FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SURESH KUMAR SHARMA, *Petitioner*, v. MERRICK B. GARLAND, Attorney General, *Respondent.*	No. 20-70238 Agency No. A200-157-160 OPINION

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

Submitted March 9, 2021[*]
San Francisco, California

Filed August 17, 2021

Before: M. Margaret McKeown, Sandra S. Ikuta, and Daniel A. Bress, Circuit Judges.

Opinion by Judge Bress

[*] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

SUMMARY[**]

Immigration

Denying in part and dismissing in part Suresh Sharma's petition for review of a decision of the Board of Immigration Appeals, the panel held that substantial evidence supported the Board's determinations that the harm Sharma suffered did not rise to the level of persecution, his fear of future persecution was not objectively reasonable, and he failed to establish eligibility for CAT relief. The panel also held that it lacked jurisdiction to consider the denial of voluntary departure relief.

The panel discussed the non-exhaustive list of factors the court considers in evaluating whether past harm cumulatively rises to the level of persecution, including physical violence and resulting serious injuries, frequency of harm, specific threats combined with confrontation, length and quality of detention, harm to family and close friends, economic deprivation, and general societal turmoil. Considering those factors, the panel held that the harm Sharma suffered did not rise to the level of past persecution.

The panel held that substantial evidence supported the Board's determination that Sharma's fear of future persecution was not objectively reasonable. First, the panel concluded that the evidence did not compel the conclusion that the individuals who targeted Sharma would have a continuing interest in him, where it had been decades since

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

his last personal interaction, and his wife's most recent interactions were years ago and involved vague threats that led to no harm. Second, Sharma's wife and son continue to reside safely in India. Although Sharma argued that his family members' safety was irrelevant because they were not similarly situated, the panel determined that the agency could reach a different conclusion, given the general similarities between the pattern of threats leveled against Sharma and his family. Likewise, the panel concluded that Sharma had not demonstrated that his family's safety bore any necessary relationship to his presence in (or absence from) India. Third, the panel concluded that Sharma's voluntary return to India undermined his reasonable fear of persecution.

The panel held that substantial evidence supported the Board's denial of CAT relief. The panel explained that because the harm Sharma suffered did not rise to the level of persecution, it necessarily fell short of the definition of torture. The panel also explained that Sharma failed to establish an objectively reasonable basis for his fear.

The panel concluded that Sharma did not raise any constitutional or legal challenges to the denial of voluntary departure, and that it therefore lacked jurisdiction to review that portion of Sharma's petition.

COUNSEL

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OPINION

BRESS, Circuit Judge:

We consider a recurring issue in immigration law: whether an applicant for asylum or withholding of removal has shown mistreatment that rises to the level of past persecution. We conclude that the record does not compel the conclusion that petitioner Suresh Sharma experienced past persecution in India. We also hold that Sharma's other arguments are without merit and therefore deny his petition for review.

I

Suresh Sharma entered the United States on July 22, 1997, on a nonimmigrant visitor visa. On August 30, 2011, the Department of Homeland Security (DHS) served Sharma with a Notice to Appear, charging him as removable for remaining in the United States longer than authorized. Sharma conceded removability and filed an application for asylum, withholding of removal, and relief under the Convention Against Torture (CAT). Sharma's application was based on the following facts, which were set forth in a sworn declaration and in Sharma's testimony at a hearing before the Immigration Judge (IJ).

Before coming to the United States, Sharma lived in Punjab, India. Sharma owned a finance company that made loans to automotive dealers. One of Sharma's clients was Vinod Kumar, whom the parties refer to as Vinod. Sharma

gave Vinod an unsecured loan of 2.5 million rupees, with payment due in March 1994. When Vinod failed to pay back the loan on time, Sharma discovered that Vinod, Vinod's brother-in-law, and Vinod's driver had gone missing, reportedly "under the instructions of Sumedh Saini," the Senior Superintendent of the Ludhiana, Punjab Police. In an effort to recover his loan to Vinod, Sharma began investigating. He learned that Saini had ordered police officials to kidnap the three men because of a personal dispute.

Sharma then began to receive anonymous phone calls instructing him to stop inquiring into Vinod's disappearance, or he "would be in big trouble." Sharma received many similar calls over the next several months. Sharma was scared by these calls, but he nevertheless continued to stay apprised of the situation, encouraging his friends to join him in "tak[ing] a stand" against Saini.

In May 1995, Sharma received a call from Saini himself. Saini told Sharma to stop investigating the disappearance of the men, "otherwise you will find yourself in a much bigger problem than them." Saini threatened to "eliminate" Sharma and his family if Sharma "ask[ed] any further question[s]." Afraid for his family's safety, Sharma moved his wife and children more than 300 miles away to Jaipur.

In January 1997, Sharma traveled to South Korea for a week to pursue a business opportunity, leaving his family behind in Jaipur. Sharma testified that he had the resources to relocate his family outside of India. But he instead decided to return to India because the business opportunity in South Korea failed to "mature[]," and he was unable to "get some kind of settlement" there.

In March 1997, Sharma organized a protest of Saini outside the Punjab Parliament building, which a group of business and political associates attended. Sharma spoke to the crowd about Saini's corruption and called for his suspension from the government. Within 45 minutes, the police broke up the protest, beating attendees with batons and chasing them away. Sharma does not specifically claim he was physically injured by police during that encounter.

A few days later, the police came to Sharma's office and accused him of loaning money to terrorists. They demanded his files, but Sharma refused. An officer "beat" and "slapped" Sharma with a baton. The officer then told Sharma that he was "finished" and had "made a big mistake crossing paths with" Saini.

The officers took Sharma's files, tied Sharma's hands, blindfolded him, and put him in a van. While driving, the officers made veiled threats, saying things like, "now we will show you how we work," and "do not worry about your family[;] we know they are in Jaipur." The van took Sharma to a facility where Sharma was locked in a room, still bound. Sharma was kept in the room all night. Officers would intermittently enter to "verbally abuse" him, "beat" and "slap" him, and "shove [him] around."

The next day, a police inspector came into the room where Sharma was being held and threatened that "worse could happen" if Sharma "continued to raise [his] voice against" Saini. The inspector held a phone to Sharma's ear. Saini told Sharma to "worry about [his] family," and if he continued to investigate Vinod's disappearance, he "would be dealt with in a manner like others."

Saini hung up, and the inspector informed Sharma that Saini had "taken pity on" him and that Saini was letting him

go. But Sharma was warned not to investigate Saini or he "would [be] permanently finished," with the inspector adding that "[w]e know that your family is in Jaipur." Sharma was then put back in the van, driven around, and pushed out on the side of the road. In total, Sharma's captivity lasted around 18 to 19 hours. He does not identify any physical injuries resulting from this ordeal.

Sharma returned home but his business was ruined because the police had stolen his files and instructed Sharma's clients not to pay back their loans. Sharma was too afraid to leave the house after the encounter. He also continued to receive "occasional" anonymous phone calls warning him that his "actions were being watched."

Sharma decided he would leave India. In July 1997, Sharma received his visitor visa for the United States and departed India. After he left India, the police "initially harassed" Sharma's wife (who was still in India), asking her about Sharma's whereabouts and warning her "not to speak up or take any action." Sharma's wife showed the police proof that Sharma was in the United States. They responded that "it was best that [Sharma] stay away and not return to India."

In spring 2012, Saini was promoted to Director General of Police Punjab, "the highest post of the police force of a state." Around the same time, Indian authorities pressed forward with legal action against Saini related to the Vinod disappearance. Meanwhile, two policemen visited Sharma's wife and "threatened her[,] saying that it was best [Sharma] stays out and not return or else [he] would not be spared."

Sharma filed his application for asylum, withholding of removal, and CAT relief on May 29, 2012, after living in the United States for approximately 15 years. As of Sharma's

hearing before the IJ, Saini still worked for the Punjabi government as Chairman of the Punjab Police Housing Corporation. Although Sharma's two daughters live in Australia, Sharma's wife splits her time between India and Australia, with extended visits to the United States as well. Sharma testified that his wife travels back and forth between India, Australia, and this country without incident. Sharma's son still lives in India full-time. None of Sharma's family members has ever been physically harmed.

The IJ found Sharma's application timely, given changed circumstances, and his testimony "generally" credible, even though "portions of his story are implausible." The IJ then concluded that Sharma's past harm did not rise to the level of persecution, noting that there was no evidence of the severity of Sharma's injuries or him receiving medical care; his detention was "less than one full day"; and, although Sharma's business was ruined, there was no evidence that Sharma "was unable to continue making a living."

The IJ also found that Sharma was unlikely to suffer future persecution. She noted that neither Sharma's wife nor their son has ever been harmed, despite both continuing to reside in India, and that more than twenty years had passed since Sharma's last encounter with Saini.

The IJ rejected Sharma's CAT claim for largely the same reasons she denied asylum and withholding of removal. And the IJ denied voluntary departure "as a matter of discretion," based on Sharma's 2011 conviction for driving under the influence and a lack of evidence of Sharma's ties to the United States.

The Board of Immigration Appeals (BIA) adopted and affirmed the IJ's decision and dismissed the appeal. The

BIA agreed that Sharma failed to establish past persecution. It also agreed that Sharma failed to establish a well-founded fear of future persecution, noting specifically the family's "travel history" and that Sharma's wife and son continue to reside in India unharmed. The BIA also affirmed the IJ's rejection of Sharma's CAT claim and the discretionary denial of voluntary departure. Sharma then filed this timely petition for review.

II

Because the BIA agreed with the IJ's reasoning and added some of its own, we review the BIA's decision and those parts of the IJ's decision upon which it relied. *See Duran-Rodriguez v. Barr*, 918 F.3d 1025, 1027–28 (9th Cir. 2019).

To be eligible for asylum, a petitioner has the burden to demonstrate a likelihood of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). To be eligible for withholding of removal, the petitioner must discharge this burden by a "clear probability." *Alvarez-Santos v. INS*, 332 F.3d 1245, 1255 (9th Cir. 2003); *see* 8 U.S.C. § 1231(b)(3).

One way to satisfy this burden is by showing past persecution, which gives rise to a rebuttable presumption of future persecution. *See, e.g.*, *Velasquez-Gaspar v. Barr*, 976 F.3d 1062, 1064 (9th Cir. 2020). Proving past persecution requires the petitioner to show, among other elements, that "his treatment rises to the level of persecution." *Hussain v. Rosen*, 985 F.3d 634, 645 (9th Cir. 2021) (citation omitted).

We review for substantial evidence the BIA's determination that a petitioner has failed to establish eligibility for asylum or withholding of removal. *See id.* at 641–42. We also review for substantial evidence the BIA's particular determination that a petitioner's past harm "do[es] not amount to past persecution." *Villegas Sanchez v. Garland*, 990 F.3d 1173, 1179 (9th Cir. 2021); *see also Prasad v. INS*, 47 F.3d 336, 339 (9th Cir. 1995).

Because "the law entrusts the agency to make the basic" eligibility determinations, *INS v. Orlando Ventura*, 537 U.S. 12, 16 (2002) (per curiam), "[t]he substantial evidence standard of review is 'highly deferential' to the [BIA]," *Pedro-Mateo v. INS*, 224 F.3d 1147, 1150 (9th Cir. 2000) (citation omitted). Consistent with this level of deference, we may grant a petition only if the petitioner shows that the evidence "*compels* the conclusion" that the BIA's decision was incorrect. *Ming Xin He v. Holder*, 749 F.3d 792, 795 (9th Cir. 2014) (quoting *Gu v. Gonzales*, 454 F.3d 1014, 1018 (9th Cir. 2006)). In other words, we ask not whether "a reasonable factfinder *could* have found" the harm the petitioner experienced "sufficient to establish persecution," but whether "a factfinder would be compelled to do so." *Prasad*, 47 F.3d at 340.

A

Sharma contends that the incidents of harm he experienced in India "cumulatively compel a finding of past persecution." Sharma's time in India, we acknowledge, involved condemnable mistreatment. But under the deferential substantial evidence standard and our precedents on the past persecution requirement, the record does not compel the conclusion that Sharma suffered hardship in India that rose to the level of persecution.

1

"Persecution," we have repeatedly held, "is an extreme concept that means something considerably more than discrimination or harassment." *Donchev v. Mukasey*, 553 F.3d 1206, 1213 (9th Cir. 2009) (quotation omitted); *see also, e.g.*, *Halim v. Holder*, 590 F.3d 971, 975 (9th Cir. 2009); *Gormley v. Ashcroft*, 364 F.3d 1172, 1180 (9th Cir. 2004); *Mansour v. Ashcroft*, 390 F.3d 667, 672 (9th Cir. 2004); *Fisher v. INS*, 79 F.3d 955, 961 (9th Cir. 1996). That conception of persecution, rooted in the term's plain meaning and in the historical objectives of our immigration laws, *see, e.g.*, *Desir v. Ilchert*, 840 F.2d 723, 726–27 (9th Cir. 1988); *Kovac v. INS*, 407 F.2d 102, 107 (9th Cir. 1969), grounds our evaluation of cases like Sharma's.

Because it is an extreme concept, persecution "does not include every sort of treatment our society regards as offensive." *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995) (citation omitted); *see also Al-Saher v. INS*, 268 F.3d 1143, 1146 (9th Cir. 2001), *amended*, 355 F.3d 1140 (9th Cir. 2004). This means that "some circumstances that cause petitioners physical discomfort or loss of liberty do not qualify as persecution, despite the fact that such conditions have caused the petitioners some harm." *Mihalev v. Ashcroft*, 388 F.3d 722, 729 (9th Cir. 2004). Simply stated, "not all negative treatment equates with persecution." *Lanza v. Ashcroft*, 389 F.3d 917, 934 (9th Cir. 2004).

Determining whether the facts compel a conclusion of past persecution is ultimately a fact-bound endeavor that is not reducible to a set formula. The inquiry is "heavily fact-dependent." *Singh v. INS*, 134 F.3d 962, 967 (9th Cir. 1998). In each case, however, "[t]he key question is whether, looking at the cumulative effect of all the incidents that a Petitioner has suffered, the treatment he received rises to the

level of persecution." *Gormley*, 364 F.3d at 1176–77 (quoting *Singh*, 134 F.3d at 967) (alterations omitted).

Although each case turns on its own facts, there are several factors that often arise in these types of cases and that guide our analysis. These factors, we emphasize, are not to be considered on their own. Under our cases, they must be evaluated in combination with each other to form a sufficiently negative portrait of the petitioner's experience in his or her own country that not only allows a finding of past persecution but requires it. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 n.1 (1992); *Gormley*, 364 F.3d at 1176–77; *Prasad*, 47 F.3d at 339.

The first, and often a significant consideration, is whether the petitioner was subject to "significant physical violence," and, relatedly, whether he suffered serious injuries that required medical treatment. *Nagoulko v. INS*, 333 F.3d 1012, 1016–17 (9th Cir. 2003). We have repeatedly denied petitions for review when, among other factors, the record did not demonstrate significant physical harm. *See, e.g.*, *Gu v. Gonzales*, 454 F.3d 1014, 1020 (9th Cir. 2006) ("Gu was detained and beaten on only one occasion, . . . [and] did not require medical treatment."); *Nahrvani v. Gonzales*, 399 F.3d 1148, 1153 (9th Cir. 2005) ("Nahrvani suffered no physical harm nor was he ever detained."); *Nagoulko*, 333 F.3d at 1016 ("[I]t is significant that Nagoulko never suffered any significant physical violence."); *Al-Saher*, 268 F.3d at 1146 ("While we do not know if Al-Saher would have been beaten if he had remained in custody, nothing that occurred prior to his escape from the third detention rises to the level of persecution."); *Prasad*, 47 F.3d at 339 (holding that when petitioner "did not require medical treatment," the attack on him was not "so overwhelming as to necessarily constitute persecution").

Conversely, when we have granted petitions for review because the record compelled a finding of past persecution, the petitioner often experienced serious physical violence, among other indicators of persecution. *See, e.g.*, *Lopez v. Ashcroft*, 366 F.3d 799, 802–03 (9th Cir. 2004) ("Lopez testified credibly that guerrillas in 1988 locked him in a warehouse and set it on fire," and he "suffered burns on his hands and back as a result of this attempt on his life."); *Chanchavac v. INS*, 207 F.3d 584, 589 (9th Cir. 2000) ("Chanchavac's persecutors . . . violently attacked Chanchavac himself on one occasion . . . and beat him so severely that he was bedridden for two days."); *Salaam v. INS*, 229 F.3d 1234, 1236 (9th Cir. 2000) (per curiam) ("Salaam was held incommunicado for several days and tortured by flogging. Salaam bears scars from these beatings . . . .").

Another factor we consider is whether the petitioner's harm was an isolated incident or, conversely, part of an ongoing pattern of serious maltreatment. *See Gu*, 454 F.3d at 1020. In combination with other indicia of persecution, serious maltreatment that is sustained and recurring is more likely to compel the conclusion of past persecution, whereas sporadic incidents, unaccompanied by an ongoing pattern of harm, less so. *Id.* We have thus explained that "an isolated criminal incident . . . does not begin to resemble persecution." *Lata v. INS*, 204 F.3d 1241, 1245 (9th Cir. 2000); *see also Prasad*, 47 F.3d at 339–40 (single attack on petitioner did not compel a finding of past persecution).

The length and quality of a petitioner's detention, if any, is also a relevant consideration. "We have recognized that, in some circumstances, detentions combined with physical attacks which occur on account of a protected ground can establish persecution." *Gu*, 454 F.3d at 1019. For example,

when a petitioner was severely beaten and detained twice, once for fifteen days, we found that the record, in combination with other factors, compelled a finding of past persecution. *See Guo v. Ashcroft*, 361 F.3d 1194, 1197–98 (9th Cir. 2004). Similarly, when the petitioner was arrested four times, and on each arrest "held incommunicado for several days and tortured by flogging," we held that based on these and other circumstances, he had established past persecution. *Salaam*, 229 F.3d at 1236, 1240. But when a petitioner was detained for only five or six days and "was not beaten, tortured, or threatened," we held that he did not establish past persecution. *Al-Saher*, 268 F.3d at 1146. We similarly denied petitions when the periods of detention, even if frequent, were "short," *Khourassany v. INS*, 208 F.3d 1096, 1098, 1100 (9th Cir. 2000), or "brief," and the petitioner sustained no injuries, *Prasad*, 47 F.3d at 339.

Petitioners often point to threats made against them in support of their claims of past persecution. Threats are relevant to the past persecution analysis. But "[m]ere threats, without more, do not necessarily compel a finding of past persecution." *Villegas Sanchez*, 990 F.3d at 1179; *see also Nahrvani*, 399 F.3d at 1153 ("[M]ost threats do not rise to the level of persecution."). That is because "[t]hreats themselves are sometimes hollow and, while uniformly unpleasant, often do not effect significant actual suffering or harm." *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003) (quotations omitted). Instead, "[w]e have been most likely to find persecution where threats are repeated, specific and combined with confrontation or other mistreatment." *Duran-Rodriguez*, 918 F.3d at 1028 (quotations omitted).

Another recurring factor that arises in our cases is harms that have befallen a petitioner's family members or close friends. A petitioner who is seeking asylum or withholding

of removal of course does so on his own behalf and not on behalf of others. In recognition of that basic point, we have explained that "although harm to a petitioner's close relatives, friends, or associates may contribute to a successful showing of past persecution," it must be "part of 'a pattern of persecution closely tied to' [the petitioner] himself." *Wakkary v. Holder*, 558 F.3d 1049, 1060 (9th Cir. 2009) (quoting *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991)); *see also, e.g.*, *Nagoulko*, 333 F.3d at 1017 ("[T]hat Nagoulko witnessed the beating of some of her co-workers does not compel a factfinder to conclude that Nagoulko suffered from past persecution.").

Economic harm can also factor into the past persecution analysis. But its relevance again depends on the severity of the deprivation in connection with the record as a whole. Thus, "substantial economic deprivation that constitutes a threat to life or freedom can constitute persecution." *Zehatye v. Gonzales*, 453 F.3d 1182, 1186 (9th Cir. 2006). But at the same time, "mere economic disadvantage alone does not rise to the level of persecution." *Hussain*, 985 F.3d at 647 (quoting *Gormley*, 364 F.3d at 1178). We thus held that the record did not compel a finding of past persecution when a petitioner was "fired from her job as a kindergarten teacher because of her religious beliefs." *Nagoulko*, 333 F.3d at 1016. "[W]hile discriminatory," this incident was "not the type of economic deprivation that rises to the level of persecution." *Id.*

Finally, political and social turmoil in the petitioner's home country can provide relevant context for the petitioner's personal experiences. We have thus "held that an asylum applicant's claim of persecution is further strengthened when evidence that the applicant was physically beaten and threatened with his life is presented in

conjunction with evidence of the country's 'political and social turmoil.'" *Aden v. Wilkinson*, 989 F.3d 1073, 1083 (9th Cir. 2021) (quoting *Korablina v. INS*, 158 F.3d 1038, 1045 (9th Cir. 1998)). That said, adverse country conditions are not sufficient evidence of past persecution, for the obvious reason that "[t]o establish past persecution, an applicant must show he was individually targeted on account of a protected ground rather than simply the victim of generalized violence." *Hussain*, 985 F.3d at 646 (citing cases). As we explained in *Prasad v. INS*, 101 F.3d 614 (9th Cir. 1996), to establish past persecution, "[i]t is not sufficient to show [the petitioner] was merely subject to the general dangers attending a civil war or domestic unrest." *Id.* at 617.

The factors we have identified here—physical violence and resulting serious injuries, frequency of harm, specific threats combined with confrontation, length and quality of detention, harm to family and close friends, economic deprivation, and general societal turmoil—are not exhaustive. But they are ones that routinely arise in petitions for review of BIA decisions denying applications for asylum and withholding of removal. Our cases do not consider these factors individually, but cumulatively. *Singh*, 134 F.3d at 967; *see also Hussain*, 985 F.3d at 647; *Guo*, 361 F.3d at 1203. Nevertheless, these factors are a good starting point for determining whether substantial evidence supports the BIA's resolution of the issue.

2

In this case, and considering the factors we identified above, the harm perpetrated against Sharma, while disgraceful, does not compel a finding of past persecution. Therefore, substantial evidence supports the BIA's decision. *Ming Xin He*, 749 F.3d at 795–96.

Perhaps most significantly, there is no indication Sharma experienced significant physical harm in India. A few days after the protest, police came to Sharma's office and "beat" and "slapped" him, apparently with a baton. The police then took Sharma into custody and placed him in a room, where they "beat[]," "slap[ped]," and "shove[d]" him throughout the night. Sharma's physical harm was thus limited to one episode of arrest and detention. *See Gu*, 454 F.3d at 1020 (denying petition where petitioner "was detained and beaten on only one occasion"). Sharma also has not identified any injuries he suffered, nor does he claim he needed medical treatment. Thus, "[w]hile we certainly condemn the attack on [Sharma], it is not, in our judgment, so overwhelming as to necessarily constitute persecution." *Prasad*, 47 F.3d at 339.

As we have described, Sharma was detained in connection with the one episode of physical harm that he identifies. While police blindfolded and bound Sharma when they took him, Sharma's detention was an isolated event, and it lasted only 18–19 hours. Although Sharma experienced verbal abuse and some physical abuse during his detention, he was ultimately released with no indication of injuries, serious or otherwise. Sharma's period of incarceration of less than one day, the fact that he was only detained once, and the lack of any resulting serious bodily harm support our view that, under the substantial evidence standard, the record does not compel a finding of past persecution. *See Gu*, 454 F.3d at 1017, 1021 (holding that record did not compel a finding of past persecution despite three-day detention); *Al-Saher*, 268 F.3d at 1146 (holding that record did not compel a finding of past persecution despite five- or six-day detention).

Sharma also points to the threats he received. It is true that Sharma did receive threatening phone calls over a period of years. But the threats were generally anonymous and vague, such as warning Sharma of "big trouble" if he continued his investigation of Vinod's disappearance. While no doubt "unpleasant," the threats evidently did not cause "significant actual suffering or harm." *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000). In fact, it is not apparent the earlier threats affected Sharma's behavior because he continued publicly investigating the case against Saini, encouraged his friends to join him, and even organized a protest. After the threats, Sharma was also still able to leave India for a business opportunity in South Korea and later willingly returned.

Sharma was threatened again in the course of his detention. But these threats did not lead to any further physical harm, substantial or otherwise, against Sharma or his family. *See Hussain*, 985 F.3d at 647 ("Unfulfilled threats are very rarely sufficient to rise to the level of persecution . . . ."); *Lim*, 224 F.3d at 936. Indeed, Sharma's wife and son continue to live in India, and his wife regularly travels between India, Australia, and the United States. *See Khourassany*, 208 F.3d at 1101. And Sharma testified that the Indian government is, in fact, actively investigating a case against Saini related to the Vinod disappearance.

Sharma points out that his business was ruined because the police stole his files and told his clients not to pay back their loans. We agree with the BIA that police interference with Sharma's business was "reprehensible." But we cannot say it compels a finding of persecution in light of the rest of the record. The police did not threaten Sharma's life if he returned to his business, and Sharma does not contend that he was foreclosed from finding other employment. *See*

Nagoulko, 333 F.3d at 1016 (holding that the petitioner's termination from her employment did not "rise[] to the level of persecution" where she found alternative "steady work").

We disagree with Sharma's assertion that his case resembles *Guo*, 361 F.3d 1194, in which we granted a petition for review. In *Guo*, the petitioner was arrested while attending a church service and detained at the police station for a day and a half. *Id.* at 1197. He was "punched" twice in the face and ordered "to do push ups until he could no longer stand it." *Id.* at 1197, 1202. "While he lay on the floor, he was kicked in the stomach." *Id.* at 1197. He was released after being "coerced to sign a paper" stating that he would forsake his religion. *Id.* at 1197, 1202.

The petitioner was then re-arrested less than a week after his release. *Id.* at 1197–98. He was "subdue[d]" with an "electrically-charged baton," kicked in the legs, hit in the face "seven or eight times," and "tied to a chair and beaten with a plastic pole." *Id.* at 1198. He was then detained for fifteen days before police let him go. *Id.* As a result, he was fired from his job and was "unable to procure other employment." *Id.* We held that "[t]his treatment rises to the level of persecution on account of his religion." *Id.* at 1203. The level of mistreatment at issue in *Guo*, however, is simply not comparable to what Sharma experienced.

Instead, this case is more analogous to ones in which we denied petitions for review after concluding that a finding of past persecution was not compelled. *See Singh*, 134 F.3d at 967–68 (noting that the past persecution analysis is informed "by comparing the facts of Petitioner's case with those of similar cases"). For example, in *Prasad*, the petitioner was detained once for four to six hours, hit in the stomach, kicked from behind, and interrogated. 47 F.3d at 339. At other times, he had rocks thrown at his house, and

his wife testified she was harassed by the army. *Id.* at 340. Although we "condemn[ed]" the attack on the petitioner, we observed that the detention was brief; the petitioner did not require medical treatment; he was not charged with any crime; there was no evidence that the government had any "continuing interest" in him; and his relatives still lived in his home country "apparently without incident." *Id.* at 339.

Similarly instructive to Sharma's case is *Lanza*, 389 F.3d 917, in which we held that substantial evidence supported the BIA's determination that the petitioner had not shown past persecution. *Id.* at 934. In *Lanza*, the petitioner was "blacklisted" by the government and fired from her job. *Id.* at 920. On one occasion, three men broke into her house, pushed her, punched her, called her names, and threatened her and her young daughter with death. *Id.* at 920–21, 934. After she fled the country, they visited her father and inquired regarding her whereabouts. *Id.* at 921. Again, we deemed the actions "reprehensible." *Id.* at 934. But we concluded that the harm the petitioner suffered was "not so overwhelming" as to "compel reversal on this issue." *Id.* (quotations omitted).

These past precedents support our view that, even if the BIA could have concluded otherwise, the record at the same time does not compel the conclusion that Sharma established past persecution in India. Thus, substantial evidence supports the BIA's decision.

B

There remains the question whether Sharma has nonetheless shown the record compels a finding of future persecution, because "[a] petitioner who cannot show past persecution might nevertheless be eligible for relief if he instead shows a well-founded fear of future persecution."

Hussain, 985 F.3d at 645–46 (quotations omitted). We thus consider next whether Sharma "adduc[ed] credible, direct, and specific evidence in the record of facts that would support a reasonable fear of persecution." *Mansour*, 390 F.3d at 673. That fear must be objectively reasonable. *Id.*; *see also Nagoulko*, 333 F.3d at 1016. The BIA agreed with the IJ that Sharma failed to carry his burden on this issue, and we hold that substantial evidence supports that determination.

First, as the IJ noted, there is an insufficient basis in the record to conclude that Saini and his followers would have a continuing interest in Sharma. At the least, the record does not compel that conclusion. Sharma left India in July 1997. As the IJ observed, it has been decades since his last personal interaction with Saini. The most recent interaction between the police and Sharma's wife occurred in 2012, and it involved only vague threats that led to no harm.

Under all of these circumstances, the record does not require the finding that Saini and his forces will persecute Sharma if he returns to India; the possibility that this would occur is speculative on this record. *See, e.g.*, *Lanza*, 389 F.3d at 934–35 ("There is no reason in the record to warrant a belief that Lanza's alleged persecutors would still be interested in her" when the "alleged persecution occurred more than ten years ago."); *Prasad*, 47 F.3d at 339 (denying petition where "[t]here is no evidence that the Fijian Government had any continuing interest in Prasad").

Second, and as the BIA pointed out, Sharma's wife and son continue to reside safely in India. The ongoing safety of family members in the petitioner's native country undermines a reasonable fear of future persecution. *See Mansour*, 390 F.3d at 673 (denying petition for review after observing that the petitioners "have several family members

who continue to live in Egypt and who have been able to obtain university educations and employment"); *Aruta v. INS*, 80 F.3d 1389, 1395 (9th Cir. 1996) (holding that evidence that "similarly situated members of the petitioner's family continued to reside without incident" in petitioner's native country "strongly supports" the BIA's denial of asylum).

Sharma does not dispute that his family members have never been harmed. But he argues their safety is irrelevant because they did not investigate Saini and therefore are not similarly situated. The IJ and BIA could reach a different conclusion, however. Given the general similarities between the pattern of threats leveled against Sharma and his family, substantial evidence supports the BIA's reliance on Sharma's family's continued well-being.

Sharma alternatively argues that his family's safety is contingent upon him staying out of India, a claim that the IJ considered and rejected. Substantial evidence supports this determination. Sharma's family was safe in Jaipur when Sharma was present in India, while he was away in South Korea, after he returned from South Korea, after the protest, and after Sharma's departure to the United States. Sharma has not demonstrated that his family's safety bears any necessary relationship to his presence in (or absence from) India.

Third, Sharma traveled to South Korea without interference and then voluntarily returned to India. The ability to "travel freely" and to "leave . . . without hindrance" undermines a reasonable fear of future persecution. *Khourassany*, 208 F.3d at 1101; *see also Gu*, 454 F.3d at 1022 ("[Gu] traveled freely without interference from the Chinese authorities."). So, too, does Sharma's voluntary return. *Loho v. Mukasey*, 531 F.3d 1016, 1017–18 (9th Cir.

2008) ("It is well established in this court that an alien's history of willingly returning to his or her home country militates against a finding of past persecution or a well-founded fear of future persecution.").

Sharma argues that the BIA failed to recognize that his travel occurred before his issues with Saini had "escalated." But even before the trip to South Korea, Sharma claimed he was "very concerned" by Saini's threats and scared for his family's safety. Sharma also failed to present evidence that he made any effort to relocate his family out of India, despite testifying that he had the resources to do so.

These aspects of the record provide further support for the BIA's determination that Sharma has not demonstrated a well-founded fear of future persecution. And "[b]ecause [Sharma] has not met the lesser burden of establishing his eligibility for asylum, he necessarily has failed to meet the more stringent 'clear probability' burden required for withholding of [removal]." *Molina-Morales v. INS*, 237 F.3d 1048, 1052 (9th Cir. 2001).

C

Our last task is to determine whether substantial evidence supports the BIA's rejection of Sharma's claim for CAT relief. *Hussain*, 985 F.3d at 641–42 (standard of review). We hold that it does.

To qualify for CAT protection, a petitioner must show it is "more likely than not he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 208.16(c)(2). Torture is "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person . . . for any reason based on discrimination of any kind, when such pain or suffering is

inflicted by or at the instigation of or with the consent or acquiescence of a public official . . . ." *Id.* § 208.18(a)(1). "The same 'more likely than not' standard applies to CAT protection as it does to withholding of removal; however, for CAT protection, the harm feared must meet the definition of torture." *Tamang v. Holder*, 598 F.3d 1083, 1095 (9th Cir. 2010).

Because the BIA could reasonably conclude that Sharma's past harm did not rise to the level of persecution, it necessarily falls short of the definition of torture. *See Hussain*, 985 F.3d at 650. Moreover, CAT relief "is based entirely on an objective basis of fear." *Tamang*, 598 F.3d at 1095. Sharma has not shown an objectively reasonable fear of future torture for the reasons identified above. *See id.* (citing 8 C.F.R. § 208.16(c)(3)).

* * *

Sharma does not raise any constitutional or legal challenges to the denial of voluntary departure. We thus lack jurisdiction to review this portion of Sharma's petition. *Corro-Barragan v. Holder*, 718 F.3d 1174, 1177 (9th Cir. 2013). The petition is therefore

DENIED IN PART AND DISMISSED IN PART.