

United States Court of Appeals For the First Circuit

No. 24-1447

MAIDELIN NOEMI ALVARADO-HERNANDEZ; JOSE ZALDIVAR-VASQUEZ;
H.S.C.A.,

Petitioners,

v.

TODD BLANCHE, Attorney General,*

Respondent.

PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS

Before

Gelpí, Rikelman, and Aframe,
Circuit Judges.

Kristian Robson Meyer, with whom Kevin P. MacMurray and MacMurray & Associates were on brief, for petitioners.

Monica G. Antoun, Trial Attorney, Office of Immigration Litigation, U.S. Department of Justice, with whom Brian M. Boynton, Principal Deputy Assistant Attorney General, and Shelley R. Goad, Assistant Director, Office of Immigration Litigation, were on brief, for respondent.

October 15, 2026

* Pursuant to Fed. R. App. P. 43(c)(2), Todd Blanche has been substituted as Attorney General.

RIKELMAN, Circuit Judge. Petitioner Maidelin Noemi Alvarado-Hernandez ("Alvarado") left her home in Honduras to escape a man who had stalked and harassed her for years and threatened her family. She then sought asylum in the United States, along with her family. An Immigration Judge (IJ) denied her asylum application, concluding that Alvarado did not demonstrate past harm that rose to the level of persecution or a well-founded fear of future persecution. The Board of Immigration Appeals (BIA) affirmed. Because substantial evidence supports the agency's determinations, we deny Alvarado's petition for review.

I. BACKGROUND

A. Relevant Facts¹

For three years, Alvarado was harassed and stalked in Honduras by Jose Funes, a man she had briefly met. Funes called and texted Alvarado daily. Although Funes's texts were innocent at first and focused on proclaiming his love for her, his messages became increasingly menacing over time. For example, Funes threatened to "do something" to Alvarado's partner or "have somebody kill [him]" if Alvarado did not "give in to [Funes's] wishes."

¹ We draw the facts from the administrative record, including Alvarado's testimony before the IJ. Khalil v. Garland, 97 F.4th 54, 59 n.1 (1st Cir. 2024).

Eventually, the harassment extended beyond text messages. Funes began to stalk Alvarado in person, showing up at her workplace and watching her from a car. When Alvarado tried to move to her grandmother's house elsewhere in Honduras to escape Funes, Funes texted Alvarado that he knew where she was and, as proof, provided the house's address.

Funes also stalked and threatened Alvarado's partner at his workplace. On at least one occasion, Funes approached the partner and pressed a gun that was under Funes's shirt against the partner's body. Gang members also reported to Alvarado that Funes had ordered them to kill her partner. Although they refused to do so, the gang members advised Alvarado and her family to "get away" because Funes "was obsessed" with her.

Alvarado complained to the police and then a prosecutor about Funes's threatening behavior. The prosecutor referred Alvarado to a psychologist and told her that if she called the prosecutor the next time Funes threatened her, the prosecutor would send the police. But Alvarado testified that even though she called the prosecutor twice, the police "never came."

Alvarado made the decision to flee to the United States soon after an incident that Alvarado interpreted as an attempt by Funes to kidnap her daughter. According to Alvarado, she and her daughter were leaving a medical appointment when Alvarado "felt that somebody was watching [her]." At some point, Alvarado

received a message from Funes that "he knew where [she] was." After walking with her daughter until she "felt lost," Alvarado "felt like a guy came and touched [her] back." At that time, "the back of [her] head" started to "hurt," and she let go of her daughter's hand. The record does not reflect how much time elapsed before Alvarado heard a bystander ask, "lady is that your daughter?" The bystander subsequently "ran" and "grabbed" Alvarado's daughter and brought her back to Alvarado.

When Alvarado returned home after the incident, she "slept a lot." The next day, Alvarado's skin was "red" and "itchy," which she had never experienced before. Alvarado's daughter had the same skin reaction.

Although Alvarado did not see Funes the day of the incident, she testified that Funes was behind what she viewed as an attempted kidnapping. According to Alvarado, Funes had previously told Alvarado's neighbors that "he could try to kidnap [Alvarado's] daughter." And sometime after the day of the medical appointment, Funes told the same neighbors that "he was not able to achieve [the] goal, but that he would do it again until he got" Alvarado.

This incident prompted Alvarado and her family to leave Honduras. They arrived in the United States in September 2016 and eventually settled in Massachusetts. While Alvarado was living in the United States, Funes attempted to contact her "[f]our or five

times" over Facebook, though she did not "accept" the messages. In one message that Alvarado received while in Dallas with her mother, Funes revealed that he knew Alvarado was in Texas (although he mistakenly placed her in Houston). Alvarado's former neighbors in Honduras also reported that Funes asked them about Alvarado's location and contact information in the United States. Alvarado sought mental health treatment in Massachusetts sometime in 2018 because she was scared that Funes "would seek [her] out and that he would even come [to the United States]" to find her.

B. Procedural History

The government began removal proceedings against Alvarado in early 2017. Alvarado, with her partner and daughter as derivative applicants, filed applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT) based on the family's experiences with Funes.

The IJ denied Alvarado's applications for each form of relief. To begin, the IJ found that Alvarado failed to "provide[] sufficient corroboration to buttress her otherwise uncorroborated claim" of past persecution. The IJ questioned Alvarado's "extremely vague" testimony about what she described as the kidnapping attempt, even though this was "the crucial incident that caused her to . . . leave Honduras." The IJ also made an adverse credibility finding regarding an affidavit submitted by Alvarado's partner. Finally, the IJ concluded that the remaining

sources of corroboration -- such as a transcript of a recorded telephone call with a neighbor and copies of messages with Funes -- were either "unclear," "vague," or "[did not] corroborate or clarify [Alvarado's] claim in any way."

Moving to the merits, the IJ found that the "severity, duration[,] and frequency" of Funes's harassment did not rise to the level of persecution. The IJ acknowledged the "deplorable" harassment that Alvarado and her partner had faced. But the IJ noted that Alvarado was "never physically harmed." And as to the purported kidnapping incident, the IJ found the facts "unclear" and did not see "any causation between Mr. Funes and that incident."

The IJ also determined that Alvarado failed to demonstrate a well-founded fear of future persecution. According to the IJ, although Alvarado "demonstrated a subjective fear," she failed to establish "an objective" or "reasonable fear that [she] would face" harm from Funes that would rise to the level of persecution if she were removed to Honduras. Because Alvarado did not carry her burden to meet the requirements for asylum, the IJ also denied her claim for withholding of removal.²

² "[T]he 'clear probability' standard for withholding of removal is even harder to meet than the 'well-founded fear' standard required for asylum." Mijangos v. Bondi, 167 F.4th 539, 544 (1st Cir. 2026).

Alvarado appealed the denial of her asylum and withholding of removal claims to the BIA.³ Aside from reversing the IJ's adverse credibility finding as to Alvarado's partner, the BIA upheld the IJ's decision. The BIA agreed that Alvarado had "not established that her past harm rises to the level of persecution when considered cumulatively." Specifically, the BIA noted that Alvarado was "not harmed physically" and did "not adequately explain[]" what she described as the kidnapping attempt. While acknowledging that Alvarado had suffered emotional harm from Funes's threats, the BIA concluded that she had "not adequately shown that the threats [were] severe enough to constitute persecution on this record." Further, the BIA agreed that Alvarado failed to "establish[] that she will experience harm rising to the level of persecution if she is returned to Honduras." The BIA thus affirmed the denial of Alvarado's applications for asylum and withholding of removal.

Alvarado timely filed a petition for review.⁴

³ The IJ also denied Alvarado's claim for CAT protection, but Alvarado did not pursue that claim before the BIA or in her petition before us, so we do not address it further.

⁴ Alvarado has not challenged the agency's denial of her withholding of removal claim, so that claim is waived. See Santos Garcia v. Garland, 67 F.4th 455, 459 n.4 (1st Cir. 2023).

II. STANDARD OF REVIEW

Although our review is focused on the final decision of the BIA, "'to the extent that the BIA deferred to or adopted the IJ's reasoning, we review those portions of the IJ's decision' as well." Ferreira v. Garland, 97 F.4th 36, 45-46 (1st Cir. 2024) (quoting Chavez v. Garland, 51 F.4th 424, 429 (1st Cir. 2022)). When discussing the decisions of the BIA and the IJ "as a unit," we refer to them as "the agency." Id. at 46. "We review legal conclusions de novo and the agency's findings of fact under the deferential 'substantial-evidence standard.'" Alves v. Bondi, 128 F.4th 297, 298 (1st Cir. 2025) (quoting Escobar v. Garland, 122 F.4th 465, 473 (1st Cir. 2024)).

The "substantial evidence standard" applies to the agency's finding that Alvarado "failed to show past persecution." Zapet-Alvarado v. Bondi, 152 F.4th 329, 337 (1st Cir. 2025); see also Urias-Orellana v. Bondi, 607 U.S. 537, 539 (2026) (holding that the Immigration and Nationality Act (INA) "requires application of the substantial-evidence standard to the agency's conclusion that a given set of undisputed facts does not constitute persecution"). That standard also applies to the finding that she failed to establish a well-founded fear of future persecution.

See Zapet-Alvarado, 152 F.4th at 338.⁵ Under the substantial evidence standard, we must "accept the agency's factual findings unless the record is such as to compel a reasonable factfinder to reach a contrary conclusion." Santos Garcia v. Garland, 67 F.4th 455, 460 (1st Cir. 2023) (citation modified). Thus, we will not disturb the agency's ruling unless "the 'evidence points unerringly in the opposite direction.'" Lobo v. Holder, 684 F.3d 11, 16 (1st Cir. 2012) (quoting Laurent v. Ashcroft, 359 F.3d 59, 64 (1st Cir. 2004)).

III. DISCUSSION

Alvarado contends that the record compels the conclusion that the harm she suffered in Honduras rises to the level of persecution and that she has a well-founded fear of future persecution. To bolster her argument, she relies on Funes's death threats to Alvarado's partner, an incident Alvarado describes as the attempted kidnapping of her daughter, and the cumulative impact of the emotional harm Alvarado has suffered from Funes's years-

⁵ To the extent Alvarado suggests that we should review the agency's future persecution finding de novo, our case law holds otherwise. Liu Jin Lin v. Holder explains that although "the BIA reviews de novo" the question of whether the petitioner has a well-founded fear of future persecution, "[w]e review the BIA's rulings on th[at] question under [the] substantial evidence standard." 723 F.3d 300, 307 (1st Cir. 2013) (emphasis added). Indeed, the Supreme Court recently confirmed that we must "review the entirety of the agency's conclusions [as to persecution] -- both the underlying factual findings and the application of the INA to those findings -- for substantial evidence." Urias-Orellana, 607 U.S. at 545.

long harassment and stalking. Although we do not minimize the harassment Alvarado experienced, we hold that substantial evidence supports the agency's conclusions that she did not demonstrate past persecution or an objectively reasonable fear of future persecution.

An applicant for asylum bears the burden of showing that she qualifies as a "refugee" under the INA. 8 U.S.C. §§ 1158(b)(1)(A)-(B). A refugee is a person who is "unable or unwilling to return to or to avail herself of the protection of her own country 'because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.'" De Pena-Paniagua v. Barr, 957 F.3d 88, 92 (1st Cir. 2020) (quoting 8 U.S.C. § 1101(a)(42)(A)). To be eligible for asylum, an applicant must establish either that she "suffered past persecution (which creates a rebuttable presumption of future persecution)" or that she independently "has a well-founded fear of future persecution." Muchiri v. Blanche, 177 F.4th 345, 348 (1st Cir. 2026) (quoting Alexandrescu v. Mukasey, 537 F.3d 22, 25 (1st Cir. 2008)).

A. Past Persecution

Establishing past persecution is not an easy task. Zapet-Alvarado, 152 F.4th at 337. Harm "must add up to more than ordinary harassment, mistreatment, or suffering" to qualify as persecution. Montoya-Lopez v. Garland, 80 F.4th 71, 80 (1st Cir.

2023) (quoting Lopez de Hincapie v. Gonzales, 494 F.3d 213, 217 (1st Cir. 2007)).

Alvarado contends that the "cumulative effect of the mistreatment" she and her family experienced in Honduras rose to the level of persecution. She emphasizes three aspects of the record that she argues, in the aggregate, establish past persecution: (1) the death threats against her partner, (2) the attempted kidnapping of her daughter, and (3) her emotional suffering.

We begin with the death threats against Alvarado's partner. Although death threats may support a finding of persecution, the threats must be "credible." Javed v. Holder, 715 F.3d 391, 395-96 (1st Cir. 2013); see also Sok v. Mukasey, 526 F.3d 48, 54-55 (1st Cir. 2008). According to Alvarado, Funes threatened her partner in several text messages, instructed gang members to "kill" him, and pressed a gun against his body. Alvarado argues these threats are specific and severe enough to amount to persecution.⁶

⁶ It is not dispositive that Funes threatened Alvarado's partner rather than Alvarado herself. See Ravix v. Mukasey, 552 F.3d 42, 46 (1st Cir. 2009) ("The acts of persecution need not be personal to the one seeking asylum if they create a well-founded fear of persecution in that person."); A-K-, 24 I. & N. Dec. 275, 278 (BIA 2007) ("We recognize that there may . . . be cases where a person persecutes someone close to an applicant . . . with the intended purpose of causing emotional harm to the applicant [I]n such a case, . . . the applicant himself would be the target of the emotional persecution").

As the agency pointed out, however, Alvarado's partner was never physically harmed. The only physical confrontations in the record -- Funes pressing his body against Alvarado's partner so that he could feel Funes's gun -- resulted in no injury. To be sure, lack of physical harm is not dispositive in the persecution inquiry. See Ruiz v. Mukasey, 526 F.3d 31, 37 (1st Cir. 2008); Montoya-Lopez, 80 F.4th at 80. But the "absence of physical harm weighs against a finding that threats amounted to persecution." Hernandez-Lima v. Lynch, 836 F.3d 109, 114 (1st Cir. 2016); see also Lobo, 684 F.3d at 18 (finding that the death threats at issue "were not 'sufficiently credible or imminent' to constitute persecution," despite the fact that one threat "occurred at gunpoint" (quoting Ravix v. Mukasey, 552 F.3d 42, 46 (1st Cir. 2009))).

Further, substantial evidence supports the agency's conclusion that the threats were not credible. Alvarado admitted that the gang members sent by Funes made clear that they did not want to harm Alvarado or her partner. And we have held that "hollow threats, without more, certainly do not compel a finding of past persecution." Hernandez-Lima, 836 F.3d at 114 (citation modified); see also Zapet-Alvarado, 152 F.4th at 338.

Alvarado nevertheless contends that the death threats here are sufficient to constitute past persecution under Javed v. Holder, 715 F.3d 391. But the threats in Javed "were accompanied

by violence" against the petitioner, including several beatings, his arrest and detention, and the "demolishing [of] his office building." Id. at 396. Further, "the same group that threatened to kill Javed shot people with whom he was associated." Id. As we observed, Javed is "not a case in which the petitioner was threatened, but was 'never in serious danger.'" Id. (quoting Vilela v. Holder, 620 F.3d 25, 29 (1st Cir. 2010)).

By contrast, none of the aggravating factors that led us to conclude that the threats against Javed placed him in serious danger are present here. For that reason, unlike in Javed, the record in this case does not compel the conclusion that the threats to Alvarado's partner amounted to persecution. See Hernandez-Lima, 836 F.3d at 113-14 (holding that substantial evidence supported the BIA's determination that the petitioner did not establish past persecution despite several death threats against him and his family).⁷

We turn next to Alvarado's claims about what she describes as the attempted kidnapping of her daughter. Alvarado maintains that the "only reasonable conclusion" from the record "is that [Funes] was directly involved in the kidnapping attempt"

⁷ Although we have left open the possibility that "[t]here may be occasions in which threats without proof of physical harm are sufficiently menacing to constitute persecution," the record here supports the agency's conclusion that the threats were not credible. Zapet-Alvarado, 152 F.4th at 338.

with the "intended purpose of causing [Alvarado] emotional harm." She frames this incident as another threat by Funes to the physical safety of one of her family members.

The agency discounted this incident because it found both the circumstances of the incident and Funes's role unclear, and, after a careful review, we conclude that the record does not compel a contrary conclusion. Based on Alvarado's testimony, the IJ determined that she let go of her daughter's hand momentarily in a busy area, and a helpful bystander quickly reconnected them. Thus, the IJ was doubtful that the incident was a kidnapping at all. The IJ was also unpersuaded by Alvarado's attempt to connect Funes to the incident. The IJ pointed out that the only evidence Alvarado submitted on that score amounted to vague, undated comments by Funes to Alvarado's neighbors and a text message he sent to Alvarado that day indicating that he knew where she was (which, unfortunately, was not unusual).

"[I]t is not clear from the record what actually occurred [to Alvarado and her daughter] that day -- nor . . . who was responsible." Vasili v. Holder, 732 F.3d 83, 90 (1st Cir. 2013). Substantial evidence thus supports the agency's assessment that Alvarado's testimony did not establish Funes's role in an attempted kidnapping of her child. See id. (holding that "[t]he petitioners' hypothesis as to the identity and motivation of the perpetrators [was] insufficient to meet their burden of proof"); Nikijuluw v.

Gonzales, 427 F.3d 115, 121 (1st Cir. 2005) (rejecting a challenge to the BIA's conclusion of no past persecution in part because there was "nothing in the record -- other than the petitioner's unfounded suspicions -- to suggest" who caused the disappearance of the petitioner's daughter).

Finally, Alvarado points to her emotional suffering to support her past persecution claim. She argues that the agency both "failed to consider" the "specific details" she submitted of her "serious actual suffering," such as her mental health treatment in Honduras and the United States, and did not give that evidence enough weight in the persecution analysis.

To be sure, a BIA decision that "completely overlooks critical evidence is erroneous as a matter of law." Contreras v. Bondi, 134 F.4th 12, 20 (1st Cir. 2025) (citation modified). Here, however, the BIA did consider Alvarado's emotional harm. The BIA recognized Alvarado's "argu[ment] that she experienced emotional harm because of these threats," but it ultimately determined that "she ha[d] not adequately shown that the threats [were] severe enough to constitute persecution on this record." The BIA's explicit reference to Alvarado's emotional harm belies her claim

that the agency ignored the critical evidence of her mental health treatment.⁸

We now assess whether Alvarado's emotional harm was enough, in light of the evidence overall, to compel a finding of persecution. "[U]nder the right set of circumstances, a finding of past persecution might rest on a showing of psychological harm." Makhoul v. Ashcroft, 387 F.3d 75, 80 (1st Cir. 2004). And we recognize that Alvarado provided concrete evidence of her psychological harm from Funes's conduct. Contra, e.g., Hernandez-Lima, 836 F.3d at 114 (noting the "total dearth of evidence that [the threats] caused any non-physical harm or suffering").

But Alvarado has never argued that her emotional harm, standing on its own and apart from what she viewed as credible

⁸ Alvarado also asserted for the first time at oral argument that the BIA committed a legal error by relying on Santos Garcia, 67 F.4th 455, in its discussion of emotional harm. Because Alvarado did not make this argument in her opening brief, it is waived. See Olmos-Colaj v. Sessions, 886 F.3d 168, 176 (1st Cir. 2018).

But even if Alvarado had properly raised this argument to us, we see no legal error in the BIA's citation to Santos Garcia. Alvarado contends that the BIA relied on Santos Garcia -- a case in which we held that the petitioner did not show "specific details" of the "immediate impact" of death threats -- to conclude Alvarado did not present "specific details" of her emotional harm. Santos Garcia, 67 F.4th at 461 (quoting Rodriguez v. Lynch, 654 F. App'x 498, 500 (1st Cir. 2016)). But as we explained, the BIA never suggested that Alvarado did not submit such details. Instead, the BIA considered Alvarado's emotional harm and determined that it was not "severe enough to constitute persecution," citing Santos Garcia for this last point. Thus, there was no legal error.

threats to the life and safety of her family members, amounted to persecution. Because substantial evidence supports the BIA's determinations that Funes's death threats to Alvarado's partner were not severe or credible and that Alvarado did not show that Funes attempted to kidnap Alvarado's daughter, the remaining evidence is insufficient to "compel" a finding of persecution. Santos Garcia, 67 F.4th at 460-61 (quoting Lopez de Hincapie, 494 F.3d at 218); cf. Ouk v. Gonzales, 464 F.3d 108, 111 (1st Cir. 2006) (determining that the agency "did not inappropriately discount [the petitioner's] emotional harm" in rejecting a finding of persecution despite the petitioner suffering from post-traumatic stress disorder).

For these reasons, we do not disturb the agency's conclusion that Alvarado failed to establish past persecution.

B. Future Persecution

Without a showing of past persecution, Alvarado does not receive the benefit of a rebuttable presumption of a well-founded fear of future persecution. Vargas-Salazar v. Garland, 119 F.4th 167, 173 (1st Cir. 2024); 8 C.F.R. § 1208.16(b)(1). Even so, Alvarado may "independently demonstrate a well-founded fear of future persecution that is both subjectively genuine and objectively reasonable." Da Silva-Queiroga v. Bondi, 169 F.4th 36, 43 (1st Cir. 2026) (citation modified).

The agency concluded that Alvarado had shown genuine subjective fear of future persecution in Honduras but that her fear was not objectively reasonable. Alvarado argues that the record "plainly compel[s]" the opposite conclusion on the objective prong. We disagree.

Under the objective prong of the future persecution standard, Alvarado was required to introduce "credible, direct, and specific evidence supporting a fear of individualized persecution in the future." Ramos-Hernandez v. Bondi, 163 F.4th 44, 53 (1st Cir. 2025) (citation modified). To support her claim, Alvarado pointed out that Funes asked her former neighbors for her location in the United States and had continued to harass her by sending her "[f]our or five" message requests on Facebook, including one showing he knew that she was in Texas. Alvarado also relied on general country conditions evidence about "local gang member[s'] propensity to commit violence against women in Honduras," especially against women who resist sexual advances by gang members.

Like the harassing texts Alvarado received in Honduras, the Facebook messages she received in the United States are not enough to compel a finding of an objectively reasonable fear of future persecution. Cf. Martínez-Pérez v. Sessions, 897 F.3d 33, 41 (1st Cir. 2018) (noting that fear may "not [be] objectively reasonable" when it is "based on the same . . . incidents that had

been found to be insufficiently serious to show past persecution"). And although Alvarado stresses her fear of harm at the hands of Funes and his fellow gang members, she acknowledges that the gang members refused to hurt her or her partner while she was in Honduras, despite Funes's command.

Finally, as to the country conditions evidence, we have explained that a relevant country conditions report "do[es] not necessarily override petitioner-specific facts -- nor [does it] always supplant the need for particularized evidence." Amouri v. Holder, 572 F.3d 29, 35 (1st Cir. 2009). Here, beyond a few Facebook messages, Alvarado offers very little particularized evidence to support her fear of future persecution in Honduras. That record is insufficient to compel the conclusion that Alvarado's fear of future persecution is objectively reasonable.

Thus, the agency's decision that Alvarado failed to establish a well-founded fear of future persecution is supported by substantial evidence.

IV. CONCLUSION

For all these reasons, we deny the petition for review.