NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

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

Zoltan Grim, Petitioner, v. Merrick B. Garland, U.S. Attorney General, Respondent.	No. 22-709 Agency No. A088-947-757 MEMORANDUM*

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

Submitted April 19, 2023**
San Francisco, California

Before: SCHROEDER, CALLAHAN, and BUMATAY, Circuit Judges.

Zoltan Grim ("Grim"), a native and citizen of Romania, petitions for review of the Board of Immigration Appeals' (the "BIA") dismissal of his appeal of the Immigration Judge's ("IJ") decision following remand finding him removable as charged for committing marriage fraud. Where, as here, the BIA adopts the IJ's decision and adds some of its own reasoning, we review both

* 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).

decisions. *Gonzalez-Caraveo v. Sessions*, 882 F.3d 885, 889 (9th Cir. 2018). Our jurisdiction is governed by 8 U.S.C. § 1252 and we deny Grim's petition.

Grim advances two arguments in support of his petition.

First, Grim argues that the BIA committed "clear error" by finding there was substantial evidence to support the IJs conclusion that the Department of Homeland Security ("DHS") had met its burden in proving marriage fraud. We review for substantial evidence the conclusion that an individual is removable for marriage fraud, as it involves factual findings. *Nakamoto v. Ashcroft*, 363 F.3d 874, 881 (9th Cir. 2004).

As a preliminary matter, contrary to Grim's contention, we need only determine whether substantial evidence supports a finding "by clear and convincing evidence" that the individual committed marriage fraud. *Id.* at 882; *see also Mondaca-Vega v. Lynch*, 808 F.3d 413, 420–22 (9th Cir. 2015) (en banc) (holding that the word "unequivocal," as used in "clear, unequivocal, and convincing" standard of proof, did not signify any higher burden than "clear and convincing" standard).

In reaching its conclusion on marriage fraud, the IJ relied on the evidence in the record of (1) Grim and Mioara Felecan's ("Felecan") long-term relationship (beginning in 1998) predating and continuing during their marriages to American citizens, (2) Grim and Felecan's repeated international travel together both before and during their respective marriages to American citizens, and (3) Grim and Felecan living together both before and throughout their marriages to American citizens, among other things. The documentary evidence included the Form I-213 prepared by Special Agent Cross, documents attached to the applications filed by Grim and Felecan, numerous photographs of Grim and Felecan, the statements of landlord John Bachar, dorm records from Grim and Felecan's employer Sun Valley Company, a report of the search warrant executed at the residence of Grim, the investigation summary and interview records prepared by Special Agent Cross, and various court records. The IJ noted that Grim failed to provide any evidence that he entered into a bona fide marriage with an American citizen.

Grim asks us to reweigh the evidence to come to a different conclusion than that of the IJ and BIA, which the court cannot do under the substantial evidence standard. *See Don v. Gonzales*, 476 F.3d 738, 743 (9th Cir. 2007). To grant the petition for review, the record must compel the conclusion that no reasonable fact finder could find as the agency did. *Id.* Grim fails to show that the evidence in the record was so compelling that no reasonable factfinder could conclude as the BIA did here.

Second, Grim raises a due process claim, arguing that the removal proceedings were "fundamentally unfair" such that he was prevented from reasonably presenting his case. "We review de novo … claims of due process violations in immigration proceedings." *Gonzalez-Caraveo*, 882 F.3d at 889.

Grim argues that the IJ improperly admitted documentary evidence. While Grim acknowledges that the rules of evidence do not apply in immigration hearings, he nevertheless argues that DHS's documentary evidence was not properly authenticated, contained hearsay in some instances, and in at least one case, "contained statements that the interviewee subsequently denied making." Unfortunately, Grim provides no specific citation to the record identifying the documents to which these arguments refer. But even if he had, the BIA correctly rejected these arguments. *See Vatyan v. Mukasey*, 508 F.3d 1179, 1185 (9th Cir. 2007) ("Immigration judges retain broad discretion to accept a document as authentic or not based on the particular factual showing presented."); *see also Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 823 (9th Cir. 2003) (stating that "hearsay is admissible in immigration proceedings"); *see also Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (outlining that "[t]he sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair" (citation omitted)). The IJ carefully considered Grim's objections to the admission of DHS's documentary evidence and exercised his discretion in weighing the admitted evidence's reliability and probative force in light of these objections, as is appropriate in immigration proceedings. *See Vatyan*, 508 F.3d at 1185 n.4.

Grim also argues that the IJ failed to require DHS to call other witnesses or explain what reasonable efforts it made to secure their presence. Grim complains that DHS did not call as a witness his former wife Allyson Heazle or an unnamed "third witness on DHS's proposed list." Unlike the facts presented in *Saidane v. INS*, 129 F.3d 1063 (9th Cir. 1997), where the government purposefully chose to rely on the hearsay affidavit of the central adverse witness who was admittedly otherwise available to testify in person, the failure to require DHS to call these witnesses does not create a due process violation. Special Agent Cross testified that he tried unsuccessfully on numerous occasions to interview Heazle. As for the "third witness" on the proposed list, Grim does not identify the witness by name.[1] Grim could have called any witness not offered by DHS but chose not to do so. He also had the opportunity to cross-examine Special Agent Cross, who was called as a witness by DHS.

In sum, Grim has not shown that the proceedings were so fundamentally unfair that he was prevented from reasonably presenting his case, nor has he shown any prejudice suffered as a result of the alleged procedural issues. Grim's due process claim is without merit.

The petition for review is **DENIED.**

[1] To the extent Grim is referring to John Bachar, Bachar provided Special Agent Cross a statement which served to support DHS's marriage fraud case, but he later offered a somewhat contradictory affidavit in support of Grim and Felecan. The IJ admitted both statements and exercised his discretion in weighing them.