

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-41086
Summary Calendar

ZAHRA SARSHAR, ET AL.,

Petitioners,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(A28 391 014 & A28 391 015)

(April 26, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:¹

Zahra Sarshar and Mohammad Manzoori-Jahromi challenge an order of the Board of Immigration Appeals denying their eligibility for asylum or withholding of deportation. We **DENY** the petition.

I.

Sarshar, lead-petitioner,² a native and citizen of Iran, entered the United States as a visitor in 1985. Charged with

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 Pursuant to that rule, the court has determined that this opinion should not be published.

² The status of the other petitioner, Sarshar's husband, depends on the disposition of the lead petitioner's application. 8 C.F.R. § 208.3

overstaying her visitor's visa, in violation of 8 U.S.C. § 1251(a)(2), she admitted the allegations in the order to show cause and applied for asylum under 8 U.S.C. § 1158(a). The Immigration Judge (IJ) denied the application and found Sarshar deportable. On appeal, the Board of Immigration Appeals (BIA) affirmed the IJ's decision and dismissed the appeal, finding that Sarshar failed to establish her asylum status.³

II.

Applicants for asylum have the burden of demonstrating that they are unable to return to their native country "because of [past] persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion". *Castillo-Rodriguez v. INS*, 929 F.2d 181, 184 (5th Cir. 1991) (quoting 8 U.S.C. § 1101(a)(42)). The BIA concluded that petitioners failed to meet this burden.⁴ We will disturb this conclusion only if Sarshar's evidence "was so compelling that no reasonable factfinder could fail" to find in her favor. *INS v. Elias-Zacarias*, 112 S. Ct. 812, 817 (1992).

Sarshar claimed that she held an important government position in Iran under the Shah's leadership, and was associated with the Shah's secret police, the SAVAK. Sarshar sought to establish past persecution by her claim that on several occasions during the

³ In each instance, voluntary departure was granted.

⁴ In failing to meet the burden of proof for asylum, petitioners necessarily fail to meet the higher burden of proof required for withholding of deportation. See generally *INS v. Stevic*, 467 U.S. 407 (1984).

emergence of the Khomeini regime, she had been taken into custody, interrogated as an anti-revolutionary, and not released until 6:00 a.m. The BIA concluded that the evidence presented was insufficient to establish past persecution. We find no basis to disturb this conclusion. See e.g., *Kapcia v. INS*, 944 F.2d 702, 704-05, 708 (10th Cir. 1991); *Zalega v. INS*, 916 F.2d 1257, 1260 (7th Cir. 1990).

The BIA concluded also that Sarshar had not demonstrated a well-founded fear of persecution.⁵ Particularly, it found that Sarshar did not hold a "prominent political position" in Iran by virtue of her occupation as a school teacher and school principal. Further, the BIA was unpersuaded that Sarshar was a member of SAVAK or even a significant informer for that organization.⁶ And, although Sarshar claimed to have received letters, inquiring of her whereabouts, from Iranian authorities similar to letters received by individuals who were later persecuted, the BIA found that she had not demonstrated that her circumstances were similar to those individuals. Citing documentary evidence, the BIA noted that many persons in Sarshar's situation "have no trouble upon return [to Iran]". Our review of the record reveals that Sarshar's evidence

⁵ The BIA did, however, find two errors in the IJ's factual findings. These errors did not effect the IJ's ultimate conclusion.

⁶ The Government contends that Sarshar's claim of persecution on account of membership in SAVAK was not preserved for appeal. This contention is moot in view of the BIA's adequately supported conclusion that Sarshar was not a member of SAVAK.

does not "compel" an overturning of the BIA's conclusions. ***Elias-Zacarias***, 112 S. Ct. at 817.⁷

III.

For the foregoing reasons, the petition is

DENIED.

⁷ Petitioners urge that the BIA erred in denying asylum, based on humanitarian reasons, because, notwithstanding the failure of proof, it refused to consider "the current deplorable conditions in Iran". Petitioners did not offer this argument to the BIA; we do not consider it.