

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-5278
Summary Calendar

YEKATARINA ZUYKOVA,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

and

No. 93-5279
Summary Calendar

OLEG ZUYKOV,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petitions for Review of an Order of the
Immigration and Naturalization Service
(A71 981 458 & A71 981 459)

(June 3, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:¹

¹ 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Petitioners sought asylum by separate proceedings and have brought separate Petitions for Review before this Court. We dispose of the separate proceedings with this single opinion.

The immigration judge denied asylum and withholding of deportation.² The Board of Immigration Appeals affirmed. Petitions for Review were brought to this Court. We affirm the decisions of the BIA and deny the Petitions for Review.

The Attorney General is authorized to grant asylum to persons unable to return to their 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). The burden of proof is on the alien. Id.; Campos-Guardado v. INS, 809 F.2d 285, 290 (5th Cir. 1987). Withholding of deportation, on the other hand, prohibits the Attorney General from deporting an alien to a country where the alien's life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1253(h). To succeed, the alien must show a "clear probability" that he will face persecution when deported. INS v. Cardoza-Fonseca, 480 U.S. 421, 425 (1987).

Since the standard for granting asylum is more lenient than that for withholding deportation, anyone ineligible for asylum does not qualify for withholding of deportation. INS v. Cardoza-Fonseca, 480 U.S. at 499; Farzad v. INS, 802 F.2d 123, 125 (5th

² An asylum request is considered also a withholding request. 8 C.F.R. § 208.3(b); INS v. Stevic, 467 U.S. 407, 420 n. 13 (1984).

Cir. 1986).

Petitioners for asylum "must present specific facts . . ." to support their claims. Ganjour v. INS, 796 F.2d 832, 837 (5th Cir. 1986).

With these legal standards in mind, we have reviewed petitioners' evidence and find it totally lacking. Petitioners are a husband and wife who entered the United States as members of the crew of a Russian vessel. He is Russian, she is Ukrainian. They were married in the former Soviet Union in 1991 but lived apart. Both claimed they would be imprisoned if they returned to their home countries and that they have been mistreated in their home countries on account of religion and nationality. Both stated they had not been arrested, detained, interrogated, convicted, sentenced, or imprisoned. They claim that the husband was being threatened with prison in Russia on account of his Christianity and unwillingness to serve in the Russian military. They fear a reprisal from the ship's officers should the officers learn that they were seeking asylum and they contend that the husband had already been threatened by a crew member even though they were keeping their intention secret.

Both petitioners admitted their deportability. The wife testified that she was a Jew who practiced the Roman Catholic religion and for that reason feared return to her country where she was unable to practice her religion because there were no Catholic churches. Both of them feared reprisals from their employer because they broke the company rule against spouses working on the

same ship.

The immigration judge correctly summed up the wife's evidence by finding that she claimed that she would be persecuted if she returned to the Ukraine because of her religion (which she does not practice) or her ethnic heritage (which she has seemingly concealed) and that she would be persecuted if she went to Russia with her husband because of the difficulty he encountered with his employer for having violated the shipping company's rules. This falls far short of making any case that anyone in Russia or the Ukraine has any interest in her or her religious practices.

Likewise, the immigration judge found that the husband's fear of prosecution for draft avoidance did not amount to persecution, and that he offered no evidence whatever to support a finding of religious persecution. The shipboard incidents of threats, even if accepted as true, were found to be based upon the fact that the petitioners clandestinely breached a rule regarding spousal shipboard exemptions and were caught in the breach of that rule. This evidence, likewise, falls far short.

We have reexamined the proceedings carefully and find that there is totally insufficient evidence to support the applications.

Both petitioners raise additional arguments presented in this Court for the first time. Since they were not presented earlier in the proceedings, they will not be considered.

Board of Immigration Appeals' decision AFFIRMED. Petitions for Review DISMISSED.

