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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HAMLET GREGOR ISRAYELYAN, Petitioner, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 03-73810 Agency No. A75-683-750 MEMORANDUM*

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

Argued and Submitted February 6, 2006
Pasadena, California

Before: BEEZER, T.G. NELSON, and GOULD, Circuit Judges.

Petitioner Hamlet Israyelyan, a native and citizen of Armenia, appeals the Board of Immigration Appeals summary affirmance of the Immigration Judge's ("IJ") denial of asylum. We have jurisdiction pursuant to 8 U.S.C. § 1252(a)(1). We withdrew a previous memorandum disposition filed on February 23, 2006 by

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

separate order filed concurrently with this memorandum disposition in light of *Gonzales v. Thomas*.[1] We grant the petition, reverse the IJ's eligibility finding, and remand to the Board of Immigration Appeals to determine whether the government rebutted the presumption of future persecution.

I. Substantial evidence does not support the IJ's determination that Israyelyan failed to show past persecution.

To satisfy his burden to show past persecution, Israyelyan had to prove: (1) that the Armenian government, or forces the government was unwilling or unable to control, (2) persecuted him (3) on account of his race, religion, nationality, membership in a particular social group, or political opinion.[2] Where, as here, there was no explicit adverse credibility finding regarding the petitioner's testimony, we must accept that testimony as true.[3]

Israyelyan credibly testified that, on two occasions, the militia, a government-controlled police force, beat him to the point of unconsciousness and threatened to kill him and his family if he did not leave the country. On both occasions, he was hospitalized for several days. The militia also beat his brother, breaking his leg, and beat his mother to death. Based upon Israyelyan's testimony,

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[1] 126 S. Ct. 1613 (2006).

[2] *Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004).

[3] *Hartooni v. INS*, 21 F.3d 336, 342 (9th Cir. 1994).

no reasonable fact-finder could conclude that the abuse Israyelyan suffered did not rise to the level of persecution.[4] Therefore, Israyelyan satisfied the first two elements.

Regarding the third element, the record does not support the IJ's conclusion that Israyelyan's mixed ethnicity was not a motivation for the abuse he suffered. Israyelyan credibly testified that the militia targeted him because he is half Azeri. Even if the militia had a mixed motive, the evidence compels the conclusion that Israyelyan's mixed ethnicity played a role in the persecution.[5] Therefore, Israyelyan established all of the requisite elements of past persecution.[6]

II. Remand is necessary regarding the presumption of future persecution.

Because Israyelyan established past persecution, he is entitled to a rebuttable presumption that he also has a well-founded fear of future persecution.[7] Neither the IJ nor the Board of Immigration Appeals has considered the issue of whether

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[4] *See Navas v. INS*, 217 F.3d 646, 657–58 (9th Cir. 2000); *Chand v. INS*, 222 F.3d 1066, 1073–74 (9th Cir. 2000).

[5] *See Mihalev v. Ashcroft*, 388 F.3d 722, 727 (9th Cir. 2004) (citing *Navas*, 217 F.3d at 656).

[6] *See Knezevic*, 367 F.3d at 1211.

[7] 8 C.F.R. § 208.13(b)(1).

the government rebutted the presumption. Thus, under *Thomas*, we must remand that issue to the agency.[8]

The petition for review is GRANTED, the IJ's eligibility determination is REVERSED, and the case is REMANDED to the Board of Immigration Appeals to determine whether the government rebutted the presumption of future persecution.

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[8] *Thomas*, 126 S. Ct. at 1615.