UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41021
Summary Calendar

MANOOCHEHR PARAHAM,
a/k/a Manoochehr Jamose Dezfuli,

Petitioner,

versus

THE IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the Board of Immigration Appeals (INS#A27-923-365)

(June 6, 1995)

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:[1]

Manoochehr Paraham petitions for review of an adverse order of the Board of Immigration Appeals on his requests for asylum or withholding of deportation. We **DENY** the petition.

I.

Paraham, a native and citizen of Iran, entered the United States on December 1, 1985, as a nonimmigrant student. He married a United States citizen in July 1987, and thereafter applied for

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 Pursuant to that rule, the court has determined that this opinion should not be published.

adjustment of status. In December 1987, the Immigration and Naturalization Service (INS) ordered him to show cause why he should not be deported for failing to comply with the conditions of his admission by willfully failing to provide full and truthful information to the INS regarding his marriage, which had been entered into for the sole purpose of obtaining immigration benefits. Paraham conceded deportability, but applied for asylum.[2]

During a deportation hearing in 1988, Paraham testified, through a Farsi interpreter, regarding his request for asylum. In July 1988, the immigration judge (IJ) denied his asylum claim, concluding that his testimony was not credible. Paraham appealed to the Board of Immigration Appeals (BIA), contending, *inter alia*, that he was denied due process because the interpreter provided for his hearing was incompetent. In March 1990, the BIA remanded the case to the IJ for a new hearing, because a large portion of the transcript was indiscernible.

A second hearing was conducted in September 1990, at which Paraham testified, first in Farsi through an interpreter, and then, by agreement, in English. The IJ again denied Paraham's request for asylum, finding that his testimony was not credible. Paraham appealed again to the BIA, which held that he had no material difficulty communicating because of alleged problems with the interpreter, that his testimony was not credible, and that he had

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[2] An application for asylum is simultaneously considered as a request for withholding of deportation. *See* ***Ramirez-Osorio v. I.N.S.***, 745 F.2d 937, 941 (5th Cir. 1984).

failed to establish a well-founded fear of persecution sufficient to merit asylum relief.

II.

Paraham contends that he was denied due process because of the lack of a competent interpreter, and that the BIA abused its discretion by denying asylum on the basis of adverse credibility determinations.

A.

Paraham maintains that he was denied due process because he did not have the assistance of a competent and qualified interpreter at his deportation hearing. Alleged due process violations in deportation proceedings are reviewed *de novo*. *See* ***Hartooni v. I.N.S.***, 21 F.3d 336, 339 (9th Cir. 1994). "[P]roof of a denial of due process in an administrative proceeding requires a showing of substantial prejudice". ***Chike v. I.N.S.***, 948 F.2d 961, 962 (5th Cir. 1991) (internal quotation marks and citation omitted). Therefore, Paraham must show that the interpreter's claimed incompetence affected the outcome of the proceeding. *See* ***Hartooni***, 21 F.3d at 340.

Paraham made no objection at the hearing regarding the interpreter's competence. At the commencement of the hearing, the IJ verified that Paraham and the interpreter were able to understand each other. After testifying through the interpreter during the first part of the hearing, Paraham revealed that he was studying radiology at a university, and that the courses were taught in English. The IJ asked why an interpreter was being used

if Paraham understood English well enough to take university courses; Paraham replied, "I don't know". In response to questioning by the IJ, Paraham's counsel stated that she communicated with him in English, and agreed with the IJ that it would be better for him to testify in English for the remainder of the hearing, using the interpreter as a back-up.[3]

The BIA found that Paraham's difficulties in communicating, if any, were attributable to his inability to explain his inconsistent and discrepant testimony regarding the date he received his draft notice. Our review of the transcript substantiates the BIA's conclusion that Paraham had no material difficulty in communicating or responding to questions because of language difficulties or the competency of the interpreter. Accordingly, Paraham has failed to demonstrate prejudice.[4]

B.

Paraham claims that the BIA abused its discretion by denying asylum on the basis of adverse credibility determinations. He asserts that any discrepancies in his testimony were minor, that they were attributable to language problems, typographical errors, or problems with the interpreter, and that they had no bearing on his credibility.

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[3] Paraham's contention that the immigration judge erred by having him testify in English is frivolous in light of counsel's agreement that it would be better for him to do so.

[4] We also reject Paraham's contention that the record was so unintelligible that the BIA could not review it properly. Paraham has not demonstrated that any of the allegedly unintelligible portions of the record contained testimony that would have affected the outcome of the proceeding.

"[I]t is the factfinder's duty to make determinations based on the credibility of the witnesses". ***Chun v. I.N.S.***, 40 F.3d 76, 78 (5th Cir. 1994). "We cannot substitute our judgment for that of the BIA or IJ with respect to the credibility of the witnesses or ultimate factual findings based on credibility determinations." ***Id***. "The BIA's determination that [Paraham] was not eligible for asylum must be upheld if supported by reasonable, substantial and probative evidence on the record considered as a whole." ***I.N.S. v. Elias-Zacarias***, 502 U.S. 478, 112 S. Ct. 812, 815 (1992). "It can be reversed only if the evidence presented by [Paraham] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." ***Id***.

In support of his asylum claim, Paraham testified that he feared returning to Iran because he would be killed, tortured, or imprisoned because of his activities as a member of the Mojahedin, a group opposed to the Khomeini regime, and because of his refusal to report for military service. He testified that, as a member of the Mojahedin, he had distributed leaflets and participated in demonstrations against the Khomeini government; that some of his friends had been arrested and imprisoned or killed because of their participation in the Mojahedin; that he had to go into hiding after soldiers for the Khomeini regime came to his house looking for him in 1981 or 1982; and that he had to use a false name to obtain a passport to leave the country, because his name was on a list maintained by the Government.

The IJ found that Paraham's testimony was not credible, based on his history, which included using a false name to obtain a passport to enter the United States, and his attempt to obtain immigration benefits by entering into a sham marriage with a United States citizen, as well as his demeanor and discrepancies in his testimony during deportation proceedings regarding the date he received his draft notice. The IJ noted that Paraham's application for asylum reflected that he graduated from high school in 1980, and that he testified at the first deportation hearing that he received his draft notice in 1980, upon completion of school; however, at the second deportation hearing, Paraham first testified that he received his draft notice in 1981, but later testified that he received it after the raid on his house, which took place in late 1981 or early 1982. The IJ concluded that Paraham "tried to tell whatever story would support his asylum and withholding of deportation claims, whether or not these facts bore any relationship to the truth". The BIA agreed with the IJ that Paraham's testimony regarding the receipt of his draft notice differed at the two hearings, and that Paraham changed his testimony at the later hearing in an attempt to bolster his persecution claim, by showing that the authorities raided his house because of his political activities rather than because of his avoidance of military service.

Although Paraham now attempts to blame the discrepancies in his testimony on language difficulties or problems with the interpreter, he made no such objections at the hearing, and failed

to take advantage of several opportunities to clarify his testimony and resolve those discrepancies.[5] We conclude that the IJ and the BIA were justified in finding that Paraham's claim of persecution or fear of persecution was not sufficiently credible to warrant the grant of asylum relief. "Certainly, the opposite conclusion, that [Paraham] was credible, is not *compelled* by the evidence. Therefore, we may not reverse this finding." *See* ***Chun***, 40 F.3d at 79 (emphasis in original).[6]

III.

For the foregoing reasons, the petition for review is

DENIED.

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[5] Paraham contends also that, in light of the BIA's remand for a new hearing because of problems with the interpreter and transcript of the first hearing, the BIA abused its discretion by considering testimony given by Paraham at the first hearing. But Paraham has failed to show that the Board considered any testimony from the first hearing that was erroneously translated or transcribed. In any event, the adverse credibility determination was not based solely on discrepancies between Paraham's testimony at the two hearings; his testimony at the second hearing was inconsistent regarding the date he was called for military service.

[6] Because Paraham failed to satisfy the burden of proof required for asylum, he cannot satisfy the higher burden of proof for withholding of deportation. *See* ***Ozdemir v. I.N.S.***, 46 F.3d 6, 8 (5th Cir. 1994)