

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 20-14582

Non-Argument Calendar

ABUBAKAH CHIKO KROMAH,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A077-548-599

Before WILLIAM PRYOR, Chief Judge, WILSON and ANDERSON, Circuit Judges.

PER CURIAM:

Abubakah Chiko Kromah, a native and citizen of Liberia, petitions for review of orders affirming the denial of relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 8 C.F.R. § 1208.17, and denying his motion to remand and to terminate his removal proceedings. Kromah has abandoned any challenge he could have made to the denial of his application for withholding of removal. *See Mendoza v. U.S. Att’y Gen.*, 327 F.3d 1283, 1286 n.3 (11th Cir. 2003). The Board of Immigration Appeals affirmed the finding of the immigration judge that Kromah’s fear of torture was speculative. The Board also denied Kromah’s motion to remand for failure to make a prima facie case that he was a citizen of the United States. *See* 8 U.S.C. § 1432(a)(5) (repealed 2000). Kromah and immigration law professors, as amici curiae, move this Court to transfer Kromah’s removal proceedings to a district court to determine whether he became a citizen of the United States through his mother’s naturalization. *See id.* § 1252(b)(5)(B). We deny Kromah’s motion and his petition for review.

In 1986, three-year-old Kromah entered the United States as a non-immigrant visitor. In 1999, Kromah’s mother became a naturalized citizen. She applied for citizenship for Kromah, but in 2002, the Immigration and Naturalization Service denied his

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application. The Service determined that Kromah did not derive citizenship from his mother because he was “not admitted as a lawful permanent resident nor did [he] attain lawful permanent resident status subsequent to [his] entry” to the United States.

In 2012, Kromah was convicted of conspiring to commit and of committing bank fraud. 18 U.S.C. §§ 371, 1344. The Department of Homeland Security charged Kromah as removable as a noncitizen who had been convicted of an aggravated felony. 8 U.S.C. §§ 1227(a)(2)(A)(iii), 1101(a)(43)(M), (U). Kromah contested removability and applied for withholding of removal and for deferral of removal under the Convention.

In 2017, Kromah was convicted of conspiring to commit access device fraud and of aggravated identity theft, 18 U.S.C. §§ 1029, 1028A, and imprisoned in Virginia. In 2019, after an asylum officer referred Kromah’s applications to an immigration court, the Department transferred Kromah to a prison in Georgia. The Department moved for a change of venue, and an immigration judge transferred Kromah’s removal proceedings to Georgia.

Kromah sought relief under the Convention on the ground that it was likely he would be tortured or killed if he returned to Liberia. He alleged a fear of harm from families of the victims of atrocities committed by his uncle, Alhaji Kromah, who led the United Liberation Movement of Liberia for Democracy during the Liberian Civil War. Kromah also alleged a fear of harm from the family and supporters of the former President of Liberia, whose political party was still in power, and of his son, Chuckie Taylor,

who was convicted in Europe of torturing Kromah's uncle and cousin.

The immigration judge denied Kromah's application for relief under the Convention and reinstated the order removing him to Liberia. The immigration judge found that Kromah's fear of torture was grounded in "conjecture" and discounted his documentary evidence from 2010 through 2012 as "outdated." The immigration judge based his decision on Kromah and his family's testimony that his uncle remained in Liberia unharmed and on the 2019 Human Rights and Country Reports, which stated that the Liberian government had been reluctant to prosecute suspected war criminals from the Liberian civil war, its law specifically prohibited torture, and there were no political prisoners in Liberia or reports of disappearances by or on the behalf of government officials. The reports also stated that there were no reports of torture by government officials and that the Liberian authorities investigated at least two claims of guards mistreating prisoners. In addition, the reports stated that the president of Liberia launched an investigation into the shooting of protestors, which resulted in the resignation of senior officers and the criminal prosecution of four officers, and that officials thwarted an attempt by members of the ruling party, the Coalition for Democratic Change, to accost a government official who was on the party blacklist.

Kromah appealed to Board and moved to remand his proceedings to an immigration court in Virginia. He maintained that he faced a clear probability of torture if he were to return to Liberia.

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As grounds to remand, Kromah argued, for the first time, that he was entitled to “derivative citizenship” under former section 1432(a)(5) of the Immigration and Nationality Act because he “re-sided permanently” in the United States after his mother’s naturalization. Kromah also argued that he was prejudiced by the change in venue. He asked the Board to transfer his removal proceedings from the Eleventh Circuit, where precedent “foreclosed” his legal argument, to the Fourth Circuit, where the issue had not been decided.

The Board denied Kromah’s motion and dismissed his appeal. The Board ruled “that remand of the record, to the original Immigration Court or to a different Immigration Court upon a transfer of venue [would be] [in]appropriate” because Kromah “never acquired status as a lawful permanent resident of the United States” as required by “former section 321(a)(5) of the Act,” 8 U.S.C. § 1432(a)(5). And “in the absence of any binding authority from the Eleventh or Fourth Circuit invalidating [the] statutory requirement, [the Board] conclude[d] that remand of the record to further consider whether [Kromah] [could] establish . . . citizen[ship] [was] not warranted.” The Board also affirmed the immigration judge’s finding that Kromah had not “carried his burden to establish prima facie eligibility for deferral of removal under the Convention Against Torture, given the limited evidence regarding the likelihood that he would face future harm rising to the level of torture by or with the consent and/or acquiescence of an authorized official.”

Kromah makes alternative arguments for relief. Kromah argues that the text and structure of former section 1432(a)(5) evidences that the terms “lawful admission” and “begins to reside permanently” have different, independent meanings and that he satisfies the latter phrase, and he asks us to transfer his removal proceedings to a district court in Virginia to address his citizenship. *See id.* § 1252(b)(2)(B). Kromah argues, alternatively, that he is entitled to relief under the Convention.

The decision of the Board is the final judgment in Kromah’s immigration proceeding. *Gonzalez v. U.S. Att’y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016). Insofar as the Board agreed with the immigration judge’s “reasoning, we review . . . [both] decisions . . . to the extent of the agreement.” *Id.* “[W]e review conclusions of law *de novo* and factual determinations under the substantial evidence test.” *Id.* “The substantial-evidence standard is highly deferential: we view the record in the light most favorable to the decision of the Board and affirm if the decision is supported by reasonable, substantial, and probative evidence on the record considered as a whole.” *Sanchez-Castro v. U.S. Att’y Gen.*, 998 F.3d 1281, 1285 (11th Cir. 2021) (internal quotation marks omitted).

We review *de novo* whether Kromah is a citizen of the United States. *Sebastian-Soler v. U.S. Att’y Gen.*, 409 F.3d 1280, 1283 (11th Cir. 2005). In “seek[ing] to obtain the privileges and benefits of citizenship,” Kromah bears “the burden . . . to show his eligibility for citizenship in every respect.” *Berenyi v. Dist. Dir., INS*, 385 U.S. 630, 637 (1967). We can decide whether Kromah is a

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citizen because the material facts are undisputed. *See* 8 U.S.C. § 1252(b)(5)(A).

When Kromah’s mother was naturalized, a child had to satisfy certain criteria to become by operation of law a citizen of the United States. *Id.* § 1432(a). The parent’s “naturalization [had to] take[] place while such child is unmarried and under the age of eighteen.” *Id.* And the child had to be “residing in the United States pursuant to lawful admission for permanent residence at the time of the naturalization of the parent . . . or thereafter begin[] to reside permanently in the United States while under the age of eighteen years.” *Id.*

United States v. Forey-Quintero, 626 F.3d 1323 (11th Cir. 2010), forecloses the argument that Kromah became a citizen of the United States only by living with his mother after her naturalization. In *Forey-Quintero*, we held “that the phrase ‘begins to reside permanently in the United States while under the age of eighteen years’ contained in 8 U.S.C. § 1432(a)(5) requires [that a child attain] the status of a lawful permanent resident” before turning eighteen years old. *Id.* at 1324. Kromah entered this country as a non-immigrant visitor, and that status did not change before his eighteenth birthday. As a visitor—that is “an alien admitted for a temporary period”—Kromah never “beg[an] to reside permanently” in this country during the interim he could derive citizenship automatically from his mother. *See id.* at 1327. We are bound to follow *Forey-Quintero* unless and until it is overruled by this

court *en banc* or by the Supreme Court. *See Delgado v. U.S. Att’y Gen.*, 487 F.3d 855, 860 n.3 (11th Cir. 2007).

No further proceedings are needed to resolve Kromah’s citizenship status. *See Forey-Quintero*, 626 F.3d at 1324. Because no “genuine issue of material fact [exists] about [Kromah’s] nationality” for a district court to resolve, we deny Kromah’s motion to transfer. *See* 8 U.S.C. § 1252(b)(5)(B). Likewise, the Board committed no error by denying Kromah’s motion to remand because he failed to make a prima facie case for derivative citizenship. *See Al Najjar v. Ashcroft*, 257 F.3d 1262, 1301–02 (11th Cir. 2001). Kromah did not become a lawful permanent resident of the United States before his eighteenth birthday as required by former section 1432(a)(5), and neither Fourth nor Eleventh Circuit precedent invalidates that statutory requirement.

Kromah faults the Board for failing to consider whether the change in venue violated his right to due process. But “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.” *Immigr. & Naturalization Serv. v. Bagamasbad*, 429 U.S. 24, 25 (1976). Kromah failed to establish a prima facie case for derivative citizenship. The Board did not need to address, and did not err in declining to address, whether the change in venue prejudiced Kromah.

Substantial evidence supports the finding that Kromah will not likely be tortured if removed to Liberia. Nearly two decades has passed since Kromah’s family was harmed for their involvement in the Liberian civil war, and recent country reports reflect

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that the Liberian government is disinterested in prosecuting war criminals from that conflict. Those reports also state that the laws in Liberia prohibit torture, that officials do not take political prisoners, and that officials who abuse their authority are subject to criminal prosecution. In addition, Kromah's uncle, who Kromah admits committed atrocities during the civil war, remains in Liberia unharmed.

We **DENY** Kromah's motion to transfer and his petition for review.