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FEB 17 2023

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

Jiuyun Cui, Petitioner, v. Merrick B. Garland, U.S. Attorney General, Respondent.	No. 22-113 Agency No. A205-188-223 MEMORANDUM*

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

Submitted February 15, 2023**
San Francisco, California

Before: S.R. THOMAS, MILLER, SANCHEZ, Circuit Judges.

Jiuyin Cui, a native and citizen of China, petitions for review of a Board of Immigration Appeals ("BIA") decision denying his appeal from an immigration judge's ("IJ") decision denying Cui relief under the Convention Against Torture

* 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).

("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252. Where, as here, the BIA both conducted its own analysis and affirmed the IJ's reasoning on the relevant issues, we review both decisions. *Hosseini v. Gonzales*, 471 F.3d 953, 957 (9th Cir. 2006). We review an IJ or BIA decision that a petitioner failed to establish eligibility for CAT for substantial evidence, upholding the decision unless "the evidence in the record compels a contrary conclusion." *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022). We review due process challenges to immigration proceedings de novo. *Zetino v. Holder*, 622 F.3d 1007, 1011 (9th Cir. 2010). Because the parties are familiar with the factual and procedural history of the case, we discuss them only as necessary. We deny the petition for review.

I

The BIA did not err in concluding that the IJ acted within his discretion in excluding the proposed expert's testimony and did not violate Cui's due process rights. In his petition for review, Cui concedes that because his counsel decided not to present the expert testimony, his due process rights were not violated. Our review of the record independently confirms that the proceedings were not "so fundamentally unfair that the alien was prevented from reasonably presenting his case." *Torres–Aguilar v. I.N.S.*, 246 F.3d 1267, 1270 (9th Cir. 2001). Therefore, the BIA correctly concluded that Cui's due process rights were not violated.

Cui claims that it was error for the BIA and IJ to disregard the expert testimony despite counsel's apparent withdrawal of the witness. However, the BIA properly concluded that the IJ acted within his discretion in excluding the testimony because the witness was unqualified to give expert testimony on the Chinese government's torture of individuals in criminal detention. Cui did not show that his expert's testimony would be "'based on sufficient facts or data' that the expert 'ha[d] been made aware of or personally observed' or from sources that 'experts in the particular field would reasonably rely on.'" *Matter of J-G-T-*, 28 I. & N. Dec. 97, 102 (BIA 2020) (quoting Fed. R. Evid. 702(b), 703). The proposed testimony did not indicate that the witness's prosecuted clients had been tortured in China nor that the witness had researched or written about the Chinese government's use of torture in connection with criminal prosecution.

Therefore, there was no error in the exclusion of the expert witness testimony or the IJ's subsequent decision to exclude the expert's report. The record establishes that both the IJ and the BIA properly gave "reasoned consideration" to the proposed evidence. *Cole v. Holder*, 659 F.3d 762, 772 (9th Cir. 2011). Accordingly, we must deny the claim.

II

The BIA did not err in affirming the IJ's denial of CAT relief. The BIA and the IJ carefully considered the Department of State Country Report on Human Rights Practices in China and Cui's testimony. Substantial evidence supports the BIA's conclusion that Cui had not met his burden of establishing that he would more likely than not be tortured if he returned to China. 8 C.F.R. § 1208.16(c)(2).

PETITION DENIED.