." *Id.*; *see* 8 C.F.R. § 208.13(b)(1)(ii). The relocation analysis requires the agency to first determine "whether an applicant could relocate safely" and, second, "whether it would be reasonable to require the applicant to do so." *Whitaker*, 914 F.3d at 659 (quoting *Afriyie v. Holder*, 613 F.3d 924, 934 (9th Cir. 2010), *abrogated on other grounds by Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1068 (9th Cir. 2017)). This analysis must be an "individualized determination" that "is a tailored analysis of the petitioner's specific harms and circumstances." *Ali v. Holder*, 637 F.3d 1025, 1030 (9th Cir. 2011); *see also Whitaker*, 914 F.3d at 659-60. DHS proposed that Lal could safely relocate within India, outside of Haryana. This level of generality is permissible, as "DHS may properly propose a specific *or* a more general area as the place of safe relocation." *Whitaker*, 914 F.3d at 660 (emphasis in original).

After considering the evidence, both the IJ and the BIA found that: (1) the INLD was a local political party operating solely within the Haryana region; (2) the conflicts between the members of the Congress Party and INLD supporters were limited to Haryana, where the INLD had presented a threat to the Congress Party's political control over the region; (3) the record did not show that Haryana police ever harmed Lal or would be interested in locating him if he moved outside of that state; and (4) there was nothing to indicate that local police (or other government) forces outside of Haryana had any concerns as to the INLD Party or its members.

As for Lal's intention to proselytize for the INLD wherever he would reside in India, the IJ and BIA concluded that there was no evidence that: (1) the Congress Party attempted to locate INLD followers who left Haryana; (2) Lal would be able to engage in the types of activities outside of Haryana which drew the Congress Party's attention to – and ire towards – him (*e.g.*, attending INLD mass rallies and sponsored blood drives); or (3) the Congress Party searches for or attacks INLD supporters who leave Haryana for another region; that it has the capacity for locating such persons; and/or that it has any concerns as to an individual INLD member who attempts to proselytize for that organization in a region where it has not heretofore had adherents.

We conclude that the IJ and BIA have conducted a sufficiently

individualized analysis tailored to Lal's specific harms and circumstances. *Cf. Whitaker*, 914 F.3d at 661 (noting that, while "the BIA's analysis focused on whether the Punjabi police would follow [the petitioner] outside of Punjab, based on his past political activity, ultimately concluding that he was not sufficiently high-profile for them to do so . . . . [it failed to] account for the persecution he may face outside Punjab from local authorities, or other actors, based on his future political activities . . . . [and] also failed to specifically address [his] stated intent to continue proselytizing for his party wherever he went."). Here, the IJ and BIA did consider and reached conclusions as to those matters which are supported by substantial evidence in the record.

In regards to whether it would be reasonable to require Lal to relocate to another region in India outside of Haryana, 8 C.F.R. § 1208.13(b)(3) requires the BIA to consider a nonexhaustive list of factors and decide whether any of them makes relocation unreasonable. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1090 (9th Cir. 2005). The IJ and BIA found that Lal could reasonably relocate due to his young age (26 at the time), unmarried status, good health, ability to speak Hindi (the official language of India) and some English, his degrees in psychology and economics, and his work experience in both farming and in retail. Substantial evidence in the record supports the finding that Lal can reasonably relocate within India outside of Haryana.

As to Lal's claim for protection under the CAT, because Lal failed to exhaust the IJ's denial of his CAT claim before the BIA, we lack jurisdiction over that issue. Exhaustion of administrative remedies is a prerequisite to our jurisdiction. *See* 8 U.S.C. § 1252(d)(1); *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). When a petitioner raises an issue in his notice of appeal to the BIA but fails to include any argument on that matter in his brief, he "will . . . be deemed to have exhausted only those issues he raised and argued in his brief before the BIA." *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc) (per curiam). Although he generally mentioned his CAT claim in his Notice of Appeal to the BIA, Lal failed to make any argument on this issue in his brief before the BIA. Lal's counsel conceded this point at oral argument.

PETITION FOR REVIEW DENIED.