

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-10681
Non-Argument Calendar

Agency No. A208-133-852

JOSEFINA PABLO-ATZ,
MARIA JOSE GUTIERREZ-PABLO,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

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

(February 18, 2021)

Before MARTIN, ROSENBAUM, and ANDERSON, Circuit Judges.

PER CURIAM:

Josefina Pablo-Atz and Maria Jose Gutierrez-Pablo (“Pablo”)¹ seek review of the Board of Immigration Appeals’s (“BIA”) final order affirming the Immigration Judge’s (“IJ”) denial of their application for asylum, withholding of removal, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”). On appeal, Pablo argues that she suffered persecution and has a well-founded fear of future persecution based on her status as a woman from Guatemala in an abusive relationship. She also argues that she qualifies for CAT relief because her testimony provided sufficient evidence to show that she would be tortured if she were removed to Guatemala.

I.

We review the decision of the BIA and will also review the decision of the IJ to the extent that the BIA expressly adopts the opinion of the IJ. *Ayala v. U.S. Att’y Gen.*, 605 F.3d 941, 947-48 (11th Cir. 2020). The BIA’s legal conclusions are reviewed *de novo*. *Lin v. U.S. Att’y Gen.*, 555 F.3d 1310, 1314 (11th Cir. 2009). We review factual determinations under the substantial evidence test. *Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1254-55 (11th Cir. 2006). We must affirm the decision “if it is supported by reasonable, substantial, and probative evidence on

¹ Maria Jose Gutierrez-Pablo is the daughter of Josefina Pablo-Atz and is a derivative beneficiary of Pablo’s asylum application.

the record considered as a whole.” *Id.* (quotation marks omitted). We will view “the record evidence in the light most favorable to the agency’s decision and draw all reasonable inferences in favor of that decision.” *Id.* at 1255 (quotation marks omitted). We will reverse a finding of fact by the BIA “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.” *Adefemi v. Ashcroft*, 386 F.3d 1022, 1027 (11th Cir. 2004) (en banc).

To establish asylum eligibility, the noncitizen must establish (1) past persecution on account of a statutorily listed protected ground, or (2) a well-founded fear that the statutorily protected ground will cause future persecution. *Diallo v. U.S. Att’y Gen.*, 596 F.3d 1329, 1332 (11th Cir. 2010). A well-founded fear means a reasonable possibility of future persecution. *Li Shan Chen v. U.S. Att’y Gen.*, 672 F.3d 961, 965 (11th Cir. 2011). Protected grounds include “race, religion, nationality, membership in a particular social group, or political opinion.” *See* INA § 101(a)(42)(B), 8 U.S.C. § 1101(a)(42)(B).

“[E]vidence that either is consistent with acts of private violence or the petitioner’s failure to cooperate with guerillas, or that merely shows that a person has been the victim of criminal activity, does not constitute evidence of persecution based on a statutorily protected ground.” *Rodriguez v. U.S. Att’y Gen.*, 735 F.3d 1302, 1310 (11th Cir. 2013).

A noncitizen is entitled to withholding of removal under the INA if she can show that her “life or freedom would be threatened in that country because of [her] race, religion, nationality, membership in a particular social group, or political opinion.” INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A). The noncitizen bears the burden of demonstrating that it is “more likely than not” that she will be persecuted or tortured upon being returned to her country. *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1232 (11th Cir. 2005). Furthermore, if an applicant is unable to prove entitlement to asylum relief, the applicant is generally precluded from qualifying for withholding of removal. *Id.* at 1232-33.

Here, substantial evidence supports the BIA’s conclusion that Pablo failed to show that the harm she feared at the hands of husband’s family and gang members arose based on her status in the social group “women in abusive relationships from Guatemala.” *Ruiz*, 440 F.3d at 1254-55 (holding that this Court will affirm the BIA’s decision “if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole”). Pablo claimed that gang members threatened her at the direction of her husband’s family and because she refused to pay them. She further claimed that her husband’s family members harmed her and would continue to harm her based on her status in the social group “women in abusive relationships from Guatemala.” However, the IJ found, and the BIA agreed, that Pablo failed to satisfy her burden of proof because the actions of

Pablo's husband's family members and the gang members "were actions of private actors," as the only evidence of any violence or mistreatment of her was by her husband's family or at the direction of her husband's family, or by the gangs for economic reasons, and not by any larger societal group. In her original application Pablo indicated that she was threatened by gang members for refusing to pay them because she owned a store or simply because she was a woman alone. The only physical violence was by her husband's family. At no point in her testimony did she state that her husband was abusive towards her. Thus, Pablo failed to establish her eligibility for asylum because she did not submit any evidence to show a connection between her purported social group, "women in abusive relationships from Guatemala" and the abuse that she endured. *Rodriguez*, 735 F.3d at 1310.. Furthermore, Pablo's claim for withholding of removal fails for the same reason as an applicant that fails to establish eligibility for asylum also cannot establish eligibility for withholding of removal. *Sepulveda*, 401 F.3d at 1232-33.

II.

The burden of proof is on the applicant to establish that it is more likely than not that he would be tortured if removed to the proposed country of removal. 8 C.F.R. § 208.16(c)(2); *Reyes-Sanchez v. U.S. Att'y Gen.*, 369 F.3d 1239, 1242 (11th Cir. 2004). In assessing whether it is more likely than not that an applicant would be tortured in the proposed country of removal, all evidence relevant to the

possibility of future torture should be considered, including, but not limited to: (i) evidence of past torture inflicted upon the applicant; (ii) evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (iii) evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and (iv) other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3).

Moreover, to obtain CAT relief, the noncitizen must demonstrate that the torture would be inflicted by the government or that the government was aware of the torture and failed to intervene. *Id.*

Substantial evidence supports the BIA's determination that Pablo failed to meet her burden of proof to establish eligibility for CAT relief. To establish CAT relief, Pablo was required to prove that it was more likely than not that she would be tortured if removed to Guatemala. *See* 8 C.F.R. § 1208.16(c)(2). However, based on the record, Pablo failed to do so. First, the BIA reasonably found that Pablo had not been tortured in the past because she admitted it during her hearing. Furthermore, Pablo admitted that she did not have any problems when she relocated to live closer to her parents. Thus, substantial evidence does not establish that it is more likely than not that Pablo would be tortured if removed to Guatemala because she admitted that she had never been tortured in the past and she had the ability to relocate to a safe location within Guatemala. *Reyes-Sanchez*, 369 F.3d at

1242; 8 C.F.R. § 1208.16(c)(3). Thus, Pablo is not eligible for CAT relief.

Accordingly, we deny Pablo's petition for review.

PETITION DENIED.