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799 Fed.Appx. 965

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

Aram TATINTSYAN, Petitioner,

v.

William P. BARR, Attorney General, Respondent.

No. 18-71056

|
Argued and Submitted August
16, 2019 Pasadena, California

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FILED February 12, 2020

Synopsis

Background: Alien petitioned for review of Board of Immigration Appeals (BIA) order denying him **asylum** and withholding of removal based on determination that there were serious reasons for believing that he had committed serious nonpolitical crime outside of United States.

[Holding:] The Court of Appeals held that substantial evidence did not support BIA's determination.



Vacated and remanded.

Procedural Posture(s): Review of Administrative Decision.

West Headnotes (1)

[1] Aliens, Immigration, and Citizenship  **Weight and Sufficiency**

Substantial evidence did not support determination of Board of Immigration Appeals (BIA) that there were serious reasons for believing that alien had committed serious nonpolitical crime outside of United States so

as to render him ineligible for **asylum** or withholding of removal; BIA relied on single conclusory **red notice** which had been issued by International Criminal Police Organization (**INTERPOL**) at request of Russia, and reliability of **red notice** was undermined by both alien's presentation of credible testimony that Russia had political reasons for charging him and evidence indicating that **red notices** arising from Russia were not reliable. Immigration and Nationality Act §§ 208, 241,  8 U.S.C.A. §§ 1158(b)(2)(A)(iii),  1231(b)(3)(B)(iii).

Attorneys and Law Firms


A. Ashley Gambourian, Attorney, Law Offices of A. Ashley Gambourian, Burbank, CA, for Petitioner

Surell Brady, Esquire, Trial Attorney, Tim Ramnitz, Trial Attorney, DOJ - U.S. Department of Justice, Civil Division/ Office of Immigration Litigation, Washington, DC, Chief Counsel ICE, Office of the Chief Counsel, Department of Homeland Security, San Francisco, CA, for Respondent

On Petition for Review of an Order of the Board of Immigration Appeals, Agency No. AXXX-XX8-612

Before: **CALLAHAN** and **CHRISTEN**, Circuit Judges, and **CHEN**,* District Judge.

*966 MEMORANDUM**

Aram Tatintsyian seeks review of an order of the Board of Immigration Appeals (BIA) denying **asylum**, withholding of removal, and relief under the Convention Against Torture (CAT). The denial of relief was based primarily on a **red notice** issued by **Interpol** at Russia's request alleging that criminal charges had been filed against Tatintsyian. The BIA found that the **red notice** raised serious questions that Tatintsyian had committed "a serious nonpolitical crime outside the United States." See  8 U.S.C. § 1158(b)(2)(A)(iii). Tatintsyian, who was determined to be credible by the Immigration Judge (IJ), denies any knowledge of the alleged crime, and offered evidence undermining the reliability of the **red notice** and suggesting that Russian officials had a political

motive for the **red notice**. Because we determine that the BIA's determination of "serious questions" is not supported by substantial evidence, we vacate the denial of immigration relief, and remand the case to the agency for consideration of Tatintsyman's claims on the merits.¹

A person is ineligible for **asylum** if "there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States." 8 U.S.C. § 1158(b)(2)(A)(iii). Such a determination also renders a person ineligible for withholding of removal. 8 U.S.C. § 1231(b)(3)(B)(iii). We have held that a finding of "serious reasons" is tantamount to a finding of probable cause. *Go v. Holder*, 640 F.3d 1047, 1052 (9th Cir. 2011). We have also held that a finding of "serious reasons" must be affirmed if it is supported by substantial evidence. *Id.*; *Guan v. Barr*, 925 F.3d 1022, 1032 (9th Cir. 2019).

The BIA's determination that there are serious reasons for believing Tatintsyman committed a serious nonpolitical crime was based solely on **Interpol's red notice** at Russia's request. The **red notice**, which issued in October 2016, over a year after Tatintsyman arrived in the United States, alleges that from August 2011 to December 2012, Tatintsyman engaged in a "preliminary conspiracy" with an unidentified "head of a municipal district" and "illegally got rights to municipal property" worth \$289,668. The **red notice** further indicated that there was no "Copy of Arrest Warrant Available at the General Secretariat in the Language Used by the Requesting Country." Tatintsyman, who was deemed credible by the IJ, denied any knowledge of the alleged conspiracy. He also presented evidence that the government had persecuted him before he left Russia and that Russia has abused **Interpol's red notice** provisions for political reasons.

When affirming an agency's finding of serious reasons, we have cited to specific evidence that supports the reasons for believing an individual has committed a serious nonpolitical

crime. See *Go*, 640 F.3d at 1053 (noting that Go "explicitly admitted under oath to being involved in a scheme to finance 'drug transactions' "); *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1188–89 (9th Cir. 2016) (noting that the Guatemalan indictment alleged specific facts connecting *967 Silva to the murder and was supported by an eyewitness whom the Guatemalan courts deemed credible). In our unpublished decision in *Belov v. Holder*, 385 F. App'x 624 (9th Cir. 2010), which the BIA cites in support of its decision, we noted that, in addition to Belov being found not credible, the BIA, in finding "serious reasons," also relied on an indictment and an arrest warrant from Russian authorities, the transcript of several witnesses from Russia, and testimony from two former business associates who testified against Belov. *Id.* at 625–26. Here, in contrast, the BIA relied on a single conclusory document, the reliability of which was undermined by both Tatintsyman's presentation of credible testimony that Russia has political reasons for charging him and evidence indicating that **Interpol's red notices** arising from Russia are not reliable. We conclude that on this record, the agency's finding of "serious reasons" is not supported by substantial evidence and must be vacated.²

In addition, in light of our remand of Tatintsyman's case for further consideration, we vacate the denial of Tatintsyman's claim for relief under CAT.

Because we find that the agency's finding of "serious reasons" to believe that Tatintsyman has committed a "serious nonpolitical crime" is not supported by substantial evidence, we **VACATE** the agency's denial of **asylum** and withholding of removal, **VACATE** the denial of relief under CAT, and **REMAND** for consideration of Tatintsyman's claims on the merits.³

All Citations

799 Fed.Appx. 965

Footnotes

* The Honorable Edward M. Chen, United States District Judge for the Northern District of California, sitting by designation.

- ** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).
- 1 The facts are familiar to the parties and are restated here only as necessary to resolve the issues presented by this petition for review.
- 2 Because the BIA's denial of withholding of removal was also based solely on the **red notice**, the denial of withholding is also vacated.
- 3 Because we vacate the denials of immigration relief, we do not address Tatintsyanyan's objections to his removal to Armenia.

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