

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 07-2451

MU JIN LIN,
Petitioner

v.

ATTORNEY GENERAL OF
THE UNITED STATES,
Respondent

On Petition for Review of an Order of Removal
of the Board of Immigration Appeals
Agency No. A77-340-396
Immigration Judge: Daniel A. Meisner

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 25, 2008

Before: SLOVITER, STAPLETON AND COWEN, Circuit Judges

(Opinion filed: July 7, 2008)

OPINION

PER CURIAM

Mu Jin Lin petitions for review of an order of the Board of Immigration Appeals (“BIA”), which affirmed an order issued by an Immigration Judge (“IJ”) denying her

applications for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”). We will deny the petition for review.

Lin, a native and citizen of the People’s Republic of China, attempted to enter the United States without inspection on January 19, 2001. She was determined to be inadmissible, and the Department of Homeland Security (“DHS”) initiated removal proceedings against her. The IJ held a hearing on April 12, 2005, and denied Lin’s applications. Lin appealed to the BIA, which affirmed, without opinion.

Lin testified to the following facts. In 1995, she married Chun Au Lin and moved into his home. The marriage failed, and the couple eventually separated, though they never divorced. Lin remained in her husband’s house and continued managing a noodle shop they had started. Lin began dating a new man, Jian An Wang, and he moved into her home in January 2000. In May 2000, Lin became pregnant. Lin testified that her neighbors were aware of this new relationship and that she was technically still married to her husband. Lin also testified that, although she did not apprise anyone other than Wang, her sister, and her doctor of her pregnancy, she often vomited at her noodle shop in plain view of her neighbors. In June 2000, two men from the village committee stormed Lin’s residence in the middle of the night. Lin heard one of them state, “you with other strange men having child.” Her boyfriend awoke and told Lin to escape. She was injured during the escape and had a miscarriage a few days later. Lin hid at her sister’s home for three or four months and then left China. Lin asserted that the village

committee came to her residence to force her to abort her pregnancy, and that she has shown past persecution based on their actions. She also argued that she had a well-founded fear of future persecution because she left China illegally. Lin submitted a letter from her sister stating that the police had arrested Wang and confiscated Lin's home.

The IJ determined that Lin had not met her burden of showing past persecution because she had failed to show that the village committee stormed her house in order to force her to abort her pregnancy. The IJ also determined that Lin had not demonstrated a well-founded fear of future persecution, as Lin had presented no evidence that anyone in China knew that she had left illegally. For the same reason, the IJ concluded that Lin had not demonstrated that, more likely than not, she would be tortured if forced to return to China.

Lin now argues that the IJ made an adverse credibility determination, and that he made legal and factual errors by concluding that she had failed to show that the village committee caused her to suffer a miscarriage, that she had failed to demonstrate economic persecution, and that she had failed to produce corroborating documents, such as proof of pregnancy.

We have jurisdiction to review a final order of removal of the BIA under 8 U.S.C. § 1252(a)(1). When the BIA affirms the IJ's decision without opinion, we review the IJ's opinion. Dia v. Ashcroft, 353 F.3d 228, 245 (3d Cir. 2003) (en banc). We review the IJ's determination regarding an applicant's fear of persecution under the substantial

evidence standard. Yu v. Att’y Gen., 513 F.3d 346, 348 (3d Cir. 2008). We will not disturb factual findings unless a reasonable fact-finder would be compelled to find that the IJ erred. Id.

An applicant for asylum bears the burden of establishing that she is unable or unwilling to return to her home country “because of [past] persecution or well-founded fear of [future] persecution on account of race, religion, nationality, membership in a particular social group, or political opinion[.]” 8 U.S.C. § 1101(a)(42)(A); see 8 C.F.R. § 1208.13(a); Abdille v. Ashcroft, 242 F.3d 477, 482 (3d Cir. 2001). “The [applicant] must show by credible, direct, and specific evidence an objectively reasonable basis for the claimed fear of persecution.” Chen v. Ashcroft, 376 F.3d 215, 223 (3d Cir. 2004).

We must reject Lin’s arguments. The IJ did not make an adverse credibility determination; instead, the IJ based his decision on Lin’s failure to meet her burden of proof. The IJ determined that Lin had not supported her claim that the village committee stormed her home in order to force her to abort her pregnancy. Lin testified that her neighbors could have seen her vomiting at her noodle shop, could have inferred she was pregnant, and could have notified the village committee. Lin also testified that her neighbors were aware that she was living in her husband’s house with a man who was not her husband. Although Lin testified that one of the men who stormed her home stated that Lin was living with “strange men” and having a child, a reasonable fact-finder would not be compelled to conclude that the village committee stormed her house in

order to force her to abort her pregnancy instead of for some other reason, such as her extramarital relationship.

Lin next argues that the IJ erred by concluding that she had not suffered economic persecution on account of her opposition to forced abortions. We have recognized that severe economic punishment may constitute persecution. Li v. Ashcroft, 400 F.3d 157 (3d Cir. 2005). In Li, we held that a Chinese national suffered persecution when he was subjected to severe economic punishment for violating China's population control policies; he had been fined twenty months' salary, had lost his health benefits and had suffered the confiscation of his household furniture and appliances. In addition, Li had asserted that, "it would be impossible" for him to find other employment because the government also had blacklisted him from any government employment. Id. at 168-69.

Lin testified at the merits hearing that she could have been fined for the unauthorized pregnancy, but that she was not fined. Lin also submitted a letter from her sister stating that government officials had arrested Wang and confiscated Lin's home, but as the IJ noted, Lin presented no evidence that the government took these actions on the basis of a protected category. Finally, Lin offered no evidence that she could not have found other employment had the government confiscated her noodle shop. In light of these facts, we cannot say that a reasonable fact-finder would be compelled to

conclude that Lin suffered economic persecution.¹

¹Lin also asserts that the IJ impermissibly required corroboration of certain facts, such as her pregnancy. An applicant's failure to corroborate may undermine her case if: (1) the facts at issue are facts for which corroboration is reasonable to expect; (2) the applicant failed to corroborate those facts; and (3) the applicant has not adequately explained her failure to do so. Abdulai v. Ashcroft, 239 F.3d 542, 554 (3d Cir. 2001). The IJ did not analyze Lin's failure to corroborate her pregnancy under Abdulai, but he did not base his decision on her failure to corroborate her pregnancy. Instead, the IJ denied Lin's applications because she failed to demonstrate that the village committee stormed her home for a reason that would constitute persecution on account of a protected category.