

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-40209  
Summary Calendar

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CARLOS CAICEDO-SOLIS,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

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Review of an Order of the  
Board of Immigration of Appeals  
(A72-408-496)

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(November 9, 1994)

Before KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:\*

I

Carlos Caicedo-Solis, petitioner, is a native and citizen of Colombia.<sup>1</sup> In 1991, Caicedo-Solis contends that he fled Colombia

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

<sup>1</sup>Because the facts are essentially undisputed between the parties, the facts preceding Caicedo-Solis's illegal entry into the United States stated herein are those testified to before the immigration judge by Caicedo-Solis.

in fear of persecution on account of his political opinion by the armed guerrillas of the National Liberation Force (the "FLN").<sup>2</sup> After refusing to join this group, the FLN forced Caicedo-Solis and two of his friends to attend the FLN training camp developed to teach terrorist tactics to kill members of the Colombia government once captured. Approximately three weeks later, Caicedo-Solis and his two friends escaped the camp. Shortly thereafter, both of Caicedo-Solis's friends were discovered dead and mutilated. Fearing for his own safety, Caicedo-Solis moved to a larger city. He suspected the FLN had discovered his whereabouts, however, when he noticed several men in a car watching him. When he began running away from these men, several gun shots were fired at him. Upon return to his apartment, Caicedo-Solis discovered the door open and the apartment ransacked, but nothing stolen. Following this incident, Caicedo-Solis departed Colombia. He later learned that his brother was detained for two days by what he believed to be the FLN and the ELN. Furthermore, he has discovered that his cousin, a voluntary member of the FLN, was assassinated by members of his own guerrilla group.

In April 1993, Caicedo-Solis entered the United States<sup>3</sup> without inspection and was immediately apprehended by the

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<sup>2</sup>The FLN is a part of the larger anti-government, National Liberation Army (the "ELN") whose purpose is to take over Colombia.

<sup>3</sup>Caicedo-Solis traveled to El Salvador, Guatemala, and Mexico before arriving in the United States.

Immigration and Naturalization Service (the "INS"). The INS commenced deportation proceedings by filing an Order to Show Cause. Caicedo-Solis conceded deportability as defined in the Immigration and Nationality Act (the "INA"),<sup>4</sup> but filed an application for asylum pursuant to section 208 of the INA.<sup>5</sup> In addition to his testimony, Caicedo-Solis submitted extensive documentation regarding human rights violations in Colombia by guerrilla groups, including the FLN and the ELN. The immigration judge denied Caicedo-Solis's request for asylum finding that his evidence did not demonstrate past persecution or well-founded fear of persecution because of his political opinion as is required for a grant of asylum. Caicedo-Solis appealed this decision to the Board of Immigration Appeals (the "Board"), which affirmed the immigration judge's opinion and dismissed the appeal. From this decision, the instant petition for review follows.

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<sup>4</sup>Caicedo-Solis admitted that he is not a citizen of the United States, is a citizen of Colombia and entered the United States without inspection. His deportability under 8 U.S.C. § 1251(a)(1)(B) is not contested in this appeal.

<sup>5</sup>In addition, Caicedo-Solis filed an application to withhold deportation and for voluntary departure with the immigration judge. The judge denied his request to withhold departure, but granted him the right to depart voluntarily from the United States. These decisions were affirmed by the Board of Immigration Appeals, but not included in Caicedo-Solis's petition for review to this court.

II

We uphold the determination of the Board<sup>6</sup> that an alien is not eligible for asylum if the Board's determination is "supported by reasonable, substantial, and probative evidence on the record considered as a whole." Elias-Zacarias, \_\_ U.S. \_\_, \_\_, 112 S.Ct. 812, 815 (1992); see Adebisi, 952 F.2d at 912. Furthermore, we reverse the decision of the Board denying asylum only if the evidence is so compelling that no reasonable factfinder could fail to find that the requisite fear of persecution existed. Rivas-Martinez v. I.N.S., 997 F.2d 1143, 1146 (5th Cir. 1993) (quoting Elias-Zacarias, 112 S.Ct. at 817).

The Attorney General is authorized, in her discretion, to grant asylum to an alien who qualifies as a "refugee," i.e., an alien unable or unwilling to return to 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." Immigration and Nationality Act, § 101(a)(42)(A) (1994); 8 U.S.C. § 1101(a)(42)(A) (1994); see Elias-Zacarias, 112 S.Ct at 815. Establishing that an alien is a "refugee" only qualifies him as eligible for asylum, with the discretion of granting asylum left to the Attorney General. I.N.S.

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<sup>6</sup>We review only the order of the Board. Castillo-Rodriguez v. I.N.S., 929 F.2d 181, 183 (5th Cir. 1991). Consequently, errors of the immigration judge are reviewed only if they have effect on the Board's order. Adebisi v. I.N.S., 952 F.2d 910, 912 (5th Cir. 1992).

v Cardoza-Fonseca, 480 U.S. 421, 428, 107 S.Ct. 1207, 1211, 94 L.Ed.2d 434 (1987); see Castillo-Rodriguez, 929 F.2d at 184. To establish eligibility for asylum, the alien must prove

1) that he has a well-founded fear of persecution in his country or nationality...on account of race, religion, nationality, membership in a particular social group, or political opinion,...2) that there is a reasonable possibility of actually suffering such persecution if he were to return to that country, and...3) that he is unable or unwilling to return to or avail himself of the protection of that country because of such fear.

Immigration and Nationality Act, 8 C.F.R. § 208.13(1), (2) (1994).

The alien must prove "by `some evidence,' direct or circumstantial, that `he has a "well-founded fear" that the guerrillas will persecute him because of that political opinion, rather than because of his refusal to fight with them.'" Elias-Zacarias, 112 S.Ct. at 817. To prove the existence of a "well-founded fear of persecution," the alien must show that a "reasonable person in the same circumstances would fear persecution if deported" on account of his political opinion.<sup>7</sup> Castillo-Rodriguez, 929 F.2d at 184. Forced conscription alone will not establish persecution on account of a political opinion as required in section 101(a)(42) of the INA. Rivas-Martinez, 997 F.2d at 1147.

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<sup>7</sup>Caicedo-Solis contends that, he has a "well-founded fear of persecution" only on account of his political opinion and not based on any of the other grounds enumerated for a grant of asylum. Consequently, we will limit our review to this ground only.

Caicedo-Solis must prove that his opposition to the FLN was founded on a political motive and further that the FLN would persecute him on account of such motive. Even assuming, however, that Caicedo-Solis held a political opinion contrary to that of the FLN, he nevertheless has failed to establish a record that compels the conclusion that the guerrillas would persecute him on account of his political opinion. See Elias-Zacarias, 112 S.Ct. at 816.

Caicedo-Solis showed through his testimony only that the guerrillas forced him and two friends to join the FLN, that they successfully fled the FLN training camp, that his friends were slain, that gunshots were fired at him and his apartment ransacked, and that his family was harassed. We can only assume, however, that it was the FLN that conducted these terrorist acts against Caicedo-Solis, since he has offered no evidence identifying the terrorists. Even assuming that the FLN sponsored the terrorist acts, this evidence alone does not support the conclusion that the FLN persecuted Caicedo-Solis on account of his political opinion, instead of some other motive. In fact, Caicedo-Solis clearly states that he believes the FLN would persecute him because he is a deserter who could divulge information concerning the FLN's operations and location to the Colombian government. Thus, Caicedo-Solis's own testimony and admission concerning the FLN's motives for persecution established only persecution alone--not persecution on account of Caicedo-Solis's political opinion.

Because we find that Caicedo-Solis has failed to establish that the FLN would persecute him on account of his political opinion to the extent necessary to warrant reversal of the Board's decision denying asylum, we AFFIRM the decision of the Board.

III

For the foregoing reasons, the judgment of the Board is

A F F I R M E D.