

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 25th day of September, two thousand nine.

5
6 **PRESENT:**

7 RALPH K. WINTER,
8 GUIDO CALABRESI,
9 PETER W. HALL,
10 *Circuit Judges.*

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12
13 **NASIBA ZOKIRJON QIZI MADAMINOVA,**
14 *Petitioner,*

15
16 v.

08-4058-ag
NAC

17
18 **ERIC H. HOLDER JR.,¹ UNITED STATES**
19 **ATTORNEY GENERAL,**
20 *Respondent.*
21

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Eric. H. Holder Jr. is automatically substituted for former Attorney General Michael B. Mukasey as respondent in this case.

1 **FOR PETITIONER:** Jay Ho Lee, New York, N.Y.

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3 **FOR RESPONDENT:** Imran R. Zaidi, Trial Attorney (Anh-
4 Thu Mai-Windle, Senior Litigation
5 Counsel, *on the brief*), Office of
6 Immigration Litigation, for Michael
7 F. Hertz, Acting Assistant Attorney
8 General, Civil Division, United
9 States Department of Justice,
10 Washington, D.C.

11
12 UPON DUE CONSIDERATION of this petition for review of a
13 Board of Immigration Appeals ("BIA") decision, it is hereby
14 ORDERED, ADJUDGED, AND DECREED, that the petition for review
15 is GRANTED.

16 Petitioner Nasiba Zokirjon Qizi Madaminova, a native
17 and citizen of Uzbekistan, seeks review of a July 22, 2008
18 order of the BIA affirming the January 8, 2007 decision of
19 Immigration Judge ("IJ") Steven R. Abrams, which denied her
20 application for asylum, withholding of removal, and relief
21 under the Convention Against Torture ("CAT"). *In re Nasiba*
22 *Zokirjon Qizi Madaminova*, No. A099 560 266 (B.I.A. Jul. 22,
23 2008), *aff'g* No. A099 560 266 (Immig. Ct. N.Y. City Jan. 8,
24 2007). We assume the parties' familiarity with the
25 underlying facts and procedural history in this case.

26 When the BIA issues an opinion that fully adopts the
27 IJ's decision, this Court reviews the IJ's decision. See

1 *Chun Gao v. Gonzales*, 424 F.3d 122, 124 (2d Cir. 2005).
2 This Court reviews the agency's factual findings under the
3 substantial evidence standard. 8 U.S.C. § 1252(b)(4)(B);
4 *see also Manzur v. U.S. Dep't of Homeland Sec.*, 494 F.3d
5 281, 289 (2d Cir. 2007). We review *de novo* questions of law
6 and the application of law to undisputed fact. *Salimatou*
7 *Bah v. Mukasey*, 529 F.3d 99, 110 (2d Cir. 2008).

8 In this case, the IJ's conclusory determination that
9 the incidents Madaminova described "didn't rise to the
10 reasons for asylum" is insufficient to permit meaningful
11 review. *See Beskovic v. Gonzales*, 467 F.3d 223, 227 (2d
12 Cir. 2006). The IJ failed to identify the legal standard on
13 which he relied in assessing whether the treatment
14 Madaminova experienced constituted persecution. *See id.*
15 Indeed, he failed to cite a single case in his decision.

16 Additionally, it is unclear whether the IJ considered
17 the cumulative effect of Madaminova's experiences as opposed
18 to assessing them in isolation. *See Poradisova v. Gonzales*,
19 420 F.3d 70, 79-80 (2d Cir. 2005). The IJ stated that he
20 was reviewing "whether or not these particular incidents in
21 and of themselves would rise to the level for asylum as
22 being past persecution," concluding that "they d[id] not."

1 However, we have explained that an IJ errs where he
2 “consider[s] each of the incidents separately without
3 determining how they affected the significance of the other
4 incidents.” *Manzur*, 494 F.3d at 290. Our concerns with the
5 IJ’s decision are exacerbated because it appears he
6 disregarded much of Madaminova’s claim. In his decision,
7 the IJ stated that “[t]he fact that she was picked on in
8 school because of her looks, was one issue that she had; the
9 fact that she was even attempted physical assault, even
10 while she was in medical school, she had a professor who
11 tried to take advantage of her sexually, but she stood her
12 ground. On all of these occasions, nothing has ever
13 happened to her since she has fought them off in all these
14 matters, and has caused some injuries to her over a period
15 of time.” Beyond the fact that this statement is difficult
16 to parse, the IJ failed to acknowledge several additional
17 incidents to which Madaminova testified, incidents that
18 required her to seek medical treatment multiple times.

19 Thus, because the IJ failed to explain the standard he
20 applied in evaluating whether Madaminova demonstrated past
21 persecution, because he did not indicate that he evaluated
22 the incidents she described cumulatively, and because he

1 appears to have ignored some of those incidents, we find
2 that his past persecution determination was erroneous. See
3 *Beskovic*, 467 F.3d at 227.

4 Because a petitioner who has been found to have
5 demonstrated past persecution is presumed to have a well-
6 founded fear of persecution, 8 C.F.R. § 1208.13(b)(1), the
7 Court cannot predict with confidence that the agency would
8 reach the same conclusion absent its error. See *Xiao Ji*
9 *Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 338 (2d Cir.
10 2006).

11 For the foregoing reasons, the petition for review is
12 GRANTED, and the case REMANDED for further proceedings
13 consistent with this Order. As we have completed our
14 review, any stay of removal that the Court previously
15 granted in this petition is VACATED, and any pending motion
16 for a stay of removal in this petition is DISMISSED as moot.
17 Any pending request for oral argument in this petition is
18 DENIED in accordance with Federal Rule of Appellate
19 Procedure 34(a)(2), and Second Circuit Local Rule 34(b).

20 FOR THE COURT:
21 Catherine O'Hagan Wolfe, Clerk

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23 By: _____
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