**FILED**
**United States Court of Appeals**
**Tenth Circuit**

**September 14, 2021**

**Christopher M. Wolpert**
**Clerk of Court**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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WILLIAMS R. NCHE,

Petitioner,

v.

MERRICK B. GARLAND, United States Attorney General,

Respondent.

No. 20-9621
(Petition for Review)

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**ORDER AND JUDGMENT***

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Before **McHUGH**, **BALDOCK**, and **MORITZ**, Circuit Judges.

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Williams Robert Nche, a native and citizen of Cameroon, petitions for review of a decision by the Board of Immigration Appeals (BIA) upholding the denial of his applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny the petition for review.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

## BACKGROUND

The Department of Homeland Security served Nche with a Notice to Appear in 2019, charging him as removable because he was present in the United States without a valid, unexpired immigrant visa. Nche admitted the factual allegations in the Notice to Appear and conceded removability but applied for asylum, withholding of removal, and protection under the CAT. An immigration judge (IJ) held a hearing at which Nche testified and presented documentary evidence. Nche's father is Anglophone, but his mother is Francophone, and he grew up in a Francophone village. He testified in French, but he also speaks Pidgin English.

Nche testified he faced persecution in Cameroon because he was part of the Anglophone community and a member of the Southern Cameroons National Council (SCNC), a political group that advocates for the nonviolent secession of Anglophone Southern Cameroon. Nche testified Cameroonian authorities arrested, beat, and detained him on three occasions. Nche also presented expert reports from a social worker and a forensic medical examiner. The social worker diagnosed him with post-traumatic stress disorder and the forensic medical examiner opined that scars on his body were consistent with the abuse he described.

The IJ found Nche was "generally credible," but certain aspects of his testimony, particularly those "regarding his past harm and fear of returning to Cameroon, specifically, his membership in the [SCNC], lacked specificity and details." R. at 47. The IJ therefore concluded Nche's testimony "was not sufficiently detailed or persuasive to circumvent his need for reasonably obtainable corroborative

evidence," such as affidavits from family members or friends confirming his Anglophone ethnicity or membership in the SCNC. *Id.* at 48. Because Nche did not meet his burden of proof for asylum or withholding of removal, the IJ denied those forms of relief. On Nche's claim for CAT protection, the IJ concluded Nche's country conditions evidence was insufficient to show it would be more likely than not that he would be tortured if he returned to Cameroon, noting the prohibition on torture in the Cameroonian constitution and the lack of evidence Cameroonian authorities continue to look for Nche. The BIA affirmed the decision of the IJ and dismissed the appeal, concluding the IJ's factual findings were not clearly erroneous. Nche timely filed a petition for review with this court.

**DISCUSSION**

Because the BIA decision was issued by a single board member, we review it "as the final agency determination and limit our review to issues specifically addressed therein." *Diallo v. Gonzales*, 447 F.3d 1274, 1279 (10th Cir. 2006). "But, when seeking to understand the grounds provided by the BIA, we are not precluded from consulting the IJ's more complete explanation of those same grounds." *Htun v. Lynch*, 818 F.3d 1111, 1118 (10th Cir. 2016) (internal quotation marks omitted). "[W]e review the agency's findings of fact under the substantial evidence standard. Under that test, our duty is to guarantee that factual determinations are supported by reasonable, substantial and probative evidence considering the record as a whole." *Elzour v. Ashcroft*, 378 F.3d 1143, 1150 (10th Cir. 2004). "To obtain reversal of factual findings, a petitioner must show the evidence he presented was so

compelling that no reasonable factfinder could find as the BIA did." *Gutierrez-Orozco v. Lynch*, 810 F.3d 1243, 1245 (10th Cir. 2016) (internal quotation marks omitted).

*1. Asylum and Withholding of Removal*

To be eligible for asylum, an alien must meet the definition of a "refugee"—a person who has suffered persecution or has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. *See* 8 U.S.C. § 1101(a)(42). To be eligible for withholding of removal, Nche needed to establish his "life or freedom would be threatened in [Cameroon] because of [his] race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1231(b)(3)(A). Nche bore the burden for each showing. *See id.* § 1229a(c)(4)(A). Failure to meet the showing required for asylum eligibility necessarily results in failure to show eligibility for withholding of removal. *See Zhi Wei Pang v. Holder*, 665 F.3d 1226, 1234 (10th Cir. 2012).

Under the REAL ID Act, "[w]here the [IJ] determines that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant demonstrates that the applicant does not have the evidence and cannot reasonably obtain the evidence." 8 U.S.C. § 1229a(c)(4)(B). Although the IJ found Nche's testimony generally credible, he also determined there existed reasonably obtainable corroborating evidence Nche failed to provide, such as evidence establishing he was Anglophone or that a Cameroonian person's ethnicity

comes from his or her father. The BIA "agree[d] with the [IJ] that [Nche] ha[d] not submitted sufficient evidence relating to his past or future harm and membership in SCNC, including a membership card or letter, or statements from individual[s] familiar with his experiences and activities in Cameroon, to corroborate his claim." R. at 4–5. The BIA further did not find clearly erroneous the IJ's rejection of Nche's explanations for not presenting such information. *See id.* at 5.

In his petition for review, Nche challenges the conclusion that he failed to present sufficient reasonably available corroborating evidence. He also challenges the weight and significance the IJ and BIA attached to the evidence he did submit. In support of these arguments, Nche characterizes as conjectural and speculative the IJ and BIA's doubt as to his Anglophone ethnicity due to his speaking French and his birthplace in a Francophone area of Cameroon. He also asserts that he testified regarding his SCNC membership and political beliefs with greater specificity and detail than the IJ and BIA described, that the BIA failed to afford sufficient weight to the medical evidence he presented, and that the BIA ignored or mischaracterized the reasons he could not obtain an affidavit or supporting statement from his mother or brother.

In analyzing these arguments, we separately consider whether substantial evidence supports (a) the BIA's finding that Nche failed to submit reasonably available corroborating evidence and (b) the BIA's conclusion that the evidence Nche did submit was insufficient to carry his burden to establish eligibility for asylum and withholding of removal. As to the first issue, Nche's arguments do not establish any

reasonable adjudicator would be compelled to conclude additional corroborating evidence was unavailable, so we will not reverse the IJ's findings concerning the availability of corroborating evidence. *See* 8 U.S.C. § 1252(b)(4) ("No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence . . . unless the court finds . . . that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.").

Regarding the evidence Nche did present, including his own testimony and that of his retained experts, "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary," *id.* § 1252(b)(4)(B). Nche does not make this showing, at most establishing that a reasonable adjudicator could have given more weight to his evidence than the BIA did. Those findings are therefore conclusive, and the record on the whole provides substantial support for the BIA's determination that Nche was ineligible for asylum and withholding of removal. *See Elzour*, 378 F.3d at 1150.

*2. CAT Relief*

"To be eligible for relief under the CAT, an individual must establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." *Zhi Wei Pang*, 665 F.3d at 1233–34 (internal quotation marks omitted). Torture, by definition, must be "inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1). Nche argues the BIA downplayed the severity of the three past incidents of torture he described in

his testimony and did not afford sufficient weight to the documentary evidence he submitted indicating international concern regarding torture in Cameroon from the United Nations, the African Commission on Human and People's Rights, and the U.S. Department of State.

These arguments, though, do not overcome the high bar necessary to set aside the BIA's factual findings in a petition for review. The BIA concluded there was insufficient basis to conclude Nche, individually, would likely face torture if he returned to Cameroon. We cannot conclude any reasonable factfinder would be compelled to reach the opposite finding, so we cannot set aside the agency's findings.

## CONCLUSION

We deny the petition for review. We grant Nche's motion to proceed in forma pauperis.

Entered for the Court

Bobby R. Baldock
Circuit Judge