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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELDA FABIAN ANDRES; TRANQUILINO LUCAS FABIAN, Petitioners, v. MERRICK B. GARLAND, Attorney General, Respondent.	No. 22-2062 Agency Nos. A208-283-022 A208-283-023 MEMORANDUM[*]

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

Submitted April 25, 2024[**]
San Francisco, California

Before: GOULD, BRESS, and KOH, Circuit Judges.

Elda Fabian Andres (Fabian), a native and citizen of Guatemala, petitions for review of an order of the Board of Immigration Appeals (BIA) denying her

[*] 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).

application for asylum, withholding of removal, and relief under the Convention Against Torture. On appeal, Fabian raises four main arguments challenging the BIA's decision: (1) the BIA erred in its denial of asylum and withholding of removal; (2) the BIA erred by not assessing Fabian's minor son's application for withholding of removal and CAT relief; (3) Fabian did not waive her CAT claim; and (4) Fabian's due process rights were violated by the poor quality of interpretation services. We have jurisdiction under 8 U.S.C. § 1252(a)(1), and we deny the petition for review.

1. Substantial evidence supports the BIA's denial of Fabian's asylum and withholding of removal claims because Fabian failed to establish a nexus between the harm suffered and a protected ground.[1] *See Barajas-Romero v. Lynch*, 846 F.3d 351, 356–60 (9th Cir. 2017) (explaining that an applicant must establish a nexus between persecution and a protected ground and that the protected ground must be "one central reason" for her persecution for asylum relief and "a reason" for relief under withholding of removal). Fabian claimed that Crisanta was a witch who targeted Fabian and placed a spell on her causing stomach and eye problems. Fabian argued that Crisanta targeted Fabian because of her religion, political opinion, and membership in nine particular social groups. However, Fabian did not

[1] Because the nexus holding is dispositive of all of Fabian's asylum and withholding of removal claims, we need not address Fabian's arguments related to the validity of her proposed social groups or anti-gang political opinion.

testify that Crisanta targeted her because of a protected ground. Indeed, Fabian testified that Crisanta targeted Fabian because Crisanta was jealous that Fabian and her husband bought a new truck. Fabian further testified that Crisanta did not like "poor people to have things," Crisanta targeted persons with "nice things," and Fabian's pastor told Fabian that Crisanta "cursed [Fabian] because [Crisanta] was angry that [Fabian] had a truck." Fabian also testified that, prior to the purchase of the truck, her husband and she, who are both Christian, did not suffer any harm. Moreover, Fabian testified that Fabian's mother, who is also Christian, was not targeted by Crisanta until after Fabian left the truck with her mother when Fabian left Guatemala. Based upon this testimony, the agency reasonably found that Crisanta targeted Fabian because of a personal dispute, namely Crisanta's jealousy over Fabian's truck.[2]

2. Fabian did not exhaust, and thus waived, her son's withholding of removal and CAT claims. *See Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023) (requiring exhaustion of claims to the BIA). Fabian's minor son,

[2] Fabian also claims that the BIA failed to provide reasoned explanations, failed to conduct an individualized analysis, and failed to consider expert testimony. These arguments lack merit. The BIA limited its decision to the nexus prong and "does not have to write an exegesis on every contention. What is required is merely that it consider the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought and not merely reacted." *Najmabadi v. Holder*, 597 F.3d 983, 990 (9th Cir. 2010) (citation omitted). The BIA here met this standard.

Tranquilino, filed a separate application for asylum, withholding of removal, and CAT relief during their removal proceedings. At that time, Tranquilino was five years old and did not have any independent claims for relief from removal. Tranquilino does not allege that he was harmed in Guatemala. Tranquilino's presence was waived at the merits hearing, and Tranquilino did not present either a written statement or oral testimony to support his application. Fabian's counsel, the IJ, and the BIA all considered Tranquilino's claims to be derivative of Fabian's application.

Now, for the first time on appeal, Fabian asserts that Tranquilino had independent claims for withholding of removal and CAT relief that the agency was required to address. Because Fabian did not make this argument before the IJ or the BIA, we decline to consider this issue. *See Santos-Zacaria v. Garland*, 598 U.S. 411, 416–23 (2023) (construing exhaustion as a claims-processing rule subject to forfeiture or waiver).

3. Fabain forfeited her CAT claim because she did not present any arguments with regard to the BIA's denial of her CAT claim in her opening brief. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259–60 (9th Cir. 1996). Fabian argues that she raised this issue by asserting that the BIA failed to address her son's separate application for withholding of removal and CAT relief. However, Fabian did not present any challenge to the BIA's conclusion that Fabian failed to

establish "it is more likely than not that she will be tortured by or 'at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity' upon removal to Guatemala." "We will not manufacture arguments for [Fabian], and [Fabian's] bare assertion does not preserve [her CAT] claim . . . ." *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

4. Fabian did not establish any due process violation based upon the interpretation services at her merits hearings. To establish that a translation was incompetent, Fabian must show (1) "direct evidence of incorrectly translated words," (2) "unresponsive answers" by her, or (3) her "expression of difficulty understanding what is said to h[er]." *Siong v. INS*, 376 F.3d 1030, 1041 (9th Cir. 2004). A review of the record does not reveal that any of these translation errors occurred during Fabian's testimony. Moreover, Fabian does not argue that she was "prevented . . . from presenting relevant evidence," *Perez-Lastor v. INS*, 208 F.3d 773, 780 (9th Cir. 2000), nor does she "demonstrate that a better translation likely would have made a difference in the outcome," *Siong*, 376 F.3d at 1041. Accordingly, Fabian failed to establish that she was "prevented from reasonably presenting [her] case" or that she suffered prejudice. *See Ibarra-Flores v. Gonzales*, 439 F.3d 614, 620–21 (9th Cir. 2006).

PETITION DENIED.