

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1381

ODALIS MIREIDA CHICAS-MACHADO,

Petitioner,

v.

MERRICK B. GARLAND, Attorney General,

Respondent.

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

Argued: September 16, 2022

Decided: July 13, 2023

Before AGEE and HARRIS, Circuit Judges, and MOTZ, Senior Circuit Judge.

Petition for review granted in part, denied in part, and remanded by published opinion. Senior Judge Motz wrote the opinion, in which Judge Harris joined. Judge Agee wrote an opinion concurring in part and dissenting in part.

ARGUED: Daniel Warren Thomann, DANIEL THOMANN, P.C., Chicago, Illinois, for Petitioner. Kevin Conway, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. **ON BRIEF:** Brian Boynton, Acting Assistant Attorney General, Justin Markel, Senior Litigation Counsel, Office of Immigration Litigation, Civil Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

DIANA GRIBBON MOTZ, Senior Circuit Judge:

An Immigration Judge (IJ) denied Odalis Mireida Chicas-Machado asylum, withholding of removal, and protection under the Convention Against Torture (CAT). The Board of Immigration Appeals (BIA) affirmed, and Chicas-Machado now petitions for review. We grant the petition for review in part, deny it in part, and remand the case to the BIA for further proceedings consistent with this opinion.

I.

Chicas-Machado, a native and citizen of El Salvador, started attending an evangelical church, the Pentecostal Church, in 2014. She became a member in 2015, and eventually acted as the church’s secretary.

Late in 2015, members of the MS-13 gang began to harass and insult Chicas-Machado several times a week when she left her home to walk to and from church. Chicas-Machado testified that the MS-13 members considered her “their enemy because I used to spread the Word of God and because I wanted [to] tell the young people to attend church.” When asked if the gang members cared about her religion when harassing her, she stated, “They didn’t care, no.” She explained, “[T]hey didn’t care that I was Christian . . . they could do with me whatever they pleased to do with me”

Approximately a year after this harassment began, MS-13 gang members escalated their conduct and threatened Chicas-Machado with death. On December 4, 2016, they confronted Chicas-Machado at one of her neighbors’ stores near her home. There they ordered her to “collaborate with them . . . [to] tell them every time that a police car went there . . . [since] because [she] was Christian . . . no one will suspect . . . [her].” Instead of

doing as the gang members ordered, Chicas-Machado reported their threat to the police. The police officers promised that they would try to detain the gang members.

Two days later, on December 6, 2016, MS-13 members again threatened her — this time they went to her own home. They told her that they had learned that she had filed a police report and threatened to rape and kill her. Chicas-Machado knew at the time that MS-13 had disfigured and then murdered her uncle when he refused to join them. She also knew that MS-13 had threatened a member of her church “the same way” they had threatened her and killed him days later. Accordingly, in response to the threats, she left El Salvador on December 16, 2016 (arriving in the United States on December 24, 2016).

Chicas-Machado filed for asylum and withholding of removal, contending that MS-13 gang members targeted her because of her membership in, attendance at, and service for the Pentecostal Church. In support of her application, she submitted evidence aiming to establish both that MS-13 persecuted her personally and that the gang systematically persecuted Evangelical Christians. She also based her claim for asylum and withholding of removal on fear of persecution as a member of two proposed social groups: (1) Salvadorans who refuse to comply with gang orders for moral and religious reasons, and (2) Salvadorans who file police reports against gangs. Additionally, she applied for protection under the CAT and submitted evidence of massive human rights violations in El Salvador, as well as other relevant country conditions evidence.

An IJ denied Chicas-Machado’s application. The IJ found Chicas-Machado credible but concluded that she failed to establish her eligibility for asylum, withholding of removal, or CAT protection. The IJ determined that Chicas-Machado’s persecution did

not have a nexus to her religion. In addition, the IJ concluded that her two proposed social groups were not socially distinct and cognizable, and that she was not entitled to CAT protection because she presented no evidence that she had been subjected to torture in which the government of El Salvador acquiesced, or that she would be subjected to such treatment upon return to El Salvador.

On March 12, 2021, the BIA, without adopting the IJ’s opinion, issued an opinion agreeing with the IJ on every issue. The BIA did not disturb the IJ’s credibility finding but nonetheless found that Chicas-Machado’s claimed persecution was not on account of her religion. The BIA also agreed with the IJ’s conclusions finding Chicas-Machado ineligible for CAT protection and determining that her two proposed social groups were not cognizable. Chicas-Machado now seeks review of that decision.

Because the BIA issued its own opinion without adopting that of the IJ, we review only the BIA’s opinion. *See Martinez v. Holder*, 740 F.3d 902, 908 (4th Cir. 2014). We consider the BIA’s legal conclusions de novo, and determine whether substantial evidence supports its factual findings. *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948 (4th Cir. 2015). The BIA errs “when it . . . distorts or disregards important aspects of the alien’s claims.” *Jian Tao Lin v. Holder*, 611 F.3d 228, 235, 237 (4th Cir. 2010) (citation omitted) (holding that the BIA erred when basing a credibility determination on “unrelated facts” in a manner “manifestly contrary to law”).

II.

A.

Chicas-Machado contends that the BIA erred in failing to find a nexus between her religion and the persecution she experienced. To be eligible for asylum, Chicas-Machado must show that she is a “refugee” as defined by the Immigration and Nationality Act (INA). *Sorto-Guzman v. Garland*, 42 F.4th 443, 448 (4th Cir. 2022). A refugee seeking asylum must prove she “(1) has a well-founded fear of persecution; (2) on account of a protected ground [*e.g.*, race, religion, nationality, membership in a particular social group, or political opinion]; (3) by an organization that the Salvadoran government is unable or unwilling to control.”¹ *Hernandez-Avalos*, 784 F.3d at 949.

To establish a well-founded fear of persecution, an asylum applicant “may show that [s]he was subjected to past persecution, in which case [s]he is entitled to a rebuttable presumption that [s]he has a well-founded fear of future persecution.” *Tairou v. Whitaker*, 909 F.3d 702, 707 (4th Cir. 2018). We have long and repeatedly held that a death threat qualifies as persecution. *See Sorto-Guzman*, 42 F.4th at 449; *Hernandez-Avalos*, 784 F.3d at 949; *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011); *Qiao Hua Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005). Chicas-Machado received at least one death threat. She has thus established that she experienced persecution.

We turn to the question of whether this persecution of Chicas-Machado was “on account of” her religion. To establish this an asylum applicant need not demonstrate that

¹ That the Salvadoran government is unable or unwilling to control MS-13 gang members is not disputed in this appeal.

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