

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 24, 2023

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

BAGICHA SINGH,

Petitioner,

v.

MERRICK GARLAND,
United States Attorney General,

Respondent.

No. 23-9510
(Petition for Review)

ORDER AND JUDGMENT*

Before **EID, CARSON,** and **ROSSMAN,** Circuit Judges.

Bagicha Singh petitions for review of the final order of removal entered by the Board of Immigration Appeals (BIA). The BIA upheld the denial by the immigration judge (IJ) of Mr. Singh’s applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). Exercising jurisdiction under 8 U.S.C. § 1252(a), we deny the petition for review.

* 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

I. Background

Mr. Singh is a native and citizen of India who unlawfully entered the United States. He was apprehended by immigration officials on the day of his entry, and they determined he was inadmissible as a noncitizen who did not possess a valid entry document. He expressed a fear of returning to his native India, and accordingly underwent a credible fear interview with an asylum officer. During his interview, he explained he was a volunteer for the Shiromani Akali Dal Amritsar (SADA) party, and he had been threatened and attacked by people who belonged to the Bharatiya Janata Party (BJP), a rival political party. He claimed that he received a death threat by telephone on June 3, 2017, and was beaten by BJP members on June 5, 2017, and August 15, 2017, after attending SADA party events.

The asylum officer determined Mr. Singh's account was not credible. The Department of Homeland Security then commenced removal proceedings against him. At a preliminary hearing, Mr. Singh conceded removability but then applied for asylum, withholding of removal, and protection under the CAT. The IJ held a hearing on his applications.

At the hearing, Mr. Singh testified regarding the incidents described in his credible fear interview. He first testified he received a threatening phone call on June 3, 2017, where members of the BJP party told him to leave the SADA party and join their party. He said the callers knew who he was “[b]ecause [he] was very active in [the SADA] party” and “[w]henever [he] did anything for [the party], [he] was kind of in the forefront.” R. at 145. But he also testified that he first publicly

volunteered for the SADA party at a rally on June 5, 2017. *See* R. at 170 (testifying that June 5th was the first rally he attended, and it was “the first time [he] had shown [himself] as a volunteer for the SADA [party].”). And he agreed that, prior to June 5, “no one would really know [he was] even a member of the party because . . . [he] hadn’t shown [himself] to be a volunteer.” *Id.* When he was asked to explain how he could receive a threat on June 3 when no one knew he was in the SADA party until June 5, he replied, “I did not go to a rally before June 5th, but prior to that, I used to work—do some work for the party, and they must have come to know then.” R. at 172.

Similarly, Mr. Singh was asked to explain why he alone was singled out for an attack from the 200 to 250 people who attended the June 5th rally “when it was [his] first rally and [his] first event.” R. at 205. He responded that he had “become quite popular in [his] party.” *Id.* When asked how that was possible after he had testified the June 5th rally was the first event he attended for the SADA party, he said “[w]hatever they used to tell me, whatever they wanted me to do, I used to jump at it.” *Id.*

Mr. Singh also testified about the second attack he described in his credible fear interview. He testified six men from the BJP party attacked him after he attended a camp that the SADA party hosted. The men told him they were going to kill him, pushed him to the ground, and then went to their car to get weapons. He said he was able to run away from them and seek refuge in a Sikh temple and he was not injured in the attack. But in his credible fear interview, Mr. Singh testified that

his attackers got out of a vehicle “and started hitting [him]” and “beat [him] with sharp weapons.” R. at 257. He said “[t]hey were using swords, [and] one had a knife.” *Id.*

After the hearing, the IJ issued a written decision, finding Mr. Singh was not credible because his testimony was “internally and externally inconsistent and implausible.” R. at 82. The IJ described the inconsistencies in Mr. Singh’s testimony about his public involvement with the SADA party and concluded that Mr. Singh “failed to provide reliable testimony as to when he began volunteering with the [SADA] Party, which undermines his account of receiving the June 3 threat and being attacked after the June 5 rally, considering he was allegedly targeted on both dates for his prior involvement with the party.” *Id.* The IJ also concluded Mr. Singh’s testimony about the second attack contradicted his account of that same attack in his credible fear interview. Specifically, the IJ found Mr. Singh’s account of the attack in his credible fear interview “deliberately contradicts [his] [hearing] testimony that his attackers pushed him to the ground and then went to retrieve weapons while he escaped unharmed.” R. at 83. The IJ further found that “[Mr. Singh] had every opportunity to explain the details of the second attack at his individual hearing” and concluded “that failing to recount that he was beaten with swords and a knife during this attack is a glaring omission in his testimony.” *Id.*

The IJ next concluded that, even if Mr. Singh had provided credible testimony, he had failed to demonstrate that the harm he suffered rose to the level of past persecution or that he had a well-founded fear of future persecution. The IJ also

concluded even if Mr. Singh had shown a well-founded fear of future persecution, he had failed to show internal relocation within India was not reasonable. Finding that Mr. Singh had not met the standards for asylum, the IJ denied his application for that form of relief.

The IJ also denied Mr. Singh's application for withholding of removal, explaining that because Mr. Singh failed to demonstrate eligibility for asylum, he necessarily failed to meet the more stringent standard for withholding of removal. As for his application for CAT relief, the IJ found that because Mr. Singh was not credible, he could not meet his burden for that form of relief. But even if Mr. Singh's testimony were credible, the IJ concluded he did not present sufficient evidence to establish he would more likely than not be tortured by or with the government's acquiescence if he were removed to India. Mr. Singh appealed to the BIA.

The BIA determined the IJ's adverse credibility determination was not clearly erroneous, concluding the "[IJ] permissibly found that [Mr. Singh's] testimony was internally inconsistent regarding whether he was a publicly well-known volunteer for the [SADA] party, particularly as it related to the June 3, 2017, threat and June 5, 2017, attack." R. at 4. The BIA also agreed with the IJ that Mr. Singh's testimony about the August 15 attack was inconsistent with his description of the same incident during his credible fear interview. The BIA explained that the IJ confronted Mr. Singh with the inconsistencies in his testimony, "but permissibly found that his explanations were unpersuasive." *Id.* The BIA also affirmed the IJ's alternative

determinations regarding past persecution, future persecution, withholding of removal, and CAT relief. Mr. Singh now petitions for review of the BIA's decision.

II. Discussion

We review the BIA's single-member decision as the final agency determination "and limit our review to the grounds relied upon by the BIA." *Htun v. Lynch*, 818 F.3d 1111, 1118 (10th Cir. 2016). "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." *Id.* (internal quotation marks omitted).

The agency's adverse credibility determination is a factual finding. *See id.* "When it comes to questions of fact . . . the [Immigration and Nationality Act] provides that a reviewing court must accept 'administrative findings' as 'conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.'" *Garland v. Ming Dai*, 141 S. Ct. 1669, 1677 (2021) (quoting 8 U.S.C. § 1252(b)(4)(B)). "This is a highly deferential standard." *Id.* (internal quotation marks omitted). And our review does not involve weighing evidence or independently assessing credibility. *See Htun*, 818 F.3d at 1119.

Mr. Singh, as the asylum applicant, had the burden of proving his eligibility for relief, and he could do so through credible testimony. *See* 8 U.S.C. § 1158(b)(1)(B)(i), (ii). An IJ assesses credibility "[c]onsidering the totality of the circumstances" including demeanor, candor, responsiveness, inherent plausibility, consistency between forms of evidence, internal consistency of statements, inaccuracies or falsehoods, "without regard to whether an inconsistency, inaccuracy,

or falsehood goes to the heart of the applicant’s claim, or any other relevant factor.” *Id.* § 1158(b)(1)(B)(iii). The IJ determined Mr. Singh was not credible and so he could not meet his burden of proof to be eligible for asylum. *See In re M-S-*, 21 I. & N. Dec. 125, 129 (B.I.A. 1995) (concluding a persecution claim that lacks veracity cannot satisfy burden of proof necessary to establish eligibility for asylum). The BIA upheld the IJ’s adverse credibility determination after concluding it was not clearly erroneous, *see Kabba v. Mukasey*, 530 F.3d 1239, 1244 (10th Cir. 2008) (explaining that the regulations require the BIA to review the IJ’s factual finding on credibility for clear error). Mr. Singh argues on appeal that the BIA “erroneously affirmed the [IJ’s] adverse credibility finding.” Pet’r’s Br. at 9 (boldface omitted). We disagree.

Mr. Singh first contends he “was not inconsistent” about whether he was a publicly well-known volunteer because he “testified that he volunteered with the [SADA party] at their request and did so frequently and openly.” *Id.* at 10. But he provides no record citations to support his contention. He further asserts “[a]t no point did [he] make any inconsistent statement, as he always testified that he was very active in the party, was well-known, and would always do any work that his party asked him to do.” *Id.* But again, he provides no record citations to support his assertion. He then concludes this argument by stating, “[t]herefore, the BIA incorrectly found that his testimony was internally inconsistent because he continuously stated that he was very involved in his party and that is possibly why the [BJP] knew he was a member of the SADA Party.” *Id.*

We are not persuaded by Mr. Singh's conclusory and unsupported argument. His argument fails to satisfy his obligations under Rule 28 of the Federal Rules of Appellate Procedure to support his contentions with citations to the record and legal authority. *See* Fed. R. App. P. 28(a)(8)(A). But more importantly, his argument offers no specific rebuttal to the agency's finding on this point. His argument ignores his own testimony and the reasons the IJ and BIA gave for this aspect of the adverse credibility determination.

Mr. Singh testified he did not publicly show support for the SADA party until the June 5th rally and so nobody would have known he was a volunteer before then, which was inconsistent with his testimony that he received a threatening phone call on June 3rd due to him being a well-known volunteer in the party. Although he attempted to explain away the inconsistencies in his testimony by saying he had done some work for the party prior to June 5, he never described what work he did. And his brief also fails to address his testimony that his involvement with the party was limited to volunteering at four events between June 5 and August 15, 2017. *See* R. at 170, 182-91. The agency reasonably concluded these inconsistencies supported a finding that Mr. Singh was not credible.

Mr. Singh next argues "the BIA incorrectly affirmed that [he] was inconsistent with the events surrounding his second attack" because the IJ "incorrectly relied on the credible fear interview." Pet'r's Br. at 10. Mr. Singh contends the credible fear interview is less reliable, citing a decision from the Second Circuit, *Ramsameachire v. Ashcroft*, 357 F.3d 169, 180 (2d Cir. 2004). In *Ramsameachire*, the Second Circuit

observed that airport border interviews of noncitizens are less reliable evidence because “a record of [an] interview that merely summarizes or paraphrases the alien’s statements is inherently less reliable than a verbatim account or transcript,” and these interviews “are not designed to elicit the details of an asylum claim.” *Id.* (internal quotation marks omitted). But we agree with the government that “neither of these principles applies to Mr. Singh’s case; the credible fear interview *does* contain a verbatim transcript of the interview, which was expressly designed to elicit details as to Mr. Singh’s claims of persecution and torture.” Gov’t Resp. Br. at 26.

Mr. Singh also contends he “was less inclined to reveal all details regarding his past persecution” to the asylum officer because of his negative experience with the Indian police. Pet’r’s Br. at 11. But again, we agree with the government that “[w]hile this excuse could explain why Mr. Singh might provide insufficient detail, it does little to explain why he would offer contradicting details to the asylum officer and the [IJ].” Gov’t Resp. Br. at 26-27. The agency reasonably concluded that the inconsistencies between Mr. Singh’s testimony about the second attack at his hearing compared to his description of that same attack in his credible fear interview supported a finding that he was not credible.

Based on the record and briefing before us, Mr. Singh has failed to show that “any reasonable adjudicator would be compelled to conclude” he was credible. 8 U.S.C. § 1252(b)(4)(B). We therefore uphold the agency’s adverse credibility

determination,¹ which is dispositive of all three of Mr. Singh’s applications for relief and protection from removal. *See In re M-S-*, 21 I. & N. Dec. at 129 (concluding a persecution claim that lacks veracity cannot satisfy burdens of proof necessary to establish eligibility for asylum and withholding of removal); *Niang v. Gonzales*, 422 F.3d 1187, 1202 (10th Cir. 2005) (affirming the BIA’s rejection of petitioner’s CAT claim because “our review is controlled by the permissible finding that [petitioner] was untruthful”).

III. Conclusion

For the foregoing reasons, we deny the petition for review.

Entered for the Court

Joel M. Carson III
Circuit Judge

¹ Because we agree with the BIA’s decision on the adverse credibility determination, we need not address the agency’s alternative holdings.