United States Court of Appeals
For the First Circuit

No. 25-1137

ELAINE DA SILVA-QUEIROGA,

Petitioner,

v.

PAMELA J. BONDI,
Attorney General,

Respondent.

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

Before

Gelpí, Lynch, and Howard,
Circuit Judges.

Rachel L. Rado, Elizabeth Shaw, and Law Offices of Rachel L. Rado, LLC, on brief for petitioner.

C. Frederick Sheffield, Trial Attorney, Office of Immigration Litigation, U.S. Department of Justice, Brett A. Shumate, Assistant Attorney General, Civil Division, and Erica B. Mile, Assistant Director, Office of Immigration Litigation, on brief for respondent.

February 27, 2026

HOWARD, Circuit Judge. Elaine Da Silva-Queiroga ("Da Silva") petitions for review of an order of the Board of Immigration Appeals ("BIA"). The BIA affirmed the denial by an Immigration Judge ("IJ") of Da Silva's applications for asylum, withholding of removal, and protection under the U.S. implementation of the Convention Against Torture ("CAT"). Because we do not disturb the determination of the IJ and BIA (together, the "agency") that Da Silva failed to demonstrate persecution, and because such a demonstration is an essential element of any asylum claim, we deny the petition.[1]

I. BACKGROUND

In 2021, Da Silva left her native Brazil and entered the United States. She was apprehended by U.S. Customs and Border Protection and charged with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. Da Silva applied for relief in the forms of asylum, withholding of removal, and protection under the CAT. She supported her application with a written affidavit and with testimony (offered through an interpreter) that the IJ found to be generally credible. We summarize relevant aspects of this testimony below.

[1] As discussed below, Da Silva has abandoned any argument related to withholding of removal or CAT protection.

A. Da Silva's Life in Brazil

Around 2010, when Da Silva was fourteen years old, she met a man named Lucas De Oliveira Custodio. The pair moved in together two years later when Da Silva became pregnant, and their son was born in November 2013.

From that point onwards, De Oliveira began a pattern of "aggressions" toward Da Silva that were "psychological and physical[]" in nature. Da Silva recounted two instances of physical aggression in her affidavit and testimony before the IJ.

First, in 2014, De Oliveira "wanted to throw a chair" at Da Silva while he was drunk and under the influence of drugs. De Oliveira's brother intervened and protected Da Silva from harm. The second incident took place about four months after the first.[2]

[2] Despite finding Da Silva's testimony to be generally credible, the IJ noted that "[t]here is an inconsistency in her testimony regarding when the second instance of physical harm occurred." The basis for this observation is Da Silva's testimony that she separated from De Oliveira soon after ("within months" of) the second incident, and also that the separation took place when she was twenty years old. But Da Silva wrote in her supporting affidavit that the second incident took place only four months after the first incident, which took place around 2014 -- when Da Silva would have been seventeen or eighteen years old. Da Silva also wrote that she began living in Resplendor, Brazil (away from De Oliveira) in 2016, but testified that the move occurred "in 2018 or 2019 if I'm not mistaken."

Da Silva gave the following explanation when counsel for the Department of Homeland Security ("DHS") raised the timeline discrepancy: "A lot of things have happened. I don't remember everything. If sometimes things don't match -- don't mesh is

Da Silva locked an intoxicated De Oliveira out of their house -- in which their son was sleeping -- and called the police for help. After getting no response from the police, Da Silva unlocked the gate and let De Oliveira in. De Oliveira then jumped on Da Silva, grabbed her by the neck and warned her "never to lock him out again." De Oliveira's brother intervened after hearing the disturbance from downstairs, seemingly repeating his conduct from the first incident with the chair.[3]

Da Silva separated from De Oliveira after the second incident and moved about twenty minutes away to Resplendor, Brazil.[4] De Oliveira's attempts to physically harm Da Silva ceased

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because it's been a while and I apologize if I don't know the exact dates but everything happened as I described."

The BIA, meanwhile, appears to have adopted a version of events in which the two incidents took place within four months of each other in 2014, and Da Silva separated from De Oliveira in 2016.

[3] According to the Government, this repetition suggests that Da Silva conflated the first incident with the second. But DHS counsel did not raise the issue during the hearing, and neither the IJ nor the BIA referenced it in their respective opinions.

[4] Da Silva testified that she and De Oliveira share custody of their son, but that no existing document formalizes that arrangement. When she left Brazil for the United States, Da Silva left her son in her sister's care, whereupon De Oliveira "went over there" and "took the child." Da Silva is also the mother of three children of whom De Oliveira is not the father: two were born in Brazil and lived there as of Da Silva's asylum application, and one was born in (and is a citizen and resident of) the United States.

at that point, but he continued to "bother" her with calls and messages -- telling Da Silva that she (in Da Silva's words) "would not live if I did not live with him," and that she "would never see [her] son again." On one occasion, De Oliveira jumped over Da Silva's fence in Resplendor and knocked on her window.

In response to this ongoing conduct by De Oliveira, Da Silva left Brazil for the United States in 2021. Da Silva stated at her removal hearing that De Oliveira's conduct is the sole reason why she fears returning to Brazil.

B. Decisions of the IJ and BIA

The IJ denied Da Silva's applications for asylum and withholding of removal on the ground that she failed to demonstrate either past persecution or a well-founded fear of future persecution. The IJ also determined that Da Silva is ineligible for CAT protection because "any harm that the respondent experienced does not rise to the level of torture . . . ."[5]

The BIA affirmed the IJ's denial of Da Silva's applications on the same grounds, observing that Da Silva "has not demonstrated that the physical harm she suffered from her ex-partner was sufficiently frequent and severe to constitute persecution." The BIA noted Da Silva's "testimony that she was

[5] Although Da Silva is now the petitioner, she was the respondent in the agency proceedings.

physically harmed on only two occasions over the course of a 4-year relationship and did not seek medical treatment or experience any serious or long-lasting injuries following either incident." The BIA also concluded -- reaching an issue that the IJ did not -- that Da Silva's proposed "particular social groups" of "Brazilian women," "Brazilian women unable to leave a domestic partnership," and "Brazilian women lacking effective governmental protection" were too amorphous to support her asylum and withholding claims. See 8 U.S.C. § 1101(a)(42)(A).

This petition followed.

II. DISCUSSION

Da Silva argues in her petition that the agency erred in concluding that she did not establish past persecution or a well-founded fear of future persecution.

Da Silva also raises arguments that, for the reasons explained below, we do not address in this opinion: She argues that the agency erred in determining that her proposed particular social groups were not cognizable, and that the agency erroneously failed to address her arguments related to (1) the possibility of relocation within Brazil and (2) humanitarian asylum.

A. Standard of Review

"[W]here, as here, the BIA accepts the IJ's findings and reasoning yet adds its own gloss, we review the two decisions as

a unit." Xian Tong Dong v. Holder, 696 F.3d 121, 123 (1st Cir. 2012). "In immigration cases, our review typically focuses on the final decision of the BIA." Rosa v. Garland, 114 F.4th 1, 8 (1st Cir. 2024) (internal quotation marks and citations omitted).

Although we review the agency's legal conclusions de novo, see Fleurimond v. Bondi, 157 F.4th 1, 5 & n.1 (1st Cir. 2025), we review its findings of fact under a substantial-evidence standard, see Hernandez-Mendez v. Garland, 86 F.4th 482, 486 (1st Cir. 2023). Under this standard, "we must accept the findings as long as they are supported by reasonable, substantial and probative evidence on the record considered as a whole," and "we will only disturb the agency's findings if . . . any reasonable adjudicator would be compelled to conclude to the contrary." Urias-Orellana v. Garland, 121 F.4th 327, 335 (1st Cir. 2024) (internal quotation marks, citations, and alterations omitted), cert. granted sub nom. Urias-Orellana v. Bondi, 145 S. Ct. 2842 (2025).

B. Asylum

An applicant is not eligible for asylum unless she establishes that she is a refugee. 8 U.S.C. § 1158(b)(1). As relevant here, a "refugee" is someone "who is unable or unwilling to return to . . . [her] 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." Id. § 1101(a)(42)(A). An applicant "'can meet this

burden through proof of past persecution, which creates a rebuttable presumption of a well-founded fear of future persecution[,]' or by demonstrating 'a well-founded fear of persecution through an offer of specific proof that [her] fear is both subjectively genuine and objectively reasonable.'" Chen v. Lynch, 814 F.3d 40, 45 (1st Cir. 2016) (quoting Singh v. Holder, 750 F.3d 84, 86 (1st Cir. 2014)). "To constitute persecution, . . . harm 'must rise above unpleasantness, harassment, and even basic suffering.'" Cano-Gutierrez v. Bondi, 146 F.4th 26, 32 (1st Cir. 2025) (quoting Villafranca v. Lynch, 797 F.3d 91, 95 (1st Cir. 2015)).

Under this standard, the agency correctly determined that Da Silva did not carry her burden of establishing that she (1) experienced past persecution or (2) has a well-founded fear of future persecution upon removal to Brazil.

1. Past Persecution

Da Silva argues that she suffered persecution in Brazil when "she was physically harmed on multiple occasions and threatened with death, where her perpetrator had the immediate ability to act on his threats." She also highlights the fact that she was only sixteen years old when De Oliveira began mistreating her, and argues that the agency should have considered her young age in determining whether she was persecuted. See Ordonez-Quino v. Holder, 760 F.3d 80, 91 (1st Cir. 2014) ("[A]ge can be a critical

factor in determining whether a petitioner's experiences cross this [persecution] threshold." (internal quotation marks and citation omitted)).

We cannot conclude that the agency erred in determining that De Oliveira's treatment of Da Silva does not qualify as past persecution under § 1101(a)(42)(A). The record supports the agency's observations that Da Silva recounted at most two instances of De Oliveira's physical aggression toward her. The record also supports the agency's finding that none of this aggression resulted in lasting injury or a need for immediate medical treatment. These findings support a conclusion that Da Silva was not persecuted under the meaning of the statute. "[T]he severity and frequency of the harassment identified by the applicant are intertwined factors that bear on 'the nature and extent of an applicant's injuries . . . .'" Martínez-Pérez v. Sessions, 897 F.3d 33, 40 (1st Cir. 2018) (quoting Vasili v. Holder, 732 F.3d 83, 89 (1st Cir. 2013)).

Our cases confirm that the agency did not err in applying this principle to the circumstances of Da Silva's case. In Ramos-Hernandez v. Bondi, we sustained the agency's determination of no past persecution where "the evidence consist[ed] of two to three relatively vague threats and one physical attack that may or may not have been connected to those threats," and cited instances of "even more severe situations [that] did not constitute

persecution." 163 F.4th 44, 53 (1st Cir. 2025). In Vargas-Salazar v. Garland, we sustained the agency's denial of relief on no-persecution grounds even where the petitioner alleged that gang members made death threats and delivered an injury to his head that required stitches and left a permanent scar. See 119 F.4th 167, 170-71 (1st Cir. 2024). And in Martínez-Pérez, we held that "three incidents" offered "as evidence of past persecution -- the single death threat and bottle-throw from Charlie, and the home invasion by an unknown assailant -- while undoubtedly scary, do not compel us to find they were serious enough to constitute persecution." 897 F.3d at 40.

We are not persuaded by Da Silva's argument that her young age at the time that De Oliveira mistreated her compels a determination of past persecution. Contrary to the argument to us the BIA expressly considered the matter of Da Silva's age -- even citing Ordonez-Quino -- and concluded that the IJ "reasonably determined that the respondent did not suffer harm rising to the level of persecution, given that the respondent's physical harm was isolated in nature and did not result in serious injuries, and the threats she received from her ex-partner were unfulfilled and not specific." Da Silva does not engage with this part of the BIA's analysis beyond offering her own citation to Ordonez-Quino and reciting that case's holding on the age of a victim.

2. Well-Founded Fear of Future Persecution

Substantial evidence also supports the agency's determination that Da Silva did not establish a well-founded fear of future persecution in Brazil. Because Da Silva did not adequately show past persecution, she was required to "independently demonstrate a well-founded fear of future persecution that is 'both subjectively genuine and objectively reasonable.'" Esteban-Garcia v. Garland, 94 F.4th 186, 191 (1st Cir. 2024) (quoting Sunarto Ang v. Holder, 723 F.3d 6, 10-11 (1st Cir. 2013)). Da Silva did not do so, and that bars her eligibility for relief.

The BIA rested its determination on two observations. First, that Da Silva "remained in Brazil for roughly 5 years following her last incident of physical harm without experiencing any further physical harm from her ex-partner." And second, that "while [Da Silva] testified that she has received threatening messages from her ex-partner as recently as 2023, she also testified that she does not necessarily fear any direct harm from her ex-partner upon return to Brazil."

These observations find support in the record. On cross-examination, DHS counsel asked Da Silva, "in the approximate five-year period after your breakup from Lucas, while you lived in Brazil, did he harm you -- physically harm you in any way during the time when -- in which you lived there?" Da Silva responded,

"[p]hysically, no." And on redirect, when asked to explain her fear of future harm at the hands of De Oliveira, Da Silva responded as follows:

> He's never accepted the breakup; the separation and he's told me over and over that if I didn't stay with him -- wouldn't stay with him I wouldn't be able to stay with anybody else. I don't fear as much that he will harm me or do something to me per se but I fear that he could harm me or do things that would affect me by hurting or harming my children.

These statements -- and a corresponding lack of countervailing evidence -- formed an adequate basis for the agency's finding of no well-founded fear of future persecution.

As respondent notes, the passage of about five years between the last incident of physical harm and Da Silva's departure for the United States undercuts her assertion of a well-founded fear of persecution upon return. Even "[t]he ability to live . . . in the country for two years without incident weakens [a claim of] alleged fear of future persecution." Phal v. Mukasey, 524 F.3d 85, 90 (1st Cir. 2008) (emphasis added); see also Ramos-Hernandez, 163 F.4th at 53 ("Given that the petitioners closed their store and remained in Guatemala for approximately two years after receiving the threats with no further incidents, they have not presented credible, direct, and specific evidence supporting a fear of individualized future persecution.").

It is also significant that Da Silva disclaimed a specific fear that De Oliveira might harm her upon her return to Brazil. Her burden was to "demonstrat[e] a 'well-founded fear of future persecution through an offer of specific proof.'" Cano-Gutierrez, 146 F.4th at 32 (emphasis added) (quoting Montoya-Lopez v. Garland, 80 F.4th 71, 80 (1st Cir. 2023)). Da Silva stated that she does not fear for her own safety, and offered no "specific proof" to support her fear of the harm that might befall her children. At the very least, then, the record does not "compel a reasonable factfinder to reach a contrary conclusion" to the agency's. Dorce v. Garland, 50 F.4th 207, 212 (1st Cir. 2022) (emphasis in original) (internal quotation marks and citation omitted).

3. Particular Social Groups and Relocation

Da Silva argues that the agency committed two further legal errors when it evaluated her asylum claim. First, she argues that the agency improperly concluded that her proposed "particular social groups" are not cognizable. Second, she argues that the BIA erroneously ignored her challenge to the IJ's finding that relocation within Brazil was a viable option, and thus an alternative bar to asylum.

We have no occasion to reach these arguments. A showing of persecution is a necessary element of an asylum claim. See 8 U.S.C. § 1101(a)(42)(A); see also De La Cruz-Quispe v. Bondi, 161

F.4th 17, 24 n.4 (1st Cir. 2025) ("Because the nexus determination is dispositive, we need not address De La Cruz's remaining arguments as to asylum."); Carvalho-Frois v. Holder, 667 F.3d 69, 73 (1st Cir. 2012) ("An inability to establish any one of the three elements of persecution will result in a denial of [an] asylum application."). Because the agency supportably concluded that Da Silva failed to make this showing, Da Silva is ineligible for asylum even if she can establish both (1) membership in a cognizable particular social group and (2) the impossibility of relocating within Brazil. Any error the agency may have committed on these points, and we don't suggest that there was error, is therefore harmless. See Cruz v. Garland, 106 F.4th 141, 146-47 (1st Cir. 2024).

C. Other Forms of Relief

No other form of relief is available to Da Silva on account of her petition for review.

1. Humanitarian Asylum

Da Silva argues that the agency ought to have granted her humanitarian asylum, which is a discretionary form of relief that may issue upon a showing of "past persecution so severe that repatriation would be inhumane." Ordonez-Quino, 760 F.3d at 94 (internal quotation marks and citation omitted). This argument is unavailing. Humanitarian asylum is "a last-resort form of relief that is difficult to obtain and rarely granted." Precetaj v.

Holder, 649 F.3d 72, 78 (1st Cir. 2011). Da Silva is categorically ineligible for it here because she has not demonstrated persecution. See 8 C.F.R. § 1208.13(b)(1)(iii); see also Martínez-Pérez, 897 F.3d at 42 ("Having failed to show past (or any) persecution, subsection (b)(1)(iii) does not apply to Martínez-Pérez, and thus this argument fails.").

2. Withholding of Removal and CAT Protection

Nor has Da Silva demonstrated her entitlement to either withholding of removal or protection under the CAT. The "Statement of the Issues" in her opening brief refers to an issue of "[w]hether the Agency erred in finding that the Respondent is not eligible for withholding of removal or protection under the Convention Against Torture." But the brief makes no further reference to either form of relief, and Da Silva has thus abandoned any argument on the issue. See Alvarado-Reyes v. Garland, 118 F.4th 462, 475 (1st Cir. 2024).[6]

III. CONCLUSION

The petition for review is **denied**.

[6] We also note that where a petitioner "fail[s] to carry his asylum burden, he also fail[s] to carry his withholding burden." Id. at 474.