

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 24 2024

FOR THE NINTH CIRCUIT

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

PAWANDEEP SINGH,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-1822

Agency No.
A216-175-461

MEMORANDUM*

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

Argued and Submitted July 10, 2024
San Francisco, California

Before: FRIEDLAND, MENDOZA, and DESAI, Circuit Judges.

Pawandeep Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' ("BIA") order affirming the Immigration Judge's ("IJ") decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). We have jurisdiction under 8 U.S.C. § 1252. We deny the petition in part and grant it in part.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

1. The BIA held that Singh waived any challenge to the IJ's denial of his CAT claim because Singh did not challenge that aspect of the IJ's decision in his brief to the BIA. Singh's brief to our court does not contest that finding, so he has forfeited any argument that he exhausted his CAT claim. *Orr v. Plumb*, 884 F.3d 923, 932 (9th Cir. 2018). We therefore deny the petition as to the CAT claim. *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

2. We grant the petition as to the remaining claims because at least two of the reasons relied upon by the IJ and the BIA for finding that Singh was not credible are not supported by substantial evidence. *Kumar v. Garland*, 18 F.4th 1148, 1152-53 (stating standard of review).

First, the IJ stated that it was implausible that Singh's attackers would have pursued him "so aggressively and continuously," given that he had a minor role in the Mann party and that he was not known for his party activities. The IJ cited nothing to support this assertion other than "common sense." Although an IJ can rely on "common sense" to support an implausibility finding, an "IJ's application of common sense [cannot] rest on unreasonable assumptions or be untethered from the evidence in the record." *Lalayan v. Garland*, 4 F.4th 822, 837 (9th Cir. 2021). Here, the IJ's application of "common sense" was impermissibly speculative. *See Kumar*, 18 F.4th at 1155.

Second, the IJ found Singh's testimony concerning the second attack to be

implausible in part because Singh testified that, as the attackers were fleeing, they shouted, “Today we were going to end you but you were saved because of these [farmers] and next time we see you anywhere we are going to kill you and shoot you.” The IJ stated that it was implausible that the attackers would “take the time to shout out a lengthy threat of this nature.” The IJ did not acknowledge that the threat had been translated into English. *See Lalayan*, 4 F.4th at 837 (“[W]hat seems like common sense to an IJ might be rooted in significant differences between the IJ’s and witness’s cultural backgrounds and systems.”). Moreover, the IJ provided no explanation as to why this two-sentence threat would be too long to yell. The IJ’s reasoning was thus impermissibly speculative.

Although the IJ had other reasons for finding that Singh was not credible, the IJ acknowledged that its finding was based on the totality of those reasons and it stated that it was “unlikely that any of these factors when considered in isolation could suffice to support an adverse credibility finding.” Because we cannot tell whether the IJ would have found Singh to lack credibility based only the other reasons, we remand for the agency to reconsider the adverse credibility determination—and, if Singh is found credible, for evaluation of his asylum and withholding of removal claims. *See Kumar*, 18 F.4th at 1155-56. We remand on an open record so that the government and Singh can provide additional evidence if they choose. *See Barseghyan v. Garland*, 39 F.4th 1138, 1146 (9th Cir. 2022).

PETITION GRANTED IN PART AND DENIED IN PART.