

US Supreme Court

Case: *INS v. Elias-Zacarias*, 502 U.S. 478 (1992)

Date: Jan. 22, 1992

Votes: 6-3

Opinion: Scalia (Rehnquist, White, Kennedy, Souter, Thomas) **Dissents:** Stevens (Blackmun, O'Connor)

Tags: Asylum, political opinion, persecution, well-founded fear,

Question(s) Presented: Does a guerilla organization's acts of conscription *necessarily* constitute persecution on account of a political opinion?

Holdings: A guerilla organization's attempt to coerce is not necessarily on account of political opinion.

- Also: persecution has to be because persecutor perceived protected ground (in this case, political opinion) in victim.

Rationale: Coercion might fall even on those who support the guerillas, if they just don't want to fight.

Facts: Native of Guatemala; threatened by guerillas if he did not join up. Left country so they wouldn't find him and pressure him.

History of Case:

- **1987:** Elias-Zacarias apprehended for entering U.S. without inspection.
- **IJ:** E-Z requested asylum & withholding of deportation. Failed to establish persecution.
- **BIA:** ineligible for discretionary grant of asylum.
- **Motion to reopen (to BIA):** not granted because still not prima facie eligible for asylum (had new evidence that guerillas had returned to his home)
- **9th Cir:** Reversed BIA; found that guerilla conscription *does* qualify as persecution on account of political opinion, because persecutor's motive in carrying out the conscription is political.
- **SCOTUS:** reverses 9th Circuit with this decision.

Appeals to Statute & Precedent:

- **8 U.S.C. § 1101(a)(42):** definition of refugee & persecution on account of five protected grounds
- **8 U.S.C. § 1105a(a)(4):** BIA's decision must be upheld if "supported by reasonable, substantial, and probative evidence on the record considered as a whole."
- **8 U.S.C. § 1158(a):** discretionary grant of asylum—"well-founded fear of persecution"
- **INS v. Cardoza-Fonseca, 480 U.S. 421 (1987):** persecution; asylum as a discretionary grant

Dicta:

- Persecution on account of a political opinion has to be on account of the *victim's* political opinion: "If a Nazi regime persecutes Jews, it is not, within the ordinary meaning of language, engaging in persecution on account of political opinion; and if a fundamentalist Moslem regime persecutes democrats, it is not engaging in persecution on account of religion." (482)
- "Elias-Zacarias appears to argue that not taking sides with any political faction is itself the affirmative expression of a political opinion. That seems to us not ordinarily so." (483)
- "...since the statute makes motive critical, he must provide *some* evidence of it, direct or circumstantial." (483)

Dissent:

- Well-founded fear is undisputed; question of law is what qualifies as persecution on account of political opinion?
- "A political opinion can be expressed negatively as well as affirmatively." (486)
- "Even if the refusal is motivated by nothing more than a simple desire to continue living an ordinary life with one's family, it is the kind of political expression that the asylum provisions of the statute were intended to protect." (486)
- "The narrow, grudging construction of the concept of 'political opinion' that the Court adopts today is inconsistent with the basic approach to this statute that the Court endorsed in *INS v. Cardoza-Fonseca*." (487)
- "It follows as night follows day that the guerillas' implied threat to 'take' him or to 'kill' him if he did not change his position constituted threatened persecution 'on account of' that political opinion." (489)
- "It is important to emphasize that the statute does not require that an applicant for asylum prove exactly why his persecutors would act against him; it only requires him to show that he has a 'well-founded fear of persecution on a count of . . . political opinion.'" (490)