

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This Second Circuit unpublished decision denied a petition for review of the BIA's denial of withholding of removal.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PRECEDENTIAL VALUE	unpublished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