

[DO NOT PUBLISH]

In the
United States Court of Appeals
For the Eleventh Circuit

No. 21-10115

Non-Argument Calendar

ALMA ARACELY CASTANEDA-MARTINEZ,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A089-099-071

Before JORDAN, NEWSOM, and LAGOA, Circuit Judges.

PER CURIAM:

Alma Castaneda-Martinez petitions this Court for review of the Board of Immigration Appeals' ("BIA") decision affirming the immigration judge's denial of her claim for withholding of removal. She argues that the BIA and the immigration judge's finding that her mistreatment by the gang, Los Chentes, was motivated by personal animus rather than her membership in a particular social group is unsupported by the record. Further, Castaneda-Martinez contends that the IJ erred in concluding that her proposed particular social group—witnesses to gang crimes who attempt to report those crimes—was not cognizable. In response, the government argues that we lack jurisdiction to consider Castaneda-Martinez's challenge to the immigration judge's nexus finding because she failed to raise that argument before the BIA and that we should thus dismiss her petition.

I.

Castaneda-Martinez, a Honduran citizen, was previously removed from the United States in 2008. She reentered the United States in May 2016 and was detained by the Department of Homeland Security and received a reasonable fear interview, after which an asylum officer found that she had a reasonable fear of persecution should she return to Honduras. Subsequently, she was placed in withholding-only proceedings before an immigration judge.

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Castaneda-Martinez applied for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231(b)(3)(A), and for relief under the Convention Against Torture (“CAT”), asserting persecution on account of membership in a particular social group. In a statement attached to her application, she asserted that she left Honduras because her life was threatened by a gang known as Los Chentes. According to Castaneda-Martinez, the threats began after she witnessed gang members murder her uncle because he refused to continue paying a “tax” to the gang. She decided to contact the police, despite being warned by the gang members not to do so. But, when Castaneda-Martinez, accompanied by her cousin and grandmother, arrived at the police station, no one was there for her to report the murder. During the next several days, she received threatening text messages and heard from neighbors that those gang members intended to kill her as well. She moved to a friend’s house in a nearby village, but the gang members found her after five months. While Castaneda-Martinez escaped, her friend’s daughter was raped by the gang members. She moved to another friend’s house, but after people in her home village heard Castaneda-Martinez was staying with that friend and reported that Los Chentes was still looking for her, her friend informed her she could no longer stay with her. As such, Castaneda-Martinez fled to the United States.

At the hearing on her application, Castaneda-Martinez provided testimony similar to her personal statement and also testified that her cousin had been murdered after the attempted report of

her uncle's murder to the police. Through counsel, she articulated three particular social groups: (1) a person who "witnessed firsthand the murder of her uncle by the Los Chentes [and] took steps to file a report"; (2) a person "persecuted by Los Chentes on account of her familial relationship," i.e., her uncle; and (3) a person "persecuted by the Los Chentes gang because she is related to a business owner who refused to pay a local tax." She further argued that her opposition to the gang was sufficient to establish her membership in those proposed social groups because it existed independently of her persecution and was the reason the gang targeted her.

The immigration judge issued an oral decision denying Castaneda-Martinez's withholding of removal and CAT claims. While finding her testimony credible, the immigration judge found that she had "not posited a cognizable particular social group definition or demonstrated any type of nexus between [the three] claimed groups and any type of harm she fears in Honduras." As to her first proposed group, the immigration judge held it was not cognizable because it only contained Castaneda-Martinez and was not "socially distinct within society for any reason." In analyzing the first group, the immigration judge noted that Castaneda-Martinez had never filed a police report against the gang members. As to her second group, the immigration judge found that she had not shown the gang was motivated by animus against her family, in particular noting that Castaneda-Martinez's grandmother still safely lived in Honduras and that her parents and siblings

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continued to live in Honduras safely. As to the third proposed group, the judge found it insufficient to show any type of social distinction within society. And the immigration judge found that it was clear that Castaneda-Martinez “simply feared being the victim of crime and in the matters for a general . . . criminal strife,” but that “generalized fear of harm or violence without more does not support” a withholding of removal claim.¹ Thus, because Castaneda-Martinez “failed to demonstrate any type of nexus due to one of the five annuity grounds such as that of membership to their social group definition,” the immigration judge found her application for withholding of removal must fail. The immigration judge therefore ordered Castaneda-Martinez removed to Honduras.

Castaneda-Martinez appealed to the BIA. Her notice of appeal argued that the immigration judge erred in determining that her proposed social groups were not cognizable as well as in finding that she could live elsewhere in Honduras without risk of persecution by the gang. She stated that she “was targeted because of her relationship with her uncle and because she was connected to activities involving seeking justice with the prosecutor, which resulted in the assassination of [her] cousin and the gang's attempt to kill [her].”

In her brief to the BIA, Castaneda-Martinez argued that the immigration judge erroneously limited her first proposed social

¹ The immigration judge also denied Castaneda-Martinez’s CAT claim, but she does not make any argument challenging that denial on appeal.

group “to the facts solely specific to [her]—a single person—rather than to the large group consisting of ‘individuals who witness gang crimes and take steps to report them.’” She also argued that the fact that she failed to file a report was not required for her proposed group to be recognized. She further argued that she and her cousin “were targeted and threatened because they went to the state’s office to file a complaint—even though no complaint was filed.” And she concluded that she had “demonstrated that her the social group defined as ‘witnesses of gang crimes who took steps (attempted to file) a police report/complaint,’ was a cognizable particular social group.” Her brief, however, did not challenge the immigration judge’s rejection of her two other proposed social groups. And she did not challenge the immigration judge’s finding that she “simply feared being the victim of crime and in the matters for a general . . . criminal strife,” which was a “generalized fear of harm or violence” that could not support a withholding of removal claim—i.e., that there was a nexus between the persecution she suffered and a protected ground. *See Sanchez v. U.S. Att’y Gen.*, 392 F.3d 434, 437–38 (11th Cir. 2004). Instead, she merely argued that her attempt to file a police report “was one of the central reasons, if not the main reason, why she was persecuted.”

On December 23, 2020, the BIA adopted and affirmed the immigration judge’s decision, as there was no clear error in the judge’s findings of fact concerning the actual motive of the gang members in Honduras, i.e., that “gang members were not motivated to harm the applicant on account of a protected ground.”

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Rather, the BIA explained that the events “appear[ed] to concern a personal dispute or vendetta for a crime committed by gang members, which does not amount to past persecution on account of a protected ground.” This petition followed.

II.

Generally, when the BIA issues a decision, we only review that decision. *Jeune v. U.S. Att’y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016). However, “[w]hen the BIA explicitly agrees with the findings of the immigration judge, we review the decision of both the BIA and immigration judge as to those issues.” *Id.* We review legal questions, including our own jurisdiction, *de novo*. *Id.*; *Amaya-Artunduaga v. U.S. Att’y Gen.*, 463 F.3d 1247, 1250 (11th Cir. 2006). And we do not consider issues not decided by the BIA. *Gonzalez v. U.S. Att’y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016).

Additionally, we may review a final order of removal only if the petitioner has exhausted her administrative remedies. 8 U.S.C. § 1252(d)(1). “[W]hen a petitioner has neglected to assert an error before the BIA that [she] later attempts to raise before us, the petitioner has failed to exhaust [her] administrative remedies.” *Jeune*, 810 F.3d at 800. It is not enough for the petitioner to “merely identify” an issue before the BIA. *Id.* She must raise the “core issue” to the BIA and set out any discrete arguments relied on in support of her claim. *Id.* “‘Unadorned, conclusory statements do not satisfy this requirement,’ and the petitioner must do more than make a passing reference to the issue.” *Id.* And, even if the BIA addresses an issue that the petitioner failed to raise in her appeal to the BIA

sua sponte, the petitioner has still failed to exhaust that claim. *See Amaya-Artunduaga*, 463 F.3d at 1251 (“[W]e think the goals of exhaustion are better served by our declining to review claims a petitioner, without excuse or exception, failed to present before the BIA, even if the BIA addressed the underlying issue *sua sponte*.”).

An otherwise removable individual is entitled to withholding of removal if her “life or freedom would be threatened in th[e] country [of removal] because of [her] . . . membership in a particular social group.” 8 U.S.C. § 1231(b)(3)(A). An applicant for withholding of removal “bears the burden of demonstrating that it is ‘more likely than not’ she will be persecuted or tortured upon being returned to her country.” *Sanchez Jimenez v. U.S. Att’y Gen.*, 492 F.3d 1223, 1238 (11th Cir. 2007) (quoting *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1232 (11th Cir. 2005)). “[E]vidence that either is consistent with acts of private violence . . . 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.” *Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006).

Here, we conclude that Castaneda-Martinez failed to exhaust her challenge to the immigration judge’s nexus finding. In rejecting Castaneda-Martinez’s claims for relief, the immigration judge rejected each of her proposed particular social groups. The immigration judge also found that Castaneda-Martinez had not “demonstrated any type of nexus between these claimed groups and any type of harm she fears in Honduras.” Rather, the judge

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found she simply possessed a “generalized fear of harm or violence”—i.e., a fear of being a victim of crime and of general criminal strife—but that fear could not support any type of application for withholding of removal. In its review of the immigration judge’s order, the BIA found that “the events described by the applicant appear to concern a personal dispute or vendetta for a crime committed by gang members, which does not amount to past persecution on account of a protected ground.”

But Castaneda-Martinez did not challenge the immigration judge’s determination that she had not demonstrated the requisite nexus between her proposed social groups and the harm she feared in Honduras or the finding that she merely had a generalized fear of harm or violence in her brief to the BIA. Indeed, her brief fails to articulate an argument or provide a factual or legal basis addressing how the immigration judge erred in this respect. Castaneda-Martinez’s brief rather challenged the immigration judge’s determinations that her “group consisted of only one member” and that she was “not able to meet the witness social group simply because she did not actually [file a police report].” While her brief to the BIA briefly mentions that her attempt to file a police report “was one of the central reasons, if not the main reason, why she was persecuted,” we conclude that this passing reference, to the extent it can be construed as raising argument as to the nexus requirement, was not sufficient for exhaustion purposes.

Because Castaneda-Martinez failed to exhaust her administrative remedies as to the key nexus issue for her withholding of

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removal claim, we lack jurisdiction to review it. Accordingly, we dismiss the petition.²

PETITION DISMISSED.

² Castaneda-Martinez's other challenge, regarding the cognizability of one of her proposed particular social groups, is also not properly before us as the BIA did not consider and decide that issue. *See Gonzalez*, 820 F.3d at 403.