

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40364
Summary Calendar

FERNANDO ALVARADO,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Review of an Order of the
Board of Immigration of Appeals
(A29 325 681)

(November 25, 1994)

Before Judges KING, JOLLY, and DeMOSS, Circuit Judges.

PER CURIAM:*

Fernando Carlos Alvarado claims to have fled his home country of Peru in fear of threatened violence at the hands of the MRTA, a leftist revolutionary group operating there. He seeks asylum in the United States, but an immigration judge determined that Alvarado had failed to establish that he is a refugee and granted

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

him voluntary departure. The Board of Immigration Appeals agreed and dismissed his appeal. In this petition for review, Alvarado argues that the Board erred when it deemed him ineligible for asylum or withholding of deportation. Finding no reversible error, we deny Alvarado's petition.

In the Attorney General's discretion, persons qualifying as refugees may obtain asylum. 8 U.S.C. § 1158(a). To qualify, Alvarado must establish that he was driven from his country of nationality, and is unwilling or unable to return to it, based on "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).

Alvarado, a native and citizen of Peru, claims he is eligible for asylum based on his political opinion.¹ His claim apparently stems from his volunteering to testify against MRTA members in connection with an incident that occurred at a Lima restaurant in 1986. Two years following the incident, he received telephone calls threatening harm if he testified against them. Additionally, he points to a break-in at his apartment as further evidence of possible intimidation by the MRTA. The Board determined that this

¹Alvarado attempts to argue that he is also entitled to asylum based on his membership in a particular social group. His statement of reasons for appeal filed with the Board reflects that he raised only the claim of persecution based on his political opinion. Alvarado therefore has not exhausted his administrative remedies that are a prerequisite to our review of this claim. We therefore lack jurisdiction over this claim. See Townsend v. I.N.S., 799 F.2d 179, 181-82 (5th Cir. 1986).

evidence did not reflect persecution or a well-founded fear of persecution based on his political opinion.

Our review is limited in this case: we will not disturb the Board's decision unless the administrative record, considered in its entirety, contains evidence "so compelling that no reasonable factfinder could fail to find the requisite fear of persecution" based on political opinion. Rivas-Martinez v. I.N.S., 997 F.2d 1143, 1146 (5th Cir. 1993). In weighing the Board's determination of Alvarado's eligibility for asylum, we focus on the relation, if any, between the asserted persecution and his political opinion, not the political motives of his persecutors. Id. at 1147. To qualify, the asserted persecution must arise from his opinions, not merely from acts that might be construed as communicating them. Id. Thus, in I.N.S. v. Elias-Zacarias, 502 U.S. 478, 112 S.Ct. 812 (1992), the Supreme Court required an alien seeking asylum to establish that he feared persecution from Guatemalan guerrillas based on his political opinions, not merely on his refusal to join them. Similarly, we require Alvarado to establish that he fears persecution based on his political opinions, not merely his volunteering to testify.

The record reflects clearly that Alvarado is politically opposed to the MRTA. It flatly belies any notion, however, that Alvarado fears persecution based on his opposition. Instead, it confirms that his fear arises solely from his volunteering to testify against the MRTA. Alvarado concedes that "until this

happened, until it was personal," he "wasn't threatened any more than any other Peruvian citizen," and all the threats related to his testifying at the upcoming trial. Furthermore, he said the MRTA threatened him with harm if he testified against them; that fact implies that, if Alvarado would withdraw his offer to testify, the MRTA would let him alone.²

Based on our review of the record, we find no evidence that would compel a reasonable factfinder to conclude that Alvarado faced persecution based on his political opinion. The Board did not err when it deemed him ineligible for asylum. Accordingly, his petition is

D E N I E D.

²Alvarado does not claim the MRTA ever learned of his opposition, let alone connected his opposition to his volunteering to testify against them.