

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-40735
Summary Calendar

CECILIA LOPEZ-PALACIOS,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of
the Board of Immigration Appeals
(A72-017-101)

(February 17, 1995)

Before SMITH, EMILIO M. GARZA, and PARKER, Circuit Judges.

JERRY E. SMITH, Circuit Judge:*

Cecilia Lopez-Palacios seeks review of the Board of Immigration Appeals' ("BIA's") denial of her application for asylum and withholding of deportation. She argues that the Immigration Judge ("IJ") erred by finding that she had failed to establish past persecution and that her testimony was not credible. Because the

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 Pursuant to that rule, the court has determined that this opinion should not be published.

IJ's decision was supported by substantial evidence, we deny the petition for review.

I.

Upon entry into the United States in 1992, Lopez-Palacios was apprehended and charged by issuance of an order to show cause with deportability for having entered the United States without inspection. Lopez-Palacios has conceded her deportability. She sought asylum or withholding of deportation, arguing that she had been persecuted in her home nation, El Salvador, because of her role as a leader of the ARENA political party and she feared that she would be harmed by political enemies if forced to return to El Salvador. Based upon Lopez-Palacios's lack of credibility, lack of corroborating evidence, and failure to establish that anyone had harmed her, the IJ denied her petition for asylum and withholding of deportation. The BIA affirmed.

II.

The amended Immigration and Nationality Act of 1952 allows the Attorney General to permit a grant of asylum to aliens who demonstrate that they are "refugees." 8 U.S.C. § 1158(a). The Act defines a refugee, in relevant part, as

any person who is outside any country of such person's nationality . . . , and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that 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).

The requirements for a claim for withholding of deportation are similar to those for asylum. Adebisi v. INS, 952 F.2d 910, 913 (5th Cir. 1992). For a petitioner to establish withholding of deportation, however, he must demonstrate more than simple past persecution or a well-founded fear of persecution; he must show that, if deported, "it is more likely than not that the alien would be subject to persecution on one of the specified grounds." INS v. Stevic, 467 U.S. 407, 429-30 (1984). This standard is more stringent than that required for an application for asylum. Castillo-Rodriguez v. INS, 929 F.2d 181, 185 (5th Cir. 1991). Accordingly, a petitioner who fails to present a claim for asylum necessarily fails to present a claim for withholding of deportation.

We will uphold the BIA's denial of asylum and withholding of deportation if it is "supported by reasonable, substantial, and probative evidence on the record considered as a whole." INS v. Elias-Zacarias, 112 S. Ct. 812, 815 (1992). The decision of the BIA is to be reversed only "if the evidence presented . . . was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." Id.

To support her claim for asylum, Lopez-Palacios testified that she had been a member of the ARENA political party beginning in 1982. By 1990, she claims to have been a paid official spokesperson for ARENA and a vice-president of the local women's chapter. Lopez-Palacios testified that these posts required her to give public speeches in support of ARENA candidates, travel throughout

the country promoting the party, and help formulate party platforms and programs. In the course of traveling around the country with her ARENA subordinates, Lopez-Palacios testified that she had received numerous death threats from FMLN guerrillas, who had also thrown stones at her, aimed weapons at her, and shot at her car.

In his oral decision issued September 8, 1993, the IJ held:

Based upon the testimony and evidence that has been presented, this Court is unable to find that respondent has established eligibility to receive political asylum in the United States The testimony provided by respondent during the course of these proceedings was neither persuasive nor convincing and frequently was inconsistent not only internally but also regarding information which she had previously provided in her application. Among the inconsistencies is the nature and dates of her affiliation with the ARENA political group, the time that she departed from El Salvador and briefly resided in Guatemala, and the time of her sister's service as mayor of Cojutepeque. Additionally unbelievable was respondent's characterization of the nature of her sister's service as mayor. Initially she indicated that her sister was absent for a quarter of her term and later indicated that she continued to function as mayor without performing any public duties. The claim that her sister would have been safe remaining in her home in Cojutepeque while she served as mayor without making public appearance is patently unbelievable. Respondent did not reveal herself to be politically astute during the course of her testimony and the Court is unable to find that she was convincing regarding the nature and role of her political activities. And also, by extension, the Court is unconvinced regarding the accuracy of her characterization of the specific dangers which she believes were the result of those claimed activities.

Furthermore, the IJ stated that even if he had credited Lopez-Palacios' testimony, he would have found that the political situation in El Salvador had improved sufficiently so as to pose no danger to her upon return to that country. The IJ specifically noted the success of Lopez-Palacios's sister, who, although she had played an even greater role than did Lopez-Palacios in ARENA

politics, has remained safely in El Salvador, where she now operates a fireworks factory. Based upon these factors and on the almost complete lack of any corroborating evidence submitted by Lopez-Palacios,¹ the IJ denied the petition for asylum and therefore also the petition for withholding of deportation.

The BIA affirmed the order of the IJ, reasoning that in view of the lack of credibility of Lopez-Palacios and the lack of corroborating evidence, she had not demonstrated past persecution. Alternatively, the BIA agreed with the IJ that she had not demonstrated a well-founded fear of persecution if she were to return to El Salvador. After reviewing the administrative record, we agree with the BIA that the IJ's denial of Lopez-Palacios's petition for asylum and withholding of deportation was supported by substantial evidence. Accordingly, for essentially the reasons stated in the IJ's oral decision, Lopez-Palacios's petition for review is DENIED.

¹ The only corroborating evidence submitted by Lopez-Palacios was a photocopy of her ARENA membership card, dated 1989.