

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Thomas B. Plunkett, III
Clerk

No. 25-60296
CONSOLIDATED WITH
No. 25-60524

HAYATULLAH ZAHID,

Petitioner,

versus

TODD WALLACE BLANCHE, *U.S. Attorney General,*

Respondent.

Petitions for Review of an Order of the
Board of Immigration Appeals
Agency No. A241 370 575

Before JONES, SOUTHWICK, and WILLETT, *Circuit Judges.*

DON R. WILLETT, *Circuit Judge:*

Hayatullah Zahid, a native and citizen of Afghanistan, petitions for review of two Board of Immigration Appeals (BIA) decisions. The first dismissed his appeal from the denial of Convention Against Torture (CAT) relief and denied his request to remand for the Immigration Judge (IJ) to consider new evidence. The second denied reconsideration. The evidence does not compel a conclusion contrary to the BIA's denial of CAT

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protection, and the BIA did not abuse its discretion in denying remand or reconsideration. We therefore DENY the petitions.

I. BACKGROUND

Before the Taliban's 2021 return to power, Zahid worked for the Afghan Ministry of Education, supervising the education department of Paktia Province. After the takeover, Taliban officials directed Zahid to provide information about female students and their families, which he did for a few months. The IJ found that this conduct constituted material support to a Tier I terrorist organization, rendering Zahid ineligible for asylum and withholding of removal.¹

In September 2022, Zahid attended a protest against the Taliban's closure of girls' schools and shared photographs and video with contacts outside of Afghanistan. Taliban officials subsequently arrested him, detained him for seven days, beat and interrogated him, and accused him of acting on behalf of the United States. He was released after his family and community members intervened. He left Afghanistan permanently in October 2023 and entered the United States in February 2024.

Zahid was served with a Notice to Appear, charging him as inadmissible for lack of valid entry documents. At his initial hearing, he admitted unlawful entry and said he intended to apply for asylum. He later applied for asylum, withholding of removal, and CAT protection, and testified in support of his application.

The IJ determined that Zahid's mistreatment amounted to past persecution for his political opinion about girls' education. But the IJ

¹ Zahid does not challenge those determinations on appeal. *See Jaco v. Garland*, 24 F.4th 395, 401 n.1 (5th Cir. 2021) (holding that unbriefed challenges are forfeited).

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concluded that Zahid had not made the higher showing required for CAT relief: that the Taliban would more likely than not torture him if he returned to Afghanistan. The BIA agreed, dismissing his appeal and declining remand for new evidence. That evidence included alleged Taliban summonses, sworn statements from family and community members, news reports, and a declaration from Zahid's nephew. The BIA later denied reconsideration.

II. STANDARD OF REVIEW

We review the BIA's legal conclusions *de novo* and its factual findings for substantial evidence.² The parties disagree about which standard applies to the agency's CAT determination. Zahid argues that we must review the agency's determination *de novo* because it is a "mixed question of law and fact." The Government argues that substantial-evidence review applies to both the underlying factual findings and the agency's application of the legal standard to those findings. We agree with the Government.

Under 8 U.S.C. § 1252(b)(4)(B), "administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." We have consistently understood the statute to mean that "the substantial evidence standard" applies to the agency's "factual determination that an individual is not eligible for CAT protection."³ The Supreme Court recently confirmed the same rule for mixed questions in the closely analogous asylum context.⁴

² *Iruegas-Valdez v. Yates*, 846 F.3d 806, 810 (5th Cir. 2017).

³ See *Aguilar-Quintanilla v. McHenry*, 126 F.4th 1065, 1068 (5th Cir. 2025); see also, e.g., *Fuentes-Pineda v. Bondi*, 170 F.4th 914, 917–21 (5th Cir. 2026); *Cabrera v. Sessions*, 890 F.3d 153, 164 (5th Cir. 2018).

⁴ *Urias-Orellana v. Bondi*, 607 U.S. 537, 545, 549–50 (2026) (holding that substantial-evidence review applies to "the entirety of the agency's conclusions—both the underlying factual findings and the application of [the statute] to those findings").

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We therefore review the agency’s CAT-eligibility determination under the substantial-evidence standard, reversing only if “the evidence . . . compels a contrary result.”⁵ That is, the evidence must be “so compelling that no reasonable factfinder could reach a contrary conclusion.”⁶

III. DISCUSSION

Zahid’s initial petition challenges the BIA’s denial of CAT relief and remand for consideration of new evidence relevant to that claim. His second petition challenges the BIA’s denial of reconsideration. Neither petition succeeds.

A. The BIA Did Not Err in Denying CAT Relief

We begin with Zahid’s challenge to the denial of his CAT claim. He raises three preliminary arguments before we reach the BIA’s ultimate denial of CAT relief.

To qualify for CAT relief, an applicant must establish that “it is more likely than not that he . . . would be tortured if removed.”⁷ Torture is defined as “an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment.”⁸ “In assessing whether it is more likely than not that an applicant would be tortured in the

⁵ *Morales v. Sessions*, 860 F.3d 812, 818 (5th Cir. 2017).

⁶ *Chen v. Gonzales*, 470 F.3d 1131, 1134 (5th Cir. 2006).

⁷ *Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002) (quoting 8 C.F.R. § 208.16(b)(1)). An applicant must also show that “a public official or person acting in a public capacity inflicted, acquiesced, or consented to the torture.” *Tamara-Gomez v. Gonzales*, 447 F.3d 343, 351 (5th Cir. 2006) (cleaned up). The agency found that the Taliban qualifies as a state actor for CAT purposes, and neither party disputes that finding.

⁸ 8 C.F.R. § 1208.18(a)(2).

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proposed country of removal, all evidence relevant to the possibility of future torture shall be considered[.]”⁹

1. *The BIA Reviewed Zahid’s Claim De Novo*

Zahid argues that the BIA failed to conduct a *de novo* review of his CAT claim. The record shows otherwise. The BIA correctly identified the governing standards: clear-error review of the IJ’s factual findings and *de novo* review of legal questions. It applied those standards and independently weighed the testimonial and documentary evidence, before concluding that Zahid had not met his burden “[b]ased on the cumulative record.” Nothing in the BIA’s decision suggests that it treated itself as bound by the IJ’s conclusion rather than reaching its own. We therefore reject this contention.

2. *Past Persecution Does Not Create a Presumption of Future Torture*

Zahid next asserts that the agency was required to apply a presumption of future persecution to his CAT claim because the IJ found that he suffered past persecution. That argument misreads the regulations. The presumption on which Zahid relies arises under 8 C.F.R. § 1208.16(b)(1)(i), which governs eligibility for withholding of removal. CAT protection is governed instead by 8 C.F.R. § 1208.16(c), which contains no comparable presumption for past torture—let alone one arising from past persecution.¹⁰

⁹ *Ghotra v. Whitaker*, 912 F.3d 284, 288 (5th Cir. 2019) (quoting 8 C.F.R. § 208.16(c)(3)).

¹⁰ See *Cabrera*, 890 F.3d at 164 (holding that “some likelihood of persecution” is not sufficient for CAT relief). Other circuits have likewise held that past persecution does not create a presumption of future torture. See, e.g., *Hernandez-Martinez v. Garland*, 59 F.4th 33, 40 (1st Cir. 2023); *Dawson v. Garland*, 998 F.3d 876, 882 (9th Cir. 2021).

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Both the IJ and the BIA understood that difference, and neither treated Zahid's past mistreatment as dispositive of his CAT claim.¹¹ That is because "[d]emonstrating torture requires a much greater showing of harm than demonstrating persecution[.]"¹² The presumption of future persecution therefore does not extend to the CAT analysis.

3. *The BIA Considered the Country-Conditions Evidence*

Zahid next argues that the BIA failed to consider country-conditions evidence describing a pattern of Taliban abuses against former government officials, protesters, and civil-society figures. In the cases Zahid cites, the BIA either refused to consider country-conditions evidence,¹³ denied that such evidence existed,¹⁴ or gave no indication that it had reviewed the evidence at all.¹⁵ The BIA need not expressly "address evidentiary minutiae or write any lengthy exegesis."¹⁶ It need only show that it considered the issues raised and reached a decision sufficient to permit review.¹⁷

The BIA did so here. It stated that it considered "the cumulative record" and specifically identified the record pages containing Zahid's country-conditions reports. The BIA also referenced "the importance of

¹¹ See 8 C.F.R. § 1208.16(c)(3)(i) (listing past torture as one *factor* to consider).

¹² *Fuentes-Pineda*, 170 F.4th at 917 (quotation omitted); see also 8 C.F.R. § 1208.18(a)(2) (defining torture as "an extreme form of cruel and inhuman treatment" that "does not include lesser forms of cruel, inhuman or degrading treatment").

¹³ *Arulnanthy v. Garland*, 17 F.4th 586, 598 (5th Cir. 2021).

¹⁴ *Ndifon v. Garland*, 49 F.4th 986, 990 (5th Cir. 2022).

¹⁵ *Noumbissi v. Garland*, No. 21-60012, 2022 WL 1744787, at *2 (5th Cir. May 31, 2022) (per curiam).

¹⁶ *Aben v. Garland*, 113 F.4th 457, 469 (5th Cir. 2024) (quoting *Abdel-Masieh v. INS*, 73 F.3d 579, 585 (5th Cir. 1996)).

¹⁷ See *Efe*, 293 F.3d at 908; *L.N. v. Garland*, 109 F.4th 389, 396 (5th Cir. 2024).

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particularized evidence to establish likelihood of torture for a CAT claim, as opposed to general country conditions.” The decision therefore shows that the BIA considered Zahid’s reports and gives us enough to review its reasoning.¹⁸ We find no error.

4. The Record Does Not Compel CAT Relief

We turn finally to whether the record compels the conclusion that Zahid is more likely than not to be tortured if he is returned to Afghanistan.¹⁹ It does not.

Zahid first points to the country-conditions reports. They describe Taliban abuses against former officials, activists, and protesters. But they do not identify any specific threat to Zahid. This generalized evidence may show that some members of those groups face a risk of torture. But it does not compel the finding that Zahid himself is more likely than not to be tortured.²⁰

The same is true for Zahid’s evidence that several friends and former colleagues were arrested, tortured, or imprisoned by the Taliban for similar activism. This evidence is more specific than the country-conditions reports, but it still concerns other people, and most of the incidents occurred before Zahid’s 2022 arrest. It may show that Zahid faces danger, but it does not

¹⁸ On reconsideration, the BIA made this explicit: “We previously considered all record evidence, including the reports cited by [Zahid] describing human rights violations against former government officials and civil rights activists and his own testimony recounting his fear of returning to Afghanistan.”

¹⁹ *See Morales*, 860 F.3d at 818.

²⁰ *See Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019) (“Generalized country evidence tells us little about the likelihood state actors will torture any particular person, including [the petitioner].”).

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compel the conclusion that *he* is more likely than not to be tortured.²¹ On this record, he has not carried his burden for CAT relief.²²

Zahid also relies on his 2022 arrest, detention, and beating. That incident does not compel a contrary finding. For starters, the IJ found that it amounted to persecution, and torture requires a greater showing.²³ It was also an isolated episode, which by itself does not compel a finding of likely future torture.²⁴ Indeed, after the 2022 incident, the Taliban had multiple opportunities to detain Zahid without doing so: he remained in Afghanistan for more than a year and travelled in and out of the country before fleeing. That history further undercuts his claim that future torture is more likely than not.²⁵ Even assuming the 2022 incident qualifies as past torture, it still does not compel a different result because past torture is “only one factor . . . to consider.”²⁶ Layering Zahid’s individualized history on top of his more generalized evidence does not close the gap between persecution and torture.

²¹ See *Agwuegbo v. Bondi*, No. 24-60388, 2025 WL 1704435, at *5 (5th Cir. June 18, 2025) (per curiam) (rejecting a CAT claim where the petitioner “relie[d] on a series of suppositions,” “did not establish that each hypothetical link in the chain of events was more likely than not to happen,” and produced only “general evidence”).

²² See *Bah v. Ashcroft*, 341 F.3d 348, 351–52 (5th Cir. 2003) (per curiam) (“An applicant for protection under CAT bears the burden”).

²³ See *Fuentes-Pineda*, 170 F.4th at 917; see also 8 C.F.R. § 1208.18(a)(2) (defining torture as “an extreme form of cruel and inhuman treatment” that “does not include lesser [harms]”).

²⁴ See *Fuentes-Pineda*, 170 F.4th at 920–21 (upholding the denial of CAT relief because the petitioner’s recent mistreatment was isolated and disconnected from prior torture).

²⁵ Cf. *id.* at 920 (holding that the petitioner’s lack of further torture by the same officers despite their past torture of him rendered his future risk “too speculative”).

²⁶ See *id.* at 917, 920 (upholding the denial of CAT relief despite past instances of torture and other recent mistreatment); 8 C.F.R. § 1208.16(c)(3)(i) (listing past torture as one *factor* to consider).

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Finally, Zahid's theory that he will likely be tortured as a suspected American spy does not compel a different outcome.²⁷ The BIA agreed with the IJ's determination that this theory is "unsupported by any objective evidence in the record." The record contains no evidence that similarly situated deportees have been tortured on that basis or that the Taliban maintains spies "interested in failed asylum seekers" in the United States. He also identified no evidence that the Taliban systematically targets returnees from the United States as suspected spies. To the contrary, Taliban officials inspected and cleared his passport on multiple occasions after his 2022 detention without incident. Those crossings occurred after the Taliban had already accused him of being a "spy of the Americans" and "slave to America." The record therefore does not compel a finding that Zahid is more likely than not to be tortured as a suspected American spy.

The question is not whether the record could *support* a particular determination but whether it *compels* one.²⁸ Here, it does not. We accordingly conclude that substantial evidence supports the agency's denial of Zahid's CAT claim.

B. The BIA Did Not Abuse its Discretion in Denying Remand

Zahid also appeals the BIA's denial of remand for the IJ to consider new evidence. The evidence included two Taliban summonses, sworn statements from his family and community members, news reports, a declaration with photographs from his nephew providing a firsthand account of a Taliban beating, and a declaration from a friend in the United States

²⁷ Zahid calls the agency's finding "clearly erroneous." But we review the agency's "factual determination that an individual is not eligible for CAT protection" for substantial evidence. *See Aguilar-Quintanilla*, 126 F.4th at 1068.

²⁸ *Fuentes-Pineda*, 170 F.4th at 918.

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about when Zahid learned that the Taliban was looking for him. Zahid argues that the BIA improperly assessed the new evidence itself—comparing the summonses with his hearing testimony, discounting the family and community statements, and finding the news reports unauthenticated—rather than remanding for the IJ to make those findings in the first instance. He separately challenges those assessments on the merits. Neither argument is availing.

We review motions to remand “under a highly deferential abuse-of-discretion standard.”²⁹ “A motion to remand for new evidence shall not be granted unless it appears to the B[IA] that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.”³⁰ “When determining materiality, the B[IA] should consider whether the new evidence would likely change the result in the case.”³¹ Remand is “particularly disfavored,”³² and “[t]he B[IA]’s decision will not be disturbed unless it is ‘capricious, racially invidious, utterly without foundation in the evidence, or otherwise so irrational that it is arbitrary rather than the result of any perceptible rational approach.’”³³

The BIA did not engage in impermissible factfinding by screening the new evidence for materiality. The governing regulation requires threshold

²⁹ *Milat v. Holder*, 755 F.3d 354, 364 (5th Cir. 2014) (quoting *Zhao v. Gonzales*, 404 F.3d 295, 303 (5th Cir. 2005)).

³⁰ *Suate-Orellana v. Barr*, 979 F.3d 1056, 1062 (5th Cir. 2020) (quoting *Milat*, 755 F.3d at 365).

³¹ *Id.*

³² *Nguhlefeh Njilefac v. Garland*, 992 F.3d 362, 365 n.3 (5th Cir. 2021) (citing *I.N.S. v. Doherty*, 502 U.S. 314, 322–23 (1992)).

³³ *Suate-Orellana*, 979 F.3d at 1062 (quoting *Milat*, 755 F.3d at 365).

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screening: a motion to remand, like a motion to reopen, “*shall not be granted unless* it appears to the B[IA] that evidence sought to be offered is material and . . . could not have been discovered or presented at the former hearing.”³⁴ This inquiry necessarily requires the BIA to assess the new evidence before deciding whether remand is warranted.³⁵ The regulation would make little sense if the BIA had to remand whenever new evidence was submitted so that the IJ could decide whether the new evidence justified remand in the first place. The BIA therefore acted within its proper role in screening Zahid’s new evidence.³⁶

To be sure, that line can be a fine one. The BIA must leave disputed historical facts to the IJ. But that doesn’t mean the Board must take new evidence at face value. When deciding whether new evidence warrants remand, the Board must first consider its reliability and probative value. Such an assessment does not require the Board to resolve the underlying factual dispute.

The remaining question is whether the BIA abused its discretion in the way it assessed that evidence.³⁷ It did not. The BIA gave specific, record-based reasons for discounting Zahid’s new evidence, and those reasons are adequate under our deferential abuse-of-discretion standard.³⁸

³⁴ 8 C.F.R. § 1003.2(c)(1) (emphasis added); *see also Chun Yin Lang v. Mukasey*, 305 F. App’x 232, 234 (5th Cir. 2008) (per curiam) (“A motion to remand . . . is subject to the same standards and regulations governing motions to reopen.”).

³⁵ *See Suate-Orellana*, 979 F.3d at 1063; *see also Marqus v. Barr*, 968 F.3d 583, 593 (6th Cir. 2020) (criticizing the BIA for not engaging in more robust threshold factfinding when denying a motion to remand).

³⁶ *See Suate-Orellana*, 979 F.3d at 1062–63.

³⁷ *See Milat*, 755 F.3d at 365.

³⁸ *See Suate-Orellana*, 979 F.3d at 1062–64 (upholding the denial of remand where the BIA explained, based on the record, why it discounted the new evidence).

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And in making that threshold judgment, the BIA did not have to decide which account was ultimately correct; it had to decide whether the new evidence was likely to change the result.

Start with the summonses. Reliable evidence that the Taliban was actively searching for Zahid would be important. Such evidence would be far more particularized than general country-conditions evidence. The BIA found them inconsistent with the record. One is dated approximately two weeks before the IJ's decision, yet Zahid stated that he did not learn of the summonses until months later. Zahid says he learned of the summonses late because his detention limited contact with his family, which already knew about them. Zahid offers an explanation for the timing discrepancy, but the BIA could still consider the discrepancy in assessing the summonses' evidentiary force.³⁹

The summonses also describe Zahid as the "leader of the protest," which conflicts with his hearing testimony that he merely photographed and shared images of the demonstration. The BIA could consider that inconsistency in weighing the summonses' reliability without deciding which

³⁹ See *Morales*, 860 F.3d at 817 (stating that neither the IJ nor the BIA is required to accept a petitioner's explanation for inconsistencies).

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account was historically true.⁴⁰ and Zahid’s different reading of the record does not show that the BIA abused its discretion.⁴¹

Take the family and village statements. The BIA gave them less weight because they came from interested declarants who were not subject to cross-examination.⁴² Zahid relies on *Aguilar-Quintanilla*,⁴³ but there the agency did not consider the family affidavits at all.⁴⁴ Here, the BIA considered the statements and explained why it discounted them.

⁴⁰ See *Mir v. Gonzales*, 207 F. App’x 498, 498–99 (5th Cir. 2006) (per curiam) (holding no abuse of discretion where the BIA relied on problems with newly submitted evidence in denying reopening). JUDGE SOUTHWICK reads *Santos-Zacaria v. Garland* to prohibit the BIA from considering this inconsistency. We read that case differently. There, the BIA “relied” on a disputed historical fact—one “neither undisputed nor found by the IJ”—to conclude that the Government had rebutted the presumption of future persecution. 126 F.4th 363, 368–69 (5th Cir. 2025). We held that the BIA may not “cho[ose] between disputed facts.” *Id.* at 368 (citation omitted). Here, the BIA did not do that. It did not decide whether Zahid led the protest, as the summonses said, or merely photographed it, as Zahid maintained. Rather, it treated that inconsistency as weakening the summonses’ reliability in deciding whether the new evidence was likely to change the result. That is evidentiary screening, not factfinding.

⁴¹ See *Suate-Orellana*, 979 F.3d at 1062.

⁴² See *Katembo v. Barr*, 825 F. App’x 225, 226 (5th Cir. 2020) (per curiam) (holding no abuse of discretion where the BIA assigned “little evidentiary weight” to a letter from a supportive friend who was not subject to cross-examination); see also *Matter of H-L-H-*, 25 I. & N. Dec. 209, 215 (BIA 2010).

The BIA’s decision says “uninterested” rather than “interested.” That appears to be a typo. The BIA cited its own authority, *Matter of H-L-H- & Z-Y-Z-*, which discounted letters from relatives and friends because their authors were “*interested* witnesses who were not subject to cross-examination.” 25 I. & N. at 215 (emphasis added).

⁴³ 126 F.4th at 1070–71.

⁴⁴ *Id.* The affidavits in *Aguilar-Quintanilla* were part of the merits record, which we reviewed for substantial evidence. *Id.* at 1071–73. Here, Zahid offered the statements with a motion to remand. The BIA therefore had to screen the new evidence for materiality—whether it was likely to change the result—and we review the denial of remand for abuse of discretion. See *Milat*, 755 F.3d at 365.

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The news reports were also problematic. They were unauthenticated, came from an unfamiliar source, and lacked basic information (like a publication date). Our cases allow the BIA to discount foreign-source material with defects like these.⁴⁵ Notably, Zahid does not challenge the BIA's treatment of the news reports, so any such challenge is forfeited.⁴⁶

The last pieces of new evidences are a declaration and photographs from Zahid's nephew and a declaration from a friend in the United States. Assuming this evidence was properly before the BIA,⁴⁷ they likewise do not show that the BIA abused its discretion in denying remand. The nephew's declaration describes a beating and includes photographs, but it came from an interested family member who was not subject to cross-examination. The friend simply relates the nephew's incident and states that Zahid did not learn that the Taliban was after him until January. Nothing else in the record shows what caused the nephew's injuries or why the assailants attacked him. Even apart from those concerns, this evidence was not likely to change the outcome of Zahid's CAT claim. At most, these declarations and photographs show that the Taliban continued to press Zahid's family for his whereabouts and beat his nephew once. That does not show that the Taliban would more likely than not torture Zahid if he returned to Afghanistan.⁴⁸

⁴⁵ *E.g., Chen v. Holder*, 547 F. App'x 541, 543 (5th Cir. 2013) (per curiam); *Zheng v. Holder*, 465 F. App'x 350, 352 (5th Cir. 2012) (per curiam).

⁴⁶ *See Jaco*, 24 F.4th at 401 n.1.

⁴⁷ The Government disputes whether the declarations and photographs were properly submitted to the BIA. The docket shows that Zahid's submission was rejected because it was filed at the wrong location. Zahid insists he corrected the filing and the BIA accepted it later that day. We need not resolve this dispute because the evidence would not have changed the outcome.

⁴⁸ *See* 8 C.F.R. § 1208.18(a)(2) (defining torture as "an extreme form of cruel and inhuman treatment" that "does not include lesser [harms]").

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Because this evidence was not likely to change the outcome, the BIA did not abuse its discretion in denying remand on this basis.⁴⁹ In sum, the assessments the BIA made have a rational basis in the record.⁵⁰ Zahid also has not shown that the new evidence, considered individually or together, would have changed the outcome of his CAT claim. The BIA therefore did not abuse its discretion in screening the new evidence and denying Zahid's motion to remand.

C. The BIA Did Not Abuse its Discretion in Denying Reconsideration

Zahid finally challenges the denial of his motion for reconsideration. We review that decision for abuse of discretion.⁵¹ Reconsideration “is not a process by which a party may submit, in essence, the same brief presented on appeal” or “by generally alleging error in the prior B[IA] decision.”⁵² Rather, “[t]he motion shall specify the errors of law or fact in the previous [BIA] order and shall be supported by pertinent authority.”⁵³

Zahid's motion for reconsideration largely repeated his arguments about CAT relief and remand. Because Zahid identified no error in law or fact in the BIA's prior decision, the BIA did not abuse its discretion by denying reconsideration.⁵⁴

⁴⁹ See *Suate-Orellana*, 979 F.3d at 1062.

⁵⁰ See *id.*

⁵¹ *Cruz v. Barr*, 929 F.3d 304, 308 (5th Cir. 2019).

⁵² *Samayoa-Montufar v. Sessions*, 724 F. App'x 349, 350 (5th Cir. 2018) (per curiam) (quoting *Erazo-Aguilar v. Sessions*, 719 F. App'x 453, 454 (5th Cir. 2018)).

⁵³ 8 U.S.C. § 1229a(c)(6)(C).

⁵⁴ See *Cruz*, 929 F.3d at 308.

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IV. CONCLUSION

We find no error in the BIA's denial of CAT relief and no abuse of discretion in its denial of remand or reconsideration. The petitions for review are therefore DENIED.

SOUTHWICK, *Circuit Judge*, dissenting:

The petitioner provided material evidence that needed to be evaluated by the immigration judge (IJ) on remand, not by the Board of Immigration Appeals (BIA) during the initial petition for review. Because the BIA failed to remand for the IJ to engage in further factfinding, I dissent.

The BIA generally cannot “engage in factfinding in the course of deciding cases.” 8 C.F.R. § 1003.1(d)(3)(iv). Where additional factfinding is required, the BIA is to remand to the IJ. *See id.* The BIA does properly make an initial assessment of evidence submitted in support of a motion for remand. Its role is limited when doing so. It performs a screening function, evaluating whether “the evidence sought to be offered is material and was not available” at the prior hearing. *Id.* § 1003.2(c)(1). If the new evidence passes that threshold, the BIA is to remand, and the IJ is tasked with further developing the factual record, gathering information, and “cho[osing] between disputed facts.” *Santos-Zacaria v. Garland*, 126 F.4th 363, 368 (5th Cir. 2025) (alteration in original) (quoting *Hammerschmidt v. Garland*, 54 F.4th 282, 290 (5th Cir. 2022)); *see also* 8 C.F.R. § 1003.1(d)(3)(iv).

Here, the BIA held that Zahid’s case did not warrant additional factfinding because it believed the evidence Zahid sought to offer on remand was immaterial. That evidence included two Taliban summonses. The first included this demand: “We specifically order you to present yourself to our department next Saturday In case of non-attendance, you will face serious reaction.” The second was similarly demanding. Zahid was ordered to appear and answer for his conduct at a girls’ school protest.

This offered additional evidence that, if credible, would show the Taliban was searching specifically for Zahid. This evidence is both too significant and too summarily rejected for me to conclude that the BIA

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appropriately screened its materiality. *See Zhao v. Gonzales*, 404 F.3d 295, 310 (5th Cir. 2005). The BIA gave some reasoning, which I will discuss.

The new evidence specific to Zahid’s risk of torture was in addition to more general evidence that the Taliban tortures people like him. That evidence gave context for the significance of the Taliban’s search for Zahid. Country-condition evidence detailed the Taliban’s widespread abuses of human and civil rights including, but not limited to, its “systematic torture of detainees” through “waterboarding” as well as “beatings, floggings, stonings, amputations, and executions.” Zahid provided evidence that the Taliban tortures and kills numerous prior government workers and that human rights protesters “suffer[] torture and other ill-treatment,” making Zahid, a prior government worker and human rights protestor, liable to suffer the same. Zahid also presented specific examples of individuals similarly situated to himself who were tortured by the Taliban.

However, despite this evidence, the BIA concluded that Zahid “provided insufficient evidence demonstrating the Taliban would more than likely torture him upon his return” to Afghanistan. To support its conclusion, the BIA cited one of this court’s opinions for the proposition that country-condition evidence alone says little about a particular individual’s probability of future torture. *See Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019). Here, though, there was meaningfully more than country-condition evidence.

In support of his motion for remand to the IJ, Zahid provided evidence that the Taliban was actively searching for him because of his conduct at the girls’ school protest. That evidence included multiple sworn statements from Zahid’s family and community members, a sworn statement and corroborating photographs from his cousin stating that the Taliban beat him as they searched for Zahid, and two Taliban summonses identifying

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Zahid as a prior government employee and demanding Zahid appear before them to account for his conduct at the protest.

To reject all the new evidence, the BIA needed to determine the evidence was not material. Such a finding does not appear in the discussion of the new evidence, but it probably should be assumed. The BIA also did not discuss the statement and photographs provided by Zahid's cousin, but it did discuss the Taliban summonses. The BIA stated that one of the two summonses was issued nearly two weeks "before the Immigration Judge's decision," but that does not apply to the second. It then stated that both summonses characterized Zahid as the "leader of the protest for opening of girls' schools" while Zahid said he only took pictures and video of the protest to share with others. Without further explanation, the BIA concluded that the "contradiction [in the summonses] with the record undermines the reliability of these documents." No other reason for rejecting this critical evidence was stated. Even if we accept an implied finding that the evidence was not material, the BIA's discussion clearly relied solely on the inconsistency. Its only other explicit and relevant statement was that Zahid had not "provided sufficient evidence."

As explained above, the BIA generally is not to "engage in factfinding in the course of deciding cases." 8 C.F.R. § 1003.1(d)(3)(iv). Instead, factfinding is for the IJ. *See id.* Yes, the BIA needs to evaluate whether "the evidence sought to be offered is material and was not available" at the prior hearing. *Id.* § 1003.2(c)(1). Here, the BIA's stated reason for the failure of the evidence to meet that standard was the inconsistency between what the Taliban allegedly believed, as shown in the new evidence, and Zahid's own statements. I conclude that the BIA's reliance on that inconsistency constitutes impermissible choosing between reasonable interpretations of the conflicting evidence. *See Santos-Zacaria*, 126 F.4th at 368 (stating that the BIA is not to choose between disputed facts). Instead of making the new

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evidence unreliable or not material, it is equally reasonable that the inconsistency shows that the Taliban misunderstood Zahid's role in the protest, leaving their search for him even stronger evidence that he would face torture.

If the new evidence meets the threshold of being material and previously unavailable, the BIA is to remand; the IJ is then tasked with further developing the factual record, gathering information, and making fact-findings. *Id.*; *see also* 8 C.F.R. § 1003.1(d)(3)(iv). The IJ could evaluate the inconsistency between the evidence about the Taliban's understanding of Zahid's actions and Zahid's own explanation. The IJ may eventually agree that the new evidence is not reliable. If so, it would be the designated fact-finder making the determination, not the BIA.

Here, Zahid has provided new evidence that, on its face, is material and was not previously available. Given the country-condition evidence Zahid already provided, proof that the Taliban is actively searching for him as a leader of the girls' school protest would be "evidence which may independently entitle him to CAT protection." *Aguilar-Quintanilla v. McHenry*, 126 F.4th 1065, 1071 (5th Cir. 2025). The significance of this new information is that it directly responds to the BIA's earlier determination that Zahid failed to demonstrate a particularized risk of future torture because at his initial administrative hearing he only provided general country-condition evidence. *See Qorane*, 919 F.3d at 911. Zahid's new evidence "establish[es] precisely that crucial proposition." *Zhao*, 404 F.3d at 305.

Therefore, this new evidence is not merely "cumulative of the evidence already in the file" but instead directly addresses the BIA's primary justification for denying CAT relief. *Matter of Coelho*, 20 I & N Dec. 464, 474 (BIA 1992). Zahid's evidence meets the threshold requirement of materiality. Therefore, the IJ should have been given an opportunity to

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evaluate it. *See Santos-Zacaria*, 126 F.4th at 368; *see also* 8 C.F.R. § 1003.1(d)(3)(iv).

I respectfully dissent.