FILED
United States Court of Appeals
Tenth Circuit

August 1, 2025

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

ANDRANIK AMIRYAN,

Petitioner,

v.

PAMELA J. BONDI, United States Attorney General,

Respondent.

No. 24-9564
(Petition for Review)

ORDER AND JUDGMENT*

Before **TYMKOVICH**, **BACHARACH**, and **EID**, Circuit Judges.

Petitioner Andranik Amiryan seeks review of a decision of the Board of Immigration Appeals (BIA) affirming an immigration judge's denial of his applications for withholding of removal and protection under the regulations implementing the United Nations Convention Against Torture (CAT). Exercising jurisdiction pursuant to 8 U.S.C. § 1252, we affirm the BIA's decision and deny Mr. Amiryan's petition.

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Mr. Amiryan, a native and citizen of Armenia, first entered the United States in 1997 as a lawful permanent resident. He proceeded to engage in numerous instances of criminal conduct, including stealing a camera from an electronics store, fraudulently using another person's credit card, and check fraud. In 2006, Mr. Amiryan was convicted of identity theft and two counts of commercial burglary. In 2007, he was convicted of grand theft and false personation. Mr. Amiryan's convictions led to the revocation of his status as a lawful permanent resident and he was removed to Armenia in early 2008.

Mr. Amiryan illegally reentered the United States in late 2009. He was subsequently arrested, convicted of illegal reentry after having been deported, and sentenced to a fourteen-month term of imprisonment. After serving his term of imprisonment, he was removed to Armenia in early 2011. But, by his own account, Mr. Amiryan illegally reentered the United States again in May 2012.

In 2020, Mr. Amiryan and others agreed to commit bank fraud. As part of the agreement, Mr. Amiryan impersonated a victim of identity theft and opened a bank account in the victim's name. Mr. Amiryan's coconspirators then arranged, under false pretenses, to wire into that account approximately $650,000 of CARES Act relief funds. Mr. Amiryan was able to withdraw approximately $450,000 of those funds before the scheme was discovered.

Mr. Amiryan was arrested and, in 2021, pleaded guilty to conspiracy to commit bank fraud, in violation of 18 U.S.C. § 1349. He was sentenced to a term of

imprisonment of 41 months and ordered to pay $650,600 in restitution ($159,900 to the bank and $490,700 to the U.S. Small Business Administration).

Following Mr. Amiryan's conviction, the Department of Homeland Security reinstated his prior order of removal. Mr. Amiryan responded by applying for withholding of removal and protection under the CAT.

The immigration judge (IJ) held an individual hearing on the merits of Mr. Amiryan's application in March 2024. Mr. Amiryan testified at the hearing that after returning to Armenia in 2011, he received a phone call from Aram Poghosyan, an army colonel who lived in the same village as Mr. Amiryan. At a subsequent meeting, Mr. Poghosyan allegedly hit Mr. Amiryan on the head with the butt of a gun and threatened his life if he did not pay $7,200 dollars to help pay for the construction of a local church. Mr. Amiryan paid the money and moved out of the village, but was later contacted by Mr. Poghosyan, who demanded he pay $4,800 a month to cover the food and salaries of people working at the church. According to Mr. Amiryan, Mr. Poghosyan threatened to harm his parents if he did not make the payments. The two men had another in-person meeting in the presence of another man named Manvel Grigoryan, who was a member of the National Assembly. During that meeting, Mr. Poghosyan hit Mr. Amiryan and asked him why he attempted to report the matter to the police. Mr. Amiryan agreed to pay the money requested by Mr. Poghosyan, but subsequently fled Armenia and ultimately reentered the United States.

Mr. Amiryan's two children also testified at the hearing before the IJ. They testified that during a trip to Armenia in 2023, they were approached by two unknown men who asked if they were the "rat's children," and asked when Mr. Amiryan "was coming back to Armenia." R. vol. 1 at 44 (internal quotation marks omitted). The two men then pushed Mr. Amiryan's son to the ground and punched him. When Mr. Amiryan's daughter tried to intervene, the men punched her too. After the incident, Mr. Amiryan's children first contacted the United States Embassy and then the local police. A police officer told them the police would launch an official investigation, but that they would have to stay in Armenia for two months. Because the children were scared for their lives and did not want to remain in Armenia, they signed an official document stating they did not want the police to launch an investigation.

On May 13, 2024, the IJ issued a written decision denying Mr. Amiryan's application. The IJ concluded Mr. Amiryan's federal conviction for conspiracy to commit bank fraud was a particularly serious crime that rendered him ineligible for withholding of removal. The IJ also concluded that even if Mr. Amiryan had not been convicted of a particularly serious crime, he "otherwise failed to meet his burden to establish he [wa]s eligible for" withholding of removal. *Id.* at 48. More specifically, the IJ concluded that neither of the two particular social groups alleged by Mr. Amiryan were cognizable. Lastly, the IJ denied CAT relief. In doing so, the IJ concluded "[t]he evidence d[id] not establish that" Mr. Amiryan "would more likely than not be tortured by a government official or that, if a private citizen trie[d]

to subject [him] to extreme harm, the Armenian government would acquiesce to [such] torture." *Id.* at 50.

Mr. Amiryan appealed the IJ's decision to the BIA. On September 25, 2024, a single member of the BIA issued a written decision affirming the IJ's decision and dismissing the appeal.

This petition for review followed.

II

A. Standards of review

We review the BIA's legal determinations de novo and its findings of fact for substantial evidence. *Xue v. Lynch*, 846 F.3d 1099, 1104 (10th Cir. 2017). Under the substantial-evidence standard, we evaluate whether the BIA's "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). We reverse these determinations only if "the evidence not only supports [a contrary] conclusion, but *compels* it." *INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992); *Dallakoti v. Holder*, 619 F.3d 1264, 1267 (10th Cir. 2010).

"Our scope of review directly correlates to the form of the BIA decision." *Sidabutar v. Gonzales*, 503 F.3d 1116, 1123 (10th Cir. 2007), *abrogated in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). Where, as here, a single member of the BIA affirms an IJ's decision, we review the BIA's opinion and the grounds for its conclusion, but "we are not precluded from consulting the IJ's

more complete explanation of those same grounds." *Neri-Garcia v. Holder*, 696 F.3d 1003, 1008–09 (10th Cir. 2012) (internal quotation marks omitted).

B. Withholding of removal

Withholding of removal requires past or possible future mistreatment in another country. *See* 8 U.S.C. § 1231(b)(3)(A) (requiring "that the alien's life or freedom would be threatened"). Further, the mistreatment must be "because of" the applicant's "race, religion, nationality, membership in a particular social group, or political opinion." *Id.*

The term "particular social group" is not defined in the statute. *See Rodas-Orellana v. Holder*, 780 F.3d 982, 990 (10th Cir. 2015) ("Congress did not define the term 'particular social group' in the INA."). "We therefore owe deference to the BIA's interpretation of that phrase, provided the interpretation is reasonable." *Id.* The BIA has interpreted the phrase to mean the group (1) shares "a common, immutable characteristic . . . beyond the power of an individual to change," (2) is defined with "particularity," meaning it "cannot be indeterminate[,] . . . too subjective, inchoate, and variable," and (3) is socially distinct, meaning it is "*perceived* as a group by society." *Id.* at 990–91 (internal quotation marks omitted). "Whether a group qualifies as a particular social group . . . is a question of law subject to de novo review." *Miguel-Pena v. Garland*, 94 F.4th 1145, 1160 (10th Cir. 2024).

In this case, Mr. Amiryan alleged he was threatened and beaten in Armenia after he was removed there the second time. He further alleged this mistreatment was

based on his membership in two particular social groups: (1) "persons deported from the United States to Armenia who have been convicted of financial crimes in the United States"; and (2) "convicted criminals who cooperated with the authorities and provided significant information about co-conspirators with connections to Armenian government officials or oligarchs who learned of the cooperation and information disclosed." R. vol. 1 at 49.

The BIA agreed with the IJ that neither group was "cognizable" and therefore affirmed the IJ's conclusion that Mr. Amiryan was ineligible for withholding of removal.[1] *Id.* at 4. With respect to the first identified group, the BIA concluded Mr. Amiryan failed to "establish that Armenian society views persons deported to Armenia who have been convicted of financial crimes in the United States as a socially distinct group." *Id.* Mr. Amiryan does not challenge this conclusion.

As for the second identified group, the BIA agreed with the IJ that this "group lack[ed] social distinction and particularity." *Id.* The BIA noted Mr. Amiryan "point[ed] to no record evidence and d[id] not otherwise argue" that his in-court testimony "establish[ed] the requisite social distinction." *Id.* Further, the BIA rejected Mr. Amiryan's contentions that "it [wa]s enough that his identity as an informant was publicly known" and that "the claimed persecutors were aware . . . he

[1] Although the IJ concluded Mr. Amiryan's federal conviction was a particularly serious crime that rendered him ineligible for withholding of removal, the BIA declined to address that issue and instead agreed with the IJ that Mr. Amiryan failed to establish that his proposed particular social groups were cognizable.

was an informant." *Id.* Lastly, the BIA concluded the IJ "properly found that the group lack[ed] particularity because it d[id] not have clear definable boundaries as it broadly encompasse[d] individuals convicted of various crimes who c[ould] provide information concerning a wide range of conduct." *Id.* at 5.

Mr. Amiryan now challenges the BIA's conclusions regarding the second identified group. He argues that "Armenian society clearly recognizes informants . . . as a distinct group, as evidenced by reports and articles on record, and by derogatory terms used for such persons in Armenian society (as in American society)." Pet. at 14. He further argues the group "is sufficiently particular" because "[i]t is objectively defined by specific criteria, starting with the member having to be a convicted criminal and informant, and narrowly tailoring the definition further from there." *Id.*

We reject Mr. Amiryan's arguments. Mr. Amiryan submitted to the IJ and the BIA articles from online news sources that discussed the deaths of four former Armenian government officials. There is no indication in the articles that any of the four officials were convicted of crimes (although one was found by the European Human Rights Court to have tortured a man). According to the articles, two of the officials had previously testified in criminal cases; there is no indication the other two officials acted as either informants or witnesses. As for the two officials who had previously testified in criminal cases, one died of coronavirus and the other died of an apparently self-inflicted gunshot wound to the head. Collectively, the evidence

of record, including these articles, fails to establish that informants, whether previously convicted of crimes or not, are sufficiently particular or socially distinct.

We therefore conclude the BIA did not err in affirming the IJ's conclusion that Mr. Amiryan was ineligible for withholding of removal.

C. Protection under the CAT

The eligibility requirements for CAT relief differ from the requirements for withholding of removal. *See Uanreroro v. Gonzales*, 443 F.3d 1197, 1202 (10th Cir. 2006). To receive protection under CAT, Mr. Amiryan must establish "it is more likely than not that he . . . would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). Torture is defined as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted . . . when such pain or suffering is inflicted by or at the instigation of *or with the consent or acquiescence of a public official . . . or other person acting in an official capacity*." *Id.* § 1208.18(a)(1) (emphasis added).

The IJ in this case concluded Mr. Amiryan was not eligible for protection under the CAT because the evidence "d[id] not establish that" Mr. Amiryan "would more likely than not be tortured by a governmental official or that, if a private citizen trie[d] to subject [him] to extreme harm, the Armenian government would acquiesce to the . . . torture." R. vol. 1 at 50. The IJ noted in support that when Mr. Amiryan's "children were harmed in Armenia, the police came to their house, took them to the police department, and offered to make a report and investigate," but the children "chose to waive their request for an investigation." *Id.* The IJ also noted that "[t]he

country conditions evidence further demonstrate[d] that even powerful people in Armenia are held accountable for bad acts." *Id.* The IJ noted in particular that "Manvel Grigor[y]an, who [Mr. Amiryan] testified was present during one of the times Mr. Poghosyan harmed him, has been charged with illegal possession of firearms and grand theft, stripped of immunity by the parliament, and is in custody." *Id.*

In his appeal to the BIA, Mr. Amiryan acknowledged Mr. Grigoryan was charged with crimes, but argued that this single instance "ignore[d] abundant evidence in the record showing the almost universal impunity for the rest of the oligarchs and former regime members." *Id.* at 26. Mr. Amiryan complained that the IJ "simply wr[ote] th[at] evidence off" by concluding it did "not rise to the level of acquiescence." *Id.* The BIA rejected Mr. Amiryan's arguments and agreed with the IJ that he failed to establish acquiescence on the part "of an Armenian official or other person acting in an official capacity." *Id.* at 5.

In his petition for review, Mr. Amiryan makes two different arguments. First, he argues that the man who threatened and beat him, Mr. Poghosyan, was "[a]n Armenian official" who was "acting 'in an official capacity.'" Pet. at 15. Mr. Amiryan also argues that "[t]he Armenian police have acquiesced to and enabled [Mr.] Poghosyan's conduct against [him]." *Id.*

The government argues, however, and we agree, that Mr. Amiryan failed to present these arguments to the BIA. By statute, we "may review a final order of removal only if . . . the alien has exhausted all administrative remedies." 8 U.S.C.

§ 1252(d)(1). "To satisfy" this statutory requirement, a petitioner "must present the *same specific legal theory* to the BIA before he or she may advance it in court." *Garcia-Carbajal v. Holder*, 625 F.3d 1233, 1237 (10th Cir. 2010), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023). Because Mr. Amiryan failed to comply with this statutory requirement, we decline to consider his arguments in the first instance. *See Miguel-Pena*, 94 F.4th at 1158.

Lastly, to the extent Mr. Amiryan reasserts the arguments he raised before the BIA, we find no basis in the record for overturning the BIA's conclusion that Mr. Amiryan failed to establish acquiescence on the part of Armenian government officials.

IV

We deny the petition for review.

Entered for the Court

Allison H. Eid
Circuit Judge