

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Navaratwam Kamalthas v. Immigration and Naturalization Service

251 F.3d 1279 (9th Cir. 2001) · No. No. 99-71081 · Decided June 5, 2001

SUMMARY

The Ninth Circuit held that an adverse credibility determination in an asylum proceeding does not necessarily preclude relief under the Convention Against Torture. The court concluded that the Board of Immigration Appeals abused its discretion by conflating the standards for asylum and Convention claims and by failing to consider relevant country-condition evidence concerning torture of Tamil males in Sri Lanka.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Betty B. Fletcher; Procter Hug, Jr.; Samuel P. King
JURISDICTION	Federal
DECIDED	June 5, 2001
DOCKET	No. 99-71081
DISPOSITION	vacated
PROCEDURAL POSTURE	Petition for review of the Board of Immigration Appeals' denial of a motion to reopen exclusion proceedings to seek relief under the Convention Against Torture.
STANDARD OF REVIEW	Denial of a motion to reopen is reviewed for abuse of discretion; factual findings are reviewed under the substantial-evidence standard; legal conclusions are reviewed de novo, subject to applicable Chevron deference for reasonable agency interpretations of ambiguous statutory provisions.
PRECEDENTIAL VALUE	Published Ninth Circuit opinion; precedential
PARTIES	Navaratwam Kamalthas v. Immigration and Naturalization Service

TOPICS

- immigration
- asylum
- removal proceedings
- agency adjudication
- judicial review of agency action

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether an alien found ineligible for asylum necessarily cannot qualify for relief under the Convention Against Torture.
2. Whether the BIA abused its discretion by denying a motion to reopen based primarily on a prior adverse asylum credibility determination without considering relevant country-conditions evidence.
3. What showing is required to establish a prima facie case for Convention Against Torture relief in a motion to reopen.

HOLDINGS

1. An inability to establish an asylum or withholding-of-removal claim does not necessarily preclude relief under the Convention Against Torture because Convention claims are analytically separate and do not require a showing that the feared torture is on account of a protected ground.
2. The BIA abused its discretion by conflating the asylum and Convention standards and failing to consider relevant evidence of country conditions that could independently establish a prima facie Convention claim.
3. A petitioner presents a prima facie case for Convention Against Torture relief when the evidence establishes substantial grounds for believing that the petitioner would be in danger of being subjected to torture in the proposed country of removal.

KEY QUOTATIONS

“We therefore conclude that the inability to state a cognizable asylum claim does not necessarily preclude relief under the Convention Against Torture.”

“We hold that a petitioner carries this burden whenever he or she presents evidence establishing "substantial grounds for believing that he [or she] would be in danger of being subjected to torture" in the country of removal”

“The BIA cannot deny a motion to reopen without recognizing the proper standard for establishing a prima facie case and giving weight to relevant country conditions.”

FACTUAL BACKGROUND

Kamalthas, a Tamil male from Sri Lanka, claimed that Tamil rebels and Sri Lankan police had subjected him to persecution and torture. After arriving in the United States using a false passport, he sought asylum and withholding of deportation, but the Immigration Judge and BIA rejected his testimony as not credible. He later moved to reopen his exclusion proceedings to seek relief under the Convention Against Torture, relying in part on evidence of country conditions showing widespread torture of Tamil males in Sri Lanka.

PROCEDURAL HISTORY

The Immigration Judge denied Kamalthas's applications for asylum and withholding of deportation after finding his testimony not credible. The Board of Immigration Appeals affirmed, and a Ninth Circuit panel affirmed the decision while permitting Kamalthas to seek reopening to raise a Convention Against Torture claim. The BIA denied the motion to reopen, concluding that Kamalthas had not presented new facts sufficient to establish a prima facie case, and Kamalthas petitioned the Ninth Circuit for review.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The BIA must reconsider the motion to reopen under the proper Convention Against Torture standard, independently evaluate the Convention claim, and consider probative evidence of country conditions in Sri Lanka and all other relevant evidence.

CASES CITED

- Kamalthas v. INS, 198 F.3d 254 (9th Cir. 1999) (unpublished disposition)
- Khourassany v. INS, 208 F.3d 1096 (9th Cir. 2000)
- Sharma v. INS, 89 F.3d 545 (9th Cir. 1996)
- Mansour v. INS, 230 F.3d 902 (7th Cir. 2000)
- INS v. Doherty, 502 U.S. 314 (1992)
- Paredes-Urrestarazu v. INS, 36 F.3d 801 (9th Cir. 1994)
- INS v. Aguirre-Aguirre, 526 U.S. 415 (1999)
- Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984)
- Arrozal v. INS, 159 F.3d 429 (9th Cir. 1998)