BIA
Hladylowcyz, IJ
A95-846-179
A95-850-979

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, Foley Square, in the City of New York, on the 17th day of August, two thousand and six.

PRESENT:

HON. GUIDO CALABRESI,
HON. SONIA SOTOMAYOR,
HON. REENA RAGGI,
Circuit Judges.

Rozina Kalaj, Vitore Hasaj,
Petitioners,

v.

Alberto R. Gonzales, United States Attorney General,
Respondent.

Nos. 05-6789-ag (L);
05-6791-ag (Con)
NAC

FOR PETITIONERS: Gregory Marotta, Belle Mead, New Jersey.

FOR RESPONDENT: Gregory A. White, United States Attorney for the Northern District of Ohio, Steven J. Paffilas, Assistant United States Attorney, Cleveland, Ohio.

UPON DUE CONSIDERATION of these petitions for review of the Board of Immigration Appeals ("BIA") decision, it is hereby ORDERED, ADJUDGED, AND DECREED

1 that the petitions for review are DENIED.

2 Vitore Hasaj and Rozina Kalaj, mother and daughter, through counsel, petition for review
3 of a BIA decision affirming the decision of Immigration Judge ("IJ") Roxanne C. Hladylowcyz
4 denying their applications for asylum, withholding of removal and relief under the Convention
5 Against Torture ("CAT"). We assume the parties' familiarity with the underlying facts and
6 procedural history of the case.

7 When the BIA summarily affirms the decision of the IJ without issuing an opinion, *see* 8
8 C.F.R. § 1003.1(e)(4), this Court reviews the IJ's decision as the final agency determination.
9 *See, e.g.*, *Twum v. INS*, 411 F.3d 54, 58 (2d Cir. 2005); *Yu Sheng Zhang v. U.S. Dep't of Justice*,
10 362 F.3d 155, 158 (2d Cir. 2004). This Court reviews questions of law and the application of
11 law to fact *de novo*. *See Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

12 Although the IJ found Kalaj credible, she also found that her internment by the former
13 Communist government from 1987 to 1989, did not constitute persecution, and that, even if it
14 had, country conditions had changed since that time, rebutting any claim to a well-founded fear
15 based on that internment. Because Kalaj did not meaningfully raise in her appeal to the BIA her
16 claim that she suffered past persecution when she was forced to live in the internment camp, that
17 claim is unexhausted. *See* 8 U.S.C. § 1252(d)(1); *Gill v. INS*, 420 F.3d 82, 86 (2d Cir. 2005).
18 Moreover, because Kalaj failed to raise in her BIA appeal the claim that country conditions had
19 not changed since the days of Communist rule in Albania, that claim is also unexhausted. The
20 IJ's determination that an incident in 1997, in which alleged supporters of the Socialist Party
21 yelled that the Kalajs were "stinkin' members of the Democratic Party" and shot at the windows
22 of the Kalaj house but did not physically injure any family member, and an incident in which she

1 was pushed by police during a political rally, did not constitute persecution, is reasonable.
2 Nothing in the record indicates that these incidents rose to the level of persecution contemplated
3 under the Immigration and Nationality Act. *See Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d
4 322, 340-41 (2d Cir. 2006) (discussing persecutorial acts). Further, Kalaj's claim that the abuse
5 she suffered at the hands of her husband in Albania constituted persecution, was not raised before
6 the BIA, and is therefore unexhausted. *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86. Because
7 Kalaj failed to raise below her claim that the IJ and BIA erred by not considering whether asylum
8 should have been granted based on humanitarian grounds under *Matter of Chen*, 20 I. & N. Dec.
9 16 (BIA 1989), that claim is also unexhausted. *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86.
10 In light of the IJ's finding that Kalaj did not suffer persecution in Albania, and given that
11 Kalaj's claim to a well-founded fear of persecution was based on the alleged past persecution she
12 suffered, the IJ reasonably determined that Kalaj failed to establish a well-founded fear. Because
13 Kalaj was unable to show the objective likelihood of persecution needed to make out an asylum
14 claim, she was necessarily unable to meet the higher standard required to succeed on a claim for
15 withholding of removal. *See Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003). Further,
16 since Kalaj did not meaningfully raise her CAT claim before the BIA, that claim is unexhausted.
17 *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86.
18 Although Hasaj did not testify, the IJ considered her "affidavit which basically
19 establishe[d] difficulties that she experienced under the former Communist regime which is no
20 longer in power" and found that Hasaj did not establish past persecution, a fear of future
21 persecution, or eligibility for withholding of removal. In her brief to this Court, Hasaj claims,
22 however, that the IJ erred in not considering the alleged persecution she suffered under the

Socialists, beginning in 1992. Specifically, Hasaj claims that one of her sons and a daughter fled to the United States because, as members of the Democratic Party, they had problems with the Socialist Party, and Hasaj received threatening phone calls and was hit on the head in her home one night by an intruder who threatened to kill her because she was a "dirty democrat." However, because Hasaj did not meaningfully raise any of these claims in her brief to the BIA, she failed to exhaust the claims. *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86.

Hasaj's claim that the IJ and BIA erred by not considering whether she merited a grant of asylum under *Matter of Chen*, 20 I. & N. Dec. 16, was not raised at the IJ or BIA level, and thus was unexhausted. *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86. Given the IJ's finding that Hasaj did not suffer persecution in Albania, and considering that Hasaj's claim to a well-founded fear of persecution was based on the alleged past persecution she suffered, the IJ reasonably determined that Hasaj failed to establish a well-founded fear. Because Hasaj was unable to show the objective likelihood of persecution needed to make out an asylum claim, she was necessarily unable to meet the higher standard required to succeed on a claim for withholding of removal. *See Wu Biao Chen*, 344 F.3d at 275. Moreover, since Hasaj did not meaningfully raise her CAT claim before the BIA, that claim is unexhausted. *See* 8 U.S.C. § 1252(d)(1); *Gill*, 420 F.3d at 86.

For the foregoing reasons, the petitions for review are DENIED. Having completed our review, any stay of removal that the Court previously granted in these petition is VACATED, and any pending motion for a stay of removal in these petitions is DENIED as moot. Any pending request for oral argument in these petitions is DENIED in accordance with Federal Rule of Appellate Procedure 34(a)(2), and Second Circuit Local Rule 34(d)(1).

1 FOR THE COURT:
2 Roseann B. MacKechnie, Clerk
3
4 By:_____