



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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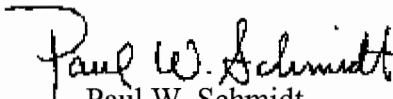
Name: NOORAI, MEHRAN

A39-066-094

Date of this notice: 10/12/2000

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Very Truly Yours,


Paul W. Schmidt
Chairman

Enclosure

Panel Members:
DUNNE, MARY M.
HOLMES, DAVID B.
HURWITZ, GERALD S.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A39 066 094 - Florence

Date:

OCT 12 2000

In re: MEHRAN NOORAI a.k.a. Mehan Noorai

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF SERVICE: T.M. Riley
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Asylum; withholding of removal

The respondent appeals from an Immigration Judge's March 22, 2000, denial of his application for asylum and withholding of removal. The respondent claims to have a well-founded fear of persecution in Iran on the basis of his family, who were supportive of the former Shah of Iran, his own service with the former secret police of that country, the SAVAK, and his associations with the Baha'i faith. The Immigration Judge found the respondent had not adequately demonstrated his eligibility for relief. We disagree with this assessment. We will sustain the appeal and grant the respondent withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3). The request for oral argument is denied. 8 C.F.R. § 3.1(e).

We first note that, although the Immigration Judge had some concerns about the respondent's truthfulness when he testified about his criminal activities in this country, the Immigration Judge did not make a specific credibility finding. A review of the record does not reveal any specific, cogent and material problems in the respondent's testimony regarding his application for relief and we find that he was for the most part credible.

The respondent is currently in removal proceedings due to a November 1, 1996, conviction in the Superior Court of California, County of Los Angeles, for the offense of grand theft person, in violation of section 487(c) of the California Penal Code. After a probation violation, the respondent was sentenced to 16 months in prison for this crime. We agree with the Immigration Judge that this crime constitutes an aggravated felony and the respondent is ineligible for asylum.

Section 208(b)(2), 8 U.S.C. § 1158(b)(2). We cannot agree, however, that the evidence supports a conclusion that this was a particularly serious crime, barring the respondent from withholding of removal under section 241(b)(3)(B)(ii).

Section 241(b)(3)(B)(ii) of the Act states that an alien is ineligible for withholding if "the alien, having been convicted of a particularly serious crime, is a danger to the community." Section 241(b)(3)(B) of the Act goes on to state:

For purposes of clause (ii), an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime. The previous sentence shall not preclude the Attorney General from determining that, notwithstanding the length of the sentence imposed, an alien has been convicted of a particularly serious crime.

In the instant case, the respondent was sentenced to 16 months of imprisonment, for his aggravated felony. Therefore, the Immigration Judge and this Board examine the type of crime he committed and its circumstances, to determine whether he has committed a "particularly serious crime" and is, therefore, ineligible for withholding of removal. Whether the crime is particularly serious depends on the nature of the conviction, the type of sentence imposed, and whether the type and circumstances of the crime indicate that the respondent is a danger to the community. *See Matter of S-S-*, Interim Decision 3374 (BIA 1999); *Matter of L-S-J-*, 21 I&N Dec. 973 (BIA 1997); *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982); *see also Beltran-Zavala v. I.N.S.*, 912 F.2d 1027 (9th Cir. 1990).

The respondent's aggravated felony conviction is for grand theft under section 487(c) of the California Penal Code, which provides simply that this crime is committed "when the property is taken from the person of another." *Id.* In his testimony, the respondent stated that he did not commit the crime, but we note he pled guilty and we do not go behind the conviction to redetermine his guilt or innocence. He originally received a short sentence, but later, after a probation violation, was sentenced to 16 months in prison. The respondent was apparently involved with drugs, but now claims to have been free of them since 1997. There is no documentary evidence in the record useful in determining the seriousness of the respondent's crime. The Immigration and Naturalization Service has not provided additional evidence as to what was involved in the actual crime. Based on this meager evidence, we cannot find his crime was particularly serious. There is no evidence that violence, or even the threat of such, was used in the commission of the crime and, at first, he did receive a relatively short sentence. Based on this record we do not find the respondent's crime was particularly serious.

Turning to an assessment of the respondent's claim, we first note that the standards for asylum and withholding of removal are significantly different. *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). An applicant for asylum must establish that he has suffered persecution or has a well-founded fear of persecution. *See Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). An applicant

for asylum has established a well-founded fear of persecution if a reasonable person in his circumstances would fear persecution. *Matter of Mogharrabi, supra*. An applicant for withholding of deportation or removal, however, must establish a clear probability of that persecution. *Id.* at 440. This "clear probability" standard requires a showing that it is more likely than not that the applicant would be subject to persecution upon return to his country. *Id.* Because a reasonable person may well fear persecution even where its likelihood is significantly less than clearly probable, it is recognized that the standard for asylum is less burdensome than that for withholding of deportation. *See id.* Accordingly, the respondent faces a more stringent burden to prove eligibility for withholding of removal than he would to prove eligibility for asylum. *See Matter of D-V-*, 21 I&N Dec. 77 (BIA 1993). Despite this high standard, we find that the respondent has adequately established eligibility for withholding of removal.

It does not appear in doubt that the respondent's family suffered in Iran after the fall of the Shah. The respondent testified that his father was an important government official who was imprisoned and later died in jail (Tr. at 24, 32-33). Further, his brother was an official with the secret police of the Shah, the SAVAK, and was executed shortly after the revolution (Tr. at 25, 33). Through his brother, the respondent himself was able to obtain employment with the SAVAK, where he worked for 2 years before coming to the United States in 1978 (Tr. at 25-27, 30-31). To further complicate the respondent's situation, he comes from a Baha'i family, although he does not practice the religion. He testified that his sister recently lost all of her property in Iran due to her religion (Tr. at 25, 42-43). While the respondent is not active in his faith, it does appear he would be associated with the religion through his family.

Considering the respondent's fear of persecution based on his service with the SAVAK, we note that the United States Department of State indicates that low level SAVAK members were able, for the most part, to continue their lives after the revolution, and political party members opposed to the revolution were able to prove their allegiance to the new government by fighting in the conflict with Iraq. *Iran - Profile of Asylum Claims and Country Conditions*, United States Department of State Bureau of Democracy, Human Rights, and Labor (DRL), August 1997 (Exh. 4) (*Profile*). As he was resident in the United States, the respondent had no such opportunity. In addition to his work with SAVAK, the respondent's brother was in a high position in the organization and his father was a high ranking government member. We find this, combined with his time in the United States, makes him much more vulnerable to persecution than those who were simple functionaries and remained in Iran after the revolution. The Service points out that the respondent had a brother who was able to remain in Iran for 1 year before fleeing, and his sister remained 12 years without incident. We do not know the brother's circumstances during that year before he fled and we note the sister was not connected with the SAVAK or the government. Also, as noted above, she recently had all of her property confiscated. The Department of State writes that Iran's "human rights record continues to be abysmal" and they note the persistence of persecution of Baha'is. *Profile* at 3, 12. While the report provided by the Department of State is advisory in nature, the Department is charged with the responsibility of knowing the political and social conditions of foreign countries. Therefore, its

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opinion is worthy of serious consideration in the absence of facts to the contrary. *Matter of T-M-B-*, 21 I&N Dec. 775 (BIA 1997); *Matter of R-*, 20 I&N Dec. 621 (BIA 1992); *see generally Asghari v. I.N.S.*, 396 F.2d 391 (9th Cir. 1968).

Based on the foregoing, we find that the respondent has established his eligibility for withholding of removal. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); *Matter of Mogharrabi, supra*. Accordingly, the following orders will be entered.

ORDER: The appeal from the denial of the application for withholding of removal to Iran is sustained and the decision of the Immigration Judge is reversed insofar as it denies this application.

FURTHER ORDER: The respondent is granted withholding of removal to Iran pursuant to section 241(b)(3)08 of the Immigration and Nationality Act, as amended, and the removal proceedings are terminated.



FOR THE BOARD