

UNITED STATES COURT OF APPEALS

For the Fifth Circuit

No. 94-40726

Summary Calendar

DEDIGAMUWAGE WILFRED PERERA,

Plaintiff-Appellant,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Defendant-Appellee.

Petition for Review of an Order of
the Board of Immigration Appeals

(A28-651-333)

(January 11, 1995)

Before JONES, BARKSDALE and BENAVIDES, Circuit Judges.

PER CURIAM:*

Pursuant to 8 U.S.C. Section 1105(2), the appellant,
Dedigamuwage Wilfred Perera ("Perera"), petitions for review of

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the order of the Board of Immigration Appeals ("BIA") denying Perera's applications for political asylum and withholding of deportation, and denying his appeal from the decision of the Immigration Judge ("IJ"). We deny the petition for review.

FACTS AND PROCEDURAL HISTORY

Perera entered the United States as a non-immigrant visitor with authorization to remain until October 23, 1988. Perera stayed in the United States beyond this date without authorization from the Immigration and Naturalization Service ("INS"). On March 28, 1988, the INS issued an Order to Show Cause asserting that Perera was deportable because he had remained in this country longer than permitted. On June 29, 1989, Perera appeared before the IJ and conceded deportability. Perera, however, asked to file and did file an application for relief seeking political asylum and withholding of deportation. On March 26, 1990, the IJ held a hearing to consider Perera's application.

At the hearing, Perera testified that he is Sinhalese, which is the largest ethnic group in Sri Lanka. In 1975, Perera joined the United National Party ("UNP"), which at the time of the hearing governed Sri Lanka. In 1977, Perera became an assistant secretary of the UNP in his home village. His job responsibilities included helping the residents in his village find jobs and getting out the vote for the UNP.

While Perera was an assistant secretary to the UNP, it was involved in a civil war with the Janatha Vimukthi Peramuna ("JVP"),

a leftist insurgency group. In 1987, the JVP became active in the area where Perera and his family resided. The JVP began threatening UNP members and their families. Members of the JVP threatened Perera five times in an effort to convince him to drop his support of the UNP and to begin providing the JVP with monetary support. Perera also described one instance, in 1988 when Perera was on a train, when several JVP members approached him and tried to convince him to go with them. Perera refused, and later members of the JVP told him that, unless he changed his allegiance, they would kill him. In June of 1988, Perera traveled to an annual conference of the UNP. At the time, the JVP threatened to kill everyone who attended the conference. A few days later, Perera's cousin, who was also active in the UNP, was killed. According to Perera, even after he arrived in the United States, he was informed by his former employer and his family that the JVP was still making threats on his life.

The IJ denied Perera's applications for political asylum and withholding of deportation, but granted Perera's request for voluntary departure. Perera appealed the decision to the BIA. On July 6, 1994, the BIA dismissed Perera's appeal and denied his applications for asylum and withholding of deportation after conducting a *de novo* review of the proceedings and after assigning different rationales and findings than those presented by the IJ. Perera appealed.

LAW AND ARGUMENT

Section 101(a)(42)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101(a)(42)(A), provides that an alien may be granted asylum if he proves "persecution or a well-founded fear of persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. Section 243(h) of the INA, 8 U.S.C. § 1253(h), as amended by § 203(e) of the Refugee Act of 1980, Pub.L. 96-212, 94 Stat. 107, provides that an alien is entitled to a mandatory grant of withholding of deportation if the alien's life or freedom would be threatened on account of the same five factors.

On appeal, Perera argues that the IJ erred in its holding that Perera did not fear persecution based on one of the enumerated five factors because he could control whether or not the JVP persecuted him. For example, IJ held that Perera "could avoid the threats of the JVP by ceasing his activities on behalf of the United National Party." Oral Decision of the Immigration Judge, March 26, 1990, at 5.

We have authority to review the decision of the BIA after its *de novo* review, but do not review the decision of the IJ. Castillo-Rodriguez v. I.N.S., 929 F.2d 181, 183 (5th Cir. 1991). Here, the BIA did not rely on the reasoning of the IJ in arriving at its decision. As previously stated, the BIA conducted a *de novo* review of the record and arrived at its own conclusions. The basis of the BIA decision is not assailed in Perera's brief, and Perera's

arguments assailing the IJ's findings are irrelevant to this appeal. Additionally, we have reviewed the record and find that there is substantial evidence to support the BIA's holding that Perera is not eligible for asylum or a withholding of deportation. Accordingly, the BIA did not err in denying relief under Section 101(a)(42)(A) of the INA, 8 U.S.C. § 1101(a)(42)(A), and Section 243(h) of the INA, 8 U.S.C. § 1253(h), as amended by § 203(e) of the Refugee Act of 1980, Pub.L. 96-212, 94 Stat. 107.

Accordingly, we deny the petition for review.