

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 23 2023

FOR THE NINTH CIRCUIT

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

CATALINA LOPEZ MERINO; DANTE
ARMANDO SANCHEZ LOPEZ; IVAN
ISAAC RAMIREZ LOPEZ; JOSE JUAN
RAMIREZ LOPEZ,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1252

Agency Nos.
A208-924-632
A208-924-634
A213-087-529
A208-924-633

MEMORANDUM*

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

Submitted June 14, 2023**
Portland, Oregon

Before: TALLMAN, RAWLINSON, and SUNG, Circuit Judges.

Petitioners Catalina Lopez Merino, Dante Armando Sanchez Lopez, Ivan
Isaac Ramirez Lopez, and Jose Juan Ramirez Lopez (collectively, Lopez
Merino), natives and citizens of Mexico, petition for review of a decision of the

* 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).

Board of Immigration Appeals (BIA) dismissing their appeal of the denial by an Immigration Judge (IJ) of asylum, withholding of removal, and relief under the Convention Against Torture (CAT).

“We review the agency’s factual findings, including credibility determinations, for substantial evidence.” *Dong v. Garland*, 50 F.4th 1291, 1296 (9th Cir. 2022) (citation omitted). “Under this standard, findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Id.* (citation and internal quotation marks omitted).

“[W]e review the BIA’s denial of CAT relief for substantial evidence.” *Gutierrez-Alm v. Garland*, 62 F.4th 1186, 1201 (9th Cir. 2023) (citation omitted).

1. Substantial evidence supports the agency’s adverse credibility determination based on significant inconsistencies identified by the BIA among Lopez Merino’s testimony, asylum declaration, border interview, and other supporting documents. *See Dong*, 50 F.4th at 1297 (“Inconsistencies in an applicant’s testimony may support an adverse credibility determination. . . .”) (citation omitted).¹

¹ The BIA properly reviewed the adverse credibility determination for clear error under the REAL ID Act’s totality of the circumstances standard. *See Ridore v. Holder*, 696 F.3d 907, 916 (9th Cir. 2012) (observing that the BIA reviews an IJ’s adverse credibility determination for clear error); *see also Kumar v. Garland*, 18 F.4th 1148, 1153 (9th Cir. 2021) (discussing the totality of the circumstances standard).

The BIA properly relied on Lopez Merino’s inconsistent testimony regarding the police assistance she received after she was sexually assaulted by her brother. Lopez Merino conveyed that when she reported her brother to the police, “no one listen[ed] to a woman who ha[d] accusations, especially if [they were] about somebody [that was] family.” However, Lopez Merino also acknowledged that the police referred her to an office for “victims of sexual abuse,” had her speak to a psychologist, recorded her statement, and sketched a picture of her brother.

Lopez Merino additionally testified that she was abused by her ex-husband, but provided significantly inconsistent statements concerning the dates of their marriage and divorce. Initially, Lopez Merino testified that she and her ex-husband “got married in 2009” and “immediately got divorced and separated” the same year. Lopez Merino subsequently stated that the marriage “documents were signed in 2010,” but that her divorce was finalized in 2017. And she separately told a DHS officer that her marriage had been dissolved in 2015. Lopez Merino attempts to explain these disparities by pointing to cultural differences regarding marriage and divorce between the United States and Mexico. But while cultural differences explain some of the inconsistencies in Lopez Merino’s testimony—for example, that she considered herself divorced once she left her ex-husband—they do not resolve others, such as whether her divorce was legally finalized in 2015 or 2017.

Finally, Lopez Merino provided conflicting accounts of her residency in

Mexico. Lopez Merino conveyed that she lived with her father from 2010 to 2016, but subsequently testified that, between 2010 and 2016, she lived with her children in Oaxaca, and then lived alone in Mexico City.

Lopez Merino argues that these disparities either have factual explanations or are due to her impaired memory resulting from trauma. But, so long as it does so reasonably, the agency is not required to accept even plausible explanations for inconsistencies. *See Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011), overruled in part on other grounds by *Alam v. Garland*, 11 F.4th 1133, 1135 (9th Cir. 2021) (en banc). And contrary to Lopez Merino's assertions, the BIA fully considered a psychological assessment indicating that Lopez Merino had difficulty with her memory due to trauma. The BIA explained that the assessment did not "resolve the number and magnitude of [the] inconsistencies" in Lopez Merino's testimony, or establish that Lopez Merino's mental conditions "affected her ability to present her case on fundamental issues." Under the totality of circumstances, the significant discrepancies in Lopez Merino's testimony provide substantial evidence in support of the agency's adverse credibility determination. *See Dong*, 50 F.4th at 1297.²

² The record does not reflect that Lopez Merino exhibited "indicia of incompetency," such as "the inability to understand and respond to questions, the inability to stay on topic, or a high level of distraction, [or] evidence of mental illness" warranting the implementation by the IJ of procedural protections. *Mejia v. Sessions*, 868 F.3d 1118, 1121 (9th Cir. 2017) (citation and internal quotation marks omitted).

2. The BIA applied the correct legal standard, and substantial evidence supports the agency’s determination that Lopez Merino did not demonstrate that it was more likely than not that she would be tortured if removed to Mexico. *See Gutierrez-Alm*, 62 F.4th at 1197 (stating that “a petitioner must demonstrate that it is more likely than not that he or she would be tortured if removed to the proposed country of removal”) (citations and internal quotation marks omitted). Although “the country conditions evidence acknowledged crime and police corruption in Mexico generally . . . the evidence fail[ed] to show that [Lopez Merino] faces a particularized, ongoing risk of future torture.” *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 706-07 (9th Cir. 2022), *as amended*.

3. Lopez Merino requests a remand for the IJ to independently consider the asylum applications filed by her children. However, the BIA properly concluded that Lopez Merino pursued derivative claims on behalf of her children, and her children’s applications did “not include any additional facts beyond [Lopez Merino’s] claim.” *See Ma v. Ashcroft*, 361 F.3d 553, 560-61 (9th Cir. 2004) (distinguishing between independent and derivative claims); *see also* 8 U.S.C. § 1158(b)(3).

PETITION DENIED.