BIA
Drucker, IJ
A220 999 318/219/320

# 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 2nd day of November, two thousand twenty-six.**

**PRESENT:**

**JON O. NEWMAN,**
**JOSÉ A. CABRANES,**
**JOSEPH F. BIANCO,**
***Circuit Judges.***

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**MYRIAN YOLANDA CHICAIZA-CAISAGUANO, D.D.G.-C., C.D.G.-C.,**
***Petitioners,***

**v.** **24-1275**
**NAC**

**TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,**

*Respondent*.*

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**FOR PETITIONER:** Matthew Krein, MacMurray & Associates, New York, NY.

**FOR RESPONDENT:** Brett A. Shumate, Principal Deputy Assistant Attorney General; Brianne Whelan Cohen, Senior Litigation Counsel; Nicole J. Thomas-Dorris, Trial Attorney, Office of Immigration Litigation, 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 DENIED.

Petitioners Myrian Yolanda Chicaiza-Caisaguano and her minor children, natives and citizens of Ecuador, seek review of an April 8, 2024 decision of the BIA, affirming a July 19, 2023 decision of an immigration judge ("IJ"), which denied her application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT").[1] *In re Chicaiza-Caisaguano*, Nos. A 220 999 318/319/320

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

[1] We principally refer to Chicaiza-Caisaguano because her children are derivative applicants for asylum and did not file independent applications.

(B.I.A. Apr. 8, 2024), *aff'g* Nos. A 220 999 318/319/320 (Immig. Ct. N.Y. City July 19, 2023). We assume the parties' familiarity with the underlying facts and procedural history.

We have reviewed the IJ's decision as modified by the BIA, that is, without the nexus findings that the BIA declined to reach.[2] *See Xue Hong Yang v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005). We review pure questions of law de novo, and factual findings and the application of law to fact for substantial evidence. *See Urias-Orellana v. Bondi*, 607 U.S. 537, 543 n.1, 545 (2026); *Al Saidi v. Blanche*, 185 F.4th 286, 297 (2d Cir. 2026). "[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).

## I. Asylum and Withholding of Removal

An applicant for asylum and withholding of removal must establish either past persecution or a fear of future persecution and "that race, religion, nationality,

[2] Chicaiza-Caisaguano's arguments about nexus to a protected ground miss the mark because the BIA did not—and was not required to—address that issue after affirming the IJ's decision on other grounds. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("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.").

membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." *Id*. § 1158(b)(1)(B)(i) (asylum); *see also id*. § 1231(b)(3)(A), (C) (withholding); 8 C.F.R. §§ 1208.13(b), 1208.16(b); *Quituizaca v. Garland*, 52 F.4th 103, 105–08 (2d Cir. 2022) (holding that the "one central reason" standard applies to both asylum and withholding of removal). "To qualify as persecution the conduct at issue must be attributable to the government, whether directly because engaged in by government officials, or indirectly because engaged in by private persons whom the government is unable or unwilling to control." *Scarlett v. Barr*, 957 F.3d 316, 328 (2d Cir. 2020) (internal quotation marks omitted). "Under the unwilling-or-unable standard, a finding of persecution ordinarily requires a determination that government authorities, if they did not actually perpetrate or incite the persecution, condoned it or at least demonstrated a complete helplessness to protect the victims." *Singh v. Garland*, 11 F.4th 106, 114–15 (2d Cir. 2021) (internal quotation marks omitted).

Substantial evidence supports the agency's conclusion that Chicaiza-Caisaguano failed to show that Ecuadorian officials were unable or unwilling to protect her from a man who had assaulted and stalked her. *See Singh-Kar v. Bondi*,

137 F.4th 94, 102 (2d Cir. 2025) (affirming denial of asylum and withholding of removal where record did "not mandate a finding by a reasonable adjudicator that the . . . government is unable or unwilling to protect" the petitioner).

Chicaiza-Caisaguano testified that she never informed authorities about the man's conduct. "Failure to report harm is not necessarily fatal to a claim of persecution if the applicant can demonstrate that reporting private abuse to government authorities would have been futile or dangerous." *Castellanos-Ventura v. Garland*, 118 F.4th 250, 254 (2d Cir. 2024) (brackets omitted). But even after finding Chicaiza-Caisaguano credible, the agency was not required to find persuasive her assertion that the police would not have helped her or would have placed her at greater risk. *See Garland v. Ming Dai*, 593 U.S. 357, 371 (2021) ("[E]ven if the BIA treats an alien's evidence as credible, the agency need not find [the] evidence persuasive or sufficient to meet the burden of proof."). As the IJ noted, the State Department's 2022 Report on Human Rights in Ecuador reflects that Ecuadorian law criminalizes rape and sexual harassment; "[p]enalties for physical, psychological, and sexual violence were enforced"; and "protective measures" like "police surveillance, placement in shelters, and awareness programs for the victim

and family" were also "generally enforced." Certified Administrative Record at 231–32, 263–64; *see Hui Lin Huang v. Holder*, 677 F.3d 130, 138 (2d Cir. 2012) (recognizing that State Department reports "are usually the best available source of information on country conditions" and may be given greater weight than countervailing evidence). While there was other evidence in the record reflecting an overburdened criminal justice system and that women are sometimes reluctant to report crimes for fear of retribution or social stigma, there is no indication that the agency overlooked this evidence, and it does not compel the conclusion that the police would refuse to help Chicaiza-Caisaguano if she reported the abuse.[3] *See Quintanilla-Mejia v. Garland*, 3 F.4th 569, 592 (2d Cir. 2021) (explaining that when "the agency's conclusion finds support in record evidence, [a petitioner] cannot secure . . . relief by pointing to conflicting evidence that might support—but not compel—a different conclusion"); *Xiao Ji Chen v. U.S. Dep't of Just.*, 471 F.3d 315, 336 n.17 (2d Cir. 2006) ("[W]e presume that an IJ has taken into account all of

[3] Because Chicaiza-Casiaguano's failure to establish past persecution was also dispositive of humanitarian asylum, we do not reach her arguments about the other requirements for that relief. *See* 8 C.F.R. § 1208.13(b)(1)(iii); *Bagamasbad*, 429 U.S. at 25; *Kone v. Holder*, 596 F.3d 141, 153 (2d Cir. 2010) ("[H]umanitarian asylum's foundational requirement [is] that the applicant must herself establish past persecution and herself be a refugee.").

the evidence before him, unless the record compellingly suggests otherwise.").

## II. CAT

For CAT relief, an applicant "bears the burden of proving" that she "more likely than not would be tortured by, or with the acquiescence of, government officials acting in an official capacity." *Quintanilla-Mejia*, 3 F.4th at 592; *see also* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). A CAT claim is a "two-step inquiry" that requires an applicant to establish that torture is "more likely than not" and that there will be "sufficient state action." *Garcia-Aranda v. Garland*, 53 F.4th 752, 758–59 (2d Cir. 2022). Thus, when a CAT applicant fears harm by private actors, the applicant must show that the feared harm will more likely than not be "inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity." 8 C.F.R. § 1208.18(a)(1).

"Acquiescence is satisfied where the government actor knows of or remains willfully blind to an act and thereafter breaches their legal responsibility to prevent it." *Garcia-Aranda*, 53 F.4th at 759 (internal quotation marks and brackets omitted). The BIA has held that acquiescence "requires a greater degree of governmental complicity than is required to establish a government is unable or unwilling to

protect a respondent in the asylum context," and "[e]vidence that a government has been generally ineffective in preventing or investigating criminal activities does not alone establish that a public official will acquiesce to torture." *Matter of O-A-R-G-*, 29 I. & N. Dec. 30, 36 (B.I.A. 2025); *see Scarlett*, 957 F.3d at 336 (remanding to BIA to determine "how the 'unable' prong of the unwilling-or-unable standard, as applicable to withholding claims, might translate to identifying government acquiescence in torture").

Chicaiza-Caisaguano asserts in a section header that the agency erred in concluding that she was ineligible for CAT relief, but she does not challenge the agency's reasoning that she failed to establish a likelihood of torture by or with the acquiescence of the Ecuadorian government. "We consider abandoned any claims not adequately presented in an appellant's brief, and an appellant's failure to make legal or factual arguments constitutes abandonment." *Debique v. Garland*, 58 F.4th 676, 684 (2d Cir. 2023) (internal quotation marks omitted). And even excusing the abandonment of this claim, any difference between the unable-or-unwilling and acquiescence standards is inconsequential here because, as explained above, the record evidence does not compel a conclusion that the Ecuadorian government

would not protect Chicaiza-Caisaguano from her abuser. *See Quintanilla-Mejia*, 3 F.4th at 592.

For the foregoing reasons, the petition for review is DENIED. All pending motions and applications are DENIED and stays VACATED.

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