

MATTER OF TAHERI

In Section 203(a)(7) Proceedings

A-13748152

Decided by Regional Commissioner January 14, 1972

A native and citizen of Iran who departed therefrom temporarily for personal reasons to obtain an education in the United States and not because of persecution or fear of persecution but who now claims fear of persecution if he returns because subsequent to his departure he engaged in acts of willful-even criminal-misconduct against the interests of that country, has failed to establish on the basis of these circumstances that he "fled" from Iran within the meaning of section 203(a)(7), Immigration and Nationality Act, as amended. [*Matter of Zedkova*, 13 I.&N. Dec. 626, distinguished*; that case involved the development of a situation, subsequent to departure, over which the alien had no control, whereas, in the instant case, applicant's situation was produced by his own deliberate acts.]

ON BEHALF OF APPLICANT: Donald L. Ungar, Esquire
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San Francisco, California 94111

The District Director finds the applicant ineligible for the preference classification sought and certifies his decision denying the application to the Regional Commissioner pursuant to 8 CFR 103.4.

The applicant is a 27-year-old single male, native and citizen of Iran. He entered the United States on May 13, 1964 as a nonimmigrant student with authorized stay last extended until November 2, 1970. He attended school in this country while otherwise maintaining his nonimmigrant status until May 22, 1970. He has been supported in greater part by his parents, who reside in Iran, and a scholarship which was awarded by an Iranian oil company. His income has been supplemented by accepting part-time and summer employment.

The applicant was arrested on June 26, 1970, along with forty other Iranians, for invading and damaging the premises of the Iranian Consulate and holding the occupants hostage under

* See Appendix hereto which consists of Memorandum of Opinion and Order of the U.S. District Court, Northern District of California, dated December 22, 1972 and December 11, 1974, and Order of the Regional Commissioner dated July 10, 1973.

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threat of death. He subsequently pled guilty to a charge of false imprisonment for which he was sentenced to 35 days in jail and placed on three years probation. He was arrested again on September 8, 1970, in New York, New York, while participating in a demonstration at the Iranian Consulate. He was then found guilty of resisting arrest and fined \$25.00 or, in lieu thereof, to serve five days in jail.

Deportation proceedings were instituted against the applicant on April 29, 1971, upon the issuance of an Order to Show Cause and Notice of Hearing charging that the applicant was subject to deportation in that he had remained in the United States for a longer time than permitted. He failed to appear for the hearing which was scheduled for May 19, 1971.

The instant application was submitted on July 9, 1971, seeking classification as a refugee under the proviso to section 203(a)(7) of the Act which provides, in pertinent part, as follows:

Conditional entries shall next be made available...to aliens who satisfy an Immigration and Naturalization Service officer...(A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled (I) from any Communist or Communist-dominated country or area, or (II) from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion, or political opinion, and (iii) are not nationals of the countries or areas in which their application for conditional entry is made....(Emphasis supplied)...*Provided*, that immigrant visas in a number not exceeding one-half the number specified in this paragraph may be made available, in lieu of conditional entries of a like number, to such aliens who have been continuously physically present in the United States for a period of at least two years prior to application for adjustment of status.

The applicant states on his application that "I fled from Iran, within the meaning of *Matter of Zedkova*, 13 I. & N. Dec. 626. I have taken part in the activities of the Confederation of Iranian Students. The Confederation was recently outlawed by the Iranian Government. I have also been arrested for an anti-Iranian Government demonstration at the Consulate of Iran in San Francisco."

He then states that he is unwilling or unable to return to Iran because "I fear that I would be jailed in Iran because of my activities with the Iranian Students Confederation and because of my arrest for taking part in the demonstration mentioned above."

In the *Matter of Zedkova*, 13 I. & N. Dec. 626, it was decided that an alien who departed temporarily from Czechoslovakia prior to the Communist upheaval there in August 1968, but who, because of political opinion, now fears to return in view of the changed conditions in that country is eligible for refugee classification under section 203(a)(7) as the term "fled" as used in section 203(a)(7) may reasonably be construed to include one who has avoided, abandoned or forsaken a danger or evil.

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The District Director denied the application and certified this matter to the Regional Commissioner reasoning in part that the applicant had failed to establish that he fled from a Communist or a Communist-dominated country or area or from a country within the general area of the Middle East.

A lengthy brief with several exhibits was submitted by counsel for consideration pursuant to the District Director's notice of certification. Oral argument was requested, granted and conducted as scheduled. Counsel relies upon the rationale set out in the *Matter of Zedkova, supra*, to establish that the applicant "fled" from Iran, argues that the applicant now needs only to establish that he is in fear of persecution, if he returns to Iran, because of political, social or religious reasons. Counsel then cites the applicant's arrest, as noted above, and states that politically motivated punishment is awaiting the applicant in Iran. Copies of four newspaper articles, a "report" and an affidavit were submitted as evidence that the applicant fears persecution because of political opinion if he returns to Iran.

The first issue to be determined in this matter is whether the applicant "fled" from Iran within the meaning of that term as it is used in section 203(a)(7). We shall, therefore, examine the evidence in the record of proceeding and make such determination.

The applicant departed Iran, when he was 20 years old, for the purpose of coming to the United States to attend school. He was admitted as a nonimmigrant student in 1964 and he maintained that status until May 22, 1970. He was supported, in part, by his parents who reside in Iran and a scholarship from an Iranian oil company. He maintained a valid Iranian passport until at least August 10, 1970. No allegations pertaining to persecution were made by the applicant until he filed the instant application. His activities in the Confederation of Iranian Students did not become apparent for the record until his first arrest in 1970. Thus, it is clear that the applicant departed from Iran in 1964 and remained absent therefrom until sometime in 1970 for the reason of obtaining an education and not for the purpose of avoiding, abandoning or forsaking a danger or evil. Iran has not been invaded by another country since the applicant's departure as Czechoslovakia was in the *Matter of Zedkova, supra*. No allegations have been made that the applicant or his parents have been persecuted at any time by the Iranian government.

The U.S. Court of Appeals for the Ninth Circuit decided on October 8, 1971, in *Antonine Salem Shubash v. District Director*, Civil No. 26262, that an alien resident of Jerusalem, carrying a Jordanian passport, who left Jerusalem in 1966, not because of persecution but for personal reasons, entering and reentering this

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country as a nonimmigrant visitor had not "fled" within the meaning of section 203(a)(7). The court stated, in pertinent part, in reaching such decision that: "The statute authorizes the issuance of a seventh preference visa 'to aliens who satisfy an Immigration and Naturalization Service officer...(A) that (i) because of persecution or fear of persecution on account of race, religion, or political opinion they have fled...(II)from any country within the general area of the Middle East, and (ii) are unable or unwilling to return to such country or area on account of race, religion or political opinion...'.*Shubash* did not meet his burden as to either condition."

The statute under which this application was filed requires an applicant to establish first, that he fled, and second, that he is *unable or unwilling* to return to the country from which he fled because of race, religion, or political opinion. After carefully considering all of the facts in this case, it is concluded that the applicant has failed to establish the first statutory requirement. He is, therefore, ineligible for classification as a refugee under the proviso to section 203(a)(7). The application will be denied.

The issue of whether the applicant is unable or unwilling to return to Iran on account of race, religion, or political opinion need not be determined in this proceeding as he is otherwise ineligible for classification as a refugee. The denial of this application is without prejudice to the applicant seeking that deportation be withheld under the provisions of section 243(h) of the Act during the deportation proceedings, which have already been instituted against him. Section 243(h) authorizes the Attorney General to withhold deportation of an alien within the United States to any country in which in his opinion the alien would be subject to persecution on account of race, religion or political opinion for such period of time deemed to be necessary for such reason.

ORDER: It is ordered that the application for classification as a refugee under the proviso to section 203(a)(7) be and the same is hereby denied.