

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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Second Circuit: *Pan v. Holder*, No. 13-203-ag, 2015 WL 304199 (2d Cir. Jan. 26, 2015): The Second Circuit granted a petition for review of the Board's decision denying asylum from the Kyrgyz Republic. The petitioner credibly testified that he was beaten three times over a 4-year period and required 2 weeks of hospitalization following the last incident. He further testified that he did not call the police because doing so would have been futile and might, instead, have made his situation worse. The petitioner's aunt, who had been granted asylum in the U.S. on a similar claim, credibly testified that, "as usual," the Kyrgyz police were unresponsive to her following two similar incidents she suffered there in 2001 and 2004. Both the Immigration Judge and the Board concluded that the petitioner had not met his burden of establishing eligibility for asylum. The circuit court disagreed. In response to the Immigration Judge's conclusion that the petitioner was the victim of "hate crimes," which the Immigration Judge defined as "a criminal act that is not a sufficient basis to find persecution," the court held that "hatred of a group that manifests itself in violent crimes against members of that group would seem to be at the core of persecution." Addressing the Board's finding that the harm suffered by the petitioner did not rise to the level of persecution, the court considered it comparable to that which the Board found to be persecution in *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998), as did the Second Circuit in *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332 (2d Cir. 2006). The Board had given no explanation for its departure from its own precedent in this case. The court also addressed the findings of both the Immigration Judge and Board that the petitioner had not established that the Kyrgyz Government was unable or unwilling to provide protection, in part because the petitioner did not report his 2005 attack to the police. The court found sufficient evidence of record to support the petitioner's contention, including his own credible testimony that the police were corrupt, which was corroborated by the State Department's 2009 country report on human rights practices included in the record. Additionally, the court found that the Immigration Judge should have considered as evidence in support of the petitioner's "unwilling or unable" claim his aunt's credible testimony regarding police inaction in response to her own attack. The court vacated the denial of asylum and withholding of removal and remanded for further proceedings.