UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 94-40687
Summary Calendar

MEBRETEAB GEORGE,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A29-304-502)

(March 2, 1995)

Before GARWOOD, HIGGINBOTHAM and DAVIS, Circuit Judges.

PER CURIAM:[1]

Mebreteab George seeks review of a final order of deportation entered by the Board of Immigration Appeals (BIA). We find no error and affirm.

George is an ethnic Amhara born in what is now the independent country of Eritrea, which was formerly a province of Ethiopia. George left Ethiopia in 1978 after his parents and siblings were imprisoned and probably executed by the Mengistu regime. George's family members were apparently targeted for their activity in an

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

organization known as the Ethiopian People's Revolutionary Party (EPRP), of which George was also a member.

After spending almost one year in the Sudan, George moved to Germany, where he was eventually granted refugee status. George lived and worked in Germany from 1980 to 1990. In January 1990, George came to the United States. Although he claims that he came "just for a visit," George never returned to live in Germany. In May 1991, George received a letter from the German Consulate in Houston stating that he had given up his permanent residence in the German Federal Republic because he had lived outside Germany for too long. In August 1992, nearly one year after his visa expired, the INS issued an order to show cause why he should not be deported.

In response to this order, George admitted deportability but sought either asylum or withholding of deportation. George asserted that he believed that if he returned to Eritrea, he would be executed by the current government because Amhara had opposed Eritrean independence.

The immigration judge (IJ) obtained an advisory opinion on these claims from the Department of State. That opinion explained that the Mengistu regime had been overthrown in May 1991 and replaced by the Transitional Government of Ethiopia (TGE). According to the opinion, the first TGE cabinet included representation by Amharas; there is little evidence that the TGE is targeting Amharas for severe mistreatment as an ethnic group; and the TGE appears tolerant of those whose active support for the EPRP

ended before June 1991. The opinion concluded that most Amharas "should now be able to return [to Ethiopia] without serious reprisals." However, the opinion also notes that the new government of Eritria has expelled a number of Amharas, most of whom have resettled elsewhere in Ethiopia.

The IJ denied George asylum and withholding of deportation, finding that he had failed to show a well-founded fear of persecution in either Eritrea or Germany. The IJ also denied voluntary departure because George refused to answer questions about his illicit purchase of an employment card and had abused the asylum process by leaving his permanent residence in Germany and coming to the United States without any intention of leaving.

George appealed to the BIA. Before the BIA, George argued that he was seeking asylum from both Germany and Eritrea. He contended that he feared returning to Germany because the German government was persecuting him by not allowing him to return and because he had learned from newspaper reports about attacks against foreigners in Germany.

The BIA first concluded that George did not enter the United States as a direct result of his flight from persecution in Ethiopia because he had been firmly resettled in Germany for ten years. The BIA found that George's voluntary choice to abandon his refugee status in Germany was irrelevant and that George's claims of persecution in Germany were utterly without merit. The BIA also decided that George had offered no objective evidence supporting his fear of persecution in Eritrea. The BIA concluded that

George's claim was frivolous. The BIA also denied voluntary departure as a matter of discretion because George was a recent arrival, had no family ties, had filed a frivolous asylum application and had not offered sufficient offsetting positive equities. George now appeals the BIA's order.

To be eligible for asylum, a petitioner must prove that a reasonable person in his circumstances would fear persecution. **Rojas v. INS**, 937 F.2d 186, 189 (5th Cir. 1991). Once the BIA determines that a petitioner is not eligible for asylum, we review the factual basis of this finding for substantial evidence. **Id.** We can reverse the BIA's determination only if the petitioner presented evidence that 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). George has not met this burden.

After a careful review of the record, we conclude that George has presented no evidence that compels the conclusion that he will be persecuted upon return to Eritrea. At his hearing, George testified that the current Eritrean government had jailed his uncle and generally mistreated Amharas. However, George also admitted that he was guessing as to the current conditions in Eritrea. George introduced no other evidence. While the Department of State opinion recognizes that many of those now exiled from Eritrea are Amharas, this is not sufficient to support a well-founded fear that George will be persecuted upon his return. Thus, the record does not contain evidence that compels us to disagree with the BIA.

Because George is not eligible for discretionary asylum, we do not address whether he was firmly resettled in Germany. Firm resettlement only becomes an issue after an applicant clears the hurdle of eligibility. **See** 8 C.F.R. § 208.14. In addition, because the standard for asylum is more lenient than the standard for withholding deportation, our conclusion that George is not eligible for asylum necessarily means that he is also not entitled to withholding of deportation. **Rojas**, 937 F.2d at 187-88. Finally, because we find that the discretionary denial of voluntary departure was neither arbitrary or capricious, we uphold the BIA's decision not to extend this privilege to George. **See Carnejo-Molina v. INS**, 649 F.2d 1145, 1151 (5th Cir. 1981).

For these reasons, the order of the BIA is AFFIRMED.