FILED
United States Court of Appeals
Tenth Circuit

November 12, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RAMIRO ANTONIO BLANCO-VALDOVINOS; LILIANA GERARDO-LEON; MICHEL KIMBERLY BLANCO-GERARDO; JAQUELINE ALEXA BLANCO-GERARDO,

Petitioners,

v.

MERRICK B. GARLAND, United States Attorney General,

Respondent.

No. 21-9512
(Petition for Review)

ORDER AND JUDGMENT*

Before **HOLMES**, **PHILLIPS**, and **EID**, Circuit Judges.

Ramiro Blanco-Valdovinos, on behalf of himself, his partner, and his two minor children, petitions for review of a decision by the Board of Immigration Appeals (BIA) denying his applications for asylum, withholding of removal, and

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

protection under the Convention Against Torture (CAT). Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny the petition for review.

BACKGROUND

Petitioner is a native and citizen of Mexico. He lived in the state of Guerrero near the border with Michoacán. He entered the United States from Mexico in 2016 without valid entry documents, so the Department of Homeland Security (DHS) served him with a Notice to Appear alleging he was removable under 8 U.S.C. § 1182(a)(7)(A)(i)(I). The Notice to Appear did not include a time and date for the first appearance before an immigration judge (IJ), but DHS later served Petitioner with that information and set his first appearance in California. Petitioner moved to transfer his case to Utah, where he and his family had moved, and the IJ in California granted the motion. Before an IJ in Utah, Petitioner conceded removability and requested asylum, withholding of removal, and CAT protection.

About eighteen months later, three weeks prior to the commencement of his merits hearing, Petitioner raised three procedural motions: (1) a motion to terminate proceedings for lack of jurisdiction; (2) a motion for continuance to translate a police report he had recently obtained from Mexico; and (3) a motion to transfer the case back to California, where he had moved after the initiation of the removal proceedings. The IJ denied all three motions.

In connection with his asylum application, Petitioner alleged he and his family were part of two particular social groups: (1) "Mexican families from the state of Guerrero who were given ultimatum of death for [cartel members'] belief that

[Petitioner and his family] were snitches," and (2) "Mexican families from Guerrero state who were given ultimatum of death for [cartel members'] belief that [Petitioner and his family] were part of the contrary cartel." Admin. R. at 40. He asserted he received death threats from two masked men in Guerrero who hit him with the back of a pistol. He traveled in Mexico frequently for business purposes, and asserted the cartel targeted him because it believed he was passing information to law enforcement or a rival cartel.

The IJ rejected Petitioner's applications for asylum and withholding of removal, concluding in part that his two proposed particular social groups were circularly defined by the harm the group suffered. The IJ also rejected Petitioner's claim to CAT protection, concluding he had presented insufficient evidence to establish he had been tortured in the past or that it was more likely than not he would be tortured with the acquiescence of Mexican authorities upon return to Mexico. The IJ acknowledged that "[t]he Mexican government has difficulty controlling the cartels" and "[t]here is evidence of corruption," but considering all the evidence, the IJ found Petitioner did not show "the government of Mexico is willfully blind to the torture that would happen to him, especially considering the documentary evidence showing police activity against the cartels and criminals in general in Mexico." Admin R. at 41.

The BIA affirmed the decision of the IJ, agreeing that Petitioner's proposed particular social groups were circularly defined, concluding that the IJ's findings regarding Petitioner's CAT application were not clearly erroneous, and concluding

that the IJ did not abuse his discretion in denying Petitioner's procedural motions. This petition followed.

DISCUSSION

Because a single BIA member issued a brief order, we review it "as the final agency determination and limit our review to issues specifically addressed therein," but we may consult the IJ's reasoning to the extent the BIA incorporated or referred to it. *Diallo v. Gonzales*, 447 F.3d 1274, 1279 (10th Cir. 2006). "We consider any legal questions de novo, and we 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).

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," 8 U.S.C. § 1101(a)(42)(A). To be eligible for withholding of removal, Petitioner needed to establish his "life or freedom would be threatened in [Mexico] because of [his] race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1231(b)(3)(A).

Petitioner 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).

Petitioner first argues there was sufficient evidence that he and his family were members of the two particular social groups he identified before the IJ and that he and his family faced persecution if they return to Mexico due to their membership in those two groups. But Petitioner does not challenge an independently sufficient basis the BIA gave for its rejection of his asylum application—regardless of the sufficiency of the evidence he presented, his proposed particular social groups were "circularly defined by the harm suffered or feared," Admin R. at 4. *See Rivera-Barrientos v. Holder*, 666 F.3d 641, 650 (10th Cir. 2012) ("[A] social group cannot be defined exclusively by the fact that its members have been subjected to harm." (internal quotation marks omitted)). Because he does not challenge this aspect of the BIA's opinion, Petitioner has waived further review of this issue, *see Kabba v. Mukasey*, 530 F.3d 1239, 1248 (10th Cir. 2008), which is independently dispositive of his application for asylum and, therefore, for withholding of removal as well, *Zhi Wei Pang*, 665 F.3d at 1234.

Petitioner also challenges the IJ's denial of CAT relief, focusing on the country conditions evidence he submitted as well as his testimony. "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." *Id.*

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). Here, the IJ considered the evidence Petitioner emphasizes on appeal, and Petitioner falls short of showing the evidence compelled findings in his favor: a reasonable factfinder could agree with the IJ that the police, though imperfect and struggling with corruption, were nonetheless acting against the cartels and therefore would not exhibit willful blindness to crimes committed against Petitioner if he returned to Mexico.

Petitioner also presses his challenges to the three procedural rulings the IJ made. We first consider Petitioner's argument that, in light of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), the IJ should have terminated proceedings for lack of jurisdiction because the Notice to Appear did not indicate the time and date of the removal hearing. Circuit precedent forecloses this argument. We have definitively rejected attempts to read a jurisdictional limitation into *Pereira*. *See Martinez-Perez v. Barr*, 947 F.3d 1273, 1278 (10th Cir. 2020) ("[W]e agree with the several circuits that have held that the requirements relating to notices to appear are non-jurisdictional, claim-processing rules.").

Next, we reject Petitioner's arguments that the IJ abused his discretion in denying Petitioner's requests for a continuance and for a second transfer of venue. When reviewing a decision for abuse of discretion, we will grant a petition for review "[o]nly if the decision was made without a rational explanation, inexplicably

departed from established policies, or rested on an impermissible basis." *Luevano v. Holder*, 660 F.3d 1207, 1213 (10th Cir. 2011) (internal quotation marks omitted). Petitioner falls short of such a showing here, where the IJ denied him additional time to translate a document he could have had translated for over a year prior to the hearing and permitted him to testify about it at the hearing. Petitioner states summarily that the denial of his motion implicated his rights under the Due Process Clause. *See* Pet'r's Opening Br. at 34. But "an alien in removal proceedings is entitled only to . . . procedural due process, which provides the opportunity to be heard at a meaningful time and in a meaningful manner." *Schroeck v. Gonzales*, 429 F.3d 947, 951–52 (10th Cir. 2005) (internal quotation marks omitted). Petitioner has not developed any argument that he was deprived of such an opportunity here, and we see no abuse of discretion in the IJ's decision.

The IJ also acted within his discretion in denying a request for a transfer of venue Petitioner made about three weeks before a removal hearing date that had been set nearly a year and a half prior. Petitioner summarily argues that a change of venue would have allowed more access to witnesses and made it easier than traveling with his family from California to Utah, given their financial and medical issues. But he does not develop any argument that the refusal to transfer venue in any way impacted the ultimate outcome of his applications for relief from removal. We therefore find neither an abuse of discretion nor a lack of fundamental fairness in the IJ's denial of his motion to transfer venue. *See Latu v. Ashcroft*, 375 F.3d 1012, 1019 (10th Cir. 2004) ("Mr. Latu cannot allege a constitutional or legal right to have removal

proceedings against him commenced in a particular place—that decision is left to the unfettered discretion of the attorney general.").

CONCLUSION

We deny the petition for review.

Entered for the Court

Allison H. Eid
Circuit Judge