

Falls Church, Virginia 22041

File: A95 719 764 - Chicago, IL

Date: JUN 25 2007

In re: JOCELYN ISADA BOLANTE a.k.a. Jocelyn Joc Joc Bolante

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Y. Judd Azulay, Esquire

ON BEHALF OF DHS: Seth B. Fitter
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal

ORDER:

PER CURIAM. The respondent is a native and citizen of the Philippines. He appeals the Immigration Judge's February 9, 2007, denial of his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act ("Act"), 8 U.S.C. §§ 1158, 1231(b)(3). The respondent's appeal will be dismissed.

The respondent has been accused of participating in the "Fertilizer Scam" in the Philippines (Tr. at 149).¹ The Senate of the Philippines convened a Committee to investigate the Fertilizer Scam and conducted a number of hearings during this investigation. The respondent was subpoenaed to testify and answer questions before this Senate Committee at least four times (Tr. at 151). The respondent repeatedly failed to comply with the subpoenas (Tr. at 265-67). After the respondent's failure to comply, the Senate in 2005 issued a warrant for his arrest. Upon completion of the investigation, the Senate Committee issued a report that charged the respondent with being the main architect of the Fertilizer Scam and recommended that he be charged. This report also recommended that Mr. Felix Montes, one of respondent's witnesses, be charged for similar crimes. *See* (Exhs. 7, 17, 20); Philippine Senate Report at 33. There is no evidence

¹ The respondent is the subject of an investigation relating to allegations that he assisted in a scheme to illegally divert approximately 728 million Philippine pesos in fertilizer subsidy funds for illicit purposes (Exh. 7 Tab Q; Philippine Senate Report).

that Mr. Montes has been arrested or harmed based on the Senate Committee Report and there is no evidence that anyone, including the respondent, has been charged with crimes as a result of the report (Tr. at 207, 293-94). The respondent claims that he will be persecuted as a former government official and based upon the Philippine Senators' ambitions for higher political office (Tr. at 149-52; Asylum Attachment at 2; Amendment to Brief at 2).

Prosecution for the violation of a law of general applicability is not persecution, unless the punishment is imposed for invidious reason. *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), *modified on other grounds, Matter of Mogharrabi, supra, Matter of Nagy*, 11 I&N Dec. 888 (BIA 1966). The exception to this rule arises when the respondent can demonstrate that he will be subjected to a disproportionately severe punishment on account of one of the protected grounds under the Act. Therefore, the respondent must establish that the prohibition against graft and corruption as applied to him were especially unconscionable or were merely a pretext to persecute him for his beliefs and characteristics. *See Abedini v. INS*, 971 F.2d 188, 191 (9th Cir. 1992).

The Immigration Judge noted that the respondent did not present any evidence of past mistreatment or harm (I.J. at 9). *See* (Exh. 7). The evidence revealed that there were presently no charges pending against the respondent with regard to the Fertilizer Scam and only an arrest warrant for his failure to appear and testify before the Senate Committee. *See* (Exh. 7 Tabs I, Q). The Immigration Judge also found that his prosecution was clearly not a pretext for persecution when the respondent had previously been under investigation, but was never sought out for arrest until he failed to comply with numerous subpoenas (I.J. at 13). The Immigration Judge noted that there was no evidence that his punishment would not be in conformity with the general application of the laws (I.J. at 12-13). *See Abedini v. INS, supra*. Moreover, the testimony indicated that the Senators who oppose President Arroyo may want to advance their own political agendas, but that this is not an attempt to punish the respondent for his imputed political opinion. *See Elias-Zacarias*, 502 U.S. 478, 112 S.Ct. 812 (1992) (recognizing that persecution "on account of" is persecution on account of the victim's political opinion). For all the reasons noted by the Immigration Judge, we agree that the respondent failed to establish that he suffered past persecution or a well-founded fear of future persecution on account of his imputed political opinion.

Next we address the respondent's claim that he would be persecuted on account of his membership in a particular social group, namely those individuals who are past government officials or suspected of involvement in corruption. *See* (Exh. 7 at 5). Membership in a particular social group means membership in a group of people who all share a common, immutable characteristic, that is, a characteristic that is either beyond the power of the individual members to change, or that is so fundamental to their identities or consciences that it should not be required to be changed. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). Moreover, a particular social group may also be distinguished by its "social visibility." *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006). The United States Court of Appeals for the Seventh Circuit has set forth a three-part test for determining membership in a particular social group, "an alien must (1) identify a particular social group; (2) establish that [he or] she is a member of that group; and (3) establish that [his or] her well-founded fear of persecution is based on [his or] her membership in that group." *See Iliev v. INS*, 127 F.3d 638, 642 n.3 (7th Cir. 1997).

As a matter of simple statutory interpretation, let alone sound public policy, we do not deem criminal behavior that is commonly and properly condemned by civilized societies to be a valid basis for a finding that a perpetrator, or suspected perpetrator, falls within a "particular social group" within the meaning of section 208 of the Act. *See Bastanipour v. INS*, 980 F.2d 1129, 1131-32 (7th Cir. 1992) (declining to treat drug traffickers as a "particular social group" under the Act); *Rodriguez-Rivera v. INS*, 848 F.2d 998, 1005 (9th Cir. 1988) (finding that an alien's fear of criminal prosecution does not constitute a protected ground under the Act). Mr. Montes testified that the respondent may or could be harmed if returned to the Philippines. However, Mr. Montes was likewise recommended for prosecution by the Senate Committee and yet, he remains unharmed in the Philippines (Tr. at 292-94) and similarly not charged. *See* (Exhs. 17, 7).

The respondent's son also claimed he received unfulfilled threats and text messages from unknown persons (Tr. at 140, 312-13). However, the Immigration Judge noted that vague, unfulfilled threats to friends or family do not support a claim of past or future persecution. *See Matter of Kasinga, supra*. The respondent also argues that there is a bounty for his capture, that radical groups may attempt to capture him, and the authorities cannot protect him from these groups. *See* Asylum Attachment at 2-3. The respondent also argues that bounties are not legitimate prosecutorial tools. The United States Department of State indicates it is unaware of any such bounty for the respondent. (Exh. 15, Ltr. at 2). The Immigration Judge noted that contempt citations and arrests are distinctly possible consequences for failing to comply with a subpoena (I.J. at 14), and that these events did not appear to be a pretext for persecution but rather an enforcement of the laws of the democratically elected government (Tr. at 13).² Although the Immigration Judge noted there was no evidence of a bounty, this would also be a possible consequence for having an open warrant of arrest in the United States. The Immigration Judge further noted that even a newspaper article indicated that there is no intent to harm the respondent, but instead there is the desire that he discuss his participation in the Fertilizer Scam and "spill the beans." (Exh. 23). For all the reasons noted by the Immigration Judge, we agree that the respondent has not demonstrated his "membership in a particular social group" within the meaning of the Act nor did he possess a well-founded fear of persecution on account of a "particular social group" or any other statutorily protected ground. *See Iliev v. INS, supra*.

² The respondent filed a Amendment to the Appellate Brief, which attempts to offer two newspaper articles to support his claim of persecution. This Board does not ordinarily consider new evidence submitted on appeal as the record we review on appeal is the record before the Immigration Judge. *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) (the Board is an appellate body whose function is to review, not to create, a record). This evidence post-dates the hearing and therefore, was technically unavailable and could not have been discovered at his former hearing. However, this new evidence does not advance his appeal as it simply references current political unrest and violence in the Philippines and adds to the articles already before the Immigration Judge. Regardless, contrary to the respondent's claims, neither article confirms a bounty against him. Also, the respondent submitted a document indicating his non-immigrant visa had been extended to June 2, 2006. However, this extension does not alter the Immigration Judge's ruling that the respondent is an intended immigrant and therefore, it would not be relevant to the issue of removability (I.J. at 3).

Finally, the respondent argues that the general violent conditions and existence of political unrest demonstrated that it is more likely than not that he will face persecution if returned to the Philippines. Random isolated criminal acts, civil strife, and general unrest in the alien's homeland, do not arise to the level of persecution. *See Kobugabe v. Gonzales*, 440 F.3d 900 (7th Cir. 2006); *Mitev v. INS*, 67 F.3d 1325, 1331 (7th Cir. 1995) (recognizing that unpleasant and even dangerous conditions do not necessarily rise to the level of persecution). We agree with the Immigration Judge that the respondent failed to carry his burden of establishing he had suffered past persecution or has a well-founded fear of future persecution on account of his race, religion, nationality, membership in a particular social group, or political opinion. Inasmuch as the respondent failed to sustain the burden applicable to asylum, the respondent also failed to sustain the more stringent burden applicable to withholding of removal under the Act. *See Kobugabe v. Gonzales, supra*.

Accordingly, the respondent's appeal is dismissed.³



FOR THE BOARD

³ The respondent also moved to strike the DHS' brief as untimely. The DHS' brief was received on May 3, 2007, and therefore, is not untimely. Further, the respondent received the brief on May 10, 2007. Accordingly, we deny the respondent's motion to strike.