

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

FEB 07 2008

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

FODAY SILLAH,

Petitioner,

v.

MICHAEL B. MUKASEY,  
Attorney General,

Respondent.

No. 06-73857

Agency No. A95-588-386

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted December 4, 2007  
Seattle, Washington

BEFORE: McKEOWN and CLIFTON, Circuit Judges, and SCHWARZER,\*\*  
District Judge

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\*This disposition is not appropriate for publication and is not precedent  
except as provided by Ninth Circuit Rule 36-3.

\*\*The Honorable William W Schwarzer, Senior United States District Judge  
for the Northern District of California, sitting by designation.

Foday Sillah petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from the order of the Immigration Judge ("IJ") which denied his application for asylum and withholding of removal. We dismiss in part and deny in part.

The parties dispute whether the court has jurisdiction to review the BIA's decision that Sillah failed to timely file his asylum application. We determine our own jurisdiction de novo. *Ruiz-Morales v. Ashcroft*, 361 F.3d 1219, 1221 (9th Cir. 2004) (citation omitted). Where, as here, the BIA adopts the IJ's findings, we review those findings for substantial evidence. *Kaur v. Ashcroft*, 379 F.3d 876, 884 (9th Cir. 2004).

An applicant for asylum must establish by clear and convincing evidence that he filed his application for asylum within one year of his arrival in the United States. 8 U.S.C. § 1158(a)(2)(B). We are generally precluded from reviewing a determination that an asylum claim was untimely filed, 8 U.S.C. § 1158(a)(3), unless the petitioner challenges the determination on constitutional or legal grounds. 8 U.S.C. § 1252(a)(2)(D). A "question of law" includes an issue of statutory construction as well as the application of law to undisputed facts. *Ramadan v. Gonzales*, 479 F.3d 646, 648 (9th Cir. 2007).

Sillah argues that we have jurisdiction to review the IJ's timeliness

determination because the IJ committed legal error in concluding that Sillah's credible testimony was insufficient to meet his burden of proof regarding his date of arrival in the U.S. The government responds that because the IJ found Sillah's testimony regarding his arrival date in the United States "[in]sufficient to establish [his arrival date] by clear and convincing evidence," this matter involves a disputed fact and not a question of law and is therefore not subject to review.

We agree with the government. The IJ found Sillah's testimony insufficient to establish by clear and convincing evidence that he arrived in the U.S. on May 29, 2002, because he could not remember the name of the person whose fraudulent passport and visa he used, claimed he was never questioned by an immigration officer either upon departing Sierra Leone or upon entering the U.S., and his testimony lacked corroboration. Because his arrival date could not be considered to be an undisputed fact, we have no jurisdiction. We therefore dismiss the petition seeking review of the BIA's denial of Sillah's application for asylum.

Sillah also challenges the denial of his claim for withholding of removal. We review a denial of withholding of removal for substantial evidence. *Kaur*, 379 F.3d at 884. "A denial must be upheld if supported by 'reasonable, substantial and probative evidence' in the record." *Id.* (quoting *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992)). We will affirm the IJ's findings "when it is possible to draw two

inconsistent conclusions from the evidence.” *Pedro-Mateo v. INS*, 224 F.3d 1147, 1150 (9th Cir. 2000).

An alien may not be removed to a country where his “life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” 8 U.S.C. § 1231(b)(3)(A). Where the applicant has suffered past persecution, there is a rebuttable presumption that the applicant’s life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. § 208.16(b)(1). The presumption may be rebutted if the IJ finds by a preponderance of the evidence that there has been a fundamental change in circumstances such that the applicant’s life or freedom is no longer threatened. *Id.*

The IJ found that Sillah had established past persecution by Revolutionary United Front (“RUF”) rebels, but that the presumption of future persecution was rebutted by evidence of changed circumstances in Sierra Leone. The IJ’s decision was based on evidence that the civil conflict in Sierra Leone ended in 2002, when the government Sillah supported was restored to power. A large U.N. peacekeeping force asserted control over the whole country at that time. The RUF and the government-allied militia also completed disarmament in 2002. International monitors declared the 2002 elections to be free and fair. The U.N.

planned a complete withdrawal of peacekeepers by December 2004. Political killings have ceased and more than 60 RUF rebels are in custody awaiting trial. The IJ found there was no evidence that former RUF rebels were still targeting civilians because they supported President Kabbah, the candidate that Sillah supported at the time of his persecution.

Sillah argues that evidence of fewer abuses by the RUF is not sufficient to rebut the presumption that he faces future persecution. *See Borja v. INS*, 175 F.3d 732, 738 (9th Cir. 1999) (holding country circumstances were not changed where evidence merely showed that revolutionary group was committing “fewer” killings). Sillah points to a State Department human rights report that there have been “some reports” of abuses by RUF rebels and that rebels continue to hold captives as laborers or sex slaves. Sillah also relies on a statement by a U.N. spokesperson that stability in Sierra Leone is “fragile.” Finally, he points to a report by the International Crisis Group that “true peace and stability [in Sierra Leone] are still far off.”

Although there is evidence that the RUF may still be committing some abuses, the facts are not as strong as in *Borja* and do not compel reversal. In *Borja*, the revolutionary group that had threatened the applicant, although declining in numbers, was still committing politically-motivated killings and was targeting

business figures like the applicant. *Id.* In contrast, the evidence here does not compel the conclusion that the RUF would target Sillah upon his return to Sierra Leone. It was reasonable for the IJ to conclude that circumstances in Sierra Leone have changed such that Sillah's life and freedom are no longer threatened. We therefore deny that portion of the petition seeking review of the BIA's decision denying withholding of removal.

**DISMISSED IN PART; DENIED IN PART**