

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 8 2024

FOR THE NINTH CIRCUIT

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

NANCY ARACELY GONZALEZ-
CUBAS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-526

Agency No.
A212-976-695

MEMORANDUM*

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

Submitted April 4, 2024**
Phoenix, Arizona

Before: CLIFTON, BYBEE, and BADE, Circuit Judges.

Nancy Aracely Gonzalez-Cubas, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals' (BIA) decision affirming an Immigration Judge's (IJ) order denying her application for asylum, withholding of

* 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).

removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition.

When, as here, the BIA adopted the IJ's decision and cited to *Matter of Burbano*, 20 I. & N. Dec 872 (B.I.A. 1994), but added its own analysis, we review both decisions. *Gonzaga-Ortega v. Holder*, 736 F.3d 795, 800 (9th Cir. 2013). We review questions of law de novo and factual findings for substantial evidence. *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1076 (9th Cir. 2020). Under the substantial evidence standard, "we may grant a petition only if the petitioner shows that the evidence 'compels the conclusion' that the BIA's decision was incorrect." *Sharma v. Garland*, 9 F.4th 1052, 1060 (9th Cir. 2021) (quoting *Ming Xin He v. Holder*, 749 F.3d 792, 795 (9th Cir. 2014)).

1. Substantial evidence supports the determination that Gonzalez-Cubas is not eligible for asylum or withholding of removal. See 8 U.S.C. §§ 1101(a)(42)(A), 1158(b), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13(b), 1208.16(b). Gonzalez-Cubas sought relief on the grounds that she "suffered past persecution at the hands of her ex-boyfriend," Oscar Romero, who abused her and attempted to sexually assault her. The IJ found that Gonzalez-Cubas did not establish past persecution on account of a protected ground, but held that even assuming she had established those elements, she failed to make the necessary showing that the Honduran government was the source of the harm. To qualify for asylum or withholding of

removal, Gonzalez-Cubas was required to show that the harm was or would be inflicted by either the Honduran government “or by forces that the government was unable or unwilling to control.” *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010); *see also Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1064 (9th Cir. 2020).

The record does not compel the conclusion that the Honduran government was unable or unwilling to control Romero.¹ Gonzalez-Cubas argues that “Honduran police often view crimes of domestic violence as pure private matters and ignore threats made against women.” She points to (1) a 2018 Honduras Human Rights Report by the U.S. Department of State that observed issues with corruption in Honduran security forces, and (2) a report submitted by “a Honduran attorney with expertise in the area of women’s rights,” which stated that Honduran society accepts violence against women and that existing laws prohibiting domestic violence are ineffective. But Gonzalez-Cubas also testified that she believed the Honduran police would investigate crimes committed against her, and she acknowledged in her opening brief that “Honduras has enacted specific legislation to address domestic violence.” And as the IJ noted, the record reflects

¹ We reject the government’s argument that Gonzalez-Cubas waived any challenge to the BIA’s determination that Honduras is willing and able to control Romero. We also reject its argument that she waived any challenge to the BIA’s conclusion that she does not face a particularized risk of torture if returned to Honduras.

that Honduras has made efforts to prevent sexual assault and domestic abuse in the country.

Absent evidence that the Honduran government was unable or unwilling to control Romero, the BIA’s decision denying asylum and withholding of removal was supported by substantial evidence.² See *Velasquez-Gaspar*, 976 F.3d at 1064 (concluding that substantial evidence supported the BIA’s determination that Guatemala was willing and able to protect the petitioner because “Guatemala is working to curb violence against women. . . . [It] criminalizes rape and domestic abuse, and officials investigate and prosecute cases under those laws”). Gonzalez-Cubas also points to an instance when her brother and sister were attacked. But as with Romero, Gonzalez-Cubas has not shown that the Honduran government was unable or unwilling to control the people who attacked her brother and sister.

2. Substantial evidence also supports the conclusion that Gonzalez-Cubas is not entitled to CAT relief because she did not prove “it is more likely than not that [s]he would be tortured by or with the consent or acquiescence of a public official in the country of removal.” *Park v. Garland*, 72 F.4th 965, 980 (9th Cir. 2023).

As we have explained, there is no evidence that the Honduran government was involved in the abuse Gonzalez-Cubas experienced, or that it acquiesced to the

² Because this issue is dispositive of Gonzalez-Cubas’s asylum and withholding of removal claims, we do not address the other arguments she raises regarding those claims.

abuse. And substantial evidence supports the conclusion that any risk of Gonzalez-Cubas being tortured upon return to Honduras is entirely speculative and thus insufficient to obtain relief. *See id.* (stating that a risk of torture cannot be speculative).

PETITION DENIED.