

Ninth Circuit Court

Case: *Kazlauskas v. INS*, 46 F.3d 902 (1995)

Judge: Hug, Wiggins*, Noonan

Date: Jan. 27, 1995

Tags: Asylum, humanitarian asylum

Gravamen/Question(s) at issue: Is petitioner eligible for discretionary humanitarian asylum?

Holdings: No—there is no reason to fear future persecution in Lithuania, and the past persecution does not rise to the level of “atrocious” required by a “Chen grant.”

Rationale: Country conditions have changed; petitioner is deportable because of crimes of moral turpitude.

Facts: Lithuanian citizen born in USSR; father dissident and political prisoner. Kazlauskas came to U.S. in 1980. Twice convicted of burglary. Deportation proceedings began in 1989 for overstay of visa and crimes of moral turpitude. Requested asylum. State Department believed Kazlauskas had a well-founded fear of future persecution; political situation subsequently changed so that future harm was unpredictable. IJ opted to deport.

History of the Case:

- **IJ (1992):** found petitioner deportable because there was no well-founded fear of persecution if he returned to Lithuania.
- **BIA:** affirmed IJ’s decision

Appeals to Statute & Precedent:

- ***Matter of Chen*, 20 I&N Dec. 16 (BIA 1989):** discretionary humanitarian asylum if past persecution was atrocious

Dicta:

- “We do not attempt to define the minimum showing of ‘atrocious’ necessary to warrant a discretionary grant of asylum based on past persecution alone. We merely hold that the IJ did not abuse his discretion by concluding that the harassment and ostracism Kazlauskas suffered is not such ‘atrocious’ past persecution as to warrant a discretionary grant of asylum.” (907)

Concurrence/Dissent: You’re too hard on the guy: there were more factors in his favor than you took into account.

Commentary:

- 9th Circuit reviews a denial of asylum for abuse of discretion & substantial evidence.
- This case happened before humanitarian asylum was broadened to include “other further harm” possibility. All that was available was a “Chen grant” of discretionary asylum, and this applicant did not qualify.