

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

Jamal :  
v. : No. 3:03cv1206 (JBA)  
Ashcroft :

**Ruling on Petition for Writ of Habeas Corpus [Doc. # 1]**

Petitioner Tahir Jamal has moved for a petition for writ of habeas corpus, challenging his order of removal to Pakistan. For the reasons discussed below, petitioner's motion is denied.

**I. Background**

On June 14, 2002, Petitioner Tahir Jamal ("Jamal"), a native and citizen of Pakistan, was charged with entering the United States without inspection, in violation of 8 U.S.C. § 1182(a)(6)(A)(I), and placed in removal proceedings. At his removal hearing, Jamal stated that he had lived in the United States since 1992 and conceded that he had not been admitted or paroled into the United States. Jamal applied for asylum and withholding of removal, claiming a fear of persecution on account of his political opinion should he be removed to Pakistan. Jamal's initial hearings before the Immigration Judge generated several questions about a separate identity that Jamal maintained, and about prior immigration benefits for which Jamal had applied. Jamal, represented by counsel, informed the Immigration Judge that his real name was Mohammed Haroon Gil, and

that he had previously applied for adjustment of status based on his marriage to a United States citizen, but was unaware of the outcome of that application. At a later hearing, Jamal also submitted his written asylum application, which stated that he had previously applied for asylum and had been granted refugee status. The Immigration and Naturalization Service ("INS") located the files for both names Jamal stated he had used, and found that using the name Mohammed Haroon Gil, Jamal had applied for but had been denied adjustment of status in August of 2000 for failing to appear to have his fingerprints taken. See Certified Administrative Record ("AR") [Doc. # 9, Ex. A] at 46. The INS trial counsel also confirmed that under the name Tahir Jamal, Jamal had previously applied for asylum, but found that his asylum application had been denied. Jamal had not been placed in removal proceedings at the time of the denial of his application. See id. at 81.

At his hearing, Jamal testified in English<sup>1</sup> that before he came to the U.S., he was active in politics in Pakistan, and that he and his father supported the Pakistan People's Party ("PPP"). As a supporter of the PPP, he would go from house to house to

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<sup>1</sup>Jamal requested an Urdu interpreter, but testified in English after the Immigration Judge noted that Jamal spoke and understood English. The transcript reveals the limits of Jamal's English language fluency, as parts of his testimony are difficult to understand, and there are several places in which it is obvious he has used the wrong choice of word or otherwise was not able to fully express himself.

gather support for the PPP. Id. At 63. He attended political rallies, where he would hold up banners for the PPP. Id. At 63-64. At one such rally, a "gang" of members of the Muslim League, a party opposed to the PPP, saw him tearing down their flags and hanging PPP flags in their place, and beat him and threatened to kill him. Id. At 64, 78-79. Jamal testified that one of the people who beat him has now become a municipal official in his city. Id. At 73. He also stated that the former prime minister of Pakistan, Benazir Bhutto, was the leader of the PPP, and that her brother was recently killed by the members of the Muslim League. Id. at 80. Because the PPP is now out of power in Pakistan, and because the Muslim League remains powerful in his home area, Jamal testified that he fears returning.

On cross examination, Jamal was questioned about his aliases, and testified that he changed his name when he came to the United States because he was still afraid as he heard that "people they have gang in New York too" who may know him. Id. at 70. He stated that he used his real name - Mohammed Haroon Gil - when he married and applied for adjustment of status, because he viewed marriage religiously and wanted to marry with his real name. Id. at 86. The INS counsel suggested to the IJ other reasons for his separate identities, however, including that he was hiding because he knew he had been denied asylum under the name Jamal. In addition, INS counsel highlighted other

discrepancies in Jamal's statements. Jamal testified, for example, that he was still married to his wife, but on his written asylum application submitted to the IJ, he stated that he had no spouse. Jamal also answered "no" on his written asylum application to the following question: "Have you or any member of your family ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in your country or any other country, including the United States?" He wrote in the space that followed "I am in prison." In fact, Jamal had a criminal record in the United States, having been convicted in December 2001 of criminal trespass in the first degree, breach of peace and violation of a protective order. See id. at 184-92. Jamal testified that he thought the question referred to whether he had been arrested in Pakistan. Id. at 71.

The IJ issued an oral decision denying Jamal's applications for asylum, withholding of removal, and relief under the Convention Against Torture. The decision found the following:

The Court was unable to find that the respondent's testimony was entirely credible due to the fact that he has used several aliases and also that he apparently did not answer the question regarding past arrests in a truthful manner. Nevertheless, even if the Court were to find the respondent's testimony to be entirely credible, the Court does not find that the circumstances described by the respondent amount to past persecution on account of political opinion. It appears as though he has only suffered one incident of maltreatment as a result of his political activities and that does not appear to the Court to rise to the level of past persecution on account of political opinion. Nor has the respondent met his burden of

proof with regard to a well-founded fear of future persecution on account of any of the five enumerated grounds.

Certified Administrative Record [Doc. # 9, Ex. A] at 22 (Oral Decision of the Immigration Judge).

Jamal appealed the IJ's ruling to the Board of Immigration Appeals ("BIA"), and on March 10, 2003, the BIA summarily affirmed, without opinion, the decision of the IJ. See id. at 2. Jamal was entitled to file a direct petition for review in the Court of Appeals within thirty days of the BIA's decision, but failed to do so. On July 11, 2003, Jamal filed the instant petition for habeas corpus.

## **II. Discussion**

The scope of review of an alien's challenge to removal on petition for habeas corpus is narrower than that on direct review. The Supreme Court concluded in INS v. St. Cyr, 533 U.S. 289 (2001) that the writ of habeas corpus may be used to remedy "detentions based on errors of law, including the erroneous application or interpretation of statutes." Id. at 302. The Second Circuit has since refined these parameters. In Wang v. INS, 320 F.3d 130 (2d Cir. 2003), the Second Circuit held that a challenge to the "BIA's application of the particular facts in [the] case to the relevant law falls within the permissible scope of habeas review." Id. at 143. The Court therefore reviewed the BIA's finding about Wang's Convention Against Torture claim that "there is no evidence in the record that China tortures deserters

from its military," noting that "this determination is not simply a factual finding-it is based upon an application of the facts to the legal standard set forth in 8 C.F.R. § 208.16." Id. at 143 (referring to regulatory standard that withholding of removal shall be granted if "it is more likely than not that [the alien] would be tortured if removed to the proposed country of removal."). As the Second Circuit made clear in Sol v. INS, 274 F.3d 648 (2d Cir. 2001), however, purely discretionary determinations by the IJ or BIA are not properly within the scope of habeas review. Thus, in Sol, the Second Circuit found that it lacked jurisdiction to decide whether the IJ and BIA denial of a discretionary waiver of deportation had adequate support in the record. Id. at 651.

The Immigration Judge deciding Jamal's asylum and withholding of removal claims found that Jamal was not credible, and provided several grounds for so finding, including the fact that Jamal had applied for various immigration benefits using different aliases, and was not forthcoming in reporting his arrests on his asylum application. Such credibility determinations generally must be deemed the kind of purely discretionary determination that, under Sol, are outside the scope of habeas review.<sup>2</sup> Unlike Wang, Jamal's factual account

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<sup>2</sup>There may be instances in which an adverse credibility determination amounts to an erroneous application of law to facts. For example, an adverse credibility finding based on a

was disputed by the Government and not credited by the Immigration Judge. Given the more limited scope of habeas review, this Court lacks jurisdiction over the IJ's determination in Jamal's case.<sup>3</sup>

Jamal sidesteps the IJ's credibility determination and focuses on the IJ's finding that the mistreatment Jamal testified to did not "rise to the level of past persecution on account of political opinion." Certified Administrative Record [Doc. # 9, Ex. A] at 22 (Oral Decision of the Immigration Judge). Jamal argues that this finding is an incorrect application of the law, and thus falls squarely within the proper scope of habeas review under Wang. This finding, however, is an alternative holding by the IJ, as evidenced by the fact that IJ introduced this conclusion by stating "[n]evertheless, even if the Court were to find the respondent's testimony to be entirely credible . . . ." Id. Thus, even if this Court were to consider and find error with the IJ's determination about past persecution, Jamal would

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failure to provide corroboration would be contrary to the regulations. See 8 C.F.R. § 208.16(b). This is not such a case, however.

<sup>3</sup>It should be noted that credibility determinations are afforded "particular deference" even on direct appeal. See Montero v. INS, 124 F.3d 381, 386 (2d Cir.1997). Because Jamal's claims were denied in part because of the adverse credibility finding, he would have little chance of success even had this Court been able to consider the merits. Given the facts of this case, it cannot be said that "any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B).

still not prevail, given the adverse credibility finding. Because the credibility determination ultimately controls the outcome of this case, the Court does not reach Jamal's challenge regarding past persecution.

**III. Conclusion**

For the foregoing reasons, Jamal's petition for writ of habeas corpus [Doc. # 1] is hereby denied. The Clerk is directed to close this case.

IT IS SO ORDERED.

/s/

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Janet Bond Arterton, U.S.D.J.

**Dated at New Haven, Connecticut, this 21st day of May, 2004.**