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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CARYL SOFIA CADIENA,</p> <p>Petitioner,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>
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No. 06-73289

Agency No. A72-168-139

MEMORANDUM \*

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

Submitted May 14, 2008  
San Francisco, California

Before: O'SCANNLAIN and HAWKINS, Circuit Judges, and SELNA,\*\*  
District Judge.

Caryl Sofia Cadiena, a native and citizen of the Philippines, petitions for  
review of the Board of Immigration Appeals' ("BIA") decision affirming the

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* Honorable James V. Selna, United States District Judge for the  
Central District of California, sitting by designation.

Immigration Judge's ("IJ") order denying her application for asylum and withholding of removal.

We have jurisdiction over Cadiena's claims pursuant to 8 U.S.C. § 1252. We review for substantial evidence, *Lim v. INS*, 224 F.3d 929, 933 (9th Cir. 2000), and we grant in part and deny in part and remand.

The IJ and BIA found that Cadiena failed to show that her fear of future persecution was objectively reasonable and on account of a protected ground. These findings are not supported by substantial evidence, because Cadiena showed that the New People's Army targeted her on account of an imputed political opinion that was derived from her parents' political opinions and activities. *See Ernesto Navas v. INS*, 217 F.3d 646, 658–62 (9th Cir. 2000). Assuming Cadiena is credible, her testimony and the record as a whole would compel a finding that Cadiena has a well-founded fear of future persecution.

Nevertheless, because the BIA failed to make an explicit finding on credibility, we remand to allow the BIA and IJ to consider two issues. First, on the issue of asylum, the BIA assumed without deciding Cadiena's credibility in affirming the IJ's decision, and the IJ seems to have assessed her father's credibility but not hers. The Court finds that the BIA should make an express determination of Cadiena's credibility in deciding whether Cadiena has made a

showing of a well-founded fear of future persecution. *See Cordon-Garcia v. INS*, 204 F.3d 985, 993 (9th Cir. 2000) (noting that the reviewing court cannot make a finding on credibility where the BIA fails to do so, and also noting that any adverse credibility determination by the BIA must be supported by “specific cogent reasons, which are substantial and bear a legitimate nexus to the finding” (internal quotation marks omitted)).

Second, assuming a well-founded fear of future persecution, “[she] is not disqualified from asylum eligibility merely because there are areas in the country where [s]he would not face persecution, provided that [s]he demonstrates the unreasonableness of internal relocation.” *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003). The BIA did not reach the issue of internal relocation. Accordingly, we remand to the agency for further consideration, in light of the applicable factors, including familial ties, of whether Cadiena could reasonably relocate to another part of the country.<sup>1</sup> 8 C.F.R. § 1208.13(b)(3); *see also*, *Melkonian*, 320 F.3d at 1071.

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<sup>1</sup> In this regard, we respectfully disagree with the dissent’s conclusion that “[t]he evidence of availability of safe relocation is more than adequate,” because “[i]t is not enough . . . for the IJ to find that applicants could escape persecution by relocating internally.” *Melkonian*, 320 F.3d at 1069. Rather, “[i]t must be reasonable to expect them to do so.” *Id.*

In regard to Cadiena’s res judicata argument, because a “final judgment, rendered on the merits in a separate action” never occurred in this case, the doctrine does not apply. *See Valencia-Alvarez v. Gonzales*, 469 F.3d 1319, 1323-24 (9th Cir. 2006) (emphasis omitted).

We agree with Cadiena that the IJ failed to provide her with a “full and fair hearing” when he did not allow her to present additional evidence of past persecution on remand from the first appeal to the BIA. *Alvarez-Santos v. INS*, 332 F.3d 1245, 1252 (9th Cir. 2003) (quoting *Campos-Sanchez v. INS*, 164 F.3d 448, 450 (9th Cir. 1999)). Since, we may infer that Cadiena was prejudiced by the denial of an opportunity to present evidence, we find that the IJ’s refusal to hear that evidence “potentially. . . affect[ed] the outcome of the proceedings.” *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1077 (9th Cir. 2005) (quoting *Agyeman v. INS*, 296 F.3d 871, 884 (9th Cir. 2002)). Accordingly, we “remand for a hearing that comports with due process.” *Id.*

Substantial evidence supports the IJ’s and BIA’s denial of withholding of removal because Cadiena has failed to show that it is “more likely than not” that she will be subject to persecution if removed to the Philippines. *See Lim*, 224 F.3d at 938-39. We deny the petition on the withholding claim.

**PETITION FOR REVIEW GRANTED in part, DENIED in part and REMANDED.**