

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
HEARING LOCATION: CINCINNATI, OHIO**

Files: A98-837-904
A98-837-905
A98-837-906

Date: June 5, 2008

In the Matter of

Byambaa RAGCHAA
Amarsaikhan DARJAAKHUU
Bulgamaa AMARSAIKHAN

IN REMOVAL PROCEEDINGS

Respondents.

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act – After admission as a nonimmigrant under Section 101(a)(15) of the Act, remained in the United States for a time longer than permitted.

APPLICATIONS: Section 208(a) of the Immigration and Nationality Act – Asylum.
Section 241(b)(3) of the Immigration and Nationality Act – Withholding of Removal.
8 C.F.R. § 1208.16 – Relief under Article 3 of the United Nations Convention Against Torture.

ON BEHALF OF THE RESPONDENT:
Charleston C. K. Wang
6924 Plainfield Road
Cincinnati, Ohio 45236

ON BEHALF OF THE GOVERNMENT:
Veronica Cromwell, Assistant Chief Counsel
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DECISION OF THE IMMIGRATION JUDGE

I. INTRODUCTION

The hearing in this matter was conducted in Cincinnati, Ohio on December 8, 2005, and April 21, 2008, through video conference pursuant to INA § 240(b)(2)(A)(iii). The lead

respondent, hereinafter "the respondent" is a 38-year-old married woman who is a native and citizen of Mongolia. She was admitted into the United States at Los Angeles, California on December 24, 2002, as a nonimmigrant visitor for pleasure. She admits the allegations in the Notice to Appear and concedes the ground of removability with which she is charged. I therefore find removability established by clear and convincing evidence.

The respondent applies for asylum, withholding of removal, and relief under Article 3 of the Convention Against Torture (CAT). Her husband, Amarsaikhan Darjaakhuu, and daughter, Bulgamaa Amarsaikhan, also natives and citizens of Mongolia, are included as derivatives on the respondent's application. The couple also has a United States citizen daughter. The respondent filed an asylum application (Form I-589) (Exh. 2) with DHS on July 20, 2005.

II. CORE ISSUES

The respondent asserts that she suffered past persecution and fears future persecution at the hands of the controlling Communist Party of Mongolia, as she claims that she was fired from her job on the basis of her political opinion. At issue is whether the respondent has shown extraordinary circumstances for failing to meet the one-year bar on asylum and whether she has met her burden of proof with respect to her claim of persecution.

III. STATEMENT OF LEGAL STANDARDS

Asylum. An applicant for asylum must show that she is either unwilling or unable to return to the country of her nationality because she has suffered past persecution or has an objectively reasonable fear of future persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13 (2004). The applicant must establish that one of these five enumerated grounds was or will be at least one central reason for her persecution. See INA § 208(b)(1)(B)(i); Matter of J-B-N & S-M, 24 I&N Dec. 208 (BIA 2007). The persecution must be at the hands of the applicant's government or an agent that the government is unwilling or unable to control. See Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000).

It is the applicant's burden to prove past persecution in an asylum application. 8.C.F.R. § 1208.13(a). For asylum applications filed on or after May 11, 2005, as was the respondent's in this case, the testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. See INA § 208(b)(1)(B)(ii). In order to establish past persecution and a well-founded fear of future persecution, supporting evidence may be submitted along with the respondent's testimony. Absent direct and specific corroborating evidence, testimony plus general corroborating evidence of country conditions may be sufficient to establish past

persecution. See Matter of S-M-J, 21 I&N Dec. 722 (BIA 1997); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). If the applicant establishes past persecution, she benefits from a presumption that she has a well-founded fear of persecution, which the government may rebut by proving that circumstances in the home country have fundamentally changed or that there is a reasonable internal relocation alternative available that eliminates the individualized fear of persecution. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B). An applicant for asylum has established a well-founded fear of future persecution if the applicant shows that a reasonable person in such circumstances would fear persecution if returned to his or her native country. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

An applicant for asylum must also show by clear and convincing evidence that the application was filed within one year of her last arrival in the United States or that she qualifies for an exception to the one-year deadline to the satisfaction of the Immigration Judge. 8 C.F.R. §1208.4(a). The respondent qualifies for an exception if she demonstrates either materially changed circumstances affecting eligibility for asylum or extraordinary circumstances that are directly related to the delay in filing her application. It is the applicant's burden to show that the extraordinary circumstances were not intentionally created by her own action or inaction and that the delay was reasonable under the circumstances. 8 C.F.R. §1208.4(a)(5).

Withholding of Removal. A respondent who is ineligible for asylum because of the one-year bar may still apply for withholding of removal. An applicant for withholding of removal must show that it is more likely than not that she will be persecuted in her country on account of one of the same five enumerated grounds as in asylum. INA § 241(b)(3). In order to make such a showing, the alien must establish a "clear probability" of persecution on account of one of the enumerated grounds. INS v. Stevic, 467 U.S. 407 (1984). The standard for withholding of removal is higher than that of asylum. See INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). As with asylum, a showing of past persecution creates a rebuttable presumption of a continuing threat to life and freedom. Matter of X-P-T, 21 I&N Dec. 634 (BIA 1996); 8 C.F.R. § 1208.16(b)(2) (2007).

Convention Against Torture. An applicant for withholding of removal under Article III of the Convention Against Torture must establish that it is more likely than not that she would be subject to torture by, at the instigation of, or with the acquiescence of a public official or one acting in an official capacity if removed to the proposed country of removal. 8 C.F.R. §§ 1208.16-1208.18. Unlike asylum or withholding of removal, which require a showing of nexus ("on account of"), the respondent need not demonstrate that she would be tortured on account of a particular ground. See generally, Matter of S-V-, 22 I&N Dec. 1306 (BIA 2000). The torture, however, must be inflicted by or with the acquiescence of the applicant's government. Matter of S-V-, *supra*.

IV. SUMMARY OF CLAIM

The following is a summary of the respondent's testimony and her husband's testimony at her hearing before this Court as well as her written statements.

The respondent was born on March 28, 1970, in Mongolia. She began to play volleyball when she was ten years old and became seriously involved in basketball at the age of fifteen. She continued to develop her skills over the years, and in 1989 she participated in her first international competition in the Soviet Union, in which she represented her country. The respondent earned many medals, including a silver medal in a teenage match and a gold medal in 1990 on the national level. She continued to progress and in 1990 the government awarded her the title of Master of Sport, the highest level one may achieve in basketball in Mongolia. The respondent became a member and the captain of the women's national team in 1991. This same year she played in a match in Bangkok, Thailand, and in 1993 she participated in an international match in China. She then played continuously in matches both within Mongolia and internationally.

In 1994 the Mongolian women's team was invited to a match in Kuala Lumpur, Malaysia. Although the Malaysian government offered to pay all of the team's expenses except travel costs, the Mongolian government refused to support their participation in the match. When the respondent raised the issue to the Specialist of the Mongolian Committee of Physical Training and Sports, later called the Olympics Committee, she was informed that they could provide funds for the men's team only. When the respondent continued to argue on her team's behalf she was warned not to complain about the government's stance and to leave the Committee's office.

In 1997 both the men's and women's teams were invited to participate in the Southeast Asia Competition in South Korea. The respondent at first expected her team to perform well in the competition, hoping that they would play in the Olympics in the near future. The Mongolian women's team had been very successful in recent years and the respondent wanted her team to play internationally. However, although the men's team was sent to South Korea, the women's team was not allowed to participate. The respondent attended the tournament as an observer, as she was at that time also an organizer for the Mongolian basketball association. As team captain, the respondent habitually raised the question of gender discrimination to the government. She testified that politics were closely tied to the Olympics Committee and national sports, as the persons at the highest levels of sport organization represented the interests of their political party.

The respondent graduated from the sports department of the state university in Ulaan Baatar, Mongolia, in 1997. During her fourth year at the university she also worked as an organizer for the basketball union. At this time the respondent wrote a book on basketball for women, including a history of the sport, necessary skills, techniques, and organization of

matches. She was told by the government that, as many professional male athletes were unable to write a book, she could not be published. The respondent began to work in 1997 as a secretary for the Mongolian National Basketball Committee, a position that she held until April 2000. In 1998 the respondent organized an All Star tournament, for which she also designed a medal, to show that women could play as well as men. Her boss, the president of the basketball committee and a member of the Democratic party, supported her fight for women's equality in basketball. The highest level of the organization, however, did not approve, and her proposals for international matches continued to be denied. The respondent also stated that she was sexually solicited by men in the basketball association who offered to support the women's team in exchange for sexual favors. The respondent refused their proposals and did not receive any support for her team. In April of 2000 the former Communist party gained governmental power, and members of the Democratic party were fired from their positions in the Basketball Committee.

Both the respondent and the president of the committee were fired. The respondent believes that her firing was politically motivated, as she was a strong supporter of the Democratic party. According to the respondent, the Democratic party gave women the opportunity to show their skills and did not discriminate. The respondent stated that under the Communist party none of the Mongolian women's teams received governmental support. The successor to her position threatened that she would never be allowed to be involved in basketball again, either as player or trainer. The respondent was also four months pregnant in April 2000, making her firing a violation of Mongolian labor laws. Although the respondent raised the issue to the government, she testified that they refused to listen because they wanted to grant the positions to members of the Communist party. When she protested further on the grounds of her pregnancy, the respondent was threatened to stop discussing the issue and stay calm, or she would be put in a difficult situation. The respondent took this to mean that they would try to stop her pregnancy or harm her child. Because she was fired, the respondent could not receive government benefits for her pregnancy, and she and her husband soon experienced financial difficulties.

For the next two years the respondent mainly stayed at home to raise her daughter, who was born on July 27, 2000. She worked from September 2000 to April 2001 as a trainer for a wrestling physical education program but resigned from this job before leaving for the United States because wrestling was not her area of expertise. The respondent has no other training outside of sports. After being fired from her secretary position and told that she could not participate further in basketball, the respondent was afraid to be involved in any basketball activities on the national level. Although she wanted to participate, she was afraid for herself and her family. The Mongolian women's basketball team effectively collapsed after she was fired, as they have not participated in any matches since 2002 and the league was discontinued.

The respondent, accompanied by her husband and daughter, came to the United States through Los Angeles on December 24, 2002, and moved to Ohio. She left Mongolia because she could not find a position in her profession of basketball trainer, and she did not want to raise her children in a country that discriminated against women. In January of 2003 the respondent realized that she was pregnant. Because she had had complications with her first pregnancy, she did not think about the possibility of becoming pregnant again. Due to their financial difficulties at the time, the respondent and her husband made a joint decision to have an abortion in April 2003. The respondent afterwards felt that they had made a mistake, and she was depressed for some time. The respondent does not remember much of what happened in her life during this period. She and her husband decided to try to have another child, and in October 2004 she gave birth to their second daughter, a United States citizen. The respondent stated that her abortion, subsequent depression, and third pregnancy were her reasons for missing the one-year bar to file for asylum, as she did not notice the time passing.

On November 28, 2005, the respondent wrote and published an article in a Mongolian newsletter that is distributed to all interested Mongolians living in the United States. The article was a condensed version of her book and gave instructions to Mongolians who wished to organize basketball games in the United States. The article also briefly discussed the current state of women's basketball in Mongolia, describing how the women's basketball team barely exists any more due to gender discrimination. The respondent testified that she would not have a future in Mongolia because she would not be able to hold a position in the field in which she was trained. She would also not be able to find other work because she has no other professional knowledge. She does not see a bright future for her children in Mongolia. The respondent believes that she would be persecuted if she were to return, as she had been fighting gender discrimination and would again experience governmental pressure. She stated that although Mongolia is called a democratic country, the organization in power makes all the decisions. Therefore, when the Communist party is in power, the head of the government will make decisions favoring that party. Although the respondent's asylum application indicated that she feared returning to Mongolia because she practices the Mormon religion, the respondent testified that she does not fear persecution on that account.

The respondent's husband, whose application for asylum is derivative upon hers, also testified. The respondent and her husband were married in Mongolia on February 1, 1992. They obtained another marriage certificate in Arlington, Virginia, in 2003, as they were required to have a marriage document to obtain a driver's license. Her husband was aware of her career as a basketball player and trainer, but was unsure as to who sponsored and paid for the national women's basketball team. The respondent received a salary when she was working as a secretary for the basketball committee, and at the time her husband owned his own company. He stated that her firing had a small but measurable effect on their financial situation. The respondent's husband had attended college for five years and he graduated with a degree in construction and welding in 1989. He started his business in 1990 and had five employees.

Although his business was in generally good condition, he shut it down when his family left for the United States and divided up the equipment and equities between his employees. The respondent's husband testified that he would be unable to restart his business if he returned to Mongolia, as there now exist large companies in the field which would make it impossible to succeed. He stated that he could not work for one of the large companies because the salary would not be sufficient to support his family. The respondent's husband testified that they missed the one-year bar to file for asylum because of language barriers, a lack of understanding of asylum law, and the emotionally stressful situation following the abortion. He stated that his wife had quit her training job at the wrestling school because it was temporary and not her profession, and if they were to return to Mongolia, his wife would not be able to work in her professional field.

V. EVIDENCE

Testimony. The respondent testified as to her treatment by the government of Mongolia for her stance on gender equality and her political opinions. She also gave her reasons for missing the one-year deadline to apply for asylum in the United States. The respondent's husband also testified as to their reasons for missing the one-year asylum bar and what would take place should they be returned to Mongolia.

Documentary. The respondent's testimony is supported by her I-589 application for asylum (Exh. 2) as well as supporting documents A through K, including their Virginia marriage certificate, the birth certificate of their United States citizen daughter, copies of their passports, a text written by the respondent on basketball, and photographs of the respondent with the Mongolian women's basketball team (Exh. 3). The Notice to Appear (Exh. 1) and the 2007 United States Department of State Country Condition Report for Mongolia (Exh. 4) were also admitted into evidence.

VI. FINDINGS AND ANALYSIS

Credibility. I find the respondent generally credible. Overall, her testimony was detailed, plausible, and consistent with her supporting documents and the current country report on Mongolia. Although the respondent originally indicated on her asylum application that she feared persecution on the basis of her Mormon religion, the respondent subsequently testified that she is claiming asylum based on her political opinion. She stated that her religious preference was Mormon but that she did not fear persecution for this reason. The Court makes no adverse credibility finding based on this and credits the testimony of the respondent.

One-Year Bar. I find that the respondent has demonstrated that she qualifies for an exception to the one-year bar for filing asylum on the basis of exceptional circumstances. Although the respondent entered the United States on December 24, 2002, she did not file for

asylum until July 20, 2005, approximately 31 months later. During this intermittent time the respondent became pregnant, underwent an abortion, experienced severe depression, became pregnant again, and gave birth to her United States citizen daughter. The respondent has testified that she did not notice the time passing, and that she could not even remember what took place in her life during her period of depression. I find that her abortion, depression, and pregnancy with her youngest daughter qualify as exceptional circumstances. Furthermore, these circumstances were directly related to her failure to file for asylum within the one-year deadline. Finally, I find that the respondent's late filing occurred within a reasonable time. Following the respondent's abortion, she was consumed with her sense of loss. Although her depression subsided when she once again became pregnant, she was anxious for her unborn baby and worried about the fact that she had experienced medical complications with her first pregnancy. The respondent was then concerned with caring for her newborn child. It is reasonable for the respondent to have filed for asylum approximately nine months after the birth of her second daughter, having at this point recovered fully from her depression and having cared for her newborn. The respondent is therefore eligible for asylum.

Asylum. An applicant for asylum must show that she is unable or unwilling to return to her country because she fears persecution on one of the five protected grounds. In this case, the respondent fears persecution by the Mongolian government on account of her political opinion and is afraid that she will be unable to obtain employment and further threatened by the controlling Communist party should she return to her country. It is the respondent's burden to show past persecution or a well-founded fear of future persecution.

The respondent has established that her political opinion was at least a central reason for the government's actions against her. The respondent was often told by government officials not to complain about the state of gender inequality in Mongolian basketball. Her pursuit for equal treatment of women in the sport was supported by Democratic party members. She, along with her boss and several co-workers, all of whom were affiliated with the Democratic party, were fired from their positions in the basketball association when the Communist party gained governmental power. The respondent has therefore shown that the Communist government targeted her on the basis of her political opinion rather than on the basis of personal discrimination.

It must also be determined whether the hardships experienced by the respondent, culminating in the loss of her job and exclusion from the national basketball profession, rise to the level of persecution. The respondent was in no way physically harmed before arriving in the United States. However, she has shown that the government's actions amounted to more than isolated incidents of harassment, as she was repeatedly threatened, sexually harassed, and eventually fired and banned from the sport because of her political opinion and spearheading of gender equality in basketball. Given that the harm the respondent experienced was nonphysical, the respondent must show that it constitutes persecution through substantial economic

deprivation. Economic deprivation rises to the level of persecution only when the resulting conditions are sufficiently severe. *Daneshvar v. Ashcroft*, 355 F.3d 615, 624 n.9 (6th Cir. 2004). A probability of deliberate imposition of substantial economic disadvantage upon an alien because of her political opinion is sufficient to establish persecution. *Berdo v. INS*, 432 F.2d 824, 846 (6th Cir. 1970). In this case, the respondent claims economic deprivation on the basis of being banned by the government from her profession as a basketball player and trainer.

The respondent testified that the government successor to her secretary position informed her that she would never work in basketball again. She was afraid to seek out any basketball positions on the national level after her firing because of this. She also was not able to receive government sponsored maternity benefits because of the loss of her secretary position, which caused financial hardship to herself and her husband. Although the respondent was able to procure employment after her firing, she was hired as a wrestling trainer, a sport in which she is neither experienced nor for which she possesses a degree. Furthermore, her husband testified that this position was temporary. This was the only employment the respondent held during the two years in which she lived in Mongolia following her firing. Simply being able to obtain employment of some form does not mean that the respondent has not experienced a substantial economic deprivation, as she need not show that all means of earning a livelihood are closed to her.

The respondent had reached the professional level of a highly specialized field. She not only played basketball seriously since the age of fifteen but also graduated from college with a degree in basketball and basketball training. Her professional experience was focused solely on playing and training basketball on the national level. The respondent was both captain of the Mongolian women's national team and somewhat responsible for its survival, as evidenced by the fact that the team collapsed when she was banned from the sport. This ban completely prevented the respondent from gaining employment in her field. It was only when she was no longer employed in basketball and no longer voicing her political opinion that she did not experience further government actions against her. The respondent was threatened on many occasions for even raising objections about the government treatment of women's basketball, and she believed that their threats to "cause trouble" for her meant possible harm to herself or her child. The respondent was therefore naturally afraid to seek out another basketball position. She has shown that the Mongolian government, lead by the Communist party, deliberately imposed a substantial economic disadvantage on her by firing her from her position, knowing at the time that she was pregnant, and banning her from the profession, effectively preventing her from finding any employment for which she was qualified. For these reasons, I find that the respondent has established that she suffered past persecution by the Mongolian government on account of her political opinion. I limit my finding to the unique factual circumstances of persecution in this case of this respondent. The respondent had reached the pinnacle of her sport and was one of a very few elite athletes in her country to achieve that level of performance and expertise. Accordingly, my finding of past persecution in this case is based, in part, on the fact

that a person who has achieved the highest level in her sport in her nation will experience complete denial of participation in that sport, either as a player, coach, or in any other form, much more severely than a mid-level player or coach in a nation's athletic system.

Having shown past persecution, the respondent has established a rebuttable presumption of future persecution. A well-founded fear of future persecution may be refuted by showing changed circumstances in Mongolia or that the respondent could safely and reasonably relocate within Mongolia. Although Mongolia has a democratic governmental system, the Communist party continues to control the coalition government. As the women's basketball team has not played in any tournaments since 2002 and is now virtually nonexistent, the government has clearly not changed its stance towards women's basketball. There is good reason to believe that the respondent would continue to be persecuted by this government, as any attempt to gain employment in her field would provoke the government to threaten her and continue the ban. The economic deprivation that this ban would create not only rises to the level of persecution on its own, but is exacerbated by the fact that her husband would be unable to support their family should he be forced to be the sole provider. The respondent has also remained an advocate for women's equality, publishing an article in the United States that discussed in part the Mongolian government's treatment of the national women's basketball team. This article was printed in a newsletter distributed to all interested Mongolians living in the United States. The government has therefore failed to show either changed circumstances or the ability to relocate, and the respondent qualifies for asylum.

Withholding of Removal and Convention Against Torture. Because I grant the respondent's application for asylum, I need not reach her applications for withholding of removal pursuant to section 241(b)(3) of the Act and for protection under the Convention Against Torture.

VII. CONCLUSION

I find the respondent removable as charged. I find that the respondent qualifies for an exception to the one-year filing requirement for asylum on the basis of exceptional circumstances. Furthermore, the respondent has demonstrated past persecution and a well-founded fear of future persecution should she be returned to Mongolia. Accordingly, I grant the respondent's application for asylum. Having granted the respondent's application for asylum, I do not reach her other applications for relief.

ORDERED:

The respondent's application for asylum is GRANTED.

A handwritten signature in black ink, appearing to read 'Charles K. Adkins-Blanch', written over a horizontal line.

Charles K. Adkins-Blanch
Immigration Judge