

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 29 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Naseem Abbas,

Petitioner,

v.

Merrick B. Garland, U.S. Attorney
General,

Respondent.

No. 21-770

Agency No. A208-613-536

MEMORANDUM*

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

Submitted March 27, 2023**
San Francisco, California

Before: BOGGS, *** M. SMITH, and OWENS, Circuit Judges.

Naseem Abbas, a native and citizen of Pakistan, petitions for review of the Board of Immigration Appeals' ("BIA") dismissal of his appeal of the Immigration Judge's ("IJ") denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") and

* 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 Danny J. Boggs, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

denial of his motion to remand. As the parties are familiar with the facts, we do not recount them here. We have jurisdiction under 8 U.S.C. § 1252 and deny the petition for review.

Where, as here, the BIA cites *Matter of Burbano*, 20 I. & N. Dec. 872 (BIA 1994), and provides its own review of the evidence and law, “we review both the IJ’s and the BIA’s decisions.” *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022) (citation omitted). We review the agency’s factual findings underlying the denials of asylum, withholding of removal, and CAT protection for substantial evidence. *Plancarte Saucedo v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022). Under this standard, we must uphold the agency’s rulings unless the evidence “compels the conclusion that these findings and decisions are erroneous.” *Id.* (citation omitted). We review the BIA’s denial of a motion to remand for abuse of discretion. *Movsisian v. Ashcroft*, 395 F.3d 1095, 1098 (9th Cir. 2005). We review claims of due process violations de novo. *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (citation omitted).

1. To qualify for asylum and withholding of removal, a petitioner must show persecution or a fear of persecution “by the government, or by forces that the government was unable or unwilling to control.” *Hussain v. Rosen*, 985 F.3d 634, 645 (9th Cir. 2021) (citation omitted). Here, substantial evidence supports the BIA’s determination that Abbas failed to show that the Pakistani government is “unable and unwilling to control the type of sectarian violence

that he experienced.” The State Department’s 2018 Human Rights Report for Pakistan (the “2018 report”), which Abbas provided in support of his asylum application, indicates that the Pakistani government arrests individuals for religious discrimination and conducts operations to eradicate militant safe havens. *See id.* at 648 (finding that similar government conduct did not compel the conclusion that the Pakistani government was unable or unwilling to control the Taliban).

Abbas also testified that he reported to the police the harm he experienced while driving through a Sunni-majority area as a bus driver. While the Pakistani government “often fail[s] to protect the rights of religious minorities,” Abbas received confirmation of his police report and a government clerk letter threatening legal action against the “leaders” of the Sunni-majority area if they failed to stop future attacks. *See Truong v. Holder*, 613 F.3d 938, 941 (9th Cir. 2010) (per curiam) (holding that substantial evidence supported the agency’s conclusion that the government was not unable or unwilling, in part, because the petitioners “sought assistance from the Italian police, who dutifully made reports after each incident and indicated that they would investigate,” despite their failure to locate the unknown assailants). Because the record does not compel the conclusion that the Pakistani government was unable or unwilling to control sectarian violence, we deny the petition as to asylum and withholding of removal.

2. Abbas does not challenge the agency’s denial of CAT relief in his

opening brief and therefore waives any objection to the BIA’s denial of CAT protection. *See Cui v. Holder*, 712 F.3d 1332, 1338 n.3 (9th Cir. 2013).

Accordingly, we deny the petition as to the CAT claim.

3. The BIA did not abuse its discretion by denying Abbas’s motion to remand, which was based on the 2020 version of the State Department’s Human Rights Report (the “2020 report”) and various news articles post-dating his IJ hearing. A motion to remand “shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing.” 8 C.F.R. § 1003.2(c)(1); *see also Rodriguez v. INS*, 841 F.2d 865, 867 (9th Cir. 1987) (“The formal requirements of the motion to reopen and those of the motion to remand are for all practical purposes the same.”). Noncitizens seeking remand “bear a heavy burden of proving that, if proceedings were reopened, the new evidence would likely change the result in the case.” *See Shin v. Mukasey*, 547 F.3d 1019, 1025 (9th Cir. 2008) (internal quotation marks and citation omitted).

Here, the BIA acted within its discretion by determining that Abbas failed to show that the proffered evidence was likely to change the outcome of the case. As the BIA noted, Abbas failed to mention how the 2020 report supported a remand. And although the articles suggest an increase in violence against Shia Muslims in Pakistan, they also note that the sectarian resurgence began in 2017 and the country’s recent blasphemy law originated in the 1980s—meaning this evidence could have been presented in his previous hearing. Accordingly,

the BIA did not abuse its discretion.

4. Finally, the BIA did not violate Abbas's due process rights by failing to review the full record.¹ Although the BIA can violate a petitioner's due process rights if it fails to consider relevant evidence, the petitioner "must overcome the presumption that [the agency] did review the evidence." *Larita-Martinez*, 220 F.3d at 1096. Aside from arguing that consideration of the whole record would have resulted in a different outcome, Abbas fails to point to anything specific in the record to overcome this presumption. *See Aguilar-Orsorio v. Garland*, 991 F.3d 997, 999 (9th Cir. 2021) (per curiam) (finding no due process violation because "nothing in the record [] indicate[d] that there was relevant evidence that the BIA failed to consider"). Because Abbas did not show error, he cannot prevail on his due process challenge. *See Larita-Martinez*, 220 F.3d at 1095 (requiring error and substantial prejudice for a due process challenge).

PETITION DENIED.

¹ To the extent that Abbas argues that the IJ also violated his due process rights by failing to review the full record, the panel does not have jurisdiction to review this claim because Abbas failed to raise this issue before the BIA. *See Bare v. Barr*, 975 F.3d 952, 960 (9th Cir. 2020).