

NOT FOR PUBLICATION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

OLGA YADIRALIA GONZALEZ
AMEZCUA; MIGUEL GONZALEZ-
UBIARCO,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-489

Agency Nos.
A209-820-700
A209-820-623

MEMORANDUM*

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

Submitted February 13, 2024**
Honolulu, Hawaii

Before: PAEZ, M. SMITH, and KOH, Circuit Judges.

Olga Gonzalez Amezcua (“Gonzalez Amezcua”) and Miguel Gonzalez-

* 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).

Ubiarco (“Gonzalez-Ubiarco”) (collectively, “Petitioners”),¹ natives and citizens of Mexico, seek review of a decision by the Board of Immigration Appeals (“BIA”) affirming an immigration judge’s (“IJ”) denial of their applications for withholding of removal and relief under the Convention Against Torture (“CAT”).² We review for substantial evidence the BIA’s determination that an applicant is not eligible for withholding of removal, *Molina-Estrada v. I.N.S.*, 293 F.3d 1089, 1093 (9th Cir. 2002), or protection under the CAT, *Lalayan v. Garland*, 4 F.4th 822, 840 (9th Cir. 2021). The BIA’s factual findings are “conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.” *Dawson v. Garland*, 998 F.3d 876, 882 (9th Cir. 2021). We have jurisdiction over the BIA’s decision under 8 U.S.C. § 1252, and we deny the petition.

An applicant “may establish eligibility for withholding of removal (A) by establishing a presumption of fear of future persecution based on past persecution, or (B) through an independent showing of clear probability of future persecution.”

Tamang v. Holder, 598 F.3d 1083, 1091 (9th Cir. 2010) (citing 8 C.F.R.

¹ Petitioners both submitted their own applications for relief from removal. However, Gonzalez Amezcua’s application is based on the same facts as Gonzalez-Ubiarco’s application.

² Petitioners also applied for asylum, but the IJ denied their asylum applications, which were filed more than eight years after their entry to the United States, as untimely. Petitioners did not appeal that determination to the BIA or this court, so their asylum claims are not before us.

§§ 1208.16(b)(1), 1208.16(b)(2)). “A ‘clear probability’ means it is ‘more likely than not’ that the petitioner would be subject to persecution on account of one of the protected grounds.” *Id.* (citing *INS v. Cardoza–Fonseca*, 480 U.S. 421, 429 (1987)). To demonstrate eligibility for CAT relief, “an alien must show that it is ‘more likely than not’ that a government official or person acting in an official capacity would torture him or aid or acquiesce in his torture by others.” *Wakkary v. Holder*, 558 F.3d 1049, 1067–68 (9th Cir. 2009) (quoting *Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001)). “The standard of proof . . . is the same as for regular withholding of removal [claims].” *Id.*

In 2004, Gonzalez-Ubiarco’s cousin, Oscar Eduardo Ubiarco Ramirez (“Oscar”), was murdered outside his house in Jalisco, Mexico. In 2005, over a period of six months, Gonzalez-Ubiarco’s uncle, Oscar’s father, paid bribes to the police to investigate Oscar’s murder. During this period, Gonzalez-Ubiarco, the uncle, and another relative received threatening phone calls.³ The callers threatened “consequences for the family” if Gonzalez-Ubiarco’s uncle continued to investigate Oscar’s murder. The threatening calls ceased when Gonzalez-Ubiarco’s uncle stopped paying the bribes. Gonzalez-Ubiarco’s cousin, Gerardo Ubiarco Bramila (“Geraldo”), joined the police force in 2006 and reopened the

³ Gonzalez Amezcua testified that she never received any threats.

investigation of Oscar's murder. Petitioners allege Geraldo was murdered in 2009. The coroner, however, ruled Geraldo's death a suicide in the official death certificate. Petitioners do not identify who killed Oscar and Geraldo or who made the threatening phone calls. The two relatives who received the same threatening phone calls as Gonzalez-Ubiarco have remained unharmed in Mexico since Oscar's murder in 2004.

1. Substantial evidence supports the conclusion that Petitioners failed to establish past persecution or fear of future persecution based upon the threats Gonzalez-Ubiarco received following Oscar's murder. As a general rule, "unfulfilled threats, without more," do not constitute "past persecution." *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000). However, "[i]n certain extreme cases, we have held that repeated and especially menacing death threats can constitute a primary part of a past persecution claim, particularly where those threats are combined with confrontation or other mistreatment." *Id.* Moreover, we have held that "a petitioner's fear of future persecution is weakened, even undercut, when similarly-situated family members living in the petitioner's home country are *not* harmed." *Tamang*, 598 F.3d at 1094 (cleaned up) (emphasis in original).

The record evidence here failed to establish that the threats directed at Gonzalez-Ubiarco were sufficiently severe to inflict harm amounting to persecution. Furthermore, the fact that the two relatives who received the same

threats as Gonzalez-Ubiarco continue to live in Mexico unharmed undermines Petitioners' claim of future persecution. Therefore, we find that substantial evidence supports the BIA's denial of Petitioners' withholding of removal claims.

2. Substantial evidence also supports the conclusion that Petitioners have not established that they will be tortured if they are removed to Mexico. Petitioners' CAT claims are based on the same facts as their withholding of removal claims. Such facts do not establish that Petitioners would most likely be tortured by or with the acquiescence of a government official or other person acting in an official capacity upon removal. *See Wakkary*, 558 F.3d at 1067–68. Therefore, we find that substantial evidence supports the BIA's determination that Petitioners are not entitled to CAT relief.⁴

PETITION DENIED.

⁴ Because substantial evidence supports the denial of Petitioners' CAT claims, we decline to address whether Petitioners waived their CAT claims on appeal.