

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5464

Summary Calendar

IGOR MARKUSHEV,

Petitioner,

versus

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

Petition for Review of an Order of the
Immigration and Naturalization Service
(A29-399-178)

(June 16, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Igor Markushev requests review of a decision by the Board of Immigration Appeals denying asylum and withholding of deportation. We AFFIRM.

I.

Markushev entered the United States on March 7, 1991, after requesting, and being denied, permission to land temporarily while

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

a crewman on the vessel SAKHALINSKI GORY. He acknowledged deportability but sought asylum and withholding of deportation on the basis of alleged persecution for his anti-communist political views and his Evangelical Christian beliefs. The Bureau of Human Rights and Humanitarian Affairs of the State Department provided an advisory opinion that, given the political climate within the then-Soviet Union, Markushev's actions would probably be punished lightly if at all. An immigration judge heard Markushev's evidence and concluded that Markushev failed to prove that he had suffered or would suffer persecution on account of his political or religious convictions.¹ The immigration judge denied Markushev asylum and withholding of deportation.² The Board of Immigration dismissed Markushev's appeal as without merit. We will affirm these decisions if substantial evidence supports them.³ It does.

Markushev's claim of past persecution rests on various incidents. He asserts both that he received ill treatment from

¹ See Zamora-Morel v. I.N.S., 905 F.2d 833, 838 (5th Cir. 1990) ("An alien who seeks asylum or withholding of deportation must demonstrate that he or she has been persecuted or fears future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion.").

² While we review the order of the Board, not the decision of the immigration judge, the Board in this instance relied in large part on the immigration judge's reasoning. We therefore consider the findings of the immigration judge. Cf. Adebisi v. I.N.S., 952 F.2d 910, 912 (5th Cir. 1992) ("This court is authorized to review only the order of the Board. Consequently, the errors or other failings of the immigration judge are considered only if they have some effect on the Board's order.").

³ See Zamora-Morel, 905 F.2d at 838 (applying substantial evidence standard to Board of Immigration Appeals decision not to withhold deportation and not to grant asylum).

government and non-government actors and that he espoused anti-communist, Christian beliefs. Even assuming the accuracy of these assertions, the immigration judge found that Markushev failed to establish a link between the two.

Markushev complains that he suffered retaliation after a confrontation with an officer in front of a classroom of soldiers. He claims that the soldiers later beat him and that he received a transfer to another (he says less desirable) post, both events occurring without explanation. The conclusion does not follow that the political content, rather than the fact of, the disagreement with the officer caused Markushev's misfortune. Because Markushev made no further allegations about discriminatory treatment during the remainder of his time in the military, or during his subsequent employment as a metal cutting machine operator, there is ample basis for the judgment that the government did not persecute him.

Markushev later secured employment as a carpenter. He claims that after another dispute with his employer, again involving politics, he felt compelled to leave lest his employer discharge him and make it difficult for him to find another job. Markushev then spent several years working on ships, during which time he does not claim persecution.

Markushev adds to his description of these intermittent incidents a complaint about the atmosphere in Russia, which is, or at least was, intolerant of people who hold his views. He also alleges that his brother has had difficulty finding employment

because of Markushev's presence in the United States, although not because of Markushev's or his brother's beliefs.

Markushev acknowledges that he has never been detained or imprisoned in Russia. He does not account for the sporadic nature of the persecution that he allegedly suffered. He provides little basis to conclude that whatever discrimination occurred in the past is ongoing, or that he would suffer because of his beliefs were he to return to the present political climate in Russia. Relying on a recent state department report, the immigration judge noted increased tolerance for religion in Russia, at least for Christianity. The immigration judge did not err by denying asylum and withholding of deportation. Substantial evidence supports the immigration judge's decision.

Markushev argues, in the alternative, that he has a well-founded fear of reprisal for attempting to defect. Punishment for such an act under a law of general applicability, if not driven by invidious motivations, does not amount to persecution on the basis of political or religious views.⁴ Moreover, a state department report suggests that the response of the Russian government would likely be mild. Markushev offers no basis for the inference that he would suffer retaliation upon his return as an Evangelical Christian, as a detractor of communism, or otherwise.

⁴ See, e.g., Castillo-Rodriguez v. I.N.S., 929 F.2d 181, 185 (5th Cir. 1991) (finding fear of prosecution for crimes in Mexico inadequate basis for asylum). Cf. Coriolan v. I.N.S., 559 F.2d 993, 1000 (5th Cir. 1977).

Markushev argues on appeal that the extension⁵ of the Lautenberg Amendment⁶ eases the burden on Evangelical Christians from Russia who seek asylum. The Amendment by its own terms applies only to refugees, not to people seeking asylum, and Markushev's argument has no merit that distinguishing between the two would violate equal protection. However, because under the standard set out in the Lautenberg Amendment Markushev's appeal fails, we need not reach this issue. We agree with the immigration judge that Markushev has offered no credible basis for concern about the possibility of persecution.

Finally, Markushev requests reinstatement of the thirty-day voluntary departure period granted first by the immigration judge and later by the Board of Immigration Appeals. Federal Circuit Courts of Appeals have disagreed over their authority to grant voluntary departure.⁷ We have no reason to trench on the authority

⁵ Pub. L. No. 102-391, 106 Stat. 1633 (1992).

⁶ Pub. L. No. 101-167, 103 Stat. 1195 (1989).

⁷ Compare Ramsay v. I.N.S. 14 F.3d 206, 211-13 (4th Cir. 1994) (exercizing broad authority to grant voluntary departure) and Umanzor-Alvarado v. I.N.S., 896 F.2d 14, 16 (1st Cir. 1990) (same) and Contreras-Aragon v. I.N.S., 852 F.2d 1088, 1092-93 (9th Cir. 1988) (en banc) (requiring reinstatement of voluntary departure) with Castaneda v. I.N.S., 1994 U.S. App. LEXIS (10th Cir. May 13, 1994) (finding lack of authority to extend or reinstate voluntary departure) and Kaczmarczyk v. I.N.S., 933 F.2d 588, 597-98 (7th Cir.), cert. denied, 112 S.Ct. 583 (1991) (same).

of the district director and leave the decision to reinstate voluntary departure to the director's discretion.⁸

⁸ See Farzad v. I.N.S., 808 F.2d 1071, 1072 (5th Cir. 1987) (recognizing "no legal or equitable persuasion for th[e] court to augment the administrative remedy already available to [an alien] of applying to the district director to grant an extension of voluntary departure.").