

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-1931

KUDZAI SHONHAI,
Petitioner

v.

ATTORNEY GENERAL UNITED STATES OF AMERICA

On Petition for Review of the Board of Immigration Appeals
Immigration Judge Tamar Wilson, A098-816-210

Before: CHAGARES, *Chief Judge*, RESTREPO, and MONTGOMERY-REEVES, *Circuit Judges*
Argued June 9, 2026; Filed Aug. 24, 2026

NONPRECEDENTIAL OPINION^{*}

RESTREPO, *Circuit Judge*.

Kudzai Shonhai petitions for review of the Board of Immigration Appeals’ (“BIA”) decisions upholding his removability under 8 U.S.C. § 1227(a)(2)(A)(i) and 8 U.S.C. § 1227(a)(2)(A)(ii), for being convicted of crimes involving moral turpitude. For the following reasons, we will deny the petition in part and dismiss it in part.

^{*} This is not an opinion of the full Court and, pursuant to 3d Cir. I.O.P. 5.7, is not binding precedent.

I.

Shonhai, a native and citizen of Zimbabwe, was admitted to the United States in August 2006 as a derivative asylee. Shonhai has remained in the United States since his arrival and fears political persecution if removed to Zimbabwe.

In May 2011, Shonhai pled guilty to sexual battery, in violation of Indiana Code § 35-42-4-8, and was sentenced to a term of 1,095 days of incarceration. Eleven years later, Shonhai pled guilty to making a false claim of U.S. citizenship in violation of 18 U.S.C. § 911 and conspiracy to possess an identity document with intent to defraud in violation of 18 U.S.C. § 1028(a)(4)(f). The Department of Homeland Security (“DHS”) charged him as removable, in relevant part, pursuant to 8 U.S.C. § 1227(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude (“CIMT”) within five years after admission for which a sentence of one or more year or longer may be imposed and pursuant to 8 U.S.C. § 1227(a)(2)(A)(ii), for being convicted of two CIMTs not arising out of a single scheme or criminal misconduct at any time after admission.

Shonhai moved to terminate proceedings and denied the removability charges, arguing that his convictions were not CIMTs. He also sought relief in the form of adjustment of status, asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). In April 2023, the Immigration Judge (“IJ”) sustained removability. The IJ ordered him removed to Zimbabwe after also denying asylum relief, withholding of removal, protection under CAT, and adjustment of status.

On appeal, the BIA dismissed Shonhai's appeal in part, upholding the IJ's removability findings, denial of asylum, withholding of removal, and denial of CAT relief. The case was remanded for further proceedings to determine whether Shonhai's case warranted adjustment of status.

On remand, another IJ concluded that the sexual battery conviction constituted a particularly serious crime ("PSC") under Section 208(b)(2)(A)(ii) of the Immigration and Nationality Act ("INA"), denied adjustment as a matter of discretion, terminated Shonhai's derivative asylee status, and ordered him removed to Zimbabwe.¹

Shonhai again appealed to the BIA, challenging the IJ's denial of his application for adjustment and termination of asylee status, and filed a motion to remand. The BIA denied Shonhai's untimely motion to remand and affirmed the IJ, including the discretionary denial of adjustment of status and the waiver, the determination that the sexual battery conviction was a PSC, and the termination of Shonhai's derivative asylee status.

Shonhai now challenges: (1) the determination that he is removable based on a conviction for a CIMT; (2) the determination that his conviction constitutes a PSC, rendering him ineligible for asylum and withholding of removal; (3) the denial of

¹ The IJ reconsidered adjustment with a Section 209(c) waiver, 8 U.S.C. § 1159(b)-(c), weighed the evidence concerning conditions in Zimbabwe, Shonhai's family ties, residence, hardship, and criminal history, and again denied relief as a matter of discretion. *See, e.g., Robleto-Pastora v. Holder*, 591 F.3d 1051, 1055 (9th Cir. 2010) (referring to "section 209(c)" waiver).

protection under CAT; and (4) the discretionary denial of adjustment of status and a waiver of inadmissibility.²

II.³

A.

We begin with the threshold issue of removability. Shonhai contends that the BIA erred in concluding that his Indiana sexual battery conviction qualifies as a removable CIMT. We disagree.

Our review of “[w]hether an offense is a crime involving moral turpitude is a question of law” and thus subject to de novo review.⁴ Because Indiana Code Section 35-42-4-8 is divisible,⁵ we apply the modified categorical approach.⁶ The modified categorical approach serves a limited function: when a statute is divisible, it permits a court to identify the statutory alternative of which the defendant was convicted.⁷ Once that identification is made, however, the analysis returns to the categorical approach to determine whether the offense necessarily constitutes a CIMT.⁸

² Shonhai raises several additional arguments that do not affect the disposition of this opinion.

³ The BIA had jurisdiction under 8 C.F.R. §§ 1003.1(b)(3) and 1240.15, granting it appellate jurisdiction over the IJ’s decisions. We have jurisdiction under 8 U.S.C. § 1252(a)(1) to review final orders of removal, denial of asylum, withholding of removal, and relief under CAT. See *Laureano v. Att’y Gen.*, 177 F.4th 453, 457–59 (3d Cir. 2026).

⁴ *Ildefonso-Candelario v. Att’y Gen.*, 866 F.3d 102, 104 (3d Cir. 2017); see also *Aquino v. Att’y Gen.*, 53 F.4th 761, 765 (3d Cir. 2022).

⁵ Section 35-42-4-8 is divisible because it sets forth alternative elements—sexual touching accomplished either by force or imminent threat of force under subsection (a)(1) or while the victim is so mentally disabled or deficient that he or she could not consent to the touching under subsection (a)(2)—each of which must be separately charged and proved.

⁶ See *Mathis v. United States*, 579 U.S. 500, 505–06 (2016).

⁷ *Id.*

⁸ See *Ndungu v. Att’y Gen.*, 126 F.4th 150, 161–62 (3d Cir. 2025).

We follow a two-element standard for a CIMT consisting of an *actus reus* and a *mens rea*.⁹ A CIMT involves “reprehensible conduct and a culpable mental state.”¹⁰ Conduct is reprehensible if it is “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.”¹¹ An act is turpitudinous if it is accompanied by “a vicious motive or a corrupt mind.”¹² Thus, “the hallmark of moral turpitude is a reprehensible act committed with an appreciable level of consciousness or deliberation.”¹³

Shonhai’s conviction under Indiana Code § 35-42-4-8(a)(1) satisfies that standard. The statute requires intentional sexual touching for the purpose of sexual gratification that is accomplished “by force or the imminent threat of force.”¹⁴ Although touching undertaken for the purpose of sexual gratification is not, standing alone, inherently vile or reprehensible, the statute requires that the touching be accomplished “by force or the imminent threat of force.”¹⁵ It is that coercive element, combined with the intentional pursuit of sexual gratification, that renders the conduct inherently reprehensible because it involves the intentional violation of another person’s body through coercion. Viewed as a

⁹ *Id.* at 160.

¹⁰ *Id.* at 161.

¹¹ *Id.* at 160 (quoting *Larios v. Att’y Gen.*, 978 F.3d 62, 69 (3d Cir. 2020)).

¹² *Larios*, 978 F.3d at 69–70 (quoting *Javier v. Att’y Gen.*, 826 F.3d 127, 130–31 (3d Cir. 2016)).

¹³ *Partyka v. Att’y Gen.*, 417 F.3d 408, 414 (3d Cir. 2005).

¹⁴ Ind. Code § 35-42-4-8(a)(1)(A) (2011).

¹⁵ *Id.*

whole, the offense necessarily combines reprehensible conduct with the requisite culpable mental state. It therefore categorically constitutes a CIMT, rendering Shonhai removable.¹⁶

Nevertheless, his removability does not resolve his remaining claims for relief. We therefore turn to whether the BIA properly: (1) concluded that his conviction constitutes a PSC, thereby barring asylum and withholding of removal and terminating his derivative asylee status; (2) denied protection under CAT, which remains available notwithstanding a PSC; and (3) denied adjustment of status and a waiver of inadmissibility.

B.

Having concluded that Shonhai is removable, we next address whether his Indiana sexual battery conviction constitutes a PSC. That determination is dispositive of his eligibility for asylum and withholding of removal and also bears on the termination of his derivative asylee status.¹⁷ We review PSC determinations de novo.¹⁸

Our PSC inquiry proceeds in two steps. First, we must examine the elements of the offense “to determine whether they ‘potentially bring the offense within the ambit of a particularly serious crime.’”¹⁹ If so, we next consider “all reliable information” to determine whether the noncitizen’s conduct in committing the offense renders it

¹⁶ See 8 U.S.C. § 1227(a)(2)(A)(i). The BIA also upheld Shonhai’s removability under § 1227(a)(2)(A)(ii) for being convicted of two or more CIMTs not arising from a single criminal scheme. Because we find Shonhai removable under § 1227(a)(2)(A)(i) we need not address whether he is also removable under § 1227(a)(2)(A)(ii).

¹⁷ See *Sunuwar v. Att’y Gen.*, 989 F.3d 239, 250 (3d Cir. 2021) (holding that a PSC “disqualifies [a non-citizen] from all forms of relief from removal except deferral of removal under the CAT”).

¹⁸ *Luziga v. Att’y Gen.*, 937 F.3d 244, 252 n.9 (3d Cir. 2019).

¹⁹ *Amos v. Att’y Gen.*, 157 F.4th 313, 327 (3d Cir. 2025) (quoting *In re N-A-M*, 24 I. & N. Dec. 336, 342 (BIA 2007)).

particularly serious.²⁰ This includes consideration of the nature of the conviction, the sentence imposed, and the underlying facts and circumstances of the crime.²¹

Applying that framework, we conclude that Shonhai's sexual battery conviction constitutes a PSC. First, we agree with the IJ's determination that intentional sexual touching accomplished by force or the imminent threat of force potentially falls within the category of PSCs. By its nature, such conduct threatens the bodily integrity and safety of another person and therefore satisfies the first step of the analysis.

Second, the underlying circumstances of Shonhai's offense also support the conclusion that the conviction constitutes a PSC. At the time of the incident, Shonhai was twenty-three years old and the victim was fifteen years old. The victim was "completely inebriated" and Shonhai sucked on her breast, leaving a bruise.²² We agree with the IJ's determination that such conduct rises to the level of a PSC.

Because Shonhai's conviction constitutes a PSC, he is statutorily ineligible for asylum under 8 U.S.C. § 1158(b)(2)(A)(ii) and withholding of removal under 8 U.S.C. § 1231(b)(3)(B)(ii). The IJ also did not err in terminating his derivative asylee status pursuant to 8 U.S.C. § 1158(c)(2)(B).²³

C.

Next, we move to the grounds for relief under CAT. To prevail under CAT, Shonhai bears the burden to "establish that it is more likely than not that he . . . would be tortured if

²⁰ *Id.*

²¹ *Id.* & n.51 (quoting *In re Frentescu*, 18 I. & N. Dec. 244, 247 (BIA 1982)).

²² App. 33.

²³ See 8 U.S.C. § 1158(b)(2)(A)(ii).

removed to the proposed country of removal.”²⁴ Torture must be: “(1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for an illicit or proscribed purpose; (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions.”²⁵ A government acquiesces when it is aware of torture and breaches its duty to intervene, or put more simply, when it is willfully blind to the torture.²⁶ Our review of factual findings is subject to the substantial evidence standard and the agency’s findings will be upheld “unless any reasonable adjudicator would be compelled to conclude to the contrary.”²⁷

We agree that Shonahi has identified no record evidence that compels the conclusion that he is likely to be tortured in Zimbabwe with the consent or acquiescence of government officials. Because he failed to prove torture or acquiescence by the government to support CAT relief, he fails on the merits.²⁸

D.

Lastly, Shonhai challenges the denial of adjustment of status under INA section 209(b) and the accompanying section 209(c) waiver of inadmissibility. A section 209(c)

²⁴ *Lopez v. Att’y Gen.*, 142 F.4th 162, 176 (3d Cir. 2025) (quoting 8 C.F.R. § 1208.16(c)(2)).

²⁵ *Myrie v. Att’y Gen.*, 855 F.3d 509, 515 (3d Cir. 2017) (quoting *Auguste v. Ridge*, 395 F.3d 123, 151 (3d Cir. 2005)).

²⁶ *Id.* at 516.

²⁷ *Nasrallah v. Barr*, 590 U.S. 573, 584 (2020) (quoting 8 U.S.C. § 1252(b)(4)(B)).

²⁸ *Galeas Figueroa v. Att’y Gen.*, 998 F.3d 77, 92 (3d Cir. 2021); *Espinosa-Cortez v. Att’y Gen.*, 607 F.3d 101, 106 (3d Cir. 2010) (recognizing that substantial evidence review is “highly deferential” to the agency).

waiver is discretionary and is granted for “humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.” On remand, the IJ expressly discussed those considerations and weighed them against the adverse factors arising from Shonhai’s criminal history. The BIA adopted and affirmed those determinations. Shonhai challenges that discretionary balancing, which is not a question of law and thus we lack jurisdiction to review.²⁹

III.

For the reasons discussed, we will deny Shonhai’s petition for review in part and dismiss in part.

Counsel for Petitioner
Stephen A. Fogdall [ARGUED]
DILWORTH PAXSON LLP

Counsel for Respondent
Brantley Mayers [ARGUED]
Melissa K. Lott
Nicole Thomas-Dorris
UNITED STATES DEPARTMENT OF JUSTICE

²⁹ *Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 433–34 (3d Cir. 2023); *see also* 8 U.S.C. §§ 1252(a)(2)(B)(ii), (D).