

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5230
Summary Calendar

JOSE LEOCADI ROCHA,
DAYSI DEL CARMEN ROSALES-JARQUIN,
HEDYI MEGALI ROCHA-ROSALES,
GEOVANN JOSE ROCHA-ROSALES,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A28-989-324, A29-572-765, A29-573-125 & A29-573-126)

(April 22, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.*

EDITH H. JONES, Circuit Judge:

Jose Leocadi Rocha and his family contest the decision of the Bureau of Immigration Appeals denying them political asylum or withholding of deportation. Because the decision is supported by substantial evidence and comports with governing legal standards, 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The family's claim for relief is based on that of their father Jose Rocha, who was imprisoned and tortured by the Sandinistas when they were in power in Nicaragua in 1983. Further, his father was killed in 1981 when the Sandinistas took over, and his family business was otherwise disadvantaged by the Sandinista government. Rocha and his family fled to the United States in 1985.

The immigration judge found, and the Board of Immigration Appeals agreed, that although Rocha was mistreated, he was not persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, as is statutorily required for a grant of asylum. 8 U.S.C. § 1158(a), incorporating 8 U.S.C. § 1101(a)(42)(A); Adebisi v. INS, 952 F.2d 910, 912 (5th Cir. 1992). Substantial evidence supports the Board's finding that Rocha's mistreatment, imprisonment and torture were inflicted because he did not fulfill the military requirement expected of all Nicaraguan citizens. This finding was based in part on the testimony of Rocha and his wife. As a result, Rocha did not qualify for consideration of his political asylum application.

With regard to withholding of deportation, Rocha was required to demonstrate that there is a "clear probability of persecution" if he is returned to Nicaragua. 8 U.S.C. § 1253(h); INS v. Stevic, 467 U.S. 407, 413 (1984). In finding no clear probability of persecution for Rocha, the BIA took judicial notice that the Sandinista government had just been replaced by an elected government headed by Violeta Chamorro in early 1990, during the

interval between the immigration judge's decision and the appellate ruling. Taking judicial notice of the change of regimes was permissible under our authority, Rivera-Cruz v. INS, 948 F.2d 962, 966-68 (5th Cir. 1991), rehear'g en banc denied, 954 F.2d 723 (5th Cir. 1992), in which this court also observed that an alien who disagrees with such judicially noticed facts may seek a reopening of his deportation proceeding. 8 CFR § 3.2. Rocha did not seek reopening here. Moreover, he does not contest that upon its ascension to power, the Chamorro government abolished compulsory military service and did away with the apparent reason for Rocha's persecution. The Board's conclusion that Rocha had not demonstrated a clear probability of persecution in the future is supported by substantial evidence.

Finally, the treatment suffered by Rocha, although callous and brutal, does not match that suffered by the petitioner in Matter of Chen, Interim Decision 3104 (BIA 1989) and compels no inference that Rocha will be persecuted in the future.

For these reasons, the decision of the BIA is **AFFIRMED**, and the petition for review **DISMISSED**.