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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCELIN PIERRE-VAL; VIOLANDA MICHEL; A. P.-V. M., Petitioners, v. TODD BLANCHE, Attorney General, Respondent.	No. 25-5039 Agency Nos. A220-560-464 A220-560-465 A220-560-466 MEMORANDUM[*]

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

Submitted October 23, 2026[**]
Pasadena, California

Before: MURGUIA, Chief Judge, and GOULD and JOHNSTONE, Circuit Judges.

Petitioner Marcelin Pierre-Val is a native and citizen of Haiti. He is joined by two others in these proceedings: his partner Violanda Michel, a native and citizen of

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

[**] The panel previously granted Respondent's unopposed motion to submit this case on the briefs and the record (Dkt. No. 29).

Haiti, and their minor child,[1] a native and citizen of Mexico. Pierre-Val seeks review of a Board of Immigration Appeals ("BIA") decision affirming the Immigration Judge's ("IJ's") determination that Michel abandoned her I-589 application and the IJ's denial of Pierre-Val's application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") with respect to both Haiti and Mexico.

We have jurisdiction under 8 U.S.C. § 1252. Where the BIA cites its decision in *Matter of Burbano*, "and also provides its own review of the evidence and law, we review both the IJ's and the BIA's decisions." *Rudnitskyy v. Garland*, 82 F.4th 742, 746 (9th Cir. 2023) (citation omitted). When the BIA cites *Burbano* and "does not express disagreement with any part of the IJ's decision, the BIA adopts the IJ's decision in its entirety." *Abebe v. Gonzales*, 432 F.3d 1037, 1040 (9th Cir. 2005). This Court reviews "purely legal questions de novo, and the agency's factual findings for substantial evidence." *Perez-Portillo v. Garland*, 56 F.4th 788, 792 (9th Cir. 2022). Under this "'highly deferential'" standard, the BIA's factual findings are "'conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.'" *Salguero Sosa v. Garland*, 55 F.4th 1213, 1217–18 (9th Cir. 2022)

[1] The minor child filed his own I-589 application, but it was a duplicate of his father's form and articulated no independent basis for relief. A minor child may derive asylum from a parent, 8 U.S.C. § 1158(b)(3), but not withholding or CAT relief, *Ali v. Ashcroft*, 394 F.3d 780, 782 n.1 (9th Cir. 2005). Therefore, the minor's potential relief is contingent on the success of his parents' asylum claims.

(quoting *Nasrallah v. Barr*, 590 U.S. 573, 583–84 (2020)). We deny the petition.

1. We review the agency's decision to deem Michel's asylum application abandoned for abuse of discretion.[2] *Gonzalez-Veliz v. Garland*, 996 F.3d 942, 948 (9th Cir. 2021). The IJ is authorized to set deadlines for filing applications for asylum and related relief, and "[i]f an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived." 8 C.F.R. § 1003.31(h); *see also Matter of R-R-*, 20 I. & N. Dec. 547, 549 (BIA 1992) ("The Board has long held that applications for benefits under the Act are properly denied as abandoned when the alien fails to timely file them."). But an IJ may excuse a late filing upon a showing of good cause. *See Alcarez-Rodriguez v. Garland*, 89 F.4th 754, 763 (9th Cir. 2023).

It is undisputed that Michel filed her application for asylum and related relief nearly two weeks after the IJ's filing deadline and only two court days prior to the merits hearing. It is also undisputed that Michel and her counsel received "adequate notice" of the application deadline. *Gonzalez-Veliz*, 996 F.3d at 949. Instead, Michel disputes the agency's determination that she did not show good cause for untimely filing. Pierre-Val and Michel filed a Motion to Accept Untimely Filing, stating that they were unable to obtain witness statements and other documentary

[2] "Abandoned" is used as a term of art by the agency to refer to applications that were denied because they were not filed by the appropriate deadline.

evidence in a timely fashion because Haiti "fac[es] severe and regular blackouts (some lasting weeks)," meaning that "[o]nly about 25% of the population has access to electricity" intermittently. Michel testified that she filed her asylum application late because she was waiting for those witness statements. But the agency determined that waiting for supporting documents should not have prevented Michel from timely filing the application itself. And the agency also found that their generalized concern did not constitute good cause for the missed deadline absent evidence that specific declarants lost power and were thereby unable to submit their statements promptly. Therefore, the agency did not abuse its discretion in deeming Michel's application abandoned. *See Alcarez-Rodriguez*, 89 F.4th at 763–64.

2. Next, we must consider whether Pierre-Val forfeited his asylum claim with respect to Haiti and his CAT claims with respect to Haiti and Mexico by failing to raise these issues in his opening brief.[3] *See Cruz v. Int'l Collection Corp.*, 673 F.3d 991, 998 (9th Cir. 2012) ("We review only issues which are argued specifically and distinctly in a party's opening brief." (citation omitted)). Pierre-Val forfeited his asylum claim with respect to Haiti, as his opening brief does not challenge the IJ's finding that his claim is barred because he had firmly resettled in Mexico. *See* 8

[3] The Government incorrectly uses the term "waived" in its brief. "The terms waiver and forfeiture . . . are not synonymous. Forfeiture is the failure to make the timely assertion of a right; waiver is the intentional relinquishment or abandonment of a known right." *Honcharov v. Barr*, 924 F.3d 1293, 1295 n.1 (9th Cir. 2019) (citation omitted).

U.S.C. § 1158(b)(2)(A)(vi); *Maharaj v. Gonzales*, 450 F.3d 961, 967 (9th Cir. 2006) ("INS regulations prohibit an immigration judge or asylum officer from granting asylum to an alien who '[h]as been firmly resettled' in a third country prior to arriving in the United States." (quoting 8 C.F.R. § 208.13(c)(2)(i)(B))). And because Pierre-Val "has not specifically and distinctly argued and raised the issue of relief under the Convention Against Torture," he has also forfeited those claims. *Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (citation omitted); *see also Cui v. Garland*, 13 F.4th 991, 999 n.6 (9th Cir. 2021) (holding issue forfeited where it was raised in the "Statement of the Case" section but no substantive argument appeared in the brief).

3. With those claims forfeited, we consider the merits of Pierre-Val's withholding of removal claim as to Haiti. "To secure withholding of removal, a petitioner must demonstrate that his 'life . . . would be threatened in that country because of'" a statutorily protected ground. *Barbosa v. Barr*, 926 F.3d 1053, 1059 (9th Cir. 2019) (quoting 8 U.S.C. § 1231(b)(3)(A)). Substantial evidence supports the agency's determination that Pierre-Val has not shown any nexus between his fear of alleged persecution by his uncle, Clebert Exate, and his asserted protected grounds: (1) his political opinion based on his refusal to join the Haitian Tèt Kale Party ("PHTK") and (2) his membership in his immediate family as a particular social group ("PSG").

The agency found that Exate's slap and purported threats against Pierre-Val were not motivated by political persecution but rather "a personal dispute about whether Mr. Pierre-Val would allow his uncle to use his truck," and Pierre-Val's "hit[ting] him with a piece of wood" in their ensuing altercation. There was also no evidence that Exate harmed any of Pierre-Val's family members in the fourteen years since their confrontation; in fact, Pierre-Val's parents remain neighbors with his uncle to this day. Because substantial evidence supports the agency's "finding of *no* nexus between the harm to [Pierre-Val] and the alleged protected ground, *Singh v. Barr*, 935 F.3d 822, 827 (9th Cir. 2019), the agency did not err in denying Pierre-Val's withholding of removal claim with respect to Haiti.

4. Substantial evidence also supports the agency's denial of Pierre-Val's claims for asylum and withholding of removal with respect to Mexico. As with withholding of removal, Pierre-Val must establish that his "persecution was on account of one or more protected grounds" to secure asylum relief. *Baghdasaryan v. Holder*, 592 F.3d 1018, 1023 (9th Cir. 2010) (citation omitted). Pierre-Val alleges that he and Michel were twice assaulted on the street by an unknown assailant in Tijuana because of their race and nationality as Black Haitians. But the IJ found that "the [actual] reason for" the attacks was that the "man was attracted to Ms. Michel." The record contains no evidence to the contrary. Therefore, substantial evidence supports the agency's determination that there was no nexus between the assailant's

harassment and Pierre-Val's asserted protected ground of race and nationality. *See Singh*, 935 F.3d at 827.

5. Even if Pierre-Val had not forfeited his CAT claims, substantial evidence also supports the agency's denial of CAT protection as to both Haiti and Mexico. Pierre-Val has not shown that the Haitian government would acquiesce in torture, *see Andrade-Garcia v. Lynch*, 828 F.3d 829, 836 (9th Cir. 2016), and the assaults in Mexico are not evidence of likely torture.

PETITION DENIED.[4]

[4] The stay of removal (Dkt. No. 2) will dissolve upon the issuance of the mandate.