

Third Circuit Court

Case: *Sheriff v. Attorney General*, 587 F.3d 584 (3d Cir. 2009)

Judges: Barry, Fisher, Jordan

Date: November 24, 2009

Tags: Humanitarian Asylum, country conditions, well-founded fear, persecution, Lithuania, (iii)(A) & (B)

Gravamen/Question(s) at issue: Is the applicant eligible for discretionary humanitarian asylum, despite DHS's rebuttal re. well-founded fear of future persecution, due to changed country conditions?

Holdings: Remanded to BIA because it failed to adequately address the evidence of record that favors an applicant, in this case the severity of the past persecution and testimony as to "other serious harm" in the future, either of which should qualify this woman for humanitarian asylum.

Rationale:

- BIA was hecka sloppy in its dismissal of the applicant's testimony in favor of administrative notice of the State Dept's country reports.
- "...general evidence of improved country conditions will not suffice to rebut credible testimony and other evidence establishing past persecution; evidence of changed country conditions can successfully rebut the presumption *only* if it addresses the specific basis for the alien's fear of persecution." (591, citation omitted; emph. original)

Facts: Persecution of Liberian woman by supporters of former Liberian president, Charles Taylor. Taylor was elected president in 1997, resigned in 2003 after a brutal authoritarian rule. Martina Sheriff is Muslim and from the Mandingo tribe, which was targeted for persecution by the National Patriotic Front of Liberia rebels led by Taylor. She fled to the U.S. using the passport of a friend who had died, and was found deportable.

History of Case:

- **2006:** IJ granted application for asylum, saying that DHS had not rebutted her well-founded fear of future persecution (and that her persecution had been so atrocious that she would qualify for discretionary humanitarian asylum as per (iii)(A)).
- **2008:** DHS appealed to BIA, which sustained the appeal and denied Sheriff's application for asylum. (DHS relied on State Dept's country report for Liberia—fundamental change in country conditions.)

Appeals to Statute & Precedent:

- *Tipu v. INS*, 20 F.3d 580, 583 (3d Cir. 1994): On appeal, Court must consider the evidence of record which favors an applicant.
- *Kazlauskas v. INS*, 46 F.3d 902, 906 (9th Cir. 1995): (iii)(A) is about "atrocious" persecution

- ***Lopez-Galarza v. INS*, 99 F.3d 954, 961-62 (9th Cir. 1996)**: persecution sufficiently atrocious to warrant humanitarian asylum
- ***Galina v. INS*, 213 F.3d 955, 959 (7th Cir. 2000)**: “This assumption prompts us to note the rather pointed reminder to the BIA by one of our sister courts of appeals not to treat Country Reports, ‘as is its tendency, as Holy Writ.’” (*Sheriff* at 592)
- ***Lal v. INS*, 255 F.3d 998, 1009 (9th Cir. 2001)**: re. *Matter of Chen* exception—when past persecution has been so severe that a person cannot bear the thought of returning to the country.
- ***Berishaj v. Ashcroft*, 378 F.3d 314, 327 (3d Cir. 2004)**: burden of proof rests on gov’t if there’s been changed country conditions. (And please use up-to-date reports, not “stale” ones!)
- ***Kholjavskiy v. Mukasey*, 540 F.3d 555, 577 (7th Cir. 2008)**: “other serious harm” case re. Russian seeking humanitarian asylum—inability to get medications for mental illness
- **8 C.F.R. §208.13(b)(1)(iii)(A) & (B)**: humanitarian asylum if past persecution was (A) atrocious and/or if there is (B) fear of other serious harm.

Dicta (persistently sarcastic toward BIA!):

- “We note here . . . that what underlies almost all of what will follow is the utter failure of the BIA to apparently even consider, much less discuss, many if not most of the atrocities to which Sheriff was subjected; her testimony that she will be killed if she is returned to Liberia, and why; and the documentary evidence in the case. The BIA was not entitled to simply ignore such a powerful presentation and summarily conclude that the presumption had been rebutted and that humanitarian relief was not in order.” (588)
- “It is undisputed that Sheriff has met the requirements for past persecution, which was perhaps why the BIA gave the back of its hand to much of the evidence of record.” (589)
- “We stress that the BIA did not say, because it could not say, that evidence of those findings was not in the record, but only that the IJ did not specify where in the record that evidence could be found. A slender reed, indeed.” (590)

Commentary:

- The Court notes that it’s been frustrated in the past by the BIA’s use of “stale” country reports when an asylum case comes before them.
- This is a precedential decision for the 3rd Circuit re. humanitarian asylum based on “other serious harm.”
- Re. addition in 2001 of (iii)(B) (“other serious harm”): “This amendment of the then-existing regulation is highly relevant and of potential seminal importance to this case and, one would think, to numerous other cases. Surprisingly, however, the amendment has rated few mentions in the caselaw and no mention at all by the BIA in any interpretative statement.” (595)