

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA



In the Matter of

RRUSTEM NEZA, A79-091-766

NURIE NEZA, A79-091-767

XHELADIN NEZA, A79-091-768

Petitioners

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IN ASYLUM PROCEEDINGS

*PETITIONERS' REPLY TO DHS OPPOSITION
TO AMENDED MOTION TO REOPEN*

TO THE HONORABLE BOARD OF IMMIGRATION APPEALS:

Petitioners RRUSTEM NEZA, NURIE NEZA, and XHELADIN NEZA hereby file their *Petitioners' Reply to DHS Opposition to Amended Motion to Reopen*, respectfully showing the following:

Petitioners filed their *Amended Motion to Reopen on Account of Changed Circumstances* on or about 9 October 2007, together with exhibits proving that during September 2007 at least three Albanian newspapers published front page articles naming Rustem Neza as having identified the assassins of Democratic Party leader Azem Hajdari, reporting that he had been denied asylum in the US, and announcing that he soon would be deported from the US to Albania. Alerted to Rustem Neza's imminent return, therefore, the assassins would be waiting for him with sharpened knives.

The DHS filed a *Department of Homeland Security's Opposition to Respondents' Amended Motion to Reopen* on or about 5 November 2007, readily acknowledging that Mr. Neza

likely will be murdered on account of his political opinion if returned to Albania, but declaring it to be his own fault for trying to rally public support for his efforts to avoid being delivered into the hands of the assassins.

His efforts have begun to awaken people who value elementary fairness and ordinary decency in legal proceedings. Congressman Louie Gohmert on 1 November 2007 filed two private bills in the United States Congress, one to prevent the deportation of Mr. Neza and make him a legal resident of the US, and the other to stop the deportation until he has an opportunity to present the facts of his case to an immigration judge. Congressman Gohmert also wrote a letter that was printed in the Lufkin Times newspaper describing the conduct of the government in its eagerness to kill Mr. Neza. That letter, as published, is attached as Exhibit 1. The private bills are attached as Exhibit 2.

The Petitioner has asked the BIA and the Circuit Court to allow him an opportunity to present the facts of his case to an immigration judge, claiming that he is entitled to do so by the Constitution of the United States and by the treaty obligations of the US. It is not necessary, however, to invoke the denial of due process that Mr. Neza's previous attorney obviously caused to Mr. Neza by his ineffective assistance. Mr. Neza is entitled by 8 USC §1229a(b)(4)(B) to the right of which the government continues to seek to deprive him:

There is no need to invoke the Constitution when the immigration statute itself guarantees a fair hearing. 8 USC §1229a(b)(4)(B) (the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross examine witnesses presented by the Government") *Rehman v. Gonzales*, 441 F3d 506, 508 (7th Cir 2006) (aliens have both statutory, and regulatory, entitlements to present all material evidence at impartial hearings. Any proceeding that meets these requirements satisfies the Constitution as well." (citations omitted)). The specific statutory right with which the immigration judge interfered in this case was the alien's right to "a reasonable opportunity...to present evidence." *Kadia v. Gonzales*, slip opinion No. 06-1299 (7th Cir—7 September 2007)

The clearly established statutory right to "a reasonable opportunity...to present evidence" plainly

was denied to Mr. Neza by the incompetence of Mr. Haber in preparation for and trial of removal proceedings, and in the appeal filed by Mr. Haber's partner Mr. Roth, whose main concern was to prevent embarrassment to Mr. Haber, rather than effective representation of Mr. Neza, as any lawyer can see by reading the transcript of the hearing and the text of Mr. Roth's brief and his *Motion to Reopen* to the BIA.

In its *Opposition* the DHS simply ignores the law, and makes the conclusory allegation that "Respondent's former counsel zealously represented him."¹ Of course, the DHS makes no attempt to show any examples of that zealous representation. There are none. The government simply hopes that its ranting will divert attention from the specific facts of the case to its abstract and incessantly repeated mantra that "the regulations 'plainly disfavor' motions to reopen."² As if that were sufficient reason to abandon the laws and treaty obligations of the United States in order to kill Mr. Neza. The government makes such noise to distract the BIA's attention from the undisputed fact that former counsel was not even aware at trial that his own client had with him the death certificates of the two murdered cousins with whom he had hidden in Albania after the Hajdari assassination.

Perhaps most outrageous, however, is the willingness of the DHS to seek litigation advantage by lying to the BIA knowingly about things its attorney could not possibly have any knowledge of. Although the BIA publishes Disciplinary Actions Under Rules of Professional Conduct, the names of government attorneys never appear there, no matter how dishonest and unethical they may be.

The DHS writes that the news stories in the Albanian newspapers announcing the imminent return of Mr. Neza to the hands of the assassins "do not contemplate evidence that is

¹ Department of Homeland Security's Opposition to Respondents' Amended Motion to Reopen, paragraph 4.

² Department of Homeland Security's Opposition to Respondents' Amended Motion to Reopen, paragraph 5.

material..." because "The news articles originate from the United States." The DHS statement is not merely stupid: it is a deliberate misrepresentation. One of the two articles in the Korrieri, 5 September 2007, is essentially a translation to Albanian of a request for assistance that Mr. Neza's attorney published in the Texas Civil Rights Review, in English, one of the articles in Agon, 12 September 2007 appropriately cites the Associated Press, and one of the articles in the Tirana Observer, 13 September 2007, cites the Dallas Morning News, all of the reports include extensive background on the Hajdari assassination and ensuing investigations, which does not appear in any of the U.S. media. Worse, is the plain lie that "Any interest in Albania about Respondents' case is a direct result of Respondent's attorney's own webpage and attempt to publicize the case in the US and in Albania." Of course, if publicity generated by Mr. Neza's attorney attracts the attention of the assassins so that they murder Mr. Neza on account of his political opinion when he returns to Albania, Mr. Neza will be no less dead. Neither human life nor logic are of any interest to the DHS. Unfortunately, neither is truth. Mr. Neza's attorney does not have a web page.³ Moreover, Mr. Neza's counsel has done nothing to publicize the case in Albania, contrary to the DHS statement. Not to confuse the BIA with mere fact and truth, the DHS provides no evidence that Mr. Neza's counsel has tried to publicize his case in Albania. The DHS also contradicts itself: it says Mr. Neza will be killed in Albania on account of his political opinion now that the assassins have been alerted to his arrival, but his asylum claim has never had any merit. The DHS should not be allowed to have it both ways. Either the killers of Hajdari want to silence the potential witnesses against them or they do not. DHS is talking out of both sides of its mouth.

Perhaps, however, the DHS should be congratulated on its sense of humor, if, indeed, its

³ He commissioned the construction of a web page several years ago, but it has never been completed and is not accessible to the public. The URL is <http://jwgpc.ssvzc.com/>

argument is not mere confusion. It argues that former counsel presented the immigration judge with “numerous inconsistencies, both internally in testimony and with the documentary evidence...” and when the BIA reviewed the record created by that attorney “both in appeal and in a motion to reconsider” it found no reason to reverse the immigration judge. From this proof (undeniable proof in light of the evidence that has been presented to the Board by present counsel) of previous counsel’s incompetence, the DHS argues the BIA should conclude the representation by previous counsel was not ineffective. It is, of course, precisely because prior counsel presented a case riddled with “inconsistencies” when he could have presented a plainly meritorious case, if he had bothered to investigate what his client had been through and what evidence was easily available to him (indeed, he did not even know his client had with him his cousins’ death certificates!) that his performance was so far beneath that which the Constitution and laws of the United States require that it denied Mr. Neza a reasonable opportunity to present his evidence. Prior counsel argues, and the DHS bays along with him and his partner, that since the record prior counsel created was so defective the BIA could not find in that same record a meritorious asylum claim, the BIA now should ignore the evidence that it now knows prior counsel could have put into the record, and which almost certainly would have resulted in a grant of asylum to Mr. Neza.

Perhaps the DHS has its own reasons for wanting to prevent disclosure of the facts that might surface if Mr. Neza were afforded a reasonable opportunity to present his case in the immigration court. It is clear that neither the BIA in its previous denial of Mr. Neza’s *Lozada* motion nor the DHS in its present pleadings, doubts that Mr. Neza very likely will be murdered if returned to Albania, and that the murder will be because of his political opinion.

The BIA should not deny Mr. Neza the right to a fair hearing before sending him to his

death. It is hard to imagine a more flagrant blot on the honor of the United States than the efforts of the DHS to deny to Mr. Neza the reasonable opportunity, which the laws of the United States guarantee him, to present his case to an immigration judge. The BIA should look at all of the evidence before it, and reject the mere bureaucratic spite for which the DHS argues. If it does, it will reopen Mr. Neza's asylum application.

Respectfully submitted,

JOHN WHEAT GIBSON, P.C.
By John Wheat Gibson
Texas Bar No. 07868500
701 Commerce, Suite 800
Dallas, Texas 75202
(214) 748-6944, FAX (214) 748-8693
ATTORNEY FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the above *Petitioners' Reply to DHS Opposition to Amended Motion to Reopen* was served on the BICE trial attorney by first class mail to Office of Chief Counsel, U.S. Department of Homeland Security, 333 S. Miami Ave., Second Floor, Miami, Florida 33130, on 7 November 2007.

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LETTER: U.S. government's apathy presents largest hurdle in fight against man's deportation



Click-2-Listen

By LOUIE GOHMERT
U.S. representative

Tuesday, October 23, 2007

The situation with Rustem Neza has been both intolerable and frustrating for more than eight months now as we have fought to assist him with our own unfeeling and, thus far, unyielding government. Our own federal laws regarding privacy have prevented me from coming forward with our efforts thus far, but Rustem's family has encouraged me to respond and has approved this statement so that we do not say anything inappropriate.

Nonetheless, for me to be aware of the vast failures of the Citizenship and Immigration Services (CIS) and Immigration and Customs Enforcement (ICE) in their widespread allowance of illegal immigration only to have them remain relentless in the Nezas' case has only added to the frustration. The Executive Branch through the Department of Homeland Security, CIS, and ICE has authority to take the actions they are taking, but they should not have the right. Through our efforts on Rustem's behalf, the best we got from CIS was that they would continue to consider our admonitions and pleas on the family's behalf and that IF there were to be a deportation, they would certainly let me know ahead of time. Imagine my absolute anger when we had to read about the outrageous attempt to deport Rustem unsuccessfully, and they now want to sedate him in order to send him to what may well be his death.

As most people know, I am a strong believer in following the laws regarding Immigration. However, we have laws to allow people to remain here based on asylum and the need to protect their lives. Yes, as the CIS keeps pointing out, Rustem apparently came in on an Italian passport which was not appropriate. However, when people came by subterfuge from Communist Cold War countries, we did not condemn them and send them back. We accepted them in a humanitarian spirit to save their lives. Rustem was also not aware that the attorney they had hired had listed that he was a citizen in the application for a liquor license for their restaurant, but that is the other issue that CIS, ICE, and Homeland Security keep hurling back at us.

EXHIBIT 1

My office and I have and will continue to personally work with Xhemal Neza, Rrustem Neza's brother, to attempt to stop this travesty of justice. We are told that if we can find an alternative

country that will take him, our government will attempt to accommodate that request. However, they have more ability to help find such a country than anyone else and yet they have not been helpful in that effort so far.

When I found out about the effort to get an order for sedation, I immediately sent letters in the nature of Amicus Curiae submissions to U.S. District Judge Sam Cummings who presides over the effort of our Executive Branch to have Mr. Neza sedated while being sent back. I personally approached Secretary of State Condoleezza Rice face to face and have attempted to contact Secretary of Homeland Security Michael Chertoff who has had an assistant contacting me instead. So far, those efforts have not been fruitful, but the deportation order needs to be changed.

I have notified them more recently that if Rrustem is returned to Albania to meet his untimely death, as a Congressman I will not stop the hounding of those in our own government until they are out by using the actual names of those bureaucrats complicitous in his murder by their apathy and callousness. This would not be out of revenge, but out of my fervent desire for better people in our United States government. Hopefully, the thought of being held to ridicule indefinitely will give the bureaucrats cause for pause that the possible murder of Mr. Neza, unfortunately, has not.

H.L.C.

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(Original Signature of Member)

110TH CONGRESS

1ST SESSION **H. R. 11**

For the relief of Rrustem Neza.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOHMERT introduced the following bill; which was referred to the Committee on IIIIIIIIIIIII

A BILL

For the relief of Rrustem Neza.

*Be it enacted by the Senate and House of Representa- 1
tives of the United States of America in Congress assembled, 2*

SECTION 1. PERMANENT RESIDENT STATUS FOR RRUSTEM 3 NEZA. 4

(a) IN GENERAL.—Notwithstanding subsections (a) 5
and (b) of section 201 of the Immigration and Nationality 6
Act, Rrustem Neza shall be eligible for issuance of an im- 7
migrant visa or for adjustment of status to that of an alien 8
lawfully admitted for permanent residence upon filing an 9
application for issuance of an immigrant visa under sec- 10

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tion 204 of such Act or for adjustment of status to lawful 1
permanent resident. 2

(b) ADJUSTMENT OF STATUS.—If Rrustem Neza en- 3
ters the United States before the filing deadline specified 4
in subsection (c), he shall be considered to have entered 5
and remained lawfully and shall, if otherwise eligible, be 6
eligible for adjustment of status under section 245 of the 7
Immigration and Nationality Act as of the date of the en- 8
actment of this Act. 9

(c) WAIVER OF GROUNDS FOR REMOVAL OR DENIAL 10
OF ADMISSION.— 11

(1) IN GENERAL.—Notwithstanding sections 12

EXHIBIT 2

212(a) and 237(a) of the Immigration and Nation- 13
ality Act, Rrustem Neza may not be removed from 14
the United States, denied admission to the United 15
States, or considered ineligible for lawful permanent 16
residence in the United States, by reason of any 17
ground for removal or denial of admission that is re- 18
flected in the records of the Department of Home- 19
land Security or the Visa Office of the Department 20
of State, on the date of the enactment of this Act. 21

(2) RESCISSION OF OUTSTANDING ORDER OF 22

REMOVAL.—The Secretary of Homeland Security 23
shall rescind any outstanding order of removal or de- 24
portation, or any finding of inadmissibility or de- 25

portability, that has been entered against Rrustem 1
Neza by reason of any ground described in para- 2
graph (1). 3

(d) DEADLINE FOR APPLICATION AND PAYMENT OF 4

FEES.—Subsections (a) and (b) shall apply only if the ap- 5
plication for issuance of an immigrant visa or the applica- 6
tion for adjustment of status is filed with appropriate fees 7
within 2 years after the date of the enactment of this Act. 8

(e) REDUCTION OF IMMIGRANT VISA NUMBER.— 9

Upon the granting of an immigrant visa or permanent res- 10
idence to Rrustem Neza , the Secretary of State shall in- 11
struct the proper officer to reduce by 1, during the current 12
or next following fiscal year, the total number of immi- 13
grant visas that are made available to natives of the coun- 14
try of the alien’s birth under section 203(a) of the Immi- 15
gration and Nationality Act or, if applicable, the total 16
number of immigrant visas that are made available to na- 17
tives of the country of the alien’s birth under section 18
202(e) of such Act. 19

(f) DENIAL OF PREFERENTIAL IMMIGRATION TREAT- 20

MENT FOR CERTAIN RELATIVES.—The natural parents, 21
brothers, and sisters of Rrustem Neza shall not, by virtue 22
of such relationship, be accorded any right, privilege, or 23
status under the Immigration and Nationality Act. 24

H.L.C.

.....
(Original Signature of Member)

110TH CONGRESS

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IN THE HOUSE OF REPRESENTATIVES

Mr. GOHMERT introduced the following bill; which was referred to the Committee on llllllllllllll

A BILL

For the relief of Rrustem Neza.

*Be it enacted by the Senate and House of Representa- 1
tives of the United States of America in Congress assembled, 2*

**SECTION 1. AUTHORIZATION TO REMAIN TEMPORARILY IN 3
THE UNITED STATES FOR RRUSTEM NEZA. 4**

(a) IN GENERAL.—The Secretary of Homeland Secu- 5
rity shall refrain from removing or deporting Rrustem 6
Neza from the United States, and shall permit him to re- 7
main temporarily in the United States, notwithstanding 8
sections 212(a) and 237(a) of the Immigration and Na- 9
tionality Act. 10

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(b) APPLICATION TO PREVIOUSLY KNOWN 1

GROUND.—The stay of removal or deportation under 2
subsection (a) shall apply only to a ground for removal, 3
deportation, or denial of admission that is reflected in the 4
records of the Department of Homeland Security, or the 5
Visa Office of the Department of State, on the date of 6
the enactment of this Act. 7

(c) DURATION OF STAY.—The stay of removal or de- 8
portation under subsection (a) shall be effective during the 9
period beginning on the date of the enactment of this Act 10
and ending on the date that is 30 days after a final deci- 11
sion is rendered on the application described in subsection 12
(d)(4), including all administrative and judicial review au- 13
thorized by law, if such an application is filed during the 14

application period described in subsection (d)(5). If no 15
such application is timely filed, the effective period of such 16
stay of removal or deportation shall end 30 days after the 17
end of such application period. 18

(d) RELIEF.— 19

(1) REOPENING OF PROCEEDINGS.—The Board 20
of Immigration Appeals shall reopen proceedings 21
pursuant to section 240 of the Immigration and Na- 22
tionality Act against Rrustem Neza based on ineffec- 23
tive assistance of counsel upon a motion filed by 24

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Rrustem Neza not later than 6 months after the 1
date of the enactment of this Act. 2

(2) RESCISSION OF OUTSTANDING ORDER OF 3

REMOVAL.— The Board of Immigration Appeals 4
shall rescind any order of removal, or any finding of 5
inadmissibility or deportability, that was entered 6
against Rrustem Neza by reason of a ground de- 7
scribed in subsection (b) before the date of the en- 8
actment of this Act. 9

(3) OPPORTUNITY TO PRESENT CLAIMS.—The 10
Board of Immigration Appeals shall ensure that 11
Rrustem Neza is provided the opportunity described 12
in paragraph (4). 13

(4) PRESENTATION OF CLAIMS.—Rrustem Neza 14
shall be provided a full opportunity after the date of 15
the enactment of this Act to apply to an immigra- 16
tion judge for asylum, withholding of removal, or re- 17
lief under the United Nations Convention Against 18
Torture. Rrustem Neza shall have all rights to ad- 19
ministrative and judicial review of any decision of 20
the immigration judge authorized by law. 21

(5) APPLICATION PERIOD.—The immigration 22
judge shall establish a reasonable application period 23
within which Rrustem Neza may apply for relief 24
pursuant to paragraph (4). 25

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