

United States Court of Appeals for the Fifth Circuit

No. 23-60360
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 7, 2024

Lyle W. Cayce
Clerk

YESENIA DEL CARMEN HERNANDEZ-DE ESCOBAR; CARLOS
ALEJANDRO ESCOBAR-HERNANDEZ,

Petitioners,

versus

MERRICK GARLAND, *U.S. Attorney General,*

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency Nos. A208 449 105,
A208 449 106

Before WIENER, STEWART, and DOUGLAS, *Circuit Judges.*

PER CURIAM:*

Petitioners Yesenia Del Carmen Hernandez-De Escobar and Carlos Alejandro Escobar-Hernandez, natives and citizens of El Salvador, petition for review of the decision of the Board of Immigration Appeals (BIA) upholding the immigration judge's (IJ's) denial of asylum, withholding of

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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removal, and protection under the Convention Against Torture (CAT). The BIA adopted and affirmed the finding of the IJ that Hernandez-De Escobar, the sole witness, was not credible.

We review the BIA's decision and consider the IJ's decision only to the extent it influenced the BIA. *Singh v. Sessions*, 880 F.3d 220, 224 (5th Cir. 2018). An adverse credibility determination is conclusive "unless, from the totality of the circumstances, it is plain that no reasonable fact-finder could make such" a determination. *Avelar-Oliva v. Barr*, 954 F.3d 757, 767 (5th Cir. 2020) (citation omitted).

Based on the totality of the circumstances, a reasonable fact finder could conclude that Hernandez-De Escobar was not credible because of (1) inconsistencies between her documentary evidence and hearing testimony regarding whether police officers made anti-gang presentations at a private school or at a different, rural school; (2) whether her father was notified of a threat from the gang in person or by telephone; and (3) whether Hernandez-De Escobar was pursuing a bachelor's degree in education or science. Although the IJ was not required to make Hernandez-De Escobar aware of the discrepancies and provide her an opportunity to explain them, the IJ questioned her on each of the three topics to confirm the version of events that she was testifying to at the hearing. *See Nkenglefac v. Garland*, 34 F.4th 422, 429 (5th Cir. 2022) ("[B]ecause the IJ had questioned [the petitioner] about the inconsistencies at trial, he had been given an adequate opportunity to respond to discrepancies that impacted the IJ's credibility determination."). Substantial evidence supports the adverse credibility

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determination, as it was supported by specific and cogent reasons derived from the record. *See Avelar-Oliva*, 954 F.3d at 767.¹

In light of Hernandez-De Escobar's lack of credibility, substantial evidence supports the BIA's determination that the petitioners failed to demonstrate eligibility for asylum and withholding of removal. *See Arulnanthy v. Garland*, 17 F.4th 586, 596–97 (5th Cir. 2021); *Avelar-Oliva*, 954 F.3d at 772. We thus need not reach the petitioners' remaining arguments regarding asylum and withholding of removal. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.”).

To obtain protection under the CAT, the applicant must demonstrate that, in the proposed country of removal, it is more likely than not that he or she would be tortured by, or with the acquiescence of, a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1); *Martinez Manzanares v. Barr*, 925 F.3d 222, 228 (5th Cir. 2019). Apart from Hernandez-De Escobar's noncredible testimony, the petitioners rely on the State Department's 2018 country report on El Salvador to establish their eligibility for CAT protection. Their reliance on that report is unavailing because the information in it is too general to independently compel the conclusion that sufficient state action would be involved in any likely torture that they, in particular, would suffer. *See Morales v. Sessions*, 860 F.3d 812, 818 (5th Cir. 2017); *see also Martinez Manzanares*, 925 F.3d at 229 (citation

¹ The Government contends that an assertion made as part of the petitioners' broader challenge to the adverse credibility determination is unexhausted, but because the BIA considered the assertion, we have as well. *See Vazquez v. Sessions*, 885 F.3d 862, 868–69 (5th Cir. 2018) (recognizing that the exhaustion requirement is satisfied if the BIA is adequately put on notice of the claim or independently considers the issue on the merits).

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omitted) (affirming that the inability of a government to protect its citizens does not amount to acquiescence for purposes of the CAT).

Petitioners' petition for review is DENIED.