

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13974
Non-Argument Calendar

DAVID MANUEL GODOY MATAMOROS,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A213-084-554

Before ROSENBAUM, GRANT, and ED CARNES, Circuit Judges.

PER CURIAM:

David Manuel Godoy Matamoros is a native and citizen of Honduras. After fleeing his home country to escape threats of gang violence, he was granted permanent residence in Mexico, where he

stayed for seven months before entering the United States without a visa or other valid entry documentation. At some point after his arrival, he turned himself in and was interviewed by an immigration officer, who concluded that Matamoros had a credible fear of persecution.

An immigration judge (IJ) later found him removable as charged by the Department of Homeland Security. He then applied for asylum,¹ asserting persecution due to his membership in a particular social group.² The IJ denied his application, finding that he was ineligible for asylum because he had firmly resettled in Mexico, he had admitted that he had a lawful permanent residence there, and he had failed to show that an exception to the resettlement bar applied to him. The Board of Immigration Appeals (BIA) affirmed the IJ's determination that Matamoros was ineligible for asylum and dismissed the appeal. Matamoros has petitioned for our review.

I.

Matamoros applied for asylum in the United States based on his fear of persecution by 18 Gang, a violent gang that operated in Honduras and from whom he'd fled Honduras to escape. The gang had extorted money from Matamoros' sister, demanding that she pay them "rent" to keep her business in Honduras running. When

¹ He also sought withholding of removal and Convention Against Torture (CAT) relief but later abandoned those claims.

² During his credible fear interview, Matamoros defined "social group" as "family of applicant's sister." And during his removal hearing, he denied being affiliated with any type of organization either in Honduras or in Mexico.

25-13974

Opinion of the Court

3

his sister was no longer able to afford that “rent” and the continued operations of her business, she had to close it. The gang didn’t like that and continued to threaten the sister, saying that they would kill her family. So, she, Matamoros, and a few other family members fled to Mexico. But, according to Matamoros, 18 Gang located them and sent a letter threatening his family, which caused him to no longer feel safe there. (But he admitted that 18 Gang never directly threatened him personally while he lived in Mexico.)

At the removal hearing, the IJ noted that Matamoros established that he had lawful permanent residence in Mexico, and it was his burden to show that an exception to the firm resettlement bar applied. *See generally Dakane v. U.S. Att’y Gen.*, 399 F.3d 1269, 1271–72 & n.1 (11th Cir. 2005) (explaining noncitizens who’ve “firmly resettled” in another country are “ineligible for,” or barred from, asylum). Before the IJ, Matamoros argued that he could not remain in Mexico due to threats from 18 Gang, who had become aware of his presence there, and because there were too few police in Mexico to protect him. But the IJ concluded that the fear of “target[ing]” was not enough to establish that Mexican authorities would “actively support any mistreatment of him” or “would substantially and consciously restrict the conditions of his residence.” The IJ found that Matamoros had firmly resettled in Mexico, was therefore ineligible for asylum, and denied Matamoros’ application, ordering him removed to Honduras.

Matamoros appealed the IJ's decision to the BIA. In his notice of appeal, he argued that the IJ erred as a matter of law in determining, among other things, that he had resettled in Mexico even though his life continued to be in danger from 18 Gang. And he pointed to evidence that a refugee organization in Mexico had agreed that he and his family should leave Mexico because of the threat posed by the gang.

The BIA dismissed the appeal. The BIA pointed out that it was undisputed that Matamoros was granted permanent resident status in Mexico and that he resided there before his arrival in the United States. Therefore, the IJ had properly found that the firm resettlement bar applied. It acknowledged Matamoros' argument that he qualified for the restricted-residence exception based on his fear of criminal activity by private actors in Mexico. But it determined that the law did not provide an exception for crime, harassment, or violence by private actors. It therefore concluded that the IJ correctly found that he had not shown that "Mexican authorities would actively support or otherwise not appropriately respond to any crimes committed" against him and his family "such that his residence in Mexico would be so substantially and consciously restricted by the authorit[ies] . . . that he was not in fact resettled." Matamoros timely filed a petition for our review.

II.

"We review the decision of the [BIA], and we review the decision of the [IJ] to the extent that the [BIA] expressly adopted the opinion of the [IJ]." *Kazemzadeh v. U.S. Att'y Gen.*, 577 F.3d 1341, 350

25-13974

Opinion of the Court

5

(11th Cir. 2009) (quotation marks omitted). We review *de novo* the BIA and IJ's conclusions of law, but review findings of fact only to determine whether substantial evidence supports them. *Id.*

"Our review for substantial evidence is highly deferential." *Id.* at 1351. Under this standard of review, "we view the record evidence in the light most favorable to the [BIA]'s decision and draw all reasonable inferences in favor of that decision." *Adefemi v. Ashcroft*, 386 F.3d 1022, 1027 (11th Cir. 2004) (en banc). "We must affirm the BIA's decision if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Id.* (quotation marks omitted); *see also Kazemzadeh*, 577 F.3d at 1351 ("We may not re-weigh the evidence from scratch.") (quotation marks omitted).

To reverse the BIA's factual findings, "we must find that the record not only supports reversal, but compels it." *Kazemzadeh*, 577 F.3d at 1351 (quotation marks omitted); *see* 8 U.S.C. § 1252(b)(4)(B) ("[T]he administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary."); *see also Kazemzadeh*, 577 F.3d at 1351 ("The mere fact that the record may support a contrary conclusion is not enough to justify a reversal of the administrative findings.") (alteration adopted and quotation marks omitted). "Our inquiry is whether there is substantial evidence for the findings made by the BIA, *not* whether there is substantial evidence for some *other* finding that could have been, but was not, made." *Mazariegos v. U.S. Att'y Gen.*, 241 F.3d 1320, 1324 (11th Cir. 2001).

III.

Matamoros contends that the BIA erred in concluding that the firm resettlement bar to asylum applied or that no exception applied to him.

A noncitizen is statutorily ineligible for asylum if he was “firmly resettled in another country prior to arriving in the United States.” 8 U.S.C. § 1158(b)(2)(A)(vi). Under the governing regulations, this firm resettlement bar to asylum applies when “prior to arrival in the United States, [the applicant] entered into another country” and received “an offer of permanent resident status, citizenship, or some other type of permanent resettlement.” 8 C.F.R. § 1208.15 (2020).³ The firm resettlement bar recognizes that a noncitizen “who has resettled somewhere else is no longer in flight from persecution or in need of refuge” in the United States. *Barreto-Claro v. U.S. Att’y Gen.*, 275 F.3d 1334, 1338–39 (11th Cir. 2001).

The resettlement bar does have exceptions. The one Matamoros relies on required him to show that “the conditions of his . . . residence in [Mexico] were so substantially and consciously re-

³ Before the BIA’s decision, the Department of Justice (DOJ) amended 8 C.F.R. § 1208.15 in Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 Fed. Reg. 80,274 (Dec. 11, 2020). The DOJ was enjoined from implementing the amendment before it became effective. *Pangea Legal Servs. v. U.S. Dep’t of Homeland Sec.*, 512 F. Supp. 3d 966, 969–70 (N.D. Cal. 2021) (preliminarily enjoining the amendment). Neither party disputes that the 2020 versions of these provisions, which were applied in this case, are the governing regulations here.

stricted by the authority of” Mexico that he “was not in fact resettled.” 8 C.F.R. § 1208.15(b) (2020). In deciding whether that exception applied, the IJ was required to “consider the conditions under which other residents of the country live; the type of housing”; the type of employment available to the applicant; and “the extent to which the [applicant] received permission to hold property and to enjoy other rights and privileges, such as travel documentation,” “education, public relief, or naturalization.” *Id.*

Matamoros’ situation fits squarely within the scope of § 1208.15’s firm resettlement bar. Matamoros conceded that he’d been granted permanent residence in Mexico and that he was free to live there and work, and he received those rights and privileges before entering the United States. Therefore, it was his burden to show that an exception applied to him. *See id.* Substantial evidence supports the BIA’s conclusion that Matamoros failed to carry that burden.

Before entering the United States, Matamoros lived in Mexico for seven months, and he testified that during that time, he was authorized to live and work in his country of refuge. He did not, and does not, allege that the Mexican authorities themselves substantially and consciously restricted his residence in Mexico. *See id.* Instead, the record shows that the Mexican government generally respected the rights of refugees, coordinated with organizations working with them, and specifically granted Matamoros permanent residency when he applied for asylum. *See generally Perez-Zen-*

teno v. U.S. Att’y Gen., 913 F.3d 1301, 1306 (11th Cir. 2019) (explaining that the substantial-evidence test requires us to “view the record evidence in the light most favorable to the agency’s decision and draw all reasonable inferences in favor of that decision”).

And the country conditions evidence and reports show that while “armed groups” had been limiting the movements of migrants and conducting kidnappings and killings, the Mexican government had increased its refugee status recognition, allowing for protection of those individuals. The record also shows that efforts to reduce gang violence against refugees and apprehend gang members had increased. Further, the reports attest that the Mexican government generally respected refugees’ right to move freely within the country, allowed foreign travel, emigration, and repatriation, and also cooperated with the Office of the UN High Commissioner for Refugees.

The record contains no evidence that the Mexican government had a hand in any threats or danger that Matamoros faced from 18 Gang or that the government even knew that the gang had threatened Matamoros’ family; indeed, Matamoros admitted that he never even reported the gang’s threats to the police. While he may have established that he lived in fear of 18 Gang while in Mexico, the record doesn’t establish that he was “substantially and consciously restricted” *by the Mexican government*, which is what he was required to show. 8 C.F.R. § 1208.15(b) (2020). And he failed to

show that the Mexican government, either actively or by its lack of action, was involved in any private actors' persecution of him.⁴

IV.

Matamoros asserts that the IJ and BIA failed to “consider [his] real-world circumstances,” as required by 8 C.F.R. § 1208.15. According to Matamoros, they instead “applied a legally erroneous standard,” by asking “whether the Mexican government would ‘actively support’ harm against [him] or otherwise not ‘appropriately respond’ to crime in a manner suggesting endorsement.” He argues that the regulation doesn’t require proof that the government committed or condoned the harm, only that there were restrictions on his life “imposed ‘by’ the authorities,” and he argues “that includes situations where the authorities cannot or will not provide protection” from private actors like 18 Gang.

The BIA applied the correct legal standard. It relied on the relevant statute, regulation, and decisions. Because it was undis-

⁴ Matamoros relies on out-of-circuit interpretations of § 1208.15, arguing that the firm resettlement bar exception can apply where a country’s government is unable to control the persecution of a refugee by private actors. We are not bound by decisions of our sister circuits. *See OSI, Inc. v. United States*, 285 F.3d 947, 952 n.3 (11th Cir. 2002). But even applying Matamoros’ urged-for interpretation, the record does not reflect that the Mexican government knew about the continued persecution of Matamoros because he didn’t report it to the Mexican authorities — he stated only that he did not believe that Mexico had a strong enough national police presence to protect him. Therefore, he has not carried his burden to show that the exception recognized by some other circuits’ interpretation of the regulation would help him.

puted that Matamoros had been granted permanent residence status in Mexico, the BIA and the IJ correctly determined that the firm resettlement bar applied to him. *See id.* The BIA acknowledged his attempt to show that an exception applied to his situation based on continued threats from 18 Gang. But the BIA rejected that argument, stating: “[T]he regulation does not provide an exception for crime, harassment, or violence committed by private actors.” And it concluded that the IJ correctly determined that Matamoros had not established that “his residence in Mexico was so substantially and consciously restricted by” the Mexican authorities “that he was not in fact resettled.”

The BIA’s reasoning is fully consistent with the language of 8 C.F.R. § 1208.15(b) (2020). It applied the correct legal standard.

V.

Matamoros contends that his country-conditions evidence establishes a “pattern of government conduct that enables criminal groups to operate openly and without fear of consequence,” which “directly contradicts the BIA’s conclusion that the Mexican government would not ‘actively support’ harm against” him. He argues that the BIA’s decision is therefore unsupported by substantial evidence.

But even if there were substantial evidence for “some *other* finding” that was not made, which there isn’t, that still would not justify reversal when there is substantial evidence for the finding that the BIA did make. *Mazariegos*, 241 F.3d at 1324. The record

25-13974

Opinion of the Court

11

contains country conditions reports for Mexico, which show government action in investigating, charging, and imprisoning officials for corruption, as well as launching initiatives to combat national crime. Further, Matamoros conceded that he'd never been directly threatened while residing in Mexico and had never reported gang activities to the police there. We cannot say, in light of that evidence, that the record compels reversal, or even supports reversal. *See Kazemzadeh*, 577 F.3d at 1351.

Instead, substantial evidence supports the BIA's finding that the resettlement bar applies to Matamoros and that he failed to meet his burden to show that he met any exception to it.

PETITION DENIED.