[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-10364

Non-Argument Calendar

DELMY HUEZO-RIVERA,
ADONAY ALVAREZ-HUEZO,
ARIADNA ORTEGA-HUEZO,

Petitioners,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A206-783-469

Before LUCK, LAGOA, and EDMONDSON, Circuit Judges.

PER CURIAM:

Delmy Huezo-Rivera ("Petitioner"),[1] a native and citizen of El Salvador, petitions for review of the order by the Board of Immigration Appeals ("BIA") affirming the decision of the Immigration Judge ("IJ"). The IJ's decision denied Petitioner's applications for asylum and for withholding of removal.[2] No reversible error has been shown; we deny the petition.

Petitioner sought asylum and withholding of removal based on her fear of future persecution[3] by members of the Mara MS gang in El Salvador on account of Petitioner's membership in a particular social group: a group consisting of Petitioner's family. On 10 June 2014, eight members of the MS gang approached Petitioner's then 11-year-old son (Adonay) as Adonay and his younger sister walked to school. The MS gang members threatened to kill Adonay unless he agreed to join their gang. The men told Adonay

---

[1] Petitioner's two minor children are included as riders on Petitioner's application for relief; so, our decision about Petitioner also applies to them.

[2] The IJ also denied Petitioner relief under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). Petitioner raised no challenge to the IJ's denial of her CAT claim either in her appeal to the BIA or in this appeal; that claim is not before us.

[3] Petitioner concedes expressly that the harm she suffered was not sufficiently severe to constitute past persecution.

that he had until 30 June to decide. After that incident, Petitioner began accompanying her children to school.

On 12 June, two MS gang members approached Petitioner and her children as they walked to school. The men grabbed Petitioner and Adonay by their arms, demanded $18,000, and said they knew that Petitioner's parents and sisters lived in the United States. The men threatened to kill Petitioner and her children if Petitioner failed to deliver the money by 3 July. The men fled when a police car drove by.

After Petitioner took her children to school, Petitioner reported the incident to the police. Police officers specializing in gangs and extortion interviewed Petitioner, opened an investigation, and offered Petitioner 24-hour protection. The officers advised Petitioner to return to her normal routine and said they would be watching over her.

As Petitioner and her children walked to school the next day, Petitioner saw different MS gang members. The men asked Petitioner why she had filed a report with the police; the men said and did nothing else. Later that day, Petitioner learned that one of Adonay's friends had been killed by MS gang members. Like Petitioner, the friend's parents also had family members living in the United States, had been extorted by the MS gang, and had been given 24-hour police protection. Petitioner no longer felt safe and fled to the United States.

We review only the decision of the BIA, except to the extent the BIA adopts expressly the IJ's decision. *See Gonzalez v. U.S. Att'y Gen.*, 820 F.3d 399, 403 (11th Cir. 2016). Because the BIA agreed expressly with parts of the IJ's reasoning in this case, we review the IJ's decision to the extent of that agreement. *See id.*

We review *de novo* the BIA's legal conclusions. *See id.* We review fact determinations under the "highly deferential substantial evidence test" whereby we "must affirm the BIA's decision if it is 'supported by reasonable, substantial, and probative evidence on the record considered as a whole.'" *See Adefemi v. Ashcroft*, 386 F.3d 1022, 1026-27 (11th Cir. 2004) (*en banc*). We "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 1027. To reverse a fact finding, we must conclude "that the record not only supports reversal, but compels it." *See Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1287 (11th Cir. 2003).

An asylum applicant bears the burden of proving statutory "refugee" status with specific and credible evidence. *Forgue v. U.S. Att'y Gen.*, 401 F.3d 1282, 1286-87 (11th Cir. 2005). A "refugee" means a person unable or unwilling to return to his country of nationality "because of persecution or a well-founded fear of persecution on account of" a protected ground, including membership in a particular social group. 8 U.S.C. §§ 1101(a)(42)(A), 1158(a)(1), (b)(1).

The IJ denied Petitioner's application for asylum. In pertinent part, the IJ concluded that Petitioner failed to demonstrate

sufficiently a nexus between her mistreatment and a statutorily-protected ground. The IJ determined that Petitioner failed to demonstrate that she had been targeted because of her family ties and determined, instead, that Petitioner had been targeted based upon the gang's perception that Petitioner had access to money through her United-States-based family.

Petitioner appealed to the BIA. The BIA affirmed the IJ's decision, concluding that Petitioner had not shown that she was or would be targeted for persecution on account of her family membership.

To satisfy the "on account of" or "nexus" requirement, an applicant need not show that a protected ground is "the *only* motivation for the persecution." *Sanchez Jiminez v. U.S. Att'y Gen.*, 492 F.3d 1223, 1232 (11th Cir. 2007) (emphasis in original). But an applicant must demonstrate "that a protected ground 'was or will be at least one central reason'" for persecution. *See* 8 U.S.C. § 1158(b)(1)(B)(i); *Sanchez-Castro v. U.S. Att'y Gen.*, 998 F.3d 1281, 1286 (11th Cir. 2021). "A reason is central if it is 'essential' to the motivation of the persecutor" and not merely "incidental, tangential, superficial, or subordinate to another reason for harm." *Sanchez-Castro*, 998 F.3d at 1286. "[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." *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006).

On appeal, Petitioner first contends that the BIA applied an incorrect legal standard in assessing Petitioner's mixed-motive asylum claim. Petitioner says the BIA erred by requiring her to establish that her membership in a particular social group (her family) was "the one central reason" (instead of "at least one central reason") for her mistreatment by the MS gang. Petitioner misconstrues the BIA's decision. Contrary to Petitioner's assertion, the BIA stated expressly that -- in a mixed-motive case -- Petitioner was required to show that her family membership "was or will be at least one central reason" for her feared mistreatment.

We also reject Petitioner's assertion that, by citing to our decision in *Ruiz*, the BIA crafted impermissibly a "categorical rule" that an asylum applicant in a mixed-motive case fails to satisfy the nexus requirement when one motivation for the persecution is not a protected ground. The BIA said correctly (citing to both *Ruiz* and BIA precedent) that "merely" being a victim of criminal activity or an act of private violence does not satisfy the nexus requirement. Never did the BIA hint that being a victim of criminal activity was a categorical bar to relief.

Petitioner next contends that the record compels the conclusion that her family membership was one of the central reasons for her mistreatment by the MS gang. We disagree.

We have distinguished "persecution of a family as a means to an unrelated end from persecution based on animus against a family *per se*." *See Sanchez-Castro*, 998 F.3d at 1287. "Where a gang targets a family only as a means to another end, the gang is

not acting because of who the family is; the identity of the family is only incidentally relevant." *Id.* In *Sanchez-Castro*, the petitioner asserted that members of the MS-13 gang in El Salvador "targeted her family [for extortion] based on the assumption that her father's work in the United States made [the family] wealthy." *Id.* at 1283. Because nothing evidenced that the MS-13 gang harbored particular animus toward petitioner's family *per se* -- and was instead targeting the family because of the family's perceived wealth -- we concluded that substantial evidence supported the BIA's finding that petitioner's family membership was no central reason for her mistreatment. *Id.* at 1287-88.

In contrast, in *Perez-Sanchez*, we concluded that the petitioner's family membership did constitute a central reason for petitioner's mistreatment by a Mexican drug cartel. *See Perez-Sanchez v. U.S. Att'y Gen.*, 935 F.3d 1148, 1158-59 (11th Cir. 2019). There, the record evidenced that the drug cartel targeted petitioner for extortion specifically because the petitioner's father-in-law had lost a shipment of cocaine belonging to the cartel. *Id.* at 1150, 1158. When the cartel was unable to locate petitioner's father-in-law, the cartel sought repayment of the father-in-law's outstanding debt from petitioner. *Id.* at 1151. Given the record in that case, we said that "[a]bsent the familial relationship between [petitioner and his father-in-law], the cartel would never have hunted [petitioner] down to begin with . . .." *Id.* at 1158. The record thus compelled the conclusion that petitioner's family ties constituted a central

reason -- and not merely an incidental role -- in the cartel's decision to target petitioner. *Id.* at 1158-59.

The circumstances presented in this appeal are more similar to the circumstances involved in *Sanchez-Castro* than to those involved in *Perez-Sanchez*. Like the petitioner in *Sanchez-Castro*, nothing in the record compels the conclusion that the MS gang members targeted Petitioner based on animosity specifically toward Petitioner's family, in themselves. Instead, substantial evidence supports a finding that the MS gang perceived Petitioner as having access to money because Petitioner's family members lived in the United States and, thus, targeted Petitioner for financial gain. The individual identity of Petitioner's family members (beyond merely that they resided in the United States) was "only incidentally relevant" to -- and not a central reason for -- the MS gang's decision to target Petitioner. *See Sanchez-Castro*, 998 F.3d at 1286-87. In a similar way, the record also supports an inference that the MS gang attempted to recruit Adonay not because of the identity of Petitioner's family, but because the gang often recruited children to serve as lookouts. *See id.* (concluding that the record supported the inference that the harm to petitioner's family members -- including attempted kidnapping, physical assault, and sexual harassment -- were the result of the gang's ordinary criminal activity unrelated to petitioner's family status).

The record compels no conclusion that Petitioner was or would be targeted by the MS gang "on account of" her family membership. Substantial evidence supports the BIA's

determination that Petitioner was unentitled to asylum. Because Petitioner has not satisfied her burden of establishing eligibility for asylum, she is unable to demonstrate eligibility for withholding of removal. *See Forgue*, 401 F.3d at 1288 n.4.

PETITION DENIED.