



Ratis v. Gonzales

2005 | Cited 0 times | Ninth Circuit | November 16, 2005

NOT FOR PUBLICATION

MEMORANDUM¹

Submitted November 8, 2005²

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Vasile Alexandru Ratis, a native and citizen of Romania, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an Immigration Judge's ("IJ") order denying his applications for asylum, withholding of removal and relief under the Convention Against Torture ("CAT"). We have jurisdiction pursuant to 8 U.S.C. § 1252. Because the BIA reviewed the IJ's decision de novo and did not expressly adopt the IJ's decision, our review is limited to the BIA's decision. See *Shah v. INS*, 220 F.3d 1062, 1067 (9th Cir. 2000). We review for substantial evidence the BIA's factual determinations regarding eligibility for relief. See *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995). We grant in part and deny in part the petition for review, and remand for further proceedings.

Substantial evidence does not support the BIA's finding that Ratis failed to establish the abuse he suffered was on account of a protected ground. The BIA found Ratis credible. As a result of embracing the Baptist faith, he was forced to resign his position as a military senior officer. While there may have been other motives for the beating by the Romanian military security officials, one was that he was a "heretic." The words used by Ratis's persecutors constitute direct evidence of their motives, and are sufficient to establish the requisite nexus to his religious beliefs. See *Baballah v. Ashcroft*, 367 F.3d 1067, 1077 (9th Cir. 2004) (words used by persecutors during alleged abuse amply establish connection between acts of persecution and protected ground). Moreover, the cumulative effect of the abuse Ratis suffered, including the overnight detention, severe beating and death threats in August of 2001, compels a finding of past persecution. See *id.* at 1076.

Because Ratis demonstrated past persecution, he is entitled to a presumption of a well-founded fear of persecution. See *id.* at 1078; 8 C.F.R. § 208.13(b)(1). The government made no arguments to the IJ or the BIA concerning changed country conditions, and presented no documentary evidence for that purpose. In a footnote in its brief to this court, the government asks us to consider extra-record newspaper articles discussing recent events in Romania, but otherwise does not address petitioner's argument that he is eligible for asylum on the existing record. We therefore conclude that Ratis is



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eligible for asylum. Because the decision to grant asylum is discretionary, however, we remand for a determination of whether Ratis should be granted asylum. See *Baballah*, 367 F.3d at 1079.

A presumption also arises that Ratis is entitled to withholding of removal. See *id.* For the same reasons just discussed, on the record as it now stands, Ratis is entitled to withholding of removal to Romania.

Ratis's CAT claim fails because, while the mistreatment he suffered in Romania was serious, the record does not compel a finding that it rises to the level of torture. See *Gui v. INS*, 280 F.3d 1217, 1230 (9th Cir. 2002)(finding similar acts of abuse to constitute persecution but not torture).

PETITION FOR REVIEW GRANTED in part; DENIED in part; REMANDED.

1. This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.
2. The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

