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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KOMITAS GRIGORYAN, Petitioner, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-1570 Agency No. A071-212-139 MEMORANDUM[*]

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

Submitted April 8, 2024[**]
Pasadena, California

Before: SILER[***], GOULD, and BEA, Circuit Judges.

Petitioner Komitas Grigoryan ("Grigoryan"), an ethnic Armenian and native and citizen of Russia, petitions for review of the Board of Immigration Appeals'

[*] 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 Eugene E. Siler, United States Circuit Judge for the Court of Appeals, 6th Circuit, sitting by designation.

(BIA) affirmance of the Immigration Judge's (IJ) denial of his application for withholding of removal and relief under the Conventional Against Torture (CAT). The parties are familiar with the facts, so we discuss them here only where necessary. We deny Grigoryan's petition.

1. Although Grigoryan styles all his withholding-of-removal arguments as legal challenges, three are factual and two are legal. First, Grigoryan argues that he will be singled out for persecution if removed to Russia because he does not speak Russian and will attract attention. According to Grigoryan, the IJ improperly overlooked this argument and accompanying expert testimony. However, the IJ expressly considered Grigoryan's argument that he is an acculturated American and discussed the expert testimony. Therefore, Grigoryan does not challenge the IJ's failure to consider this evidence—he instead challenges the IJ's failure to accord evidentiary weight to that evidence. This is a factual challenge.

Second, Grigoryan contends that the IJ mistakenly concluded that his brother was not a credible witness. "An adverse credibility determination is a factual finding," so this, again, is a factual challenge. *Ruiz-Colmenares v. Garland*, 25 F.4th 742, 748 (9th Cir. 2022).

Third, Grigoryan argues that he demonstrated enough individualized risk of persecution to establish eligibility for withholding of removal under a disfavored group theory. *See Wakkary v. Holder*, 558 F.3d 1049, 1065 (9th Cir. 2009) (holding

that an applicant for withholding of removal must demonstrate that it is "more likely than not" that they will be persecuted). The question of whether a petitioner met this burden is another factual challenge.

We lack jurisdiction to review a petitioner's factual challenges to their removal order when they are removable due to an aggravated felony conviction. 8 U.S.C. §§ 1252(a)(2)(C)–1227(a)(2)(A)(iii); *Nasrallah v. Barr*, 590 U.S. 573, 587 (2020). Grigoryan is removable for his commission of an aggravated felony. Therefore, we do not have jurisdiction to consider his three factual challenges to the agency's denial of withholding of removal.

2. We may, however, consider Grigoryan's two remaining legal challenges. 8 U.S.C. § 1252(a)(2)(D); *Guerrero-Lasprilla v. Barr*, 589 U.S. 221, 227 (2020). We review them *de novo*. *Hernandez-Gil v. Gonzales*, 476 F.3d 803, 804 n.1 (9th Cir. 2007).

Grigoryan argues that the IJ applied an "incorrect standard" in determining whether he demonstrated a sufficient nexus between his Armenian ethnicity and the alleged harm. Yet the agency made no nexus finding; rather, the IJ concluded that Grigoryan had not demonstrated a clear probability of persecution and denied relief on that basis. The agency did not err on this basis.

Grigoryan next argues that, because he has demonstrated that he is entitled to withholding of removal on the merits, we should remand the case to the IJ for a

determination of whether any of Grigoryan's prior convictions constitute a "particularly serious crime" under 8 U.S.C. § 1231(b)(3)(B)(ii). However, as explained above, we do not have jurisdiction over Grigoryan's claim on its merits. The agency also did not err on this basis.

3. Finally, Grigoryan challenges the agency's denial of his claim for CAT relief. Because the BIA reviewed the IJ's decision for clear error and agreed with the IJ's reasoning, we review both decisions. *See Garcia-Martinez v. Sessions*, 886 F.3d 1291, 1293 (9th Cir. 2018). We review legal conclusions *de novo*, *Hernandez-Gil*, 476 F.3d at 804 n.1, and factual findings for substantial evidence. *Plancarte Sauceda v. Garland*, 23 F.4th 824, 831 (9th Cir. 2022).

Grigoryan contends that the Russian government is willfully blind to torture. Grigoryan also argues that he will be targeted and tortured if returned to Russia because he will be suspected to be a spy. Here, Grigoryan posited two distinct theories for why he would be tortured: his Armenian ethnicity and his American background. "In assessing a CAT claim from an applicant who has posited multiple theories for why he might be tortured, the relevant inquiry is whether the *total* probability that the applicant will be tortured—considering all potential sources of and reasons for torture—exceeds 50 percent." *Velasquez-Samayoa v. Garland*, 49 F.4th 1149, 1154 (9th Cir. 2022). The agency stated that it considered the entirety of the evidence in the record and assessed Grigoryan's aggregate risk of torture from

all sources to conclude that, on balance, Grigoryan did not prove that he would probably face torture.

Nor did the agency fail to consider "evidence of gross, flagrant or mass violations of human rights within the country of removal" as part of its CAT analysis. 8 C.F.R. § 1208.16(c)(3)(iii). The IJ considered country conditions evidence in its analysis of Grigoryan's withholding of removal claim, and then concluded that those reports did not demonstrate that he faced an individualized risk of persecution. The IJ incorporated that finding into his CAT analysis, concluding that because Grigoryan did not face a clear probability of future persecution based on his Armenian ethnicity, he did not face a clear probability of future torture based on his ethnicity. So, although the IJ did not directly reference the country conditions reports in his CAT analysis, he *did* base his CAT analysis on his withholding of removal findings—which, in turn, relied on the country conditions reports. The BIA then agreed with the IJ's reasoning and confirmed that it, too, based its CAT findings on the entirety of the evidence of record. Grigoryan therefore cannot show that the BIA failed to consider the country conditions reports.

Grigoryan also argues that the IJ misapplied the standard for CAT relief by requiring a nexus to a protected ground. *See Cole v. Holder*, 659 F.3d 762, 770 (9th Cir. 2011) ("[A]n application for CAT relief need not show that [the applicant] will be tortured 'on account of' any particular ground."). But the IJ did not impose a

nexus requirement. Rather, the IJ concluded that Grigoryan "has not carried his burden of proof in demonstrating that it is more likely that [sic] not that he will be tortured in Russia." The BIA likewise concluded that the IJ "correctly considered a fear of torture in Russia for any reason." Therefore, neither the IJ nor the BIA applied a nexus requirement to Grigoryan's CAT petition.

PETITION DENIED.