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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>VALERIU MATEPA; et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>MICHAEL B. MUKASEY, Attorney General,</p> <p>Respondent.</p>
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No. 06-70044

Agency Nos. A79-726-523
A79-726-524
A79-726-525
A79-726-526

MEMORANDUM*

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

Argued and Submitted May 9, 2008
Portland, Oregon

Before: TALLMAN and CLIFTON, Circuit Judges, and CARROLL**, Senior
United States District Judge.

Valeriu and Maria Matepa, and their children Elena and Ivan, all of whom
are citizens of Moldova, petition for review of the order of the Board of

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

** The Honorable Earl H. Carroll, Senior United States District Judge,
District of Arizona, sitting by designation.

Immigration Appeals dismissing their appeal from an Immigration Judge's decision denying their applications for asylum and withholding of removal. We deny the petition.

Valeriu Matepa is of Ukrainian ethnicity and the Matepa family's primary language is Russian. The Matepas' asylum claim rests on their allegations that they were persecuted in Moldova on account of their nationality. They contend that the IJ applied the incorrect legal standard in deciding whether the evidence demonstrated that the Moldovan government played a sufficient role in the family's persecution. The Matepas argue that the IJ erroneously required them to establish complicity on the part of the Moldovan police.

We have held that "affirmative state action is not necessary to establish a well-founded fear of persecution if the government is unwilling or unable to control those elements of its society responsible for targeting a particular class of individuals." *Avetova-Elisseva v. I.N.S.*, 213 F.3d 1192, 1196 (9th Cir. 2000) (internal quotations and citations omitted). In the present case, the IJ recited and properly applied precisely this standard and concluded that "there is not evidence sufficient to show that the Moldovan government is unable or unwilling to protect ethnic Russian speakers from harassment or persecution[.]" The IJ did not require the Matepas to provide evidence of government complicity.

The Matepas also contend that substantial evidence does not support the IJ's determination that the Moldovan government was not unable or unwilling to control the individuals who harmed them, but they have failed to show that the evidence compels a contrary conclusion. *See Gu v. Gonzales*, 454 F.3d 1014, 1018 (9th Cir. 2006) (discussing how our review of such determinations is "highly deferential"). The Matepas reported three instances of claimed persecution to police: (1) Valeriu Matepa's former co-workers beat him after he refused to buy them drinks; (2) one in a group of intoxicated youths kicked Elena Matepa in the back as the Matepa family was exiting a bus; and (3) the Matepas' mailbox was burned and a neighbor threw a rock at their window.

After the first incident, Valeriu Matepa went to the police, who stated that they were aware of what happened but advised Valeriu that his report would likely not lead to any arrests because one of his assailants was the father of a police officer. Although this is an unfortunate example of police bias and inaction, it is insufficient, standing alone, to demonstrate that the Moldovan government is generally unwilling to control private actors who might persecute ethnic minorities, and it is completely unrelated to the other instances of purported persecution and police complacency.

When someone kicked Elena Matepa and she fell on the pavement, the police responded promptly, apprehended and questioned the men responsible, and asked Valeriu Matepa what he wanted them to do. The police did decline to accompany or transport Elena to the hospital, but the record does not show that Elena's injuries were so serious as to necessitate emergency transport, and the officers' failure to provide such transport does nothing to show that they were unwilling or unable to "control" Elena's attackers.

Finally, with respect to the third incident, after the Matepas reported the damage to their home, the police responded and completed a report. The Matepas left Moldova shortly afterward, however, before the police had an opportunity to take any substantive action. Accordingly, there is no evidence that the police would have failed to prevent further destruction or to punish those responsible. In addition, there is nothing in the 2003 Country Report to support the Matepas' allegations that Moldovan police are ineffective at controlling private actors who have engaged in violence against Russian speakers or those of Ukranian ethnicity.

The Matepas have failed to establish that the evidence compels the conclusion that the acts of which they complain "were committed by the government or forces the government is either unable or unwilling to control." *Nahrvani v. Gonzales*, 399 F.3d 1148, 1154 (9th Cir. 2005) (internal quotations

omitted). They have therefore failed to demonstrate that they experienced past persecution or that they have an objectively reasonable, well-founded fear of future persecution. As a result, they are ineligible for asylum or withholding from removal. *Id.* at 1154 (holding that, because the petitioner failed to establish eligibility for asylum, “he necessarily failed to demonstrate eligibility for withholding of removal”) (citing *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003)).

PETITION FOR REVIEW DENIED.