

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 28, 2026

Christopher M. Wolpert
Clerk of Court

LILIAN JHOAN LAZO-VILLALTA,

Petitioner,

v.

TODD BLANCHE, United States Attorney
General,*

Respondent.

No. 25-9565
(Petition for Review)

ORDER AND JUDGMENT*

Before **TYMKOVICH, McHUGH**, and **FEDERICO**, Circuit Judges.

An immigration judge (IJ) denied Lillian Jhoan Lazo-Villalta's application for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The Board of Immigration Appeals (BIA or Board) affirmed.

* Todd Blanche is now the Attorney General of the United States and has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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

Exercising jurisdiction under 8 U.S.C. § 1252(a), we deny in part and dismiss in part Lazo-Villalta's pro se petition for review.¹

BACKGROUND

I.

In 2015, Lazo-Villalta, a native and citizen of Honduras, entered the United States illegally. The Department of Homeland Security served her with a Notice to Appear (NTA), charging her with being inadmissible to the United States. She admitted the allegations in the NTA and conceded the inadmissibility charge but filed an application for asylum, withholding of removal, and CAT protection.

The IJ held a hearing on her application. At the hearing, Lazo-Villalta provided testimony concerning her claims.

Lazo-Villalta grew up in Agua Blanca Azul in the department of El Progreso Yoro in Honduras. When she was about fourteen years old, a member of the 18 Gang named Dennis Martinez began raping her, which resulted in her becoming pregnant and giving birth to a son. When Lazo-Villalta was about seventeen years old, Dennis forced her and their child to move in with him.² While she was living with him, Dennis frequently physically and sexually assaulted Lazo-Villalta.

¹ Because Lazo-Villalta proceeds pro se in this matter we construe her filings liberally, but we do not act as her advocate. *Yang v. Archuleta*, 525 F.3d 925, 927 n.1 (10th Cir. 2008).

² The IJ and the parties refer to the two men who targeted Lazo-Villalta by their first names and for the sake of consistency we continue this designation.

Eventually, she moved in with Dennis's parents. They protected her from Dennis because they knew about his violent tendencies and did not agree with his behavior. Lazo-Villalta tried to ask the local police chief for help, but he said he would not take any action, because he was close friends with Dennis. Around 2011, Dennis came to the United States, while Lazo-Villalta remained in Honduras living with Dennis's parents.

Lazo-Villalta helped Dennis's parents run a small food stand out of their house. On September 14, 2015, while she was working alone in the shop, a member of the MS 13 gang named Irvis Vigil Ortis pointed a gun at Lazo-Villalta and threatened to kill her. Apparently, Irvis threatened her because he believed that she had told people that he was with a particular woman. Irvis believed this prevented him from taking up with other women in the neighborhood.

Lazo-Villalta reported Irvis's threat to the police in her neighborhood. They took her report but could not find him. But she later spotted Irvis in another town and presented her complaint against him to the police in that town. The police arrested Irvis but let him go the next day when he paid his bail. Lazo-Villalta explained that the police would not have released Irvis if he did not have friends on the police force, even if he had the money for bail. Irvis drove by her house at least twice after his release and placed his hand on his gun in a menacing manner.

Lazo-Villalta was afraid of Irvis, so she fled Honduras alone in September 2015. She arrived in the United States in mid-December 2015. Her son continues to live in Honduras with Dennis's parents.

II.

The IJ found Lazo-Villalta's testimony credible but issued a written decision premitting Lazo-Villalta's application for asylum and denying her request for withholding of removal and protection under the CAT. The IJ found her asylum application was untimely under the applicable one-year deadline. The IJ then determined Lazo-Villalta raised two distinct claims for relief and addressed them separately. *See* R. vol. 1 at 56 ("As Respondent's claims for relief stem from two distinct experiences with two unrelated individuals, the Court will address them each in turn."). Lazo-Villalta based her claims on her membership in two proposed particular social groups (PSG). Her claim against Dennis was based on her membership in the proposed PSG of women viewed as property by virtue of their status in a domestic relationship, while her claim against Irvis was based on the proposed PSG of known witnesses who have filed police reports against gang members in Honduras.

The IJ determined her withholding claims could not succeed because her proposed PSGs were not cognizable and because she did not establish (1) past persecution from Irvis, (2) a nexus to a protected ground, (3) an inability to escape future persecution by relocating within Honduras, or (4) that the Honduran government was unable or unwilling to protect her. She was not entitled to CAT relief because she had not shown it was more likely than not that she would be tortured if she were removed to Honduras.

The BIA dismissed Lazo-Villalta's appeal. It rejected her assertion that the IJ had erred in admitting certain evidence and declined to remand the matter for further investigation of that evidence. The BIA upheld the IJ's determination that her asylum application was untimely and the IJ's conclusion that she had not shown her entitlement to withholding or CAT relief. Finally, it rejected her assertion that asylum should be granted on a humanitarian basis due to the severity of her past harm and her fear of future harm.

DISCUSSION

I.

Because a single Board member issued the BIA decision, 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). “[W]e 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.” *Id.* (quoting *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).

II.

Lazo-Villalta challenges the BIA's finding that her asylum application was untimely. A one-year deadline applies to asylum applications. *See* 8 U.S.C. § 1158(a)(2)(B). Lazo-Villalta admits she entered the United States on December 13, 2015, and did not file her asylum application until January 3, 2018. But she contends her untimely filing should be excused because she falls within a class of individuals described in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. 2018).³

In *Mendez Rojas*,

a district court ruled that the government's failure to provide a class of aliens with notice of the one-year asylum bar violated the Immigration and Nationality Act (INA), Administrative Procedure Act (APA), and the Fifth Amendment's Due Process Clause. 305 F. Supp. 3d 1176, 1178 (W.D. Wash. 2018). Following that decision, the government settled the case and committed to (1) retroactively accept as timely any asylum applications filed by class members before March 31, 2022, and (2) prospectively amend NTAs to provide notice of the one-year bar.

Real v. Att'y Gen. of U.S., 147 F.4th 361, 363 n.1 (3d Cir. 2025).

Lazo-Villalta claims membership in class B in the *Mendez Rojas* litigation.

That class is comprised of

[a]ll individuals who have been or will be detained upon entry; *express a fear of return to their country of origin*; are released or will be released from DHS custody without a credible fear determination; are issued a Notice to Appear (NTA); and did not receive notice from DHS of the one-year deadline to file an asylum application set forth in 8 U.S.C. § 1158(a)(2)(B).

Mendez Rojas, 305 F. Supp. 3d at 1179 (emphasis added).

³ Lazo-Villalta also states that the BIA erred in finding that she did not show extraordinary circumstances for failing to file her application within a year. *See* Pet'r Opening Br. at 8. But because she has only developed an argument on the *Mendez Rojas* issue, we confine our discussion to that issue.

The IJ determined that Lazo-Villalta had not demonstrated she was a member of the *Mendez Rojas* class. The IJ cited evidence—Form I-213 and Form I-867A, submitted by DHS—that showed when she was detained Lazo-Villalta did not express a fear of returning to Honduras. The IJ further found that Lazo-Villalta’s hearing testimony was insufficient to demonstrate that upon entering the country she had claimed fear of returning to Honduras. The BIA agreed.⁴

The government argues we lack jurisdiction to review Lazo-Villalta’s challenge to the BIA’s determination because it is a factually based challenge to the BIA’s refusal to make an exception to the one-year bar. *See* 8 U.S.C. § 1158(a)(3) (barring judicial review of issues involving the one-year bar and statutory exceptions); *id.* § 1252(a)(2)(D) (exempting constitutional and legal issues from bar); *see also Ferry v. Gonzales*, 457 F.3d 1117, 1129-30 (10th Cir. 2006) (discussing reviewability of BIA’s determinations under § 1158(a)(2)). We agree and therefore dismiss this claim.

III.

To qualify for withholding of removal, an applicant must prove a “clear probability of persecution” on account of a protected ground. *Karki v. Holder*, 715 F.3d 792, 801 (10th Cir. 2013). The BIA determined that although Lazo-Villalta suffered harm rising to the level of persecution from Dennis, she did not suffer

⁴ The BIA also determined that remand was not warranted for further consideration of the contents of the Form I-213 and Form I-867A. Lazo-Villalta has not developed an appellate argument challenging the BIA’s refusal to remand her case on that basis.

persecution from Irvis. Whether an applicant established persecution “is a question of fact, even if the underlying factual circumstances are not in dispute and the only issue is whether those circumstances qualify as persecution.” *Vicente-Elias v. Mukasey*, 532 F.3d 1086, 1091 (10th Cir. 2008). Lazo-Villalta contends Irvis’s threats were “part of a sustained pattern of intimidation that caused severe emotional and psychological harm” constituting persecution. Pet’r Opening Br. at 11. But “[m]ere denigration, harassment, and threats” are typically insufficient to constitute persecution. *Zhi Wei Pang v. Holder*, 665 F.3d 1226, 1231 (10th Cir. 2012) (internal quotation marks omitted). And, “[a]lthough we consider threats in assessing the cumulative impact of the mistreatment [a petitioner has] suffered,” this court has “rarely, if ever, granted asylum based on threats and emotional or psychological harm alone.” *Jimenez v. Bondi*, 156 F.4th 1037, 1045 (10th Cir. 2025). Substantial evidence supports the BIA’s finding that Irvis’s threatening behavior did not rise to the level of persecution.

Lazo-Villalta also claims she has a reasonable fear of future persecution from Irvis. The BIA declined to address that issue because it agreed with the IJ that she had not shown that internal relocation within Honduras to escape such persecution would be unreasonable under the circumstances. Although Lazo-Villalta claims that Honduran gangs have a “sustained ability to locate and harm individuals across regions,” Pet’r Br. at 13, this generalized and unsupported assertion is insufficient to overcome the BIA’s factually specific determination concerning the reasonableness of relocation.

IV.

Lazo-Villalta challenges the BIA’s determination that she failed to articulate a cognizable PSG. Because the Board’s other findings were dispositive of Lazo-Villalta’s withholding claim involving Irvis, it did not consider whether “known witnesses who have filed police reports against gang members in Honduras” is a cognizable PSG. We have upheld the Board’s findings concerning Irvis and therefore need only consider the issues that relate to the PSG involving Dennis: women viewed as property by virtue of their status in a domestic relationship.

This court has adopted the BIA’s framework for establishing whether a group qualifies as a PSG: the group must share a common, immutable characteristic, have particular and well-defined boundaries, and be perceived by society as a distinct group. *See Rodas-Orellana v. Holder*, 780 F.3d 982, 990-91 (10th Cir. 2015). “Whether a group qualifies as a particular social group under [8 U.S.C.] § 1102(a)(42) is a question of law subject to de novo review.” *Miguel-Pena v. Garland*, 94 F.4th at 1145, 1160 (10th Cir. 2024).

The BIA upheld the IJ’s finding that the PSG of “women viewed as property by virtue of their status in a domestic relationship . . . does not provide a clear benchmark for determining who falls within the group and there is insufficient evidence in the record to establish that it is socially distinct within Honduran society.” R., vol. 1 at 3-4. Lazo-Villalta has not pointed to evidence that establishes that Honduran society perceived her PSG as distinct to meet the social distinction

requirement or shown it is possible to determine who belonged in the group sufficient to satisfy particularity. She fails to show that her proposed group qualifies as a PSG.

V.

Lazo-Villalta contends she qualified for humanitarian asylum. A petitioner may receive a discretionary grant of humanitarian asylum if she shows either “compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or . . . a reasonable possibility that he or she may suffer other serious harm upon removal to that country.” 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B). But to obtain relief under either prong, the applicant must first show that she suffered persecution on account of a protected ground. *See Matter of L-S-*, 25 I. & N. Dec. 705, 710 (BIA 2012) (“We emphasize that every asylum applicant who arrives at this stage of the analysis has demonstrated past persecution and thus has proven that he or she is a refugee.” (internal quotation marks omitted)). The BIA denied relief because Lazo-Villalta had not met this requirement. We have upheld the BIA’s finding concerning lack of persecution on account of a protected ground (Lazo-Villalta’s alleged membership in a PSG). It follows that Lazo-Villalta also did not demonstrate her qualification for humanitarian asylum.

VI.

Finally, Lazo-Villalta challenges the BIA’s rejection of her CAT claim. To establish her CAT claim, she needed to show that if removed to Honduras she would more likely than not be tortured by or with the consent or acquiescence of a public

official there. *See Garcia-Botello v. Bondi*, 168 F.4th 1245, 1257 (10th Cir. 2026) (citing 8 C.F.R. §§ 1208.16(c), 1208.18(a)(1)).

The BIA upheld the IJ’s determination that she failed to meet her burden of proof for CAT protection. It noted that Dennis lived in the United States and did not seek Lazo-Villalta out for harm; there was no evidence that Irvis had tried to contact her since she left Honduras; and she would be able to relocate to another area of Honduras to avoid both Dennis and Irvis. Lazo-Villalta fails to show that the BIA reversibly erred in its reasoning or conclusions.

CONCLUSION

We dismiss Lazo-Villalta’s challenge to the BIA’s bar of her asylum application as untimely. We deny the petition for review concerning her other issues.⁵

Entered for the Court

Carolyn B. McHugh
Circuit Judge

⁵ Lazo-Villalta raises other issues that the BIA declined to reach: whether the Honduran government is unable to unwilling to protect her, whether she established a nexus between her proposed groups and a protected ground, and whether she demonstrated a pattern or practice of persecution for similarly situated individuals in a particular social group. Because we affirm the BIA on the independent and adequate grounds noted in this disposition, we do not reach these issues that the Board did not decide, and which are unnecessary to our disposition. *See Griffin v. Davies*, 929 F.2d 550, 554 (10th Cir. 1991) (“We will not undertake to decide issues that do not affect the outcome of a dispute.”).