

United States Court of Appeals
for the Fifth Circuit

No. 25-60394

United States Court of Appeals
Fifth Circuit

FILED

October 22, 2026

Thomas B. Plunkett, III
Clerk

PAU THAN TUANG,

Petitioner,

versus

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

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
Agency No. A212 593 226

Before JONES, CLEMENT, and RICHMAN, *Circuit Judges.*

PER CURIAM:*

Pau Than Tuang petitions for review of a final order of removal. Tuang, a native of Burma (also known as Myanmar), was convicted in state court after pleading guilty to sex crimes against a child. Removal proceedings were initiated when he was released from prison. Tuang admitted he was removable but sought deferral of removal to Burma under the Convention

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

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against Torture (CAT).¹ An immigration judge (IJ) granted the requested relief, but the Board of Immigration Appeals (BIA) reversed that decision and ordered Tuang's removal. Tuang has petitioned for review. We deny his petition.

I

Pau Than Tuang is a native of Burma. He is of Chin ethnicity, a minority ethnic group within that country. He is also a Christian, a minority religion within Burma. The IJ found that "the majority religion in Burma is Buddhism," and that fact is reflected throughout the record.

In 2012, Tuang entered the United States as a refugee, and in 2017, he became a lawful permanent resident. In 2021, Tuang pleaded guilty to one count of forcible sodomy of a child and four counts of lewd molestation of a child under OKLA. STAT. ANN. §§ 21-888 and 21-1123. The charges arose from Tuang's 2015 sexual assault of a 14-year-old in Tulsa, Oklahoma. He was sentenced to 14 years of imprisonment, but 10 years of that sentence were suspended. Upon his release from prison, he was placed in the custody of Immigration and Customs Enforcement (ICE). Tuang conceded removability, but sought deferral of removal under the CAT.

An IJ granted Tuang's application for deferral of removal. At the outset, it should be noted that Tuang does not contend that he would suffer torture in Burma because of his criminal convictions or the nature of his crimes in the United States. The IJ observed that "[t]here's no information in the record on the treatment specifically of individuals returning to Burma with criminal records from the United States, and there's no indication that

¹ 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18(a) (2020).

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ICE would share that criminal record with the Burmese Government” when Tuang returned.

Although the IJ found that Tuang had not been subjected to torture in the past in Burma, the IJ concluded that it was more likely than not that a chain of three events would occur and then, more likely than not, Tuang “would experience severe mistreatment in the military based on his ethnicity,” and would face “punishment that would be disproportionate based on his Chin identity for his absence from the household registry and . . . any mistreatment . . . that has previously been described would likely be intensified by [Tuang’s] Christian faith and identity.”

The BIA reversed. It concluded:

[E]ach link in this hypothetical chain of events is not more likely than not to occur. A respondent’s eligibility for CAT protection cannot be established by stringing together a series of suppositions to show that it is more likely than not that torture will result if the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen.

The BIA considered the record and concluded that the IJ’s factual determinations were clearly erroneous.

The BIA ordered Tuang’s removal to Burma. During the pendency of this petition for review, Tuang was removed to Burma. His counsel indicated at oral argument that he had been detained there. The record does not reflect why or where. The IJ found, prior to Tuang’s removal, that “[r]efusal to submit to military conscription can result in a jail sentence of 3 to 5 years,” and that is supported by articles in the record. But we do not speculate as to why Tuang has been detained.

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II

Tuang presents three issues in his petition. His first contention is that the BIA “engage[d] in improper *de novo* factual review where it disregarded the IJ’s factual findings and reweighed the record evidence.” The BIA’s opinion identified the correct standard of review, recognizing: “We review the findings of fact made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii).” The BIA also cited its own precedent, which explains that “an Immigration Judge’s predictive findings of what may or may not occur in the future are findings of fact, which are subject to a clearly erroneous standard of review” by the BIA.²

The BIA must actually apply the correct standard of review.³ Whether the BIA did so is a question of law we review *de novo*.⁴ In conducting that review, we are guided by the following principles: the “BIA may not overturn an IJ’s factual findings ‘simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder’”;⁵ “[w]here there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous”;⁶ and “a finding is ‘clearly erroneous’ when although there is

² See *Matter of Z-Z-O-*, 26 I. & N. Dec. 586, 590 (B.I.A. 2015).

³ See *Alvarado de Rodriguez v. Holder*, 585 F.3d 227, 235 (5th Cir. 2009); see also *Kabba v. Mukasey*, 530 F.3d 1239, 1245 (10th Cir. 2008) (“Common sense as well as the weight of authority requires that we determine whether the BIA *applied* the correct legal standard, not simply whether it *stated* the correct legal standard.”).

⁴ *Parada-Orellana v. Garland*, 21 F.4th 887, 893 (5th Cir. 2022).

⁵ *Alvarado de Rodriguez*, 585 F.3d at 234 (citation omitted).

⁶ *Id.* at 234-35 (quoting *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985)).

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evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.”⁷

III

An applicant for protection under CAT bears the burden of establishing that if removed, “it is more likely than not that [he] would be tortured by, or with the acquiescence of, government officials acting under the color of law.”⁸ This requires the IJ to make predictive findings of fact.

Before we proceed to consider the IJ’s findings of fact and the BIA’s conclusion that they are clearly erroneous, it is helpful to provide a brief account regarding some of the strife in Burma. This account is taken from reports submitted as evidence by Tuang in his removal proceedings.

More than ten years ago, there were reports that people of Chin ethnicity had been tortured in Burma. An online report prepared in August 2017 by “Minority Rights Group,” and published on “minorityrights.org,” said that “[t]here have been consistent reports of Chin people being recruited as forced labour, arrested arbitrarily and tortured.” That same report stated that “[t]he Chin National Front signed the Nationwide Ceasefire Agreement in October 2015” and that “[r]epresentatives said that the situation facing ethnic Chin in Chin State had improved since the initiation of the peace process.” There were outbreaks of violence thereafter, nevertheless.

In February 2021, a military coup occurred in Burma. The IJ’s findings focus on the potential forced conscription of Tuang by that military junta. In a February 26, 2024 article, the British Broadcasting Corporation

⁷ *Anderson*, 470 U.S. at 573 (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

⁸ *Torosyan v. Blanche*, No. 25-60450, 2026 WL 2244205, at *5 (5th Cir. Aug. 4, 2026) (alteration in original) (quoting *L.N. v. Garland*, 109 F.4th 389, 394 (5th Cir. 2024)).

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(BBC) reported about the Burmese military's conscription policies and actions in Burma. It recounted that, in February 2021, "the military [in Burma] seized power in a coup, jailing elected leaders and plunging much of the country into a bloody civil war that continues today." "Young Burmese, many of whom have played a leading role protesting and resisting the junta, are now told they will have to fight for the regime." Burma's "conscription law was first introduced in 2010 but had not been enforced until on 10 February" "Last October [2023], the regime suffered its most serious setback since the coup." "According to the National Unity Government, which calls itself Myanmar's government in exile, more than 60% of Myanmar's territory is now under the control of resistance forces."

There is no question that, based on the record, Burma is a dangerous place for its inhabitants. There is also no question that human rights violations have occurred across Burma. The Chin people and Christians have been subjected to discrimination and in many instances harsh treatment and persecution. But Buddhist monks and practitioners of Buddhism have not been spared. The country is torn by the military's attempts to maintain control of Burma and those who oppose the military junta.

We now turn to the IJ's operative findings. The IJ cited *Matter of J-F-F*⁹ for the proposition that, in order to grant relief under CAT, she "need[ed] to look and see whether each step in the links in the causal chain are more likely than not to occur." The IJ made five findings regarding torture, only four of which are at issue. We consider each of the five findings.

⁹ 23 I. & N. Dec. 912, 917-18 (A.G. 2006).

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A

The first of the IJ's findings was Tuang would be "encountered as a deportee by the government at the airport, per documented evidence that the U.S. Government provides deportee lists to the Burmese Government and information that Thai officials have similarly done so." This finding is not in dispute.

B

The IJ found Tuang would be "forcibly conscript[ed] . . . because this is how Thai deportees are being treated that are in [Tuang's] age range." The BIA concluded this finding was clearly erroneous, explaining its conclusion. The BIA said that "[i]n 2024, the military government enacted a pre-existing conscription law for all men ages 18 to 35 (Exh. 10 at 41, 57)." This is supported by the record in several places, including Exhibit 10 that the BIA referenced. The IJ did not find to the contrary. The BIA further observed, "[h]owever, the military planned to draft just 60,000 people a year out of the 14 million eligible (Exh. 10 at 48)." This, too, is supported by the BIA's record citation, and other material in the record. Logically, it could not be said, based on these facts, that Tuang would more likely than not be conscripted, even if only males were actually conscripted and therefore the number of those eligible would be approximately 7 million rather than 14 million.

The IJ's finding that it was more likely than not that Tuang would be conscripted was based on articles regarding the treatment of young men sent back to Burma by the Thai government after they had illegally entered Thailand. The IJ extrapolated that young men removed from the United States to Burma would be similarly treated. The BIA addressed the evidence regarding Burmese men deported by Thailand, pointing out that "[i]n fact, the articles concerning returnees from Thailand show that only a few dozen

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were conscripted out of 144,000 citizens (Exh. 5 at 158-61).” One “updated” article, dated August 30, 2024, reported that “Thailand has detained and deported more than 144,000 Myanmar citizens over the past three months,” and that “Myanmar military authorities forcibly recruited dozens of people deported after serving time in jail in the southern Thai province of Ranong”

The IJ relied on an earlier article dated August 16, 2024, which reported that Myanmar “Junta authorities have forcibly recruited nearly six dozen Myanmar nationals repatriated by Thailand after serving time in the country’s Ranong Prison” Details provided in that article included that “[o]n July 30, Thai authorities deported more than 150 Myanmar nationals from Ranong Prison to Myanmar’s southernmost port of Kawthoung and more than 120 others on Aug. 7” and that “Junta authorities arrested at least 23 people from the first group and 48 from the second group upon their return, according to residents of the border town.” The “deportees were all men over the age of 20, many of whom were . . . able to pay bribes to escape forced recruitment.” According to this article, at least 71 (which is “nearly six dozen”) out of 270 males who were eligible for conscription based on their ages were forcibly recruited, though the family of one of the 71 was able to pay a bribe of \$170 in United States dollars after he was taken to a military base, and he was then released. We do not know how many others paid bribes and therefore were, according to witnesses, “released immediately” on August 7 or July 30. Nor do we know if all of the remaining approximately 200 males paid bribes to escape conscription, and if some did not and were not conscripted, why they were not conscripted. There is no indication in the record that any of those conscripted in July and August 2024 after their deportation from Thailand were targeted either for conscription or were passed over for conscription because of their ethnicity or religious beliefs.

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One of the articles in the record said that in July 2024, 355 “Myanmar nationals” “were repatriated” by Thailand after being held for immigration violations. No information was provided as to how many, if any, of those individuals were forced to serve in the Burma military.

Given all the unknowns about how many men deported from Thailand back to Burma were not conscripted, and why they were not, it was not permissible for a factfinder to conclude from the information in the record that more than half of Burmese men deported to Burma by Thailand would be forced to serve in the military. The IJ’s inferential leap was too great, as the BIA concluded.

It is particularly evident that Tuang has not shown that it is more likely than not that *he* would be forcibly conscripted because Tuang has not said whether he or family members would be able to pay a bribe. One of the articles on which the IJ relied reported that “[s]ources said that bribes to avoid service typically range from 500,000 kyats (US\$240) to a staggering 50 million kyats (US\$23,830), depending on the area and draft quota requirements.” That same article also reported that in April 2024, a Burmese man deported from Thailand was arrested upon his return to Burma but released after a bribe equal to \$100 in United States currency was paid. As noted above, another man deported from Thailand in August 2024 paid a bribe equal to \$170 in United States dollars.

C

The third conclusion by the IJ was that “[Tuang] would be given dangerous assignments after being forced into military service based on his ethnicity, given the documented use of human shields, portering continuing, and other dangerous roles being assigned to minorities per the State Department documents in evidence.” The BIA carefully reviewed the record to determine whether this finding was clearly erroneous.

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A 2023 State Department Country Report on Human Rights Practices said: “[t]he military reportedly forced civilians to act as human shields, carry supplies, or serve in other support roles; human rights organizations documented the use of villagers as human shields in Karen, Kachin, and Shan States.” Under the heading “Conflict-related Abuses,” that report also stated:

Fighting between the regime and opposition forces reportedly intensified in Kachin, Chin, Karen, Shan, and Kayah States and in Sagaing and Magway Regions. Reports of killings, disappearances, excessive use of force, disregard for civilian life, sexual and gender-based violence, and other abuses committed by regime security forces were common; some ethnic armed organizations (EAOs) and [People’s Defense Force] groups were accused of similar abuses. . . . Deliberate killings and deaths due to excessive or unjustified use of force by the regime and some opposition forces were reported. The military routinely conducted airstrikes that killed civilians and destroyed civilian infrastructure.

The BIA acknowledged this and similar reports, observing “[w]hile the evidence shows human rights violations in the Chin State, this is not particular to men conscripted into military service (Exh. 4 at 90-94, 140; Exh. 5 at 131, 144).” The record supports that observation. The IJ’s conclusions that Tuang would more likely than not be tortured were based not on human rights violations generally in Burma, but on Tuang’s likely treatment if conscripted into military service.

The BIA reiterated that the IJ’s findings in this regard were clearly erroneous because “[t]he evidence does not support that it is more likely than not that [Tuang] would not only be conscripted into military service but that he would be given dangerous assignments or mistreated based on his

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ethnicity (Chin) and/or religion (Christianity).” The BIA then gave more detailed reasons why it concluded the IJ’s findings were clearly erroneous:

- “[E]vidence of villagers or minority ethnic groups being used as porters or ‘human shields’ outside of the military conscription context does not support that [Tuang] would be used as a ‘human shield’ if conscripted into the military upon his return to Burma (Exh. 10 at 53).”
- “The 2023 State Department Human Rights Report notes that the military reportedly forced civilians to act as human shields, but this did not occur in Chin State (Exh. 4 at 94).”
- “The 2022 International Religious Freedoms Report notes an instance of a Buddhist monk and civilians abducted and used as human shields in Mindat Township in Chin State, but this is some 11 hours away from [Tuang’s] hometown of Chikha (Exh. 3 at 4; Exh. 5 at 138).” This is an accurate statement regarding the record. Additionally, Buddhism is the majority religion in Burma, as the IJ found, so the monk was not targeted based on minority religious beliefs.
- “Other mentions of ‘human shields’ in the record in relation to military service comes from researchers and activists positing that recent recruits of any background may be used as such given that the military is in a poor state and losing within the country (Exh. 10 at 41, 64),” but “there is no objective evidence [that using members of the military as human shields] is happening.” This conclusion is supported by the record. The articles all discuss *fears* expressed by researchers and activists, not reports of actual occurrences. The record contains reports that say the military hopes that conscriptions in large numbers from many sources will boost morale and prevent the

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“physical collapse of the military.”¹⁰ Using military members as “human shields” would certainly not aid in recruitment.

- “The conclusion that [Tuang] would be given dangerous assignments or mistreated due to his ethnicity and religion if conscripted is speculative.”

The BIA properly conducted its review of the IJ’s third finding. We agree with the BIA that this finding was clearly erroneous.

D

The IJ’s fourth finding was that “[Tuang] would experience severe mistreatment in the military based on his ethnicity, given the use of arbitrary arrests and detention documented in the State Department Country Reports Against Ethnic Minorities and the perception that members of the Chin community are political dissidents.” The BIA’s analysis of the third finding

¹⁰ For example, one report states:

USIP’s data shows that 12 brigadier generals have been killed or captured by the resistance. With mass demoralization, surrender, desertion and the loss of senior officers threatening military institutions, the generals apparently hope that the prospect of new recruits in large numbers will prevent the morale and physical collapse of the military — at least for now.

But the generals are still faced with the key question of how to conscript young people who harbor deep resentment toward the military — which is almost all of them. Furthermore, the need for manpower is urgent, as fighting is expected to escalate in March and April. This has reportedly already led the military to bypass the lengthy recruitment procedures and rely on its notorious methods of forced and arbitrary recruitment: pulling people off the streets, from their homes and out of IDP camps.

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apply to the IJ's fourth finding, as well. The BIA correctly applied a clear-error analysis.

E

The IJ's fifth finding was that "[Tuang] also faces . . . punishment that would be disproportionate based on his Chin identity for his absence from the household registry and . . . any mistreatment . . . that has previously been described would likely be intensified by [Tuang's] Christian faith and identity." For the reasons considered above, the record does not support the IJ's finding in this regard. The BIA correctly concluded that this finding was speculative and clearly erroneous.

The IJ noted that by Tuang's "best estimate, his parents did remove [him] and his brother from their household registry" in 2014 or 2015. The IJ said the Burmese government has "historically used these household registries to track anti-government sympathizers and to punish their families and to punish those who have left the country without permission. So the Court notes that the household registry creates an issue for [Tuang] in this case." But the IJ did not explain much less cite record support as to what "disproportionate" "punishment" Tuang would face and how it would amount to torture.

The IJ's decision reflects that Tuang "clearly testified that he was never harmed on account of his religion" and that "he was never personally targeted as a result of his Christianity" when he lived in Burma. But the IJ did find that Tuang had suffered harm while living in Burma related to his Chin ethnicity. In 2004, Tuang, his brother, and other Chin children from their school were forced by the military to clear brush on Fridays "to make sure that the Burmese military had clear observation stations." The IJ found that "[t]he children clearing the brush learned that the fields contained active land mines, and the only individuals that were present clearing this brush,

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doing this dangerous activity, were Chin youth,” and that “[a] teacher at the school did ask the military not to put the students in a position of clearing brush near active land mines, but the military refused this request.”

When Tuang was 13 and his brother was 16, they were forced to porter clothing, ammunition, and gun magazines for the Burmese military “for what felt like 4 to 5 hours.” Tuang was given a bamboo bag and a heavy backpack and was forced to carry these bags on his head. Tuang said it was painful because “this is a traditional way for Burmese people to carry items, but, generally, there is a shoulder brace provided so that the weight of the bag is not fully on your head.” Boys who refused to porter or who tried to stop along the way to rest or drink water from streams were kicked. They were not given any water during their journey. That evening, Tuang and his brother were confined in a chicken coop, and soldiers attempted to persuade them to join the military. Tuang’s brother was the primary focus, but both boys were kicked when they refused to join, and Tuang’s brother was “pretty severely” beaten. Tuang and his brother escaped later that night and ran home. This precipitated the brothers’ flight to another village, then on to Malaysia by way of Thailand. In 2012, they were admitted to the United States as refugees. Their parents told them the Burmese military inquired about them during a time that spanned from 2006 to 2015.

The IJ considered these events, concluding that “the Court does not in any way seek to minimize the past harm that [Tuang] experienced, especially as a 13-year-old boy,” but “I would not find that that harm was sufficiently severe to rise to the level of torture.” Nevertheless, the IJ said, “I would find that it is indicative of potential future harm, and it was serious harm, certainly serious enough to be found to be past persecution in granting [Tuang] refugee status to come to the United States.” The IJ reiterated that it did not rise to the level of past torture: “I do note the age of [Tuang], the nature of the harm, the risk that he was facing in clearing the fields, and how

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scary it must have been to be removed from your home village, but I would not find that it was past torture.” The IJ continued, “[h]owever, the past harm is an indicator of potential future torture, and the Court will give it the appropriate weight.”

The BIA did not consider this to be evidence that Tuang would more likely than not be tortured. We agree with that assessment.

IV

The second issue pressed in Tuang’s petition is that the IJ’s decision was supported by substantial evidence, and the BIA’s factual findings are clearly erroneous. Tuang’s argument overlaps with his contention that the BIA conducted a de novo review rather than considering whether the IJ’s findings were clearly erroneous. We will not repeat the analysis in section III above. It resolves Tuang’s second issue.

V

In his third issue, Tuang contends we must remand this case to the IJ. He argues that even if the BIA “deemed the IJ’s findings of fact clearly erroneous,” it took “it upon itself to correct those errors by making new evidentiary findings.”

The BIA did not make evidentiary findings. We have said in the immigration context that “factfinding” includes developing a record, gathering new information, and choosing between disputed facts.¹¹ The BIA did none of those. It considered whether the four pivotal fact findings by the IJ were clearly erroneous. It concluded they were. Tuang had the burden of proving that more likely than not, he would be tortured if he were to be removed to Burma. He did not meet that burden of proof. The IJ’s findings

¹¹ See *Santos-Zacaria v. Garland*, 126 F.4th 363, 368 (5th Cir. 2025).

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that he did were clearly erroneous. The IJ considered all of Tuang's evidence and arguments. The BIA was not required to remand to the IJ for further factfinding.

* * *

We DENY Tuang's petition for review.