UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 93-4314
Summary Calendar

JEOVANI VALLE ALVARENGA,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A29 990 825)

(November 4, 1993)

Before SMITH, WIENER, and EMILIO M. GARZA, Circuit Judges

PER CURIAM*:

Petitioner Jeovani Valle Alvarenga challenges the Board of Immigration Appeals' ("BIA") rejection of his claim for asylum and

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

withholding of deportation pursuant to §§208(a)[1] and 243(h),[2] respectively, of the Immigration and Nationality Act ("INA"). The Immigration Judge ("IJ") found that Alvarenga failed to prove that any actions have been or will be taken against him because of his membership in a social group or because of his political opinions. The BIA concurred in the IJ's decision and affirmed. As we conclude that the BIA's decision is supported by substantial evidence, we affirm.

I

FACTS AND PROCEEDINGS

The facts underlying this case are essentially undisputed.[3]

When Alvarenga was sixteen, he was riding on a public bus with several other young men. The military boarded that bus and forcibly conscripted Alvarenga and the other youths into military service. While at the military training camp, Alvarenga was subjected to beatings for failing to perform exercises. He was also placed for three days in a punishment room--a windowless room where water dripped on him continuously. During his period of incarceration in that room he was only fed bread and water.

By the eighth day of his military service, Alvarenga managed to escape with a group of other recruits. Instead of returning to his father's home where he had been living, Alvarenga hid at his

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[1]8 U.S.C. §1158(a).

[2]8 U.S.C. §1253(h).

[3]Most of the facts relating to this appeal come from the testimony of Alvarenga, which the IJ credited as truthful.

mother's house. After spending a few days there, he left Honduras. Alvarenga entered the United States several months later.

In April 1992, Alvarenga was served with an Order to Show Cause why he should not be deported. In the initial proceedings, Alvarenga did not contest his deportability, as he admitted that he was not a citizen of the United States and had entered without inspection in violation of §241(a)(1)(B) of the INA.[4] Alvarenga instead made an application for asylum.

At the asylum hearing Alvarenga claimed that he was persecuted because of his social group and political opinion. According to Alvarenga, the military illegally recruited[5] and punished him; this constituted persecution and this persecution was applied to an identifiable social group, namely, minors who might be subjected to recruitment. Alvarenga further contended that a political opinion would be attributed to him because of his desertion, and that he will be subject to persecution for that opinion if he returns to Honduras.

The IJ rejected all of Alvarenga's claims, concluding that he failed to adduce sufficient evidence that any of the described actions were taken or would be taken against him "on account of" his political opinion or membership in a social group. In a brief per curiam opinion, the BIA affirmed the IJ's decision. Alvarenga timely petitions for review.

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[4]8 U.S.C. §1251(a)(1)(B).

[5]Evidence adduced at the asylum hearing disclosed that the Honduran Constitution prohibits recruitment of anyone under eighteen.

II

STANDARD OF REVIEW

In immigration cases, we are authorized to review only the decision of the BIA, not that of the IJ.[6] We review the BIA's factual conclusions that an alien is ineligible for withholding of deportation only to determine whether those conclusions are supported by substantial evidence.[7] We apply the same substantial evidence standard to the BIA's finding that an alien is not entitled to asylum.[8] The substantial evidence standard requires only that the BIA's conclusions be based on the evidence presented and be substantially reasonable.[9]

III

DISCUSSION

Both §208(a) and §243(h) require that an asylum applicant show that he was persecuted "on account of race, religion, nationality, membership in a particular social group, or political opinion."[10] Thus, to establish a valid claim to asylum under either §208(a) or §243(h) an applicant must show at a minimum that 1) he was persecuted, and 2) this persecution occurred on account of a

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[6] Castillo-Rodriguez v. INS, 929 F.2d 181, 183 (5th Cir. 1991).

[7] Zamora-Morel v. INS, 905 F.2d 833, 838 (5th Cir. 1990).

[8] Id.; Castillo-Rodriguez, 929 F.2d at 184.

[9] Rojas v. INS, 937 F.2d 186, 189 (5th Cir. 1991).

[10] 8 U.S.C. §1158(a) (incorporating definition of "refugee" contained in 8 U.S.C. §1101(41)(A)); 8 U.S.C. §1253(h).

statutorily enumerated characteristic.[11]

Alvarenga offers a plethora of arguments to reverse the BIA's order. The main thrust of his arguments, though, is that illegal conscription can constitute persecution within the meaning of the INA, and that Honduran males below the age for legal conscription constitute a particular social group under the INA. We decline to address these contentions, however, as we conclude that another issue controls the resolution of this case: Whether substantial evidence supports the BIA's decision that Alvarenga was not persecuted on account of his membership in a social group or his political opinion.[12]

A. The BIA's Order

Before we address the IJ's findings relating to the "on account of" element, we pause to consider Alvarenga's challenge to the sufficiency of the BIA's Order. According to Alvarenga, the BIA's Order fails to accord him sufficient process by neglecting adequately to consider, analyze, and explain its resolution of Alvarenga's various claims. We find Alvarenga's contention

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[11]See, INS v. Elias-Zacharias, 117 L.Ed. 2d 38, 45 (1992) (noting that asylum applicant must show that he was subject to persecution because of statutory characteristic); Rivas-Martinez v. INS, 997 F.2d 1143, 1148 (5th Cir. 1993) (same).

[12]We thus express no opinion on the BIA's statement in its order that "a violation of a country's conscription laws is not persecution" other than to note that it appears overbroad. Precedent supports the proposition that conscription can constitute persecution in certain limited contexts. See Barraza Rivera v. INS, 913 F.2d 1443, 1451-52 (9th Cir. 1990) (conscription to perform inhuman acts). A fortiori illegal conscription could, we suspect, in certain limited contexts likewise constitute persecution.

misguided.

Although its Order is rather terse, the BIA need not write an exegesis on every contention presented to it.[13] In the instant case the Order proclaims that the BIA has reviewed the record and concurs in the decision of the IJ. The Order also announces that Alvarenga received a fair hearing as the IJ fully explained the reasons for her decision--explanations that addressed each of Alvarenga's various claims. As we "ought not jump to the conclusion that the [BIA] is endeavoring to mislead us,"[14] we must conclude that the BIA considered--and rejected--Alvarenga's various claims for the reasons espoused by the IJ.[15]

B. On Account of Social Group

Alvarenga asserts that he has been persecuted because of his membership in a particular social group--males under the age of eighteen, the age of legal conscription in Honduras[16]--and that he has a well-founded fear of future persecution based on his membership in that social group.[17] On appeal, he merely asserts

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[13]E.g., Osuchukwu v. INS, 744 F.2d 1136, 1142 (5th Cir. 1984).

[14]Rebollo-Jovel v. INS, 794 F.2d 441, 446 (9th Cir. 1986).

[15]Cf., Ramirez-Gonzales v. INS, 695 F.2d 1208, 1213 (9th Cir. 1983) (holding that IJ's findings were subsumed in BIA affirmance).

[16]We are assuming, arguendo, that this classification can constitute a "particular social group" within the meaning of the INA. As noted earlier, we express no opinion as to the proper resolution of this issue.

[17]Section 208(a) of the INA provides that the Attorney General has discretion to grant asylum to a refugee, which is defined as someone who has suffered persecution or has a well-founded fear of future persecution. 8 U.S.C. §1101(41(A).

that his past persecution was on account of membership in that social group. In contrast, evidence adduced at the asylum hearing supports the BIA's determination that Alvarenga was not punished "on account of" his membership in that social group.

At the asylum hearing, the IJ first found it unlikely that the military was aware of Alvarenga's true age (and thus membership in the social group) because Alvarenga failed to provide the military with any objective corroboration of his age. The IJ reasoned that the military would be unlikely to credit uncorroborated assertions of age because the military's haphazard conscription scheme--which has no central store of data and which often depends on sweeps of areas where young males congregate to corral recruits--provides a ready incentive to lie about age to avoid induction.

The IJ next noted that Alvarenga's own testimony disclosed that the military's recruitment and admittedly harsh punishment did not vary on account of age. According to Alvarenga, the military conscripted all young males--including those both over and under 18 years of age--from the bus he was riding. And, as Alvarenga repeatedly admitted, the harsh punishment by the military was dealt out according to whether the recruit properly performed his exercises--not according to age. The IJ found from the foregoing that Alvarenga failed to prove that he was treated more harshly, or indeed differently, because of his age--a determination that we conclude is amply supported by substantial evidence.

As to his claim of future persecution, Alvarenga attempts to weave an "on account of" motive out of whole cloth. Alvarenga

contends that he will be subject to harsh punishment on return because of his desertion; that any punishment he receives for his desertion would be persecution because such punishment is illegal under Honduran law; and that such punishment is illegal under Honduran law because he was a member of a social group exempt from conscription. Alvarenga thus concludes that this persecution will be "on account of" his membership in the social group. This conclusion is erroneous as it equates illegality with motive. The fact that his conscription was illegal--and that any punishment based on that conscription may thus be illegal--does not explain why the military would punish him more severely on return because of his age at induction.[18]

C. On Account of Imputed Political Opinion

Alvarenga asserts as an alternative ground for asylum that he will be subject to persecution if returned on account of an imputed political opinion. Alvarenga simply insists on appeal that this political opinion[19] will be imputed to him on account of his desertion, and then reasons that this must be so because he is going to be punished if returned to Honduras. In sum, the fact of punishment is once again used to infer the reason for it.

In contrast to Alvarenga's circular argument, the IJ observed that the evidence adduced at the asylum hearing furnished many

[18]The record reveals that Alvarenga is now eighteen, so he cannot now claim that his conscription would be illegal owing to his membership in the relevant social group.

[19]Alvarenga never discloses what this imputed political opinion might be other than to state that he would be viewed as a "political opponent."

nonpolitical explanations for Alvarenga's desertion, which ranged from fear of the training officers and physical inability to perform the required exercises to a simple desire to follow the pack of fellow trainees as they escaped. The IJ concluded from the foregoing that there simply was not sufficient evidence to support the assertion that Alvarenga's desertion, in itself, would brand him with a particular political opinion in the eyes of the Honduran military. And we conclude that this finding satisfies the substantial evidence test, as it is substantially reasonable and based on the evidence presented.[20]

IV

CONCLUSION

Alvarenga was subjected to harsh and sometimes cruel military discipline resulting from his concededly illegal conscription. Even if we were to assume that such discipline constitutes persecution here, Alvarenga's asylum application must fail because it neglects to satisfy the statutory requirement that such persecution be done "on account of" a statutorily enumerated characteristic. Alvarenga failed to offer any plausible evidence to infer an "on account of" motive on the part of the military; in

[20] Cf., Campos-Guardado v. INS, 809 F.2d 285, 287-90 (5th Cir.), cert. denied, 484 U.S. 826 (1987) (affirming BIA decision that refused to find a political opinion imputed to the applicant, even though the applicant was raped while watching an uncle and a cousin tortured and murdered for their political beliefs); Young v. United States Dept. of Justice, INS, 759 F.2d 450, 452-56 (5th Cir.), cert. denied, 474 U.S. 996 (1985) (same in regards to an applicant who was subjected to an attempted kidnapping and summary termination from government employment shortly after his son was arrested for political activity).

contrast the evidence and findings contained in the administrative record provide substantial evidence to support the BIA's decision rejecting Alvarenga's claims. Consequently, the decision of the BIA is

AFFIRMED