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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NIRUP BISHWANATH DAS,

Petitioner,

v.

MERRICK B. GARLAND, Attorney
General

Respondent.

No. 22-1750

Agency No.
A216-531-410

MEMORANDUM*

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

Submitted September 18, 2024**
San Francisco, California

Before: O’SANNLAIN, FERNANDEZ, and SILVERMAN, Circuit Judges.

Nirup Das petitions pro se for review of the Board of Immigration Appeals’
 (“BIA”) order dismissing his appeal from the decision of the immigration judge

* 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).

(“IJ”) denying his applications for asylum,¹ withholding of removal,² and protection under the Convention Against Torture (“CAT”).³ We have jurisdiction under 8 U.S.C. § 1252(a)(i). We review de novo questions of law, including whether a particular social group is cognizable. *Gutierrez-Alm v. Garland*, 62 F.4th 1186, 1199 (9th Cir. 2023). We review the BIA’s factual findings⁴ and the denial of CAT relief⁵ for substantial evidence. We grant the petition in part, deny it in part, and remand for further proceedings.

The BIA erred in determining Das did not establish a cognizable particular social group of “wealthy Bengalis doing business in the State of Maharashtra” for purposes of asylum and withholding of removal because it failed to consider his Bengali ethnicity or conduct a case-specific analysis. *See Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1088 (9th Cir. 2020); *Rios v. Lynch*, 807 F.3d 1123, 1126 (9th Cir.

¹ 8 U.S.C. § 1158(a)(1).

² 8 U.S.C. § 1231(b)(3)(A).

³ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 85, implemented at 8 C.F.R. § 1208.18.

⁴ *Id.* at 1194, 1199; *Umana-Escobar v. Garland*, 69 F.4th 544, 550 (9th Cir. 2023).

⁵ *Tzompantzi-Salazar v. Garland*, 32 F.4th 696, 703 (9th Cir. 2022).

2015); *Perdomo v. Holder*, 611 F.3d 662, 667–69 (9th Cir. 2010). Specifically, the BIA’s conclusion that Das’s group lacked an immutable characteristic or particularity is flawed. The Bengali ethnicity is immutable⁶ and is an “innate characteristic”⁷ uniting Das’s group. Further, the BIA has found groups of easily recognizable minority ethnicities cognizable,⁸ and the record shows that Das’s persecutors recognized his group.⁹ Finally, because “Bengali” delineates an easily identifiable minority group, additional characteristics do not necessarily justify denying asylum.¹⁰ On remand, the BIA should conduct a case-specific analysis and consider Das’s Bengali ethnicity. *See Diaz-Reynoso*, 968 F.3d at 1088; *Perdomo*, 611 F.3d at 664.

The BIA also erred in its analysis of whether Das demonstrated persecution on account of a protected ground. *See Umana-Escobar*, 69 F.4th at 551–52. It

⁶ *See Donchev v. Mukasey*, 553 F.3d 1206, 1217–18, 1220 (9th Cir. 2009); *In re V-T-S-*, 21 I. & N. Dec. 792, 798 (BIA 1997); *cf. In re H-*, 21 I. & N. Dec. 337, 342–43 (BIA 1996).

⁷ *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005), *overruled on other grounds as stated in Cordoba v. Holder*, 726 F.3d 1106, 1116 (9th Cir. 2013).

⁸ *See In re V-T-S-*, 21 I. & N. Dec. at 798; *cf. Mihalev v. Ashcroft*, 388 F.3d 722, 726 (9th Cir. 2004); *In re H-*, 21 I. & N. Dec. at 340, 343.

⁹ *See Reyes v. Lynch*, 842 F.3d 1125, 1135–36 (9th Cir. 2016); *cf. Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1229 (9th Cir. 2016).

¹⁰ *See Cordoba*, 726 F.3d at 1116–17, 1116 n.2.

stated that it found no clear error in the IJ’s determination that Das did not establish that any past or feared harm was or would be on account of Das’s political opinion or particular social group. After the BIA’s decision, this court held that “the BIA must review de novo whether a persecutor’s motives meet the nexus legal standards.” *See id.* at 552. Thus, we also remand Das’s asylum and withholding of removal claims for the BIA to apply the proper standard of review. *See id.* at 553. It should also consider any facts favorable to Das¹¹ that have compelled nexus findings in other cases, such as Das’s stated opposition to Shiv Sena¹² and his persecutors’s statements about his ethnicity.¹³

Finally, substantial evidence supports the BIA’s denial of CAT protection because the record does not compel the conclusion that it is more likely than not Das will be tortured upon removal to India. *See* 8 C.F.R. § 1208.16(c)(2)–(3); *Tzompantzi-Salazar*, 32 F.4th at 704–05; *see also Maldonado v. Lynch*, 786 F.3d 1155, 1163–64 (9th Cir. 2015) (en banc).

¹¹ *See id.*

¹² *See Borja v. I.N.S.*, 175 F.3d 732, 736 (9th Cir. 1999) (en banc), *superseded by statute on another ground as stated in Parussimova v. Mukasey*, 555 F.3d 734, 740–41 (9th Cir. 2009); *Gonzales-Neyra v. I.N.S.*, 122 F.3d 1293, 1294–95, 1296 (9th Cir. 1997), *amended*, 133 F.3d 726 (9th Cir. 1998).

¹³ *See Mihalev*, 388 F.3d at 727–28; *Gafoor v. I.N.S.*, 231 F.3d 645, 651–52 (9th Cir. 2000), *superseded by statute on another ground as stated in Parussimova*, 555 F.3d at 740–41; *Maini v. I.N.S.*, 212 F.3d 1167, 1175–76 (9th Cir. 2000).

The parties shall bear their own costs.

**PETITION FOR REVIEW GRANTED in part, DENIED in part, and
REMANDED.**