

United States Court of Appeals
For the Eighth Circuit

No. 20-2597

Yaroslav Rozhko; Olena Rozhko; Ivan Rozhko

Petitioners

v.

Monty Wilkinson, Acting Attorney General of the United States¹

Respondent

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

Submitted: February 9, 2021

Filed: February 12, 2021

[Unpublished]

Before BENTON, MELLOY, and KELLY, Circuit Judges.

PER CURIAM.

¹Monty Wilkinson has been appointed to serve as Acting Attorney General of the United States, and is substituted as respondent pursuant to Federal Rule of Appellate Procedure 43(c).

Ukrainian citizens Yaroslav, Olena, and Ivan Rozhko petition for review of an order of the Board of Immigration Appeals (BIA). Having jurisdiction under 8 U.S.C. § 1252, this court denies the petition.

The BIA dismissed their appeal from the decision of an immigration judge denying their request for asylum and withholding of removal relief.² This court concludes that substantial evidence supports the agency’s determination that Rozhko was not entitled to asylum, because he did not show that he was unable or unwilling to return to Ukraine due to persecution, or a well-founded fear of future persecution, on account of a protected ground. *See De Castro-Gutierrez v. Holder*, 713 F.3d 375, 379 (8th Cir. 2013) (standard of review); *Litvinov v. Holder*, 605 F.3d 548, 553 (8th Cir. 2010) (asylum eligibility requirements; if asylum applicants do not establish past persecution, they must show their fear of future persecution is both subjectively genuine and objectively reasonable); *see also Cano v. Barr*, 956 F.3d 1034, 1039 (8th Cir. 2020) (persecution “involves the infliction or credible threat of death, torture, or injury to one’s person or freedom, on account of a protected characteristic”; it is “an extreme concept that excludes low-level intimidation and harassment”) (citations and alteration omitted). This court also concludes that Rozhko’s argument concerning withholding of removal relief is not properly before this court. *See Ateka v. Ashcroft*, 384 F.3d 954, 957 (8th Cir. 2004) (if petitioner fails to raise particular issue when he appeals to BIA, petitioner has not exhausted administrative remedies).

The petition is denied. *See* 8th Cir. R. 47B.

²The denial of relief under the Convention Against Torture is not before this panel. *See Chay-Velasquez v. Ashcroft*, 367 F.3d 751, 756 (8th Cir. 2004) (claim not raised in opening brief is waived). Because Olena and Ivan Rozhko’s applications are derivative of Yaroslav Rozhko’s application, *see* 8 U.S.C. § 1158(b)(3)(A), all subsequent references are to Yaroslav Rozhko.