

**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 April, two thousand twenty-five.

PRESENT:

RAYMOND J. LOHIER, JR.,
WILLIAM J. NARDINI,
MYRNA PÉREZ,
Circuit Judges.

RAUL SEBASTIAN IXCOY SICA,
Petitioner,

v.

PAMELA BONDI, UNITED STATES
ATTORNEY GENERAL,
Respondent.

22-6488
NAC

FOR PETITIONER: Samuel Iroegbu, Esq., Albany, NY.

1 **FOR RESPONDENT:**

Brian M. Boynton, Principal Deputy Assistant
Attorney General; Anna E. Juarez, Senior
Litigation Counsel; Lynda A. Do, Trial
Attorney, Office of Immigration Litigation,
United States Department of Justice,
Washington, DC.

7 UPON DUE CONSIDERATION of this petition for review of a Board of
8 Immigration Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND
9 DECREED that the petition for review is DENIED.

10 Petitioner Raul Sebastian Ixcoy Sica, a native and citizen of Guatemala, seeks
11 review of a September 7, 2022 decision of the BIA affirming a June 14, 2019 decision
12 of an Immigration Judge (“IJ”) denying his application for asylum, withholding of
13 removal, and relief under the Convention Against Torture (“CAT”). *In re Raul*
14 *Sebastian Ixcoy Sica*, No. A 209 449 661 (B.I.A. Sept. 7, 2022), *aff’g* No. A 209 449 661
15 (Immig. Ct. Buffalo June 14, 2019). We assume the parties’ familiarity with the
16 underlying facts and procedural history.

17 Under the circumstances, we have reviewed the IJ’s decision as modified by
18 the BIA, i.e., minus the grounds for denying relief that the BIA did not rely on.
19 *See Xue Hong Yang v. U.S. Dep’t of Just.*, 426 F.3d 520, 522 (2d Cir. 2005). We review
20 fact-finding under the substantial evidence standard, and we review questions of
21 law and the application of law to fact *de novo*. *See Yanqin Weng v. Holder*, 562 F.3d

1 510, 513 (2d Cir. 2009). “[T]he administrative findings of fact are conclusive
2 unless any reasonable adjudicator would be compelled to conclude to the
3 contrary.” 8 U.S.C. § 1252(b)(4)(B).

4 Ixcoy Sica alleged that, in 2006, MS-13 members attempted to recruit him on
5 three separate occasions, but he refused each time. During the third and final
6 incident, when he again refused to join MS-13, one man took out a gun and told
7 him they would kill his family if he did not join and another man hit him in the
8 face; Ixcoy Sica was not injured and did not require medical attention. Following
9 this incident, Ixcoy Sica and his family moved five hours away to a different state
10 in Guatemala, where they lived for two months before he came to the United
11 States. He testified that his family then moved back to their home, where gang
12 members still ask about him.

13 An asylum applicant has the burden to establish that he has suffered past
14 persecution or has a well-founded fear of future persecution. *See* 8 U.S.C.
15 § 1158(b)(1)(B)(i); 8 C.F.R. § 1208.13(a), (b). The agency reasonably concluded
16 that Ixcoy Sica did not suffer harm rising to the level of persecution or meet his
17 burden to establish that he could not avoid future persecution by relocating within
18 Guatemala.

1 The threats do not rise to the level of persecution because the gang members
2 did not take steps to act on their threats and Ixcoy Sica did not sufficiently allege
3 that the gang members had killed others like him who refused to join them. *See*
4 *Huo Qiang Chen v. Holder*, 773 F.3d 396, 406–07 (2d Cir. 2014) (unfulfilled threats
5 are generally insufficient to establish past persecution); *see also KC v. Garland*, 108
6 F.4th 130, 136 (2d Cir. 2024) (“[D]eath threats . . . will constitute past persecution
7 only if the applicant can point to aggravating circumstances indicating that the
8 death threat was so imminent or concrete or so menacing as itself to cause actual
9 suffering or harm.” (quotation marks omitted)).

10 Ixcoy Sica alleged that he was struck once in the face during his final
11 interaction with the gang members. While a past persecution claim can be based
12 on harm other than threats to life or freedom, including “non-life-threatening
13 violence and physical abuse,” *Beskovic v. Gonzales*, 467 F.3d 223, 226 n.3 (2d Cir.
14 2006), the harm must be sufficiently severe, rising above “mere harassment,”
15 *Ivanishvili v. U.S. Dep’t of Just.*, 433 F.3d 332, 341 (2d Cir. 2006). The IJ reasonably
16 concluded that the threats and this single incident of physical abuse did not rise to
17 the level of persecution. *See Mei Fun Wong v. Holder*, 633 F.3d 64, 72 (2d Cir. 2011)
18 (“[P]ersecution is an extreme concept that does not include every sort of treatment

1 our society regards as offensive.” (quotation marks omitted)). Although “violent
2 conduct generally goes beyond the mere annoyance and distress that characterize
3 harassment,” *Ivanishvili*, 433 F.3d at 342, Ixcoy Sica’s physical abuse did not occur
4 in the context of an arrest or detention, and he did not allege injury or require
5 medical attention, *see Jian Qiu Liu v. Holder*, 632 F.3d 820, 822 (2d Cir. 2011) (noting
6 that beatings, even in the context of a detention on account of a protected ground,
7 do not “constitute[] persecution *per se*”).

8 Absent past persecution, and because his fear was of private actors, rather
9 than state actors, Ixcoy Sica had the burden to establish “that it would not be
10 reasonable for him . . . to relocate.” 8 C.F.R. § 1208.13(b)(3)(i).¹ He testified that
11 he could not relocate because MS-13 “is everywhere.”² However, following his
12 interactions with the gang in 2006, he and his family relocated to a neighboring

¹ The citations are to the regulations at the time of the IJ’s decision. *See Garcia v. Garland*, 64 F.4th 62, 67 n.3 (2d Cir. 2023) (“This opinion relies on . . . the operative regulations at the time of the IJ and BIA decisions in this case . . .”).

² At his hearing, Ixcoy Sica raised concerns that he could not afford to relocate within Guatemala. While economic feasibility is a factor an IJ can consider in a relocation inquiry, Ixcoy Sica does not raise the issue on appeal. *See* 8 C.F.R. §§ 1208.13(b)(3) (asylum), 1208.16(b)(3) (withholding of removal) (setting out a “totality of the circumstances” inquiry for relocation), 8 C.F.R. § 1208.16(c)(3) (CAT) (directing an IJ to consider “all evidence relevant to the possibility of future torture,” including “whether relocation within the country is possible”).

1 state in Guatemala for two months and had no further issues. *See Jian Xing Huang*
2 *v. U.S. INS*, 421 F.3d 125, 129 (2d Cir. 2005) (“In the absence of solid support in the
3 record . . . [an applicant’s] fear is speculative at best”). Ixcoy Sica argues that the
4 country conditions evidence establishes “the impunity in which [the] Gang
5 operates.” However, “an applicant . . . cannot simply point to general country-
6 conditions evidence without showing how that evidence compels the conclusion
7 that a person in the applicant’s particular circumstances would be unable to
8 relocate to avoid persecution.” *Singh v. Garland*, 11 F.4th 106, 116 (2d Cir. 2021)
9 (quotation marks omitted)). Given Ixcoy Sica’s burden to demonstrate that he
10 could not safely relocate within Guatemala, his previous safe relocation is
11 sufficient support for the agency’s conclusion that he failed to meet his burden.
12 *See* 8 C.F.R. § 1208.13(b)(3)(i).

13 Ixcoy Sica’s ability to relocate is dispositive of his claims for asylum,
14 withholding of removal, and CAT protection. *See* 8 C.F.R. §§ 1208.13(b)(3)(i),
15 1208.16(b)(3)(i), (c)(2), (c)(3)(ii); *Lecaj v. Holder*, 616 F.3d 111, 119–20 (2d Cir. 2010)
16 (holding that an applicant who fails to demonstrate the chance of persecution
17 required for asylum “necessarily fails to demonstrate the ‘clear probability of
18 future persecution’ required for withholding of removal, and the ‘more likely than

1 not' to be tortured standard required for CAT relief" (quotation marks and
2 citations omitted)).

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

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