NONPRECEDENTIAL DISPOSITION
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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 22, 2024
Decided December 2, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 23-3046

MANUEL DEIFILIO SUMBA-YUNGA,
Petitioner,

v.

MERRICK B. GARLAND, Attorney General of the United States,
Respondent.

Petition for Review of an Order of the Board of Immigration Appeals.

No. A074-150-263

O R D E R

Manuel Deifilio Sumba-Yunga, a native of Ecuador, has illegally entered the United States three times since 1993 and has been removed twice. He now requests withholding of removal and protection under the Convention Against Torture ("CAT"). The immigration judge ("IJ") denied relief, and the Board of Immigration Appeals ("BIA") dismissed his appeal. Before us is Sumba-Yunga's petition to review that dismissal.

Background

Sumba-Yunga is a native of Ecuador who first entered the U.S. illegally in 1993. He was removed in June 2009. Later that same year, he illegally re-entered the U.S. He was removed in 2014, and he again illegally re-entered the U.S. later that same year.

An asylum officer conducted a reasonable fear interview and determined that Sumba-Yunga presented a reasonable fear of torture. Sumba-Yunga applied for withholding of removal and protection under the CAT. In 2019, an IJ held a hearing on the merits of the application. Sumba-Yunga explained he was afraid to return to Ecuador because he had been threatened and extorted on two occasions by individuals he believed to be gang members.

The first incident occurred in March 2009.[1] Sumba-Yunga was in public in Cuenca, Ecuador, when a masked individual approached. The individual grabbed Sumba-Yunga by the chest and told him he knew where Sumba-Yunga lived and that he just returned from the U.S. Sumba-Yunga testified that if "you come back from another country, they think that you have money."

The masked individual then demanded $10,000. Sumba-Yunga handed him $1,000 he had on hand but told him he could not pay the full $10,000. The masked individual stated he was "guarding" Sumba-Yunga and required at least $5,000 in payment. Sumba-Yunga asked for more time to gather that money, and the individual agreed. Two days later, Sumba-Yunga saw the individual driving near his home and evaded him. Four days later, Sumba-Yunga was approached by the individual and paid him the remaining $4,000. Sumba-Yunga went to the police station to report the extortion, but the police officer demanded $500 before providing any help. Sumba-Yunga could not afford that payment and believed the officer was connected to the masked individual.

After the extortion incident, Sumba-Yunga decided to return to the U.S. Since his first removal from the U.S., he had spent about three months in Ecuador.

In 2014, Sumba-Yunga was removed a second time to Ecuador and lived in Cuenca. On his third day there, Sumba-Yunga was again approached, this time by two

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[1] Although that date is inconsistent with other evidence that Sumba-Yunga remained in the U.S. until June 2009, the IJ notes that such a minor discrepancy does not warrant an adverse credibility finding.

individuals on a motorcycle. One of those individuals got off the motorcycle and grabbed him. As in the incident five years earlier, that individual (not the man from the earlier incident) demanded money, telling Sumba-Yunga he knew where he lived. That individual said he knew that Sumba-Yunga owned a company, had recently built a house, and had returned from the U.S. The individual also threatened to kidnap Sumba-Yunga and said that, without payment, Sumba-Yunga would need to work with the individual. Sumba-Yunga relayed the extortion attempt to his family, who thought the individual was from the Sombra Negra gang. As a result of the extortion, Sumba-Yunga decided to leave Cuenca for a city five hours away. Two weeks later, he illegally reentered the U.S.

In a 2020 order, the IJ found that Sumba-Yunga was not eligible for withholding of removal or protection under the CAT. To the IJ, Sumba-Yunga did not establish that he had suffered past harm rising to persecution; and even if he had, he did not demonstrate that that harm was due to a protected ground. The IJ also found that Sumba-Yunga had failed to demonstrate a substantial probability of future persecution. On the CAT claim, Sumba-Yunga did not demonstrate substantial risk of torture. As a result, he was ordered removed from the U.S.

Sumba-Yunga appealed to the BIA, which issued its decision in 2023. The BIA adopted and affirmed the IJ's decision. The BIA also declined to consider persecution based on political opinion, finding that Sumba-Yunga failed to articulate the argument before the IJ. And the BIA considered the question of future persecution risk waived, as Sumba-Yunga did not meaningfully challenge the IJ's findings on appeal. As a result, the BIA dismissed Sumba-Yunga's appeal. He now petitions for review of that dismissal.

Discussion

A. Withholding of Removal

To qualify for withholding of removal, an applicant must "establish that his or her life or freedom would be threatened in the proposed country of removal on account of" certain protected grounds, including "membership in a particular social group" or "political opinion." 8 C.F.R. § 1208.16(b). An applicant for withholding of removal can prevail through two routes. An applicant who suffered past persecution on account of a protected ground is accorded a rebuttable presumption of future persecution. 8 C.F.R. § 1208.16(b)(1)(i). Absent past persecution, the applicant can still prevail by establishing

future persecution: that it is "more likely than not" that his life or freedom would be threatened based on a protected ground. 8 C.F.R. § 1208.16(b)(2).

The BIA here expressly adopted the IJ's opinion, so we review the IJ's decision directly, as supplemented by any additional reasoning by the BIA. *Rodriguez Galicia v. Gonzales*, 422 F.3d 529, 535 (7th Cir. 2005). We review the IJ's factual findings under the "substantial evidence" standard. 8 U.S.C. § 1252(b)(4)(B) ("[A]dministrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary[.]"). This is a highly deferential standard: "To reverse the [agency's] finding we must find that the evidence not only *supports* that conclusion, but *compels* it[.]" *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992) (emphasis in original).

1. Past Persecution

Sumba-Yunga contends he suffered past persecution. The government responds that "the record does not compel the conclusion that Sumba-Yunga was subjected to past mistreatment rising to the extreme level of persecution."

"Threats can constitute past persecution only in the most extreme circumstances, such as where they are of a most immediate or menacing nature or if the perpetrators attempt to follow through on the threat." *Bejko v. Gonzales*, 468 F.3d 482, 486 (7th Cir. 2006). But in most cases "threats in and of themselves will not compel a finding of past persecution." *Id.* Examples of threats rising to persecution illustrate the weakness of Sumba-Yunga's claim. In *Nakibuka v. Gonzales*, a "death threat" was "accompanied by an attacker pressing a gun to the victim's head." 421 F.3d 473, 477 (7th Cir. 2005). Likewise, the unfulfilled death threat in *N.L.A. v. Holder* required a finding of persecution, as it was colored by the murder of the applicant's uncle and kidnapping of her father. 744 F.3d 425, 431-32 (7th Cir. 2014).

Sumba-Yunga's evidence of past persecution is limited to two incidents in which seemingly unarmed individuals demanded money. In the first, Sumba-Yunga agreed to pay the person $5,000 (rather than the initial $10,000 demand) and had no further interaction with that person. In the second, five years later, the individuals demanded Sumba-Yunga's money and threatened to kidnap him absent payment. The question is whether, on these facts, the IJ was compelled to find past persecution. *See* 8 U.S.C. § 1252(b)(4)(B) ("[A]dministrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary[.]"). As the threats were made by unarmed individuals, involved no violent follow-through, and were not

colored by any other acts of violence, the answer is "no."

Sumba-Yunga has not shown that the record compels the conclusion that the two extortionate threats he experienced rose to the level of persecution.

2. Cognizable Social Group

For Sumba-Yunga to prevail, it is not enough for him to show past persecution; he must also tie that past persecution to a protected ground. *See* 8 C.F.R. § 1208.16(b). Sumba-Yunga argued he was a member of a particular social group: "individuals threatened or coerced by gangs without protection of the authorities or their acquiescence." The IJ and BIA rejected this as a cognizable social group for withholding of removal.

According to the government, Sumba-Yunga "does not challenge that determination, which is dispositive of his claim to past persecution." He argues on appeal that he suffered past persecution and has a reasonable fear of future persecution. But he does not address whether that persecution stemmed from a protected ground. Because Sumba-Yunga failed to address that issue, it is waived. *See Bradley v. Vill. of Univ. Park*, 59 F.4th 887, 897 (7th Cir. 2023) (appellant may waive a non-jurisdictional issue by failing to present a developed argument on appeal that engages with the reasoning of the district court). And without a cognizable social group, Sumba-Yunga's claim fails.

Even if we reach the merits, Sumba-Yunga still falls short. To be eligible for withholding of removal, a person must "proffer[] a particular social group that is cognizable under" the law. *Cece v. Holder*, 733 F.3d 662, 668 (7th Cir. 2013). Membership in a particular social group is a question of fact, but whether a particular social group is cognizable is a question of law. *Id.* We review that legal question de novo. *Id.*

To constitute a particular social group, members must all "share a common, immutable characteristic." *Dominguez-Pulido v. Lynch*, 821 F.3d 837, 844 (7th Cir. 2016) (quoting *Matter of M–E–V–G–*, 26 I. & N. Dec. 227, 230–31 (BIA 2014)). That characteristic must be one that group members "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Id.*. Here, the question is whether victims of gang threats—the group Sumba-Yunga claims to belong to—form a cognizable social group. Yet, a social group "cannot be defined merely by the fact of persecution." *Jonaitene v. Holder*, 660 F.3d 267,

271 (7th Cir. 2011). But that is precisely how Sumba-Yunga defines his group.

Cece v. Holder provides a helpful point of contrast. In *Cece*, an asylum-seeker defined her group as "young Orthodox wom[e]n living alone in Albania," who are targets for trafficking due to their identity. 733 F.3d at 670. The group is linked by the persecution members suffer, but members "are also united by the common and immutable characteristic of being (1) young, (2) Albanian, (3) women, (4) living alone." *Id.* at 672. The BIA initially concluded the group was not cognizable, being defined largely by the harm inflicted on group members. *Id.* at 671. But this court rejected that argument, concluding that its members were also linked by immutable traits. *Id.* at 671–72. In contrast, Sumba-Yunga's purported social group is purely based on his persecution, that is, being threatened and extorted.

To the extent Sumba-Yunga was targeted due to his identity, he was targeted for his wealth. He explains that people who lived in the U.S. and return to Ecuador are targeted for their perceived wealth, and that the people threatening him raised his return from abroad.

This court previously evaluated a highly similar proposed social group: "Mexican nationals who have lived in the U.S. for many years and are perceived as wealthy upon returning to Mexico." *Gutierrez v. Lynch*, 834 F.3d 800, 805 (7th Cir. 2016). That group was determined not to be cognizable. *Id.* at 806. This court reached the same conclusion for the proposed social group "individuals deported from the United States who have money or who are perceived to have money, and who have family members in the United States who could pay ransom." *Dominguez-Pulido*, 821 F.3d at 844. Wealth, perceived wealth, and the ability to pay a ransom do not create a cognizable social group. *Id.* at 845.

Sumba-Yunga has not provided a cognizable social group. Although he is the victim of threats, those threats are based on his wealth, not any immutable characteristic recognized by a court. As a result, his claim fails.

He raises an additional issue related to cognizable social groups: the IJ relied on a vacated decision, and Sumba-Yunga believes the BIA should have remanded for reconsideration absent reliance on that decision. The BIA's decision declining to remand was correct. The vacated decision, *Matter of A-B-*, 27 I. & N. Dec. 316, 334-35 (A.G. 2018), stated that members must share an identity other than the risk of persecution. But in the same sentence the IJ cites *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009), which makes

the same point. So, a remand is unnecessary, as it would not change the IJ's conclusion.

3. Political Opinion

Sumba-Yunga further argues he falls "under the protected ground of imputed political opinion." Before the IJ, Sumba-Yunga described the actual and imputed political opinion of being "an anti-gang dissident." He argues he "has been and will be persecuted" for refusing "to pay extortion or cooperate with gang activities." This refusal, he contends, will be seen as opposition.

The IJ determined that "Applicant did not testify to his political opinion or that any of his alleged persecutors were aware of his political opinion." In turn, the BIA concluded that Sumba-Yunga failed to articulate the claim before the IJ and will *not* consider it for the first time on appeal. This was likely a mistake by the BIA, as Sumba-Yunga provided a political opinion: being "an anti-gang dissident."

But this potential error does not save Sumba-Yunga's claim, as he fails to draw a link between his purported political opinion and any persecution he suffered. The Supreme Court has illuminated the limits of what constitutes a political view. In *Elias-Zacarias*, the applicant requested asylum based on a guerrilla movement's attempt to recruit him. 502 U.S. at 480. But even a guerrilla movement supporter may resist recruitment due to non-political reasons, such as "fear of combat, a desire to remain with one's family and friends, [or] a desire to earn a better living in civilian life." *Id.* at 482. And in *Elias-Zacarias*, the applicant testified he refused to join the guerillas out of fear of government retaliation, an express non-political motive. *Id.* at 482.

Sumba-Yunga provides no political motive for opposition to handing over the money to gang members. Rather, his motivation appears to be a non-political reason: a desire to keep his money. This is comparable to all the non-political motivations for not joining a guerrilla movement considered by the court in *Elias-Zacarias*. Sumba-Yunga cannot show targeting on account of political opinion, nor can he show targeting based on a cognizable social group. As a result, even if the threats rose to the level of persecution, Sumba-Yunga cannot prevail.

4. Risk of Future Persecution

Even if Sumba-Yunga cannot prove past persecution, he can prevail by showing a risk of future persecution on account of a protected ground. The IJ determined that

Sumba-Yunga failed to establish a substantial probability of future persecution. Sumba-Yunga disputes that determination.

But Sumba-Yunga again runs into the problem of waiver. The BIA noted that, on appeal, he failed to "meaningfully challenge" the IJ's determination of no clear probability of future persecution. His brief before the BIA contained a heading titled "Fear of Future Persecution," and that section ran for about one double-spaced page. But most of that page repeated the legal standard, followed by a conclusory statement that Sumba-Yunga faced past persecution, had to flee, and reasonably feared future persecution. Arguments, even if raised on appeal, may still be waived "if they are underdeveloped, conclusory, or unsupported by law." *Puffer v. Allstate Ins. Co.*, 675 F.3d 709, 718 (7th Cir. 2012). This type of "skeletal 'argument'" is an assertion rather than an argument. *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (quoting *United States v. Giovannetti*, 919 F.2d 1223, 1230 (7th Cir. 1990)). When the BIA concluded the future persecution claim was waived, it was correct.

Even reaching the merits, Sumba-Yunga does not prevail. He points to two incidents, five years apart, in which he was threatened. In the 2009 incident, Sumba-Yunga made the payment (reaching an agreement on a lower extortion amount), and had no further contact with the individual. In the wake of the 2014 threat, Sumba-Yunga left Cuenca, and there is no evidence the second individual followed up.

An applicant must present "specific evidence" that a reasonable person, based on the facts, fears being singled out for persecution. *Sayaxing v. I.N.S.,* 179 F.3d 515, 520 (7th Cir. 1999). Sumba-Yunga faced two threats, seemingly from unrelated people, and the last threat occurred half a decade ago. This falls below the level of specific evidence of facing future threat. And as previously discussed, most threats do not rise to the level of persecution. *Bejko* 468 F.3d at 486. More than that, even if Sumba-Yunga established a likelihood of future persecution, it will likely be on account of his wealth, which is not a cognizable protected ground. *Dominguez-Pulido*, 821 F.3d at 844.

Sumba-Yunga could still prevail, even without evidence of being singled out, if he can establish a "pattern or practice of persecution" based on a protected trait. *Krishnapillai v. Holder*, 563 F.3d 606, 620 (7th Cir. 2009); 8 C.F.R. § 208.13(b)(2)(iii). Such an approach comes with a high bar: "There must be a systematic, pervasive, or organized effort to kill, imprison, or severely injure members of the protected group[.]" *Holder*, 563 F.3d at 620 (quoting *Mitreva v. Gonzales*, 417 F.3d 761, 765 (7th Cir. 2005)). Sumba-Yunga asks this court to take judicial notice of a congressional bill permitting

Ecuadorian nationals to be eligible for temporary protected status based on the circumstances in the country. He argues this helps establish the risks he faces upon return to Ecuador. This evidence has some probative value, but it is not enough for Sumba-Yunga to prevail. To the extent there is a pattern or practice of persecution in Ecuador, it is not linked to any of Sumba-Yunga's purported protected grounds (social group membership and political opinion). And those grounds, as discussed above, are non-cognizable anyway.

B. Convention Against Torture

To receive protection under the CAT, an applicant must demonstrate that, "more likely than not," he would be tortured if returned. 8 C.F.R. § 1208.16(c)(2); *Herrera-Garcia v. Barr*, 918 F.3d 558, 561 (7th Cir. 2019). Torture is "the intentional infliction of severe pain or suffering for the purpose of coercion, punishment, or discrimination." *Herrera-Garcia*, 918 F.3d at 561. (cleaned up); *see* 8 C.F.R. § 1208.18(a)(1). Several factors affect the torture determination: "Evidence of past torture"; "[e]vidence that the applicant could relocate to a part of [his home country] where he … is not likely to be tortured"; "[e]vidence of gross, flagrant or mass violations of human rights within the country of removal"; and "[o]ther relevant information regarding conditions in [his home country]." 8 C.F.R. § 1208.16(c)(3)(i)–(iv). "The CAT standard presents a higher threshold than the asylum standard." *Pathmakanthan v. Holder*, 612 F.3d 618, 625 (7th Cir. 2010). So, if Sumba-Yunga cannot meet the burden to establish withholding of removal, he will not receive CAT deferral either. *See id.*

Sumba-Yunga argues he qualified for deferral of removal under the CAT. An alien ordered removed "shall be granted deferral of removal to the country where he or she is more likely than not to be tortured." 8 C.F.R. § 208.17(a). In turn, torture is defined as "an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2).

Sumba-Yunga has reason to fear the particular people who previously threatened him. But, as the IJ concluded, he cannot demonstrate likelihood they will "ascertain his whereabouts, track him down, and torture him." That chain of events is highly speculative, especially given the only violence involved was being "grabbed by the chest." Sumba-Yunga's evidence does not compel a finding of future torture, so the IJ's determination stands. *See Elias-Zacarias*, 502 U.S. at 481 n.1 (pointing out the deferential review of the IJ's findings).

Though Sumba-Yunga also points to violence and numerous accounts of torture throughout Ecuador, that evidence is not specific to him, so it cannot support his CAT claim. *See Lozano-Zuniga v. Lynch*, 832 F.3d 822, 830-31 (7th Cir. 2016) (noting that evidence about generalized violence within a country is not enough to show future torture); *Lenjinac v. Holder*, 780 F.3d 852, 856 (7th Cir. 2015) (noting that reports of torture in a country are not enough to show individual himself will be tortured). That Sumba-Yunga is returning to a dangerous country, by itself, does not permit him to make out a CAT claim.

* * *

Sumba-Yunga cannot overcome the evidentiary hurdle necessary to overturn the BIA's decision. There is substantial evidence in support of the conclusions of the IJ and the BIA. Sumba-Yunga has not shown that he was persecuted or that it is more likely than not he will be persecuted in the future. This resolves his withholding of removal arguments. And none of the factors for deciding whether it is more likely than not that he will be tortured in Ecuador cut in his favor, so he is not entitled to protection under the CAT.

For these reasons, we DENY the petition for review.