

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Barrera Pacheco v. Barr

No. 18-2021, United States Court of Appeals for the Second Circuit (November 17, 2020)

SUMMARY

This Second Circuit unpublished decision denied a petition for review of the BIA's denial of withholding of removal. The court held that the petitioner failed to establish that his membership in a family victimized by gangs was "one central reason" for the harm, as the gang's motive was incidental criminal enterprise and perceived wealth, not family ties. General country conditions evidence was insufficient without particularized proof linking fear of future harm to a protected ground. The petitioner's asylum and CAT claims were waived.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Denny Chin; Joseph F. Bianco; William J. Nardini
JURISDICTION	Federal
DECIDED	November 17, 2020
DOCKET	18-2021
DISPOSITION	denied
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an Immigration Judge's denial of withholding of removal.
STANDARD OF REVIEW	Substantial evidence for factual findings, including nexus determination; legal issues reviewed de novo (though not explicitly stated). See 8 U.S.C. § 1252(b)(4)(B); Yanqin Weng v. Holder, 562 F.3d 510, 513 (2d Cir. 2009); Gjolaj v. Bureau of Citizenship & Immigr. Servs., 468 F.3d 140, 142-43 (2d Cir. 2006).
PRECEDENTIAL VALUE	unpublished
PARTIES	Roman Barrera Pacheco v. William P. Barr, United States Attorney General

TOPICS

immigration removal proceedings asylum judicial review of agency action administrative law
standard of review waiver

PRACTICE AREAS

Immigration Law

QUESTIONS PRESENTED

1. Whether the agency erred in denying withholding of removal on the ground that the petitioner failed to show that his family membership was a central reason for the alleged persecution.

HOLDINGS

1. The agency reasonably determined that the petitioner failed to demonstrate that he suffered past persecution or has a well-founded fear of future persecution on account of his family membership. The family membership was not a central reason for the harm; the harm was motivated by perceived wealth or general criminal enterprise.
2. The petitioner waived these challenges by not sufficiently arguing them in his brief.

KEY QUOTATIONS

“the protected ground cannot play a minor role in the alien's past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to another reason for harm.” (at 3)

“harm motivated purely by wealth is not persecution” (at 4)

“general country conditions evidence is insufficient to establish that someone in Barrera Pacheco’s particular circumstances would be harmed on account of a protected ground, i.e., that gangs would likely target him because of his relationship to his family as opposed to his perceived wealth.” (at 5)

“In the absence of solid support in the record for a claim of future persecution, an applicant's fear is speculative at best.” (at 5)

FACTUAL BACKGROUND

Petitioner Roman Barrera Pacheco, a native and citizen of Mexico, applied for withholding of removal based on his membership in a family that has been victimized by gangs. He claimed that gangs harmed his brother and brother-in-law. The IJ and BIA denied relief, finding that the harm was not on account of a protected ground. The Second Circuit upheld the denial, concluding that the family membership was not a central reason for the harm; the harm was motivated by perceived wealth or general criminal enterprise.

PROCEDURAL HISTORY

The BIA affirmed the IJ's August 30, 2017 decision denying Barrera Pacheco's application for withholding of removal. Barrera Pacheco then petitioned for review to the Second Circuit.

DISPOSITION

denied

CASES CITED

- Norton v. Sam's Club, 145 F.3d 114, 117 (2d Cir. 1998)
- Wangchuck v. U.S. Dep't of Homeland Sec., 448 F.3d 524, 528 (2d Cir. 2006)
- Yanqin Weng v. Holder, 562 F.3d 510, 513 (2d Cir. 2009)
- Gjolaj v. Bureau of Citizenship & Immigr. Servs., 468 F.3d 140, 142-43 (2d Cir. 2006)
- Matter of C-T-L-, 25 I. & N. Dec. 341, 348 (BIA 2010)
- In re J-B-N- & S-M-, 24 I. & N. Dec. 208, 214 (BIA 2007)
- Acharya v. Holder, 761 F.3d 289, 297 (2d Cir. 2014)
- INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992)
- Manzur v. U.S. Dep't of Homeland Sec., 494 F.3d 281, 291 (2d Cir. 2007)
- Ucelo-Gomez v. Mukasey, 509 F.3d 70, 73-74 (2d Cir. 2007)
- Melgar de Torres v. Reno, 191 F.3d 307, 313 (2d Cir. 1999)
- Matter of L-E-A-, 27 I. & N. Dec. 40, 45 (BIA 2017)
- Mu Xiang Lin v. U.S. Dep't of Justice, 432 F.3d 156, 160 (2d Cir. 2005)
- Jian Xing Huang v. INS, 421 F.3d 125, 129 (2d Cir. 2005)

OPINION

PER CURIAM.

18-2021 Barrera Pacheco v. Barr BIA Segal, IJ A 205 308 418 UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER").

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. 1 At a stated term of the United States Court of Appeals 2 for the Second Circuit, held at the Thurgood Marshall 3 United States Courthouse, 40 Foley Square, in the City of 4 New York, on the 17th day of November, two thousand twenty. 5 6 PRESENT: 7 DENNY CHIN, 8 JOSEPH F. BIANCO, 9 WILLIAM J. NARDINI, 10 Circuit Judges.

11 _____ 12 13 ROMAN BARRERA PACHECO, 14 AKA ROMAN BARRERA, 15 Petitioner, 16 17 v. 18-2021 18 NAC 19 WILLIAM P. BARR, UNITED STATES 20 ATTORNEY GENERAL, 21 Respondent. 22 _____ 23 24 FOR PETITIONER: H. Raymond Fasano,

Esq., Youman, 25 Madeo & Fasano, LLP, New York, NY. 26 27 FOR RESPONDENT: Jeffrey Bossert Clark, Acting 28 Assistant Attorney General; Derek 1 C. Julius, Assistant Director; 2 Bernard A. Joseph, Senior 3 Litigation Counsel, Office of 4 Immigration Litigation, United 5 States Department of Justice, 6 Washington, DC.

7 UPON DUE CONSIDERATION of this petition for review of a 8 Board of Immigration Appeals (“BIA”) decision, it is hereby 9 ORDERED, ADJUDGED, AND DECREED that the petition for review 10 is DENIED. 11 Petitioner Roman Barrera Pacheco, a native and citizen 12 of Mexico, seeks review of a June 13, 2018, decision of the 13 BIA affirming an August 30, 2017, decision of an 14 Immigration Judge (“IJ”) denying his application for 15 withholding of removal.

In re Roman Barrera Pacheco, No. 16 A205 308 418 (B.I.A. Jun. 13, 2018), aff’g No. A 205 308 418 17 (Immig. Ct. N.Y. City Aug. 30, 2017). We assume the 18 parties’ familiarity with the underlying facts and 19 procedural history. 20 Barrera Pacheco has not challenged the denial of asylum 21 as untimely, which was dispositive of that form of relief, 22 or the denial of relief under the Convention Against 23 Torture.

See Norton v. Sam’s Club, 145 F.3d 114, 117 (2d 24 Cir. 1998) (“Issues not sufficiently argued in the briefs 2 1 are considered waived and normally will not be addressed on 2 appeal.”). Accordingly, we address only the agency’s 3 denial of withholding of removal.

We have reviewed both 4 the IJ’s and the BIA’s decisions “for the sake of 5 completeness.” Wangchuck v. U.S. Dep’t of Homeland Sec., 6 448 F.3d 524, 528 (2d Cir. 2006). The applicable standards 7 of review are well established. See 8 U.S.C. 8 § 1252(b)(4)(B); Yanqin Weng v. Holder, 562 F.3d 510, 513 9 (2d Cir. 2009); Gjolak v. Bureau of Citizenship & Immigr.

10 Servs., 468 F.3d 140, 142-43 (2d Cir. 2006) (reviewing 11 nexus determination for substantial evidence). 12 To demonstrate eligibility for withholding of removal, 13 “the applicant must establish that race, religion, 14 nationality, membership in a particular social group, or 15 political opinion was or will be at least one central 16 reason for persecuting the applicant.” 8 U.S.C. 17 §§ 1158(b)(1)(B)(i), 1231(b)(3)(A); see also Matter of C-T- 18 L-, 25 I. & N. Dec.

341, 348 (BIA 2010) (applying “one 19 central reason” standard to withholding). Under this “one 20 central reason” standard, “the protected ground cannot play 21 a minor role in the alien’s past mistreatment or fears of 22 future mistreatment. That is, it cannot be incidental, 3 1 tangential, superficial, or subordinate to another reason 2 for harm.” In re J-B-N- & S-M-, 24 I. & N. Dec.

208, 214 3 (BIA 2007); Acharya v. Holder, 761 F.3d 289, 297 (2d Cir. 4 2014) (there may be “more than one motive for mistreatment, 5 as long as at least one central reason for the mistreatment 6 is on account of a protected ground” (internal quotation 7 marks omitted)). An applicant “must provide some evidence 8 of [a persecutor’s motives], direct or circumstantial.” 9

INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992); see also 10 Manzur v. U.S. Dep't of Homeland Sec., 494 F.3d 281, 291 11 (2d Cir.

2007). 12 Barrera Pacheco argues for withholding based on his 13 membership in the social group of a family that has been 14 victimized by gangs. Assuming this is a cognizable social 15 group, the agency reasonably determined that Barrera 16 Pacheco failed to demonstrate that he suffered past 17 persecution or has a well-founded fear of future 18 persecution on account of his membership in this group.

19 Barrera Pacheco's membership in his family was not and 20 would not be "one central reason" for his harm. See In re 21 J-B-N- and S-M-, 24 I. & N. Dec. at 214. While Barrera 22 Pacheco stated that the gangs harmed his brother and 4 1 brother-in-law, their familial status was incidental to the 2 gang's main purpose of maintaining its criminal enterprise, 3 which affects all of Mexican society.

See id.; Matter of 4 L-E-A-, 27 I. & N. Dec. 40, 45 (BIA 2017) ("[T]he fact that 5 a persecutor has threatened an applicant and members of his 6 family does not necessarily mean that the threats were 7 motivated by family ties... [and] the fact that a 8 persecutor targets a family member simply as a means to an 9 end is not, by itself, sufficient to establish a claim, 10 especially if the end is not connected to another protected 11 ground.").

For example, Barrera Pacheco's brother-in-law 12 wrote that gang members assaulted him once because they 13 believed he had "large sums of money" given his former 14 residence in the United States, not because of his family 15 ties. See Ucelo-Gomez v. Mukasey, 509 F.3d 70, 73–74 (2d 16 Cir. 2007) (holding that "harm motivated purely by wealth 17 is not persecution").

And Barrera Pacheco had no evidence 18 that his family members have experienced ongoing harm given 19 their family ties or prior residence in the United States. 20 See Melgar de Torres v. Reno, 191 F.3d 307, 313 (2d Cir. 21 1999). 22 Barrera Pacheco now argues that the IJ ignored country 5 1 conditions evidence that gangs target already victimized 2 families.

But general country conditions evidence is 3 insufficient to establish that someone in Barrera Pacheco's 4 particular circumstances would be harmed on account of a 5 protected ground, i.e., that gangs would likely target him 6 because of his relationship to his family as opposed to his 7 perceived wealth. See Mu Xiang Lin v. U.S. Dep't of 8 Justice, 432 F.3d 156, 160 (2d Cir.

2005) (requiring 9 "particularized evidence" beyond general country conditions 10 to support a fear-based claim); Jian Xing Huang v. INS, 421 11 F.3d 125, 129 (2d Cir. 2005) (holding that "[i]n the 12 absence of solid support in the record" for a claim of 13 future persecution, an applicant's "fear is speculative at 14 best"). Absent evidence that his family membership — as 15 opposed to his perceived wealth — was a central reason the 16 gangs targeted him or would target him in the

future, the 17 unfortunate criminal activity that Barrera Pacheco suffered 18 and fears is not a basis for withholding of removal.

See 19 Ucelo-Gomez, 509 F.3d at 73. 20 21 22 6 1 For the foregoing reasons, the petition for review is 2 DENIED. All pending motions and applications are DENIED 3 and stays VACATED. 4 FOR THE COURT: 5 Catherine O'Hagan Wolfe, 6 Clerk of Court 7