

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 19-3619

ASHIFUL ISLAM PRAMANIK,
Petitioner,

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA,
Respondent

On Petition for Review of a
Decision of the Board of Immigration Appeals
(No. A057-568-919)
Immigration Judge: Kuyomars Q. Golparvar

Submitted under Third Circuit L.A.R. 34.1(a)
July 2, 2020

(Filed July 30, 2020)

Before: GREENAWAY, JR., SHWARTZ and RENDELL, *Circuit Judges*.

OPINION*

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

RENDELL, *Circuit Judge*:

Petitioner Ashiful Pramanik seeks review of the Board of Immigration Appeals' (BIA) decision to dismiss his appeal from the Immigration Judge's (IJ) denial of his applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Petitioner argues he was denied due process as a result of alleged misconduct on the part of the IJ. We disagree and will deny the petition.¹

I. Background²

Petitioner Ashiful Pramanik is a native and citizen of Bangladesh who has lived in the United States as a lawful permanent resident since July 2011. Between August 4, 2016 and January 12, 2017, he was convicted three times of possession of a controlled substance. Accordingly, he was issued a Notice to Appear charging him with removability on November 30, 2018.

Thereafter, Petitioner applied for asylum, withholding of removal, and CAT protection. At a hearing before the IJ, Petitioner testified that he fears persecution based on his family's support of and his membership in the youth division of the Bangladesh National Party (BNP) when he lived in Dhaka, Bangladesh as a teenager.

Petitioner testified at the hearing that his involvement in the BNP included recruiting new members and attending protests against the Awami League, the BNP's

¹ The BIA had jurisdiction under 8 C.F.R. § 1003.1(b)(3). We have jurisdiction to review this petition from the BIA under 8 U.S.C. § 1252(a)(1).

² Because we write for the parties, who are familiar with the facts, we only include what is necessary to explain our decision.

political adversary and the current political majority in parliament. He believes that the Awami League is corrupt and persecutes members of the BNP. He specifically referenced two incidents in 2010 when he claimed the Awami League harmed him. First, Petitioner testified that, at a protest in Dhaka in 2010, members of the Awami League beat him with a stick, necessitating stitches in his head. He was, however, unable to provide medical records and indicated that he had not reported the incident to the police. Second, Petitioner claimed that he was arrested with a group of BNP members at another protest in 2010, but the group was released after an hour because a BNP leader bribed the police.

Throughout Petitioner's testimony, the IJ directly asked various questions, such as why Petitioner dropped out of school and whether he struggled with drug addiction. When Petitioner's father testified, the IJ warned Petitioner's counsel to avoid asking leading questions notwithstanding any language barriers. When Petitioner's counsel again attempted to ask a leading question of the father, the IJ sustained the Government's objection on the basis that the question was leading. Petitioner's counsel responded that he had no further questions but raised concerns that the IJ had become an advocate for the Government. The IJ stated that counsel could ask additional questions, but those questions could not be leading. After a contentious exchange, counsel proceeded to ask additional questions of Petitioner's father.

The testimony of Petitioner and that of his father differed on important points. In contrast to Petitioner's claim that he lived in Dhaka during the relevant time period, Petitioner's father testified that in 2009 he and Petitioner moved to a village

approximately 200 kilometers outside of Dhaka to avoid the Awami League. His father maintained that Petitioner did not return to Dhaka until 2011, when the family “carefully” traveled to the airport to leave for the United States. AR 193. Between 2009 and 2011, Petitioner’s father claimed that the Awami League did not do anything to Petitioner. Petitioner, however, had testified that his arrest and attack at the hands of the Awami League took place in 2010. The IJ permitted Petitioner’s counsel to re-call Petitioner to address the inconsistency, and Petitioner claimed that he lived in the other village for only a year and returned to Dhaka in 2010. In an effort to explain the discrepancy, Petitioner suggested that his father must have forgotten about his time in Dhaka in 2010.

The IJ credited Petitioner’s father’s testimony and found that Petitioner’s testimony was not credible. Based on the adverse credibility finding, the IJ denied Petitioner’s requests for asylum and withholding of removal.³ The IJ also denied the application for CAT protection because Petitioner failed to show that he would more likely than not be tortured with the consent or acquiescence of the government upon his return to Bangladesh. Petitioner appealed the IJ’s decision to the BIA, arguing in part that his due process rights were violated when the IJ improperly acted as an advocate by refusing to allow Petitioner’s counsel to ask leading questions and appearing to criticize Petitioner.

³ In the alternative, even if Petitioner’s testimony were credible, the IJ said he would have denied asylum in the exercise of his discretion and would have denied withholding because Petitioner failed to establish past persecution or a clear probability of future persecution.

The BIA dismissed the appeal. It found no clear error in the IJ's adverse credibility determination and concluded that Petitioner did not sustain his burden to establish that he is entitled to relief.⁴ The BIA further found no due process violation, concluding that the IJ committed no error and that Petitioner suffered no prejudice. Petitioner now seeks review of that decision, again contending that he was denied due process.

II. Standard of Review

Although our jurisdiction is over the BIA's decision, we consider the opinion of the IJ to the extent that "the BIA has substantially relied on that opinion." *Camara v. Att'y Gen.*, 580 F.3d 196, 201 (3d Cir. 2009), *as amended* (Nov. 4, 2009). We review questions of law, including whether a due process violation has occurred, *de novo*. *Abdulrahman v. Ashcroft*, 330 F.3d 587, 595–96 (3d Cir. 2003). Factual findings, however, "will be upheld if [they are] supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Garcia v. Att'y Gen.*, 665 F.3d 496, 502 (3d Cir. 2011), *as amended* (Jan. 13, 2012) (alteration in original) (internal quotations marks and citation omitted).

III. Analysis

A. Applicable Law

Although Petitioner is not a U.S. citizen, "[a]liens have a 'right to a full and fair hearing that allows them a reasonable opportunity to present evidence on their behalf.'"

⁴ The BIA did not consider the IJ's alternative bases for denying relief, as it found "the issue of credibility dispositive." AR 3 n.1.

Jarbough v. Att’y Gen, 483 F.3d 184, 192 (3d Cir. 2007) (quoting *Cabrera-Perez v. Gonzalez*, 456 F.3d 109, 115 (3d Cir. 2006)). To establish a due process violation on the ground that “he was not afforded the opportunity to argue on his own behalf,” Petitioner must show “(1) that he was prevented from reasonably presenting his case[,] and (2) that substantial prejudice resulted.” *Serrano-Alberto v. Att’y Gen.*, 859 F.3d 208, 213 (3d Cir. 2017) (alteration in original) (citation omitted). Substantial prejudice requires that the alleged violation had “the potential for affecting the outcome of [the] deportation proceedings.” *Id.* (alteration in original) (citation and emphasis omitted).

B. Petitioner failed to establish that he was denied due process.

Petitioner contends that the IJ’s conduct at his hearing, particularly the limitations on his counsel’s questioning and the questions posed to Petitioner, prevented him from presenting his case and caused substantial prejudice. *See id.* We disagree.

First, Petitioner has not shown that the IJ prevented him from presenting his case at the hearing. An IJ has “the authority . . . to properly control the scope of any evidentiary hearing” under 8 C.F.R. § 1240.11 (c)(3)(ii). Here, the IJ’s actions did not exceed that authority. Petitioner argues that the IJ improperly limited Petitioner’s counsel’s questions and contends that the IJ’s “taunt[ing]” and “mock[ing]” questioning effectively eliminated his opportunity to present his case because it demonstrated that the IJ had a bias against Petitioner and was looking for a reason to deny relief. Petr.’s Br. 25-26. The Government responds that the IJ’s limitations and questions were “pertinent to the credibility finding and related to Petitioner’s counsel leading his own witnesses.” Gov’t Br. 25. We agree with the Government.

Petitioner cites our decision in *Serrano-Alberto* as support, but that case was markedly different from these facts. The IJ in *Serrano-Alberto*, in addition to being consistently hostile, required the petitioner to give only yes or no answers during critical parts of his testimony, focused disproportionately on “sundry irrelevant details,” lacked familiarity with the record, and made findings that were directly in conflict with the record. *Serrano-Alberto*, 859 F.3d at 224. We found that such a failure to develop the record, combined with a “condescending and belligerent tone throughout the hearing,” ultimately “evinced bias and created an intolerable atmosphere of intimidation.” *Id.* Accordingly, we found that the petitioner was denied the opportunity to present his case in violation of his due process rights. *Id.* at 225.

No such violation occurred here. The IJ did not fail to develop the record. Petitioner was represented by counsel, who had the opportunity to ask questions of multiple witnesses, with periodic interruptions from the IJ to ask his own questions and subject to the IJ’s limitation that counsel could not ask leading questions. The IJ acted properly in instructing Petitioner’s counsel not to ask leading questions of his own witnesses, and counsel was not prevented from asking additional non-leading questions to present new facts. Further, the details on which the IJ focused in this case, such as whether Petitioner struggled with drug addiction or the circumstances under which he left high school, were far from “sundry irrelevant details” and did not demonstrate bias. *See id.* at 224. The questions addressed facts relevant to the discretionary asylum determination and to assessing credibility, and the record does not reveal the pervasive hostility or condescension present in *Serrano-Alberto*. Petitioner has not shown that the

IJ's questions or instructions interfered with his right to a "a full and fair hearing [with] . . . a reasonable opportunity to present evidence on [his] behalf." *Id.* at 225 (alterations in original) (citations omitted).

Petitioner also has not shown substantial prejudice. While Petitioner points to the IJ's alleged "failure to develop the record" as prejudicial, he has not explained why the IJ's actions, specifically, affected the outcome of the proceedings. Petr's Br. 28. As noted above, the IJ's instructions did not preclude Petitioner's counsel from asking additional non-leading questions that might have elicited further information. Petitioner also relies on the allegedly improper comments of the IJ to show substantial prejudice, but he fails to demonstrate how "the tenor of the hearing," without more, prejudicially affected the outcome of the proceeding. *Id.*

To the extent that Petitioner argues prejudice resulted because the IJ's credibility determination was based purely on bias or on insufficient evidence, we disagree. The credibility determinations of an IJ are subject to a substantial evidence standard and will be upheld so long as the determinations are "reasonably grounded in the record." *Jishiashvili v. Att'y Gen.*, 402 F.3d 386, 392 (3d Cir. 2005) (citation and quotation marks omitted). Petitioner's testimony differed significantly from his father's on material issues, including where Petitioner lived in 2010 and whether the Awami League did anything to him at that time. Petitioner's effort to resolve the inconsistency was unpersuasive, and the IJ reasonably credited Petitioner's father's account over Petitioner's. This determination was grounded in the record, and the IJ was well within

his authority to find Petitioner not credible. Petitioner has not shown substantial prejudice.

Because Petitioner has not shown either that he was prevented from presenting his case, or that substantial prejudice resulted from the way the IJ conducted the hearing, we will deny the petition for review.

IV. Conclusion

For the foregoing reasons, we will deny the petition.