IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-41187

Summary Calendar

LUIS ALBERTO ARAICA-PEREZ,
MARIA ESTER RAMOS-BONILLA,

Petitioners,

versus

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order of the
Board of Immigration Appeals
(A29 768 677 & A29 768 678)

(June 21, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Luis Alberto Araica-Perez and Maria Ester Ramos-Bonilla, husband and wife, petition for review of the Board of Immigration Appeals' order denying their applications for asylum and withholding of deportation under 8 U.S.C. §§ 1158(a) and 1253(h). Because we agree with the Board, we deny their petition.

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Petitioners concede deportability but raise three challenges to the Board's affirmance of the immigration judge's decision to deny their applications for asylum and withholding of deportation. First, they argue that the Board misunderstood their asylum claim. They had argued below that Araica-Perez would be persecuted for his political opinions if he were to be deported to his native Nicaragua. On appeal, Araica-Perez and his wife argue that the Board misunderstood them to be arguing that he feared persecution for his membership in a particular social group. By faulting him for not producing any evidence that the Sandinistas had recently persecuted former Sandinista officers like him for their prior opposition to Sandinista policies, the Board, petitioners argue, misconstrued their political-persecution claim to be a social-group-persecution claim. We disagree. We understand the Board to have determined that Araica-Perez could not establish a well-founded fear of political persecution upon his return to Nicaragua. The Board's reference to similarly situated Nicaraguans is intended to compare him to others of his political beliefs, not to others in some social group of which he is a member.

Second, petitioners challenge the Board's finding that the election of the Chamorro government wrested real power from the Sandinistas whom petitioners fear. Petitioners argue that the Sandinistas retain "de jure and de facto control of the same forces" that persecuted Araica-Perez when he lived in Nicaragua. They rely in part upon De la Llana-Castellon v. INS, 16 F.3d 1093 (10th Cir. 1994), in which the Tenth Circuit faulted the Board for

failing to consider whether the Sandinistas could still terrorize petitioners despite Chamorro's inauguration as president. See id. at 1097. Here, by contrast, the Board expressly considered this issue and found that petitioners had offered no evidence that the Sandinistas have continued to harass or harm political opponents after Chamorro's government assumed control. The De la Llana court acknowledged that whether the Chamorro government had fully wrested control from the Sandinistas is a close question "over which reasonable persons could disagree." Id. The Board here found the Chamorro government had. Because we see no evidence that would compel a "reasonable fact-finder . . . to conclude the contrary," we defer to the Board's factual finding. INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992).

Finally, petitioners argue that the incompetence of the immigration court's Spanish translator rendered the record below incomplete. They complain that at "critical moments" in their testimony, the record is blank because the court reporter could not discern the testimony, the translator failed to translate their Spanish, or the translator provided an inaccurate translation. However, petitioners have not articulated what their missing testimony would have stated, nor have they explained how the missing testimony would have changed the decision in their case. Accordingly, we find no violation of due process. See McLeod v. INS, 802 F.2d 89, 94-95 (3d Cir. 1986) (finding no due process violation despite poor transcription where missing testimony could not have affected the outcome).

The petition for review is DENIED.