

**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 14th day of March, two thousand twenty-five.

PRESENT:

DEBRA ANN LIVINGSTON,
Chief Judge,
MYRNA PÉREZ,
MARIA ARAÚJO KAHN,
Circuit Judges.

NINGMA DORJE SHERPA,
Petitioner,

v.

PAMELA BONDI, UNITED STATES
ATTORNEY GENERAL,
Respondent.

22-6445
NAC

1
2 **FOR PETITIONER:** KHAGENDRA GHARTI-CHHETRY, Chhetry &
3 Associates, P.C., New York, NY.
4

5 **FOR RESPONDENT:** CHRISTINA R. ZEIDAN, Trial Attorney, Office
6 of Immigration Litigation, United States
7 Department of Justice, Washington, D.C.

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

11 Petitioner Ningma Dorje Sherpa, a native and citizen of Nepal, seeks review
12 of an August 31, 2022 decision of the BIA affirming a June 24, 2019 decision of an
13 Immigration Judge (“IJ”) denying his application for asylum, withholding of
14 removal, and relief under the Convention Against Torture (“CAT”). *In re Ningma*
15 *Dorje Sherpa*, No. A206-291-442 (B.I.A. Aug. 31, 2022), *aff’g* No. A206-291-442
16 (Immig. Ct. N.Y. City June 24, 2019). We assume the parties’ familiarity with the
17 underlying facts and procedural history.

18 We have reviewed the IJ’s decision as modified by the BIA, and therefore do
19 not assess the adverse credibility and time-bar grounds that the BIA declined to
20 rely on. *See Xue Hong Yang v. U.S. Dep’t of Just.*, 426 F.3d 520, 522 (2d Cir. 2005);
21 *INS v. Ventura*, 537 U.S. 12, 15-17 (2002). We review factual findings for

1 substantial evidence and questions of law *de novo*. See *Yanqin Weng v. Holder*, 562
2 F.3d 510, 513 (2d Cir. 2009). “[T]he administrative findings of fact are conclusive
3 unless any reasonable adjudicator would be compelled to conclude to the
4 contrary.” 8 U.S.C. § 1252(b)(4)(B).

5 An asylum applicant has the burden to establish past persecution or a well-
6 founded fear of future persecution. *Id.* § 1158(b)(1)(B)(i); 8 C.F.R. § 1208.13(a), (b).
7 Where, as the agency assumed here, an applicant has shown past persecution,
8 there is a presumption of future persecution. 8 C.F.R. § 1208.13(b)(1). The
9 Department of Homeland Security (“DHS”) can rebut the presumption by
10 establishing, by a “preponderance of the evidence,” *id.* § 1208.13(b)(1)(ii), that
11 “[t]here has been a fundamental change in circumstances such that the applicant
12 no longer has a well-founded fear of persecution,” *id.* § 1208.13(b)(1)(i)(A). In
13 assessing whether DHS has rebutted the presumption, the agency must “conduct
14 an individualized analysis of how changed conditions would affect the specific
15 petitioner’s situation” and “cannot rely in a conclusory fashion on information in
16 a State Department country report.” *Passi v. Mukasey*, 535 F.3d 98, 101–02 (2d Cir.
17 2008) (internal citation and marks omitted). Substantial evidence supports the
18 agency’s finding that circumstances in Nepal have fundamentally changed, such

1 that Sherpa no longer has a well-founded fear of persecution by Maoists on
2 account of his membership in the Nepali Congress Party (“NCP”), or lack of
3 support for the Maoist cause.

4 Sherpa identified the following past harm. He stopped attending school in
5 sixth grade (in 1999) when Maoists threatened to burn down the school. In 2004,
6 after he became a monk, Maoists came to his house, attempted to recruit him, and
7 beat him. In 2007, he joined the NCP, and in 2011, Maoists beat him and
8 threatened his life because he was opposing a Maoist rally. He left Nepal in 2013.
9 He testified that he feared returning to Nepal because of a violent Maoist splinter
10 group and then stated that Maoists went to his parents’ home looking for him
11 years after he left Nepal, once in 2017 and once in 2019.

12 First, the agency did not err in taking administrative notice of the State
13 Department reports or the 2017 election. *See Xiao Kui Lin v. Mukasey*, 553 F.3d 217,
14 222 n.4 (2d Cir. 2009) (“[T]he BIA has the power to take administrative notice of
15 official reports such as those from the State Department.” (citing 8 C.F.R.
16 § 1003.1(d)(3)(iv))). The agency cited these reports for the proposition that overall
17 Nepal’s political climate and human rights situation has improved since the
18 Maoist-led insurgency ended in 2006, including the free and fair 2017 national

1 election. Compare U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Nepal*,
2 in *Country Reports on Human Rights Practices* (2007) (noting that Nepal is in a "state
3 of political transition" following the 2006 peace agreement ending the insurgency),
4 with U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., *Nepal*, in *Country*
5 *Reports on Human Rights Practices* (2018) (describing Nepal as a "federal democratic
6 republic," reporting that the 2017 national elections were "generally well
7 conducted," and that "civilian authorities maintained effective control of security
8 forces."). This was not an error. Further, the agency did not heavily rely on
9 these reports, as it also considered Sherpa's submitted reports and did not find
10 them contradictory to the State Department reports. See C.A.R. 176-77.

11 The agency did not specifically discuss Sherpa's claims that Maoists
12 searched for him at his parents' home after his departure from Nepal. But while
13 Sherpa argued on appeal to the BIA that the IJ erred by not considering these visits,
14 he does not raise such an explicit argument here; to the contrary, his brief does not
15 mention the 2019 incident or discuss either incident when challenging the
16 fundamental change finding. See *Debique v. Garland*, 58 F.4th 676, 684 (2d Cir.
17 2023) ("We consider abandoned any claims not adequately presented in an
18 appellant's brief, and an appellant's failure to make legal or factual arguments

1 constitutes abandonment.” (internal citations and marks omitted)).

2 In any event, Sherpa does not have a well-founded fear based on these two
3 incidents. The July 2017 visit was before the November and December 2017
4 elections that resulted in a coalition government. As to the 2019 visit, the country
5 conditions evidence supports the agency’s conclusion: violence peaked between
6 1996 and 2006; a Maoist splinter group committed only limited violence¹; the
7 government declared the Maoist group a criminal organization and made arrests
8 to curb their activities. Sherpa also testified that he lived safely in Nepal between
9 December 2011 and his 2013 departure, and that during at least part of that period
10 he lived at his parents’ home, and worked at his parents’ tea stall in a public place.
11 The fact that Sherpa was not harmed during that period further supports the
12 agency’s conclusion that his fear is no longer objectively reasonable given the
13 additional improvements in conditions since he left in 2013. *See Jian Xing Huang*
14 *v. INS*, 421 F.3d 125, 129 (2d Cir. 2005) (“In the absence of solid support in the
15 record . . . [an applicant’s] fear is speculative at best.”).

¹ In 2019, the Maoist group apologized for a bombing targeting a telecommunications company that resulted in one death, for which the group apologized because “it had no intention of targeting the general public.” CAR at 507-509.

1 The agency's conclusion that conditions have changed is dispositive of
2 asylum, withholding of removal, and CAT relief. *See* 8 C.F.R. §§
3 1208.13(b)(1)(i)(A) (providing that asylum claim fails if DHS shows "a
4 fundamental change in circumstances such that the applicant no longer has a well-
5 founded fear of persecution"), 1208.16(b)(1)(i)(A) (same as to withholding), (c)(2)
6 (placing burden on CAT applicant to show that torture is "more likely than not").

7 For the foregoing reasons, the petition for review is **DENIED**.

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