

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-4965

Summary Calendar

MITKO GORGIEV,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
A71 521 146

March 9, 1993

Before KING, DAVIS, and WIENER, Circuit Judges.

PER CURIAM:*

Mitko Gorgiev appeals the Order of the Board of Immigration Appeals ("Board") affirming the immigration judge's decision denying Gorgiev asylum or withholding of deportation, and ordering his deportation. Finding the Board's decision to be supported by substantial evidence, we affirm.

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

I.

Mitko Gorgiev is a 27-year-old native and citizen of Bulgaria who entered the United States without inspection on or about February 2, 1992, as a stowaway aboard a merchant vessel. He is single and has no children.¹

Gorgiev attended public school in Bulgaria, and attended a veterinary institute upon his graduation in 1978. In 1979, during his first year at the institute, he was arrested for importing Western information from Germany to Bulgaria, and was suspended from school for one month. The following year, he transferred to another school to continue his veterinary studies. He graduated with a certificate in the field, and went to work for the government as a veterinarian technician for farmers.² Two years before his arrival in the United States, Gorgiev testified that he was fired from his government job because he

¹ Gorgiev's mother and sister continue to reside in Bulgaria. Gorgiev's father died of a heart attack in January 1990, five days after his release by the security forces who had held him in detention for a month and interrogated him.

At his hearing before the immigration judge, Gorgiev gave a somewhat rambling family history. According to his testimony, his family was wealthy and farmed large plots of land before the Communists took over Bulgaria. His grandfather opposed the Communists and apparently was, along with other members of his family, involved in activities of armed resistance. His grandfather was taken into custody and placed under a death sentence, but was subsequently released. Some of his uncles were also arrested. Gorgiev fails, however, to tie the events that allegedly occurred to his grandfather and a few other family members to his claim of persecution in Bulgaria.

² At the hearing before the immigration judge, Gorgiev testified that he either had to work for the government or go to jail.

helped organize a strike at his workplace. He did not work during the intervening two-year period following his dismissal.

Gorgiev testified that he became affiliated with the Union of Democratic Forces ("UDF") in 1990. His job was to protect UDF leaders during meetings and demonstrations. In May or June of 1990, he participated in a demonstration, forming part of a phalanx around UDF leaders. He and some other members were pulled out of the phalanx by the militia and arrested for "hooliganism." He was sent to a brickmaking factory for 45 days.

In early September of 1991, Gorgiev testified that he was arrested a third time because he was a member of the UDF and he had witnessed the arson of the headquarters of the Bulgarian Socialist Party ("BSP"). Initially, Gorgiev refused to answer the immigration judge's specific questions about the arson, except to say that he did not take a direct part in it, because he was afraid his testimony might get back to Bulgaria. Later, however, he admitted that: he was present when the fire was set; he knows who set the fire; someone saw him at the site of the fire and reported him to the police; the police told him he was connected to people who set the fire; and one of the reasons the Bulgarian authorities seek him is to find out who set the fire.

After his arrest,³ Gorgiev was held for a short period of time by the authorities. His family interceded on his behalf and had him removed to a hospital because he needed medical attention. He escaped from the hospital, went into hiding for four months, and was able to use a friend's passport to travel to Italy. While in Italy, he arranged passage to the United States as a stowaway.

Gorgiev was apprehended upon his arrival in the United States for entering the country without inspection. On February 4, 1992, the Immigration and Naturalization Service ("INS") issued an Order to Show Cause ("OSC") charging that Gorgiev was deportable pursuant to INA § 241(a)(1)(B), 8 U.S.C. § 1251(a)(1)(B).

A hearing was held before an immigration judge on March 25, 1992. The OSC was admitted into evidence, and Gorgiev conceded the OSC's factual allegations and his deportability. Gorgiev requested an opportunity to apply for asylum, and the immigration judge continued the hearing. On June 10, 1992, the asylum hearing commenced.⁴ An interpreter was used. At the close of

³ Gorgiev testified that when the police arrested him they told him that he would not leave alive. He testified that he believes that the people who arrested him are the same people who "destroyed" his father, that many people are "disappearing" in Bulgaria, and that there are people who want to destroy him. Gorgiev also testified, however, that he does not know who these people are or why they want to do this to him.

⁴ Gorgiev was represented by counsel at the first hearing. Prior to the second hearing, the attorney who represented Gorgiev at the first hearing had withdrawn at Gorgiev's request. Gorgiev appeared at this hearing unrepresented. After a long colloquy, the immigration judge

the hearing, the judge gave an oral decision, which was simultaneously translated, denying both asylum and withholding of deportation because he found that Gorgiev was not in danger of persecution in Bulgaria for any of the reasons described in §§ 208 or 243(h) of the INA, 8 U.S.C. §§ 1158 & 1253(h).

The immigration judge found that Gorgiev was not a credible witness, and that he appeared to fear prosecution due to his knowledge of the arson incident rather than persecution within the meaning of the INA. The judge additionally found that Gorgiev failed to relate the alleged past persecution of family members to his own fear of persecution. He also noted that Gorgiev's education and history of government employment refuted Gorgiev's claims of government persecution. The immigration judge pointed out that the primary group with which Gorgiev claimed affiliation, the UDF, was a major political party in Bulgaria; the chairman of the UDF was recently elected President of Bulgaria; and the UDF won more than one-third of the total parliamentary seats in the 1990 elections.

On June 16, 1992, Gorgiev appealed to the Board. The office of the immigration judge sent copies of the immigration judge's opinion and the hearing transcript to the parties on July 28, 1992. Gorgiev failed to submit a brief. On September 10, 1992, the Board issued an Order affirming the immigration judge's

determined that Gorgiev had ample opportunity to obtain counsel, no other attorneys were willing to represent him, and Gorgiev was willing to proceed representing himself.

decision.⁵ Gorgiev now appeals the Board's Order to this court, arguing that he was wrongly denied asylum or withholding of deportation.

II.

On appeal, this court is authorized to review only the Order of the Board. Adebisi v. Immigration & Naturalization Serv., 952 F.2d 910, 912 (5th Cir. 1992); Castillo-Rodriguez v. Immigration & Naturalization Serv., 929 F.2d 181, 183 (5th Cir. 1991). We review the Board's factual findings to determine if they are supported by substantial evidence. INA § 106a(a)(4), 8 U.S.C. § 1105a(a)(4); Zamora-Morel v. Immigration & Naturalization Serv.,

⁵ The following language appeared in the Board's Order:

Upon review of the record, we agree with the immigration judge's determination The respondent's testimony centered around fear of the government due to his knowledge about the arson incident. He was evasive in his testimony, and would not give any specifics about the events surrounding the fire. Any interrogation by the government would be related to its right to investigate criminal behavior There is no evidence in the record that the government would be interrogating the respondent as a pretext for persecution [R]espondent admits that he has knowledge of a criminal incident which he is unwilling to share with the government. . . . His 1990 arrest for participation in a demonstration . . . appears related to the government's prosecutorial power, as no evidence has been presented otherwise . . . [and] respondent has not proven that his 1991 arrest was on account of one of the enumerated grounds for establishing a well-founded fear of persecution. We note that the respondent has recited a history of family problems with government, but has not provided any significant details . . . or [explained] how th[is] would establish . . . a well-founded fear of persecution. . . . A review of the record reveals that the respondent's testimony as a whole is fragmented, lacking in detail and focused on different areas than his asylum application.

905 F.2d 833, 838 (5th Cir. 1990); see Immigration & Naturalization Serv. v. Elias-Zacarias, ___ U.S. ___, ___, 112 S. Ct. 812, 815 (1992). This standard requires only that the Board's conclusion be based upon the evidence presented and be substantially reasonable. Rojas v. Immigration & Naturalization Serv., 937 F.2d 186, 189 (5th Cir. 1991). We cannot weigh evidence that has been raised for the first time on appeal and has not been brought previously before the Board during the administrative process. Rivera-Cruz v. Immigration & Naturalization Serv., 948 F.2d 962, 967 (5th Cir. 1991); Yahkpuu v. Immigration & Naturalization Serv., 770 F.2d 1317, 1320 (5th Cir. 1985).

The standard for determining whether asylum should be granted is whether a reasonable person in the applicant's circumstances would fear persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Rivera-Cruz, 948 F.2d at 966; see 8 C.F.R. § 208.13(1), (2); see also INA §§ 101(a)(42)(A) & 208, 8 U.S.C. §§ 1101(a)(42)(A) & 1158. It is sufficient under this standard to show that persecution is a reasonable possibility, or that the applicant has a "well-founded" fear of persecution. Immigration & Naturalization Serv. v. Cardoza-Fonseca, 480 U.S. 421, 428 (1987); Rivera-Cruz, 948 F.2d at 966. An application for asylum is also treated as a request for withholding of deportation. 8 C.F.R. § 208.3(b); Adebisi, 952 F.2d at 913; Castillo-Rodriguez, 929 F.2d at 185. In order to qualify for withholding of

deportation, a "clear probability" of persecution must be shown. Immigration & Naturalization Serv. v. Stevic, 467 U.S. 407, 413 (1984); Rivera-Cruz, 948 F.2d at 966. According to these standards, it is easier to qualify for asylum than for withholding of deportation. Cardoza-Fonseca, 480 U.S. at 443, Rivera-Cruz, 948 F.2d at 966.⁶

As this court has previously observed, "[t]he law regulating persecution claims, although humane in concept, is not generous." Coriolan v. Immigration & Naturalization Serv., 559 F.2d 993, 996 (5th Cir. 1977). Substantial evidence is a highly deferential standard. We cannot reverse merely because we disagree with the Board's apprehension of the facts. Silwany-Rodriguez v. Immigration & Naturalization Serv., 975 F.2d 1157, 1160 (5th Cir. 1992); Rojas, 937 F.2d at 189. "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." American Textile Mfrs. Inst., Inc. v. Donovan, 452 U.S. 490, 523 (1981) (quoting Consolo v. Federal Maritime Comm'n, 383 U.S. 607, 620 (1966)). In order to obtain a reversal of the Board's decision, the alien must show that the evidence he presented was so compelling that no reasonable factfinder could fail to arrive at his conclusion. Silwany-Rodriguez, 975 F.2d at 1160; see Elias-Zacarias, ___ U.S. at ___,

⁶ We analyze such a claims under the lower burden of proof required for asylum. If the applicant fails to satisfy this lower standard, we need not decide whether he satisfies the more demanding standard for withholding of deportation. Rivera-Cruz, 948 F.2d at 969.

112 S. Ct. at 815-17. It is not enough that the evidence merely supports the alien's conclusion -- it must compel it. Elias-Zacarias, ___ U.S. at ___, 112 S. Ct. at 815, n.1; Silwany-Rodriguez, 975 F.2d at 1160. Based on the record before us, we cannot say that the Board's decision finding that Gorgiev failed to establish a well-founded fear of persecution⁷ is not supported by substantial evidence.

The Board found that Gorgiev's primary fear centered around the arson incident at BSP headquarters, an incident about which he possessed vital information which he refused to disclose. The record before us supports this conclusion. Gorgiev provided some disjointed family history information, but failed to explain how this related to him, personally, and his fear of persecution. None of the information before us compels the conclusion that the Bulgarian government would persecute Gorgiev upon his return home for one of the reasons enumerated in INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A).⁸

Gorgiev's unwillingness to testify openly before the immigration judge, coupled with his failure to submit a brief to the Board, seriously undermined his case by building a factually

⁷ Refer to note 5, supra.

⁸ While the record before us undeniably contains evidence (Gorgiev's testimony) that Gorgiev was involved in political organizations and that political opinion may have been a factor in his treatment at the hands of the government and the police, the record also contains evidence that the police targeted Gorgiev as a result of the investigation of the fire. Refer to note 5, supra. This, however, does not allow us to reverse the Board's decision. See American Textile Mfrs., 490 U.S. at 523, Consolo, 383 U.S. at 618-20.

fragmented and inadequate administrative record for purposes of appeal. In his brief to this court, Gorgiev retells his story, adding items of new information germane to his asylum claim that are not contained in the record. We are not permitted to consider this information on appeal. Rivera-Cruz, 948 F.2d at 967; Yahkpuu, 770 F.2d at 1320.

III.

The Order of the Board is AFFIRMED.