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4 UNITED STATES COURT OF APPEALS
5 FOR THE SECOND CIRCUIT
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7 SUMMARY ORDER
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9 THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER
10 AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY
11 OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY
12 OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR
13 IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.
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15 At a stated term of the United States Court of Appeals for the Second Circuit, held at the
16 Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the
17 15th day of May, two thousand and six.

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19 PRESENT:

20 HON. DENNIS JACOBS,
21 HON. SONIA SOTOMAYOR,
22 HON. REENA RAGGI,
23 *Circuit Judges.*
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26 Mikhael Hana Morkos,

Petitioner,

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28
29 v.

No. 04-5717-ag
NAC

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31 Alberto R. Gonzales,¹

Respondent.
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35 FOR PETITIONER: Michael Boyle, Justin Conlon, North Haven, Connecticut.
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37 FOR RESPONDENT: Steven M. Biskupic, United States Attorney for Eastern District of
38 Wisconsin, Stacy C. Gerber Ward, Assistant United States
39 Attorney, Milwaukee, Wisconsin.
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¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as the respondent in this case.

1 UPON DUE CONSIDERATION of this petition for review of a decision of the Board of
2 Immigration Appeals (“BIA”), it is hereby ORDERED, ADJUDGED, AND DECREED, that the
3 petition for review is GRANTED, the BIA’s order is VACATED, and the case is REMANDED
4 to the BIA for further proceedings consistent with this decision.

5 Mikhael Hana Morkos, through counsel, petitions for review of the BIA order affirming
6 the decision of Immigration Judge (“IJ”) Michael W. Straus denying his application for asylum,
7 withholding of removal, and relief under the Convention Against Torture (“CAT”), in which his
8 wife, Manal Bedrous, and daughter, Mirna Hana, were named derivative beneficiaries. We
9 assume the parties’ familiarity with the underlying facts and procedural history of the case.

10 This Court reviews the IJ decision where, as here, the BIA summarily adopted or affirmed
11 the IJ decision without opinion. *See Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005). This Court
12 reviews the agency’s factual findings under the substantial evidence standard, overturning them
13 only if any reasonable adjudicator would be compelled to conclude to the contrary. 8 U.S.C. §
14 1252(b)(4)(B); *see, e.g., Saleh v. U.S. Dep’t of Justice*, 962 F.2d 234, 238 (2d Cir. 1992).
15 Questions of law, such as assertions that the IJ used the incorrect standard of law, are reviewed
16 *de novo*. *See, e.g., Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

17 If an applicant demonstrates past persecution, there is a presumption of a well-founded
18 fear of persecution. 8 C.F.R. § 208.13(b)(1). That presumption can be rebutted by the
19 government if it shows, by a preponderance of the evidence, that “the applicant can avoid future
20 persecution by relocating to another part of the applicant’s country of nationality . . . and under
21 all the circumstances, it would be reasonable to expect the applicant to do so.” 8 C.F.R. §
22 208.13(b)(1)(i)(B). In evaluating whether the government met its burden of proof, the IJ must

1 consider two different factors: 1) whether the applicant could avoid persecution by relocating and
2 2) whether it is reasonable, under all of the circumstances, for the applicant to relocate. *See*
3 *Hong Ying Gao v. Gonzales*, 440 F.3d 62, 71-72 (2d Cir. 2006). The regulations further direct
4 the agency to consider various factors, such as on going civil strife in the country of removal,
5 political infrastructure, social and cultural constraints, and family ties, in determining whether it
6 is reasonable for an applicant to internally relocate. 8 C.F.R. § 208.13(b)(3).

7 Even though the burden was correctly placed on the government, the IJ did err in his
8 analysis of the two-part relocating finding. First, the IJ failed to make a finding as to whether
9 relocation within Egypt was a reasonable option, and the government concedes this point.
10 Despite the government's argument that this is irrelevant, the IJ erred because he did not actually
11 consider all of the circumstances presented, as required by 8 C.F.R. § 208.13(b)(3). The IJ failed
12 to consider whether it is reasonable for an individual and his family to remain in hiding in order
13 to avoid persecution from particular individuals. Moreover, the IJ failed to take all of the country
14 conditions information into account. In his decision, the IJ cites to the country reports in support
15 of his conclusions that (1) the Muslim men who had persecuted Morkos would not seek him
16 throughout Egypt and (2) the number of Coptic Christians forced to convert to Islam is
17 insignificant. The IJ does not discuss, however, whether Morkos would be free of persecution
18 from other persons if he were to relocate within Egypt. Without analyzing Morkos's particular
19 circumstances in light of the overall country conditions regarding Coptic Christians, the IJ failed
20 adequately to address the first element of internal relocation analysis by reference to the totality
21 of the circumstances.

22 Second, the IJ erred by applying the wrong standard of law. To demonstrate the viability

1 of relocation the government must prove not only that the individuals who persecuted Morkos in
2 the past would not persecute him if he moved to a different area of Egypt, they must show that
3 Morkos would not be persecuted by anyone on account of his religion in a different area of
4 Egypt. *See* 8 C.F.R. § 208.13(b)(1)(i)(B); *see also Hong Ying Gao*, 440 F.3d at 71-72. In this
5 case, the IJ did not address whether there is widespread persecution against Coptic Christians in
6 Egypt, other than attempts to convert Christians to Islam. Accordingly we cannot determine
7 whether the IJ’s relocation finding is not supported by substantial evidence.

8 Morokos does not raise any issued regarding the denial of his withholding of removal or
9 CAT claims in his brief to this Court. Accordingly, we deem these claims waived. *See Yueqing*
10 *Zhang v. Gonzales*, 416 F.3d 540, 541 n.1 (2d Cir. 2005).

11 For the foregoing reasons, the petition for review is GRANTED, the BIA’s order is
12 VACATED, and the case is REMANDED to the BIA for further proceedings consistent with this
13 decision. Having completed our review, any stay of removal that the Court previously granted in
14 this petition is VACATED, and any pending motion for a stay of removal in this petition is
15 DENIED as moot. Any pending request for oral argument in this petition is DENIED in
16 accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule
17 34(d)(1).

18 FOR THE COURT:
19 Roseann B. MacKechnie, Clerk

20 By: _____
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