

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 0.23 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV), THE PARTY CITING THE SUMMARY ORDER MUST FILE AND SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED. IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

1 At a stated term of the United States Court of Appeals
2 for the Second Circuit, held at the Daniel Patrick Moynihan
3 United States Courthouse, 500 Pearl Street, in the City of
4 New York, on the 5th day of March, two thousand seven.

5
6 **PRESENT:**

7 HON. DENNIS JACOBS,
8 Chief Judge,

9 HON. RALPH K. WINTER,

10 HON. PETER W. HALL,
11 Circuit Judges.

12
13
14 ISO HODZIC, TALIA SEIMANJIN, SAMRA
15 HODZIC, BRAHO HODZIC,
16 Petitioners,

17
18 -v.-

04-4508-ag
NAC

19
20 ALBERTO R. GONZALES,¹
21 Respondent.

¹Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Alberto R. Gonzales is automatically substituted for former Attorney General John Ashcroft as a respondent in this case.

1
2
3 **FOR PETITIONER:** Justin Conlon, New Haven,
4 Connecticut.

5
6 **FOR RESPONDENT:** Donald J. DeGabrielle, Jr., United
7 States Attorney for the Southern
8 District of Texas, Fred T. Hinrichs,
9 Assistant United States Attorney,
10 Houston, Texas.
11

12 UPON DUE CONSIDERATION of this petition for review of a
13 decision of the Board of Immigration Appeals ("BIA"), it is
14 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
15 review is DENIED.

16 Iso Hodzic, Talia Seimanjin, Samra Hodzic, and Braho
17 Hodzic, natives of Yugoslavia and citizens of Montenegro,
18 seek review of a July 23, 2004 order of the BIA adopting and
19 affirming immigration judge ("IJ") Joseph Russelburg's June
20 10, 2003 decision denying Iso Hodzic's applications for
21 asylum, withholding of removal, and relief under the
22 Convention Against Torture ("CAT"). In re Iso Hodzic, Talia
23 Seimanjin, Samra Hodzic, and Braho Hodzic, Nos. A95 462 647,
24 A95 462 648, A95 462 649, A95 462 650 (B.I.A. July 23,
25 2004) aff'g Nos. A95 462 647, A95 462 648, A95 462 649, A95
26 462 650 (Immigr. Ct. New York City June 10, 2003). We
27 assume the parties' familiarity with the underlying facts

1 and procedural history of the case.

2 When the IJ's decision rests on alternative grounds and
3 the BIA adopts and affirms that decision without expressly
4 addressing each ground, this Court may review the entire IJ
5 decision and need not confine its review to the grounds
6 expressly addressed by the BIA. *Ming Xia Chen v. BIA*, 435
7 F.3d 141, 144 (2d Cir. 2006). This Court reviews the
8 agency's factual findings, including adverse credibility
9 determinations, under the substantial evidence standard,
10 treating them as "conclusive unless any reasonable
11 adjudicator would be compelled to conclude to the contrary."
12 8 U.S.C. § 1252(b)(4)(B); see *Zhou Yun Zhang v. INS*, 386
13 F.3d 66, 73 & n.7 (2d Cir. 2004). It reviews *de novo* the
14 IJ's findings concerning the legal sufficiency of the
15 evidence, as they present questions regarding the
16 application of law to fact. *Edimo-Doualla v. Gonzales*, 464
17 F.3d 276, 281 (2d Cir. 2006).

18 The IJ's determination that Hodzic was not eligible for
19 relief based on the rape of his wife is dispositive.
20 Hodzic's brief argues that the IJ erred in holding that the
21 rape could not be considered in determining whether Hodzic
22 had suffered past persecution. Hodzic cites *Matter of C-Y-*

1 Z-, 21 I & N Dec. 915, 919 (BIA 1997), and various cases from
2 other circuit courts indicating that persecution of family
3 members could be taken into consideration when analyzing
4 whether an applicant had suffered past persecution.

5 Hodzic's case is easily distinguished from *C-Y-Z-*,
6 which discusses the ability of a person whose spouse has
7 been forced to undergo an abortion or sterilization
8 procedure to establish his own claim of past persecution on
9 account of a political opinion.

10 Hodzic also cites to a Ninth Circuit case, *Lin v.*
11 *Ashcroft*, 377 F.3d 1014 (9th Cir. 2004), arguing that the
12 court implied that the BIA's holding in *C-Y-Z-* should be
13 extended to persecution committed against other close family
14 members. Petitioner's Brief at 49. However, *Lin* held that
15 the applicant could establish a well-founded fear on account
16 of his membership in a social group said to be composed of
17 his immediate family, which the Chinese government had
18 singled out under the family planning laws. 77 F.3d at
19 1029. Because the *Lin* Court was analyzing the "on account
20 of" element of an asylum claim, and not the harm element,
21 Hodzic's second argument is also unavailing.

22 Hodzic's case is also distinguishable from the Sixth

1 Circuit case he cites, *Abay v. Ashcroft*, 368 F.3d 634 (6th
2 Cir. 2004). *Abay* noted that the BIA and other circuits had
3 “suggest[ed] a governing principle in favor of refugee
4 status in cases where a parent and protector is faced with
5 exposing her child to the clear risk of being subjected
6 against her will to a practice that is a form of physical
7 torture causing grave and permanent harm.” *Abay*, 368 F.3d
8 at 642. Because that case focused on the particular
9 protective relationship between a parent and child, Hodzic’s
10 argument that the principle should apply to him and his wife
11 is without merit.

12 The agency correctly concluded that Hodzic did not
13 suffer past persecution. In *Matter of Acosta*, 19 I. & N.
14 Dec. 211, 222 (BIA 1985), the BIA interpreted past
15 persecution to include “harm or suffering inflicted upon an
16 individual in order to punish him for possessing a belief or
17 characteristic a persecutor sought to overcome.” Such harm
18 must be severe. *Ai Feng Yuan v. DOJ*, 416 F.3d 192, 198 (2d
19 Cir. 2005) (citing *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th
20 Cir. 1995) (“persecution is an extreme concept that does not
21 include every sort of treatment our society regards as
22 offensive”)). Persecution must rise above mere harassment,

1 but it is not limited to threats to life or freedom; non-
2 life-threatening violence and physical abuse also fall
3 within this category. *Tian Yong Chen v. INS*, 359 F.3d 121,
4 128 (2d Cir. 2004). When determining whether an applicant
5 has demonstrated persecution, the events are viewed
6 cumulatively. *See Poradisova v. Gonzales*, 420 F.3d 70, 79-
7 80 (2d Cir. 2005).

8 Hodzic cites the rape of his wife as the most serious
9 act of persecution against his family. In addition, he
10 claimed that he was arrested, detained for 36 hours, and
11 beaten in March 1999, and that he was hit with a stick three
12 or four times on the upper arm. Here, the agency reasonably
13 determined that Hodzic's brief detention, which did not
14 result in severe or lasting harm, was not an independent
15 basis on which he could claim past persecution. *See Tian-*
16 *Yong Chen*, 359 F.3d at 128.

17 The agency's conclusion that Hodzic failed to establish
18 his eligibility for asylum was thus supported, and a review
19 of the IJ's adverse credibility determination is
20 unnecessary.

21 Because Hodzic was unable to show the objective
22 likelihood of persecution needed to make out an asylum

1 claim, he was necessarily unable to meet the higher standard
2 required to succeed on a claim for withholding of removal.
3 See *Wu Biao Chen v. INS*, 344 F.3d 272, 275 (2d Cir. 2003).
4 Moreover, because Hodzic presented no additional evidence
5 indicating that he would likely be tortured upon return to
6 Montenegro, the IJ appropriately determined that he did not
7 establish his eligibility for CAT relief.

8 For the foregoing reasons, the petition for review is
9 DENIED. Having completed our review, any stay of removal
10 that the Court previously granted in this petition is
11 VACATED, and any pending motion for a stay of removal in
12 this petition is DISMISSED as moot. Any pending request for
13 oral argument in this petition is DENIED in accordance with
14 Federal Rule of Appellate Procedure 34(a)(2), and Second
15 Circuit Local Rule 34(d)(1).

16 FOR THE COURT:

17 Thomas Asreen, Acting Clerk

18 By: _____
19
20
21