

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Sharma v. Garland

No. No. 20-9554, United States Court of Appeals for the Tenth Circuit (April 6, 2021)

SUMMARY

The Tenth Circuit denied a petition for review of the BIA’s denial of asylum, withholding of removal, and CAT relief for a Nepali petitioner who suffered two beatings by Maoist youth group members. The court upheld the BIA’s finding that the beatings, even cumulatively, did not rise to the level of past persecution and that the petitioner could reasonably relocate within Nepal to avoid future harm. The court dismissed the petitioner’s argument that threats combined with physical harm constituted persecution because he failed to exhaust that argument before the BIA. The court also rejected the petitioner’s CAT claim as insufficient under the substantial evidence standard.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Joel M. Carson III; Phillips; McHugh; Carson
JURISDICTION	Federal
DECIDED	April 6, 2021
DOCKET	No. 20-9554
DISPOSITION	other
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision.
STANDARD OF REVIEW	We review the Board's legal conclusions de novo and its factual findings for substantial evidence. Under the substantial-evidence standard, the agency's findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.
PRECEDENTIAL VALUE	unpublished
PARTIES	Santosh Sharma v. Merrick B. Garland, Attorney General

TOPICS

- immigration
- asylum
- removal proceedings
- exhaustion of remedies
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the argument that threats from the YCL constituted past persecution was exhausted before the BIA.
2. Whether the BIA's determination that the two beatings did not rise to the level of past persecution is supported by substantial evidence.
3. Whether the BIA's finding that Sharma could reasonably relocate within Nepal to avoid future harm is supported.
4. Whether the withholding of removal and CAT claims fail if the asylum claim fails.

HOLDINGS

1. The argument was not exhausted before the BIA, so the court lacks jurisdiction to consider it.
2. Substantial evidence supports the BIA's finding that the beatings, even cumulatively, do not amount to persecution.
3. Sharma did not challenge the relocation finding, so the asylum claim fails.
4. Because the asylum claim fails, the withholding claim (higher burden) and CAT claim (higher burden) also fail.

KEY QUOTATIONS

"Even when considered cumulatively, [the] two beatings do not rise to the level of persecution." (4)

"the fact that the YCL supported the political party that is now in power does not convert the youth group, particularly its violent tendencies, into a government-sponsored group." (6)

"the Board observed that Sharma did not 'allege[] on appeal that anything else [beyond physical harm] occurred that may be considered in determining the past persecution analysis.'" (5)

"The agency's findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." (4)

"Sharma's opening brief does not challenge this holding. Accordingly, his 'claim of a well-founded fear of future persecution necessarily fails.'" (7)

FACTUAL BACKGROUND

Santosh Sharma, a native and citizen of Nepal, joined the Nepali Congress Party in March 2017. On November 19, 2017, members of the Young Communist League (YCL) asked him to leave the party and campaign for the Maoists. He refused. On November 23, 2017, YCL members beat him, causing cuts on his arm and hands. He did not seek medical attention or report the incident. He moved to his aunt's house several hours away. Nearly a year later, on November 12, 2018, a different group of YCL members beat him, hitting him with a helmet, causing redness and swelling. He again did not seek medical attention or report the incident. He hid at a

neighbor's home for two days and then fled to Delhi, India, eventually entering the United States and applying for relief.

PROCEDURAL HISTORY

The immigration judge denied Sharma's applications for asylum, withholding of removal, and CAT relief. The BIA affirmed on appeal, assuming credibility but finding no past persecution, no well-founded fear of future persecution because relocation was possible, and no CAT claim. Sharma petitioned for review.

DISPOSITION

other

CASES CITED

- *Rivera-Barrientos v. Holder*, 666 F.3d 641 (10th Cir. 2012)
- *Nasrallah v. Barr*, 140 S. Ct. 1683 (2020)
- *Ritonga v. Holder*, 633 F.3d 971 (10th Cir. 2011)
- *Zhi Wei Pang v. Holder*, 665 F.3d 1226 (10th Cir. 2012)
- *Rodas-Orellana v. Holder*, 780 F.3d 982 (10th Cir. 2015)
- *Sidabutar v. Gonzales*, 503 F.3d 1116 (10th Cir. 2007)
- *Tulengkey v. Gonzales*, 425 F.3d 1277 (10th Cir. 2005)
- *Kapcia v. INS*, 944 F.2d 702 (10th Cir. 1991)
- *Garcia-Carbajal v. Holder*, 625 F.3d 1233 (10th Cir. 2010)
- *Birhanu v. Wilkinson*, ___ F.3d ___, 2021 WL 868499 (10th Cir. Mar. 9, 2021)

CITED IN

- *Sharma v. Garland*, *Sharma v. Garland*, 9 F.4th 1052, 1060-64 (9th Cir. 2021)
- *Sharma v. Garland*, *Sharma v. Garland*, 9 F.4th 1052, 1060-63 (9th Cir. 2021)

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