

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13621

Non-Argument Calendar

ELISEO JULIAN YAX-SOCH,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A206-444-821

Before BRANCH, LAGOA, and BRASHER, Circuit Judges.

PER CURIAM:

Eliseo Julian Yax-Soch seeks review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") denial of his application for asylum under 8 U.S.C. § 1158(a) and withholding of removal under 8 U.S.C. § 1231(b)(3). On appeal, he argues that he established past persecution and a well-founded fear of future persecution on account of his race and religion. However, because he failed to challenge the agency's determination that Yax-Soch's testimony alone was insufficient and that he failed to provide evidence to corroborate his claims, he abandoned any challenge to that issue. We conclude the lack of corroboration is dispositive and therefore we deny the petition.

I. Background

Yax-Soch, a citizen of Guatemala of Mayan nationality, entered the United States without inspection in February 2014. The Department of Homeland Security ("DHS") served him with a Notice to Appear, charging him with being removable under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States without having been admitted or paroled. At a hearing in 2017, Yax-Soch conceded removability.

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Yax-Soch then applied for asylum and withholding of removal on account of his religion and nationality.¹ He stated that he is an Evangelical Christian, a religious minority in Guatemala, and that his parents were well-known pastors of an Evangelical church in the community. He asserted that he had been “harassed, discriminated against[,] made fun of[,] and accosted” because of his religion. He maintained that the police in Guatemala do not protect his family, and his parents, who still live in Guatemala, are forced to pay a “tax” to be able to travel freely throughout the community and “hopefully prevent more abuse.” He stated that he feared returning to Guatemala because he could “be hurt, tortured, or killed as a result of [a] fight” he had been in with individuals who are against his religion. According to Yax-Soch, he defended his rights during the referenced fight and unspecified people had come to his parents’ home and the homes of his extended family looking for him. These unspecified people threatened to kill his family members if they hid Yax-Soch.

Yax-Soch also included a written statement in support of his application. In the statement, he reiterated that he is an Evangelical Christian, which is a religious minority in Guatemala, and that he fears being hurt, tortured or killed by people who are against his religion if returned to Guatemala. He stated that, as a child, he

¹ Yax-Soch also petitioned for relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”). The IJ determined that he did not meet the requirements for CAT relief, and Yax-Soch affirmatively states that he is not challenging that ruling on appeal.

stopped attending school because other children would harass, intimidate, “throw rocks and soil” at Yax-Soch and his brothers, and “take away” and ruin their school items and clothes because of Yax-Soch’s religion. He tried to reenter school as a teen, but students at the school again began accosting him and beating him. After the administration refused to intervene and local officials refused to help, Yax-Soch stopped attending school. Because of his lack of education, he never learned to speak Spanish and can only speak in Quiche, a native dialect.

Yax-Soch explained that, when he turned 18 in 2013, he wanted to start a business selling traditional clothing, but he was “robbed and tortured” during his first day out. Later in December 2013, he “had a confrontation with these people.” Yax-Soch hit one of the individuals in the head with a stick and injured others, and then he ran away. These people later came to [Yax-Soch’s] parents’ home, and they told his father that if they found Yax-Soch, they would kill him. Yax-Soch learned from his parents that these people also visited members of Yax-Soch’s extended family and threatened to kill them if they were hiding Yax-Soch. Finally, he stated that his parents pay a “tax” to these people so that they can travel freely. While his parents may be able to travel freely, they do not live in peace “due to the constant oppression and belittling they endure.”

In addition to his written statement, Yax-Soch submitted the 2017 and 2018 United States Department of State Human Rights

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Reports for Guatemala.² Both reports stated that Guatemala's indigenous population, while comprising approximately 44% of the country's population, are "largely outside the political, economic, social, and cultural mainstream" due in part to "pervasive discrimination." Neither of the reports mention anything regarding discrimination or mistreatment of Evangelical Christians.³

At the 2019 hearing on his application, Yax-Soch, age 23, testified to the following. He is of indigenous Mayan descent and is a citizen of Guatemala. His parents and three sisters still reside in his birthplace, Totanicapán, Guatemala, and his three brothers live with other family members in nearby Sololá. One of his uncles lives in the United States.

² A few days before the hearing on his application, Yax-Soch also attempted to submit a written statement from his father in support of his application. The IJ determined that the submission, which was filed after the designated filing deadline, was untimely, and the IJ did not consider the statement. To the extent Yax-Soch argues in his reply brief that the IJ erred in excluding his father's statement, he abandoned any challenge to the IJ's ruling by failing to raise this issue in his counseled initial brief. *Cole v. U.S. Att'y Gen.*, 712 F.3d 517, 530 (11th Cir. 2013) (explaining that a party adequately raises an issue when the party "specifically and clearly identifie[s] it in its opening brief; otherwise the claim will be deemed abandoned and its merits will not be addressed"), *abrogated on other grounds by Nasrallah v. Barr*, 140 S. Ct. 1683 (2020)); *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 683 (11th Cir. 2014) (explaining that we do not address arguments made for the first time in a reply brief).

³ Additionally, both reports indicated "there were no reports of anti-Semitic acts" for 2017 or 2018.

He is an Evangelical Christian, and his parents are leaders and pastors in the church. He was a youth leader in the church and preached to non-believers. Evangelical Christians were the minority religious group and the majority group was Catholic, followed by non-believers.

He explained that he came to the United States “to look for peace, tranquility, and love.” He elaborated on the problems he faced in Guatemala, stating that people attacked, disliked, and hated his family because of their religious beliefs and attempts to preach. He stopped attending school at a very young age because, on a daily basis, other children in the school beat him, threw rocks at him, and bullied him because of his religion and his inability to speak Spanish and communicate with them. At times he had to see the medicine man in his village due to injuries from the bullies. He reported the incidents to the “school leaders,” but they did not do anything to help. Because he dropped out, he does not know how to read and write and cannot speak Spanish.

Like his parents, Yax-Soch weaves traditional skirts and clothing. When he was 18, he took some of their clothing out to sell, and he was stopped by a group of three to four people who beat him up and stole the merchandise. They did not say anything to him while beating him, and they left him unconscious. After the assault his back hurt, his arm was fractured, and his mouth was swollen. He visited the medicine man for treatment. His parents

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reported the incident to the police, who said they would investigate, but they did not because his family is indigenous.⁴

Sometime after that, he encountered the same people that he believed had robbed and beaten him, and he believed they were going to do it again. “[S]o this time around, [he] defended [himself,]” by grabbing a stick and hitting some of the people. He said these individuals were well-known in the village and “known to be very well-connected.” After he hit one of them in the head, he ran and hid at his uncle’s house. Yax-Soch’s father told him that the individuals came armed to his parents’ house looking for Yax-Soch. They told his father that they were looking for Yax-Soch and were planning to kill him because he hit one of them. Yax-Soch stated that he knew that these people had killed before and that if he remained in Guatemala, he would be killed. His parents reported the incident to police, but the police did not do anything because Yax-Soch’s family is indigenous.

Yax-Soch testified that he left Guatemala because (1) these people wanted to kill him, (2) he was unable to speak Spanish, and (3) his indigenous nationality. He stated that, if he is returned to Guatemala, he believes he will be killed by the people who beat him up.

⁴ Yax-Soch explained that the indigenous people do not speak Spanish and their culture and the way they dress is different from the non-indigenous people. According to Yax-Soch, the police do not do anything to help indigenous people.

He stated that no safe place in Guatemala existed for him, citing as an example that, at age 13, he moved to Sololá to live with his grandmother, but “[p]eople were constantly bullying [him] because of [his] inability to speak the Spanish language” and because he was indigenous. He could not bear the treatment, so after a month or two, he returned to his parents’ home. Similarly, at age 15, he moved to San Reymundo to live with other relatives, but he experienced similar treatment and hostility due to his race and his religion and he could not “find peace.” He “was beaten up because [of] the simple fact that [he] couldn’t speak to them in Spanish and because of the way [he] looked.”

On cross-examination, Yax-Soch admitted that he did not have any proof of these incidents or police reports, but that this was mainly because the police did not write anything down. He also had no proof of any medical treatment sought for injuries because the medicine man “does not provide any receipt or any writings.”

The IJ issued an oral decision denying Yax-Soch’s application. The IJ found that Yax-Soch was “credible as to his own subjective understanding of the experiences and information to which he testified.” However, his testimony “lacked detail” and he could not recall the exact dates of important events.” And “[t]he only two events [Yax-Soch] described with even a reasonable amount of detail were the time he was robbed and the subsequent attempted repeat of the same crime.” Accordingly, the IJ found that Yax-Soch “ha[d] not provided testimony to sufficiently carry

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his burden of proof.” Relatedly, the IJ found that Yax-Soch “failed to provide the [necessary] evidence to corroborate his claims.”

Setting aside the evidentiary burden issues, the IJ found that Yax-Soch did not demonstrate that the reason he was attacked was on account of his race or religion. And even if the harms Yax-Soch suffered were on account of his religion and race, the IJ concluded that the harms did not raise to the level of persecution. Accordingly, the IJ concluded that Yax-Soch did not qualify for asylum.

Furthermore, the IJ concluded that Yax-Soch failed to demonstrate a well-founded fear of future persecution for purposes of asylum because his family continues to live in the same area in Guatemala, and there was no evidence that they have experienced any harm that would rise to the level of persecution. The IJ also found that relocation within Guatemala was an option.

Moreover, because Yax-Soch failed to demonstrate his eligibility for asylum, the IJ concluded that his claim for withholding of removal necessarily failed.

Yax-Soch appealed to the BIA. The BIA affirmed the IJ’s decision without opinion. Yax-Soch then filed the present petition for review with this Court.

II. Discussion

Yax-Soch argues that the BIA and IJ erroneously denied his application for asylum and withholding of removal because substantial evidence supported his claim that he suffered past-

persecution and had a well-founded fear of future persecution based on his race and religion. On the other hand, the government argues that we need not reach the merits of Yax-Soch's arguments, and we may affirm the IJ's decision because Yax-Soch does not challenge the IJ's determination that he failed to meet his burden of proof and failed to present corroborating evidence.

Where the BIA affirms the IJ's opinion without issuing its own, "we review the IJ's decision as if it were the BIA's decision." *Mutua v. U.S. Att'y Gen.*, 22 F.4th 963, 967–68 (11th Cir.), *cert. denied* 142 S. Ct. 1674 (2022). We review legal conclusions *de novo* and factual findings for substantial evidence. *Perez-Zenteno v. U.S. Att'y Gen.*, 913 F.3d 1301, 1306 (11th Cir. 2019). Under the substantial evidence standard, we review the evidence in the light most favorable to the agency's decision and draw all reasonable inferences in favor of that decision. *Silva v. U.S. Att'y Gen.*, 448 F.3d 1229, 1236 (11th Cir. 2006). 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.* (quoting *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1230 (11th Cir. 2005)).

When a petitioner "fails to offer argument on an issue, that issue is abandoned." *Sepulveda*, 401 F.3d at 1228 n.2; *see also Sapuppo*, 739 F.3d at 680 ("When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed.").

The petitioner bears the burden of establishing eligibility for asylum or withholding of removal by offering “credible, direct, and specific evidence in the record.”⁵ *Forgue v. U.S. Att’y Gen.*, 401 F.3d 1282, 1287 (11th Cir. 2005) (quotations omitted). “The testimony of the applicant may be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.” 8 U.S.C. § 1158(b)(1)(B)(ii). If found to be credible, an

⁵ A petitioner seeking asylum must establish 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). If the petitioner demonstrates that he was subject to past persecution, he is “presumed to have a well-founded fear of persecution on the basis of the original claim.” 8 C.F.R. § 208.13(b)(1). But where the petitioner has not demonstrated past persecution, to establish a well-founded fear of persecution, he “must prove (1) a subjectively genuine and objectively reasonable fear of persecution, that is (2) on account of a protected ground.” *Silva*, 448 F.3d at 1236 (quotation omitted).

To qualify for withholding of removal under the INA, the petitioner must demonstrate that, if removed to his country, his “life or freedom would be threatened in that country because of [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) (quotations omitted). Generally, if a petitioner is unable to meet the standard of proof for asylum, he will be precluded from qualifying for withholding of removal. *Id.*

applicant's testimony may be sufficient to establish eligibility on its own, without corroborative evidence. *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1255 (11th Cir. 2006). "However, [w]here the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." *Morales v. U.S. Att'y Gen.*, 33 F.4th 1303, 1308 (11th Cir. 2022) (alteration in original) (quotations omitted). "An applicant's failure to corroborate his testimony can be fatal to his asylum application." *Id.*; see also *Nreka v. U.S. Att'y Gen.*, 408 F.3d 1361, 1369 (11th Cir. 2005) (holding that, in light of the IJ's express concerns regarding the credibility of the applicant's testimony—albeit not an express adverse credibility determination—and the applicant's failure to address those concerns with sufficient corroborating evidence, the evidence did not compel the conclusion that he suffered past persecution or that he had a well-founded fear of future persecution). "The weaker an applicant's testimony, . . . the greater the need for corroborative evidence." *Yang v. U.S. Att'y Gen.*, 418 F.3d 1198, 1201 (11th Cir. 2005).

Here, Yax-Soch failed to challenge the IJ's determinations that his testimony alone failed to meet his burden of proof and that he failed to present sufficient corroborating evidence. Thus, he abandoned any challenge to those issues.⁶ *Sepulveda*, 401 F.3d at

⁶ To the extent he seeks to address those issues for the first time in his counseled reply brief, his arguments come too late. *Cole*, 712 F.3d at 530

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1228 n.2; *see also Sapuppo*, 739 F.3d at 680. As we explained in *Morales*, “[w]here the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.” 33 F.4th at 1308 (alteration in original) (quotations omitted). And “[a]n applicant’s failure to corroborate his testimony can be fatal to his asylum application.” *Id.* Accordingly, we affirm on the ground that Yax-Soch failed to present sufficient corroborating evidence in support of his claim.

AFFIRMED.

(explaining that a party adequately raises an issue when the party “specifically and clearly identifie[s] it in its opening brief; otherwise the claim will be deemed abandoned and its merits will not be addressed”), *abrogated on other grounds by Nasrallah v. Barr*, 140 S. Ct. 1683 (2020)); *Sapuppo*, 739 F.3d at 683 (explaining that we do not address arguments made for the first time in a reply brief).