

Eighth Circuit Court

Case: *Haregwoin Abrha v. Alberto Gonzalez, A.G.*, 433 F.3d 1072 (2006)

Judges: Murphy*, Bowman, Gruender

Date: January 10, 2006

Tags: Humanitarian Asylum, Ethiopia, rebuttal by DHS, past persecution, well-founded fear, country conditions

Gravamen/Question(s) at issue: Did IJ abuse his discretion by denying applicant's asylum request, given her testimony of past persecution and well-founded fear of future persecution?

Holdings: Applicant's petition denied.

Rationale:

- Since DHS rebutted applicant's claim of fear of future persecution (regime change), applicant had the burden to prove that there was something for her to fear still, which burden she did not meet.

Facts: Ethiopian woman admitted to U.S. as nonimmigrant visitor. Member of Tigre ethnic group, married to former army colonel from another ethnic group. Past persecution by Mengistu regime, fear of future persecution by those who overthrew that government. Claimed to have been imprisoned, beaten, and tortured. Vague testimony about current political situation. Husband was granted asylum in U.S. in 1995, and daughters as derivatives. State Dept's country conditions report said that those who had fled should now be able to return without reprisals.

History of the Case:

- **1991:** Applicant admitted to U.S. on nonimmigrant visa in April; stayed past end date in Oct.
- **1993:** Filed asylum application
- **1995:** INS ordered her to appear for a hearing
- **1997-1999:** Appeared before IJ, who denied application: no well-founded fear of future persecution.
- **2003:** Appeal to BIA, which affirmed IJ's decision w/o opinion
- **2005:** Appeal to 8th Circuit

Appeals to Statute & Precedent:

- **8 U.S.C. § 1158(a)**
- ***In re. N-M-A-*, 22 I&N Dec. 312 (BIA 1998):** Factors to consider re. (iii)(A) "atrocious" persecution for humanitarian asylum
- ***Kayembe v. Ashcroft*, 334 F.3d 231, 235-37 (3d Cir. 2003):** IJ may rely on State Dept's assessment of country conditions for information about possible future persecution.

Dicta:

- “Although unable to show a well founded fear of future persecution, Abrha might obtain a discretionary grant of asylum if she could demonstrate that the past persecution was so severe that repatriation would be inhumane. [(iii)(A)] Not all harm is severe enough to warrant a discretionary grant of asylum, however. Factors which should be considered include the degree of harm suffered, the length of time over which the harm was inflicted, and evidence of psychological trauma resulting from the harm.” (1076)

Commentary:

- **Procedure for review:**
 - “An IJ decision affirmed by the BIA without opinion is treated as the final agency decision . . . and we review it directly.” (1075)
 - Deference to fact-finder; looking for abuse of discretion, or evidence that was so obvious that fact-finder should have recognized fear of persecution.
- “The parties agree that Abrha has suffered past persecution, which creates a presumption of a well-founded fear of future persecution.” (1075) ← which can be rebutted by DHS, at which point it’s the applicant’s burden to show that future persecution is still possible.
- This CA differentiates between “well-founded fear” of future persecution (broad standard) and the more demanding standard of likelihood in a withholding of removal decision. (3rd Circuit says these are essentially the same standard.)