

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5323

Summary Calendar

FARDIN REZAEI,

Petitioner,

v.

IMMIGRATION & NATURALIZATION SERVICE,

Respondent.

Petition for Review of an Order
of the Immigration and Naturalization Service
(A29-573-458)

(June 21, 1994)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

An immigration judge found Fardin Rezaei to be deportable under 8 U.S.C. § 1251. The immigration judge also denied Rezaei's request for political asylum and withholding of deportation, but the immigration judge granted his request for voluntary departure. The Board of Immigration Appeals (Board)

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

affirmed the decision of the immigration judge. Rezaei filed the present petition for review. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Rezaei is a native and citizen of Iran who entered the United States near Brownsville, Texas, without being inspected. Because Rezaei entered the United States without being inspected, deportation proceedings were brought against him. Rezaei requested asylum, withholding of deportation, and voluntary departure.

At a hearing on October 28, 1991, Rezaei conceded that he was deportable for entering the country without inspection. The immigration judge then set a hearing for February 13, 1992, to hear Rezaei's requests for asylum, withholding, and voluntary departure.

At the February 13 hearing, Rezaei testified that he was a member of the Mujahedin-e-Khalq (Mujahedin) organization in Iran. Rezaei asserted that because he was a member of the Mujahedin organization, he would be subject to persecution in Iran if he was forced to return. According to Rezaei, he became a member of the Mujahedin in 1980 at the age of twelve. His participation in the organization amounted mainly to the distribution of propaganda. He stated that he knew the Mujahedin utilized violence in its struggle against the Khomeini government, but he did not engage in or condone this violence. He further stated that the Mujahedin organization advocated the establishment of a democratic government in Iran.

Rezaei testified that in 1980 a fellow student reported to the principal that he had been distributing Mujahedin materials at school. He was arrested, interrogated, and badly beaten over the course of three days. He stated that he was so badly beaten that he was ill for about a week and had bruises over his entire body. Rezaei was finally released to his family, and he remained out of school for the remainder of 1981.

Following his arrest, Rezaei continued his activities with the Mujahedin by attending a large anti-government demonstration, continuing to pass out propaganda, and attending meetings. Between January of 1981 and July of 1987, when he fled Iran, Rezaei was not arrested again. However, Rezaei testified that other events occurred during this six-year period which supported his claim that he had a well-founded fear of persecution upon his return to Iran. Specifically, Rezaei testified that the Khomeini government had adversely treated other members of the Mujahedin. He and his sister also asserted that his sister was not allowed to attend college because of his involvement in the Mujahedin.

In 1987, Rezaei fled Iran. He testified that he was forced to flee Iran at this time because the individual at whose home he attended Mujahedin meetings was arrested, and he was scared that he would also be arrested. Rezaei used a forged passport to exit Iran, and he was able to enter the United States through the aid of a professional smuggling organization. He further stated that revolutionary guards twice visited his parents' house seeking him after he initially left their home. Rezaei's sister testified

that the revolutionary guard's second visit caused their father to have a heart attack. Rezaei has no further family remaining in Iran because his brother, mother, and sister have all been able to immigrate to the United States.

The immigration judge denied Rezaei's request for asylum because he did not believe that Rezaei had established a well-founded fear of persecution. The immigration judge stated that Rezaei "intended to immigrate to the United States with the rest of his family, and that his early arrival was precipitated by the need to avoid required military service." The immigration judge noted the "unlikely coincidence that the Respondent's role as a Mujahedin sympathizer or member would be discovered in exactly the same month as he became liable for required military service, during a time of warfare that had resulted in large military and civilian casualties."

Moreover, the immigration judge determined that certain aspects of Rezaei's story were not credible. For instance, the immigration judge determined that there was a contradiction between Rezaei's testimony concerning his ability to continue attending school while a member of the Mujahedin and his sister's testimony concerning her inability to work or attend school in Iran due to her brother's activities. The immigration judge further noted that he found Rezaei's and his sister's reactions to the arrest of the individual at whose home the meetings were being held to be inconsistent. Rezaei testified that he fled the country because of his fear of being arrested. However, his

sister, who had also attended the meetings and stated that the individual was a close friend, took no action. The immigration judge further noted a discrepancy between Rezaei's testimony concerning the democratic underpinnings and goals of the Mujahedin and the information supplied by the United States Department of State describing the Mujahedin as a "militantly Islamic anti-democratic, anti-American, and anti-Western collectivist organization."

The Board agreed with the immigration judge's determination that Rezaei's testimony concerning his alleged involvement with the Mujahedin was not credible. The Board also noted that the testimony from Rezaei's sister also failed to corroborate Rezaei's asylum claim. Therefore, the Board concluded that the record did not support a finding that Rezaei had a reasonable fear of persecution upon his return to Iran.

II. STANDARD OF REVIEW

This court reviews the Board's factual conclusions that an alien is not eligible for withholding of deportation or that an alien is not eligible for consideration for asylum only to determine whether the conclusions are supported by substantial evidence. Adebisi v. INS, 952 F.2d 910, 912 (5th Cir. 1992); Castillo-Rodriguez, 929 F.2d 181, 182-83 (5th Cir. 1991). Therefore, we will reverse the decision of the Board only if the facts presented by Rezaei are such that a reasonable person would have to conclude that the Board's decision was incorrect. INS v. Elias-Zacarias, 112 S. Ct. 812, 815 (1992); Castillo-

Rodriguez, 929 F.2d 181, 184 (5th Cir. 1991). Furthermore, the Supreme Court has stated that in order for an applicant to obtain judicial reversal of the Board's decision the applicant must "show that the evidence he presented was so compelling that no reasonable factfinder could fail to find the requisite fear of persecution." INS v. Elias-Zacarias, 112 S. Ct. 812, 815 (1992).

III. DISCUSSION

A. REQUEST FOR ASYLUM

In order to establish a claim for asylum, Rezaei must establish that he is unable or unwilling to return to Iran "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). "To prove the existence of a wellfounded fear of persecution, the alien must demonstrate that a reasonable person in the same circumstances would fear persecution if deported." Castillo-Rodriguez v. INS, 929 F.2d 181, 184 (5th Cir. 1991). The alien must also establish that this fear is based on one of the five enumerated factors. Id.

Rezaei asserted that he had a reasonable fear of persecution upon returning to Iran because of his membership in the Mujahedin organization. The Board concluded that Rezaei had not presented any credible evidence to establish that a reasonable person in Rezaei's circumstances would fear persecution in Iran. The Board concluded that Rezaei's testimony concerning his involvement with the Mujahedin was not credible. Specifically, the Board

determined that much of Rezaei's testimony concerning the organization's ideology and goals was directly contradicted by the background information supplied by the Department of State concerning the Mujahedin. We uphold the Board's determination. We conclude that there is substantial evidence to support the Board's conclusion that Rezaei did not have a reasonable fear of persecution upon his return to Iran.

B. WITHHOLDING OF DEPORTATION

In order to qualify for withholding of deportation, a clear probability of persecution must be shown. INS v. Stevic, 467 U.S. 407, 413 (1984). The standard for seeking asylum is whether the applicant has a well-founded fear of persecution. INS v. Cardoza-Fonseca, 480 U.S. 421, 428 (1987). According to these standards, it is easier to qualify for asylum than for withholding of deportation. Rivera-Cruz v. INS, 948 F.2d 962, 966 (5th Cir. 1991). Therefore, because Rezaei has failed to establish the lower burden required for asylum, we need not decide whether he is eligible for withholding of deportation. Id. at 969.

C. DENIAL OF DUE PROCESS

Rezaei also asserts that because he was unable to introduce testimony from Dr. Fereidon Sadri, a Ph.D. in sociology, he was denied due process in the deportation proceeding. In order to establish a due process challenge to a deportation proceeding, an alien must establish substantial prejudice. Patel v. INS, 803 F.2d 804, 807 (5th Cir. 1986). Rezaei asserts that Dr. Sadri

would have been able to corroborate his testimony concerning conditions in Iran. Beyond this conclusory statement concerning the value of Dr. Sadri's testimony, Rezaei has not asserted how he was substantially prejudiced by the immigration judge's decision to not allow the testimony. Further, in his brief before this court Rezaei suggests that Dr. Sadri's testimony concerning conditions in Iran would have been duplicative of other evidence in the record. Therefore, we conclude that Rezaei has not demonstrated substantial prejudice.

III.

For the foregoing reasons, we AFFIRM the order of the Board denying Rezaei's requests for asylum and withholding of deportation.