

No. 00-2782

**IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

SANTOS ANDRES RAMIREZ, et. al,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

**PETITION FOR REVIEW OF AN ORDER OF
THE BOARD OF IMMIGRATION APPEALS
INS A75 250 459, et. al,**

BRIEF FOR RESPONDENT

STATEMENT OF JURISDICTION

In this immigration case, the petitioner, Santos Andres Ramirez (“Ramirez”), seeks this Court’s review of a final order of deportation issued by the Board of

¹In proceedings below, Ramirez submitted an application for asylum which

apply to all final orders of deportation issued by the Board on or after October 31,

Ramirez is a 43-year-old native and citizen of El Salvador. A.R. 3. Ramirez arrived in the United States, with his wife, Maria Luz Ramirez, on December 4, 1992, without inspection by an immigration officer. A.R. 3.

In El Salvador, Ramirez had several relatives who, he claims, were members

and his concession of deportability, deportability had been established by clear, convincing and unequivocal evidence. A.R. 68. The IJ then turn to Ramirez's application for asylum and withholding of deportation. A.R. 68.

While finding that Ramirez testified credibly, the IJ held that his testimony, even if true, did not establish eligibility for asylum. A.R. 72. The IJ found that Ramirez failed to establish past persecution. A.R. 72. The IJ noted that the last threats Ramirez received were in 1980. A.R. 72. The IJ also noted that Ramirez

A.R. 72-73. The IJ held that although a new problem has arisen in El Salvador concerning criminal violence and gangs, Ramirez has not stated any claim of persecution based on anything other than having been supportive (but not actively

SUMMARY OF THE ARGUMENT

whether the evidence compelled a finding of a fear of persecution, however, the court “may not reweigh the evidence.” Miranda v. INS, 139 F.3d 624, 626 (8th Cir. 1998). “[A] reviewing court is not entitled to reverse ‘simply because it is convinced that it would have decided the case differently.’” Anton v. INS, 50 F.3d 469, 472 (7th Cir. 1995)(quoting Milosevic v. INS, 18 F.3d 366, 371 (7th Cir.

the requirement that the fear of future persecution be objectively reasonable,

interviewed on television and radio. See id. at 8, A.R. 231. Moreover, the report

founded fear, the Board must take more than a cursory notice of the changes of the country at issue and make an individualized analysis).

Contrary to Ramirez's assertions, in addition to properly considering the State Department's 1997 Country Condition Report, the Board analyzed how Ramirez's particular situation is affected by the changed conditions in El Salvador. The Board found it significant that Ramirez has been absent from El Salvador for eight years and did not provide evidence that anyone was looking for him or his family members. A.R. 4. See Nyonzele v. INS, 83 F.3d 975, 982 (8th Cir. 1996)(noting that the applicant's evidence of family persecution occurred over a decade ago and holding that the applicant did not show that the "rather dated events" provided an objectively reasonable basis for a well-founded fear of persecution); see also BT rquz h. INS

⁴A major reason for caution in labeling mere threats past persecution is because a finding of past persecution raises a presumption of future persecution and flips the burden of proof to the INS to show that conditions have changed to such a degree that the inference is invalid, a result that would “unduly handcuff the INS.” Id.

opinions.

First, Ramirez has not shown that he was persecuted on account of an affirmative political opinion. Although Ramirez testified that he supported the

and any alleged persecution. See Najafi v. INS, 104 F.3d 943, 947 (7th Cir. 1997).

In cases where courts have found the necessary link between family membership and persecution, the connection was manifest. See Mgoian v. INS, 184 F.3d 1029, 1036 (9th Cir. 1999)(finding that all of the applicant's "principal family members were subjected to forms of violence persecution and harassment as members of the Kurdish-Moslem intelligentsia . . ."); Gebremichael v. INS, 10 F.3d 28, 36 (1st Cir. 1993)(finding family persecution where "the Ethiopian security forces applied to petitioner the 'time honored theory of cherchez la famille ('look for the family'),'

CONCLUSION

For the foregoing reasons, the decision of the Board should be affirmed, and the petition for review denied.

Respectfully Submitted,

DAVID W. OGDEN

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(A)(7)(B),(C), I certify

CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of December, 2000, two copies of the

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