[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-14623
Non-Argument Calendar

Agency No. A200-715-919

ALI MAROUNFA,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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

(January 9, 2020)

Before ED CARNES, Chief Judge, GRANT, and TJOFLAT, Circuit Judges.

PER CURIAM:

Ali Marounfa, a citizen and native of Niger, entered the United States in 2003. In April 2019 he was removed from the United States to Niger after the Board of Immigration Appeals affirmed an Immigration Judge's order finding him removable and denying his applications for asylum and withholding of removal. This is his petition for review of the Board's decision.

I.

Marounfa first entered the United States on a visitor visa that permitted him to stay for up to one year. He overstayed that visa. In November 2015 the FBI received information about a person calling himself Ali Tera creating YouTube videos inciting violence in Niger. After an investigation led the FBI to Marounfa, he admitted that he had created the videos. On November 7, 2016, the Nigerien government issued an arrest warrant for Marounfa accusing him of various crimes connected to the videos.

In June 2017 the Department of Homeland Security detained him. It also issued him a notice to appear charging him as being removable under 8 U.S.C. § 1227(a)(1)(b) for being present in the United States for a time longer than permitted by law. In July 2017 an IJ held a hearing on Marounfa's case. Marounfa, through counsel, conceded removability. A couple of weeks later he applied for asylum, 8 U.S.C. § 1158, withholding of removal under 8 U.S.C.

§ 1231(b)(3), and withholding of removal under CAT, 8 C.F.R. § 1208.16(c). His applications stated that he was fluent in English.

The government submitted evidence showing that in the videos he had created Marounfa advocated for murder, war, and a military coup in Niger. He called on Nigeriens to murder Niger's president and other government officials, and he offered ten million dollars to any Nigerien soldiers willing to lead a military coup.

The IJ held two merit hearings, on January 4 and March 21, 2018. Marounfa and two witnesses supporting him testified in English. During the proceedings, the IJ asked Marounfa if he understood every question asked in English and said an interpreter could be provided to Marounfa if needed. Marounfa replied that he did not have a problem with English and understood.

Marounfa testified that he was active in the Lumana party, a political group that supports an opposition politician. He claimed to have an important role in the group. He said that due to his political activities he feared being arrested or killed by government officials if he returned to Niger, and he claimed that the government had killed his brother and his cousin because of their opposition to the current government. He admitted recording the YouTube videos using the name Ali Tera but denied telling people to kill government officials, offering money to assassinate the Nigerien president, or supporting a military coup. And he said a

Nigerien government official tried to bribe him to stop criticizing the Nigerien government, but he did not accept the bribe.

The two witnesses who testified in support of Marounfa were Tayaba Abdulai and Ibrahim Dodo. Abdulai testified that he was a member of Lumana as well and had seen the Ali Tera videos. He said Marounfa did not advocate for violence in the videos, but his answers as to the videos were vague and inconsistent. And Abdulai had visited Niger in 2016 without incident, despite his political activities. Dodo testified that he was the secretary in charge of Lumana Africa. He said he had only seen a couple of the Ali Tera videos and had no knowledge of Marounfa advocating violence. Dodo admitted that he visited Niger for one month in 2017 to visit family and the government of Niger did not create any problem for him. He said he had heard of threats against Marounfa by the Nigerien government but had no proof. The two witnesses gave conflicting testimony about Marounfa's role in Lumana.

The IJ issued an order denying Marounfa's applications for asylum and withholding of removal and ordered him removed to Niger. The IJ rejected his asylum application because Marounfa conceded it was untimely. The IJ denied his applications for withholding of removal under 8 U.S.C. § 1231(b)(3) and under CAT because Marounfa had engaged in terrorist activity. Alternatively, the IJ denied the withholding of removal applications because he deemed Marounfa not

credible and found that he had otherwise failed to provide enough evidence to support his claims. And the IJ also denied his withholding of removal applications on another independent ground — that even if Marounfa's testimony were deemed credible, he did not meet his burden to obtain relief.

Marounfa obtained new counsel and appealed to the Board. He also submitted a motion to remand based on the claim that he had ineffective counsel in the proceedings before the IJ. The Board dismissed his appeal, mostly adopting the reasoning of the IJ's decision, and the Board denied his motion to remand. The Board held that the terrorist bar made Marounfa ineligible for asylum and withholding of removal under 8 U.S.C. § 1231(b)(3). Contrary to the IJ's order, the Board concluded that the terrorist bar did not disqualify Marounfa from obtaining withholding of removal under CAT, but the Board denied his CAT claim after it concluded that he failed to meet his burden to qualify for relief. And the Board held that his counsel was not ineffective, and even if she had been, Marounfa had failed to show prejudice.

On November 1, 2018, Marounfa petitioned for review of the Board's decision. He also sought a stay of removal while his petition was pending. We denied his stay request because he failed to make the required showing that he was likely to succeed on the merits; he was removed to Niger in April 2019.

II.

We review the Board's decision, and we also review the IJ's decision because the Board expressly adopted it. Ruiz v. Gonzales, 479 F.3d 762, 765 (11th Cir. 2007). We "review the IJ's analysis as if it were the Board's." Najjar v. Ashcroft, 257 F.3d 1262, 1284 (11th Cir. 2001).

We review findings of fact under the "substantial evidence test" and "must affirm [the Board's and IJ's decisions] if [they] are supported by reasonable, substantial, and probative evidence on the record considered as a whole." Id. at 1283–84. That test is "highly deferential," and we "defer to the [Board] unless a reasonable factfinder would have to conclude that the requisite fear of persecution existed." Id. at 1284 (internal quotations omitted). We review de novo legal questions but defer to the Board's interpretation of relevant statutes if reasonable. Seck v. U.S. Att'y Gen., 663 F.3d 1356, 1364 (11th Cir. 2011). And we review de novo our own jurisdiction. Alvarado v. U.S. Att'y Gen., 610 F.3d 1311, 1314 (11th Cir. 2010).

III.

Marounfa contends that the Board erred by denying his motion to remand based on the alleged ineffectiveness of his counsel in the proceedings before the IJ. He asserts that his counsel did not adequately prepare him for his removal hearings because she failed to inform him about key information likely to come up in the

hearings, such as the videos or his criminal record. He asserts that she should have known he needed more preparation because it was clear he did not understand her questions. He claims that she did not visit him while he was in detention and barely communicated with him before the hearings. She also failed to file an application for cancellation of removal based on his two United States citizen daughters. But given the record, we deny his petition as to this issue.

In a case where a motion to remand seeks to introduce new evidence or otherwise reopen the proceedings before the IJ, it is treated as a motion to reopen and subjected to the same substantive requirements. Najjar, 257 F.3d at 1301. A person filing a motion to remand bears a heavy burden and must prove to the Board that, if the proceedings were remanded to the IJ, the new evidence would likely change the result in the case. Ali v. U.S. Att'y Gen., 443 F.3d 804, 813 (11th Cir. 2006). The Board has broad discretion to grant or deny motions to remand, Najjar, 257 at 1302, so our review is limited to determining whether the Board exercised its discretion in an arbitrary or capricious manner. Zhang v. U.S. Att'y Gen., 572 F.3d 1316, 1319 (11th Cir. 2009).

An alien in deportation proceedings does not have a Sixth Amendment right to counsel, but he does have a Fifth Amendment due process right to a fundamentally fair hearing. Rodriguez v. Reno, 178 F.3d 1139, 1146 (11th Cir. 1999). That includes a due process right to effective assistance of counsel. Id. To

succeed on his ineffective assistance of counsel claim, Marounfa must demonstrate that his counsel's performance was deficient to the point that it negatively affected the fundamental fairness of his hearings. See id. And he must also show that he was substantially prejudiced by the violation. See Frech v. U.S. Att'y Gen., 491 F.3d 1277, 1281 (11th Cir. 2007).

His counsel was not ineffective for failing to request an interpreter. Marounfa said he was fluent in English, he spoke English well enough to get through the hearing, and he told the IJ he understood English and did not require an interpreter. See Saleh v. U.S. Dep't of Justice, 962 F.2d 234, 241 (2d Cir. 1992) (concluding counsel was not ineffective for failing to request an interpreter where alien said he understood English and "testified extensively in English"). His counsel acted reasonably in believing Marounfa's own statements given the evidence in the record. See id.

As to his other assertions, even if his counsel's performance was ineffective (and we doubt it was), his claim fails because he cannot show prejudice. The failure to apply for cancellation of removal did not prejudice Marounfa because cancellation is a form of discretionary relief that does not involve a protected liberty interest. See Pierre v. U.S. Att'y Gen., 879 F.3d 1241, 1252 (11th Cir. 2018). So he cannot show prejudice even if his attorney should have filed for

cancellation of removal because his "actual chances of receiving such discretionary relief are too speculative." See Rodriguez, 178 F.3d at 1148.

The alleged inadequate preparation also did not cause him substantial prejudice. Even if better preparation would have allowed him to be deemed credible (including as to his statements about his criminal record and the videos), he still would have been denied the relief he sought. That is because his applications for asylum and withholding of removal under 8 U.S.C. § 1231(b)(3) and under CAT were all denied on independent grounds having nothing to do with his credibility. And because he does not even contest those conclusions in his briefs to this Court, they are unaffected. See infra Section IV.C.

Because Marounfa failed to establish an ineffective assistance of counsel claim, the Board's denial of his motion to remand was not an arbitrary or capricious exercise of its discretion.

IV.

Marounfa also contends that the Board erred in affirming the IJ's decision because (1) his constitutional rights were violated when he was prevented from appearing in the courtroom alongside his counsel during his second merit hearing; (2) the evidence proved that he was eligible for CAT relief; and (3) the terrorist bar was not properly applied.

A.

Marounfa argues that his due process rights and right to counsel were violated by the IJ's decision not to allow him to appear in person at his March 21, 2018 merits hearing. He instead testified through video conference. We lack jurisdiction to address his argument because Marounfa never raised it before the Board. Fernandez-Bernal v. Att'y Gen. U.S., 257 F.3d 1304, 1317 n.13 (11th Cir. 2001) (citing 8 U.S.C. § 1252(d)(1)). For that reason we dismiss his petition as to this issue.

B.

Marounfa argues that the Board erred in denying him relief under CAT. But a petitioner must do more than merely identify an issue before the Board to exhaust his claim. Jeune v. U.S. Att'y Gen., 810 F.3d 792, 800 (11th Cir. 2016). Instead, he must both raise the "core issue before the [Board], and also set out any discrete argument he relies on in support of that claim." Id. (internal quotation marks and citations omitted). A passing reference to an issue does not satisfy that standard. Id.

In his brief to the Board Marounfa failed to meaningfully raise the issue of whether he met his burden for CAT relief. He did not mention any portion of CAT regulations, the requirements for CAT relief, or any analysis about prospective torture, and instead focused entirely on the legal standard for asylum and

withholding of removal under 8 U.S.C. § 1231(b)(3) by arguing that he had a well-founded fear of persecution. He simply added the phrase "or torture" to the heading and conclusion of the section focusing on a well-founded fear of persecution. That is not enough. As a result, we dismiss his petition as to this issue. Fernandez-Bernal, 257 F.3d at 1317 n.13.

C.

That leaves the Board's decision denying Marounfa's application for asylum and application for withholding of removal under 8 U.S.C. § 1231(b)(3). Marounfa has abandoned any argument as to his asylum claim by not challenging the Board's conclusion that he is ineligible for asylum because of the one-year time bar. See May v. Morgan County, 878 F.3d 1001, 1006 n.5 (11th Cir. 2017); see also 8 U.S.C. § 1158(a)(2)(B) (establishing one-year time limit).

Marounfa does argue that the Board erred by concluding he was ineligible for withholding of removal under § 1231(b)(3) because of the "terrorist bar." See 8 U.S.C. § 1231(b)(3)(B)(iv) (barring an alien who commits terrorist activities from obtaining withholding of removal if reasonable grounds exist to believe the alien presents a danger to the security of the United States). And if we construe his petition liberally, he also argues that but for his ineffective assistance of counsel he would have been deemed a credible witness, which was one reason his application for withholding of removal failed.

But even if the terrorist bar does not apply and he is deemed credible, his argument fails. That is because the Board adopted the IJ's alternative finding that even if Marounfa were credible and the terrorist bar did not apply to his application for withholding of removal under 8 U.S.C. § 1231(b)(3), he failed to show either past persecution on a protected ground or a well-founded fear of future persecution on a protected ground, and thus failed to meet his statutory burden to qualify for withholding of removal under § 1231(b)(3). See 8 C.F.R. § 1208.16(b) (detailing eligibility for withholding of removal).

To obtain reversal of a judgment that is based on multiple, independent grounds, an appellant must prove that every stated ground for the judgment against him is wrong. See Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 680 (11th Cir. 2014). When an appellant fails to challenge one of those grounds in his appeal, "he is deemed to have abandoned any challenge of that ground, and it follows that the [judgment] is due to be affirmed." Id. Marounfa has abandoned any challenge to the Board's decision that he is ineligible for asylum because of the one-year time bar or withholding of removal under § 1231(b)(3) because he failed to meet his statutory burden; we deny his petition as to those issues. See May, 878 F.3d at 1006 n.5.

PETITION DENIED IN PART, DISMISSED IN PART.