

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
██████████, CALIFORNIA

FILE NO.: ██████████

IN THE MATTER OF:)
)
██████████) IN DEPORTATION PROCEEDINGS
RESPONDENT)

CHARGE: § 241 (a)(1)(B) of the Immigration and Nationality Act
("INA") -- Nonimmigrant overstay

APPLICATION: INA § 208 - Asylum
INA § 243 (h) - Withholding of Deportation
INA § 244 (e) - Voluntary Departure

ON BEHALF OF THE RESPONDENT:
Susan E. Hill
1303 ██████████
██████████, CA

ON BEHALF OF THE SERVICE:
Assistant District Counsel
██████████, CA

WRITTEN DECISION OF THE IMMIGRATION JUDGE

Procedural Information

The respondent is a thirty-five-year-old female who is a native and citizen of Jordan. The United States Immigration and Naturalization Service ("Service") brought these deportation proceedings against the respondent pursuant to the authority contained in Section 242 of the Immigration and Nationality Act ("INA"). Proceedings were commenced with the filing of the Order to Show Cause with the Immigration Court on June 12, 1996. See Exhibit 1, 8 C.F.R. § 3.14 (a) (4/9/97).

The respondent admitted to the allegations in the Order to Show Cause that she entered the United States on or about October 22, 1991 at or near ██████████, California as a nonimmigrant

visitor for pleasure with authorization to remain in the United States for a temporary period not to exceed April 21, 1992. She admitted that she remained in the United States beyond April 21, 1992 without authorization from the Service. She further concedes that she is deportable as charged under INA § 241 (a)(1)(B) for having remained in the United States for a time period longer than permitted. On the basis of the respondent's admissions, this Court finds that the respondent's deportability has been established by evidence that is clear, unequivocal, and convincing. 8 C.F.R. § 240.8 (a) (4/9/97). As the respondent declined to designate a country of deportation, Jordan was designated pursuant to the recommendation of the Service.

The respondent applied for asylum as relief from deportation pursuant to INA § 208 (a) (1996). Applications for asylum are also considered as applications for withholding of deportation according to INA § 243 (h) (1996). In lieu of deportation, the respondent requested voluntary departure pursuant to INA § 244 (e) (1996).

The respondent's Application for Asylum and Withholding of Deportation (Form I-589), dated January 10, 1992, is contained in the record as Exhibit 2.

Facts and Testimony

The evidence at the hearing consisted of the respondent's written asylum application and supporting documentation [Exhibit 3], the State Department's Country Report for Jordan [Exhibit 4], her own testimony, and the testimony of her husband. The record also contains her marriage certificate showing that she married her husband on January 12, 1992 [Exhibit 5].

At the hearing, the respondent testified that she was afraid to return to Jordan because she believes that her family will kill her. She believes that they will kill her because she lost her virginity to her husband prior to their marriage and because she left Jordan without their permission either to marry or to leave Jordan.

The respondent testified that she met her husband in 1991, they had premarital sex in [REDACTED] 1991, and he asked to marry her in [REDACTED] 1991. She left Jordan on [REDACTED], 1991.

The respondent testified that although her husband asked her father's permission to marry her, her father refused permission because her husband is Palestinian and had a low paying job. The respondent testified that although her family is poor, her father would not approve a marriage that he believed would affect the status of his family. Because the respondent and her husband believed that her father would never allow them to marry and would kill the respondent if he found out about their sexual relations, they decided that they must leave Jordan. The respondent fears that if she is forced to return to Jordan the male members of her family, approximately fifteen men, would kill her based on her disobedience of her father's wishes and the disgrace she brought on the family. The respondent testified that her belief that her family will harm her comes from letters received from her sister. In these three letters dated [REDACTED], 1992, [REDACTED], 1995, and [REDACTED], 1997, the respondent's sister wrote that their father was very angry and had asked their brothers to kill the respondent should they ever come in contact with the respondent again [Exhibit 3]. The respondent testified that she sends all correspondence to her sister at a post office box so that her family will not know where she is located.

The respondent testified that there is little protection for her if she is forced to return to Jordan. Often, the police will ask the male family members that are threatening a woman in the family to sign a piece of paper certifying that they will not harm the woman. However, the respondent believes that the certification would mean nothing to her family and that they would kill her regardless of their signatures being on a paper. She believes that any murderer would be charged and punished if proven guilty, but she also believes that the threat of punishment would not prevent a family member from harming a woman who is thought to have shamed the family.

Nonetheless, the respondent conceded that the law in Jordan does not preclude marriage without parental permission. She stated that her father does not know for a fact that she had sexual relations with her husband prior to their marriage. However, the respondent assumed that her father knew of her actions because she left the country and that he would conclude that she had premarital sexual relations. Neither the respondent, nor her husband, tried to communicate with her father on any level, including discussing the respondent's wishes to marry. At the time of the proceedings, the respondent had not spoken with her father since she left the country and had not told him that he is a grandfather.

The respondent's husband testified on behalf of the respondent. He testified that while marriage had been legally possible in Jordan without family permission, it is the approval of the family that controls whether the couple is accepted in society. He testified that *his* friends and family know that they live in the United States, but that they are unaware that the couple had premarital sex. The husband believes that knowledge of their premarital relations would taint the image of his wife, the respondent, for his family and friends. He testified that he asked the respondent's father for permission to marry the respondent, but that her father refused permission. He believed that her father would never give them permission to marry. The respondent's husband testified that he concluded that he and the respondent must leave Jordan because he was concerned that the respondent might be pregnant which would cause the respondent's father to know of their sexual relations.

Statement of the Law

The burden of proof is on the respondent to establish that she is eligible for asylum or withholding of deportation. Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985); 8 C.F.R. §§ 208.5 and 242.17 (c) 1996.

To qualify for withholding of deportation the respondent's facts must show a clear probability that her life or freedom would be threatened in the country directed for deportation on account of race, religion, nationality, membership in a particular social group or political opinion. INA § 243 (h)(1) (1996); INS v. Stevic, 467 U.S. 407 (1984). This means that the respondent's evidence and testimony must establish that it is more likely than not that she would be subject to persecution for one of the grounds specified. INS v. Stevic, *supra*, at 429-30.

To qualify for asylum, the respondent must show that she is a refugee within the meaning of INA § 101 (a)(42)(A) (1996). *See* INA § 208 (a) (1996). This means that the respondent must demonstrate unwillingness or inability to return to her country because of persecution, or a "well-founded fear of persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101 (a)(42)(A) (1996). The persecution feared by an asylum applicant must be more than mere harassment, brief confinement, or interrogation. Matter of D-L- & A-M-, 20 I&N Dec. 409 (BIA 1991); Zalega v. INS, 916 F.2d 1257, 1260 (7th Cir. 1990).

The test for relief based on an asylum claim has both an objective and subjective component. Desir v. Ilchert, 840 F.2d 723, 726 (9th Cir. 1988). The objective component is met when the respondent establishes that there is a reasonable possibility of such persecution. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). The objective component requires a showing by credible, direct, and specific evidence of facts supporting a reasonable fear. In the test for objectiveness, the reasonableness of the respondent's fear can be based on what has happened to others who are similarly situated, as reported in the Department of State Country Reports on Human Rights Practices, or other reliable sources. Matter of Exame, 18 I&N Dec. 303, 304-5 (BIA 1982).

In determining whether an alien is eligible for asylum, the subjective component is met when the fear is genuine. Hernandez-Ortiz v. INS, 777 F.2d 509, 513 (9th Cir. 1985). The respondent's

subjective mental state must be considered against the background of circumstances prevailing in the alien's home country. In contrast to the test for objectiveness, in some cases the only available evidence of the alien's subjective fear is the alien's own testimony. This may suffice where the testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for the respondent's fears. Matter of Dass, 20 I&N Dec. 120, 127 (BIA 1989); Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987). This does not mean, however, that introducing supporting evidence is at the respondent's option; generally, such evidence must be presented when available. Matter of Dass, *supra*, at 124.

Alternatively, eligibility for asylum may be established by a showing of past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 208.13 (b)(1) (1996); Matter of Chen, 20 I&N Dec. 17 (BIA 1989). The regulations indicate, and the Board of Immigration Appeals ("BIA") has held, that where past persecution is established, there is a rebuttable presumption that the respondent has reason to fear persecution in the future unless a preponderance of the evidence establishes that since the time the persecution occurred conditions in the respondent's home country have changed to such an extent that the respondent no longer has a well-founded fear of being persecuted if she were to return. A respondent who establishes past persecution, but not a well-founded fear of future persecution if forced to return, will be denied asylum unless there are compelling reasons for not returning her to her home country which arise out of the severity of the past persecution. *Id.*

The well-founded fear standard required for asylum is more generous than the clear probability standard of withholding of deportation. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). Therefore, the more liberal "well-founded fear" standard is used first to review the respondent's application because if she fails to meet this test, she necessarily would not meet the clear probability

test required for withholding.

Credibility

Initially, the Court was concerned that the respondent submitted an asylum application in 1992, did not attend the interview regarding that application, and later disavowed the contents of that application in front of this Court on the date of the hearing on the merits of her claim. The respondent indicated that she had filed another asylum application with the Court upon receiving notice of deportation proceedings in June 1996. However, this second asylum application was not properly filed, and the Court did not accept the second application during the hearing. Instead, the Court proceeded using the application for asylum filed in 1992 that was supplemented by documentation presented three weeks prior to the hearing on the merits. The supplemental documentation contained a declaration by the respondent submitted to the Court on November 24, 1997.

Because the 1992 asylum application is consistent with the respondent's later declaration and testimony, the Court disregards its earlier misgivings and finds the respondent to be credible.

Analysis and Findings

Request for Asylum

After evaluating the testimony and evidence submitted by the respondent and the Service, the Court finds that the respondent has not established past persecution or a well-founded fear of future persecution. Persecution is harm or harm threatened on account of a belief or trait held by or imputed to an alien, and the belief or trait must be protected under one of the five grounds: race, religion, nationality, membership in a particular social group, or political opinion. At issue is whether there is a viable theory of persecution in this case.

The respondent claims that her father will kill her if she returns to Jordan because she married

without his permission and because he would assume that the respondent and her husband had premarital sex. Both of these actions would bring shame to the family honor, and the respondent claims that her father would act to end the shame by killing her.

In this case, there is no claim of past persecution. The respondent does not allege that her father has ever been abusive to her in the past. It appears from her testimony that she and her father did not often have contact with one another. Her written declaration described the Jordanian societal views of women in general and described the relationship between the respondent and her husband; however, it did not describe the relationship between the respondent and her father in detail. Consequently, there is no allegation of past abusive behavior by her father. Also, there is nothing in the record indicating that any female member of her family has suffered any harm by any male member of the family. Thus, there is nothing showing that the respondent, or any woman in her family, has suffered any persecution at the hands of her father, or anyone else, in the past.

As a result, the respondent must show a well-founded fear of persecution. The respondent claims to have a subjective fear of persecution. However, the Court must question the basis for her subjective fear. Because there was nothing in the record indicating past abusive conduct by her father, the respondent's fear that her father will react with violence and possibly kill her does not appear to have a real probability of happening. The respondent's belief that her father, or other male members of the family, will kill her is particularly based on letters from her sister. The respondent has not spoken with her father or any member of her family other than her sister to confirm that, in fact, her fear is well placed. The respondent's father is unaware that he has grandchildren by the respondent and her husband. While this knowledge might not erase her father's displeasure regarding her marriage, it might mitigate the fierceness of his reaction. Each of these factors places doubt on the subjective fear of the respondent.

Even assuming that the respondent satisfies the subjective aspect of the well-founded fear element because she has a genuine apprehension or awareness of danger, the Court must examine the basis of that fear in objective facts and events. The Country Conditions Report for Jordan corroborates the respondent's declaration that the Jordanian justice system would not deter her male family members from attacking her. The report acknowledges that the "Criminal Code allows for leniency for persons found guilty of committing a 'crime of honor,' the term commonly used for a violent assault against - or murder of - a female by a male relative for alleged sexual misconduct" [Exhibit 4, p. 1313]. In addition, the respondent submitted Jordanian newspaper articles that recounted incidents of violent behavior similar to what she is afraid will happen to her. These articles, however, told of specific instances in particular families. While the Court does not doubt that the violence against women occurs in Jordan, it does not follow a particular pattern or practice against women in general. A specific family may react violently against a woman who has married without permission, but another family may choose not to react violently. The type of retribution feared by this respondent has not happened to any other female member of her family. Also, the respondent has not spoken directly to her father to gain first hand knowledge of the depth of his anger. Consequently, there is a doubt that her family would react so violently to her.

Additionally, even if the respondent could show that she has been singled out for persecution based on the threats that she believes her father has given, the respondent cannot satisfy the other elements of asylum claim. Taking the respondent's fear as subjectively and objectively substantiated, the respondent must go on to show that the persecution she fears is "on account of" her membership in a particular social group. As defined by the Board of Immigration Appeals, members of "a particular social group" are person who hold an "immutable characteristic or common trait such as sex, color, kinship or in some cases shared past experiences such as land ownership or military

service.” Matter of Acosta, *supra*, at 233. The respondent argues that she is a member of Jordanian women that would be persecuted because of their choice to have premarital sex and to defy the wishes of their families by marrying without permission.

There has been an emerging body of law that reflects the asylum claims of women who suffer persecution. For example, all Iranian women are not a social group, but Iranian women who advocate women’s rights can be. Safaie v. INS, 25 F.3d 636, 640 (8th Cir. 1994); or upper class Iranian women who support the Shah can be a social group. Fatin v. INS, 12 F.3d 1233 (3rd Cir. 1993). In addition, “young women of the Tchmba-Kunsunto Tribe who have not had (female genital mutilation), as practiced by that tribe, and who oppose this practice” have been found to be a particular social group. Matter of Kasinga, Int. Dec. 3278 (BIA 1996). However, gender alone cannot define a particular social group. Gomez v. INS, 947 F.2d 660, 664 (2nd Cir. 1991). It must be considered whether the class of people is cognizable as a particular social group under the applicable laws. Sanchez-Trujillo v. INS, 801 F.2d 1572 (9th Cir. 1986). In this case, the fact that the respondent is a woman is a self-evident immutable characteristic. Nonetheless, the Court does not find that the respondent has adequately defined what additional immutable characteristic would make her social group one that is cognizable as a particular social group and cause harm to be inflicted on its members in order to punish them for having one or more of the five statutory grounds.

Even if the Court were to accept this as an accurate classification, the respondent must then show who is the persecutor. The persecutor must be the government or a group that the government is unable or unwilling to control. In this case, the respondent and her husband testified that she is able to file a complaint against her family with the police. The police would then ask her father to sign a document stating that he will not kill or harm the respondent. As the respondent testified, this recourse has little deterrent effect and male family members will often still commit the crime and then

spend very little time in jail for the offense. The respondent argues that the government may be able to impose punishment, but the punishment will not prevent her from being killed. While this may be true, the protection offered in this country differs little from what is provided in Jordan. A person cannot be jailed in the United States until he has committed a crime. In both Jordan and the United States, the deterrent effect of the prescribed punishment may not always prevent another from committing the same crime. Thus, although the attempt to stop the crime from happening may be nothing more than a formality in the respondent's eyes, the government does make an effort to control the criminal behavior of male relatives who harm women because of alleged sexual transgressions.

The respondent testified that she fears that her family will find her if she is returned to the small country of Jordan. The respondent must show that the persecutor can and would seek her out throughout the country. Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985). In this case, letters from the respondent's sister warn the respondent that her father has asked the male members of her family to kill her if they come in contact with her again. Yet, the Court doubts that her family members would have the resources to search, find, and kill the respondent because, as the respondent testified, her family is poor. The respondent also testified that there were only fifteen male members of the family that would be looking for her. It appears to this Court that the threatened harm to the respondent is localized. The respondent has been out of Jordan for six years. Although her father may still be angry, it is questionable if the other male family members' feelings are that strong or as strong as they once were believed to be. The record does not indicate that the male family members would search for her throughout the country. The language used in the letters from her sister telling of her father's request for clearing the family name state that the father asked the male members to harm the respondent if they meet her again. There is no call for the men to search out the

respondent.

Also, the Court questions the zealotness of the respondent's father's anger. The record indicates that the respondent left Jordan on [REDACTED], 1991 and that the respondent's husband left Jordan on [REDACTED], 1991. The [REDACTED], 1992 letter from the respondent's sister indicated that their father found out about the respondent going to the United States from the airport police. The Court assumes that this meant that he found out very soon after the respondent left for the United States. Yet, in the nearly seven weeks between the respondent's departure and the respondent's husband's departure, the record does not indicate that her father harassed or harmed her husband. The Court realizes that the harm feared is directed at the respondent, but it seems that the respondent's father would at least contact her husband if he was that upset over the respondent's behavior with her soon-to-be husband and the respondent leaving Jordan.

< The Court acknowledges that the respondent's case is sympathetic. Obviously, the respondent fears her father's reaction to her marriage if she were to return to Jordan. However, personal problems, without more, cannot be the basis of an asylum claim. Matter of Y-G-, 20 I&N Dec. 794, 799 (BIA 1994). The Court will not differentiate the feared reaction of the respondent's father from the reaction of many fathers here in the United States who are unhappy with their daughters' choices and marital decisions. The United States can guarantee no more protections from angry fathers than Jordan does from its angry fathers. Also, persecution within the Act does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. Fisher v. INS, 79 F.3d 955, 962 (9th Cir. 1996); Fatin v. INS, 12 F.3d 1233 (3d. Cir. 1993). While the Court sympathizes with the respondent's fear of her father's disappointment and anger at her marriage, the Court does not find relief for the respondent within the specific provisions of the Act.

Based on the record and other portions of the respondent's testimony, the Court finds that

the respondent fears a violent attack by the male members of her family based on her defiance of their wishes that she not marry her husband. However, the Court finds that the respondent has not shown that the harm feared will come from the government or a group that the government is unable or unwilling to control. The Court finds that the respondent does not make an asylum claim based on fear on account of her membership in a particular social group. Instead, the respondent is claiming asylum for protection in a personal family dispute. Additionally, although the Court does not doubt that "crimes of honor" occur in Jordan, the harm to this particular respondent is speculative. Consequently, the respondent's request for asylum is denied.

Request for Withholding of Deportation

Lastly, inasmuch as the respondent has failed to satisfy the lower burden of proof required for asylum, it necessarily follows that she has failed to satisfy the clear probability standard of eligibility required for withholding of deportation in that she has not established that if she were now to return to Jordan it is more likely than not that she would be subject to persecution.

Request for Voluntary Departure

The respondent has requested the privilege of departing the United States voluntarily in lieu of deportation pursuant to INA § 244 (e). To qualify for voluntary departure she must show that she would be willing and has the means to depart immediately, that she has been a person of good moral character for at least the past five years, and that she is deserving of the relief in the exercise of discretion. *See* 8 C.F.R. §§ 242.17 (b) and 244.1; *see also* Matter of Seda, 17 I&N Dec. 550 (BIA 1980).

The respondent has met the statutory requirements for voluntary departure, and that relief will be granted in the exercise of discretion. The respondent is given the privilege of departing the United States voluntarily on or before August 10, 1998.

ORDERS

IT IS HEREBY ORDERED, that the respondent's applications for asylum and withholding of deportation be denied.

IT IS FURTHER ORDERED, that the respondent be granted the privilege of departing this country voluntarily without expense to the government on or before August 10, 1998 plus any extension and on such conditions that may be granted by the District Director of the Immigration and Naturalization Service.

IT IS FURTHER ORDERED, that if the respondent does not voluntarily depart the United States when and as required, the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the respondent shall be deported from the United States to Jordan on the charge contained in the Order to Show Cause.

1-8-98
Date

Margaret R. Reichenberg
Margaret R. Reichenberg
U.S. Immigration Judge