[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-12614
Non-Argument Calendar

Agency No. A208-567-292

ALBA HERLINDA JIMENEZ-PEREZ,
J. J. D. J. P.,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals

(May 29, 2020)

Before GRANT, LUCK and MARCUS, Circuit Judges.

PER CURIAM:

Alba Jimenez-Perez and her son seek review of the final order of the Board of Immigration Appeals ("BIA") affirming the Immigration Judge's ("IJ") denial of their application for asylum, withholding of removal, humanitarian asylum, and Convention Against Torture ("CAT") relief.[1] In her petition, Jimenez-Perez argues that: (1) in light of Perez-Sanchez v. U.S. Att'y Gen., 935 F.3d 1148 (11th Cir. 2019), the BIA erred by relying on Matter of Bermudez-Cota, 27 I. & N. Dec. 441 (BIA 2018), in dismissing her appeal because her notices to appear ("NTA") that did not specify the time and place of her hearing violated the agency's claim-processing rules; and (2) the IJ and BIA failed to afford reasoned consideration and applied incorrect legal standards to her claims for asylum, humanitarian asylum, and CAT relief. After thorough review, we dismiss the petition in part and deny it in part.

For starters, we lack jurisdiction to review Jimenez-Perez's claim-processing argument. We review our own subject matter jurisdiction de novo. Amaya-Artunduaga v. U.S. Att'y Gen., 463 F.3d 1247, 1250 (11th Cir. 2006). We lack jurisdiction to review the BIA's decision unless the petitioner has exhausted all administrative remedies available to her. Indrawati v. U.S. Att'y Gen., 779 F.3d 1284, 1297 (11th Cir. 2015). A petitioner fails to exhaust all administrative remedies regarding a specific claim when she neglects to raise that claim before the BIA. Id.

[1] Because the applications for relief are based on Jimenez-Perez's past persecution and her son is a derivative beneficiary, we discuss the proceedings only as to Jimenez-Perez.

This requirement is not "stringent." Id. It merely requires the petitioner to have previously argued the "core issue" now on appeal before the BIA, as well as set out any discrete arguments supporting the claim. Jeune v. Att'y Gen., 810 F.3d 792, 800 (11th Cir. 2016) (quotations omitted). Although she is not required to "use precise legal terminology" or present a well-developed argument supporting her claim, the petitioner must "provide information sufficient to enable the BIA to review and correct any errors below." Id. (quotations omitted). The exhaustion requirement precludes review of a claim not presented to the BIA even if the BIA elected to address the issue sua sponte. Amaya-Artunduaga, 463 F.3d at 1250-51.

An immigration court is vested with jurisdiction to conduct removal proceedings upon the filing of a "charging document." 8 C.F.R. § 1003.14(a). An NTA is a charging document. Cunningham v. U.S. Att'y Gen., 335 F.3d 1262, 1266 (11th Cir. 2003). The Immigration and Nationality Act ("INA") requires an NTA to specify the time and place at which an alien's removal hearing will be held. 8 U.S.C. § 1229(a)(1)(G)(i). The regulatory framework, however, does not require an NTA to specify the time and place of a removal hearing. See generally 8 C.F.R. § 1003.15.

In Pereira v. Sessions, the Supreme Court considered when an alien's continuous physical presence for purposes of cancellation of removal ends, and held that an NTA that does not specify the time and place of a hearing does not comport with 8 U.S.C. § 1229(a) and consequently is not an NTA at all. 138 S. Ct. 2105,

2110 (2018). Following Pereira, the BIA addressed the question of whether a defective NTA nevertheless vests the IJ with jurisdiction. Bermudez-Cota, 27 I. & N. Dec. at 442-43. The BIA concluded that an NTA that does not specify the time and place of an alien's initial hearing is sufficient to vest the IJ with jurisdiction so long as it is followed by a notice of hearing that supplies this missing information. Id. at 447. The BIA noted both the long history of NTAs that lacked time and place specifications and that the Supreme Court in Pereira remanded the case for further proceedings, indicating that there was jurisdiction over the case. Id. at 443-47.

After Pereira, we held that, although an NTA's failure to specify the time of the hearing violated 8 U.S.C. § 1229, the statutory requirement was not jurisdictional and was instead a claim-processing rule. Perez-Sanchez, 935 F.3d at 1153-55. We further reasoned that 8 C.F.R. § 1003.14 was a claim-processing rule because agencies cannot set or limit their own jurisdiction. Id. at 1155-57. Thus, we held that, even if the NTA's failure to specify the time of the hearing rendered it deficient under 8 C.F.R. § 1003.14, the agency still properly exercised jurisdiction because the regulation could not have imposed a jurisdictional limitation. Id. We then determined that we lacked jurisdiction to address whether the case should be remanded on the basis that the NTA violated the agency's claim-processing rules because the petitioner had not exhausted that claim. Id. at 1157.

Here, under our binding case law, Jimenez-Perez's defective NTA did not deprive the IJ of jurisdiction. See id. Moreover, we lack jurisdiction to consider Jimenez-Perez's claim-processing argument because she did not raise it before the BIA. See id. While Jimenez-Perez raised the "core issue" of the defective NTAs to the BIA, she did not challenge the agency's claim-processing rule in any way, instead urging that the IJ lacked jurisdiction. Jeune, 810 F.3d at 800. To the extent the BIA addressed the claim-processing issue sua sponte when it said that Jimenez-Perez had waived any challenge to her NTAs by failing to raise it before the IJ, that statement did not remove the exhaustion requirement. Amaya-Artunduaga, 463 F.3d at 1250-51. Accordingly, we dismiss her petition for lack of jurisdiction to the extent that she argues that the defective NTAs violated the agency's claim-processing rule.

We turn now to Jimenez-Perez's substantive argument that the IJ and BIA failed to afford reasoned consideration and applied incorrect legal standards to her claims for asylum and humanitarian asylum. In this analysis, we review only the BIA's decision, except to the extent that the BIA either expressly adopts the IJ's decision or explicitly agrees with the IJ's findings. Jeune, 810 F.3d at 799. In reviewing the BIA decision, we review de novo the agency's legal conclusions, but we "defer to the BIA's interpretation of a statute if it is reasonable and does not contradict the clear intent of Congress." Quinchia v. U.S. Att'y Gen., 552 F.3d 1255, 1258 (11th Cir. 2008) (quotations omitted); Chevron, U.S.A., Inc. v. Nat. Res. Def.

Council, Inc., 467 U.S. 837, 842-44 (1984). However, if congressional intent is clear, courts and agencies "must give effect to [Congress's] unambiguously expressed intent." Chevron, 467 U.S. at 842-43. An agency's "interpretation is reasonable and controlling unless it is arbitrary, capricious, or manifestly contrary to the statute." Dawson v. Scott, 50 F.3d 884, 887 (11th Cir. 1995) (quotations omitted). Chevron deference is appropriate in cases involving precedential three-member decisions of the BIA or single member BIA decisions resting on existing BIA or federal court precedent. Quinchia, 552 F.3d at 1258.

Claims that the agency failed to give reasoned consideration or applied the wrong legal standard to an issue are questions of law that we review de novo. Jeune, 810 F.3d at 799. In a reasoned-consideration examination, we ask whether the agency "consider[ed] the issues raised and announce[ed] its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." Id. at 803 (quotations omitted). "[T]he agency does not give reasoned consideration to a claim when it misstates the contents of the record, fails to adequately explain its rejection of logical conclusions, or provides justifications for its decision which are unreasonable and which do not respond to any arguments in the record." Id. However, the BIA and IJ "are not required to address specifically each claim the petitioner made or each piece of evidence the petitioner presented." Ayala v. U.S. Att'y Gen., 605 F.3d 941, 948 (11th Cir. 2010) (quotations omitted).

We review the agency's factual findings under the substantial evidence test. Gonzalez v. U.S. Att'y Gen., 820 F.3d 399, 403 (11th Cir. 2016). Under this test, the agency's decision will be affirmed "if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." Silva v. U.S. Att'y Gen., 448 F.3d 1229, 1236 (11th Cir. 2006) (quotations omitted). Thus, the agency's factual findings may be reversed only if the record compels reversal. Id.

Issues not briefed on appeal are deemed abandoned. Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008). Issues raised for the first time in a reply brief are also deemed abandoned. Id. To raise an issue on appeal, a party must "specifically and clearly identif[y] it in its opening brief." Cole v. U.S. Att'y Gen., 712 F.3d 517, 530 (11th Cir. 2013) (quotations omitted).

An applicant for asylum must meet the INA's definition of a refugee. 8 U.S.C. § 1158(b)(1). The definition of "refugee" includes:

> any person who is outside any country of such person's nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A). Thus, the applicant must, with "specific and credible evidence," establish (1) past persecution on account of a statutorily listed factor, or (2) a well-founded fear that the statutorily listed factor will cause future persecution. Ruiz v. U.S. Att'y Gen., 440 F.3d 1247, 1257 (11th Cir. 2006) (quotations omitted).

An "applicant must prove that the protected ground was or will be at least one central reason for persecuti[on]." Perez-Zeneto v. U.S. Att'y Gen., 913 F.3d 1301, 1307 (11th Cir. 2019) (quotations omitted). We've held that "persecution is an extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation, and that mere harassment does not amount to persecution." De Santamaria v. U.S. Att'y Gen., 525 F.3d 999, 1008 (11th Cir. 2008) (quotations omitted). "In determining whether an alien has suffered past persecution, the IJ must consider the cumulative effect of the alleged persecutory incidents." Id.

The INA does not define "particular social group," but we've deferred to the BIA's criteria. Castillo-Arias v. U.S. Att'y Gen., 446 F.3d 1190, 1196 (11th Cir. 2006). Whether an applicant's proposed group constitutes a particular social group is a question of law. Perez-Zeneto, 913 F.3d at 1306.

To satisfy the particular social group criteria, the group's members first must have a "common characteristic other than their risk of being persecuted," and that characteristic must be immutable or fundamental to a member's individual conscience or identity. Castillo-Arias, 446 F.3d at 1193–94, 1196–97. Notably, "[t]he risk of persecution alone does not create a particular social group within the meaning of the INA." Id. at 1198. Second, a group must have sufficient social visibility. Id. at 1194, 1197–98. Social visibility, or "social distinction," requires a group to be socially distinct within the society in question, meaning it must be

perceived as a group by society. Matter of W-G-R-, 26 I. & N. Dec. 208, 216 (BIA 2014). Whether a group is socially distinct is determined by the perception of the society as a whole and not by the persecutor's perception of the group. Matter of M-E-V-G-, 26 I. & N. Dec. 227, 242 (BIA 2014). Third, a group must be "defined with particularity," so it must "be discrete and have definable boundaries" and not "amorphous, overbroad, diffuse, or subjective." Gonzalez, 820 F.3d at 404 (quoting W-G-R-, 26 I. & N. Dec. at 214); see also M-E-V-G-, 26 I. & N. Dec. at 239 ("A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group."). The BIA decides on a "case-by-case basis" whether a "particular kind of group characteristic" meets these requirements. Matter of Acosta, 19 I. & N. Dec. 211, 233 (BIA 1985), overruled on other grounds by Matter of Mogharrabi, 19 I. & N. Dec. 439, 441 (1987).

In Perez-Zeneto, we considered whether "Mexican citizens targeted by criminal groups because they have been in the United States and they have families in the United States" was a particular social group under the INA. 913 F.3d at 1304. We explained that the IJ and BIA had reasonably applied precedent requiring particular social groups to be socially distinct and defined with particularity and reasonably concluded that Perez-Zenteno had failed to establish that her proffered group was either socially distinct or defined with sufficient particularity. Id. at 1308–09. Additionally, the BIA had reasonably determined that the group was

circularly defined by the risk of persecution because the group's defining attribute was that it was "targeted by" criminal groups. Id. at 1309–10. Even reviewing the matter de novo, we concluded that Perez-Zenteno's proffered definition did not constitute a particular social group because the group had been "drawn far too broadly" and the petitioner had "done nothing to limit or circumscribe this large and diverse group in any way." Id. at 1311.

The BIA also recently explored the meaning of the phrase "particular social group." In Matter of A-R-C-G-, the BIA determined that the respondent, a domestic-violence victim, was a member of a particular social group of "married women in Guatemala who are unable to leave their relationship." 26 I. & N. Dec. 388, 388-90 (BIA 2014). But then, in Matter of A-B-, the Attorney General addressed whether "being a victim of private criminal activity constitutes a cognizable 'particular social group' for purposes of an application for asylum or withholding of removal." 27 I. & N. Dec. 316, 317 (BIA 2018). Changing course, the Attorney General overruled A-R-C-G- as wrongly decided on the grounds that it was based on concessions by the Department of Homeland Security that the group was cognizable, and that the BIA's analysis was cursory, lacked rigor and broke with precedent. Id. at 331–33.

According to the Attorney General, a particular social group must "exist independently of the harm asserted" by the applicant. Id. at 334 (quotations omitted). However, A-R-C-G- had "never considered that 'married women in

Guatemala who are unable to leave their relationship' was effectively defined to consist of women in Guatemala who are victims of domestic abuse because the inability 'to leave' was created by harm or threatened harm," and was not independent of it. Id. at 335. The Attorney General noted that "[s]ocial groups defined by their vulnerability to private criminal activity likely lack the particularity required under M-E-V-G-, given that broad swaths of society may be susceptible to victimization." Id. at 335. Similarly, the Attorney General criticized A-R-C-G- for viewing the group as cognizable because there was "significant room for doubt" that Guatemalan society viewed the women as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances. Id. at 336.

Thereafter, in Amezcua-Preciado v. U.S. Attorney General, 943 F.3d 1337 (11th Cir. 2019), we held that we deferred to the interpretation of the term "particular social group" the Attorney General used in A-B-, and based on that interpretation, the BIA did not err in concluding that "women in Mexico who are unable to leave their domestic relationship" was not a cognizable social group. Id. at 1344. As we explained, Amezcua-Preciado's proposed group closely mirrored, and suffered from the same defects as, the proposed group in A-R-C-G- that the Attorney General found not cognizable. Id. at 1344-45. In other words, the proposed group was not

socially distinct within Mexican society, was not defined with sufficient particularity, and was circularly defined with regard to the asserted persecution. Id.

An applicant may qualify for asylum even without showing a well-founded fear of future persecution if she (1) demonstrates "compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution"; or (2) establishes "a reasonable possibility that he or she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13(b)(1)(iii). This provision describes what courts refer to as "humanitarian asylum." Mehmeti v. U.S. Att'y Gen., 572 F.3d 1196, 1200 (11th Cir. 2009). Nevertheless, an applicant for humanitarian asylum still must show that she is a "refugee" within the meaning of the INA. Perez-Zeneto, 913 F.3d at 1311 n.3.

Here, Jimenez-Perez sought asylum and humanitarian asylum based on her claims that she had been persecuted on account of her membership in the particular social group of "Guatemalan women viewed as property" and on account of her membership in "the Jimenez family." She now argues that the BIA applied incorrect legal standards in rejecting both of these claims. We disagree.

First, we note that, even on de novo review, Jimenez-Perez has not identified any legal errors in the BIA's decision that "Guatemalan women viewed as property" is not a particular social group. Among other things, Jimenez-Perez's group lacks particularity because, while the words "viewed as property" indicates that the group

is intended to encompass some subset of "Guatemalan women," there is no obvious criterion for whether a Guatemalan woman is viewed as property. See Gonzalez, 820 F.3d at 404; Amezcua-Preciado, 943 F.3d 1344-45. To the extent Jimenez-Perez intends "viewed as property" to mean that an individual is treated as property, in the sense that she was subjected to mistreatment, the definition is impermissibly circular because it is defined by the persecution that its members experience. See Perez-Zeneto, 913 F.3d at 1309-10; Amezcua-Preciado, 943 F.3d at 1345; A-B-, 27 I. & N. Dec. at 334-35. Jimenez-Perez argues that in evaluating this factor, the BIA conflated diversity with overbreadth, but she cites only out-of-circuit decisions for this proposition. The BIA's language, notably, was consistent with our precedent that a petitioner's failure to limit a "large and diverse group" may render the group overbroad. Perez-Zeneto, 913 F.3d at 1311.

Further, Jimenez-Perez's proposed group lacks social distinctness because nothing suggests that Guatemalan society recognizes women who are viewed as property to be socially distinct. Amezcua-Preciado, 943 F.3d at 1344-45; W-G-R-, 26 I. & N. Dec. at 216; M-E-V-G-, 26 I. & N. Dec. at 242; A-B-, 27 I. & N. Dec. at 336. And while the BIA expressly held that Jimenez-Perez had failed to show that her group was socially distinct, providing an independent basis for its decision, Jimenez-Perez did not sufficiently challenge that determination in her initial brief to this Court. Timson, 518 F.3d at 874; Cole, 712 F.3d at 530. On this record, we

cannot say that the BIA legally erred in holding that "Guatemalan women viewed as property" is not a particular social group.

As for Jimenez-Perez's claim based on her membership in the Jimenez family, the record reveals that the BIA afforded reasoned consideration to this claim. The BIA properly noted that a protected ground need only be "a central reason" for persecution; Jimenez-Perez offers nothing the BIA failed to consider; and the BIA's decision is not disorganized nor confusing. Jeune, 810 F.3d at 799, 803. Further, the BIA properly applied clear-error review to the IJ's factual finding that certain threats and attacks were "on account of criminal intent or due to personal disputes," and did not improperly apply clear-error review to any conclusions of law. Id. While Jimenez-Perez says the BIA legally erred in holding that particular threats and attacks did not constitute persecution, the BIA did not reach that issue since it found that the acts had no nexus to a protected ground. The BIA also identified and applied the proper legal standard for showing a well-founded fear of persecution. And the BIA's treatment of her claims based on her father's abuse did not impose an improperly high standard of proof. To the contrary, it accurately tracked our precedent that the agency must consider the "cumulative effect" of alleged incidents of persecution, and it nowhere required her to provide additional corroborating evidence of persecution. De Santamaria, 525 F.3d at 1008.

As for her claim for humanitarian asylum, the record again reflects that the BIA afforded her reasoned consideration, recognizing that its determination that she was not a "refugee" foreclosed the claim. Perez-Zeneto, 913 F.3d at 1311 n.3. Thus, for all of these reasons, Jimenez-Perez has not shown that the BIA erred as a matter of law in evaluating her applications for asylum or humanitarian asylum.

Finally, we find no merit to Jimenez-Perez's claim that the BIA failed to afford reasoned consideration or applied an incorrect legal standard to her claim for CAT relief. We review the BIA's and IJ's factual findings concerning CAT relief under the substantial evidence test. See Alim v. Gonzales, 446 F.3d 1239, 1255-57 (11th Cir. 2006). "The burden of proof is on the applicant for withholding of removal under [CAT] to establish that it is more likely than not that . . . she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). In order for an act to constitute torture, it must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." Id. § 1208.18(a)(1). "Acquiescence" requires that a "public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." Id. § 1208.18(a)(7). In other words, it means that "the government was aware of the torture, yet breached its responsibility to intervene." Rodriguez Morales v. U.S. Att'y Gen., 488 F.3d 884, 891 (11th Cir. 2007); see also

Reyes-Sanchez v. U.S. Att'y Gen., 369 F.3d 1239, 1243 (11th Cir. 2004) (holding that the Peruvian government did not acquiesce to torture where police responded to reported incident of torture, even if never apprehended those responsible).

In assessing a CAT claim, the IJ must consider "all evidence relevant to the possibility of future torture." 8 C.F.R. § 1208.16(c)(3). Specifically, the IJ must consider: (1) "[e]vidence of past torture"; (2) "[e]vidence that the applicant could relocate to a part of the country . . . where . . . she is not likely to be tortured"; (3) "[e]vidence of gross, flagrant or mass violations of human rights within the country"; and (4) "[o]ther relevant information regarding conditions." Id.

Here, we cannot say the BIA legally erred in rejecting Jimenez-Perez's claim for CAT relief. The BIA's detailed discussion of the issue indicates that it did not simply agree with the IJ, but instead conducted its own analysis. For instance, when Jimenez-Perez argued that the Guatemalan government's failure to prevent or respond to the harms she'd suffered showed it would acquiesce to her torture in the future, the BIA found that, in each instance, she had not shown government acquiescence. The BIA's analysis confirmed that it "heard and thought and [did] not merely react[]" in rejecting her claim. Jeune, 810 F.3d at 803.

To the extent Jimenez-Perez says the BIA and IJ did not consider all of the evidence, they were not required to specifically address each piece of evidence. Ayala, 605 F.3d at 948. Regardless, the record reveals that the BIA reviewed it all,

thoroughly rejecting Jimenez-Perez's argument that the IJ had failed to consider evidence. Further, because the BIA and IJ treated Jimenez-Perez's testimony as true in evaluating her claims, they did not need to specifically address the evidence corroborating her testimony as well. See id. Nor did the BIA impose a requirement that Jimenez-Perez report past incidents of torture to the police. Rather, it noted only that she had not reported certain incidents as evidence that the government was unaware of them.

Accordingly, we dismiss Jimenez-Perez's petition for review to the extent that she argues that her defective NTA violated the agency's claim-processing rule and deny the petition in all other respects. [2]

DISMISSED IN PART AND DENIED IN PART.

[2] We add that Jimenez-Perez has abandoned any challenge to the BIA's and IJ's determinations that she was ineligible for withholding of removal and any challenge to the BIA's factual findings concerning her CAT claim, since she does not raise those issues in her initial brief. See Timson, 518 F.3d at 874. She also concedes that she is not challenging the IJ's and BIA's factual determinations concerning her asylum claim, so she's abandoned that challenge as well. Id. As for her argument that the BIA erred in evaluating her proposed social group of "the Jimenez family," it is misplaced because the BIA assumed that the group was cognizable.