

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-5243

(Summary Calendar)

CRISTOBAL GIOVANNI REYES-RODRIGUEZ,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A29 955 855)

(March 9, 1994)

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

EMILIO M. GARZA, Circuit Judge:*

Cristobal Giovanni Reyes-Rodriguez, a native and citizen of Nicaragua, appeals a final order of the Board of Immigration Appeals ("BIA"), denying his request for asylum and withholding of deportation. Finding substantial evidence to support the BIA's decision, we affirm.

In February 1989, Reyes-Rodriguez illegally entered the United States without inspection. Later that year, the Immigration and

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Naturalization Service ("INS") issued an Order to Show Cause charging Reyes-Rodriguez to be deportable. At his deportation hearing, Reyes-Rodriguez conceded deportability, but requested asylum and withholding of deportation. He testified that while in Nicaragua he had refused to participate in pro-Sandanista political demonstrations and organizations. He also testified that his father))a radio announcer for a Sandanista-controlled station))was killed because the Sandanistas perceived him to be a security threat. The immigration judge denied Reyes-Rodriguez's request for asylum and withholding of deportation. The BIA dismissed the appeal.

To qualify for asylum, an alien must show that persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, "is a reasonable probability, or that the applicant has a 'well-founded' fear of persecution." *Rivera-Cruz v. INS*, 948 F.2d 962, 966 (5th Cir. 1991). "[A] grant of asylum may be proper under certain circumstances even if there is no reasonable likelihood of present persecution. Discretionary asylum may be granted if the past persecution was so severe that repatriation of the applicant would be inhumane." *Id.* at 969 (citing *Matter of Chen*, Int. Dec. 3104 (BIA 1989)). To qualify for withholding of deportation, an alien must show a "clear probability" of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. *Id.* at 966.

The BIA held that Reyes-Rodriguez was not entitled to asylum on any of the foregoing bases. In concluding that Reyes-Rodriguez did not have a well-founded fear of persecution, the BIA took administrative notice of the change in government in Nicaragua. The BIA further determined that, assuming Reyes-Rodriguez has suffered persecution in the past in Nicaragua, that persecution was not so severe that it would be inhumane to return him to Nicaragua.

"We review the Board's factual findings [such as well-founded fear and clear probability of persecution] to determine if they are supported by substantial evidence." *Rojas v. INS*, 937 F.2d 186, 189 (5th Cir. 1991). "As long as the [BIA's] conclusion is substantially reasonable, we cannot reverse the finding simply because we disagree with the [BIA's] evaluation of the facts." *Castillo-Rodriguez v. INS*, 929 F.2d 181, 184 (5th Cir. 1991). An applicant seeking reversal of a BIA asylum determination "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*, 112 S. Ct. 812, 817 (1992). The Board's determination that an alien is not entitled to discretionary asylum on the basis of severe past persecution is reviewed for abuse of discretion. See *Rojas*, 937 F.2d at 190.

The single issue before us is whether the BIA's denial of asylum))based on its finding that Reyes-Rodriguez did not establish a well-founded fear of persecution))was based on substantial

evidence.¹ In arriving at its decision, the BIA took administrative notice that the Sandanistas no longer control the Nicaraguan government. See *Rhoa-Zamora v. INS*, 971 F.2d 26, 36 (7th Cir. 1992) (holding that substantial evidence supported the denial of Nicaraguan's asylum application, where evidence showed that Sandanistas no longer controlled Nicaraguan government); *Gutierrez-Rogue v. INS*, 954 F.2d 769, 772 (D.C. Cir. 1992) (same). The BIA also noted that none of the evidence submitted by Reyes-Rodriguez demonstrated that the Sandanistas are seeking to persecute others similarly situated))i.e., those Nicaraguans who refused to participate in pro-Sandanista demonstrations or organizations when the Sandanistas were in power. Our independent review of the record does not reveal any evidence so compelling that no reasonable factfinder could fail to find the requisite fear

¹ Because we hold that substantial evidence supported the BIA's denial of asylum, we need not address Reyes-Rodriguez's claim for withholding of deportation. See *Rivera-Cruz*, 948 F.2d at 969 ("[A petitioner's] failure to establish a 'well-founded' fear of persecution necessarily implies that he is unable to satisfy the more demanding standard of 'clear probability' of persecution.").

of persecution on account of any enumerated ground.² We therefore hold that the BIA's conclusion was substantially reasonable.³

Accordingly, the BIA's decision is AFFIRMED.

² Neither the cause nor the motivation behind the death of Reyes-Rodriguez's father has been conclusively established. Moreover, even were we to assume that Reyes-Rodriguez's father was killed by the Sandanistas because they feared he would disclose confidential information, Reyes-Rodriguez would still fail to establish a well-founded fear of persecution based on political opinion, or any other enumerated ground. See *Elias-Zacarias*, 112 S. Ct. at 816 ("[T]he mere existence of a generalized 'political' motive . . . is inadequate to establish . . . the proposition that [the alien] fears persecution *on account of* political opinion . . .").

³ We further hold that the BIA did not abuse its discretion by denying Reyes-Rodriguez's request for asylum based on his claims of severe past persecution. The record reflects that Reyes-Rodriguez has never been arrested, beaten, or tortured. Consequently, we cannot conclude that returning Reyes-Rodriguez would be inhumane. See, e.g., *Rivera-Cruz*, 948 F.2d at 969; *Rojas*, 937 F.2d at 189-90.