

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 20 2023

FOR THE NINTH CIRCUIT

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

GURPREET SINGH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 22-1374

Agency No.
A202-062-599

MEMORANDUM*

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

Submitted November 14, 2023**
Seattle, Washington

Before: McKEOWN and GOULD, Circuit Judges, and BAKER, Judge.***

Gurpreet Singh, an Indian citizen, seeks review of an order by the Board of Immigration Appeals (BIA) dismissing his appeal from an Immigration Judge'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 M. Miller Baker, Judge for the United States Court of International Trade, sitting by designation.

(IJ) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petition.

Singh, a practicing Sikh, alleges that he was persecuted by Hindus and political opponents in India. Singh also alleges that leaders of a rival political party tried to file a false report against him in the lead-up to an election, but that the matter was settled by elders in Singh's village. Singh did not report these incidents to the police because he believed the police would not help him.

The BIA did not err in upholding the IJ's denial of asylum. To establish asylum eligibility, an applicant must show that he is unable or unwilling to return to his country of nationality "because of 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); *Udo v. Garland*, 32 F.4th 1198, 1206 (9th Cir. 2022).

Substantial evidence supports the BIA's determination that Singh did not establish past persecution. Contrary to Singh's contention, the BIA did not rely exclusively on the fact that Singh was not physically harmed to the point of serious harm or injury. Though the BIA appropriately considered his lack of physical harm as a factor, it took into account Singh's age, the threats he received, the severity of harm he did incur, and his continued political activities. *See Sharma v.*

Garland, 9 F.4th 1052, 1061 (9th Cir. 2021) (explaining that a finding of past persecution depends on a “heavily fact-dependent” inquiry into “whether, looking at the cumulative effect of all the incidents that a Petitioner has suffered, the treatment he received rises to the level of persecution,” wherein “[t]he first, and often a significant consideration, is whether the petitioner was subject to significant physical violence”) (internal quotation marks and citations omitted). The agency evaluated the harm Singh experienced as both a child and an adult, ultimately finding his uninhibited practice of the Sikh religion and continued political activity was insufficient to show that Singh had been severely impacted by his mistreatment. Substantial evidence supports this conclusion: Singh continued his political activities even after receiving threats from political opponents and after the settlement with the village elders; those threats to “silence” Singh were generalized and speculative, rather than pointed and specific; and Singh’s injuries from the two altercations—scratches and a bloody lip—were minor. Persecution is “an extreme concept,” and the evidence in the record does not compel a finding that Singh experienced past persecution. *Id.* at 1060 (quoting *Donchev v. Mukasey*, 553 F.3d 1206, 1213 (9th Cir. 2009)).

Additionally, the BIA did not err in holding that Singh did not establish that he faces an individualized risk of persecution as a member of a disfavored group. In determining whether an applicant has established a well-founded fear of

persecution based on membership in a disfavored group, “this court will look to (1) the risk level of membership in the group (*i.e.*, the extent and the severity of persecution suffered by the group) and (2) the [undocumented person’s] individual risk level (*i.e.*, whether the [undocumented person] has a special role in the group or is more likely to come to the attention of the persecutors making him a more likely target for persecution).” *Mgoian v. INS*, 184 F.3d 1029, 1035 n.4 (9th Cir. 1999). “The relationship between these two factors is correlational; that is to say, the more serious and widespread the threat of persecution to the group, the less individualized the threat of persecution needs to be.” *Id.*

While Sikhs are a significant minority that has endured discrimination, Sikhs have also achieved positions of power in government and there are certain provisions within the law designed specifically for their protection. But even if Singh had put forth substantial evidence that Sikhs are a disfavored group, “the petitioner [must] present[] some evidence that he or she face[s] a unique risk of persecution upon return that [is] distinct from the petitioner’s mere membership in a disfavored group.” *Halim v. Holder*, 590 F.3d 971, 979 (9th Cir. 2009) (quoting *Lolong v. Gonzales*, 484 F.3d 1173, 1180 n.5 (9th Cir. 2007) (en banc)). Singh has failed to do so.

Before the BIA, Singh failed to challenge the IJ’s determination of his claims for withholding of removal and CAT protection. As the government

pointed out in its answering brief, Singh has failed to exhaust his remedies under 8 U.S.C. § 1252(d)(1). Though the Supreme Court recently held that the exhaustion requirement is not jurisdictional, *see Santos-Zacaria v. Garland*, 598 U.S. 411, 423 (2023), we have held that it remains a mandatory claim-processing rule. *See, e.g., Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).¹

Even if not waived, these claims would fail: Because “[w]ithholding’s clear-probability standard is more stringent than asylum’s well-founded-fear standard,” a failure to establish eligibility for asylum necessitates a failure to establish eligibility for withholding. *Singh v. Garland*, 57 F.4th 643, 658 (9th Cir. 2022) (internal quotation marks and citation omitted). Substantial evidence also supports the IJ’s conclusion that Singh has failed to establish that he would be subject to torture in India and that the Indian government would acquiesce to such treatment. *See Plancarte Saucedo v. Garland*, 23 F.4th 824, 834 (9th Cir. 2022).

PETITION DENIED.

¹ Singh also argues that the IJ failed to provide Singh the opportunity to offer additional corroborating documents. To the extent that this argument refers to the exhibit that was excluded as untimely, Singh waived this argument by failing to raise this issue before the BIA. To the extent that Singh sought to submit other evidence to the IJ supporting his credibility, the IJ found Singh credible but concluded that “the problem[s] with [Singh’s] case . . . go far beyond the absence of corroborating information.”