NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-11696
Non-Argument Calendar

EDINSON ISAIAS CRUZ-YANES,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A208-542-780

Before ABUDU, ANDERSON, and DUBINA, Circuit Judges.

PER CURIAM:

Petitioner Edinson Isaias Cruz-Yanes ("Cruz") petitions for review of the order of the Board of Immigration Appeals ("BIA") that affirmed the Immigration Judge's ("IJ") denial of his

application for asylum, withholding of removal under the Immigration and Nationality Act ("INA"), and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"). On petition for review, Cruz argues that the BIA failed to give reasoned consideration to his arguments, rendering its decision incapable of appellate review. Specifically, Cruz contends, among other reasons, that the BIA did not meaningfully address, or explain why it failed to address, his arguments that the IJ's decision was incapable of appellate review, that the IJ failed to develop the record properly, and that the IJ applied incorrect legal standards and failed to consider the totality of the circumstances in making its findings. Having read the parties' briefs and reviewed the record, we deny Cruz's petition for review.

II.

We only review the BIA's decision, except to the extent the BIA expressly adopts the IJ's decision. *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 799 (11th Cir. 2016), *overruled in part on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411, 419-23 & n.2, 143 S. Ct. 1103, 1113-16 & n.2 (2023). Where the BIA explicitly agrees with the IJ's reasoning, we will also review the IJ's decision to that extent. *Id.* Generally, courts and agencies need not make findings on issues if those findings are unnecessary to the results they reach. *INS v. Bagamasbad*, 429 U.S. 24, 25, 97 S. Ct. 200, 201 (1976). A noncitizen who fails to argue an issue in their brief on appeal abandons it. *Ruga v. U.S. Att'y Gen.*, 757 F.3d 1193, 1196 (11th Cir. 2014).

We review legal issues *de novo*, including whether the agency failed to give reasoned consideration to an issue. *Jeune*, 810 F.3d at 799. When analyzing for reasoned consideration, we examine whether the BIA considered the issues raised and announced its decision sufficiently to show it heard and thought about the evidence and did "not merely react[]." *Jeune*, 810 F.3d at 803. While the BIA must consider all evidence that a petitioner has submitted, it need not specifically address each of a petitioner's claims or pieces of evidence presented. *Ali v. U.S. Att'y Gen.*, 931 F.3d 1327, 1334 (11th Cir. 2019).

The BIA "does not need to do much" to ensure reviewability of a decision, but it fails to ensure reviewability when it misstates the contents of the record, fails to adequately explain its rejection of logical conclusions, or provides justifications for its decision which are unreasonable and do not respond to any arguments in the record. *Id.* at 1333-34. Reasoned-consideration review is not a review for whether the agency's findings have evidentiary support, but only for whether the decision is "so fundamentally incomplete," in light of the facts and claims presented in the case, "that a review of legal and factual determinations would be quixotic." *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015), *overruled in part on other grounds by Santos-Zacaria*, 598 U.S. at 419-23 & n.2, 143 S. Ct. 1103, 1113-26 & n.2.

II.

Cruz, a native and citizen of Honduras, illegally entered the United States in October 2015, without being admitted. The

Department of Homeland Security ("DHS") issued Cruz a notice to appear, charging him with removability under the Immigration and Nationality Act, 8 U.S.C. §1182(a)(6)(A)(i). Cruz conceded removability and applied for asylum, withholding of removal, and CAT relief. Cruz was 13 years old at the time of his application, and he stated that if he returned to Honduras, members of a gang, who wanted him to join them, would beat and torture him until he consented, and if he did not join, they would kill him. Cruz lived with his grandmother, and he feared for her life as well. Eventually, his grandmother forced him to leave and join his father in the United States.

At the merits hearing, Cruz testified to the facts stated in his application. The IJ asked Cruz a few questions, but neither his counsel nor the government questioned Cruz. Cruz's attorney declined the offer to make a closing argument, and the government responded that Cruz had not shown that he had suffered persecution based on any protected ground. The IJ issued an oral decision denying Cruz's application and ordered him removed to Honduras. The IJ found that the harm Cruz suffered in Honduras from the gang members did not rise to the level of persecution; that Cruz's well-founded fear of future harm failed because he could not provide a nexus from the harm to a protected ground; and that Cruz was not eligible for CAT relief because he had not shown that the Honduran government would condone the gang's actions against Cruz.

With the assistance of new counsel, Cruz appealed the IJ's decision to the BIA, asserting, among several reasons, that the IJ did not address his claim for relief due to his political opinion, did not adequately develop the record, and committed factual and legal errors. The BIA dismissed Cruz's appeal, finding that Cruz did not meaningfully challenge the IJ's finding on the gang's motive in targeting him or point to any evidence that the gang had any other motivations. The BIA affirmed the IJ's nexus finding and the resulting denial of Cruz's asylum and withholding of removal claims. The BIA also affirmed the IJ's finding that Cruz was ineligible for CAT relief because Cruz did not challenge the IJ's findings that he did not suffer past torture or show governmental acquiescence or demonstrate how he met his burden under CAT. To the extent that Cruz made an ineffective assistance of counsel claim, the BIA found that Cruz did not comply with the procedural requirements for bringing such a claim. The BIA also held that Cruz's due process argument fails because Cruz did not establish that he suffered substantial prejudice.

III.

"To be eligible for asylum, an applicant bears the burden of proving that he is a 'refugee' within the meaning of the INA." *Sanchez Jimenez v. U.S. Att'y Gen.*, 492 F.3d 1223, 1231 (11th Cir. 2007) (quoting INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A)). The INA defines a refugee as a person who is (1) outside the country of his nationality, (2) unwilling to return to that country, and (3) unable to avail himself of that country's protection (4) because of persecution or a well-founded fear of persecution on account of one

of five statutorily protected grounds. INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A). The five protected grounds are race, religion, nationality, membership in a particular social group, and political opinion. *Id.*

Similarly, "[t]o qualify for withholding of removal, an applicant must establish that his life or freedom would be threatened in his country of origin on account of the alien's 'race, religion, nationality, membership in a particular social group, or political opinion.'" *Cendejas Rodriguez v. U.S. Att'y Gen.*, 735 F.3d 1302, 1308 (11th Cir. 2013) (quoting INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A)). "The applicant must demonstrate that he would more likely than not be persecuted upon being returned to his country of origin." *Id.* (citation modified). "Because the 'more likely than not' standard is more stringent than the 'well-founded fear' standard for asylum, an applicant unable to meet the 'well-founded fear' standard is generally precluded from qualifying for either asylum or withholding of removal." *Sanchez Jimenez*, 492 F.3d at 1239.

The standards for both asylum and withholding of removal "contain a causal element known as the nexus requirement." *Sanchez-Castro v. U.S. Att'y Gen.*, 998 F.3d 1281, 1286 (11th Cir. 2021). To meet that requirement, "[a]n applicant must establish that a protected ground 'was or will be at least one central reason for persecuting the applicant.'" *Id.* (quoting INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i)). "A reason is central if it is essential to the motivation of the persecutor." *Id.* (citation modified).

Ordinary private criminal activity against an applicant only establishes a nexus if a protected ground motivated the organization to commit the crime. *See Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006) (noting that persecution on account of political opinion is based on the *victim's* political opinion (emphasis in original)).

To establish CAT eligibility, 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). The CAT does not require that the applicant prove that he would be tortured because of race, religion, nationality, membership in a particular social group, or political opinion. *Compare* 8 C.F.R. § 208.16(c)(2) *with* 8 C.F.R. § 208.16(b).

"Torture" is an intentional action against a person which causes severe physical or mental pain or suffering, "when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity or other person acting in an official capacity." 8 C.F.R. § 208.18(a)(1). To obtain CAT relief, the applicant must demonstrate that the torture would be inflicted by the government or that the government was aware of the torture and failed to intervene. *Reyes-Sanchez v. U.S. Att'y Gen*, 369 F.3d 1239, 1242 (11th Cir. 2004). Acquiescence "requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 208.18(a)(7). A government does not

acquiesce to harm inflicted by non-governmental actors when it "actively, albeit not entirely successfully, combats" those non-governmental actors. *Reyes-Sanchez*, 369 F.3d at 1243.

To establish a due process violation, a petitioner must show that he was deprived of liberty without due process of law and that the purported error caused him substantial prejudice. *Lapaix v. U.S. Att'y Gen.*, 605 F.3d 1138, 1143 (11th Cir. 2010). "Due process requires that aliens be given notice and an opportunity to be heard in their removal proceedings." *Id.*

IV.

The record demonstrates that the BIA gave reasoned consideration to Cruz's arguments, even though it did not address all of his assertions. The BIA correctly concluded that Cruz's arguments failed to challenge the IJ's dispositive findings that he did not establish that: (1) his feared persecution by gang members would be for any reason other than the gang's criminal endeavors, or (2) the government of Honduras would acquiesce to him being tortured. Cruz's failure to meaningfully challenge those findings made them dispositive of his eligibility for relief and rendered it unnecessary for the BIA to address many of Cruz's other arguments. By affirming those IJ findings, the BIA implicitly held that the IJ decision and record were capable of review. *See Jeune*, 810 F.3d at 803. Moreover, the BIA adequately explained its rejection of Cruz's due process claim by reasoning that none of the alleged violations would have changed the outcome considering the

affirmance of the nexus and government-acquiescence findings. *See Ali*, 931 F.3d at 1333-34.

We conclude that Cruz's other arguments are unavailing. While Cruz argues that the BIA misstated the record regarding the gang's motivation, the alleged misstatement meant functionally the same thing given that Cruz bore the burden of proving that the gang targeted him based on a protected ground. The BIA's construction of Cruz's due process argument as an ineffective assistance of counsel claim was reasonable given the way Cruz described his former attorney's work on his case. *See id*. Further, Cruz does not highlight any material evidence in the record that the BIA's decision ignored. *See Ali*, 931 F.3d at 1334.

Accordingly, based on the aforementioned reasons, we deny Cruz's petition for review.

PETITION DENIED.