Files: (b) (6) (b) (6)

Date: MAR 31 2009

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Jaime B. Naini, Esquire

ON BEHALF OF DHS: Harris Lee Leatherwood
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The respondents have appealed the Immigration Judge's July 18, 2006, decision which denied their applications for asylum and withholding of removal under sections 208(a), and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), and 1231(b)(3).[1] The Department of Homeland Security has requested that the Immigration Judge's decision be affirmed. The Immigration Judge's decision denying the application for protection under the Convention Against Torture, and granting the respondents' voluntary departure, has not been appealed. Thus, we view both of these issues as waived. The respondents' appeal will be dismissed.

The respondents consist of the lead male respondent, his wife, and four minor children. The lead respondent's wife and minor children did not file separate asylum applications, and have relied upon the lead respondent's asylum application as derivative claimants. The respondents argue that the

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[1] We note that we initially found the respondents' appeal as untimely, dismissed it for lack of jurisdiction, and subsequently denied their motion to reconsider this decision. The United States Court of Appeals for the (b) (6) however, remanded this case to the Board, finding that we abused our discretion when we did not acknowledge our authority to consider extraordinary circumstances in excusing the respondents' untimely appeal. (b) (6) *v. Mukasey*, (b) (6) (b) (6) In a July 31, 2008, interim order, we found that extraordinary circumstances did exist, and reinstated the respondents' appeal.

Immigration Judge erred in finding that the lead respondent did not experience past persecution, or that they do not face future persecution if they returned to Venezuela on account of the lead respondent's membership in a particular social group of "former prison guard(s)," or political opinion.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008); *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008). Because the respondents' applications for relief from removal were filed after May 11, 2005, they are governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

We affirm the Immigration Judge's determination that the respondents have not met their burden of establishing that the lead respondent experienced past persecution, or a well-founded fear of persecution, on account of a ground enumerated in the definition of 'refugee' under section 101(a)(42) of the Act, as required for asylum. The Immigration Judge properly found that the there is insufficient credible testimonial or corroborating evidence to establish that the assault on the lead respondent or the telephonic or written threats that his family received were related to his dispute with his former supervisor, (b) (6) We likewise concur with the Immigration Judge that the respondents have not established that the one incident when the lead respondent was physically assaulted by unknown individuals in 1998, along with the threats they subsequently received from unknown individuals, even if credible, were sufficiently severe such that would constitute past persecution. *Cf., e.g., Lumaj v. Gonzales*, 462 F.3d 574 (6th Cir. 2006) (finding that an isolated attack must be of sufficient severity to warrant a finding of "persecution"); *Pilica v. Ashcroft*, 388 F.3d 941 (6th Cir. 2004) (finding no past persecution when applicant arrested, detained for a week, and beaten by police resulting in head injuries and a week-long hospitalization).

We also agree with the Immigration Judge that the respondents have not established that political opinion, or any other ground enumerated in the definition of 'refugee' under section 101(a)(42) of the Act, was or will be at least one central reason for the claimed problems he had with (b) (6) *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). Contrary to the respondents' appellate argument, the mere fact that the lead respondent was a prison guard when he witnessed his supervisor (b) (6) alleged corrupt activities is not adequate evidence that (b) (6) was motivated to harm him on account of his membership in a particular social group consisting of "former prison guard(s)" (Respondent's Br. at 12). *See Marku v. Ashcroft*, 380 F.3d 982, 986 (6th Cir. 2004) (it is not enough to present evidence that the applicant was a member of a social group); *see also Matter of C-A-*, 23 I&N Dec. 951, 958-59 (BIA 2006) (if a former police officer was singled out for reprisal, not because of his status as a former police officer, but because of his role in disrupting criminal activity, he would not be considered, without more, to have been targeted as a member of a particular social group). The respondents have not pointed to record evidence that would otherwise support their bare assertion, raised for the first time on appeal, that (b) (6) targeted them for harm on account the lead respondent's status as a former prison guard (*see id.*).

The respondents have also argued that they are entitled to asylum because the lead respondent opposed governmental corruption, specifically of (b) (6) corruption, took steps to expose the

corruption, and was persecuted as a result (Respondents' Br. at 13). We conclude that, even assuming arguendo that (b) (6) was responsible for the harm endured by the respondents, such harm cannot be considered political persecution.

In *Marku v. Ashcroft*, *supra*, the Sixth Circuit has recognized that courts have held that opposition to government corruption can constitute political opinion, and whistleblowing against corrupt government officials may constitute political activity in certain circumstances. However, it is not sufficient to claim that the alleged corruption is intertwined with government operations. *See Zoarab v. Mukasey*, 524 F.3d 777, 782 (6th Cir. 2008). This is not a case where the respondent is involved in a public campaign of political expression against widespread public corruption. *See id.* The respondent here was trying to prevent (b) (6) from engaging in illegal or similar misconduct at the prisons and had a problem with (b) (6) as a result of their confrontations. There is no evidence submitted that would establish that (b) (6) viewed any of the lead respondent's actions as motivated by political opinion. *See Marku v. Ashcroft*, *supra*. Morever, unlike in cases where political persecution due to an applicant's opposition to corruption was recognized, the Venezuelan government in the instant case did not retaliate against the respondent. Rather, the Venezuelan government was responsive to the lead respondent's report of corruption and, in fact, fired (b) (6) from his government position. *See, e.g., Grava v. INS*, 205 F.3d 1177, 1181 n.3 (9th Cir. 2000) (retaliation completely untethered to a governmental system does not afford a basis for political persecution). Accordingly, we conclude that the Immigration Judge appropriately found that the respondent's problems with (b) (6) was, ultimately, a personal dispute and not a political one. *See id.* (asylum is not available to an alien who fears retribution solely over personal matters).

The record evidence likewise does not support the conclusion that the Venezuelan government was or would be unable to protect the respondents from (b) (6) *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985) (harm or suffering had to be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control). The lead respondent testified that he did tell police that he suspected (b) (6) to be responsible for the assault and threats he received because he believed (b) (6) to be a politically powerful man. However, the Immigration Judge found that the evidence does not establish that (b) (6) was politically powerful, noting that the documentary evidence submitted by the respondent showed that (b) (6) was himself subject to pressure and dismissal by the Venezuelan government (Exh. 2, Tabs 18, 19). This finding is not clearly erroneous. We also take administrative notice of the Country Reports on Human Rights Practices, which reports that (b) (6) who is the director of the nongovernmental organization, Venezuelan Prison Observatory, has himself been the subject of criticism by the Venezuelan government due to his advocacy on behalf of Venezuelan prisoners. 2005 U.S. Dept. of State Country Reports on Human Rights Practices for Venezuela, pp. 3, 9; *see* 8 C.F.R. § 1003.1(d)(3)(iv). Finally, while the respondents have characterized the summons issued against the lead respondent as "quite ominous," we cannot conclude that the record evidence establishes that an enumerated protected ground was at least one central reason for its issuance (Respondents' Br. at 14-15).

Because the respondents have not met their burden of establishing past persecution, or a well-founded fear of future persecution, on account of a ground enumerated in the definition of 'refugee' under section 101(a)(42) of the Act, the Immigration Judge correctly denied their asylum application. Having failed to meet the less stringent burden of proof for asylum, the respondents

cannot satisfy the more onerous burden for proof of withholding for removal. *Kaba v. Mukasey*, 546 F.3d 741, 751 (6th Cir. 2008). In light of this disposition, we need not address the Immigration Judge's discretionary denial of asylum. In view of the foregoing, the following orders shall be entered.

ORDER: The respondents' appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondents are permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondents fail to voluntarily depart the United States, the respondents shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondents fail to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondents shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondents file a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* Voluntary Departure: Effect of a Motion To Reopen or Reconsider or a Petition for Review, 73 Fed. Reg. 76,927, 937-38 (Dec. 18, 2008) (to be codified at 8 C.F.R. §§ 1240.26(c)(3)(iii), (e)(1)).

WARNING: If, prior to departing the United States, the respondents file any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondents file a petition for review and then depart the United States within 30 days of such filing, the respondents will not be deemed to have departed under an order of removal if the aliens provide to the DHS such evidence of their departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provide evidence DHS deems sufficient that they remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 73 Fed. Reg. At 76938 (to be codified at 8 C.F.R. § 1240.26(i)).

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