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1. [Wojcik v. INS, 951 F.2d 172](#)

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Wojcik v. INS

United States Court of Appeals for the Eighth Circuit

October 15, 1991, Submitted ; December 17, 1991, Filed

No. 91-1920

Reporter

951 F.2d 172 *; 1991 U.S. App. LEXIS 29435 **

Bogdan Wojcik, Petitioner, v. Immigration and Naturalization Services, Respondent.

Prior History: **[**1]** Petition for Review of an Order of the Immigration and Naturalization Service.

Disposition: Accordingly, we affirm.

Core Terms

persecution, asylum, well-founded, Nationality, activities, deportable, refugee, ship, administrative notice, discretion to grant, immigration judge, requires, changes

Case Summary

Procedural Posture

Petitioner alien sought review of the order of respondent, the Immigration and Naturalization Services (INS), denying his request for asylum under § 208 of the Immigration and Nationality Act, codified at [8 U.S.C.S. § 1253\(h\)](#).

Overview

The alien, a crew member aboard a Polish vessel, overstayed the time authorized by the INS. The INS issued an order for the alien to show cause why he should not be deported. The immigration judge (IJ) denied the alien's request for asylum and withholding of deportation, finding that he had not been punished in the past for his Solidarity activities, that he did not present sufficient evidence to support a current fear of persecution, and that any anticipated punishment for jumping ship did not provide a legal basis for granting asylum. The Board of Immigration Appeals (BIA) affirmed the decision. The BIA took administrative notice that the Solidarity organization was part of a coalition

government and that the alien no longer had a well-founded fear of persecution by the Polish government. The court affirmed the decision. The court held that there was substantial evidence to support the BIA's finding that the alien no longer had a well-founded fear of persecution by the Polish government on account of his Solidarity activities. Both the IJ and the BIA concluded that he had not established that he was a refugee, and they did not reach the question of whether to grant asylum.

Outcome

The court affirmed the decision of the BIA denying the alien's request for asylum. The court held that there was substantial evidence that the alien no longer had a well-founded fear of persecution by the Polish government on account of his Solidarity activities.

LexisNexis® Headnotes

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Administrative Proceedings

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Eligibility for Asylum

Immigration Law > ... > Administrative Proceedings > Evidence > General Overview

Immigration Law > Asylum, Refugees & Related Relief > Refugee Status > Eligibility for Refugee Status

[HN1](#) **Asylum, Administrative Proceedings**

Under the Immigration and Nationality Act, the Attorney General has the discretion to grant asylum to "refugees," 8 U.S.C.S. § 1158(a). A refugee is a person

who is unable or unwilling to return to his home country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, 8 U.S.C.S. § 1101(a)(42)(A). The well-founded fear standard has both a subjective and an objective component. The subjective component requires that the alien's fear be genuine, while the objective component requires a showing by credible, direct, and specific evidence of facts that would support a reasonable fear that the petitioner faces persecution.

Immigration Law > Deportation &
Removal > Administrative Appeals > General
Overview

[HN2](#) **Deportation & Removal, Administrative Appeals**

The Board of Immigration Appeals' use of administrative notice of the changed political conditions in Poland has been approved by two circuits, the Tenth Circuit and the Seventh Circuit. The United States Court of Appeals for the Eighth District agrees with those decisions.

Counsel: Counsel who represented the appellant was Herbert A. Igbanguo of Minneapolis, Minnesota.

Counsel who represented the appellee was Karen Fletcher Torstenson of Washington, D.C. Appearing on the brief were Stuart M. Gerson and Robert Kendall, Jr. of Washington, D.C.

Judges: Before BEAM, Circuit Judge, HEANEY, Senior Circuit Judge, and LOKEN, Circuit Judge.

Opinion by: PER CURIAM

Opinion

[*172] PER CURIAM.

Bogdan Wojcik petitions for review of an Immigration and Naturalization Service (INS) order denying his request for asylum under Section 208 of the Immigration and Nationality Act, [8 U.S.C. § 1253\(h\)](#). We affirm.


Wojcik, born in Szczecin, Poland, was an active member of the Solidarity union between 1980 and 1987. He arrived in the United States in July 1987 as a crew

member of a Polish vessel, left his ship, and stayed beyond the time authorized by the INS. The INS issued an order for Wojcik to show cause why he should not be deported. In response, Wojcik conceded he was deportable and requested asylum.

At his initial hearing, Wojcik testified about his Solidarity participation, and his fear that, if he returned to Poland, **[**2]** he would be imprisoned for abandoning ship and for engaging in political activities. He introduced a February 1988 advisory opinion from the Department of State's Bureau of Human Rights and Humanitarian Affairs, stating that assuming the facts in his application were true, Wojcik had a well-founded fear of persecution in Poland. He also introduced a December 12, 1987 letter from his sister in Poland, indicating that the secret police had searched family members' homes looking for Wojcik's belongings, that they found Solidarity publications, and that he would receive a long prison sentence if he returned.


In May 1988, the immigration judge denied Wojcik's request for asylum and withholding of deportation, finding that Wojcik had not been punished in the past for his Solidarity activities, that he did not present sufficient evidence to support a current fear of persecution, and that any anticipated **[*173]** punishment for jumping ship did not provide a legal basis for granting asylum.

Wojcik appealed the decision to the Board of Immigration Appeals (BIA), arguing he had a well-founded fear of persecution which was corroborated by his sister's letter. The BIA, relying on newspaper articles, took **[**3]** administrative notice that "effective September 10, 1989, the Solidarity organization formally entered into the coalition government which is presently governing Poland"; that in December 1990, Lech Walesa was elected and sworn in as president of Poland; and that electoral reforms were projected. The BIA found that Wojcik no longer had a well-founded fear of persecution by the Polish government, and affirmed the decision denying Wojcik asylum.

[HN1](#)  Under the Immigration and Nationality Act, the Attorney General has the discretion to grant asylum to "refugees," 8 U.S.C. § 1158(a). A refugee is a person who is unable or unwilling to return to his home country "because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion," 8 U.S.C. § 1101(a)(42)(A). The well-founded fear standard has both a subjective and an objective component:

The subjective component requires that the [alien's] fear be genuine, while the objective component "requires a showing by credible, direct and specific evidence . . . of facts that would support a *reasonable* fear that the petitioner faces persecution."

[4]** [Rodriguez-Rivera v. INS, 848 F.2d 998, 1002 \(9th Cir. 1988\)](#) (emphasis in original). In this case, both the immigration judge and the BIA concluded that Wojcik had not established that he is a refugee, and therefore his request was denied without reaching the question whether the discretion to grant asylum should be exercised. In reaching its conclusion, the BIA expressly relied upon the recent, dramatic political changes in Poland, changes that have seen the Solidarity union, a renegade and at times illegal political organization when Wojcik first participated, rise to a legitimate and even leadership role in the Polish government.

HN2  The BIA's use of administrative notice of the changed political conditions in Poland has been approved by two circuits. See [Kapcia v. INS, No. 90-9533, slip op. at 11 \(10th Cir. Sept. 9, 1991\)](#); [Kaczmarczyk v. INS, 933 F.2d 588, 593-95 \(7th Cir.\), cert. denied, 60 U.S.L.W. 3402 \(No. 91-365, Dec. 3, 1991\)](#). We agree with those decisions. In addition, We have carefully reviewed the entire record, and conclude there is substantial evidence to support the BIA's finding that Wojcik no longer has **[**5]** a well-founded fear of persecution by the Polish government on account of his Solidarity activities. See [Kubon v. INS, 913 F.2d 386, 388 \(7th Cir. 1990\)](#).

Accordingly, we affirm.

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