File: (b) (6)

Date: DEC 19 2005

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mary Lane, Accredited Representative

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture

ORDER:

PER CURIAM. This case was last before us on March 18, 2004, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his application for asylum and withholding of removal, and for protection under the Convention Against Torture. Although we took issue with some of the reasons given by the Immigration Judge for finding the respondent not credible, we agreed that overall, the respondent lacked credibility, and his applications were denied on that basis. The matter is now before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) (b) (6) The court found that the Board's adverse credibility finding was not supported by substantial evidence, and it remanded the case for further proceedings.

Taking the respondent's testimony as true, as the court's decision requires us to do, we find that the respondent suffered past persecution in Albania, and that at least some of the persecution was inflicted on account of the respondent's political opinion or imputed political opinion. The respondent testified to a number of instances where he was attacked in his home or other locations, or detained in police stations. He was badly beaten on many of these occasions. At least some, if not most, of these encounters occurred due to the respondent's activities as a journalist and political activist. Under these facts, the treatment the respondent received clearly rose to the level of persecution and it was inflicted at least in part on account of political opinion.

Given this finding on past persecution, we conclude that a remand is necessary. A remand will allow both parties to present and develop evidence on the question whether there has been such a fundamental change of circumstances in Albania that the respondent no longer has a well-founded fear of persecution there. 8 C.F.R. § 1208.13(b)(1)(i)(A). We note that as past persecution has been shown, the burden is

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now on the Department of Homeland Security to rebut the presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii). Accordingly, the decision of the Board in this case dated March 18, 2004, is vacated, and the record is remanded to the Immigration Judge for further proceedings consistent with this decision and the decision of the court.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
(b) (6)

File No.: (b) (6)

In the Matter of:	)	
	)	
(b) (6)	)	**In Removal Proceedings**
	)	
Respondent	)	

Charge: Section 237(a)(1)(B) of the Immigration and Nationality Act ("Act"), as amended—remained in the United State for a time longer than permitted.

Applications: Asylum pursuant to § 208(a) of the Act;
Withholding of removal under § 241(b)(3) of the Act;
Withholding of removal under the Convention Against Torture ("CAT") pursuant to 8 C.F.R. § 1208.16(c).

ON BEHALF OF RESPONDENT
Mary M. Lane
Mark Beougher, Esq.
(b) (6)

ON BEHALF OF THE GOVERNMENT
Tara Good
Assistant Chief Counsel
(b) (6)

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. BACKGROUND

Respondent is a 55-year-old male, native and citizen of Albania. He was admitted into the United States as a nonimmigrant visitor for business on August 19, 1999, with authorization to remain until November 18, 1999. Respondent remained in the United States beyond that period without authorization. On January 28, 2000, respondent filed an administrative application for asylum. *See* Exhibit 2. The Government commenced proceedings on March 15,

2000 with the filing of a Notice to Appear ("NTA"), charging respondent as removable under § 237(a)(1)(B) as an overstay. *See* Exhibit 1.

Respondent admitted the factual allegations and conceded the charge of removability. Respondent sought relief from removal by way of asylum, withholding of removal under the Act, and withholding of removal under the Torture Convention. After reviewing the testimony and documentary evidence, the Court denied respondent's applications for relief and ordered him removed on December 19, 2002. The Court found respondent had failed to submit credible testimony sufficient to demonstrate that he was persecuted on account of a protected ground.

Respondent appealed to the Board of Immigration Appeals ("Board"). The Board issued an order on March 18, 2004, affirming the decision of this Court. Respondent then appealed to the (b) (6) Court of Appeals (b) (6) On (b) (6) the (b) (6) determined that respondent had testified credibly and remanded respondent's case to the Board for further consideration of respondent's claims of past persecution and a well-founded fear of future persecution. Upon remand, the Board determined that, taking respondent's testimony as true, respondent had suffered past persecution and at least some of the persecution was inflicted due to respondent's activities as a journalist and political activist. On December 19, 2005, the Board remanded the case to this Court to address the question of whether there has been such a fundamental change in country conditions in Albania that respondent no longer has a well founded fear.

II. APPLICABLE LAW

A. Asylum and Withholding Under the Act

Respondent bears the evidentiary burdens of proof and persuasion in applications for asylum and withholding of removal. *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); 8 C.F.R. § 1208.13.

An alien seeking a discretionary grant of asylum must establish that he or she is a "refugee" within the meaning of INA § 101(a)(42)(A). INA § 208(b)(1); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 427-28 (1987); *Gilaj v. Gonzales*, 408 F.3d 275, 288 (6th Cir. 2005). A refugee is someone who has either suffered past persecution or has a well-founded fear of future persecution in his or her country of nationality or last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Thus, the alien must demonstrate an unwillingness or inability to return to his or her country because of persecution, or a well-founded fear of persecution, on account of one of the five stated grounds. *Id.*; 8 C.F.R. § 1208.13.

An alien who establishes that he or she suffered past persecutions within the meaning of the Act shall be presumed also to have a well-founded fear of future persecution unless the Government establishes, by a preponderance of the evidence, that since the time the persecution occurred, conditions in the applicant's country have changed to such an extent that the applicant no longer has a well-founded fear of persecution, if he or she were to return. *See* 8 C.F.R. § 1208.13(b). If the Government demonstrates there is little likelihood of persecution, the alien's application for asylum will be denied, absent compelling humanitarian reasons otherwise based on the past persecution. *See Matter of Chen*, 20 I&N Dec. 16 (BIA 1989).

An alien seeking withholding of removal from any country, under INA § 241(b)(3), must show through facts a "clear probability" that his or her life or freedom would be threatened in the country directed for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Stevic*, 467 U.S. 407, 413 (1984). "Clear probability" means that respondent's facts must establish it is more likely than not that he or she would be subject to persecution on one of the specified grounds. It should be noted that the well-founded fear standard required for asylum is more generous than the clear probability standard of withholding of removal. *See INS v. Cardoza-Fonseca*, 480 U.S. at 449.

Once the alien has established qualifications for relief under INA § 241(b)(3), withholding of removal is mandatory, absent a finding that he or she is barred from such relief under INA § 241(b)(3)(B). The alien cannot then be returned to the country where he or she would face persecution, but may be removed to another country under certain circumstances.

B. Convention Against Torture

The applicant for withholding of removal under the Torture Convention bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. *See* 8 C.F.R. § 1208.16(c)(2). In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including but not limited to: (1) evidence of past torture inflicted upon the applicant; (2) evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal; and (4) other relevant information of conditions in the country of removal. *See* 8 C.F.R. § 1208.16(c)(3).

III. ANALYSIS OF FACTS AND LAW

As the [redacted] found respondent was credible, this Court must accept respondent's account of his experiences as true. Moreover, the Board determined respondent has experienced past persecution. Therefore, the only issue *sub judice* is whether the Government has established that country conditions have changed in Albania to such an extent that respondent no longer has a well-founded fear of return. In order to analyze the effect of changed country conditions on respondent's well-founded fear, the Court will briefly summarize respondent's past persecution.

Respondent and his family were targeted by the Communist Party due to his father's education at a liberal arts institute in Italy. Their persecution began as early as 1951, when they were sent to a re-education camp. After he graduated from high school, respondent was sent to work at as a mechanic, but also began working as a newspaper reporter. In 1988, respondent wrote an article criticizing Albania's agricultural policy. As a result, he was again sent to re-education camp for a year and his journalist license was taken away.

Respondent then became involved in a secret pro-democracy movement that planned to knock down a statue of Joseph Stalin. In the early morning hours of January 5, 1990, the day set for the toppling of Stalin's statue, two police officers arrived at respondent's hotel room. Respondent was taken to a police station where he was interrogated, beaten, and tortured for three days. On February 20, 1991, respondent participated in the toppling of Enver Hoxha's statue. The next day respondent was jailed and beaten by police officers in retaliation for his involvement with the toppling of the Hoxha statue. Respondent was arrested at least five times in February and March of 1991 and two more times in April and July of 1991. During these arrests, he was interrogated and beaten.

The Democratic Party won the March 2, 1992 elections. Respondent continued to work as a journalist and suffered no further incidents until a television station aired a program written by respondent critical of Albanian Muslims on March 3, 1996. That evening two armed men came to respondent's door and threatened him with a gun. In 1996, respondent was also selected as a candidate for parliament as a member of the Social-Democratic Union Party. Respondent received threatening phone calls in connection with his candidacy. On March 10, 1996, an individual came to respondent's door. When respondent opened the door, the man hit respondent with his gun and told him "this is the best vote for you."

In March 1997, the Democratic Party lost the elections, and the Socialist Party came to power. From 1997 until he left Albania in 1999, respondent suffered numerous attacks, most of which were connected to his work as a journalist. Shortly after the March 1997 elections, respondent was abducted by three armed men and taken to a fortress outside of town where he was beaten severely. On June 19, 1998, respondent was at the Socialist Party headquarters to obtain a calendar of events. He encountered a man who took him to an office where the man put a gun in respondent's mouth and told him not to write about a political candidate. On September 2, 1998, explosives were set off in respondent's office, rendering the office unusable. On January 5, 1999, respondent was attacked and his equipment destroyed the day after appearing in a television program discussing the problems of Shengjin, an Albanian city. After a program aired on February 19, 1999 regarding the toppling of Hoxha's statue, armed men broke into respondent's apartment and attempted to sexually assault his wife. On March 14, 1999, a program by respondent discussing political killings in Albania aired. Respondent was then kidnapped and taken to a police station where he was beaten and interrogated.

After this incident, respondent left his home and went to stay with his brother in Tirana. Police came looking for respondent at his parent's house twice with an arrest warrant for respondent. They beat respondent's father after the second visit, telling him they would find respondent regardless of where he went. Respondent then left Albania for the United States

On remand, both parties submitted additional evidence of current country conditions in Albania. *See* Exhibits R1 – R4. Clearly, country conditions have changed substantially since respondent left Albania. The Democratic Party returned to power following the July 2005 parliamentary elections, and Democratic Party leader Sali Berisha was selected as Prime Minister. *See* Exhibit R1, Tab F, at 6. Berisha's government has taken steps to combat organized crime and corruption in Albania and to move toward membership in the European Union and the NATO. *See* Exhibit R1, Tab G. With the Democratic Party leading the new government, conditions have improved for rank and file Democratic Party members. A report released in January 2006 by the United Kingdom Home Office states there is no evidence of persecution of opposing political parties and individuals facing threats should be able to avail themselves of police protection. *See* Exhibit R1, Tab K, at 9. The 2006 Country Report on Human Rights Practices ("2006 Country Report") further indicates there were no reports of politically motivated disappearances, prisoners, detentions, or unlawful killings. *See* Exhibit R4, Tab A, 2-5.

However, a showing of changed country conditions, in and of itself, is insufficient to rebut the presumption that respondent has a well-founded of future persecution. *See Fergiste v. INS*, 138 F.3d 14, 19 (1st Cir. 1998). Instead, the Government must demonstrate that country conditions have changed as they relate to respondent's individual circumstances such that it negates his well-founded fear. *Ouda v. INS*, 324 F.3d 445, 452 (6th Cir. 2003). The (b) (6)

Circuit found credible respondent's testimony that he experienced past persecution by the police and security forces under the communists, by Socialist Party members, and by unidentified assailants in retaliation for his reporting. Therefore, the Government must demonstrate changed circumstances that negate respondent's individualized fear of future persecution.

While rank and file members of the Democratic Party may currently face little threat, respondent has been previously targeted due to his anti-communist activities and his work as a journalist. Recent information indicates that even under the current Democratic Party government, Albanian journalists continue to be targeted for violence based on their reporting. The 2005 Country Report on Human Rights Practices describes a number of reports of physical abuse of journalists by police and other officials. *See* Exhibit R2, Tab A, at 6. (b) (6) a relative of a Socialist Party official, beat two journalists during an election rerun, while four police officers failed to intervene to stop the attack. *Id.* at 7. In December 2005, an explosive was thrown into the office of a daily newspaper, damaging the office. *Id.*; Exhibit R2, Tab B. A police chief in Korca used offensive language and shoved the camera of one journalist several times to prevent her from filming the police closure of a store. Exhibit R2, Tab A, at 7. In separate incident, the mayor of Korca approached the same journalist, shoved her against a desk, and took her camera for a half hour. *Id.* The 2006 Country Report notes one report that police used excessive force against a reporter attempting to interview the president, resulting in minor injuries. *See* Exhibit R3, Tab A, at 7. The 2006 Country Report also states that political intimidation of the media is an ongoing problem, and libel continues to be a crime punishable by up to two years in prison. *Id.* As the new Democratic Party government has been either unwilling or unable to stop violence against journalists, respondent would continue to be at risk of future persecution in Albania.

Although the Democratic Party now controls the government, recent reports indicate that many members of the communist security forces continue to occupy powerful positions within the security organizations of Eastern European counties, including Albania's state intelligence agency ("SHIK"). *See* Exhibit R3, Johan Leman & Stef Janssens, "Human Smuggling and Tracking From/Via Eastern Europe," 6 *KOLOR, Journal on Moving Communities*, No. 1 (May 2006); "Eastern Europe Struggles to Purge Security Services," *NY Times*, Dec. 12, 2006; "When an Ex-K.G.B. Man Says They're Out to Get Him," *NY Times*, Dec. 10, 2006. Other former security personnel became involved with organized crime. *See* Leman & Janssens, *supra*. The former communist police and security force members who now occupy these positions of authority and power may well include the same individuals who persecuted respondent for his role in the anticommunist movement and his reporting on various problems in Albania while under the control of the Socialist Party.

While the Democratic Party may not endorse any actions respondent's former persecutors may take against him, the Democratic Party clearly does not have the capacity to control its own security forces and police. All available information indicates Albania suffers from extensive problems with corruption and police abuse. Police corruption and impunity are commonplace, as evidenced by reports that police beat and mistreated detainees. *See* Exhibit R3, Tab A, at 4. If the Court accepts respondent's testimony as true, as it is bound to, the Court must find that mere transfer of power to the Democratic Party does not negate respondent's well-founded fear of persecution, as his former persecutors likely still occupy positions of power and cannot be controlled by the Democratic Party government and the Democratic Party has also failed to protect journalists from violent attacks.

In addition to the evidence that respondent's prior persecutors continue to occupy positions giving them the means to target respondent, respondent submitted evidence that his family in fact continues to be targeted. Respondent's father was attacked in his home on November 3, 2005, allegedly due to respondent's work as a journalist. *See* Exhibit R2, Tab G. This attack demonstrates that respondent's former persecutors not only have the power and capacity to harm respondent, but they remain intent on harming respondent due to his prior political activities.

In light of evidence that some of respondent's persecutors may very well continue to occupy powerful positions in the police, intelligence forces, and organized crime and are free to abuse their power with impunity and evidence that respondent's family members have been targeted even after the Democratic Party came to power, the Government cannot establish that the change in power in the Albanian parliament eliminated the danger respondent faces from those who have previously harmed him.

IV. CONCLUSION

Therefore, as the (b) (6) Circuit found respondent credible and the Board made a finding of past persecution, the Court must grant respondent's application for asylum as the Government has failed to rebut respondent's presumption of a well-founded fear. The Court will not address respondent's application for withholding of removal under the Act or under the Torture Convention as they are moot.

ORDER

IT IS HEREBY ORDERED that respondent's application for asylum is GRANTED.

ELIZABETH A. HACKER
Immigration Judge

Date: 6/28/07