FILED
United States Court of Appeals
Tenth Circuit

May 10, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

IBRAHIEM ZEID SALEH BAGASH,

Petitioner,

v.

MERRICK B. GARLAND,
United States Attorney General,

Respondent.

No. 22-9542
(Petition for Review)

ORDER AND JUDGMENT[*]

Before **MORITZ**, **EID**, and **CARSON**, Circuit Judges.

Ibrahiem Bagash petitions for review of an order by the Board of Immigration Appeals (BIA) sustaining a removal order by an immigration judge (IJ). Exercising jurisdiction under 8 U.S.C. § 1252, we deny the petition.

BACKGROUND

Mr. Bagash is a native and citizen of Yemen. He left Yemen in 2019 and traveled to eleven different countries before arriving in the United States in 2021.

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[*] After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

The Department of Homeland Security served him with a notice to appear charging him as removable because he was present in this country without admission or parole. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Mr. Bagash conceded removability but applied for asylum, restriction on removal, and relief under the Convention Against Torture (CAT). He stated he faced persecution from Yemenis in the south of the country and from the Houthi militia.

After a hearing, the IJ denied relief. In his written decision, the IJ concluded Mr. Bagash's testimony lacked credibility. The IJ detailed eleven specific inconsistencies and implausibilities to support that finding:

(1) Mr. Bagash's representations before the IJ in support of his motion to continue his individual hearing were inconsistent with statements he made in a recorded phone call from the immigration detention facility. The IJ found this suggested Mr. Bagash "was using dilatory tactics to extend his proceedings." R. at 132.

(2) Mr. Bagash initially expressed unwillingness to sign his asylum application, but agreed to do so after realizing his refusal would not result in another continuance, which the IJ also "consider[ed] . . . to have been a dilatory tactic." *Id.*

(3) Mr. Bagash claimed in his credible fear interview with an asylum officer that the Houthis forced him to go into the medical field, but he testified he chose to go into the medical field because he wanted to help people.

(4) Mr. Bagash testified he refused to treat Houthi soldiers at his job but "offered no explanation as to how he was able to refuse this treatment in a Houthi[-]run hospital." *Id.* He claimed in his asylum application that the militia forced him treat Houthi soldiers, and "was not able to explain how he could refuse treatment to Houthi soldiers while being forced to treat them." *Id.* at 133.

(5) Mr. Bagash told the asylum officer in his credible fear interview and wrote in his asylum application that "the Houthis arrested him because he refused to attend their conferences," but he did not mention this in his testimony, citing only his refusal to treat Houthi soldiers and participation in a demonstration at the hospital as the reasons for his detention. *Id.*

(6) Mr. Bagash testified Houthi soldiers used violence to break up the hospital demonstration, including the use of tear gas, but he did not mention the use of violence or tear gas in his credible fear interview or written asylum application.

(7) Mr. Bagash did not mention any siblings on his asylum application, but he mentioned a brother in his testimony.

(8) Mr. Bagash denied he knew another Yemeni citizen, but could not explain the existence of a photograph showing him with the other individual in Honduras.

(9) Mr. Bagash asserted he never applied for a United States visa, when in fact he had applied for a diversity lottery visa in March 2020.

(10) Mr. Bagash testified he entered the United States at a port of entry in El Paso, Texas, when in fact Border Patrol agents apprehended him outside an official port of entry near Sunland Park, New Mexico.

(11) Mr. Bagash never mentioned being drafted by the Yemeni army in his application and testimony, but he submitted a letter to the IJ indicating he had, in fact, been drafted.

In addition to the lack-of-credible-testimony finding, the IJ alternatively concluded Mr. Bagash needed and failed to provide sufficient corroborating evidence to support his applications for asylum, restriction on removal, and CAT relief. The IJ further concluded the persecutor bar, *see* 8 U.S.C. §§ 1158(b)(2)(A)(i); 1231(b)(3)(B)(i), and the national security bar, *see id.* §§ 1158(b)(2)(A)(iv), 1231(b)(3)(B)(iv), both precluded relief for Mr. Bagash. Finally, the IJ concluded Mr. Bagash did not satisfy the relevant standards for relief on the merits of his asylum claim, including the standards for past persecution and a well-founded fear of future persecution.

The BIA, in a decision issued by a single board member, affirmed the denial of relief, concluding the IJ did not clearly err in finding Mr. Bagash was not credible. The BIA also affirmed the IJ's conclusion that Mr. Bagash needed to and failed to provide sufficient evidence corroborating his asylum claim. This timely petition for review followed.

DISCUSSION

Because a single board member issued the BIA decision, we review it "as the final agency determination and limit our review to issues specifically addressed therein." *Diallo v. Gonzales*, 447 F.3d 1274, 1279 (10th Cir. 2006). "We consider any legal questions de novo, and we review the agency's findings of fact under the substantial evidence standard. Under that test, our duty is to guarantee that factual determinations are supported by reasonable, substantial and probative evidence considering the record as a whole." *Elzour v. Ashcroft*, 378 F.3d 1143, 1150 (10th Cir. 2004). "To obtain reversal of factual findings, a petitioner must show the evidence he presented was so compelling that no reasonable factfinder could find as the BIA did." *Gutierrez-Orozco v. Lynch*, 810 F.3d 1243, 1245 (10th Cir. 2016) (internal quotation marks omitted).

Mr. Bagash presents four main arguments in his petition. First, he argues the BIA ignored several of the arguments he raised in his agency appeal, denying him the due process right to be heard in a meaningful manner. Second, he argues the BIA erred in affirming the denial of CAT relief premised solely on the IJ's adverse credibility determination. Third, he argues the IJ's specific findings of inconsistencies and implausibilities in his testimony are inaccurate. Fourth, he argues he did, in fact, present sufficient evidence in support of his applications for asylum, withholding of removal, and CAT relief.

We reject the first argument insofar as the BIA did not have to consider every ground the IJ relied upon in its order denying relief. "As a general rule courts and

agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach." *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976). And "[w]e are limited to judging the propriety of the [BIA]'s rulings solely by the grounds invoked by the agency." *Berdiev v. Garland*, 13 F.4th 1125, 1136 (10th Cir. 2021) (internal quotation marks omitted). So, to the extent Mr. Bagash challenges the final two reasons the IJ relied on to deny relief—i.e., the applicability of the persecutor and national security bars or the IJ's conclusions that Mr. Bagash did not make an adequate showing of past or probable future persecution—we cannot review such challenges.[1]

We reject the second argument because, without credible testimony, Mr. Bagash did not present sufficient evidence that he would probably face torture if he returned to Yemen. And we have previously held an adverse credibility finding can be fatal to a CAT claim under such circumstances. *See Ismaiel v. Mukasey*, 516 F.3d 1198, 1206 (10th Cir. 2008). In his petition for review, Mr. Bagash emphasizes the country-conditions evidence he submitted, but the IJ found his

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[1] Mr. Bagash also briefly argues "the IJ violated [his] procedural due process and his statutory rights under [8 U.S.C.] § 1229a(b)(4)(B)" by considering a translated transcript of his phone calls from the detention facility. Pet'r's Opening Br. at 42. But the BIA did not rely on the phone calls when it upheld the IJ's adverse credibility finding. So, even assuming the IJ admitted them in error, Mr. Bagash cannot show the necessary prejudice to sustain his due-process argument. *See United States v. Mendoza-Lopez*, 7 F.3d 1483, 1485 (10th Cir. 1993) ("To establish fundamental unfairness sufficient to constitute a violation of due process, [an alien] must show that he suffered prejudice from the alleged unfairness."); *see also Matter of Santos*, 19 I. & N. Dec. 105, 107 (B.I.A. 1984) ("[A]n alien must demonstrate that he has been prejudiced by a violation of a procedural rule or regulation before his deportation proceeding will be invalidated.").

evidence was not sufficiently individualized. In other words, the IJ found Mr. Bagash did not "submit[] sufficient evidence to reflect that *he* would be singled out for torture in the future by a public official or with the acquiescence of a public official." R. at 145 (emphasis added). The BIA upheld this finding as not clearly erroneous, and Mr. Bagash does not demonstrate any reasonable factfinder would be compelled to reject it, so substantial evidence supports the decision. *See Gutierrez-Orozco*, 810 F.3d at 1245.

Finally, we reject Mr. Bagash's third and fourth arguments because the record evidence does not compel a finding that he testified credibly or that he is otherwise entitled to asylum, restriction on removal, or CAT protection. In his petition for review, although Mr. Bagash presents a view of the evidence and his testimony through which a factfinder might credit his account, he falls well short of showing "that no reasonable factfinder could find as the BIA did." *Id.* (internal quotation marks omitted). He therefore fails to establish the BIA's decision is unsupported by substantial evidence.

CONCLUSION

We deny the petition for review.

Entered for the Court

Nancy L. Moritz
Circuit Judge