

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-11252
Non-Argument Calendar

KERIEKAN JERMAINE PALMER,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A087-037-637

Before ROSENBAUM, LUCK, and ABUDU, Circuit Judges.

PER CURIAM:

Keriekan Jermaine Palmer seeks review of the Board of Immigration Appeals's dismissal of his appeal of an immigration judge's order denying his application to waive the joint filing

requirement to petition for removal of his conditional permanent resident status, and his application for asylum, withholding of removal, and relief under the Convention Against Torture (“CAT”). After careful review, we deny the petition.

FACTUAL BACKGROUND

Palmer is a Jamaican citizen seeking a waiver of the joint filing requirement to remove the conditions on his permanent resident status, asylum, withholding of removal, and relief under the Convention. He does not want to return to Jamaica because of violent acts and threats by the Stone Crusher gang.

Palmer was admitted to the United States as a visitor on October 27, 2006. On April 27, 2007, he married Denise Dunn, a United States citizen. Because of the marriage, he became a conditional permanent resident on March 11, 2008. On May 20, 2010, Palmer and Dunn jointly filed a petition to remove the conditions on Palmer’s residency. But because Palmer failed to appear for an interview, the petition was denied, and his conditional permanent residency was terminated on March 11, 2011.

Palmer and Dunn divorced on December 20, 2011. Between 2011 and 2017, Palmer filed three more petitions on his own, requesting a good faith waiver of the joint filing requirement. Each time, the United States Citizenship and Immigration Services denied the petition because he did not prove his marriage was entered in good faith. While these petitions were pending, Palmer was arrested and convicted on five separate occasions for obstructing the

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police, dealing in stolen property, marijuana possession, and two instances of resisting an officer.

On June 27, 2014, the Department of Homeland Security served Palmer with a notice to appear before an immigration judge, charging that he was removable under the Immigration and Nationality Act. On March 26, 2019, the Department formally initiated removal proceedings against Palmer.

PROCEDURAL HISTORY

Preliminary hearings

Immigration Judge Yon Alberdi presided over Palmer's initial hearing on August 14, 2020. Judge Alberdi informed Palmer that he had a right to an attorney at his own expense. Palmer appeared pro se, but indicated to the judge that he had hired an attorney the day before who could only appear "five days or a week" in the future. Judge Alberdi rescheduled the hearing for two weeks later on August 28, 2020.

Immigration Judge Kevin Chapman presided over the August 28, 2020, hearing. Palmer again appeared pro se and explained that the attorney he retained had been disbarred. Palmer told Judge Chapman that the attorney had kept his retainer, and he was having trouble getting the money to pay a second attorney. Judge Chapman responded that the case must move forward at some point, and that Palmer must either hire an attorney or represent himself.

Palmer clarified that he had already spoken with another attorney who would meet with him on September 23, 2020. Judge Chapman was concerned about the delay and stated that they couldn't "sit around from July 17th when [Palmer] was detained to September 23rd when you can talk with a lawyer." Judge Chapman inquired into why Palmer did not want to return to Jamaica, gave him an application for asylum, and told him to fill out the application before his next hearing. Judge Chapman also told Palmer he could send in supporting documents with his application, but Palmer explained that it was not possible to contact his family, hospitals, or the police in Jamaica from immigration detention. Judge Chapman scheduled another hearing for September 11, 2020, and told Palmer to tell the presiding judge that he is scheduled to speak with an attorney on September 23, and is in the process of obtaining supporting evidence for his asylum application. On September 2, 2020, Palmer submitted his petition for asylum, withholding of removal, and relief under the Convention.

The next hearing was held as scheduled on September 11, 2020, with Judge Alberdi presiding and Palmer appearing pro se. Despite Judge Chapman's direction, Palmer did not tell Judge Alberdi that he was speaking with an attorney on September 23, or that he needed additional time to collect evidence for his asylum application. Even so, Judge Alberdi continued the hearing until October 8, 2020. Judge Alberdi indicated that he was giving Palmer more time to submit evidence and prepare for the hearing. He also explained the types of evidence Palmer could submit in support of his case, including documents and letters describing the details of

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his marriage and divorce. Palmer stated that he already sent in two letters,¹ but that he was having trouble obtaining paperwork from Dunn. In response, Judge Alberdi suggested that Palmer write and submit a letter explaining the details of his relationship with Dunn.

In a written statement dated September 17, 2020, Palmer explained the circumstances surrounding the gang violence he faced in Jamaica, his move to the United States, and his relationship with Dunn. These facts were addressed in further detail at his final removal hearing.

Final removal hearing

On October 8, 2020, Judge Alberdi presided over Palmer's final removal hearing. Palmer again appeared pro se. He did not mention whether he had met with an attorney as scheduled on September 23, 2020, or whether he still wanted to retain counsel. Judge Alberdi explained that the hearing would address both Palmer's petition for a good faith waiver and his asylum application. Judge Alberdi noted that he received the pro se letter written by Palmer explaining his marriage, and asked Palmer if he had sent in any other documents. Palmer responded that he attempted to get documents from a hospital and a police station in Jamaica, but that he had been unsuccessful.

Judge Alberdi explained that he would ask Palmer questions because Palmer was appearing pro se. Judge Alberdi began by

¹ No letters were submitted to the immigration judge before the final removal hearing on October 8, 2020.

asking Palmer background questions about his age, place of birth, and family members. Judge Alberdi then asked Palmer why he was afraid to return to Jamaica. Palmer responded that the Stone Crusher gang was trying to extort him, had burned down his business when he first came to the United States, and burned down his house in 2011. He also described multiple experiences he had with the gang in Jamaica, including a disfiguring machete attack against him in 2005, an attack against him and his daughter at gunpoint in 2010, and the shooting of his brother in 2011. When Judge Alberdi asked Palmer why the gang was targeting him, Palmer responded that it wanted to get money from him because he was in the United States.

Judge Alberdi then inquired about Palmer's marriage to Dunn. Judge Alberdi asked Palmer several specific questions, such as how long Palmer and Dunn dated before their marriage, whether he and Dunn lived together, whether he could provide documents related to the leases or mortgages he shared with Dunn, and whether he could provide any tax returns or insurance policies with both names. Palmer stated that he did not have any of these supporting documents because he did not have contact with Dunn and she never returned anything to him after the divorce. Palmer indicated that he had photos, car payments, utility bills, and bank statements showing they were married, but that he did not have access to these documents from inside immigration detention.

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Next, Judge Alberdi asked Palmer about his criminal history. Palmer explained the circumstances of each of his arrests and convictions. After the government questioned Palmer, Judge Alberdi asked if there was anything else Palmer wanted to tell the court as to why he should be allowed to remain in the United States. Palmer asserted that he would face death if he returned to Jamaica.

Judge Alberdi entered an oral decision at the end of the hearing. First, he denied Palmer's application for a good faith waiver to the joint filing requirement. He explained that "due to the scant evidence" besides Palmer's "own testimony, this [c]ourt cannot find any type of probative evidence to demonstrate [Palmer] entered into a good faith marriage with . . . Dunn." Next, Judge Alberdi denied Palmer's applications for asylum and withholding of removal. He found Palmer's testimony credible, but concluded that Palmer's fear of gang violence did not have a nexus to a statutorily protected ground. Finally, Judge Alberdi denied Palmer's application for Convention relief because he failed to show that he would be tortured by or with the consent of the Jamaican government. While Judge Alberdi "believe[d] what happened" to Palmer, he explained that "being attacked by gangs is not a grounds for" relief.

The board's review

Palmer filed a notice of appeal with the board, arguing that the removal proceedings violated his due process rights. He asserted that he did not waive his right to counsel, the removal

proceedings were rushed because of the coronavirus pandemic, and the immigration judge failed to develop the record.²

On March 22, 2022, the board dismissed Palmer's appeal. The board ruled that Palmer's due process rights were not violated because Palmer was advised of his right to counsel, given a continuance and a reasonable opportunity to obtain counsel, and waived his right to counsel when he proceeded at the September 11 and October 8, 2020, hearings without mentioning counsel. The board also explained that Judge Alberdi met his duty to develop the record and gave Palmer adequate time to obtain and present evidence. On the merits, the board affirmed the immigration judge's denials of Palmer's applications for relief.

Palmer now petitions for review.

STANDARD OF REVIEW

Unless the board expressly adopts an immigration judge's opinion, we review only the board's decision. *Jiang v. U.S. Att'y Gen.*, 568 F.3d 1252, 1256 (11th Cir. 2009). When the board explicitly agrees with the findings of the immigration judge, we review both decisions on those issues. *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016). "We review de novo the conclusions of law by the [b]oard and [i]mmigration [j]udge, but we review findings of fact for substantial evidence to support them." *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 1350 (11th Cir. 2009). Under the

² Other issues were also raised but they are not relevant here.

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substantial evidence standard, “we must affirm if the decision . . . 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, 1237 (11th Cir. 2006) (quotation omitted).

DISCUSSION

Palmer asserts that his removal proceedings violated his due process rights. Noncitizens in removal “proceedings are entitled to due process of law under the Fifth Amendment.” *Frech v. U.S. Att’y Gen.*, 491 F.3d 1277, 1281 (11th Cir. 2007). Due process protects a noncitizen’s right to “be given notice and an opportunity to be heard in their removal proceedings.” *Sama v. U.S. Att’y Gen.*, 887 F.3d 1225, 1234 (11th Cir. 2018) (quoting *Lapaix v. U.S. Att’y Gen.*, 605 F.3d 1138, 1143 (11th Cir. 2010)).

Here, Palmer argues that the board erred in determining that his due process rights were not violated because: (1) he had a reasonable time to obtain counsel and voluntarily waived the right to retain counsel; (2) he had the opportunity to obtain and present evidence; and (3) the immigration judge adequately developed the record.³ We address each issue in turn.

³ Palmer listed three additional issues in his initial brief: (1) whether the board erred when it found that there was not enough evidence to establish a connection to the Jamaican government to bring a successful Convention relief claim; (2) whether the board erred in finding Palmer was removable when there was a pending petition for a good faith waiver; and (3) whether the board was biased against Palmer because of his criminal record. But, other than listing these issues, Palmer failed to address them, provide supporting arguments, or

Right to counsel

First, Palmer contends that he was deprived of his right to retain counsel. Noncitizens in removal proceedings “have the right to retain private counsel.” *Flores-Panameno v. U.S. Att’y Gen.*, 913 F.3d 1036, 1040 (11th Cir. 2019) (citing 8 U.S.C. § 1362). But noncitizens may waive that right, and the “waiver will be upheld if voluntarily made.” *Montilla v. INS*, 926 F.2d 162, 169 (11th Cir. 1991). Further, “a waiver of the right to counsel need not always be express” and “may be inferred from the language and acts of the defendant.” *Cobourne v. INS*, 779 F.2d 1564, 1566 (11th Cir. 1986). A noncitizen who has “acknowledged that he understood his right to counsel” may “waive[] that right when he elect[s] to proceed with [a] hearing unrepresented.” *Id.* (explaining that “the immigration judge informed [the noncitizen] of his right to counsel at the outset of the deportation hearing and provided him with a list of free legal services” before the noncitizen waived his right to counsel by proceeding with the hearing).

First, the board did not err in determining that Palmer was adequately advised of his right to counsel and was given an opportunity to obtain counsel. Palmer was advised of his right to be represented by counsel at his own expense at the August 14, 2020, hearing. Palmer understood this right because he explained that

cite to relevant authority. Because Palmer “ma[de] only passing references to [these issues] or raise[d them] in a perfunctory manner without supporting arguments and authority,” they are forfeited. See *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014).

he had already hired an attorney. When Palmer informed Judge Alberdi that his attorney could not appear that day, the judge rescheduled the hearing for two weeks later on August 28, 2020. When Palmer informed Judge Chapman on August 28 that his attorney had been disbarred, Judge Chapman postponed the hearing for a second time until September 11, 2020. Finally, Judge Alberdi continued the hearing for a third time until October 8, 2020, giving Palmer additional time to find and speak with an attorney.

Second, the board did not err in finding that Palmer waived his right to counsel. Although Palmer originally expressed his desire to hire an attorney, he always appeared pro se. Judge Chapman warned Palmer at the August 28, 2020, hearing that he would either need to hire an attorney or represent himself. At the last two hearings on September 11 and October 8, 2020, Palmer did not mention that he had retained an attorney or ask for additional time to hire an attorney. When Judge Alberdi explained at the merits hearing on October 8, 2020, that he would ask Palmer questions because he did not have an attorney, Palmer indicated that he understood. Palmer waived his right to counsel when he proceeded with the merits hearing and answered questions on his own behalf. *See Cobourne*, 779 F.2d at 1566.

Opportunity to obtain and present evidence

Next, Palmer argues that the board erred in determining that the immigration judge did not violate his due process rights by failing to provide a reasonable amount of time to obtain and present evidence. Due process is not violated when an immigration

judge gives a noncitizen the opportunity to testify and present evidence, considers all admissible evidence, and denies relief as a matter of law. *See Lapaix*, 605 F.3d at 1144.

After reviewing the record, we conclude that Palmer was not denied notice or an opportunity to present his case. Palmer argues that he had “less than two months” to obtain evidence in support of his applications. But the Department gave him notice that he was removable on June 27, 2014. Additionally, Judge Alberdi gave Palmer an opportunity to present evidence at the merits hearing, found his testimony credible, and did not require further evidence to substantiate the facts related to his asylum application. The immigration judge concluded that, even taking all of Palmer’s testimony as true, his fear of gang violence did not have a nexus to a statutorily protected ground. Palmer’s asylum application did not fail for lack of evidence; it failed as a matter of law because, even with his credible testimony, he could not meet the requirements for asylum. Thus, Palmer’s due process rights were not violated by a lack of opportunity to present evidence on his asylum application.

Development of the record

Finally, Palmer argues that the board erred in determining that the immigration judge sufficiently developed the record on his petition for a good faith waiver and his asylum application. Assuming that due process requires the immigration judge to make reasonable efforts to develop the record, here, Judge Alberdi did so. For the asylum claim, Judge Alberdi asked Palmer questions about why he was afraid to return to Jamaica and why the gang was

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targeting him. And for Palmer's petition for a good faith waiver, Judge Alberdi asked Palmer several specific questions about his marriage to Dunn.

Palmer stresses that the immigration judge did not ask more specific questions about the gang attacks. But, after Palmer testified and answered questions, Judge Alberdi asked if there was anything else Palmer wanted to tell the court as to why he should be allowed to remain in the United States. Palmer's answer to this question did not reveal any facts entitling him to a waiver or asylum.

CONCLUSION

In sum, Palmer's petition is due to be denied because Palmer's due process rights were not violated.

PETITION DENIED.