

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-12567

Non-Argument Calendar

MATEO EDWIN NOLASCO-GARCIA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A208-603-429

Before NEWSOM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Mateo Edwin Nolasco-Garcia, a native and citizen of Guatemala, seeks review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of his application for asylum, pursuant to 8 U.S.C. § 1158(a), and withholding of removal under 8 U.S.C. § 1231(b)(3).¹ He challenges the BIA's determination that he failed to show a nexus between the harm he suffered and fears suffering if he is returned to Guatemala and his membership in a particular social group, which he defined as the "immediate family of Gaspar Nolasco-Garcia."² After review, we deny the petition for review.

I. Background

Nolasco-Garcia was born in Guatemala in 1998. He unlawfully entered the United States without inspection in 2016 as an unaccompanied minor at the age of 17. At that time, the Department of Homeland Security ("DHS") issued Nolasco-Garcia a notice to appear, charging him as removable for being an alien present in the United States without being admitted or paroled. At

¹ Nolasco-Garcia also sought relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"), which was denied. *See* 8 C.F.R. § 1208.16(c). His CAT claim is not at issue on appeal.

² Gaspar Nolasco-Garcia is the Petitioner's father.

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a hearing before the IJ, he conceded his removability and indicated that he would be filing an application for asylum.

Nolasco-Garcia then filed an application seeking asylum, withholding of removal, and CAT relief. As relevant to this appeal, he indicated that he was seeking asylum and withholding of removal on account of his membership in a particular social group.³ He indicated that he was raised by his grandparents in Guatemala. He experienced past harm in Guatemala when he was robbed by three men in 2011 on his way home from school late at night. The men took his money and cell phone, and threatened to harm him and his family if he reported the crime. The men stated that they knew who Nolasco-Garcia was and where he lived. Additionally, when his parents returned to Guatemala from the United States in 2012, the gang “heard about [his] parents coming from the U.S,” and the gang called his father and “threatened to kill [them] all if [they] did not pay [the gang] money.” When his father did not pay, the gang tried to burn the family’s house down while the family was sleeping. His father made a police report, but nothing came of it because the police do “not care [about] what happens to the indigenous Mayan population.” After the fire incident, his father received another threatening call and his father “feared for [their] lives.” Nolasco-Garcia explained that his father returned to the United States in 2014, and helped Nolasco-Garcia

³ He also sought asylum and withholding of removal based on race, but on appeal he does not challenge the denial of relief on that ground.

and one of his siblings come to the United States as well.⁴ Finally, Nolasco-Garcia indicated that, if he returned to Guatemala, he feared being “beaten or even killed by the gangs because [his father] never paid them money.” He explained that the town he is from is very small and that the gangs would know when he returns and would target him because his father never paid them.

Nolasco-Garcia submitted a sworn statement from his father, Gaspar, in support of his application. Gaspar stated that in the mid-1980s, when he was 13 years old, Guatemala was in the midst of a civil war, and he and his family experienced violence at the hands of Guatemalan army and the guerillas. First, the guerillas came through his village and recruited his dad and brother. Then the Guatemalan army came through the village and went house to house checking to see if anyone in the village was hiding guerillas. The Guatemalan army did not understand the people in the village because they spoke a native dialect, Popti, while the army spoke Spanish. A group of the soldiers raped Gaspar’s mother and then killed her in front of Gaspar. After that, Gaspar never felt safe in Guatemala.

In 1992, Gaspar came to the United States, but was deported shortly thereafter back to Guatemala. In 1998, he again came to the United States and was again deported. He returned to the

⁴ According to his application for asylum, Nolasco-Garcia has three siblings, one of whom still lives in Guatemala.

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United States in 2001 and lived in the United States until he returned to Guatemala in 2012.

When he returned to Guatemala in 2012, he started helping with “an evangelization of the church” in his village. He then started receiving threatening calls from the gang telling him to stop helping “those young people who were members of their gang” and threatening to kill him. One night, someone set his house on fire while the family was sleeping. He stated that witnesses saw that the arsonists, who included his ex-brother-in-law, were members of a gang. He filed a police report, but the police did not do anything. The threatening phone calls continued, although he did not elaborate as to the nature of the threats. Then in 2013, while working, he was attacked by some men who said “it was time for [him] to die” and they beat him up and left him unconscious. When he woke up, he returned home and reported the incident to the local civil authorities in the village, but they did not help him. Then, in 2014, gang members attacked his wife by dragging her to the woods and attempting to rape her. A little while later, he received another call from the gang stating that they had not forgotten about him and that they were going to kidnap his daughters and kill his son, Nolasco-Garcia. At that point, he decided to return to the United States. He maintained that if Nolasco-Garcia is returned to Guatemala, he will be in danger from the gang because the gang “knows [the] family” and that the gang will kill him “[o]ut of resentment.”

Nolasco-Garcia's mother also submitted a statement. She stated that she left Guatemala "due to the threats received from the mara groups, who are gangs that kidnap, torture, and kill good people if we don't follow their orders." She explained that she was threatened by the gang because of her work in the catholic church because the gang does not want people helping the youth in the village because they want to recruit the youth. She stated that in March 2014, she was leaving church when members of the gang grabbed her and dragged her to the woods and told her to stop helping the "street kids" and "orphan kids" "or suffer the consequences." The men tried to rape her, but they left when they saw some farmers coming toward them. Then in June 2014, she received a threatening phone call telling her not to hide and that they knew where she lived. A couple of weeks later, three of the gang members put a gun to her head and kidnapped her, took her to a nearby cave, tied her up, and beat her. They released her when a group of students passed by their location. She explained that those events are why she took her youngest daughter and left Guatemala in the summer of 2014.

At the 2019 hearing before the IJ, Nolasco-Garcia testified that, after finishing high school in Guatemala, he came to the United States in the beginning of 2016 at the age of 17. His parents currently live in the United States, with two of his siblings, while his older brother, Freddy, remains in Guatemala. His maternal grandparents raised him in Guatemala after his parents came to the United States when Nolasco-Garcia was a toddler.

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Nolasco-Garcia explained that he left Guatemala because he “felt threatened” and “was afraid to die.” He explained that his fear stemmed from when three gang members attacked, assaulted, and robbed him and threatened his family in 2011 while he was coming home from school. At the time of the attack, his parents were still living in the United States and had not yet returned to Guatemala. When the men attacked him, they stole his money and his cell phone and “told [him] that [he] was to join [the gang]” and that if he joined, he would “live in peace.” Nolasco-Garcia did not say anything to the men, he just nodded his head, so that they would let him go. He did not report the incident to police and did not require any medical attention. That was the only time he was attacked by those gang members.

Nolasco-Garcia further testified that, in 2012, after his parents returned to Guatemala, a gang set his family’s house on fire while they were sleeping because his father did not pay the gang an “extortion.” Neighbors saw that one of the gang members was his aunt’s ex-husband. Nolasco-Garcia explained that he believed that the gang that set his house on fire was the same one that attacked him in 2011 because they told his father about the 2011 attack. He also stated that, approximately two years ago, someone hit his brother Freddy in the head with the butt of a gun and beat him up. He did not know why his brother was beaten up, but noted that his brother “had a lot of problems with alcohol.” Nolasco-Garcia stated that no other incidents happened to his family, although his father “did receive other threats, saying that things were not just going to stay like this that we’re still going to pay.” Nolasco-Garcia

confirmed that he is afraid to return to Guatemala because of the gang and the threats to his family. He explained that he believes the gang will kill or torture him, and that the gang will want to harm him for escaping Guatemala.

On cross-examination, the government pointed out that the father's police report concerning the fire indicated that the ex-husband of the father's sister-in-law set the fire because he was drunk, and it did not mention anything about any other individuals or gang members. Nolasco-Garcia stated that the discrepancy was possible because his father does not speak Spanish well and the police speak Spanish. He also stated that the police are afraid of the gangs and do not want to get involved. Next, the government focused on the gang recruitment aspect of the interaction. It pointed out that during his credible fear interview that occurred after he was caught crossing the border illegally, Nolasco-Garcia stated that the men in the 2011 attack told him that he needed to join them if he wanted to be left alone. And Nolasco-Garcia confirmed that boys his age were getting recruited by the gangs. The government pointed out that Nolasco-Garcia left Guatemala in 2016, which was over three years since the gang tried to burn down his family's house and that no physical attacks occurred between 2012 and 2016. When asked why the gang tried to extort money from his father, Nolasco-Garcia stated that his father worked "as a church treasury [*sic*]." The government followed up asking whether the gang wanted Nolasco-Garcia's father to steal the church's money, and Nolasco-Garcia said "perhaps, yes."

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The IJ issued an oral decision denying Nolasco-Garcia's application for asylum, withholding of removal, and CAT relief. After finding Nolasco-Garcia credible, the IJ explained that in order to be entitled to relief, Nolasco-Garcia had to show that his claims of past persecution or well-founded fear of future persecution were on account of, as relevant here, his membership in a particular social group. The IJ then explained that Nolasco-Garcia identified four social groups to which he belonged, including "that of immediate family of Gaspar Nolasco-Garcia." The IJ explained that the BIA had indicated in *Matter of L-E-A*, 27 I&N Dec. 40 (BIA 2017), that familial relationships could be a cognizable social group. However, the IJ explained that, even assuming that being the immediate family of Nolasco-Garcia's father constituted a cognizable social group, Nolasco-Garcia failed to demonstrate "any type of animus against his family." In other words, he did not show that the reason why he was targeted by the gang was because he was a member of his family. Rather, the evidence merely showed that the family was the victim of, and Nolasco-Garcia fears, "generalized crime of violence created by the gangs in his country," which is insufficient for asylum or withholding of removal. In support of the determination, the IJ noted that the 2011 attack on Nolasco-Garcia did not have anything to do with Nolasco-Garcia's familial ties as evidenced by the fact that it occurred prior to his father returning to Guatemala and was for the purpose of gang recruitment. Similarly, the gang tried to burn down the family's house because Nolasco-Garcia's father refused to pay an extortion demand, which had nothing to do with familial ties. Accordingly,

the IJ determined that the requisite nexus between the past persecution or fear of future persecution by the gang and Nolasco-Garcia's membership in his family was missing. Therefore, the IJ denied Nolasco-Garcia's asylum request. Furthermore, the IJ explained that because Nolasco-Garcia could not meet his burden of establishing asylum his claim for withholding of removal based on the same facts necessarily failed.

Nolasco-Garcia appealed the IJ's decision to the BIA. As relevant here, he argued that the IJ erred in determining that there was no nexus between the past persecution or fear of future persecution and Nolasco-Garcia's social group of the immediate family of his father.

The BIA dismissed Nolasco-Garcia's appeal, finding in relevant part that there was "no clear error in the [IJ's] fact-finding underlying [the] determination that [Nolasco-Garcia] [had] not demonstrate[d] a nexus between the harm suffered and feared and his . . . membership in any cognizable particular social group." The BIA agreed with the IJ's conclusion that Nolasco-Garcia "was a victim of crime and violence at the hands of gang members," but that "the evidence did not [show] that he was or would be targeted or harmed on account of any protected ground, . . . including his status as his father's immediate family member." Accordingly, the BIA concluded that Nolasco-Garcia failed to meet his burden of establishing his eligibility for asylum or withholding of removal, and dismissed his appeal. Nolasco-Garcia now petitions this Court for review of the BIA's decision.

II. Discussion

Nolasco-Garcia argues that substantial evidence does not support the BIA's conclusion that no nexus existed between the past persecution he suffered or the future persecution he fears and his particular social group of the immediate family of his father. He asserts that the gang targeted his father because of his father's involvement with the church in their village and that his family was then targeted because of their familial relationship with his father.

The government, in turn, argues that we should dismiss the petition because Nolasco-Garcia failed to exhaust his claim that his father was targeted for religious reasons, and, therefore, we lack jurisdiction to review the claim. Alternatively, the government asserts that we should deny the petition because substantial evidence supports the agency's determination.

We review the BIA's decision as the final agency decision, and we review the IJ's decision as well to the extent that the BIA expressly adopts or agrees with it. *Gonzalez v. U.S. Att'y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016); *see also Ayala v. U.S. Att'y Gen.*, 605 F.3d 941, 948 (11th Cir. 2010) (explaining that when the BIA explicitly agrees with the findings of the IJ, we will review the decisions of both the BIA and the IJ as to those issues).

We review "factual determinations under the substantial evidence test." *Gonzalez v. U.S. Att'y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016). Under the substantial evidence test, "we view the record evidence in the light most favorable to the agency's decision and draw all reasonable inferences in favor of that decision."

Sanchez Jimenez v. U.S. Att’y Gen., 492 F.3d 1223, 1230 (11th Cir. 2007) (quotation omitted). The agency’s decision will be affirmed “if it is ‘supported by reasonable, substantial, and probative evidence on the record considered as a whole.’” *Id.* (quotations omitted). We cannot “reweigh the evidence from scratch” and will reverse findings of fact “only when the record compels a reversal.” *Adefemi v. Ashcroft*, 386 F.3d 1022, 1027 (11th Cir. 2004) (quotations omitted). In other words, the BIA’s decision “can be reversed only if the evidence presented by [Nolasco-Garcia] was such that a reasonable factfinder would have to conclude that [a nexus] existed.” *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Rivera v. U.S. Att’y Gen.*, 487 F.3d 815, 820 (11th Cir. 2007) (“In sum, findings of fact made by administrative agencies, such as the BIA, may be reversed by this Court only when the record compels a reversal; the mere fact that the record may support a contrary conclusion is not enough to justify a reversal of the administrative findings.” (alteration adopted) (quotation omitted)).

A petitioner seeking asylum must present specific, credible evidence that establishes either (1) that he was persecuted in the past “on account of race, religion, nationality, membership in a particular social group, or political opinion,” or (2) that he has a “well founded fear” of persecution in the future “on account of” any of those enumerated grounds. 8 U.S.C. §§ 1101(a)(42)(A), 1158(b)(1); *Sanchez Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223, 1232 (11th Cir. 2007). To qualify for withholding of removal, the petitioner must demonstrate that, if removed to his country, his “life or freedom would be threatened in that country because of

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[his] race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3). The petitioner must show that it is “more likely than not” that “he will be persecuted or tortured upon returning to his country.” *Carrizo v. U.S. Att’y Gen.*, 652 F.3d 1326, 1331 (11th Cir. 2011) (quotation marks omitted). Generally, if an alien is unable to meet the standard of proof for asylum, he will be precluded from qualifying for withholding of removal. *Id.*

Both asylum and withholding of removal require the petitioner to show a nexus between the alleged persecution and a protected status, *i.e.*, “that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least *one central reason* for persecuting the applicant.” 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). To show a nexus, the petitioner must “present specific, detailed facts showing a good reason to fear that he . . . will be singled out for persecution on account of” the statutorily protected ground. *Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1286 (11th Cir. 2005) (quotation and emphasis omitted). “In other words, the protected ground cannot play a minor role in the [petitioner’s] past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to another reason for harm.” *Sanchez-Castro v. U.S. Att’y Gen.*, 998 F.3d 1281, 1286 (11th Cir. 2021) (quotation omitted).

When confronted with persecution claims based on the status of one’s family,

we distinguish persecution of a family as a means to an unrelated end from persecution based on animus against a family per se. Where a gang targets a family only as a means to another end, the gang is not acting because of who the family is; the identity of the family is only incidentally relevant.

Id. at 1287 (internal citation omitted). Importantly, evidence that the harm experienced or treatment complained of “is consistent with general criminal activity does not help [a petitioner] with the nexus requirement.” *Id.* at 1288.

As an initial matter, we must address the government’s argument that we lack jurisdiction over Nolasco-Garcia’s petition because he failed to raise the discrete argument that his father was targeted for religious reasons before the BIA or the IJ. We review whether we have subject matter jurisdiction *de novo*. *Blanc v. U.S. Att’y Gen.*, 996 F.3d 1274, 1277 (11th Cir. 2021). Under 8 U.S.C. § 1252(d)(1), we “may review a final order of removal only if . . . the alien has exhausted all administrative remedies available to the alien as of right. . . .” The Supreme Court recently clarified that the administrative exhaustion provision is not jurisdictional and is merely a claims-processing rule. *Santos-Zacaria v. Garland*, 143 S. Ct. 1103, 1112 (2023). “Unlike jurisdictional rules, mandatory claim-processing rules may be forfeited if the party asserting the rule waits too long to raise the point.” *Manrique v. United States*, 581 U.S. 116, 121 (2017) (quotations omitted). “If a party properly raises them, however, they are unalterable.” *Id.* (alteration adopted) (quotation omitted). Thus, because the Attorney General

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raised the statutory claims-processing rule of exhaustion in response to Nolasco-Garcia's petition, we must enforce it if the claim is in fact unexhausted. *See id.*

"A petitioner has not exhausted a claim unless he has both raised the core issue before the BIA, and also set out any discrete arguments he relies on in support of that claim." *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 800 (11th Cir. 2016) (internal citation omitted) (quotations omitted). As we have explained,

[u]nadorned, conclusory statements do not satisfy this requirement, and the petitioner must do more than make a passing reference to the issue. While exhaustion does not require a petitioner to use precise legal terminology or provide well-developed arguments to support his claim, it does require that the petitioner provide information sufficient to enable the BIA to review and correct any errors below. These requirements further the purpose of exhaustion: to give the agency a full opportunity to consider the petitioner's claim and to compile a record that will be adequate for future judicial review.

Id. (internal citations omitted) (quotations omitted); *see also Morales v. U.S. Att'y Gen.*, 33 F.4th 1303, 1307 (11th Cir. 2022) ("[T]he petitioner must raise both the core issue and set out any discrete arguments he relies on in support of that claim before the BIA."); *Shkambi v. U.S. Att'y Gen.*, 584 F.3d 1041, 1048 n.4 (11th Cir. 2009) (dismissing as unexhausted petitioner's specific argument that the IJ had engaged in speculation when discrediting his testimony

where the petitioner had contested only that the adverse-credibility finding was not supported by substantial evidence before the BIA).

Here, Nolasco-Garcia admits in his brief that he never raised before the BIA the discrete argument that the reason the gang targeted his father was because of his father's involvement with the church, and that the purpose was to "stop[] his father's religious activities." Nevertheless, he argues that the "connection [was] clear" from his parents' statements. But the fact that his parents may have mentioned a connection with the church in their affidavits is not sufficient to have exhausted this discrete argument. *Morales*, 33 F.4th at 1309 (explaining that to exhaust an issue the petitioner "must not just merely raise the issue; he must argue it"). Thus, the government is correct that this discrete argument is unexhausted, such that we are precluded from reviewing it. See 8 U.S.C. § 1252(d)(1). Accordingly, to the extent that Nolasco-Garcia seeks to raise a new, unexhausted discrete argument on appeal, that part of his petition is dismissed.

Setting aside the unexhausted argument, substantial evidence supports the finding of the Board concerning a lack of nexus.⁵ To be clear, Nolasco-Garcia's asylum and withholding of removal claim is based on his membership in a particular social

⁵ "Because the Board considered only the nexus requirement, we review only whether substantial evidence supports its finding that [Nolasco-Garcia] did not satisfy that requirement." *Sanchez-Castro*, 998 F.3d at 1286. Accordingly, "[w]e do not consider whether [Nolasco-Garcia's] experience rises to the level of persecution, whether [he] has a well-founded fear of future persecution, or whether [his] family unit qualifies as a particular social group." *Id.*

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group, which he identified as the immediate family of his father. Thus, for purposes of establishing a nexus, he needed to show that his family's status was a central reason for the harms experienced or feared. But the record here does not compel a finding that any persecution that Nolasco-Garcia suffered or that he fears he will suffer if returned to Guatemala is on account of the status of his family. Rather, substantial evidence supports the conclusion that the harms experienced and feared are unrelated to the status of his family and are simply general criminal activity. For instance, the gang first attacked Nolasco-Garcia in 2011, prior to his parents' return to Guatemala, and it is clear that the purpose of the attack was to rob him and try and recruit him for the gang. In other words, the 2011 attack did not occur because of his family's status. Similarly, when the gang tried to burn down his family's house, it was not because of who his family was, but rather because his father did not pay the gang's extortion demands. As we explained previously, "[w]here a gang targets a family only as a means to another end, the gang is not acting because of who the family is; the identity of the family is only incidentally relevant." *Sanchez-Castro*, 998 F.3d at 1287. And even accepting his assertion on appeal that the gang targeted his family because of his father's involvement with the church, that purported motivation—to get his father to stop helping with the church and thus cease interfering with gang recruitment—is unrelated to the identity of the family. In other words, the gang was not acting because of who the family is, but rather as a means to another end. *Id.* Nothing in the record

indicates that the gang harbors any animus against the Nolasco-Garcia family per se.

Accordingly, nothing in the record compels the conclusion that Nolasco-Garcia's family was a central reason for any persecution that he suffered or fears suffering. Consequently, we agree with the Board that he is ineligible for asylum and withholding of removal based on his membership in the particular social group of the immediate family of his father, and we deny his petition for review.

PETITION DISMISSED IN PART AND DENIED IN PART.