

No. 00-3221

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

TATYANA VLADIMROVNA MIROMOVA

Petitioner-Appellant,

v.

INS

Respondents-Appellees.

**BRIEF FOR RESPONDENT;
ORAL ARGUMENT NOT REQUESTED**

BRIEF FOR APPELLEES

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STATUTES

The Immigration and Nationality Act of 1952, as amended:

Section 101(a)(42)(A),
8 U.S.C. § 1101(a)(42)(A) 3, 21, 26

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Genadiy as the male Petitioner. The applications of the minor children are entirely

STATEMENT OF THE ISSUES

A. Whether the Board correctly determined that the Petitioners failed to prove their statutory eligibility for asylum based on past persecution on account of religion or imputed political opinion.

INS v. Elias-Zacarias, 502 U.S. 478 (1992);

Matter of A-S-

STATEMENT OF THE CASE

The

STATEMENT OF THE FACTS

A.

A.R.

At

In 1993, the female Petitioner's mother helped to organize the opening of a religious school in Kiev. A.R. 180-181. The mother experienced trouble getting the licenses to open the school and was accused of being a KGB collaborator by a government official. A.R. 182. The school taught grades one through three since permission could not be obtained to teach other grades. A.R. 183. The school was the

³Contrary to the statement in Petitioners' brief, the record does not support their assertion as fact that the school was closed on the order of Ukrainian President Kravchuk. Pet. Br. at 9.

She said that her mother was questioned about her whereabouts after she left. A.R. 196.

On cross examination, the female Petitioner testified that her sister Natalia is in the United States and is also an asylum applicant. A.R. 198.

In response to questions from the Court, the female Petitioner testified that she was not detained prior to 1982. A.R. 210. She also testified that

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knocked unconscious. A.R. 232; 234. He testified that he could not prove whether the men were from the government. A.R. 233. Although he reported the incident to the police, no action was taken against anyone in connection with the attack. A.R. 233. The Petitioner testified that he was hospitalized for one month, largely because of a pelvic bone dislocation and he did receive disability payments for this injury. A.R. 234. He continued his church activities. A.R. 235.

The male Petitioner also testified that he was accosted by two men near a rehabilitation clinic and that the men broke his crutches and ran away. A.R. 235.

He

because of his religion. A.R. 113-114. The Court was also skeptical because the first asylum application attributed the attacks to mafia groups, while the second claimed religious reasons. A.R. 114.

Department of State Profile on Ukraine, the Board observed that Evangelicals, such as Seventh Day Adventists, are permitted to practice their religion, significantly

⁵The Petitioners' argument based on imputed political opinion is entirely dependent on their religion and is not developed in the record or in their brief. Consequently, the two arguments are interdependent and the Respondent's

petition for review brings before a court is whether establishment of the ultimate fact of the "requisite fear of persecution" is compelled by the evidence.

The Supreme Court's decisions in INS v. Elias-Zacarias, 502 U.S. 478 (1992) and INS v. Aguirre-Aguirre, 526 U.S. 415 (1999), reflect the principle that judicial review of administrative asylum determinations is sharply limited. Aguirre provides general legal principles applicable to the immigration context and, in particular, to asylum decisions. The Court stressed that the INA makes the and "in exptres eters" A maken

theestutoryyn codiations for[relief] haivebeen met."

2. Burden of Proof

⁶Petitioners have cited no authority for the bold assertion in their brief that Congress intended for “lenient consideration of asylum claims.” Pet. Br. at 16. 20. Congress, in fact, established statutory requirements that must be met in order to qualify for a grant of asylum. See 8 U.S.C. § 1101(a)(42)(A).

testimony without corroboration. 8 C.F.R. § 208.13(a). This regulation sets a threshold showing that an applicant must make to be found eligible. The INA makes clear that the agency may require such a threshold to be met, including terms of testing and determining the credibility of applicants. See 8 U.S.C. §§ 1158 (b)(1) & (2)(C), (d)(1) & (5)(B). If the Board does not credit the testimony and it is5)(B7uxf ap)(Base,he agelicant muhas faileto bepshoe mu"sufficie m" evidcy Tj ET-933 5 T

not the case here. See Pet. Br. 54 at fn 16. Interestingly, the female Petitioner was able to gather some documentary evidence, including certificates from the Seventh Day Adventist Development and Relief Agency of the children's enrollment and the Petitioner's employment as a teacher, in the days prior to her departure from Ukraine. A.R. 338-343. The Petitioners' failure to produce evidence to contradict the State Department reports or explain their failure to do so therefore permits a reasonable conclusion to be drawn that they failed to carry their burden of meeting the statutory and regulatory requirements for asylum.

The Board identified specific and cogent reasons for its adverse credibility determination and this Court should defer to the Board's finding. Hajiani-mzehice

⁹Contrary to their assertion in their brief, the burden to prove changed country conditions never shifted to INS in this case because the Petitioners did not prove past persecution. Pet. Br. at 50-51.

stabbing, the brief states that the male Petitioner “strongly feels was not unconnected with his religious belief and their establishment of a church run school.” Pet. Br. at 5, citing A.R. 311-19; 370-78.

The arrests and brief detentions of the female Petitioner also do not amount to

¹⁵This record does not clearly explain why the female Petitioner's mother is

For

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