

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 3 2023

FOR THE NINTH CIRCUIT

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

Yohan Arele Ayala Andino,

No. 22-132

Petitioner,

Agency No. A088-882-902

v.

MEMORANDUM*

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

Respondent.

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

Submitted March 29, 2023**
San Francisco, California

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

Yohan Arele Ayala Andino, a native and citizen of Honduras, petitions for review of the Board of Immigration Appeals’ (“BIA”) affirmance of the Immigration Judge’s (“IJ”) denial of discretionary humanitarian asylum. He does not challenge the denial of ordinary asylum, withholding of removal, or

* 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.

protection under the Convention Against Torture (“CAT”). We have jurisdiction under 8 U.S.C. § 1252 and deny the petition.

We review both the IJ’s and the BIA’s decisions 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. *Ali v. Holder*, 637 F.3d 1025, 1028 (9th Cir. 2011). When the BIA finds past persecution but no well-founded fear of future persecution, we review the denial of humanitarian asylum for abuse of discretion. *Belayneh v. INS*, 213 F.3d 488, 491 (9th Cir. 2000); 8 U.S.C. § 1252(b)(4)(D) (discretionary judgment on asylum is conclusive unless “manifestly contrary to the law and an abuse of discretion”). When deciding whether to grant asylum as a matter of discretion, the agency balances the negative and positive factors, as set out in *Matter of Marin*, 16 I. & N. Dec. 581 (BIA 1978). *Rashtabadi v. INS*, 23 F.3d 1562, 1570 (9th Cir. 1994).

The agency did not abuse its discretion in denying humanitarian asylum. As Andino concedes, though he established past persecution, the Department of Homeland Security successfully rebutted the presumption of a well-founded fear of future persecution. Nevertheless, the agency may award asylum as a matter of discretion when a person demonstrates a “reasonable possibility” of “other serious harm” upon removal. 8 C.F.R. § 1208.13(b)(1)(iii)(B).

Andino contends that the agency erred in denying discretionary relief because it impermissibly weighed his juvenile adjudications as though they

were criminal convictions. But Andino misapprehends the BIA and IJ decisions, which focused explicitly on his several arrests in *adulthood*.

We have held that the agency may consider arrests—even when there has been diversion or simply no conviction—insofar as the fact of arrest indicates that a petitioner might have committed the accused act or is generally “undesirab[le] as a permanent resident.” *Paredes-Urrestarazu v. INS*, 36 F.3d 801, 810 (9th Cir. 1994). Here, Andino was arrested at least eleven times in the eight-year period between his eighteenth birthday and his hearing before the IJ. Like the agency, we acknowledge that he was not convicted in connection with any of these arrests. However, his arrests still bear on whether he might have committed the underlying conduct. Indeed, in his testimony before the IJ, Andino admitted to several bad acts, including (1) robbery, (2) breaking the window on a city bus, and (3) pushing his wife during an argument, causing bruising. Thus, the agency properly considered Andino’s adult arrests and admitted misconduct.

We reject Andino’s contention that the agency abused its discretion in not discussing his evidence of rehabilitation. The agency need not discuss “each. . . piece of evidence offered by the petitioner” in its decisions. *Ramirez-Villalpando v. Holder*, 645 F.3d 1035, 1040 (9th Cir. 2011) (quotation omitted). Further still, the agency did not abuse its discretion in finding that the sum of Andino’s positive factors is outweighed by the numerous instances of bad conduct that pervade the record.

Given Andino’s adult arrest record, admitted gang affiliation, and perpetration of intimate partner violence against his wife, the agency’s decision to deny him humanitarian asylum was not “arbitrary, irrational or contrary to law.” *Cui v. Garland*, 13 F.4th 991, 995-96 (9th Cir. 2021) (quotation omitted).

The stay of removal remains in place until the mandate issues.

PETITION DENIED.