

OCT 05 2004

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

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

FOR THE NINTH CIRCUIT

MIKIC SLAVISA,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 03-70974

Agency No. A76-707-897

MEMORANDUM*

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

Submitted August 25, 2004**
San Francisco, California

Before: SCHROEDER, Chief Judge, GOODWIN, and TASHIMA, Circuit Judges.

Mikic Slavisa, Serbian native in Kosovo and citizen of the former
Yugoslavia, petitions for review of the Board of Immigration Appeals' decision

* 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.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

denying his applications for asylum, withholding of removal, and for relief under the Convention Against Torture. The record establishes that the petitioner did suffer past persecution as a Serbian living in Kosovo. He fled ethnic cleansing by Albanian Kosavars, and his house and store were burned and looted. Such flight from ethnic cleansing constitutes past persecution. See Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004). He is therefore entitled to a presumption of a well-founded fear of future persecution if returned to Kosovo. The BIA's conclusion that he had failed to demonstrate a well-founded fear of future persecution in Kosovo is therefore not supported by substantial evidence in the record.

The BIA did not consider the issue of whether the petitioner could relocate internally within the former Yugoslavia, and we therefore remand for consideration of this issue. See Kenezevic.

The petition for review is GRANTED and the matter REMANDED.