24-464
Lubana v. Blanche

BIA
Gundlach, IJ
A220 737 619

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:

RAYMOND J. LOHIER, JR.,
Chief Judge,
JON O. NEWMAN,
DEBRA ANN LIVINGSTON,
Circuit Judges.

AMANDIP SINGH LUBANA,
Petitioner,

v. **24-464**
NAC

TODD BLANCHE, UNITED STATES ATTORNEY GENERAL,
Respondent.[*]

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

FOR PETITIONER: Suraj R. Singh, Esq., New York, NY.

FOR RESPONDENT: Brian Boynton, Principal Deputy Assistant Attorney General; Sheri R. Glaser, Senior Litigation Counsel; Zachary S. Hughbanks, 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.

Petitioner Amandip Singh Lubana, a native and citizen of India, seeks review of a January 30, 2024 decision of the BIA affirming a May 26, 2023 decision of an Immigration Judge ("IJ") denying his application for asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). *In re Lubana,* No. A 220 737 619 (B.I.A. Jan. 30, 2024), *aff'g* No. A 220 737 619 (Immigr. Ct. N.Y. City May 26, 2023). We assume the parties' familiarity with the underlying facts and procedural history.

We have reviewed the IJ's decision as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d 268, 271 (2d Cir. 2005). We review the agency's factual findings, including a relocation determination, "for substantial evidence." *Singh*

v. Garland, 11 F.4th 106, 112–13 (2d Cir. 2021). Under the substantial evidence standard, the agency's determination "is generally 'conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.'" *Urias-Orellana v. Bondi*, 607 U.S. 537, 545 (2026) (quoting 8 U.S.C. § 1252(b)(4)(B)).

An applicant for asylum or withholding of removal has the burden of establishing a well-founded fear or likelihood of future persecution, respectively. 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3)(A); *see* 8 C.F.R. §§ 1208.13(a)–(b), 1208.16(b).[1] Because the agency found that Lubana was persecuted by members of the Bharatiya Janata Party ("BJP") in Punjab for his support of the Shiromani Akali Dal Amritsar Party ("Mann Party"), he was presumed to have established a risk of future persecution. *See* 8 C.F.R. §§ 1208.13(b)(1), 1208.16(b)(1)(i). However, the Department of Homeland Security ("DHS") can rebut such a presumption by establishing, by a preponderance of the evidence, that (1) "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country,"

[1] Citations are to the regulations prior to enjoined amendments intended to go into effect in January 2021 that would have placed the burden on Lubana to rebut a presumption that relocation would be reasonable, and revised the factors to be considered in determining the reasonableness of relocation. *Compare, e.g.*, 8 C.F.R. § 1208.13(b)(3) (effective Nov. 20, 2020), *with id.* § 1208.13(b)(3) & (b)(3)(iii) (effective Jan. 11, 2021).

and (2) "under all the circumstances, it would be reasonable to expect the applicant to do so." *Id.* § 1208.13(b)(1)(i)(B)–(ii); *see also id.* § 1208.16(b)(1)(i)(B)–(ii). DHS may meet its burden by "adducing additional evidence or resting upon evidence already in the record," *In re H-*, 21 I. & N. Dec. 337, 346 (B.I.A. 1996), but it cannot rely on the absence of evidence, *cf. Kone v. Holder*, 596 F.3d 141, 150 (2d Cir. 2010) (holding that return trips to home country did not establish changed conditions simply because there was no new persecution). Here, substantial evidence supports the agency's determination that DHS established that Lubana could safely and reasonably relocate within India, outside Punjab.

As to the risk of persecution, DHS presented evidence that, contrary to Lubana's testimony that BJP supporters would track him through his national identification card, the Indian government does not store or share information regarding when, where, or for what purpose a person's identity is verified by this card. Lubana is not a high-profile activist for a separate Sikh state (the aim of the Mann Party) or a violent militant, and thus is unlikely to attract attention from the central Indian government or state governments beyond Punjab. Moreover, the country conditions evidence reflects that (1) Sikhs and Mann Party supporters like Lubana are generally safe outside Punjab, and (2) Lubana can ask a magistrate to

require police investigation of any BJP supporters who harass him. *See Bah v. Mukasey*, 529 F.3d 99, 115 (2d Cir. 2008) (explaining that DHS only has to show that relocation will "obviate the risk . . . related to the original claim"). Given these facts, the IJ reasonably concluded that Lubana would not be persecuted outside Punjab for his continued support of the Mann Party. *See Singh*, 11 F.4th at 112–13. Lubana broadly challenges DHS's evidence as outdated, but does not cite evidence that conditions in India have since changed and thus has not established that the record compels the conclusion that he cannot safely relocate. *See id.*

As to the reasonableness of internal relocation, Lubana argues that the agency failed to assess all relevant factors. The agency considers, among any other relevant factors, whether the applicant "would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. §§ 1208.13(b)(3), 1208.16(b)(3). Aside from stating that these issues are not mentioned, Lubana does not argue that a specific factor or circumstance makes relocation unreasonable. Lubana's lack of health issues, his physical ability to perform construction work, and DHS's evidence that there are

Sikh communities in states outside Punjab all support the conclusion that internal relocation is feasible. *See Singh*, 11 F.4th at 112–13.

The relocation finding is dispositive of asylum and withholding of removal. 8 C.F.R. §§ 1208.13(b)(1)(i)(B), 1208.16(b)(1)(i)(B). Lubana does not challenge the denial of his CAT claim.

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