

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 15 2023

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

FERNANDA ITZEL MOLINEROS
VIDALES,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 21-1050

Agency No. A209-390-306

MEMORANDUM*

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

Submitted March 9, 2023**
Pasadena, California

Before: GILMAN***, FORREST, and H.A. THOMAS, Circuit Judges.

Fernanda Itzel Molineros Vidales, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' (BIA) dismissal of her appeal from an immigration judge's (IJ) denial of her applications for

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

asylum, withholding of removal, and relief under the Convention Against Torture (CAT), and her motion to present expert witness testimony. We have jurisdiction under 8 U.S.C. § 1252. Because the BIA partially relied on the IJ's decision and reasoning, we review both the decision of the BIA and the parts of the IJ's decision that the BIA relied upon. *See Bhattarai v. Lynch*, 835 F.3d 1037, 1042 (9th Cir. 2016). Questions of law are reviewed de novo. *Soto-Soto v. Garland*, 1 F.4th 655, 659 (9th Cir. 2021). Factual findings are reviewed for substantial evidence, meaning that the BIA's factual findings are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. *See Villavicencio v. Sessions*, 904 F.3d 658, 663–64 (9th Cir. 2018). We deny the petition for review.

1. To meet the nexus requirement for her asylum claim, Molineros had to provide direct or circumstantial evidence concerning her alleged persecutors' motives. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). In particular, she had to present evidence that she was persecuted (or that she had a well-founded fear of future persecution) "on account of" a statutorily protected ground. *See* 8 U.S.C. § 1101(a)(42)(A) (2023). Molineros argued that the threatening phone calls she received were related to the killing of her father, and that the people who killed her father were persecuting her either because of her relationship to her father or because of her membership in the particular social group (PSG) of people who have filed homicide complaints against organized crime. The BIA, however, took a different view of the available evidence, concluding that (i) the

killing of Molineros's father and the threats to Molineros were "personal or criminal" in nature, rather than motivated by a statutorily protected ground, and (ii) Molineros's testimony concerning the possible motivations of her alleged persecutors was "speculative."

Substantial evidence supports the BIA's determinations. Although the agency assumed for the sake of argument that Molineros testified credibly, it was not required to agree with Molineros's interpretation of the relevant evidence. *See Garland v. Ming Dai*, 141 S. Ct. 1669, 1680 (2021) ("[E]ven if the BIA treats an alien's evidence as credible, the agency need not find his evidence persuasive."). Therefore, the BIA did not err in denying Molineros's asylum claim.

2. The nexus requirement for a withholding of removal claim is less demanding than the requirement for an asylum claim, but where the BIA finds no nexus at all between an instance of harm and a protected ground, the result is the same under both standards. *See Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019). Because the BIA found no nexus between the alleged harm to Molineros and a protected ground, it did not err in denying her withholding of removal claim. Moreover, because lack of nexus is dispositive of Molineros's asylum and withholding of removal claims, we do not consider Molineros's remaining arguments concerning these claims.

3. Although Molineros correctly observes that the BIA's and IJ's remarks concerning her claim for CAT relief were limited, "[t]here is no indication that

the IJ or BIA did not consider all the evidence before them . . . [and] no indication of misstating the record or of . . . failing to mention critical evidence.” *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 894 (9th Cir. 2018).

The BIA properly considered “the entirety of the record,” including the “general country conditions” cited by Molineros, and determined that there was insufficient support for Molineros’s CAT claim. Molineros also fails to overcome the presumption that the BIA considered all relevant evidence regarding her asylum and withholding of removal claims. *See Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000).

4. Finally, the BIA did not err in affirming the IJ’s denial of Molineros’s late-filed motion to present expert testimony on crime and violence in Mexico. Molineros argues that an IJ’s discretion to deny a motion or exclude evidence “cannot be exercised in an arbitrary way that disregards . . . due process rights,” but she seems to acknowledge that her motion was untimely. If a document is not filed by the IJ’s deadline, the opportunity to file it “shall be deemed waived,” 8 C.F.R. § 1003.31(h) (2023), and the BIA correctly noted that IJs “are given broad authority to regulate the course of removal hearings” under 8 C.F.R. section 1240.1. Although Molineros was instructed to file any relevant evidence at least thirty days before the merits hearing, Molineros’s motion to present the testimony in question was filed just days before the hearing. The BIA thus did not err in affirming the IJ’s denial of this motion.

PETITION DENIED.¹

¹ We also deny Molineros's motion to stay these proceedings.