

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 23 2024

FOR THE NINTH CIRCUIT

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

BURKMAN ELVIS ANDERSON,
Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-395

Agency No. A097-328-997

MEMORANDUM*

On Petition for Review of an Order of the
Immigration Judge

Submitted February 13, 2024**
Pasadena, California

Before: CALLAHAN, IKUTA, Circuit Judges, and LASNIK, *** District Judge.

We write primarily for the parties who are familiar with the facts. The Department of Homeland Security (“DHS”) reinstated a removal order entered

* 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 Robert S. Lasnik, United States District Judge for the Western District of Washington, sitting by designation.

against the petitioner, Burkman Anderson, on March 23, 2023. Because Anderson expressed fear of returning to Jamaica, he was referred to an asylum officer for a reasonable fear interview and determination to ascertain whether he should be given an opportunity for a merit hearing on his application for withholding of removal. After a preliminary interview, the officer found no evidence of reasonable fear based on a protected ground. An immigration judge (“IJ”) affirmed. Anderson now petitions for review of the IJ’s negative reasonable fear determination and moves to stay removal. We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny Anderson’s petition.¹

A. Review of Reasonable Fear Determination

We review the IJ’s rulings for substantial evidence, upholding the IJ’s determination unless “any reasonable adjudicator would be compelled to conclude to the contrary.” *Hermosillo v. Garland*, 80 F.4th 1127, 1131 (9th Cir. 2023) (quoting *Ai Jun Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014)). Reasonable fear at the screening stage exists when a petitioner shows a “reasonable possibility” that he (1) would be persecuted on account of his “race, religion, nationality, membership in a particular social group or political opinion,” or (2) would be tortured in his country of removal “by or at the instigation of or with the consent or

¹ An order by the IJ affirming the asylum officer’s negative reasonable fear determination makes the Petitioner’s reinstatement order final, 8 C.F.R. § 208.31(g)(1), and therefore subject to our review under 8 U.S.C. § 1252(a)(1).

acquiescence of a public official or other person acting in an official capacity.” *Id.* at 1129 (citation omitted). “Persecution encompasses the infliction of suffering or harm” based on a protected ground in a way regarded as “offensive.” *Sael v. Ashcroft*, 386 F.3d 922, 924 (9th Cir. 2004) (quoting *Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004)). Torture is “severe pain or suffering, whether physical or mental” to punish, obtain a confession, intimidate, or coerce or for any discriminatory reason. *Kamalthas v. I.N.S.*, 251 F.3d 1279, 1282 (9th Cir. 2001) (quoting 8 C.F.R. § 208.18(a)(1)).

Anderson’s evidence of persecution and torture is sparse and speculative at best. Anderson’s testimony cannot establish that the incidents of violence against his sons, including the murder of his son in 2016, were motivated by political reasons or any other protected ground. Anderson testified that he did not know the “full truth” of whether his son was murdered for political reasons, but he believed that it was because his son was murdered in a neighborhood that was frequented by “JLP activists.” Anderson’s eldest son was stabbed in a water dispute where he was the initial aggressor, and his youngest son was stabbed defending one of his friends in a fight. Anderson also testified that he was stabbed 25 years ago by a supporter of an opposing political party, but his aggressor was killed by the police, and nothing on the record reflects a similar incident since. The fact that Anderson’s aggressor was

killed by police undermines Anderson's claim that a public official acquiesced to the violence inflicted on him by an opposing political party.

Anderson also described a dispute over farmland and water, neither of which is a protected ground. Anderson's testimony does not establish persecution, let alone torture with the consent or acquiescence of a person acting in an official capacity. Anderson fails to show torture even considering the aggregate risk of harm. Because the record does not compel us to reach a different result than that reached by the IJ, Anderson's petition for review is denied.

B. Motion to Stay Removal

Because we deny Anderson's petition for review, we deny his motion to stay removal. *See Nken v. Holder*, 556 U.S. 418, 434 (2009); *Sharma v. Garland*, 9 F.4th 1052, 1059–60 (9th Cir. 2021).

PETITION FOR REVIEW AND MOTION TO STAY REMOVAL DENIED.