

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

September 16, 2026

Christopher M. Wolpert
Clerk of Court

ALIX SIMBAQUEBA ORTIZ;
JUAN OVIEDO MARTINEZ;
HADE GOMEZ SIMBAQUEBA;
AHILLYN GOMEZ SIMBAQUEBA,

Petitioners,

v.

TODD BLANCHE, United States
Attorney General,*

Respondent.

No. 25-9553
(Petition for Review)

ORDER AND JUDGMENT**

Before **MATHESON, CARSON, and ROSSMAN**, Circuit Judges.

Alix Simbaqueba Ortiz petitions for review of the Board of Immigration Appeals (BIA) decision affirming the immigration judge's (IJ) denial of her

* Todd Blanche is now the Attorney General of the United States and has been substituted as Respondent. *See* Fed. R. App. P. 43(c)(2).

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

applications for relief from removal.¹ Exercising jurisdiction under 8 U.S.C. § 1252(a)(1), we deny her petition for review.

I. BACKGROUND

A. Underlying Facts

Petitioner is a native and citizen of Colombia who entered the United States without valid entry documents in July 2022. She was then placed in removal proceedings, and the IJ found her removable. Seeking relief from removal, Petitioner applied for asylum, withholding of removal, and protection under the Convention Against Torture (CAT).

Before the IJ, Petitioner testified that she worked as a nurse's assistant for the public health department in Bogota, Colombia. At times, her work involved conducting home visits to assess medical needs and administer vaccines. She described three incidents when Revolutionary Armed Forces of Colombia (FARC) dissidents harmed her while she was working.

The first incident happened in 2014, while Petitioner was doing home visits in a “red zone” (a neighborhood under guerilla control). Upon entering a house, she noticed weapons and explosives. The people in the house said they were FARC dissidents and held her captive for somewhere between five and eight hours, threatening to hurt her if she reported them to the police. They allowed Petitioner to

¹ Ms. Simbaqueba Ortiz's husband and two minor daughters, all petitioners in this case, are derivative beneficiaries of her asylum application. 8 U.S.C. § 1158(b)(3)(A). They also filed their own applications, but they present no claims or arguments distinct from hers.

leave when her supervisor came looking for her. As she was leaving, they said they knew where she worked. Petitioner and her supervisor reported the incident to the police, but the house was empty when the police arrived to investigate. After the incident, she stopped working in the field for a time; she then worked without problems for about eight years.

The second incident happened on May 10, 2022, while Petitioner was administering Covid-19 vaccines in Bolivar City, an area within Bogota. Five armed FARC dissidents approached her and demanded that she give them the vaccines. They struck her in the face, knocking out one of her teeth, and threatened to kill her daughters if she reported them to police or failed to comply with their demands. Petitioner was too afraid to report the incident to the police. After the incident, she was reassigned to an in-office position.

The third incident happened on May 30, 2022. That day, two armed FARC dissidents forced their way into Petitioner's apartment and demanded vaccines. They grabbed her by the hair, threw her to the ground, and threatened to pull out her teeth. They threatened to find her daughters at school and kill them if she failed to turn over the vaccines. The two FARC dissidents also threatened to kill her if she reported them, so she did not report the incident to the police. After the third incident, Petitioner fled Colombia and came to the United States.

B. Legal Standards

To qualify for asylum, an applicant must prove by a preponderance of the evidence that she is a refugee. *Rivera-Barrientos v. Holder*, 666 F.3d 641, 645

(10th Cir. 2012); 8 U.S.C. § 1158(b)(1)(A). A “refugee” is a person who is unable or unwilling to return to—and unable or unwilling to avail herself of the protection of—her country, because of persecution or a well-founded fear of persecution, on account of any of five protected grounds: race, religion, nationality, membership in a particular social group (PSG), or political opinion. *Id.* § 1101(a)(42)(A); *Rodas-Orellana v. Holder*, 780 F.3d 982, 986 (10th Cir. 2015).

“Persecution is the infliction of suffering or harm upon those who differ [on a protected ground] in a way regarded as offensive and must entail more than just restrictions or threats to life and liberty.” *Ritonga v. Holder*, 633 F.3d 971, 975 (10th Cir. 2011) (internal quotation marks omitted). “[P]ersecution may be inflicted by the government itself, or by a non-governmental group that the government is unwilling or unable to control.” *Id.* (internal quotation marks omitted). “We refer to the latter as private persecution.” *Singh v. Bondi*, 130 F.4th 848, 858 (10th Cir. 2025) (internal quotation marks omitted). “[A]n asylum applicant must establish a ‘nexus’ between the alleged persecution and a protected ground.” *Miguel-Pena v. Garland*, 94 F.4th 1145, 1159 (10th Cir. 2024) (quoting *Dallakoti v. Holder*, 619 F.3d 1264, 1267 (10th Cir. 2010)).

To qualify for withholding of removal, an applicant must show “a clear probability of persecution on account of a protected ground.” *Rodas-Orellana*, 780 F.3d at 987 (internal quotation marks omitted). This burden of proof is higher than the burden for asylum. *See id.* at 986.

To receive protection under the CAT, an applicant must prove that if she is returned to her country, it is more likely than not that she would be tortured, *see* 8 C.F.R. § 1208.16(c)(2), “by, or at the instigation of, or with the consent or acquiescence of, a public official,” *id.* § 1208.18(a)(1). A CAT applicant need not show a nexus between torture and a protected ground. *See Ritonga*, 633 F.3d at 978.

C. Agency Proceedings

Petitioner based her asylum and withholding-of-removal claims on her membership in two proposed PSGs: “(1) female public health workers providing healthcare in conflict-affected regions of Colombia, and (2) female healthcare workers in Colombia who oppose guerrilla control.” R. vol. I at 438.

The IJ found Petitioner’s testimony credible but denied her applications. First, the IJ determined “the threats and violence [Petitioner] experienced in Colombia took a significant psychological toll” but fell “below the level of persecution.” *Id.* at 581. The IJ then found Petitioner failed to show a nexus between her past harm and her membership in either of her proposed PSGs.

Next, the IJ found Petitioner did not establish the Colombian government’s inability or unwillingness to protect her from private persecution. The facts showed the police “responded immediately and investigated” when Petitioner reported the 2014 incident, and she did not report the other two incidents to police. *Id.* at 582. The IJ acknowledged country conditions evidence of Colombia’s struggles with private armed groups like the FARC and noted the evidence showed the Colombian government generally investigated and prosecuted reported FARC activity. The IJ

then found Petitioner could safely relocate within Colombia. Based on these findings, the IJ denied asylum and withholding of removal.

The IJ also denied Petitioner's request for CAT protection, finding she failed to prove it was more likely than not that Colombian officials would acquiesce to her torture. The IJ reasoned that Petitioner had not been tortured in the past, police investigated the only incident she reported, and she could relocate within Colombia. The IJ also explained, "[t]he record does not indicate that the unknown criminals [Petitioner] fears have a continued interest in harming her or her family or that they are motivated to expend resources to locate [her] in Colombia." *Id.* at 584.

The BIA upheld the IJ's denial of asylum and withholding. In doing so, it affirmed the no-persecution finding and agreed Petitioner failed to prove the Colombian government was unable or unwilling to control the FARC. The BIA also affirmed the IJ's finding that Petitioner was ineligible for CAT protection because she did not meet her burden to show government officials would acquiesce to her torture upon her removal to Colombia.

This timely petition for review followed.

II. DISCUSSION

A. Standards of Review

Where, as here, a single BIA member issues a brief order affirming an IJ's decision, we review both the BIA order and any parts of the IJ's decision it relied on. *Dallakoti*, 619 F.3d at 1267. We review legal conclusions de novo and findings of fact for substantial evidence. *Id.* Under the substantial-evidence standard, "the

administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” 8 U.S.C. § 1252(b)(4)(B).

B. Asylum

To begin, Petitioner argues the IJ and the BIA applied the wrong legal standard in assessing whether she established persecution because they failed to consider her past harm cumulatively. “Whether the BIA applied the correct legal framework is a question of law, which we review de novo.” *Miguel-Pena*, 94 F.4th at 1159. In assessing whether harm is persecution, “[w]e do not look at each incident in isolation, but instead consider them collectively, because the cumulative effects of multiple incidents may constitute persecution.” *Ritonga*, 633 F.3d at 975.

Here, the BIA acknowledged the IJ “[did] not explicitly state she considered past harm cumulatively,” then discussed the three incidents when FARC dissidents harmed Petitioner and determined, “considered in the aggregate, [Petitioner’s] past harm does not rise to the level of persecution.” R. vol. I at 4, 5. The BIA applied the appropriate cumulative-harm standard.²

Petitioner next argues the BIA erred in upholding the IJ’s finding that she failed to show the Colombian government’s inability or unwillingness to control the FARC dissidents. We review for substantial evidence whether an applicant has

² The IJ also considered the harm cumulatively even though she did not explicitly say so. The IJ noted, “[i]n determining whether an applicant has shown harm rising to the level of persecution, the court considers incidents in the aggregate.” R. vol. I at 581. She then discussed the three FARC incidents and found “the threats and violence [Petitioner] experienced in Colombia took a significant psychological toll” but fell “below the level of persecution.” *Id.*

satisfied the unable-or-unwilling standard. *See Singh*, 130 F.4th at 863 (stating to prevail on factual challenge to the BIA’s unable-or-unwilling ruling, a petitioner must show the record compels “any reasonable adjudicator” to find the government was unable or unwilling to protect him from private persecution (quoting 8 U.S.C. § 1252(b)(4)(B)); *see also Dallakoti*, 619 F.3d at 1267. Proof of a government’s inability or unwillingness will often take the form of country conditions reports and evidence of the government’s specific response to the alleged persecution. *See Singh*, 130 F.4th at 860.

Here, Petitioner argues, and the agency acknowledged, country conditions evidence shows private armed groups like the FARC continue to cause problems in Colombia. But as the IJ and the BIA found based on the record before it, country conditions evidence also shows the government generally investigates and prosecutes FARC activity when it is reported. This is consistent with Petitioner’s testimony about the Colombian government’s specific response to her alleged persecution by the FARC dissidents. Police responded and investigated when Petitioner reported the 2014 incident, and she remained unharmed for about eight years thereafter.

But Petitioner did not report either of the May 2022 incidents. When an asylum applicant relies on the government’s response to unreported private persecution to satisfy the unable-or-unwilling standard, “she must show that reporting the persecution to authorities would have been futile or dangerous [.]” *Id.* at 862. Petitioner has not pointed to any evidence that police failed to investigate reported FARC activity or otherwise explained why reporting the May 2022 incidents

would have been futile or dangerous. Based on the record before us, therefore, we cannot say any reasonable adjudicator would be compelled to conclude the Colombian government was unable or unwilling to protect Petitioner from private persecution, as required to reverse the BIA on this issue.³

Petitioner also argues the BIA erred by declining to address the viability of her proposed PSGs, nexus, and internal relocation. We are not persuaded. The BIA’s determination that Petitioner failed to establish the Colombian government’s inability or unwillingness to protect her was dispositive. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (“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.”). 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) (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)). “Adhering to this principle means that we are ‘not at liberty to search for grounds to affirm that were not relied upon by the agency.’” *Id.* at 1137 (quoting *Uanreroro v. Gonzales*, 443 F.3d 1197, 1205 (10th Cir. 2006)).

³ Petitioner argues the BIA misapplied the unable-or-unwilling standard by “[t]reating one failed [police] response as dispositive, while ignoring credible evidence of systemic incapacity.” Opening Br. at 26. The BIA “need not discuss every piece of evidence in rendering its decision” and “[w]e presume [it] has considered the whole record.” *Singh*, 130 F.4th at 860 (internal quotation marks omitted). Here, the BIA considered country conditions reports and evidence of Colombia’s specific response to the alleged persecution. We discern no misapplication of the legal standard.

Finally, Petitioner contends the agency erred in failing to apply the presumption of future persecution. But the government argues, and we agree, that Petitioner did not raise this argument before the BIA. We may only review a final removal order if the noncitizen “has exhausted all administrative remedies.” 8 U.S.C. § 1252(d)(1). And we consider an argument exhausted only if the noncitizen presented “the *same specific legal theory* to the BIA.” *Garcia-Carbajal v. Holder*, 625 F.3d 1233, 1237 (10th Cir. 2010), *abrogated on other grounds by Santos-Zacaria v. Garland*, 598 U.S. 411 (2023); *see Garcia-Botello v. Bondi*, 168 F.4th 1245, 1250 n.6 (10th Cir. 2026). We decline to consider this unexhausted argument in the first instance. *See Miguel-Pena*, 94 F.4th at 1158.

C. Withholding of Removal

Petitioner’s inability to satisfy the burden of proof for asylum necessarily precludes her from meeting the higher standard for withholding of removal based on the same facts. *See Rodas-Orellana*, 780 F.3d at 987.

D. Protection under the CAT

Petitioner argues the agency applied the wrong legal standard when it evaluated her eligibility for CAT protection. The government correctly objects that she failed to raise this argument before the BIA. Because Petitioner did not exhaust this argument, we decline to review it. *See Miguel-Pena*, 94 F.4th at 1158.

In any event, Petitioner has identified no evidence that would compel a reasonable adjudicator to conclude the Colombian government would acquiesce to her torture. *See Htun v. Lynch*, 818 F.3d 1111, 1118 (10th Cir. 2016) (noting

“a request for protection under the CAT involves factual determinations reviewed for substantial evidence”).

III. CONCLUSION

We deny the petition for review.

Entered for the Court

Veronica S. Rossman
Circuit Judge