

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 17 2024

FOR THE NINTH CIRCUIT

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

PARDEEP KUMAR, et al.,

Petitioners,

v.

MERRICK B. GARLAND, Attorney
General,

Respondent.

No. 23-4313

Agency Nos.

A240-056-626, A240-464-211,

A240-464-212

MEMORANDUM*

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

Submitted October 21, 2024**
Phoenix, Arizona

Before: TASHIMA, M. SMITH, and BADE, Circuit Judges.

Pardeep Kumar (“Kumar”), his wife, Neha, and their son, T.K., natives and citizens of India, petition for review of the Board of Immigration Appeals’ (“BIA”) dismissal of their appeal of an Immigration Judge’s (“IJ”) denial of their

* 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).

applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). “We review the denial of asylum, withholding of removal and CAT claims for substantial evidence.” *Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1028 (9th Cir. 2019) (citations omitted). “Under this standard, we must uphold the agency determination unless the evidence compels a contrary conclusion.” *Id.* (citation omitted). We have jurisdiction under 8 U.S.C. § 1252, and we deny the petition for review.

1. The BIA affirmed and adopted the IJ’s decision denying relief because the government established that Kumar could safely and reasonably relocate to another part of India.¹ Kumar challenges the IJ’s relocation finding on both factual and legal grounds.

Factually, the IJ’s finding that Kumar could safely relocate to Punjab is supported by substantial evidence. Kumar takes issue with the IJ’s analysis of the electoral success of the Aam Aadmi Party (“AAP”) in Punjab’s March 2022 State Assembly elections. But Kumar’s asylum application was based on his fear of political violence perpetrated by supporters of the Bharatiya Janata Party (“BJP”) as retaliation for his support of the Indian National Lok Dal Party (“INLD”). The IJ therefore looked at AAP’s sweeping electoral success in Punjab (and BJP’s

¹ We refer singularly to Kumar because Neha and T.K. are “derivative[s]” of his asylum application.

remarkably poor electoral performance there), and concluded that BJP has few supporters and little power in Punjab. The IJ further reasoned that there was no indication AAP would persecute farmers or members of other parties, and the IJ noted that AAP oversaw the police in Punjab. Based on this evidence, the IJ rationally concluded that Kumar was unlikely to be subjected to political violence in Punjab. *Cf. Singh v. Whitaker*, 914 F.3d 654, 661 (9th Cir. 2019) (holding that the BIA erred by failing to consider persecution that an asylum applicant may face “from local authorities, or other actors, based on his future political activities”); *Singh v. Garland*, 97 F.4th 597, 608 (9th Cir. 2024) (same).

The IJ’s finding that Kumar could reasonably relocate to Punjab is likewise supported by substantial evidence. None of the evidence Kumar cites to challenge the IJ’s reasonable relocation finding compels a different conclusion. “Relocation is generally not unreasonable solely because the country at large is subject to generalized violence.” *Hussain v. Rosen*, 985 F.3d 634, 648 (9th Cir. 2021) (citing 8 C.F.R. § 1208.13(b)(3)).² Likewise, Kumar’s concern about India’s public health system is too generalized to support his argument that relocation is unreasonable. *Cf. Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1090–91 (9th Cir. 2005) (holding

² Kumar argues that the BIA erred by citing *Hussain* because, unlike Kumar, the petitioner in that case did not experience past persecution. But the BIA cited *Hussain* to support its conclusion that evidence of generalized violence does not establish that relocation is unreasonable. The factual distinction Kumar highlights is not relevant to this conclusion.

that it was not reasonable for a gay man with AIDS to relocate to Mexico, where he would face discrimination preventing him from receiving treatment for his condition and where necessary medicines were unavailable for purchase).

Kumar's other arguments that the IJ erred in his relocation analysis are unexhausted. *Suate-Orellana v. Garland*, 101 F.4th 624, 629 (9th Cir. 2024) (explaining that exhaustion is a non-jurisdictional claim-processing rule, but a court must enforce it if properly raised). "To exhaust a claim, the noncitizen must put the BIA on notice of the challenge, and the BIA must have 'an opportunity to pass on the issue.'" *Id.* (quoting *Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004) (per curiam)). By not raising the issue before the BIA, Kumar did not exhaust his argument that the IJ erred by failing to consider his low caste status. But even if Kumar had exhausted this argument, a reasonable factfinder presented with this record would not be compelled to find that relocation within India was unreasonable for Kumar because of caste-based discrimination. Kumar has offered no evidence that he would be subject to caste-based persecution in Punjab. Kumar also failed to exhaust his legal challenge that the IJ erred by finding no presumption against relocation.

Because the IJ's relocation finding defeats Kumar's claim that he has a well-founded fear of future persecution, and thus his claims for asylum and withholding of removal, *Duran-Rodriquez*, 918 F.3d at 1029, we deny the petition for review

on these claims.

2. We are not persuaded by Kumar’s argument that the BIA erred by mentioning, “in passing,” that he had safely relocated to either Cyprus or the United States. Although the safety of Kumar’s relocation to Cyprus or the United States does not bear on the safety of his relocation to Punjab, those relocations are relevant to Kumar’s ability to relocate to areas where he is unfamiliar with the local language. The BIA was referring to this aspect of the IJ’s analysis addressing the reasonableness of Kumar’s potential relocation to Punjab.

3. Kumar failed to exhaust his argument that both the IJ and the BIA erred by failing to consider him for humanitarian asylum. *Suate-Orellana*, 101 F.4th at 629.

4. Finally, Kumar waived any challenge to the IJ’s denial of CAT protection by failing to develop relevant arguments.³ *Badgley v. United States*, 957 F.3d 969, 979 (9th Cir. 2020) (quoting *United States v. Graf*, 610 F.3d 1148, 1166 (9th Cir. 2010)) (“Arguments made in passing and not supported by citations to the record or to case authority are generally deemed waived.”).

³ However, we disagree with the government’s assertion that Kumar waived his substantial evidence arguments against the IJ’s relocation findings. Kumar’s brief sufficiently challenges the IJ’s inferences as speculative and explains why, in his view, the record does not support them.

PETITION FOR REVIEW DENIED.⁴

⁴ Kumar's motion for a stay of removal is denied. The temporary stay of removal expires upon issuance of the mandate.