

**Faithful but Forsaken:  
Real ID Act Harms  
Victims of Religious Persecution**

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***Faithful but Forsaken: Real ID Act Harms Victims of Religious Persecution*** is a brief report produced by Hebrew Immigrant Aid Society in Washington, D.C. as an immediate response to the introduction of the Real ID Act in the House of Representatives.

The principal author of this report was Maria S. Constantinescu. Maria volunteered her time and skills to produce this report. This report is in tribute to the many victims of religious persecution who pursue asylum protection in the United States.

The report is endorsed by the following coalition of # of non-governmental and faith-based organizations committed to protecting people seeking asylum based on religious persecution:

American Immigration Lawyers Association  
American Jewish Committee  
Anti-Defamation League  
B'nai B'rith International  
Church World Service/Immigration and Refugee Program  
Center for Gender and Refugee Studies  
Center for National Security Studies  
Coalition for Immigrants' Rights at the Community Level (CIRCLE)  
Episcopal Migration Ministries  
Florida Immigrant Advocacy Center  
Hebrew Immigrant Aid Society  
Human Rights First  
Immigrant and Refugee Rights Project, Washington Lawyers' Committee for Civil Rights and Urban Affairs  
Jesuit Refugee Service  
Kurdish Human Rights Watch, Inc.  
Lutheran Immigration and Refugee Service  
Midwest Immigrant & Human Rights Center, a program of Heartland Alliance  
The Multiracial Activist  
National Asian Pacific American Legal Consortium  
National Immigration Law Center

Texas Lawyers' Committee for Civil Rights  
U.S. Committee for Refugees and Immigrants  
The Workmen's Circle/Arbeter Ring  
World Relief  
World Organization for Human Rights USA

"Those who deny freedom to others deserve it not for themselves; and, under the rule of a just God, cannot long retain it."

---President Abraham Lincoln

"Freedom, by its nature, must be chosen, and defended by citizens, and sustained by the rule of law and the protection of minorities.

--- America will not pretend that jailed dissidents prefer their chains, or that women welcome humiliation and servitude, or that any human being aspires to live at the mercy of bullies."

---President George Walker Bush, January 20, 2005

"[There is] a pattern of serious misapplications by the board [of immigration appeals] and the immigration judges of elementary principles of adjudication."

---Honorable Richard Posner, the Court of Appeals for the Seventh Circuit, in *Niam v. Ashcroft*, 354 F. 3d 652, 63 Fed. R. Evid. Serv. 417, 7<sup>th</sup> Cir., Jan. 07, 2004

"It's created havoc everywhere."

---Roseann B. MacKechnie, clerk of the court for the Court of Appeals for the Second Circuit, as quoted in "Immigration in the Courts: Burdened by appeals A Justice Dept. plan to reduce backlog of immigration cases has done so, but also driven up federal appeals", Newsday, December 15, 2004.

"The United States offers protection in the form of asylum to individuals fleeing persecution in other nations.- In most cases, however, asylum seekers find themselves alone, destitute and facing deportation. Asylum law is governed by a labyrinth of statutes, regulations and case law, but, unlike criminal defendants, only those asylum seekers who can afford to hire an attorney or who are fortunate enough to secure pro bono counsel are represented."

---Honorable Sandra Day O'Connor, Justice for the Supreme Court of the United States, as quoted in the introduction to *Best Practices in Representing Asylum-Seekers* (American Law Institute-American Bar Association Committee on Continuing Professional Education, 2005)

# Faithful but Forsaken: Real ID Act Harms Victims of Religious Persecution

## INTRODUCTION

*Imagine that you are forced to flee from your home to escape religious persecution in search of asylum, freedom and safety in the United States. You arrive with few possessions and poor English language skills. Engraved in your mind are images of the killings, bloodshed, and burnings of your fellow worshippers and the beatings and deaths of your family members. You know that you will be tortured if you return.*

*Your asylum claim is denied because the atrocities you suffered do not make sense to the Immigration Judge of the Executive Office for Immigration Review. You are detained in an isolated facility and cannot afford a lawyer. You appeal your case to the Board of Immigration Appeals and receive an order affirming the previous decision without being offered an explanation. When your case is finally heard on a petition for review in a federal Court of Appeals, it is granted. It turns out that the circumstances you described to the immigration judge were not that hard to interpret after all.*

The changes in immigration law proposed in the REAL ID Act will exacerbate the already dire situation faced by victims of religious persecution. Victims of religious persecution are often forced to rely on access to the federal courts of appeals to vindicate their rights to asylum when the underlying adjudicative process fails them. The REAL ID Act however will gut this necessary review by federal courts of appeals of asylum claims brought by religious victims of persecution. The REAL ID Act limits federal appellate jurisdiction to only pure questions of law and constitutional claims when most asylum cases are decided by the immigration judge and Board of Immigration Appeals on other grounds. Thus, victims of religious persecution will face deportation to likely death or other indignities without any redress after their claims have been mishandled by immigration judges and/or the Board of Immigration Appeals. Additionally, under the REAL ID Act, victims of religious persecution will languish for longer periods of time given the government's proposed new authority of indefinite detention. Finally, while the goal purported by the Real ID Act of combating fraud in the asylum process is laudable, unfortunately, the provisions in the real ID Act do not in fact address fraud. The Real ID Act only makes it more difficult for bona fide victims of religious persecution to find safe haven in the United States.

Under current law, hundreds of religious persecution cases are pending before the federal courts of appeals. A disturbing number of these cases did not receive a meaningful review by the Board of Immigration Appeals (BIA). The BIA is an administrative agency within the Department of Justice which handles appeals from Immigration Judges' decisions. Its purpose, in effect, is to provide guidance to Immigration Judges by interpreting the immigration laws. The cases that

come before the BIA are primarily from individuals seeking relief from orders of removal and deportation entered by Immigration Judges.

In 2002, Attorney General Ashcroft imposed procedural reforms to the BIA which greatly impacted Board Members' ability to give careful consideration to each case that came before it. Coinciding with the reforms, the Board's decisions in favor of appellants dropped from 1 in 4 to 1 in 10. Since then, approximately twenty-five percent of BIA decisions have been appealed to the federal courts of appeals, resulting in a tripling of the number of immigration appeals on federal court dockets.

The BIA reforms reduced the size of the Board from 23 to 11 members while the number of immigration judges has increased from 75 in 1987 to more than 220 today. The BIA reforms allow a single Board member to decide an appeal without any written opinion and established that parties have to brief a case within 21 days. The rule eliminated *de novo* review of the facts in a case and prohibited the introduction and consideration of any new evidence in proceedings before the Board.

The BIA's practice of affirming Immigration Judges' decisions without a written opinion and eliminating *de novo* review has caused serious errors of fact and law to go uncorrected. Single member review creates the incentive to rubber-stamp immigration judges' decisions notwithstanding the merits of the appeal.

The elimination of *de novo* review burdens the federal courts, which now have to scrutinize the fact-findings and conclusions of more than 220 immigration judges. As a result, the due process rights of this very vulnerable group of asylum-seekers are being compromised. Additionally, the federal courts are being crippled by the immigration caseload on appeal.

The following case summaries reveal that victims of religious persecution need and deserve better protections in their asylum process. In these cases, the four most frequent reasons that federal judges reversed BIA decisions were the following: (1) federal judges disagreed with the immigration judges' inquiry into the nature of the asylum seekers' religious beliefs; (2) federal judges reconsidered evidence that had either been left out or misinterpreted; (3) federal judges believed asylum seekers' testimony; and (4) federal judges discovered that immigration judges had applied the wrong law and had held the testimony of asylum seekers to the wrong legal standard. To implement the Real ID Act would further reduce the ability of this deserving group of victims of religious persecution from securing freedom, safety and justice in the United States.

## ARMENIA

**Armenian Pentecostal denied asylum because of capricious misinterpretation of his religious beliefs and practices.**

A Pentecostal Christian was denied asylum for not appearing religious enough to the immigration judge. Matevosyan was detained, interrogated and beaten in Armenia for 30 days on account of his Pentecostal faith. The Board of Immigration Appeals affirmed the immigration judge's decision, and Matevosyan appealed his case.

According to the Court of Appeals for the Ninth Circuit, the immigration judge's disbelief that Matevosyan was a Pentecostal Christian was based on the immigration judge's subjective interpretation of Matevosyan's statements. The immigration judge speculated about whether or not a true Pentecostal Christian in the United States would join a church and disagreed with Matevosyan about the number of books in the Bible. Matevosyan explained that he was not able to find a church conducting services in the Armenian language in the city where he now resided. The Court of Appeals asked the appropriate question in order to determine Matevosyan's asylum claim. They inquired as to whether Matevosyan's alleged persecutors believed he was a Pentecostal Christian and whether they persecuted him on that basis. The case was remanded to the Board of Immigration Appeals for a determination of whether, believing Matevosyan's testimony, Matevosyan qualified for asylum.

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*Armen Matevosyan, Petitioner v. John Ashcroft, Attorney General, respondent*

*No. 03-71685*

*United States Court of Appeals for the Ninth Circuit*

*Filed: September 2, 2004*

*Opinion: Memorandum*

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## BOSNIA-HERZEGOVINA

**Elderly Serbian couple fearing ethnic cleansing by Muslims and Croats denied asylum for not readily appearing Serbian**

The Knezevics, an elderly couple of Serb nationality, were denied asylum for not appearing Serbian enough in their testimony. The petitioners were victims of ethnic cleansing from Dvar, a formerly Serb city. When the Croat army began shelling Dvar, the Knezevics fled the city on foot, their business and home were destroyed, Dvar was thereafter populated and governed almost exclusively by Croats, and attempts by Serbs to return to Dvar were countered by violence. The immigration judge held that the Knezevics were not refugees singled out for persecution but displaced persons forced from their home by civil war. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Ninth Circuit reversed the order of deportation.

The Court of Appeals for the Ninth Circuit concluded that the petitioners were eligible for asylum and identified three points. First, the Croat army invaded Dvar in order to eliminate Serbs. The Knezevics were clearly singled out for persecution. Second, the petitioners would

not only subjectively fear a Muslim-led attack if they were to return. A pattern of Croats persecuting Serbs existed throughout Bosnia-Herzegovina, so that the petitioner's fear of future persecution was objective. Third, the petitioners could not relocate within their country of nationality. Mr. And Mrs. Knezevic were 75 and 66 years old, and could not start their lives all over again in a country ravaged by ethnic strife. The Court of Appeals remanded the case to the Board of Immigration Appeals to reconsider the application for asylum.

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*Damjan Knezevic ; Danica Knezevic, Petitioners v. John Ashcroft, Attorney General, respondent*  
No. 02-72384  
*United States Court of Appeals for the Ninth Circuit*  
Filed : May 24, 2004  
*Opinion : Carlos T. Bea, Circuit Judge*

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## **BULGARIA**

<p><b>Bulgarian Protestant denied asylum because physical and sexual assault by police causing miscarriage not considered harmful enough for asylum eligibility.</b></p>
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Detelina Vladimirova, a Bulgarian Protestant, was clubbed in the abdomen by police, causing her to miscarry. The immigration judge denied the application for asylum because Ms. Vladimirova's mistreatment had not threatened her life or freedom. The incident was the third in a series of arrests and harassment, including physical assault and the threat of sexual assault, directed at Ms. Vladimirova and her husband on account of their practice of the Word of Life religion, a form of Protestantism outlawed in Bulgaria. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Ninth Circuit reversed the order of deportation.

On appeal, the Court of Appeals for the Ninth Circuit concluded that the immigration judge did not apply the right standard in deciding whether Ms. Vladimirova suffered past persecution and failed to consider that Ms. Vladimirova could presume a well-founded fear of future persecution. The Court of Appeals found that the violence Ms. Vladimirova suffered constituted persecution. Moreover, the 2000 Department of State Report on International Religious Freedom in Bulgaria made clear that harassment of those practicing unsanctioned religions was spread throughout the country. The case was remanded to the BIA to reconsider the Vladimirovas' request for withholding of removal.

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*Detelina Vladimirova, Petitioner v. John Ashcroft, Attorney General, respondent*  
377 F.3d 690  
*United States Court of Appeals for the Ninth Circuit*  
Decided : July 26, 2004  
*Opinion : Ripple, Circuit Judge*

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## CHINA

### **Chinese Falun Gong practitioner denied asylum because of speculative misinterpretation of her testimony.**

The immigration judge speculated that Chen Yun Gao was expelled from high-school in China because she skipped classes rather than because she followed the Falun Gong religion. The Board of Immigration Appeals affirmed without explaining its decision. A messenger for the Falun Gong, a religious group banned by the Chinese government, Gao claimed that she was expelled from school, beaten, and imprisoned in a labor camp for her messenger activities. Gao was denied asylum until the Court of Appeals for the Third Circuit reversed the order of removal.

On appeal, the Court of Appeals concluded that any reasonable adjudicator would be compelled to believe Gao's testimony. Gao was consistent in her statements that she was a messenger for the Falun Gong. The immigration judge had pointed to report cards on which the school stated that Gao participated in "outdoor exercises" - the school did not mention "messenger activities" on the report cards. But this did not mean that Gao lied when she stated that she was expelled because of her messenger activities. Gao believed that she fooled the school as to the nature of her activity. This similarly did not mean that the school believed her story. The immigration judge entirely failed to discuss the Disciplinary Determination issued by the school. This document cited the reason for Gao's expulsion to be her activities as a messenger for the Falun Gong. The immigration judge's disbelief of Gao's testimony was not supported by specific cogent reasons. The case was remanded to the Board of Immigration Appeals for a determination of Gao's asylum claim without reliance on the adverse credibility finding.

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*Chen Yun Gao, Petitioner v. John Ashcroft, Attorney General, respondent*

*No. 01-3472*

*United States Court of Appeals for the Third Circuit*

*Filed : May 20, 2002*

*Opinion : Judith M. Barzilay, Judge, U.S. Court of International Trade*

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### **Chinese Christian couple denied asylum because abortion certificates could not be authenticated.**

A Christian Chinese couple was denied asylum because of the immigration judge's impossible requirement to get abortion certificates authenticated by their persecutor. The Lius were forced twice to undergo an abortion and jailed and fined for failure to comply with China's one-child policy. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Third Circuit reversed the order of deportation.

On appeal, the Court of Appeals concluded that the immigration judge unreasonably expected the Lius to authenticate the abortion certificates according to the procedures set forth in the Hague Convention. The Lius' counsel was told by the Chinese officials at the provincial level that no such authentication was performed at that level. Moreover, the Lius would have had to try to obtain an authenticated document before fleeing China from the very government that persecuted them. Disregarding the abortion certificates, the immigration judge was under the impression that one abortion had never occurred and did not believe Mrs. Liu's testimony regarding that abortion. The case was remanded to the Board of Immigration Appeals.

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*Gui Cun Liu; Xiu Ding Liu, Petitioners v. John Ashcroft, Attorney General, Respondent*

No. 02-4334

*United States Court of Appeals for the Third Circuit,*

*Filed : June 24, 2004*

*Opinion : Alito, Circuit Judge*

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<p style="text-align: center;"><b>Chinese Falun Gong practitioner denied asylum for insignificant slip of tongue regarding dates during his testimony.</b></p>
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A devout Chinese practitioner's application for asylum was denied for a momentary lapse of memory on his part. Liu misstated the date on which his wife was sent to prison for her practice of Falun Gong but immediately corrected his error. Liu's wife, with whom Liu co-founded a Falun Gong Training Center, was arrested in China while Liu was in the United States on business, and she was imprisoned for two years. The Board of Immigration Appeals affirmed without explaining its decision.

On appeal, the Court of Appeals for the Ninth Circuit concluded that Liu's slip of tongue revealed nothing about the fear Liu had for his safety if he were forced to return to China. The fear of future persecution in the country one would be deported to however is vital to the determination of an applicant's eligibility for asylum. The immigration judge also wrongly required Liu to obtain Falun Gong materials he had sent to his wife in China. These materials had been confiscated by the Chinese authorities when they arrested Mrs. Liu. The Court of Appeals had noted in a previous case that an immigration judge can only ask for easily available corroborating evidence. The case was remanded to the Board of Immigration Appeals for a determination of Liu's eligibility for asylum.

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*Xuefeng Liu, Petitioner v. John Ashcroft, Attorney General, respondent*

No. 02-73410

*United States Court of Appeals for the Ninth Circuit*

*Filed : February 6, 2004*

*Opinion : Memorandum*

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**Chinese Christian denied asylum because his commitment to Christianity  
was arbitrarily questioned.**

A Chinese Christian was denied asylum for failure to wear his faith on his sleeve in court. Min Xue was expelled from school at the age of 15 and arrested and beaten because of his sincere Christian faith. According to a notice written on school stationery, Xue promoted “religious ideas” among his fellow classmates. The immigration judge did not believe Xue’s account of persecution because the immigration judge did not think that the substance of Xue’s religious beliefs were as Christian as Xue made them out to be. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Ninth Circuit reversed the order of deportation.

The Court of Appeals for the Ninth Circuit concluded that the immigration judge appeared to have based his observations on the immigration judge’s subjective understanding of Christian tenets. Xue’s church verified that Xue had been enrolled in the church continuously since 1976 and was a practitioner of Christianity for 28 years. Even though Xue was arrested and beaten after attending church when he was about 17 years old, Xue remained enrolled at his church, often attending in secret. The Court of Appeals for the Ninth Circuit remanded the case to the Board of Immigration Appeals for a determination of whether Xue’s testimony qualified Xue for asylum.

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*Min Xue, Petitioner v. John Ashcroft, Attorney General, Respondent*  
No. 02-73721  
*United States Court of Appeals for the Ninth Circuit*  
Filed : August 12, 2004  
Memorandum

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**Chinese practitioner of persecuted minority religion denied asylum because his  
experiences of imprisonment and beating were not deemed abusive enough  
for asylum eligibility.**

The immigration judge erroneously concluded that Zhongkeng Tang, a practitioner of Yi Guan Dao, was imprisoned and beaten for too short a time to have suffered persecution. Yi Guan Dao is a religion banned by the Chinese government. Tang was detained without food and water for three nights and two days and was beaten with sticks and with an electric whip so that he was bleeding severely and could not see straight. Tang was denied asylum. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Seventh Circuit reversed the order of deportation.

On appeal, the Court of Appeals believed that Tang’s imprisonment and beatings qualified as proof of persecution. Tang provided specific details regarding the beatings he received and the injuries he suffered, stating among other things that the beatings caused his head to hurt and he became very dizzy. The Court of Appeals remanded the case to the Board of Immigration Appeals for a determination of whether Tang’s persecution was on account of his religion.

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***Zhongkeng Tang, Petitioner v. John Ashcroft, Attorney General, Respondent***

*No. 03-1001*

***United States Court of Appeals for the Seventh Circuit***

*Decided : August 13, 2004*

*Opinion : Joel M. Flaum, Chief Judge, William J. Bauer, Ilana Diamond Rovner, Circuit Judges.*

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## **EGYPT**

<p style="text-align: center;"><b>Egyptian Coptic Christian denied his chance to seek asylum because of erroneous reading of regulations.</b></p>
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A Coptic Christian from Egypt was denied the motion to reopen his application for asylum because the Board of Immigration Appeals abused its discretion. Maly based his motion to reopen on changed circumstances, alleging that levels of violence in Egypt against Coptic Christians had risen in general and that members of his family had been tortured and had received death threats. The Court of Appeals for the Ninth Circuit reversed the order of deportation.

The Court of Appeals disagreed with the Board of Immigration Appeals that Maly waited too long to file his petition to reopen. A motion to reopen based on changed circumstances is exempt from the requirement that the motion has to be filed within 90 days from the date of the previous final administrative decision. Maly also presented material evidence with his motion to reopen documenting that the circumstances surrounding the persecution had changed, and this material evidence could not have been available at an earlier hearing. The Court of Appeals also disagreed with the Board of Immigration Appeals that Maly only described a continuance of the circumstances that had given rise to his first application. Maly submitted a declaration detailing six separate incidents of persecution of his family members in Egypt – including torture by the police, death threats and beatings – all of which occurred subsequent to Maly’s original asylum claim that was based almost entirely on harassment directed at himself. The Court of Appeals for the Ninth Circuit remanded to the BIA with instructions to reopen Maly’s application for asylum.

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***Anis Shokri Salama Maly, Petitioner v. John Ashcroft, Attorney General, Respondent***

*No. 03-70069*

***United States Court of Appeals for the Ninth Circuit***

*Filed : August 2, 2004*

*Opinion : Stephen Reinhardt, Circuit Judge*

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## ERITREA

**An Eritrean Jehovah's Witness whose brother was beaten to death, denied asylum because of trivialization of his and his family's persecution.**

Mr. Ghebremedhin, an Eritrean Jehovah's Witness, was denied asylum by the immigration judge who did not think that Mr. Ghebremedhin's expulsion from his profession and ban against getting a business license because of his faith was severe enough to constitute persecution. Mr. Ghebremedhin, who could not participate in national military service because of his religion, was barred from resuming his teaching position at the University of Asmara and was denied a business license for a consulting firm concerning land irrigation. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Seventh Circuit reversed the order of deportation.

On appeal, the Court of Appeals concluded that Mr. Ghebremedhin was targeted for persecution because of his Jehovah's Witness faith. Mr. Ghebremedhin was subjected to more serious punishment for evading the draft than others who were not members of the Jehova's Witness faith. In a letter, the Eritrean government rejected Ghebremedhin's request for a license for a consulting business because the government had "found out" about Ghebremedhin's religious affiliation. The Court of Appeals emphasized that a well-founded fear of persecution is an objectively reasonable awareness of danger. Some members of the Jehovah's Witness faith have been imprisoned for 9 years in Eritrea for evading the draft, although the maximum penalty for refusal to perform service in Eritrea is 3 years. The petitioner's brother and one associate were incarcerated and beaten to death because they maintained that their convictions as Jehovah's Witnesses barred them from serving in the national military service. The case was remanded to the Board of Immigration Appeals to enter an order granting Ghebremedhin asylum.

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*Ghebregziabher Ghebremedhin , Petitioner v. John Ashcroft, Attorney General, respondent*

*No. 03-1815, 03-3836*

*United States Court of Appeals for the Seventh Circuit*

*Decided : October 13, 2004*

*Opinion : Ilana Diamond Rovner, Circuit Judge*

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## ETHIOPIA

**Eritrean Jehovah's Witness denied asylum and unreasonably required to conceal her faith in order to avoid future persecution**

The immigration judge could not decide whether or not Yordanos Muhur was a Jehovah's Witness, so he denied her asylum claim. An ethnic Eritrean born in Ethiopia, Muhur married a Muslim Ethiopian whose family strongly disapproved of her. Muhur's husband converted to the Jehovah's Witnesses faith but later moved with Muhur to Saudi Arabia because of business dealings and resumed Islam. Muhur was abused by her Muslim husband who demanded that Muhur behave like a Muslim wife.

The immigration judge found that Ethiopia does not persecute Jehovah's Witnesses. If on the other hand the Ethiopian government were to force Muhur to return to Eritrea where Jehovah's Witnesses are persecuted, Muhur would not face a real danger of persecution there because she was never persecuted in Eritrea in the past. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Seventh Circuit reversed the denial of asylum.

On appeal, the Court of Appeals concluded that the immigration judge could not ask Muhur to conceal her faith in Eritrea in order to escape persecution. Since Eritrea persecutes Jehovah's Witnesses, Muhur had a well-founded fear that she would be persecuted in Eritrea on account of her faith. Whether Ethiopia would take Muhur back without deporting her to Eritrea remained to be determined. The case was remanded to the Board of Immigration Appeals for a determination whether Muhur was a Jehovah's Witness.

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*Yordanos Muhur, Petitioner v. John Ashcroft, Attorney General, Respondent*

No. 02-3597

*United States Court of Appeals for the Seventh Circuit*

*Decided : January 20, 2004*

Opinion : Posner, Circuit Judge

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## **FIJI**

<p style="text-align: center;"><b>Fijian couple of mixed-races and religions denied asylum despite the government's failure to protect them.</b></p>
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The Faruks, a couple of mixed-race and mixed-religions, were denied asylum for what appeared to be a feud within their families. The Faruks were subjected to a variety of harassment before and after they were married, including death-threats, severe beatings, and rock throwing, some of which was carried out by members of their families. Government officials denied the Faruks a marriage certificate and the police refused to protect Althea when her home was vandalized. The immigration judge held that the harassment did not fully constitute persecution on religious and racial grounds. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Ninth Circuit reversed the order of deportation.

On appeal, the Court of Appeals for the Ninth Circuit concluded that the involvement of the Faruks' families had little bearing on the Faruks' asylum claim. The government of Fiji was unable or unwilling to control the Faruks' persecutors, so that it did not matter who inflicted the persecution. The cumulative effect of all threats and attacks on the Faruks was sufficient to establish a fear of future persecution. The Court of Appeals for the Ninth Circuit held that the Faruks were eligible for asylum and remanded the case to the Board of Immigration Appeals.

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*Mohammed Azim Faruk ; Althea Val Faruk, Petitioners v. John Ascroft, Attorney General, Respondent*  
*No. 03-70342*  
*United States Court of Appeals for the Ninth Circuit*  
*Filed : August 4, 2004*  
*Opinion : Betty B. Fletcher, Circuit Judge*

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## INDONESIA

**Indonesian Christian couple denied asylum because massive, country-wide uprisings did not target Christians exclusively.**

A married Christian couple from Indonesia was denied asylum because the immigration judge believed that the severe civil uprisings in the couple's home country was not specifically directed at Christian inhabitants. Indonesia sustained 122 religiously motivated attacks on Christian facilities resulting in 3000 deaths in 2000. The immigration judge did not address whether Mrs. Pakkung's and Mr. Eduard's removal could be withheld under the Convention against Torture Act, even though Mrs. Pakkung and Mr. Eduard stated on their applications for asylum that they were afraid of being tortured in Indonesia. The Board of Immigration Appeals affirmed without explaining its decision.

On appeal, the Court of Appeals for the Fifth Circuit concluded that the record clearly demonstrated a pattern of persecution of Christians by Muslims in Indonesia. Churches were routinely burned, and Muslims targeted Christians with forced conversions and other physical violence. The Court of Appeals also concluded that the deportation order could be withheld under the Convention against Torture Act. Mrs. Pakkung declared on her application that the bodies of Christians have been thrown in the forest in Indonesia, where they became food for wild pigs. The case was remanded to the Board of Immigration Appeals for a correct application of asylum law.

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*Jopie Eduard, Petitioner v. John Ashcroft, Attorney General, Respondent*  
*Yuliana Pakkung, Petitioner v. John Ashcroft, Attorney General, Respondent*  
*No. 03-60092 consolidated with No. 03-60093*  
*United States Court of Appeals for the Fifth Circuit*  
*Filed : July 21, 2004*  
*Opinion : DeMoss, Circuit Judge*

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**Indonesian Ethnic Christian denied asylum because he included personal problems with his mother in his testimony.**

Wiransane was denied asylum for divulging his personal fears, in particular the fear he had of his mother, instead of proving that he was ethnic Chinese. Wiransane, an Indonesian citizen who claimed he was persecuted because of his Chinese ethnicity, was forcibly kicked out of his house by armed men when he was about 13 years old. Wiransane and his mother were homeless for a

year and were not able to resettle permanently afterwards. The Board of Immigration Appeals affirmed the immigration judge's decision without explaining its decision.

On appeal, the Court of Appeals for the Tenth Circuit concluded that the immigration judge's denial of eligibility for asylum failed on two counts. The immigration judge did not provide specific, cogent reasons for disbelieving Wiransane's claim to Chinese ethnicity. The immigration judge instead focused on Wiransane's testimony about violence the petitioner feared because of personal circumstances. The immigration judge also incorrectly assumed that eligibility for asylum required the applicant to have come to the United States out of fear of persecution. Wiransane could qualify as a refugee if he feared that a forced return to Indonesia would subject him to persecution on account of his Chinese ethnicity. The Court of Appeals for the Tenth Circuit remanded the case to the Board of Immigration Appeals for a determination of

Wiransane's ethnicity and for whether Wiransane would suffer persecution in Indonesia on account of his ethnicity.

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*David Wiransane, Petitioner v. John Ashcroft, Attorney General, Respondent*

*No. 02-9555*

*United States Court of Appeals for the Tenth Circuit*

*Filed : April 27, 2004*

*Opinion : Hartz, Circuit Judge*

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## ROMANIA

<p style="text-align: center;"><b>A Romanian Baptist was denied asylum because of disregard of complex political realities in Romania.</b></p>
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Ileana, a Romanian Baptist, happened upon an immigration judge with an incomplete understanding of the political realities in Romania. The persecution Ileana suffered in Romania included severe beatings requiring his hospitalization and constant surveillance. Members of Ileana's family were also kept under surveillance and tortured on account of their Baptist faith. The immigration judge denied the application for asylum, and the Board of Immigration Appeals affirmed until the Court of Appeals for the Sixth Circuit reversed the order of deportation.

On appeal, the Court of Appeals concluded that the immigration judge did not provide sufficient justifications why she disbelieved Ileana's account of past persecution. The immigration judge inquired why the Romanian authorities would accuse Ileana of being against the Communist Party if in fact Ileana was a dues paying member. The Court of Appeals pointed out that paying dues to the Communist Party did not give Ileana a free ride to be against the Communist Party. The Court of Appeals also pointed out that the immigration judge lacked a sufficient basis for concluding that Ileana did not have a well-founded fear of future persecution in Romania. The immigration judge stated that the secret police no longer existed in Romania. However, Ileana had submitted a report by the Commission on Security and Cooperation in Europe, which the immigration judge did not even mention, stating that some 5,000 Securitate agents had been



taken on by the new Romanian security service. The case was remanded to the Board of Appeals for a more complete analysis of Romania's current conditions.

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*Mihail Daniel Ileana, Petitioner v. John Ashcroft, Attorney General, Respondent*

*106 Fed. Appx. 349*

*United States Court of Appeals for the Sixth Circuit*

*Decided : August 5, 2004*

*Opinion : Spiegel, Circuit Judge*

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## RUSSIA

<p><b>Russian Evangelical denied asylum because the government had other illegal reasons to mistreat him.</b></p>
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Savkin's application for asylum was denied because the religious persecution Savkin claimed did not seem to go to the heart of his application for asylum, which also included extortion by the Russian government. The Russian government demanded that Savkin, an evangelical Christian, sign illegal contracts when Savkin refused to give the government the money he was giving to his church. The Board of Immigration Appeals affirmed without explaining its decision until the Court of Appeals for the Ninth Circuit reversed the order of deportation.

The Court of Appeals concluded that the immigration judge's disbelief of Savkin's testimony was not based on specific and cogent reasons. The immigration judge relied on inconsistencies between Savkin's asylum application and his testimony, inconsistencies Savkin had in fact explained by a letter from members of his church in Russia. The immigration judge also pointed to a State Department Country Report that indicated general condition of peace in Russia. But the immigration judge failed to note that the Report also discussed localized persecution of evangelical Christians. The Court of Appeals furthermore argued that Savkin did not have to claim religion as the sole motive for his persecution in order to qualify for asylum on religious grounds. Savkin's religion could constitute only one motive for the persecution. Savkin protested the Russian government's extortion because giving the Russian government the money Savkin intended to give to his church violated Savkin's religious beliefs. The case was remanded to the Board of Immigration Appeals since Savkin had established past persecution on account of his religious beliefs.

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*Anatoly Ivanovich Savkin ; et al., Petitioners v. John Ashcroft, Attorney General, respondent*

*No. 03-70701*

*United States Court of Appeals for the Ninth Circuit*

*Filed : November 29, 2004*

*Opinion : Memorandum*

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## TURKMENISTAN

<p style="text-align: center;"><b>Turkmenain Jew denied asylum because of speculation, conjecture and last-minute editing to immigration judge decision.</b></p>
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An immigration judge presumed Mamedov's Turkmenian nationality and Jewish faith to be an odd mix. Mamedov, who claimed that he was persecuted because of his Jewish religion, was excluded from all employment in Turkmenistan and was beaten by the police. The immigration judge did not believe this persecution to be as significant as Mamedov claimed it to be because it was not clear to the immigration judge that a Jew of Turkmenian nationality could be persecuted in Turkmenistan. The Board of Immigration Appeals affirmed without explaining its opinion until the Court of Appeals for the Seventh Circuit reversed the order of deportation.

The Court of Appeals pointed out that the immigration judge changed his mind at the last minute, adding a handwritten correction to his opinion that a police attack on Mamedov was not "not solely," but in fact "not even partially" motivated by Mamedov's Jewish faith. The immigration judge refused to open his eyes to the realities Jews faced in Turkmenistan. The immigration judge did not understand that an informal synagogue could be inside a house and that a large number of Jews could be in Mamedov's town of origin while only 8 or ten were at a religious gathering. A tone of malaise towards Mamedov's Turkmenian nationality and Jewish faith ran throughout the immigration judge's opinion. The case was remanded to the Board of Immigration Appeals.

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***Ahmed Mamedov, Oqulsheker Mamedov, and Jannet Mamedov, Petitioners v. John Ashcroft, Attorney General, respondent***

*No. 03-1393, 03-1394, 03-1395*

***United States Court of Appeals for the Seventh Circuit***

*Decided : November 1, 2004*

*Opinion : Posner, Circuit Judge*

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