NOT FOR PUBLICATION

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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

REMIGIO CHAVEZ-ESCAMILLA, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 20-73295 Agency No. A092-305-894 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted August 31, 2022
Pasadena, California

Before: M. SMITH and R. NELSON, Circuit Judges, and DRAIN,** District Judge.

Remigio Chavez-Escamilla, a Mexican citizen, petitions for review of the Board of Immigration Appeals' ("BIA") vacatur of an Immigration Judge's ("IJ") grant of his application for deferral of removal under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. *Wang v. Sessions*,

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gershwin A. Drain, United States District Judge for the Eastern District of Michigan, sitting by designation.

861 F.3d 1003, 1007 (9th Cir. 2017). We grant the petition and remand the case to the BIA.

"Where the BIA conducts its own review of the evidence and law, rather than adopting the IJ's decision," our court's "review is limited to the BIA's decision, except to the extent the IJ's opinion is expressly adopted." *Guerra v. Barr*, 974 F.3d 909, 911 (9th Cir. 2020) (citation omitted). The court reviews legal questions de novo. *Id.* "Whether the BIA has applied the correct standard of review is a question of law." *Id.* (citation omitted).

Chavez-Escamilla argues that the BIA erred in applying the clearly erroneous standard because it did not defer to the IJ's factual findings. The IJ concluded that Chavez-Escamilla had shown past torture and that he was more likely than not to experience future torture in Mexico with the consent or acquiescence of a public official or an individual acting in an official capacity. The BIA agreed that Chavez-Escamilla had experienced past torture. Nevertheless, it reversed because his wife had safely relocated to another part of Mexico, the country conditions reports did not establish a particularized threat, and Chavez-Escamilla did not know whether the police officers who harmed him were still looking for him or connected to police elsewhere. Chavez-Escamilla contends the BIA failed to determine that the IJ's decision was illogical, implausible, or without support and did not thoroughly consider the IJ's findings, as the clearly

erroneous standard requires.

The BIA commits an error of law when it "engages in de novo review of an IJ's factual findings instead of limiting its review to clear error." *Soto-Soto v. Garland*, 1 F.4th 655, 659 (9th Cir. 2021) (citation omitted). The BIA may determine an IJ's findings are clearly erroneous if they are "illogical or implausible," but if "the BIA does not address the key factual findings on which the IJ based its conclusion," or gives "more weight to certain facts in the record than to others," the court "may justifiably infer that the BIA applied the wrong standard of review." *Id.* (cleaned up).

The BIA failed to correctly apply the clearly erroneous standard. While the BIA indicated disagreement with the IJ's findings, it did not explain why the IJ's decision was illogical, implausible, or without support. *See id.* at 660. Nor did it grapple with characteristics the IJ used to distinguish Chavez-Escamilla from his wife, such as his desire to run a tattoo parlor, or address the IJ's finding that the country conditions evidence showed a particularized threat to Native Americans in Mexico. Nor did the BIA address the IJ's finding that Chavez-Escamilla and his wife are distinguishable. The BIA stated, "while we acknowledge that it may be difficult for the applicant to obtain employment as a tattoo artist in the area where his family has safely relocated in Mexico, based on all of the relevant evidence in this case, we will not uphold the Immigration Judge's finding that the applicant

would be unable to safely relocate." This does not address the IJ's factual findings, explain why the country conditions evidence was insufficient to show a particularized threat of torture, or indicate the relevance of Chavez-Escamilla's employment to the BIA's analysis. Clear error review requires the BIA to "explain how these alleged errors showed lack of logic, plausibility, or support in the record on the part of the IJ." *Soto-Soto*, 1 F.4th at 660. The court therefore remands this case to the BIA so it "may apply the correct standard of review and properly consider the IJ's factual findings." *Vitug v. Holder*, 723 F.3d 1056, 1064 (9th Cir. 2013).

PETITION GRANTED; REMANDED.