23-7500
Paca-Acan v. Blanche

BIA
Drucker, IJ
A220 441 301/302/303

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 24th day of September, two thousand twenty-six.

PRESENT:

SUSAN L. CARNEY,
EUNICE C. LEE,
MYRNA PÉREZ,
Circuit Judges.

JIMMY FERNANDO PACA-ACAN, JHENIFER ANABEL GUAMAN-SHAMBI, S.A.P.,
Petitioners,

v.

23-7500
NAC

TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,

Respondent.[*]

FOR PETITIONERS:	Caridad Pastor, Pastor & Associates, P.C., New York, NY.
FOR RESPONDENT:	Brian M. Boynton, Principal Deputy Assistant Attorney General; Cindy S. Ferrier, Assistant Director; Marie V. Robinson, Attorney, Office of Immigration Litigation, Civil Division, United States Department of Justice, Washington, DC.

UPON DUE CONSIDERATION of this petition for review of a Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the petition for review is GRANTED.

Petitioners Jhenifer Anabel Guaman-Shambi, her husband Jimmy Fernando Paca-Acan, and their minor child, natives and citizens of Ecuador, seek review of a decision of the BIA affirming a decision of an Immigration Judge ("IJ") denying asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Jimmy Fernando Paca-Acan, et al.*, Nos. A220 441 301/302/303 (B.I.A. Sep. 29, 2023), *aff'g* Nos. A220 441 301/302/303 (Immigr. Ct. N.Y.C. Aug. 9, 2022). We assume the parties' familiarity with the underlying facts and procedural

[*] The Clerk of Court is respectfully directed to amend the case caption as set forth above.

history.

We have reviewed the IJ's decision as modified by the BIA, i.e., minus the findings that the BIA declined to reach. *See Xue Hong Yang v. U.S. Dep't of Just.*, 426 F.3d 520, 522 (2d Cir. 2005). We address only whether Guaman-Shambi established a nexus to a protected ground as required for asylum and withholding of removal claims because Guaman-Shambi does not challenge the denial of her CAT claim. *See Debique v. Garland*, 58 F.4th 676, 684 (2d Cir. 2023) (deeming abandoned "claims not adequately presented in an appellant's brief" (quotation marks omitted)). We review fact finding, including nexus determinations, for substantial evidence, and we generally review questions of law de novo. *See Hong Fei Gao v. Sessions*, 891 F.3d 67, 76 (2d Cir. 2018); *Edimo-Doualla v. Gonzales*, 464 F.3d 276, 282 (2d Cir. 2006). "[T]he 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).

An applicant for asylum and withholding of removal must establish either past persecution or a fear of future persecution and "that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(i); *see*

also 8 C.F.R. §§ 1208.13(b), 1208.16(b); *Quituizaca v. Garland*, 52 F.4th 103, 105–06 (2d Cir. 2022) (holding that "one central reason" standard applies to both asylum and withholding). The protected ground "cannot be a minor, incidental, or tangential reason for the harm." *Garcia-Aranda v. Garland*, 53 F.4th 752, 757 (2d Cir. 2022). However, it need not be the sole reason for a persecutor's actions. *See Acharya v. Holder*, 761 F.3d 289, 297–98 (2d Cir. 2014). "Where there are mixed motives for a persecutor's actions, an asylum applicant need not show with absolute certainty why the events occurred, but rather, only that the harm was motivated, in part, by an actual or imputed protected ground." *Aliyev v. Mukasey*, 549 F.3d 111, 116 (2d Cir. 2008) (quotation marks omitted). Remand is appropriate where the agency fails "to conduct the required mixed-motive analysis" or to consider evidence supporting a claim that the harm was "motivated at least in part by" a protected ground. *Id*. at 118.

Guaman-Shambi alleged that she was physically abused for many years as a child by her father who forced her to live and work in his home and perform heavy manual labor. She argued that this abuse constituted persecution because it was on account of her membership in various particular social groups related to family, gender roles, and patriarchal norms. The agency did not address the

cognizability of all of her proposed social groups, instead concluding that she had not established a nexus to any protected ground because her father was only interested in free labor. Guaman-Shambi argues that the agency failed to conduct a mixed-motive analysis, cursorily dismissed her argument that her father and stepmother were also motivated by the fact that she was her father's daughter, and contends that mixed motives are inherent in domestic violence claims.

Guaman-Shambi asserted that her past harm was based on her membership in four social groups: (1) daughters who disobey fathers, (2) women who defy men, (3) nuclear family members of the Guaman-Shambi family, and (4) women who refuse to abide by patriarchal society norms. She stated that her father made her live in his home "so that [she] could cook, wash their clothes, take care of the animals and do heavy labor" and that he and her stepmother beat her if she "did not obey the[m] in everything they said." Cert. Admin. R. ("CAR") at 335. These statements indicated that free labor was a motive, and her statement that her father and stepmother also beat Paca-Acan to force him to do work for them undercuts a family- or gender-based motive.

However, Guaman-Shambi also submitted evidence that violence against women and children have other motivations and are influenced by the culture. A

report from a clinical psychologist who specializes in child abuse stated that "[m]any abusive parents perceive their children as their property, giving them a sense of ownership over the child and the child's body that makes them the target for the parent's violence" and that "[t]his sense of parental ownership and control over a child is especially prevalent when a family comes from a community with a history of strict gender roles that subjugate children and women to men, for example, societies where machismo is prevalent." CAR at 312. Further, the country conditions evidence reflects significant levels of gender-based violence and child abuse, including forced labor and domestic servitude.

We generally remand only if the evidence compels a conclusion contrary to that of the agency. *See* 8 U.S.C. § 1252(b)(4)(B); *Quintanilla-Mejia v. Garland*, 3 F.4th 569, 593–94 (2d Cir. 2021). However, where, as here, the agency (1) assumed cognizability of multiple proposed social groups but did not conduct a mixed-motive analysis, (2) did not discuss evidence of the motive of abusive parents from machismo cultures, and (3) ignored important aspects of the country conditions evidence, we remand for further consideration by the agency. *See Yan Chen v. Gonzales*, 417 F.3d 268, 275 (2d Cir. 2005) ("Where the immigration court fails to consider important evidence supporting a petitioner's claim, we are deprived of

the ability to adequately review the claim and must vacate the decision and remand for further proceedings." (quotation marks omitted)). We reach no conclusions as to whether Guaman-Shambi's remaining proposed social groups are cognizable or whether her evidence establishes a mixed motive, but remand only for the agency to consider the issues in the first instance.

For the foregoing reasons, we GRANT the petition for review, VACATE the BIA's decision, and REMAND to the BIA for further proceedings consistent with this order. All pending motions and applications are DENIED and stays VACATED.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court