

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-4025
Summary Calendar

SARI MOHAMMAD MEFLEH KHATALIN,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A28 328 059)

(December 10, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

In this immigration case, Sari Mohammad Mefleh Khatalin petitions for review of the Board of Immigration Appeals' (BIA) denial of asylum, which had been granted by the Immigration Judge (IJ). Because we find substantial evidence in the record to support the BIA's conclusions, we dismiss the petition for review.

*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 Pursuant to that Rule, the Court has determined that this opinion should not be published.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. Facts and Procedural History

Khatalin, a native of Jordan, entered the United States as a nonimmigrant student on October 1, 1982. He ultimately abridged his nonimmigrant status by working without permission at a local McDonald's restaurant from September 1983 to December 1987. In the interim, Khatalin had married a United States citizen and in April 1986 filed a petition with the Immigration and Naturalization Service (INS) to adjust his status. In February 1987, however, Khatalin's wife withdrew his petition because the couple had separated. The INS soon thereafter commenced deportation proceedings against Khatalin, charging him with failure to maintain his nonimmigrant status.

At the first IJ hearing in March 1987, Khatalin conceded he had abridged his status on the grounds of unauthorized employment, and the IJ found him deportable. Khatalin then requested asylum. At the second IJ hearing in August 1987, Khatalin testified that he had converted from Moslem to Christian earlier that year. He withheld news of his conversion from his family (including his wife) and friends for fear that he would be killed. Despite his purported efforts to the contrary, Khatalin stated that his family learned of his conversion from a cousin who had visited his family. The cousin, according to Khatalin, returned to the United States with an undated letter written in Arabic from his father, who allegedly vowed to kill his son because of his conversion. Khatalin further claimed that other family members and friends

would aid the father in killing him, and that the Jordanian government would refuse to protect him from his familial assassins.

On cross-examination, the petitioner acknowledged that Jordan's constitution provides for freedom of worship and that he was not aware of any Christians who had been persecuted for practicing their religion. The INS also submitted State Department reports that concluded, in Jordan, "[t]here appears to be little discrimination against religious minorities, who are represented at all levels in the Government, military, and the business community. Laws making harassment of religious minorities a crime are enforced." Finally, the INS introduced evidence that Khatalin's father -- the same man who allegedly vowed to kill his son for his apostasy -- agreed in a June 1985 letter to Khatalin to pay for his tuition at Jacksonville Baptist College and Bishop College, institutions which are administered by the Baptist Church.

Following his own testimony, Khatalin proffered Imad Shehadeh as an expert witness concerning Islam and Jordanian law. Shehadeh lived in Jordan five years while working as a Christian missionary. Though he has no formal education in either Islamic law or Jordanian civil law, Shehadeh claimed that the Jordanian government would be unable, and perhaps even unwilling, to protect Khatalin if he was deported to his homeland. On cross, Shehadeh, like Khatalin, acknowledged that Jordanian law allows Moslems to convert. He further acknowledged that he had never witnessed either an apostate being persecuted for his conversion or the government refusing to aid one who had converted.

The IJ denied Khatalin's request for withholding of deportation but granted his request for asylum because Khatalin reasonably feared persecution not from government authorities but from religious authorities. The BIA sustained the appeal of the IJ's grant of asylum, concluding that Khatalin had not demonstrated a well-founded fear of persecution. The BIA stated it was "troubled by certain inconsistencies and other questionable evidence" in the record, such as the purported letter from Khatalin's father vowing to kill his son and Khatalin's and Shehadeh's assertions that Khatalin would be persecuted. Accordingly, the BIA set aside the grant of asylum and ordered Khatalin deported. Khatalin now petitions for review of the BIA's order.

II. Discussion

A. Standard of Review

We are permitted to review only the BIA's conclusions. Adebisi v. INS, 952 F.2d 910, 912 (5th Cir. 1992). But to the extent that the IJ's findings affect the Board's order, then we may also review the IJ's findings. Id. Either way, we review the findings to determine whether they are supported by substantial evidence. 8 U.S.C. § 1105a(a)(4); Rojas v. INS, 937 F.2d 186, 189 (5th Cir. 1991). To overturn a BIA finding under the substantial evidence standard, the alien "must show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." INS v. Elias Zacarias, ___ U.S. ___, ___, 112 S. Ct. 812, 817 (1992); Rivas-

Martinez v. INS, 997 F.2d 1143, 1146 (5th Cir. 1993). This standard is not an easy one to satisfy. The Supreme Court in Elias Zacarias made clear that, to reverse the BIA, the alien cannot simply show that the evidence supports his conclusion; rather, he must show that the evidence compels it. Elias Zacarias, ___ U.S. at ___ n.1, 112 S. Ct. at 815 n.1.

B. Khatalin's Request for Asylum

The law governing grants of asylum is well-settled. The Attorney General, in her discretion, may grant asylum to a "refugee," which is defined as an alien who is unwilling to return to, or avail himself the protection of, his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). We construe a "well-founded fear of persecution" to be one in which a reasonable person in the alien's circumstances would fear persecution. Rojas, 937 F.2d at 189.¹

¹ A finding that the alien is, in fact, a "refugee" does not automatically entitle the alien to asylum. Instead, once the alien has met the statutory criteria under § 1101(a)(42)(A), he must also persuade the Attorney General to grant asylum as a matter of discretion. 8 U.S.C. § 1158(a); INS v. Cardoza Fonseca, 480 U.S. 421, 428 n.5, 107 S. Ct. 1207, 1211 n.5 (1987). Because it is purely discretionary, the Attorney General's decision whether to grant asylum must be upheld absent a showing that the decision was arbitrary, capricious, or an abuse of discretion. Zamora-Morel v. INS, 905 F.2d 833, 837-38 (5th Cir. 1990).

Congress has established a second form of relief for aliens. Once an alien is found deportable, he may apply for withholding of deportation rather than asylum. 8 U.S.C. § 1253(h). To qualify, the alien must show there is a "clear probability" that he will be persecuted. Rivera-Cruz v. INS, 948 F.2d 962, 966 (5th Cir. 1991). From the alien's point of view, withholding of deportation is a

We do not find that the evidence compels a grant of asylum in this case. Both Khatalin and Shehadeh testified that, in their respective opinions, Khatalin would be persecuted for his apostasy if he returned to Jordan and that the government would refuse to intervene. However, each failed to provide instances in which a Muslim who had converted to Christianity was persecuted for his apostasy.² In addition, they were unaware of instances in which the Jordanian government had refused to protect religious converts. Shehadeh, in fact, contradicted himself at one point when he

less attractive form of relief. The "clear probability" standard for withholding of deportation is more difficult to satisfy than the "well-founded fear of persecution" standard for asylum. Cardoza Fonseca, 480 U.S. at 443, 107 S. Ct. at 1219; Rivera-Cruz, 948 F.2d at 966. The only advantage it provides to the alien is that, once the alien has established a clear probability of persecution, he is entitled, as a matter of law, to withholding of deportation. 8 U.S.C. § 1253(h). By contrast, an alien who has established a well-founded fear of persecution must also demonstrate he is entitled to relief as a matter of discretion. 8 U.S.C. § 1158(a). Otherwise, asylum is a more attractive form of relief. Asylum, if granted, makes the alien eligible for permanent residence status. 8 U.S.C. § 1159(a)(1),(2). Withholding of deportation is only country-specific; the alien may still be eligible for deportation to another country. 8 U.S.C. § 1253(a); Cardoza Fonseca, 480 U.S. at 428 n.6, 107 S. Ct. at 1211 n.6.

² Shehadeh testified that he was aware of a Christian who had proselytized among Muslims and subsequently was placed in a mental institution. This example is irrelevant to Khatalin's situation. Jordanian law forbids proselytizing among Muslims but does not forbid the practice of Christianity or other religions. Khatalin has expressed no interest in returning to Jordan to proselytize among Muslims. Quite the opposite, he wishes to remain in the United States to practice Christianity and fears that deportation to Jordan will lead to persecution because of his conversion.

testified that the Jordanian government would probably "rise-up very quickly" to protect a practicing Christian.³

We also note that this court previously has placed much trust in State Department reports regarding the social, political, and economic climate of other countries. See Rojas, 937 F.2d at 190 n.1 (State Department "is the most appropriate and perhaps the best resource the Board could look to in order to obtain information on political situations in foreign nations"). Its conclusion that "[t]here appears to be little discrimination against religious minorities" in Jordan is quite substantial evidence to us that Khatalin's fear of persecution is not well-founded. As for the purported letter from Khatalin's father that threatened the son for his apostasy, the BIA doubted its authenticity,⁴ which it was entitled to do. See 8 C.F.R. § 3.1(d) (the BIA "shall exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case"); Cardoza Fonseca, 480 U.S. at 444, 107 S. Ct at 1220

³ Khatalin argues that the BIA improperly "reversed" the IJ's qualification of Shehadeh as an expert witness. Khatalin misunderstands the BIA's finding. The BIA merely concluded that Shehadeh's testimony did not effectively rebut its own conclusion that Khatalin's fear of persecution was not well-founded. Indeed, we echo the BIA's sentiments. Neither Khatalin nor Shehadeh reconciled their assertions that practicing Christians are persecuted in Jordan with the fact that Shehadeh himself had spent five years in Jordan as a Christian missionary.

⁴ The BIA questioned Khatalin's testimony because, on the one hand, he insisted he was very circumspect about informing others of his conversion, yet appears to have been quite flippant about the matter when he informed his cousin, who in turn informed Khatalin's father.

("Congress has assigned the Attorney General and his delegates the task of making these hard individualized decisions").

Because we do not find that substantial evidence exists to compel us to conclude that the BIA unreasonably found Khatalin's fear was not well-founded, the petition for review is DISMISSED.