27, 2000. A.R. 2-4.[1]

[1] The abbreviation "A.R." refers to the Administrative Record which was previously filed with this Court.

STATEMENT OF ISSUES

1. Whether substantial evidence supports the BIA's conclusion that petitioner does not have a well-founded fear of persecution in Eritrea on account of religion or political

[2] During her July 13, 1993, immigration hearing, petitioner alleged that she was a native of Eritrea which had

OSC and conceded deportability. A.R. 73. At the conclusion of a hearing held December 16, 1993, an immigration judge denied petitioner's applications for asylum under section 208(a) of the INA, 8 U.S.C. § 1158(a)(1990), and withholding of deportation under section 243(h) of the INA, 8 U.S.C. § 1253(h)(1990), but granted her voluntary departure. A.R. 63.

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[3] Except as indicated below, the allegations presented in petitioner's 1988 Affidavit and a 1991 Supplemental Affidavit) do not va

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teach theology at the Catholic Seminary in Asmara [Eritrea], and he continues to be greatly involved with the Church and the Eritrean people. He has sought to move to the Vatican for further study . . . [but] he has beee6nilveicaexit visa bynd thethiopiicaauCat Eriesle.My uncl he continues tw Erech andthethiopiicag

[8] In her brief, petitioner alleges that "some of

[redacted]

[9] In her 1988 Affidavit, petitioner stated that "[i]t has been common for the Ethiopian government to select students upon their completion of college and send them (with or without their consent) to Crlege anleSoviet Unimon forfuranlor

her Catholic beliefs.[10]

[10] In contrast, in her 1988 and 1991 Affidavits, petitioner claimed that the "Kebele questioned me briefly on one or two occasions." A.R. 159, 491.

[11] In contrast, in her 1988 and 1991 Affidavits, petitioner claimed that by the Kefetgne "I was interrogated for one to two hours on three or four occasions." A.R. 159, 491.

[12] In contrast, in her 1988 and 1991 Affidavits, petitioner claimed that the military officials "interrogated me about two days per week for two months, from one to six hours at a time." A.R. 160, 491.

Regarding petitioner's

(citing and discussing Behzadour v. INS

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On December 27, 2000, the BIAd dimissed petitioner's6

, 940 F.2d 1025 (8th Cir. 1991)

in 1993 following a referendum in which citizens voted overwhelmingly for independence from Ethiopia, and that while the government harasses and discriminates against Jehovah's Witnesses, "Islam and Christianity are practiced and tolerated widely throughout the country with persons free to worship . . . ." A.R. 2-3.

Referencing the report entitled *Eritrea - Profile of Asylum Claims & Country Conditions*, August 1995, the BIA noted the Department of State's observations and conclusions that when the EPLF assumed power, it expelled Mengistu's soldiers, administrators, and supporters, with the result that "[t]he harsh excesses of the Marxist dictatorship (under Mengistu) . . . have ended, and . . . Eritrean exiles who had fled Mengistu's brutal rule should now be able to return without reprisals." A.R. 3. The BIA noted petitioner's acknowledgment during her asylum hearing that the present government of Eritrea is neither anti-Catholic nor pro-Marxist. Id. n. 3, 4.

In addition, the BIA noted that the 1995 Profile also

its members to return to Eritrea. Id.

Regarding petitioner's claim of past persecution, the BIA determined that petitioner had failed to establish the level of severe or long-lasting harm (such as permanent physical and emotional scarring, or a combination of detention, involuntary military service, sleep deprivation, beatings, electrical

something which this Court has held it may not do.

Petitioner claims that she has a well-founded fear of persecution in what is now Eritrea based upon certain events which occurred in the mid-1980s in Ethiopia, from which Eritrea became independent in 1993, six years after petitioner

IV 1998), the Attorney General is authorized to grant asylum to "refugees."

objective component)." Lopez-Zeron, 8 F.3d at 638; see also Cardozo-Fonseca, 480 U.S. at 430-31; Feleke

asylum to aliens lacking a current well-founded fear in the exercise of its discretion. In rare circumstances, a showing of severe "past persecution" can provide a basis for a discretionary grant of asylum on humanitarian grounds, even if there is little likelihood of further persecution if the alien returns to his home country. 8 C.F.R. § 208.13(b)(1)(ii); Bereza v. INS, 115 F.39t INS

applicant] must provide some evidence of it, direct or circumstantial." Elias-Zacarias, 502 U.S. at 483 (emphasis added). Significantly, after Elias-Zacarias, "applicants can no longer establish that their persecution was 'on account of' political opinion by inference, unless the inference is one that is clearly to be drawn from facts in evidence." Sangha, 103 F.3d at 1487.

Another way of expressing the "on account of" or "motive" requirement, reaffirmed as a "still useful guideline[]" by the Board in its decision in Matter of Mogharrabi, 19 I. & N. Dec.

probability," that is, that "it is more likely than not," that she would be subject to persecution in El Salvador in order to qualify for withholding of deportation. INS v. Stevic, 467 U.S. 407, 429-30 (1984). In contrast, the "well-foundea90b"at

founded fear of political persecution." Ghasemimehr, 7 F.3d at 1390 (emphasis added).

Deference to agency interpretations "is especially appropriate in the immigration context where officials 'exercise especially sensitive political functions that implicate questions of foreign relations.'" Id. (quoting INS v. Abudu, 485 U.S. 94, 110 (1988)). Further, interpreting asylum laws may involve political questions that may affect this country's relations with other countries, and as the Supreme Court declared, "[t]he judiciary is not well positioned to shoulder primary responsibility for asusetingiortarencs os

infer the existence of past persecution, he affirmatively found that petitioner was never arrested or imprisoned in Ethiopia, and that "[t]here is no indication that the government was ever aware of her activities . . . ." A.R. 60-61. No presumption of a well-founded fear was possible under the circumstances.

Later in her brief, petitioner again confuses the standards for asylum in several respects by asserting that "[a]s a victim of past persecution [she] is statutorily eligible for asylum. The Service did not offer any evidence about changed country conditions.[18] Nor did they rebut the presumption of past persecution." Pet. Br. at 42 (emphasis added and citations omitted). The INA does not recognize a "presumption of past persecution." Moreover, INS regulations require more than a showing of past persecution:

[18] As discussed, infra, this statement is incorrect.

8 C.F.R. § 208.13(b)(1)(ii)(emphasis added). The BIA

reasoning and to mislead the Court into undertaking a de novo review, rather than a review for substantial evidence. As stated above, this is something the Court may not do.

B. Neither The Immigration Judge Nor The BIA Based

petitioner neither identifies a single item of evidence, nor suggests what its probative value is. Asserting, instead, that torture and other "[t]hreats to life or freedom are always persecution," petitioner alleges that she "suffered psychological torture and inhumane treatment in being threatened, arrested, interrogated etc . . . She was witnessing what happened to others similarly situated. This alone rises to the level of persecution." Pet. Br. at 40-41. Petitioner also asserts that "[w]hen taken together, the treatment that [she] received at the hands of the government or individuals and/or officials the government could not control cumulatively constitutes 'persecution.'" Pet. Br. at 40. In contrast to these wholly unsubstantiated claims, the record shows that petitioner was never detained, arrested, or injured in any way. She presented no testimony of persecution of other persons similarly situated. When she was interrogated subsequent to her return from Russia regarding why she had refused to cooperate in the ideological education, she responded that it was due to her Catholic beliefs. A.R. 99. Yet, petitioner never alleged that she was in any way prevented from practicing her faith.[22] Petitioner conceded

[22] In fact, petitioner's brief presents no allegation of persecution "on account of" religion. Her Marxist indoctrination in the Soviet Union had no discernable effect

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on her freedom of religion. Although her series of interrogations upon return from the Soviet Union appear heavy handed, and petitioner was threatened witfaLo if sm tdidavygeugh hideolo

83 F.3d at 982 (quoting Hamzehi

applicants should be carefully reviewed in the light of the sweeping changes which have taken place in that country and are still taking place. The brutal and dictatorial Marxist regime of President Mengistu was overthrown in May 1991. A new Transitional Government of Ethiopia (TGE) was formed under the leadership of the Ethiopian People's Revolutionary Democratic Front (EPRDF), a coalition of ethnic armies united largely by their bitter opposition

hearing. A.R. 108, 124-25. In fact, petitioner admitted that none of her other hearing exhibits corroborated her father's claims. Id. In this case, the BIA preferred t renept, th3

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U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-44 (1984)). If the agency's interpretation is reasonable, this Court cannot replace it with its own judgment. Franklin v. INS, 72 F.3d 571, 572 (8th Cir.1995)(citing Arkansas AFL-CIO v. FCC, 11 F.3d 1430, 1441 (8th Cir.1993)), cert. denied, 519 U.S. 834 (1996).

parties and the opportunity for rebuttal); Gebremichael v. INS, 10 F.3d 28 (1st Cir. 1993). Moreover, the scope of administrative notice is broader than judicial notice because of the BIA's "specialized experience in [the] subject matter area." Llana-Castellon v. INS, 16 F.3d 1093, 1096 (10th Cir. 1994).

Courts have stated that the due process rights of aliens are not violated wir. Tj 0Kingts of(administrative notise) Tj 0 -27 TDe ditionciaevidrience ia motionttoor sconed wir. Ter

933 F.2d at 595. While the court determined that due process requires an opportunity to rebut noticed facts, it concluded

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure

CERTIFICATE OF SERVICE

I certify that on May 18, 2001, two copies of Respondent's Brief Disk were served upon counsel for petitioner by placing it in the Department of Justice mail room for same day mailing, first-class, postage prepaid, addressed to:

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