

UNITED STATES DEPARTMENT OF JUSTICE
ATTORNEY GENERAL OPINION



In re Bassel Marshi, File No. A26 980 386

IN REMOVAL PROCEEDINGS

This is an appeal by the respondent Bassel Marshi from an Immigration Judge's ("IJ") decision, subsequently affirmed without opinion by the Board of Immigration Appeals ("BIA"), denying respondent's requests for political asylum, relief under the United Nations Convention Against Torture ("CAT"), and withholding of removal. Pursuant to 8 C.F.R. § 1003.1(h)(1)(i) (2003), I directed the BIA to refer the case to me for review and stayed the Board's decision pending the outcome of that review.¹

I conclude that respondent Marshi has established grounds for the granting of asylum pursuant to section 208 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158 (2000), and that he merits a favorable exercise of discretion. Because I conclude that respondent is entitled to asylum, I do not address his additional claims for relief under the CAT or for withholding of removal under section 241 of the INA.

I.

Respondent Marshi is a native of Kuwait who moved to Lebanon at an early age and has been a citizen of Lebanon since that time. The record reflects the following background facts bearing on Marshi's claim that he has suffered persecution, or has a well-founded fear of persecution, in Lebanon: Marshi is a Christian; his parents were

¹ My review of the BIA's decision in this case is *de novo*; it is not confined to reviewing the decisions of the BIA or the IJ for legal or factual error. See *Deportation Proceedings of Joseph Patrick Thomas Doherty*, 12 Op. O.L.C. 1, 4 (1988) ("when the Attorney General reviews a case pursuant to 8 C.F.R. § 3.1(h), he retains full authority to receive additional evidence and to make *de novo* factual determinations").

Christians of Palestinian origins; and one of his grandmothers was Jewish. Oral Decision of the Immigration Judge in *Matter of Bassel Marshi*, at 2 (July 18, 2000) (“Oral Decis.”); Transcript of Hearing in *Matter of Bassel Marshi*, at 53, 90, 94 (Dec. 21, 1999; July 18, 2000) (“Tr.”). After a period of approximately four years’ service in the predominantly Maronite Christian Lebanese Forces, *id.* at 92-94, respondent became a Red Cross volunteer in Lebanon and performed emergency medical technician (“EMT”) work for that organization. *Id.* at 95.

Respondent provided critically important relief services for seriously wounded United States Marines, in his capacity as a Red Cross worker, following the terrorist bombing of the Marine Barracks in Beirut, Lebanon, on October 21, 1983. Specifically, as testified by U.S. Marine Colonel Barry Ford (who in 1983 was a Marine Captain serving in Beirut and personally observed Marshi’s efforts there), Marshi was instrumental in locating wounded Marines who had been evacuated to scattered parts of the city after the bombing. Marshi organized Red Cross ambulances to retrieve and return the wounded Marines, who were considered vulnerable to being taken as hostages under the circumstances, to American custody. Tr. at 69-78. Relatedly, respondent also participated in relief efforts following the earlier bombing of the U.S. Embassy in Beirut in April, 1983. His participation in these relief efforts was captured in photographs that were published in prominent publications, both in the United States and in the Middle East. See Respondent’s Exh. 4, tabs 8-9; Oral Decis. at 8. Persons associated with Hezbollah, a Shi’ite/Islamacist militia that has been designated by the State Department as a terrorist organization, and the radical Shi’ite movement in Lebanon claimed responsibility for the 1983 Beirut bombing of the Marine Barracks. Tr. at 75.

Marshi subsequently came to the United States on a visitor's visa in 1984. He apparently filed some form of application for asylum in 1984, but he returned to Lebanon in apparent frustration after he formed the impression that asylum would not be granted. At any rate, Marshi was not granted asylum on that occasion, although the record does not clearly establish whether there was a specific denial of any formal application. Oral Decis. at 4.

Following his return to Lebanon in 1984, Marshi testified that he and a female colleague working with the Red Cross were seized or kidnapped by Shi'ite Amal militiamen and that he was held for approximately a day and a half and interrogated and threatened for approximately two hours. Oral Decis. at 4; Tr. at 114-119. Marshi testified that the persons who captured and interrogated him specifically mentioned his prior assistance to the U.S. Marines and that they had seen his "pictures," presumably the published photographs of Marshi's participation in the Beirut relief efforts. *Id.* at 118.

After this incident, Marshi came to the United States again in 1986 on a visitor's visa, which he has long overstayed. According to Marshi's testimony, at various subsequent times he sought the assistance of counsel for purposes of pursuing asylum or other forms of immigration relief, but those efforts were not fruitful. Oral Decis. at 5. In 1999, following his citation for a traffic offense, he was discovered to be without lawful immigration status and he was referred to the former Immigration and Naturalization Service ("INS"). He was then placed in removal proceedings for overstaying his visitor's visa and, in that context, raised his claims for asylum and CAT relief.

II.

At his hearing before the IJ, Marshi called two witnesses, in addition to himself, to testify in support of his claims for asylum and CAT relief. One witness was Dr. Linda Wallbridge, a Ph.D. in Anthropology and author of a book on the Lebanese Shi'ites and their religious life. Tr. at 40-41. She testified that, in light of respondent's close association with the United States and the U.S. Marines, his past service with the Maronite Lebanese Forces, and his eclectic religious/ethnic background, he would face a substantial prospect of persecution if he returned to Lebanon. *Id.* at 45-57. The IJ, however, determined that he would not give "any weight" to Dr. Wallbridge's testimony on the stated grounds that she had not been properly proffered or qualified as an expert witness. *Id.* at 58-59. When respondent's counsel proposed to establish Dr. Wallbridge's expertise (Wallbridge had already summarized her academic and professional background, *see* Tr. at 40-41), the IJ stated, "You should have done that at the very beginning," and then abruptly excused Dr. Wallbridge from the hearing. *Id.* at 60.

The other witness was the above-mentioned Col. Ford, who has extensive training (both academic and military), qualifications, and field experience with respect to the Mid-East and North Africa in general, and Lebanon in particular. Tr. at 79-81. Indeed, Col. Ford's qualifications in this respect are formally recognized by the United States Government, in that his secondary military occupational specialty as a Marine Corps Officer is 9944, Mid-East, North Africa Specialist.² Notwithstanding Col. Ford's

² Col. Ford has received a Master's Degree in Mideast Studies from the prestigious Johns Hopkins School of Advanced International Studies. In addition to his service in Lebanon in 1993, Col. Ford served as Naval Attache to the U.S. Embassy in Muscat, Oman, from 1986 to 1988, as well as service in Operation Desert Storm in Saudi Arabia and Kuwait in 1990-91. After receiving his Master's degree, Col. Ford served in the Plans, Policies, and Operations unit at Marine Corps Headquarters at the Pentagon, where his area of responsibility was Africa and the Mid-East. Tr. at 79-81.

extensive qualifications and experience, the IJ peremptorily ruled that he would not allow Col. Ford to testify concerning conditions in Lebanon, stating: "I don't think that being a colonel in the Marines gives one an expertise on Lebanon for having served in Lebanon, gives one the sort of expertise which should be recognized by a Court in making a judgment about country conditions." *Id.* at 33-36. As the record clearly shows, Col. Ford's qualifications were based on far more than his "being a colonel in the Marines" and "having served in Lebanon."

I conclude that the IJ erred in disallowing Col. Ford's testimony on country conditions and related issues. Even apart from the fact that there is no requirement that such testimony in an administrative hearing can be offered only by a person who has been formally "qualified" as an expert witness, *see generally* K. Davis, Administrative Law Text § 14.11 (3d Ed. 1972) ("The technical rule known as 'the opinion rule' does not apply to the administrative process."), the IJ arbitrarily and prematurely ruled that he would not permit Col. Ford's testimony, even before an opportunity was presented for respondent to establish Col. Ford's experience and qualifications, which were extensive and impressive indeed. Tr. at 32-34.³ Moreover, as indicated both by the respondent's offer of proof and by the sworn written statement of Col. Ford contained in the record, Col. Ford's foreclosed testimony would have been material and supportive of the respondent's claims for asylum. *Id.* at 82. Respondent's offer of proof was that, if Col. Ford were allowed to testify, he would testify that "because of the various factions in control and striving for control in Lebanon, that Mr. Marshi would be in grave danger of

³ See also *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949-51 (4th Cir. 1997) (admonishing federal agencies against the strict application of technical exclusionary rules of evidence in administrative proceedings).

being killed, kidnapped, murdered, tortured, and, otherwise persecuted if he was compelled to return to the Middle East.” *Id.*

Because I conclude below that there is sufficient evidence to establish that respondent is eligible for asylum, there is no need to remand this matter with instructions for the IJ to permit Col. Ford to testify on conditions in Lebanon and how they effect respondent’s claims. Were that not the case, however, the IJ’s erroneous and prejudicial prohibition of Col. Ford’s proffered testimony would have warranted a remand of this matter to the IJ with instructions to admit and fairly consider the excluded testimony.

III

After consideration of the record, as well as the most recent pertinent State Department Report on Lebanon,⁴ I conclude that the Respondent is eligible for asylum under the provisions of section 208 of the INA. Because I have determined that Respondent is eligible for asylum, I need not address his additional claims for relief under the CAT and withholding of deportation under section 241 of the INA.

A.

A threshold issue is whether the respondent satisfies the statutory prerequisites even to submit a valid application for asylum. Under 8 U.S.C. § 1158(a)(2)(B) and the implementing regulations, an application for asylum must be filed no later than one year after the date of the alien’s last arrival in the United States (which was 1986 in respondent’s case); or by April 1, 1998, whichever is later. See 8 C.F.R.

⁴ See U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Lebanon – Country Reports on Human Rights Practices – 2002* (March 31, 2003) (“2002 Country Report”). The 2002 Report was obviously not available at the time of the 2000 hearing before the IJ, but the most current State Department Report on pertinent conditions in the country from which an applicant seeks asylum is clearly an appropriate source of relevant information to be considered in determining a claim for asylum or CAT relief. See, e.g., *Abassi v. INS*, 305 F.3d 1028, 1031-32 (9th Cir. 2002).

§ 208.4(a)(2)(B)(ii) (“The 1-year period shall be calculated from the date of the alien’s last arrival in the United States or April 1, 1997, whichever is later.”). Marshi filed the pending application in February, 2000, well after the filing deadline had expired.

Under 8 U.S.C. § 1158(a)(2)(D), however, an application that is otherwise time-barred may yet be considered if the alien “demonstrates to the satisfaction of the Attorney General” either (1) *changed circumstances* which materially affect the applicant’s eligibility for asylum; or (2) *extraordinary circumstances* relating to the delay in filing within the statutory filing deadlines. I am satisfied that the “changed circumstances” criterion has been satisfied and, therefore, respondent’s untimely application for asylum may properly be considered.

The regulations governing a determination of “changed circumstances” provide that the term refers to “circumstances materially affecting the applicant’s eligibility for asylum” and include, *inter alia*, “changes in conditions in the applicant’s country of nationality.” 8 C.F.R. § 208.4(a)(4)(i)(A). The regulations further provide that “[t]he applicant shall file an asylum application within a reasonable period given those ‘changed circumstances.’” *Id.* § 208.4(a)(4)(ii).

The most significant of the changed circumstances that form the basis of my determination are: (1) the withdrawal of the Israeli Defense Forces from Lebanon in 2000, *see* 2002 Country Report at 1, thereby removing what had been a major deterrent and limitation upon the autonomy and operations of Hezbollah and other elements hostile to the United States and Israel; (2) the increased influence and autonomy of Hezbollah, and of the Syrian Government and its proxies within Lebanon, relative to that of the official Government of Lebanon; and (3) the addition of Hezbollah, on November 2,

2001, to the list of terrorist organizations covered by Executive Order No. 13224, which thereby blocked access to their assets. See U.S. Department of State, *Comprehensive List of Terrorists and Groups Identified under Executive Order 13224*. The latter development not only recognizes the increased threat presented by Hezbollah within Lebanon, but also would have the tendency to exacerbate antagonism on the part of Hezbollah and its adherents towards the United States and its perceived supporters.

With regard to the foregoing, I note in particular that the State Department recently reported: “During the year [2002], Hizballah⁵, the influence of the Syrian Government, and Palestinian groups all undermined the authority of the [Lebanese] Government and interfered with the application of law in those areas not completely under the Government’s Control.” 2002 Country Report at 1. The State Department further reported that, following the Israeli withdrawal from Lebanon in 2000, “[t]he Government did not attempt to disarm Hizballah, a terrorist organization operating in the region.” *Id.*

In light of Marshi’s unusual public association with United States interests (through his public assistance to Marines wounded by the terrorist bombing in Beirut for which Hezbollah has claimed credit), coupled with his past association with the Lebanese Forces, the basis for his fear of persecution at the hands of Hezbollah and other Shi’ite and/or Syrian-backed elements in Lebanon is substantially enhanced or aggravated by the foregoing intervening considerations. Not only is it evident that virulent anti-American sentiment among Hezbollah and similar elements in Lebanon has been substantially

⁵ I note that the Hezbollah organization is spelled in a number of different ways in different sources. I follow the spelling used by the Immigration Judge and in the transcript in this proceeding to avoid possible ambiguity.

exacerbated by the U.S. military undertakings in Afghanistan and Iraq and the addition of Hezbollah to the U.S. list of terrorist organizations, but Hezbollah and similar elements have apparently gained greater capacity to act on such sentiments within Lebanon.⁶ Taken together, these factors substantially increased the prospect that Marshi would be persecuted on the basis of political and social group associations should he return to Lebanon under current circumstances.

It is important to emphasize, however, that my determination that the “changed circumstances” exception to the filing deadline applies in this case is a narrow one. It is not intended to indicate that the changed circumstances exception is available to any asylum applicant from Lebanon who failed to file a timely application prior to the events described above respecting Hezbollah. Those events have particular significance to this case, however, because of Respondent Marshi’s unique personal history, as related above.

B.

Respondent may qualify for asylum if he establishes that he has suffered persecution, or has a well-founded fear of persecution, in the country of his nationality on account of race, religion, nationality, membership in a particular social group, or political opinion.⁷ See 8 U.S.C. § 1101(a)(42)(A) (2000); 8 C.F.R. § 208.13(b)(1) (2003); *Sangha v. INS*, 103 F.3d 1482, 1488 (9th Cir. 1997).

⁶ It is reported that Hezbollah now has the second largest number of elected representatives in the Lebanese Parliament. See D. Lewis, *In the Home of Hezbollah*, Atlanta Journal and Constitution (May 28, 2003), available at www.ajc.com/news/content/news/atlanta_world/050328hezbollah.html.

⁷ The political opinion criterion may extend to situations where a political opinion is *attributed* to the alien by those likely to persecute him, whether or not such political opinion is actually held. See generally *Sangha v. INS*, 103 F.3d 1482, 1488-89 (9th Cir. 1997). This consideration is germane here.

While I do not believe that Marshi has demonstrated past persecution, I conclude that he has adequately established that he has a well-founded fear of persecution on the basis of imputed political opinion (imputed support or sympathy for the United States and its Mid-East policy, coupled with his former membership in the Lebanese Forces⁸) if he returns to Lebanon under present conditions. The factors cited in Point III.A, *supra*, with regard to the increased influence and autonomy of Hezbollah and Syrian-controlled elements in Lebanon, coupled with Marshi's public assistance to the U.S. Marine Corps and his past service in the Lebanese Forces, form the primary basis for my conclusion. In brief, I think it is reasonable to expect that a person with Marshi's distinctive public identification and association with the United States and the U.S. Marine Corps in the context of the Beirut terrorist incident, see Tr. at 54, 57, coupled with his additional association with the Lebanese Forces, *id.* at 142, would be likely to attract hostile attention and persecution in today's Lebanon at the hands of Hezbollah or other Syrian-related Shi'ite elements. See generally *Ayoub v. INS*, 113 F.3d 1240 (Table), 1997 WL 243494 (9th Cir. 1997).⁹ In addition to the testimony of Col. Ford and Dr. Wallbridge, the 2002 State Department Report, and other documentary evidence in the record, respondent's own sworn testimony provided further supportive evidence that he has a

⁸ An informative description of the role and status of the Maronite Christian Lebanese Forces is set forth by the First Circuit in *Albathani v. INS*, 318 F.3d 365, 367-68 (1st Cir. 2003). As recognized in that opinion, there has been intense historical conflict between the Lebanese Forces and Hezbollah. The court in *Albathani* assumed arguendo that membership in the Lebanese Forces could qualify for the "particular social group or political opinion" asylum categories under appropriate circumstances. *Id.* at 373.

⁹ In the *Ayoub* case, the court overturned the BIA's denial of asylum in the case of a Lebanese Christian under background facts comparable to those presented here. The court noted that "Ayoub testified that in 1989 at a check point in southern Lebanon, the Hezbollah beat his head and chest using the bottom of a gun, took his money and threatened to kill him if he came back because they considered Ayoub a 'traitor belonging to Israel' and a 'Christian.' . . . Thus, Ayoub presented sufficient facts which compel a finding that he was persecuted on account of an imputed political opinion." 1997 WL 243494 at **1.

well-founded fear of persecution on the grounds indicated. *See* Tr. at 106, 115-119, 136-143.

I would emphasize, however, that such grounds for asylum are not established merely on the generic basis that Hezbollah and other Shi'ite elements active in Lebanon may be hostile to Lebanese nationals with American connections or to persons who formerly served in the Lebanese Forces. Rather, my decision to grant asylum here is based to a substantial degree on a particular determination that Respondent Marshi openly assisted U.S. Armed Forces attacked abroad under circumstances where doing so has exposed him to the substantial prospect of reprisal by strongly anti-United States elements (i.e., Hezbollah and/or other Shi'ite or Syrian-controlled elements) that have the capacity and autonomy to persecute him under the unique conditions that have developed in Lebanon in recent years. When that factor is considered together with Marshi's prior service in the Lebanese Forces, there are sufficient grounds to conclude that he has established a well-founded fear of persecution in Lebanon on the basis of imputed political beliefs.

CONCLUSION

I conclude that respondent Marshi has established eligibility for asylum under section 208 of the INA. I find that respondent Marshi merits a favorable exercise of discretion and direct that such asylum be granted. The BIA's decision and order of March 5, 2003, are hereby vacated.

Dated:

2-13-04


John Ashcroft
Attorney General