

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This Second Circuit unpublished decision denied a petition for review of the BIA's denial of withholding of removal.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.

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

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

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

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

And Barrera Pacheco had no evidence that his family members have experienced ongoing harm given their family ties or prior residence in the United States. See *Melgar de Torres v. Reno*, 191 F.3d 307, 313 (2d Cir. 2000). Barrera Pacheco now argues that the IJ ignored country conditions evidence that gangs target already victimized families.

But 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. See *Mu Xiang Lin v. U.S. Dep't of Justice*, 432 F.3d 156, 160 (2d Cir.

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