

Third Circuit Court

Case: *Tilija v. A.G.*, 930 F3d 165 (3rd Cir. 2019)

Date: July 12, 2019

Panel: Greenaway, Shwartz, Bibas

Opinion: Greenaway

Tags: Immigration, Motion to Remand, Asylum, Changed Country Conditions, political opinion, prima facie claim

Question(s) Presented: Does respondent's evidence of changed country conditions establish a prima facie asylum claim, such that he may petition to reopen his case?

- Did BIA err in failing to consider new evidence?

Holdings: BIA abused discretion. Respondent presented a prima facie case for asylum relief. Remanded for further proceedings.

Rationale: BIA did not accept new evidence as true and ignored what was favorable to the applicant.

Facts: Nepali citizen found removable and applied for asylum and withholding of removable. Had been part of Nepali Congress Party since 2013 (rival of Maoist Party). Was attacked while campaigning for NCP. Moved around Nepal but kept getting threatened. Came to U.S. After his IJ appearance, he learned his wife had been assaulted in Nepal for his political activity.

Legal History, Prior Appeals & Trial Court Input:

- **IJ:** Denied petition for asylum because harm did not rise to the level of persecution; ordered removed.
- **BIA:** New evidence presented that was not available previously: regardless, final order of removal affirmed. Did not show that gov't was unable or unwilling to protect him.

Appeals to Statute & Precedent:

- **8 C.F.R. § 1003.2(c)(1):** BIA may deny motion to remand asylum proceedings if no prima facie claim / no new, previously unavailable evidence / not entitled to such relief.
- ***Huang v. Att'y Gen.*, 620 F.3d 372, 389 (3d Cir. 2010):** To establish a prima facie claim, the movant "must produce objective evidence that, when considered together with the evidence of record, shows a reasonable likelihood that he is entitled to [asylum] relief."
- ***Abdulai v. Ashcroft*, 239 F.3d 542 (3d Cir. 2001):** BIA can't just dismiss motion without considering the evidence.
- ***Guo v. Ashcroft*, 386 F.3d 556, 564 (3d Cir. 2004):** must "merely show a realistic chance that the petitioner can at a later time establish that asylum should be granted."
- **8 C.F.R. § 1208:** Well-founded fear of persecution, reasonable possibility of suffering based on protected ground if returned; not likely to be protected by that country.

- *Bhasin v. Gonzales*, 423 F.3d 977 (9th Cir. 2005): BIA must accept new facts as true unless inherently unbelievable.
- *Shardar v. Att’y Gen.*, 503 F.3d 308 (3d Cir. 2007): Quotes ^^^. Also – brother threatened because of applicant’s political activity.
- *Espinosa-Cortez v. Att’y Gen.*, 607 F.3d 101 (3d Cir. 2010): BIA can’t ignore or misconstrue evidence in the asylum applicant’s favor.

Discussion:

- BIA should have accepted as true the evidence that was presented of respondent’s wife’s assault and the lack of help she received from the Nepali police. Instead, they questioned the veracity of the statements regarding the police inaction.
- BIA ignored or misconstrued evidence in respondent’s favor. Applied an overly rigorous standard to new evidence. This is an abuse of discretion.
- “Tilija need only provide enough evidence of this inability to rely on police protection to show he has a realistic chance to establish that his asylum claim should be granted at a later date.” 172-73
- “Past persecution of family members due to the asylum seeker’s social groups qualify to establish persecution for the asylum seeker’s claim.” 173