

(202) 616-4868

Attorneys for Respondent

Ukraine.

Finally, the Court lacks jurisdiction over Bogdan's Torture Convention claim as she has not exhausted her available administrative remedies.

Because respondent believes that the issues presented in this case are thoroughly addressed in the briefs, he does not request oral argument.

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**Foreign Affairs Reform and Restructuring Act of 1998, Pub. L.
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^{2/} The abbreviation "A.R." refers to the Certified Administrative Record on file with the Court. Citations to petitioners' opening brief will be indicated by "Pet'rs Br." followed by a page number.

conclude that she suffered persecution in the past and that she presently has a well-founded fear of persecution (1) where the mistreatment of her by the mafia when she refused to pay back money owed them by her husband and the mistreatment of her daughter by her Tartar classmates who were Muslim, did not rise to a level of past persecution; (2) where there was no showing of a causal connection between Bogdan's mistreatment and her religion and/or an imputed political opinion; (3) where Evangelical Christian groups in Ukraine are no longer denied religious freedom; and (4) where there is no evidence of harm to her family members who remain in Ukraine. 8 U.S.C. § 1252(b)(4)(B); INS v. Elias-Zacarias, 502 U.S. 478, 484 (1992); Rucu-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (per curiam); Manivong v. INS, 164 F.3d 432, 433 (8th Cir. 1999)e5 408 112.5

STATEMENT OF THE CASE

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^{2/} Bogdan initially filed her asylum application with the INS Asylum Office. The INS denied the application and referred the case to the immigration court. A.R. 139-41, 215.

request for voluntary departure. A.R. 208-09. The Bogdans thereafter appealed the immigration judge's decision to the Board. A.R. 177-80. The Board dismissed the appeal on October 10, 2000. A.R. 1-3. This petition for review followed.

B. Statement Of Facts

In support of her application for asylum, Bogden offered her testimony, asylum application and supporting affidavit, and various background documents. A.R. 222-23, 231-70.

1. Bogdan's Asylum Application

In her asylum application and supporting affidavit, Bogdan stated that she was seeking "political and religious asylum" because of "harassment from [the] police, mafia[,] and work supervisors" due to her "church affiliation and nationality." A.R. 343.

Bogdan stated that her husband "disappeared to an unknown destination" in January 1992. A.R. 349. A month after his disappearance, four unknown men came to her home looking for her husband. Id. The men informed Bogdan that her "husband owed them \$1500" and that she "would have to pay them the \$1500 within one month." Id. The men further told her that she would be "in trouble" if she did not pay them the money. Id. Bogdan was visited by these four men on several occasions. A.R. 349-53. She surmised that they

During one of the visits by the four men, "[t]wo of the men held [her] hands, another held [her] by [her] hair, and the last one punched [her] in the face twice and kicked [her] kidneys once" when she refused their demands for money. A.R. 349-50. Bogdan was given three additional months to "find the money." A.R. 350. Bogdan later surmised that her "husband was a member of the [m]afia." Id. As a result, Bogdan "changed where [she] lived secretly." Id. The four men "came to [her] parents['] house and asked them where [she] was living." Id. During the next two years, Bogdan "changed [her] residence many times." Id.

Bogdan stated that she asked for police protection but was told that she "would have to be Ukrainian in order to receive help and protection." A.R. 350-51. According to Bogdan, "[a]t that time Russian people were under pressure from the government to change their nationalities to Ukrainian." A.R. 350. Bogdan stated that she "did not change [her] nationality and [her] problems became worse." A.R. 351. Bogdan's "son wasn't allowed to go to kindergarten [because] there was no place for Russian children." Id. She also could not "receive medical care for [her] children." Id. Bogdan "changed her nationality [to Ukrainian] to avoid these problems." Id.

Bogdan stated that prior to 1995, she "did not have religious freedom as a believer [in God]" and that she "began to go to the Baptist Church [in Crimea] in the summer of 1995." A.R. 351. Bogdan's affiliation with the Baptist Church "became known to the administration of [her] work" and her employer thus began making

"things difficult for [her]" by fixing her "[schedule so that [she] would have to work on Sundays." Id. Bogdan was also warned by her ex-Communist boss that she would be fired if she "didn't stop going to church." Id. Bogdan "stopped going to church because [she] couldn't get another job and [she] needed the money to care [for] and feed [her] children." Id.

Bogdan stated that in 1995 a lot of Tartars returned to Krimea to retrieve the homes they were forced to leave when Stalin sent them away. A.R. 352. Some aggressive Tartars visited Bogdan's home and

Bogdan was advised by someone at the station to stop attending church. Id.12.

Bogdan later departed for the United States. A.R. 354. Bogdan stated that "those men still continue to come to her mother's home." Id. She further stated that her mother asked her "not to come back to the Ukraine because [her] life is still in danger there." Id.

2. Hearing Testimony

Bogdan, an ethnic Russian and Baptist, testified to the following facts in support of her application for asylum and withholding of deportation at the hearing held on December 9, 1998. Bogdan is a native and citizen of Ukraine and at the time of the hearing was 36 years old. A.R. 235-36 She was born in the city of Simferopol, the region of the Crimea in the Country of the Ukraine. A.R. 235.

Bogdan is married and has two children, Yevgeniya who was age 12 at the time of the hearing and Roman who was age 7. A.R. 233. Prior to coming to the United States, Bogdan's home was in Simferopol, Ukraine, where she lived with her husband and two children. A.R. 235. Bogdan lived in Simferopol her entire life before coming to the United States. Id.

informed them that she did not know where her husband was and that she was not going to pay them back because she did not have any money. A.R. 240. Bogdan was given three months to find the money and was told that she was going to be charged

treatment prior to 1995, Bogdan stated "Yes, I had a nervous breakdown of stress and I saw a psychiatrist, which is in Russia a neurologist." A.R. 246. Bogdan testified that she was also hospitalized in the United States for a nervous

he called me to his office and said, if you don't want to lose your job, stop attending church.

A.R. 253. When asked whether she stopped going to church, she responded,

I stopped for a while but I'm still reading religious books

then went to the police station to file a written report of the incident. A.R. 250. While they accepted her report, Bogdan did not believe that "they made any further investigation, processing of the document." A.R. 251. While

Bodgen first thought about coming to the United States in late 1995. A.R. 255. She applied for a visa in December, 1995 which was initially denied. Id.

As to the harassment received by Bogdan's daughter from her Tarter classmates, the immigration judge found that such acts "did not rise to the level of past persecution." A.R. 207. In so finding, the immigration judge noted that "the problems for [Bogdan's] daughter really do not specifically relate to any connection to the Baptist church, but rather involve some school harassment by Muslims, which apparently would have been directed to any Christian religionist." Id.

Nor did the immigration judge find that the problems experienced by Bogdan at her job rose to a level of past persecution. A.R. 207. In so finding, the immigration judge

5. Decision by the Board of Immigration Appeals

The Board dismissed the Bogdans' appeal on October 10, 2000. The Board found that the immigration judge correctly determined that Bogdan had failed to show either past persecution, a well-founded fear of persecution or a clear

99 F.3d 954, 959 (9th Cir. 1996); Matter of Chen, 20 I.& N. 16, 17

A request for asylum in removal proceedings is automatically considered to include a request for withholding of removal. See INS v. Stevic, 467 U.S. 407, 420 n.13 (1984). Withholding of removal is governed by Section 241(b)(3) of the Act, 8 U.S.C. § 1251(b)(3). With certain exceptions, 4.pertinent here, withholding of removal is



^{6/} Bogdan argues for the first time in her brief to this Court that she was "subject to threats of economic persecution at her workplace at the Naval Warehouse." Pet'rs Br. at 46. Because she failed to raise this issue before the Board, this Court lacks jurisdiction to consider this argument. Aiyadurai

Bogdan claimed that she experienced the following problems while

²⁷ Moreover, the mafia attacks against Bogdan were perpetrated

1486 (alien must prove causal connection, that it, that persecution was "on account of statutory enumerated ground."). On the contrary, the record established that the mafia harassed and assaulted Bogdan in order to encourage her to pay back money owed to them by her husband, not because of her religion. A.R. 206, 240-41.

And, as noted by the immigration judge, Bogdan's problems with the mafia occurred three years prior to her "religious affiliations."

A.R. 206. Moreover, when asked why she believed that the mafia was after her, Bogdan stated that "they were requiring some money, and

harassment by Muslims, which apparently would have been directed to any Christian religionist." A.R. 207. In any event, the immigration judge found that such mistreatment did not rise to a level of past persecution. Id.

In sum, the evidence of record is not so compelling that no reasonable factfinder could fail to find that Bogdan established persecution or that it was on account of a ground covered by the asylum statute. See A.R. 207 ("In the present case the evidence is just overwhelming that the mafia [was] after [Bogdan] because her husband had borrowed money from them. The Court does not believe that this type of criminal activity, which the Court does not dispute can be extremely threatening, falls within a protected basis under the Act.").

2. Well-Founded Fear Of Future Persecution

^{8/} The regulations became effective March 22, 1999. See

CONCLUSION

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

Respectfully submitted,

STUART E. SCHIFFER
Acting Assistant Attorney General
Civil Division

DAVID V. BERNAL
Assistant Director

BRENDA E. ELLISON
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U. S. Department of Justice
Post Office Box 878
Ben Franklin Station
Washington, D.C. 20044
(202) 616-4868

Dated: March 22, 2001

Attorneys for Respondent

CERTIFICATION OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7), and Eighth Circuit Rule 28A(c), I certify that respondent's brief:

- (1) was prepared using Corel WordPerfect 9 and Courier type in font size 12;
- (2) is monospaced;
- (3) has 10.5 or less characters per inch;
- (4) does not exceed 50 pages; and
- (5) contains less than 1,300 lines of text.

BRENDA E. ELLISON
Senior Litigation Counsel
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202)616-4868

Dated: March 22, 2001

