

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 94-41147

(Summary Calendar)

FRANCISCO JAVIER VASQUEZ-MOREIRA and
MARTHA VANESSA RODRIGUEZ-RUIZ a/k/a
Martha Vanessa Vasquez,

Petitioners,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order
of the Board of Immigration Appeals
(A29 961 401; A29 953 282)

August 25, 1995

Before HIGGINBOTHAM, DUHÉ, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Francisco Javier Vasquez-Moreira and his wife Martha Vanessa Rodriguez-Ruiz (the "Vasquezes") petition for review of a final order of the Board of Immigration Appeals ("BIA"). We deny their petition.

I

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The Vasquezes are natives and citizens of Nicaragua. The Immigration and Naturalization Service ("INS") initiated deportation proceedings against the Vasquezes on the grounds that they had entered the United States without inspection. At their deportation hearing, the Vasquezes conceded deportability and applied for asylum, alleging that Mr. Vasquez would be persecuted if he was deported to Nicaragua. Mrs. Vasquez's claim is entirely derivative of her husband's claim.

At the Vasquezes deportation hearing, Mr. Vasquez testified that from 1982 to 1987 he had acted as a recruiter for the Sandinista military and served in the Sandinista reserves. He also served a two-year tour of active duty in the Sandinista Army. In 1988, due to renewed religious convictions, Mr. Vasquez decided to leave the military. He testified that the Sandinistas tried to obtain his return by sending him notices and sending civilian representatives to convince him to return. Mr. Vasquez did not testify that he was imprisoned, tortured, or abused in any way. Mrs. Vasquez testified that she never suffered any personal harassment or persecution.

The immigration judge ("IJ") denied the Vasquezes' application, and the BIA affirmed. The Vasquezes timely petitioned this court for review of the decision of the BIA, arguing that Mr. Vasquez's "credible testimony established past persecution on account of [his] religious beliefs and his imputed political opinion, [and] a well-founded fear of future persecution as well."

II

The Vasquezes argue that the BIA erred in concluding that Mr. Vasquez was not eligible for asylum.¹ We will affirm the BIA's decision that a petitioner is not eligible for asylum if substantial evidence in the record supports its decision. *INS v. Elias-Zacarias*, ___ U.S. ___, ___, 112 S. Ct. 812, 815, 117 L. Ed. 2d 38 (1992); *Faddoul v. INS*, 37 F.3d 185, 188 (5th Cir. 1994); see also 8 U.S.C. § 1105a(a)(4) (1994) ("[T]he petition shall be determined solely upon the administrative record upon which the deportation order is based and the Attorney General's findings of fact, if supported by reasonable, substantial, and probative evidence on the record considered as a whole, shall be conclusive."). We will not reverse the BIA's determination merely because we disagree with the BIA's evaluation of the facts of the case. *Jukic v. INS*, 40 F.3d 747, 749 (5th Cir. 1994). Based on the substantial evidence test, we will reverse the BIA's decision only if the evidence compels such a result. *Chun v. INS*, 40 F.3d 76, 78 (5th Cir. 1994). In short, a petitioner must show that the evidence was so compelling that "a reasonable factfinder would have to conclude" in his favor. *Elias-Zacarias*, ___ U.S. at ___, 112 S. Ct. at 815; accord *Chun*, 40 F.3d at 78; see also *Silwany-Rodriguez v. INS*, 975 F.2d 1157, 1160 (5th Cir. 1992) (holding that "the

¹ "[An] alien may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 1101(a)(42)(A) of this title." 8 U.S.C. § 1158(a) (1994). "The term 'refugee' means (A) any person who is outside any country of such person's nationality . . . and 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 . . ." 8 U.S.C. § 1101(a)(42) (1994). The Immigration and Naturalization Service acts on behalf of the Attorney General on immigration matters. 8 C.F.R. § 2.1 (1995).

alien must show that the evidence he presented was so compelling that no reasonable fact-finder could fail to arrive at his conclusion").

An alien deserves consideration for asylum if he can demonstrate a "well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Jukic*, 40 F.3d at 749; *Faddoul*, 37 F.3d at 188. An alien's subjective fears of persecution can satisfy this standard, but only if "a reasonable person in the same circumstances would fear persecution if deported." *Jukic*, 40 F.3d at 749; accord *Faddoul*, 37 F.3d at 188; *Rivera-Cruz v. INS*, 948 F.2d 962, 966 (5th Cir. 1991); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 107 S. Ct. 1207, 1213, 94 L. Ed. 2d 434 (1987) (holding that "well-founded" can be established "when there is less than a 50% chance of the occurrence taking place").

This court has construed the term "persecution" to require "a showing by the alien that harm or suffering will be inflicted on [him] in order to punish [him] for possessing a belief or characteristic a persecutor sought to overcome." *Faddoul*, 37 F.3d at 188 (internal quotation and citation omitted). "At a minimum, there must be some particularized connection between the feared persecution and the alien's race, religion, nationality or other listed characteristic." *Id.* A demonstration of this connection requires specific and detailed facts supporting the existence of a good reason that the petitioner should fear being singled out for

persecution. *Id.*²

Mr. Vasquez based his asylum claim on a fear that the Sandinistas would harm him because he refused to continue to serve in the military reserves on religious grounds. The BIA then found that the Sandinistas had demanded that Mr. Vasquez serve in the reserves because his prior agreement to active service included a commitment to reserve service and not because of Mr. Vasquez's religious beliefs. Accordingly, the BIA found that the Sandinistas' demand for continued service did not constitute persecution. The BIA also found that even if the Sandinistas had persecuted Mr. Vasquez in the past, the change in Nicaragua's government, including the election of President Chamorro in 1991, made future persecution unlikely. The BIA also found that Mr. Vasquez had failed to give:

any indication, much less any evidence, of even one instance in which the Sandinistas, following their removal from power, have imprisoned or otherwise harmed or have sought to harm any individual upon his return to Nicaragua merely on account of his refusal to continue serving in the military reserves, for religious reasons or for any other reason.

Also, the United States State Department issued an advisory opinion that, given the political changes in Nicaragua, Mr. Vasquez does not have a well-founded fear of persecution were he to return to Nicaragua.

Based on the record, we hold that substantial evidence

² The Vasquezes argue that new asylum regulations, effective October 1, 1990, eliminate his burden to show that he will be singled out for persecution. These regulations, however, do not apply to applications for asylum such as the Vasquezes' that were filed prior to October 1, 1990. 8 C.F.R. § 208.1(a).

supported the BIA's decision. In other cases, courts have sustained the BIA's finding that ignoring a notice to serve in the military does not create a well-founded fear of persecution. See *Jukic*, 40 F.3d at 749 (holding that where petitioner claimed only that "because he previously served in th[e] army and since then has ignored a draft notice sent by them" but did not make showing that people in native country would view his prior military service negatively, petitioner did not show a well-founded fear of persecution based on his political opinion); *cf. Elias-Zacarias*, ___ U.S. at ___, 112 S. Ct. at 815-16 (holding that conscription into military is not per se persecution *on account of* petitioner's political opinion). We have previously upheld the BIA's decision that the change in government in Nicaragua negated claims by petitioners alleging future persecution by the Sandinistas. See *Rivera-Cruz*, 948 F.2d at 966-67 (upholding BIA's decision that petitioner did not have well-founded fear of persecution by Sandinistas after change of government); *Rojas v. INS*, 937 F.2d 186, 190 (5th Cir. 1991) (upholding BIA's rejection of claim of persecution for refusal to serve in Sandinista army because Sandinistas were no longer in power). Accordingly, Mr. Vasquez has not shown that the BIA's finding was not supported by substantial evidence.³

³ The Vasquezes also argue that principles of public international law require that they be granted asylum. Public international law, however, does not control in this context because "federal executive, legislative, and judicial actions supercede the application of these principles of international law." *Gisbert v. U.S. Attorney Gen.*, 988 F.2d 1437, 1448 (5th Cir.), *amended on reh'g on other grounds*, 998 F.2d 1122 (5th Cir. 1993).

Concerning the Vasquezes' application for withholding of deportation,⁴ to warrant eligibility, an alien must demonstrate a "clear probability" of persecution on return. *Faddoul*, 37 F.3d at 188. This standard requires a higher likelihood of persecution than the "well-founded fear" standard for asylum. *Jukic*, 40 F.3d at 750. Because we uphold the BIA's decision that Mr. Vasquez did not demonstrate a "well-founded fear" of persecution, he cannot satisfy the higher standard for withholding of deportation. See *Jukic*, 40 F.3d at 750.

III

For the foregoing reasons, we DENY the Vasquezes' petition for review.

⁴ "An application for asylum shall be deemed to constitute at the same time an application for withholding of deportation." 8 C.F.R. § 208.3(b) (1995).