

United States Court of Appeals
For the Eighth Circuit

No. 25-2780

Maria Lily Alvarenga; E.D.B.A.

Petitioners

v.

Todd Blanche, Attorney General of the United States

Respondent

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

Submitted: June 10, 2026

Filed: October 8, 2026

Before COLLOTON, Chief Judge, ERICKSON and GRASZ, Circuit Judges.

GRASZ, Circuit Judge.

Maria Lily Alvarenga and her son, E.D.B.A., petition for review of the Board of Immigration Appeals' (BIA) order affirming an immigration judge's (IJ) decision ordering them removed to Honduras and denying their claims for asylum, statutory withholding of removal, and protection under the Convention Against Torture (CAT). We deny the petition.

I. Background

Alvarenga¹ and E.D.B.A. are Honduran nationals who unlawfully entered the United States in April 2019. After Border Patrol officers encountered Alvarenga, the Department of Homeland Security placed her into removal proceedings for being present without admission or parole. Removal proceedings are divided into two phases: the first determines an alien's removability; the second determines whether an alien qualifies for relief from removal. At the first hearing, the IJ determined Alvarenga was removable after Alvarenga admitted she was a citizen of Honduras and lacked a visa or passport when she arrived at the United States border.

At the second hearing, Alvarenga sought relief by claiming asylum, statutory withholding of removal, and protection under the CAT. Alvarenga argued she merited relief based on gang-related persecution, claiming MS-13 repeatedly tried to recruit E.D.B.A. E.D.B.A. refused the gang's recruitment and MS-13 threatened to kidnap him and "do something" to his mother. Alvarenga reported that she feared MS-13 would torture and kill her in retaliation. MS-13 never physically harmed Alvarenga nor acted on the kidnapping threats. But E.B.D.A. stopped going to school to avoid interacting with the gang. Alvarenga never reported the gang's activity to law enforcement.

Because Alvarenga did not sufficiently prove the persecution was because of a protected ground nor demonstrate government acquiescence in the face of torture, the IJ denied Alvarenga's claims for relief. Alvarenga appealed to the BIA, challenging the IJ's denial of relief from removal and claiming her due process rights were violated because the IJ committed procedural errors. The BIA dismissed the appeal, and Alvarenga now petitions this court for review.

¹Given the derivative nature of the relief sought by E.D.B.A., we refer only to Alvarenga throughout this opinion.

II. Discussion

In her petition for review, Alvarenga claims the BIA erred when it concluded the IJ did not violate Alvarenga's due process rights and affirmed the IJ's decision to deny Alvarenga's application for relief under asylum, statutory withholding of removal, and the CAT. We address each in turn.

A. Due Process

Alvarenga argues the IJ violated her due process rights when he committed procedural errors "in numerous ways" during the course of her removal proceedings. "We review procedural due process challenges de novo, 'as the question of whether an immigration hearing violates due process is a purely legal issue.'" *Brizuela v. Garland*, 71 F.4th 1087, 1091 (8th Cir. 2023) (quoting *Ramirez v. Sessions*, 902 F.3d 764, 770 (8th Cir. 2018)).

The Fifth Amendment's Due Process clause applies to aliens in removal proceedings and "mandates that removal hearings be fundamentally fair." *Al Khouri v. Ashcroft*, 362 F.3d 461, 464 (8th Cir. 2004). "However, it is axiomatic in this Circuit that an alien's due process claim must demonstrate both a fundamental procedural error *and* prejudice." *Brizuela*, 71 F.4th at 1091 (quoting *Ramirez*, 902 F.3d at 770). To show prejudice, a petitioner must demonstrate "the outcome of the proceeding may well have been different had there not been any procedural irregularities." *Mohamed v. Bondi*, 137 F.4th 692, 695 (8th Cir. 2025); *see also Arroyo-Sosa v. Garland*, 74 F.4th 533, 541 (8th Cir. 2023) ("Actual prejudice exists where defects in the deportation proceedings may well have resulted in a deportation that would not otherwise have occurred.").

Alvarenga was charged as an alien present “without being admitted or paroled” and so bore the burden² to prove that she was “entitled to be admitted” or otherwise “lawfully present in the United States pursuant to a prior admission.” 8 U.S.C. § 1229a(c)(2)(A)–(B). Alvarenga did not carry her burden and only alleges that while she did not “have a visa and . . . passport to enter legally,” there are “many situations” where a non-citizen lacks a passport or visa but is not deemed present “without being admitted or paroled.” Even assuming, without deciding, that there were fundamental procedural errors in the removal proceedings, Alvarenga has not demonstrated prejudice, and so her due process claim fails. Put simply, Alvarenga failed to show she may not have been ordered removed even if the IJ had conducted procedurally perfect removal proceedings.

While it is true that possessing a visa is not the sole, exclusive means through which an alien can be “admitted or paroled,” Alvarenga still has not demonstrated a plausible basis that *she* was “entitled to be admitted” or otherwise “lawfully present.” § 1229a(c)(2)(A)–(B); 8 C.F.R. § 1240.8(c); *see also Brizuela*, 71 F.4th at 1091 (denying due process claim where alien did not contest she was removable nor explain how she might otherwise have obtained relief if procedural defects had not occurred). Instead of detailing the evidence she might have offered if the IJ had conducted a more thorough inquiry, Alvarenga argues the IJ’s alleged failure to ask sufficient probing questions constitutes grounds for reversal and remand. We disagree. *See Deng Chol v. Garland*, 25 F.4th 1063, 1072 (8th Cir. 2022) (“[T]here is no prejudice if the petitioner fails to explain the evidence . . . she might have offered if the IJ asked further questions.”); *Durakovic v. Garland*, 101 F.4th 989, 995 (8th Cir. 2024) (denying due process claim when petitioners could not show the

²The government has the initial burden to “establish the alienage of the respondent” who is “charged as being in the United States without being admitted or paroled.” 8 C.F.R. § 1240.8(c). But here, Alvarenga conceded that she was a citizen of Honduras and consequently bore the burden to prove she was lawfully present. *See Rodriguez-Quiroz v. Lynch*, 835 F.3d 809, 818 (8th Cir. 2016) (noting that after alien “admitted that he was a citizen of Mexico,” the “burden of proof thereafter shifted to [the alien] to establish . . . that he was ‘lawfully present’” (quoting 8 U.S.C. § 1229a(c)(2)(B))).

outcome of removal proceedings would have been different). The mere “speculative possibility” that Alvarenga would have produced evidence of her lawful presence³ or admissibility had she been asked the right question, without more, “is insufficient to establish actual prejudice” *United States v. Leal-Monroy*, 988 F.3d 1077, 1081 (8th Cir. 2021). Accordingly, Alvarenga’s due process claim fails.

B. Asylum and Withholding of Removal

Alvarenga argues the BIA erred by denying her claims for asylum and withholding of removal. We review the BIA’s legal determinations de novo and apply the deferential substantial evidence standard when reviewing the BIA’s factual determinations. *See Quijano-Duran v. Bondi*, 172 F.4th 991, 994 (8th Cir. 2026); 8 U.S.C. § 1252(b)(4)(B) (“[T]he administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary.”).

To be eligible for asylum, Alvarenga must demonstrate she is unable or unwilling to return to Honduras because of past persecution or a well-founded fear of future persecution on account of her race, religion, nationality, political opinion, or membership in a particular social group. 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i); *Ferchichi v. Bondi*, 128 F.4th 966, 973 (8th Cir. 2025). Alvarenga claims she was part of the particular social group “Honduran citizens who refused to comply with gang demands” and alternatively argues that she was persecuted on behalf of her imputed political opinion stemming from her “perceived (imputed) resistance to the narco-state and support of the current governmental structure.”

³That Alvarenga had only a “speculative possibility” of producing evidence that she was “admitted or paroled” is supported by her own Application for Asylum and Withholding of Removal where Alvarenga indicated she lacked an “I-94 Number.” A Form I-94 is a document marked with an “I-94 Number” that indicates one’s arrival into the United States through an official port of entry and is given to aliens who are admitted or paroled by DHS. 8 C.F.R. §§ 1.4, 264.1.

When a claim for asylum is based on one's membership in a particular social group, "the petitioner must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *Ngugi v. Lynch*, 826 F.3d 1132, 1138 (8th Cir. 2016). The petitioner must show the protected characteristic "was or will be at least one central reason for persecuting the [petitioner]." 8 U.S.C. § 1158(b)(1)(B)(i); *see also Ferchichi*, 128 F.4th at 973.

Likewise, a petitioner is "eligible for withholding of removal if she shows a clear probability that her life or freedom would be threatened on the basis of her membership in a particular social group" or political opinion if she was removed to her country of origin. *Becerril-Sanchez v. Bondi*, 127 F.4th 1099, 1110 (8th Cir. 2025) (cleaned up); *see also* 8 U.S.C. § 1231(b)(3)(A). "The clear probability standard for withholding of removal is *more onerous* than the well-founded fear standard for asylum." *Mayorga-Rosa v. Sessions*, 888 F.3d 379, 382 (8th Cir. 2018) (emphasis added) (quoting *Malonga v. Mukasey*, 546 F.3d 546, 551 (8th Cir. 2008)). "Therefore, an alien who cannot meet the standard for asylum cannot meet the standard for establishing withholding of removal." *Becerril-Sanchez*, 127 F.4th at 1110 (quoting *Guled v. Mukasey*, 515 F.3d 872, 881 (8th Cir. 2008)).

The BIA found Alvarenga's proposed social group of "Honduran citizens who refused to comply with gang demands" was not sufficiently particular or recognized within Honduran society. We agree. *See Gaitan v. Holder*, 671 F.3d 678, 682 (8th Cir. 2012) (rejecting the social group of "young males from El Salvador who have been subjected to recruitment by MS-13 and who have rejected or resisted membership in the gang"); *Mayorga-Rosa*, 888 F.3d at 384–85 (finding particular social groups defined by fear of gang violence lack particularity and immutability); *Constanza v. Holder*, 647 F.3d 749, 754 (8th Cir. 2011) (holding the social group of "'persons resistant to gang violence' [is] too diffuse to be recognized as a particular social group").

Alvarenga's claim for persecution based on imputed political opinion fares no better. While Alvarenga argues her perceived, imputed "resistance to the narco-state and support of the current governmental structure" qualifies as a basis for asylum, precedent says otherwise — generalized political opposition against gang activity is not enough. See *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992) (holding neither "the mere existence of a generalized 'political' motive underlying the [gang's] forced recruitment" nor retaliation for petitioner's "refusal to [join the gang and] fight with them" is sufficient alone to prove petitioner was persecuted because of petitioner's political opinion); *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 579 (8th Cir. 2009) (holding that opposition to gang violence and the "mere refusal to join [MS-13], without more, does not compel a finding that the gang's threats were on account of an imputed political opinion"). Alvarenga's asylum claim thus fails. And because she cannot meet the "well-founded fear standard for asylum," she therefore cannot meet the "more rigorous . . . standard for establishing withholding of removal." *Becerril-Sanchez*, 127 F.4th at 1110 (quoting *Guled*, 515 F.3d at 881).

C. CAT

Lastly, Alvarenga argues the BIA erred in denying her claim for relief under the CAT. "We review the BIA's determination of claims for . . . relief under the CAT using the standard of substantial evidence" *Che v. Mukasey*, 532 F.3d 778, 781 (8th Cir. 2008). To qualify for relief under the CAT, a petitioner must show it is more likely than not that he or she would be tortured if removed to the proposed country of removal. *Durakovic*, 101 F.4th at 996; 8 C.F.R. § 1208.16(c)(2).

The petitioner must show that severe pain or suffering would be inflicted "by or at the instigation of or with the consent or acquiescence of" a public official or other person acting in an official capacity. § 1208.18(a)(1). "A government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it, but it does cross the line into acquiescence when it shows willful

blindness toward the torture of citizens by third parties.” *Hassan v. Rosen*, 985 F.3d 587, 590 (8th Cir. 2021).

Because Alvarenga does not allege her predicted torture would be “by or at the instigation of or with the consent of [government] officials, [s]he must show that public officials will acquiesce in [her] torture.” *Becerril-Sanchez*, 127 F.4th at 1111 (quoting *Garcia v. Holder*, 746 F.3d 869, 873 (8th Cir. 2014)). “Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” *Id.* (quoting 8 C.F.R. § 208.18(a)(7)); see also *Menjivar v. Gonzales*, 416 F.3d 918, 923 (8th Cir. 2005) (“‘Acquiescence’ at least requires prior awareness of the torture and a breach of a legal responsibility to intervene.”).

Alvarenga never reported any of the gang’s activities or threats to the Honduran police and so has not shown they were aware of the potential for torture. Nor has she put forth substantial evidence that shows the government exhibits “willful blindness toward the torture of citizens by third parties.” *Juarez-Coronado v. Barr*, 919 F.3d 1085, 1089 (8th Cir. 2019) (quoting *Mouawad v. Gonzales*, 485 F.3d 405, 413 (8th Cir. 2007)). At most, Alvarenga has made generalized claims that criminal organizations have infiltrated the Honduran police and judiciary. But these are insufficient to show government acquiescence. *Uriostegui-Teran v. Garland*, 72 F.4th 852, 857 (8th Cir. 2023) (finding substantial evidence supported the BIA’s decision to deny CAT relief when petitioner only submitted “country-conditions reports show[ing] that criminal organizations have infiltrated the Mexican police and government” but did not explain how “general infiltration” made acquiescence in *petitioner’s* torture more likely).

Alvarenga’s petition for CAT relief fails because substantial evidence supports the BIA’s denial.

III. Conclusion

We deny the petition.
