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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROSA ANGELICA LOPEZ FLORES, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 19-72154 Agency No. A206-030-149 MEMORANDUM[*]

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

Submitted November 8, 2022[**]
Seattle, Washington

Before: IKUTA and COLLINS, Circuit Judges, and FITZWATER,[***] District Judge.

Rosa Angelica Lopez Flores ("Lopez Flores") challenges the decision of the Board of Immigration Appeals ("BIA") upholding the immigration judge's ("IJ's")

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

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

[***] The Honorable Sidney A. Fitzwater, United States District Judge for the Northern District of Texas, sitting by designation.

ruling denying asylum, withholding of removal, and relief under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252 to conduct judicial review in part, and we lack jurisdiction in part. We therefore deny the petition in part and dismiss it in part for lack of jurisdiction.

We review factual findings for substantial evidence and legal questions and constitutional claims de novo. *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003).

1. Lopez Flores contends that a purported claim-processing error—that her initial Notice to Appear lacked the date and time of her hearing—undermined her defense and thus warrants remand. She also raises a claim for humanitarian asylum, and asserts that she is a member of a particularized social group composed of women in El Salvador.

Non-citizens applying for relief such as asylum must exhaust all claims in the administrative forum. *Barron v. Ashcroft*, 358 F.3d 674, 677 (9th Cir. 2004). If this does not occur, we lack jurisdiction to consider the claim. *Id*. Lopez Flores did not adequately exhaust her argument that an alleged claim-processing error vitiated her defense before the agency because she did not raise it before the IJ or the BIA. Likewise, she did not exhaust her claim for humanitarian asylum or her argument that, as a woman in El Salvador, she is a member of a particularized social group, because

she did not raise either argument before the BIA. *See Honcharov v. Barr*, 924 F.3d 1293, 1295–96 (9th Cir. 2019) (per curiam). We therefore lack jurisdiction to consider these arguments.

2. Lopez Flores argues that the BIA erred when it conducted its review of the IJ's decision because the BIA did not apply the correct standard of review. The BIA is prohibited from engaging in de novo factfinding and must review the IJ's factual findings under the deferential "clearly erroneous" standard. *Perez-Palafox v. Holder*, 744 F.3d 1138, 1145 (9th Cir. 2014). But "the BIA may review legal questions, discretion, and judgment . . . de novo." *Id*. (internal quotation marks omitted) (quoting 8 C.F.R. § 1003.1(d)(3)(ii)).

The BIA engaged in precisely that kind of review in this case. It accurately stated this standard at the outset of its opinion. It relied on the factual conclusions of the IJ where appropriate, using phrases such as "the Immigration Judge determined" to indicate when the IJ's factual findings were being evaluated using the more deferential standard. In contrast, the BIA recounted legal conclusions as if reached by the BIA independently. The BIA therefore did not commit reversible error in conducting its review of the IJ's decision.

3. Lopez Flores also challenges the agency's denial of asylum and withholding of removal. To be eligible for asylum, an applicant must establish that she is a refugee

within the meaning of 8 U.S.C. § 1101(a)(42)(A). 8 U.S.C. § 1158(b)(1)(A). To do so, the applicant must prove "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A).

The BIA held that Lopez Flores did not adequately establish either past persecution or a well-founded fear of future persecution that was sufficiently related to a protected ground. The BIA relied on the IJ's factual determinations regarding the motives of the alleged persecutors and agreed with the IJ that these motives were not tied to Lopez Flores' membership in a particular social group. This conclusion disposes of both Lopez Flores' asylum application and her withholding of removal application. Substantial record evidence supports this conclusion. Accordingly, we deny the petition as to these forms of relief.

4. Finally, Lopez Flores challenges the agency's denial of relief under the CAT. "In order to present a prima facie case for relief under the [CAT], the burden of proof is on the petitioner to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." *Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2001) (citation and quotation marks omitted). Torture is defined by regulation as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person," for such purposes as those

specified in the regulation. 8 C.F.R. § 208.18(a)(1). Torture must involve the acquiescence of a public official, meaning that the public official must be aware of or willfully blind to it. *Zheng v. Ashcroft*, 332 F.3d 1186, 1194 (9th Cir. 2003). Mere "generalized evidence of violence and crime" in the country of removal is not a sufficient basis for granting relief under the CAT. *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010).

Substantial evidence supports the agency's conclusion that Lopez Flores failed to establish that Salvadoran officials would acquiesce in any torture of her. As the BIA explained, she did not present any evidence that the Salvadoran government was complicit in the mistreatment of her relatives, and she testified that Salvadoran officials investigated the matter. On this record, the agency permissibly concluded that acquiescence in any future torture had not been shown. *See Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016) (stating that "a general ineffectiveness on the government's part to investigate and prevent crime will not suffice to show acquiescence"). The agency's conclusion denying relief is therefore supported by substantial record evidence. We deny the petition to the extent Lopez Flores seeks relief under the CAT.

PETITION DENIED in part; DISMISSED in part.