United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
October 13, 2021
Lyle W. Cayce
Clerk

No. 20-60125
Summary Calendar

MARIA CONSUELO ALVARENGA-REYES; JENNIPHER VANESSA AMAYA ALVARENGA; DENNYS EMILIO ROMERO-AMAYA; SIFREDIS JHOSEP ROMERO-AMAYA; MIRIAN CONSUELO AMAYA-ALVARENGA; LISSETH BEATRIZ AMAYA DE ROMERO,

Petitioners,

versus

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

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
BIA No. A208 284 429
BIA No. A208 284 430
BIA No. A208 284 431
BIA No. A208 284 443
BIA No. A208 284 444
BIA No. A208 284 445

Before BARKSDALE, COSTA, and OLDHAM, *Circuit Judges*.

PER CURIAM:*

Maria Consuelo Alvarenga-Reyes, her three daughters, and her two minor grandchildren, natives and citizens of El Salvador, petition for review the Board of Immigration Appeals' (BIA) affirming, without opinion, the denial of their applications for: asylum; withholding of removal; and protection under the Convention Against Torture (CAT). Petitioners assert: the Immigration Judge (IJ) lacked jurisdiction to order them removed; the IJ improperly changed their proposed social group; they were denied a full and fair hearing; they were subjected to a pattern or practice of persecution, and demonstrated both being subjected to past persecution and having a well-founded fear of future persecution; and they are entitled to protection under CAT. (In their appeal to the BIA, petitioners also asserted: their proposed social groups are cognizable; and the test for determining whether a proposed social group is cognizable is unconstitutionally vague. These claims are abandoned on appeal for failure to brief. *See Chambers v. Mukasey*, 520 F.3d 445, 448 n.1 (5th Cir. 2008).)

In considering the BIA's decision (and the IJ's decision, to the extent it influenced the BIA), legal conclusions are reviewed *de novo*; factual findings, for substantial evidence. *E.g.*, *Orellana-Monson v. Holder*, 685 F.3d 511, 517–18 (5th Cir. 2012). Under the substantial-evidence standard, "petitioner has the burden of showing that the evidence is so compelling that no reasonable factfinder could reach a contrary conclusion". *Id.* at 518 (citation omitted).

Regarding their assertions the IJ lacked jurisdiction to order them removed, and improperly changed their proposed social group, petitioners failed to present these claims to the BIA. Accordingly, they are unexhausted;

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* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

and, therefore, our court lacks jurisdiction to address them. *Wang v. Ashcroft*, 260 F.3d 448, 452–53 (5th Cir. 2001) ("An alien fails to exhaust his administrative remedies with respect to an issue when the issue is not raised in the first instance before the BIA".).

Petitioners maintain their right to a full and fair hearing was violated because neither the IJ nor the BIA addressed the contentions they were persecuted on account of their political opinion. They are unable to demonstrate they were substantially prejudiced by this because they have failed to identify any actual or imputed political opinion they hold or any instances they were targeted because of it. *See Okpala v. Whitaker*, 908 F.3d 965, 971 (5th Cir. 2018) (explaining "[p]roving substantial prejudice requires an alien to make a *prima facie* showing that the alleged violation affected the outcome of the proceedings" (emphasis added)).

To qualify for asylum, an applicant must demonstrate, *inter alia*, either past persecution, or a "well-founded fear of future persecution", based on one of five enumerated grounds, including membership in a particular social group. 8 C.F.R. § 208.13(b) (asylum eligibility); 8 U.S.C. §§ 1101(a)(42)(A) (defining refugee), 1158(b)(1) (conditions for granting asylum). To qualify for withholding of removal, an applicant "must demonstrate a clear probability of persecution on the basis of race, religion, nationality, membership in a particular social group, or political opinion". *Chen v. Gonzalez*, 470 F.3d 1131, 1138 (5th Cir. 2006) (internal quotation marks and citation omitted). Accordingly, the standard for withholding of removal is more stringent than for asylum. *Orellana-Monson*, 685 F.3d at 518. Therefore, an applicant who fails to meet the asylum standard cannot meet the withholding-of-removal standard. *Id.*

Because they failed to demonstrate a protected ground was a central reason for any suffered persecution, petitioners are ineligible for asylum or

withholding of removal. *See Martinez Manzanares v. Barr*, 925 F.3d 222, 227 (5th Cir. 2019) (explaining "protected ground cannot be incidental, tangential, superficial, or subordinate to another reason for harm" (internal quotations and citation omitted)).

To obtain relief under CAT, applicant must show, *inter alia*, it is more likely than not she will be tortured in her home country "at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity". 8 C.F.R. §§ 1208.16(c)(2) (eligibility for withholding of removal under CAT), 1208.18(a)(1) (defining torture). Although petitioners maintain they are at a heightened and particularized risk of torture, they have not provided any evidence the Salvadoran government would acquiesce to any torture. At most, petitioners have demonstrated El Salvador is unable to protect its citizens from gang members, and "a government's inability to protect its citizens does not amount to acquiescence". *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019).

DISMISSED in part; DENIED in part.