

03-4811(L)
Koudriachova v. Gonzales

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

August Term, 2006

(Argued October 30, 2006 Decided June 26, 2007)

Docket Nos. 03-4811(L), 03-41229(Con)

ELENA KOUDRIACHOVA, ALEXANDRE KOUDRIACHOV,
& ILIA KOUDRIACHOV,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney General,

Respondent.

Before:

CARDAMONE, WALKER, and RAGGI,
Circuit Judges.

Petitioner Alexandre Koudriachov petitions for review of the March 26, 2003 order of the Board of Immigration Appeals (BIA) dismissing his application for asylum. Koudriachov also petitions for review of the BIA's December 12, 2003 order denying his motion to reconsider its March 26, 2003 decision.

Petition granted, in part, and dismissed, in part.

MICHAEL P. DiRAIMONDO, Melville, New York (Marialaina L. Masi, Mary Elizabeth Delli-Pizzi, DiRaimondo & Masi, LLP, Melville, New York, of counsel), for Petitioners.

Norman Cairns, Assistant United States Attorney, Albuquerque, New Mexico (David C. Iglesias, United States Attorney, District of New Mexico, Albuquerque, New Mexico), filed a brief for Respondent.

1 CARDAMONE, Circuit Judge:

2 Petitioner Alexandre Koudriachov (petitioner or appellant)
3 seeks review of a March 26, 2003 decision and order of the Board
4 of Immigration Appeals (BIA or Board), denying his application
5 for asylum and withholding of removal. In re Koudriachova, No.
6 A 70 652 782 (B.I.A. Mar. 26, 2003), aff'g No. A 70 652 782
7 (Immig. Ct. N.Y. City Feb. 22, 1999).

8 The BIA, in a nonprecedential decision by a single member of
9 the Board, dismissed petitioner's appeal because it found he had
10 failed to show that he had been persecuted, or that he had a
11 well-founded fear of future persecution, on account of any of the
12 grounds protected by the Immigration and Nationality Act (INA).
13 Koudriachov also seeks review of the BIA's December 12, 2003
14 order denying his motion to reopen its March 26, 2003 decision.
15 In re Koudriachova, No. A 70 652 782 (B.I.A. Dec. 12, 2003).

16 Because the BIA's March 26, 2003 decision dismissing
17 petitioner's appeal contains significant ambiguities and
18 potential misunderstandings of the relevant legal standards, we
19 grant the petition for review and remand to the BIA for
20 additional investigation or explanation. We dismiss petitioner's
21 motion to reopen the December 12, 2003 order of the BIA as moot.

22 BACKGROUND

23 The BIA held that Koudriachov was ineligible for asylum even
24 if his testimony before the immigration judge (IJ) and in his
25 asylum application was wholly credible. Consequently, for
26 purposes of this appeal, we accept petitioner's account of the

1 events leading up to his application for asylum as truthful and
2 accurate. See Yan Chen v. Gonzales, 417 F.3d 268, 271-72 (2d
3 Cir. 2005).

4 Koudriachov is a native of the former United Soviet
5 Socialist Republic (Soviet Union or USSR). In his testimony
6 before the IJ, petitioner provided a harrowing and at times
7 brutal account of his experiences in the Soviet military and as a
8 neophyte Russian intelligence agent. His encounters with the
9 Soviet military began when he was 18 and, as part of a period of
10 mandatory military service, he was drafted into the USSR Ministry
11 of Internal Affairs (MVD). Petitioner explained that the MVD was
12 not a part of the regular Soviet army, but rather comprised a
13 special group of troops responsible for guarding secret military
14 objects and locations, controlling riots in prisons and student
15 towns, and fulfilling special assignments relating to terrorism
16 and saboteur groups. To prepare MVD soldiers for their unique
17 responsibilities, they were given extensive physical,
18 psychological, and ideological conditioning. Koudriachov found
19 objectionable many aspects of the MVD training program and
20 operations. In particular, he believes it morally wrong that
21 convicted criminals were brought to the MVD base so that soldiers
22 could practice combat techniques on them. Partially as a result
23 of his moral misgivings regarding these practices, Koudriachov
24 resolved not to pursue a military career.

25 He completed his term of military service in 1983 and
26 subsequently enrolled at the Leningrad Institute of Meteorology

1 (Institute) in what is now the City of St. Petersburg. Following
2 his participation in an international student festival,
3 Koudriachov was summoned to the regional headquarters of the
4 Komsomol, the youth wing of the Communist Party. There he met
5 with a Komsomol official who ordered him to write reports on his
6 interactions with foreigners. Koudriachov objected to writing
7 such reports, but agreed to do it after being threatened with
8 expulsion from the Institute. The purpose of the reports was
9 never explained, though petitioner suspected they were used to
10 obtain personal information about foreigners for the purpose of
11 blackmailing them. He believes he was selected for this task
12 because of his previous training with the Ministry of Internal
13 Affairs.

14 In his third year at the Institute Koudriachov was ordered
15 to report to an address, No. 4 Liteynyi, which was known to be
16 the headquarters of the KGB Intelligence Service in Leningrad
17 (St. Petersburg). There he met an individual referred to as
18 Vitaly Sergeevich. There is some confusion in the record as to
19 whether Sergeevich contacted Koudriachov on behalf of the MVD or
20 the KGB. We will refer to the agency as the KGB for purposes of
21 this opinion without resolving this factual question.

22 Sergeevich became Koudriachov's contact within the KGB. In
23 their initial meeting, Sergeevich informed the petitioner that
24 he had been selected to work as a spy for the Soviet government
25 and that he would eventually be attending a special school in

1 Moscow to prepare him for this work. Koudriachov had no desire
2 to become a KGB agent but realized he had no choice.

3 After graduating from the Meteorology Institute in 1989,
4 petitioner received an assignment from Sergeyevich to begin work
5 at a factory that employed many foreign specialists. Koudriachov
6 was told that he would work there for a few years before
7 attending spy school. Petitioner testified that throughout his
8 employment at the factory he met regularly with Sergeyevich to
9 report technical and personal information he had obtained from
10 his co-workers. While Koudriachov thought it immoral to betray
11 his co-workers in this way, he continued to divulge the
12 information because Sergeyevich threatened him by saying he would
13 be drafted into the army or subject to violence were he to
14 refuse.

15 As the date for petitioner's departure to spy school drew
16 near, he resolved to defect from the KGB and flee with his family
17 to the United States. In preparation for this momentous step,
18 Koudriachov tried to distance himself from Sergeyevich's
19 surveillance by moving to a different address in St. Petersburg.
20 However, very soon after he moved, he was attacked in the street
21 by two men who Koudriachov believes were sent by Sergeyevich.
22 Indeed, the day after the attack, the petitioner was summoned to
23 Sergeyevich's office and asked about his change of residence.

24 On September 20, 1992 Koudriachov and his family entered the
25 United States on visitor visas. In 1993 Koudriachov's wife,
26 Elena, applied for asylum and withholding of removal.

1 Koudriachov was selected for a Diversity Visa in April 1998 and
2 became eligible for adjustment of status to legal permanent
3 resident. Once he realized that his adjustment application
4 required him to request that the Russian government reissue or
5 register his passport, however, Koudriachov decided that he could
6 not pursue his adjustment application and had to pursue an asylum
7 claim instead. The IJ allowed Koudriachov to substitute his
8 asylum application for that of his wife's on October 28, 1998.

9 On February 22, 1999 the IJ rejected the petitioner's
10 application for asylum and withholding of removal, finding that
11 he was not credible. Koudriachov appealed the decision to the
12 BIA. On March 26, 2003 the BIA dismissed the appeal. The BIA
13 assumed the petitioner was credible, but found he had nonetheless
14 failed to establish that he was persecuted or fears persecution
15 on account of any ground protected under the INA. Ninety days
16 later, petitioner filed a timely motion to reopen with the BIA in
17 which he offered new evidence in the form of an expert affidavit
18 of a former KGB intelligence officer, Yuri Shvets, and, for the
19 first time, requested relief under CAT. On December 12, 2003 the
20 BIA denied the motion to reopen. Koudriachov now petitions for
21 review of the BIA's dismissal of his appeal from the IJ's
22 February 22, 1999 decision and the BIA's denial of his motion to
23 reopen. We grant the petition in part, and dismiss in part.

1 DISCUSSION

2 I Overview of Applicable Law

3 Where, as here, the BIA does not adopt the IJ's decision to
4 any extent, we review only the decision of the BIA. See Chen v.
5 Bureau of Citizenship & Immigration Servs., 470 F.3d 509, 513 (2d
6 Cir. 2006). We review de novo the BIA's interpretation of the
7 law as well as its application of the law to the facts. See
8 Tanov v. INS, 443 F.3d 195, 198 (2d Cir. 2006). When the BIA
9 interprets ambiguous language in the INA in a precedential
10 opinion issued by a three judge panel, we defer to that
11 interpretation so long as it is reasonable. See Rotimi v.
12 Gonzales, 473 F.3d 55, 56-58 (2d Cir. 2007) (per curiam); Chevron
13 U.S.A. Inc. v. Nat'l Res. Def. Council, Inc., 467 U.S. 837, 843-
14 44 (1984). Factual findings are reviewed under the substantial
15 evidence standard and are upheld when they are supported in the
16 record by reasonable, substantial, and probative evidence. See
17 Islami v. Gonzales, 412 F.3d 391, 396 (2d Cir. 2005).

18 To qualify as a "refugee," an asylum applicant must
19 establish that he or she has been persecuted in the past, or has
20 a well-founded fear of persecution in the future, on any one of
21 five statutorily protected grounds. See Edimo-Doualla v.
22 Gonzales, 464 F.3d 276, 281 (2d Cir. 2006). These grounds
23 include persecution on account of (1) race, (2) religion, (3)
24 nationality, (4) membership in a particular social group, or (5)
25 political opinion. 8 U.S.C. § 1101(a)(42). In this case,
26 Koudriachov asserts that he is eligible for asylum because he

1 faces persecution in Russia on account of his membership in the
2 particular social group of defected KGB intelligence agents and
3 on account of political opinions that will be imputed to him.
4 Such fear may be well-founded even if there is only a slight,
5 though discernible, chance of persecution. Yan Chen, 417 F.3d at
6 270.

7 II Membership in a Particular Social Group

8 A. General Principles

9 We have observed that of the five grounds protected under
10 the INA, membership in a "particular social group" is the least
11 well-defined on its face. See Hong Ying Gao v. Gonzales, 440
12 F.3d 62, 66-67 (2d Cir. 2006). Because the legislative history
13 of the INA does not shed much, if any, light on the meaning of
14 the phrase, courts have struggled to apply it. See Fatin v. INS,
15 12 F.3d 1233, 1239 (3d Cir. 1993) (Alito, J.) (detailing
16 legislative history of particular social group language and
17 noting lack of evidence regarding legislative aim). It is fair
18 to say that the resulting applications establishing refugee
19 status on this ground have not been entirely consistent. Among
20 the groups that the various courts of appeals have found, on the
21 one hand, to qualify as particular social groups under the INA
22 are: women sold into marriage who live in a part of China where
23 forced marriages are considered valid and enforceable, Hong Ying
24 Gao, 440 F.3d at 70; former employees of Columbia's Attorney
25 General's Office, Sepulveda v. Gonzales, 464 F.3d 770, 772 (7th
26 Cir. 2006); the educated, landowning class of cattle farmers

1 targeted by the Revolutionary Armed Forces of Columbia, Tapiero
2 de Orejuela v. Gonzales, 423 F.3d 666, 672 (7th Cir. 2005);
3 Somalian females, Mohammed v. Gonzales, 400 F.3d 785, 798 (9th
4 Cir. 2005); and gay men with female sexual identities in Mexico,
5 Hernandez-Montiel v. INS, 225 F.3d 1084, 1094 (9th Cir. 2000).
6 On the other hand, the following groups have been found not to
7 constitute particular social groups: uncorrupt Ukrainian
8 prosecutors who exposed government corruption, Pavlyk v.
9 Gonzales, 469 F.3d 1082, 1088 (7th Cir. 2006); anonymous
10 noncriminal informants, Castillo-Arias v. U.S. Att'y Gen., 446
11 F.3d 1190, 1197 (11th Cir. 2006); tattooed youth, Castellano-
12 Chacon v. INS, 341 F.3d 533, 549 (6th Cir. 2003); and children
13 from Northern Uganda, Lukwago v. Ashcroft, 329 F.3d 157, 171-72
14 (3d Cir. 2003).

15 B. BIA's Test In Matter of Acosta

16 In 1985, the BIA undertook to clarify the meaning of the
17 phrase particular social group in the seminal decision of Matter
18 of Acosta, 19 I. & N. Dec. 211, 232-34 (BIA 1985), overruled in
19 part on other grounds by INS v. Cardoza-Fonseca, 480 U.S. 421
20 (1987). In Matter of Acosta, the BIA explained that a particular
21 social group is one unified by some characteristic that is either
22 (1) "beyond the power of an individual to change" or (2) "so
23 fundamental to individual identity or conscience that it ought
24 not be required to be changed." Matter of Acosta, 19 I. & N.
25 Dec. at 233. The BIA explained that "[t]he shared characteristic
26 might be an innate one such as sex, color, or kinship ties, or in

1 some circumstances it might be a shared past experience such as
2 former military leadership or land ownership." Id.

3 Recently, in In re C-A-, 23 I. & N. Dec. 951 (BIA 2006), the
4 BIA reaffirmed the Acosta test and provided further clarification
5 regarding its proper application. See id. at 955-61. It
6 observed that Acosta does not require "a voluntary associational
7 relationship among group members" nor does it require an element
8 of "cohesiveness or homogeneity among group members." Id. at
9 956-57. However, a group's "visibility" -- meaning the extent to
10 which members of society perceive those with the relevant
11 characteristic as members of a social group -- is a factor in
12 determining whether it constitutes a particular social group
13 under the INA. Id. at 957, 959-60.

14 With regard to groups united by some shared past experience,
15 In re C-A- reiterated that shared past experiences do constitute
16 an immutable characteristic because a past experience cannot be
17 undone. See id. at 958; see also Matter of Fuentes, 19 I.& N.
18 Dec. 658, 662 (BIA 1988) (stating that an applicant's status "as
19 a former member of the national police" was "in fact an immutable
20 characteristic" that could serve as the basis of a particular
21 social group). Yet, not all applicants who can point to
22 membership in some group united by a shared past experience will
23 qualify for asylum. Rather, an asylum applicant's status as a
24 member of a particular social group -- and not some other factor
25 -- must be the central reason why that individual is targeted for
26 persecution. Thus, the BIA indicated that an individual who is

1 targeted due to her status as a former police officer may be
2 eligible for asylum as a member of the particular social group of
3 former police officers. See In re C-A-, 23 I. & N. Dec. at 958-
4 59; see also Matter of Fuentes, 19 I. & N. Dec. at 662. But, a
5 former police officer singled out for reprisal because of her
6 role in disrupting particular criminal activity would likely not
7 be eligible for asylum. In re C-A-, 23 I. & N. Dec. at 959. In
8 the second scenario, the persecution the applicant fears is not a
9 result simply of her status as a former police officer, but
10 rather is a result occasioned by other factors more specific to
11 the particular applicant.

12 In sum, the BIA has adopted a broad definition of particular
13 social group, one that encompasses groups united by a shared past
14 experience. Nonetheless, in determining whether an applicant
15 ultimately qualifies for asylum, courts must examine closely
16 whether the persecution the applicant fears derives primarily
17 from his or her status as a member of that particular social
18 group or whether it derives primarily from some other factor.

19 C. BIA's Test is Reasonable

20 The BIA's interpretation of the ambiguous phrase particular
21 social group is reasonable and merits our deference under
22 Chevron. See Hong Ying Gao, 440 F.3d at 69-70 (stating that the
23 BIA in Acosta adopted a reasonable interpretation of the
24 statutory language); see also Ucelo-Gomez v. Gonzales, 464 F.3d
25 163, 171 (2d Cir. 2006) (per curiam) (observing that the BIA in
26 Acosta provided guidance as to what constitutes a particular

1 social group). Our decision in Gomez v. INS, 947 F.2d 660 (2d
2 Cir. 1991), has been interpreted by some other circuits as laying
3 down a test for what constitutes a particular social group that
4 is at odds with the Acosta test. See, e.g., Niang v. Gonzales,
5 422 F.3d 1187, 1199 (10th Cir. 2005); Castellano-Chacon, 341 F.3d
6 at 546 (6th Cir. 2003); Mya Lwin v. INS, 144 F.3d 505, 512 (7th
7 Cir. 1998). However, we have recently clarified that the best
8 reading of Gomez is one that is consistent with Acosta. See Hong
9 Ying Gao, 440 F.3d at 69-70. Gomez involved a Salvadorian woman
10 who applied for asylum on the grounds that she had been
11 repeatedly raped as a youth by Guerrilla forces. See Gomez, 947
12 F.2d at 662. We denied her petition because there was "no
13 indication that [the petitioner] will be singled out for further
14 brutalization on [the basis of her past victimization]." Id. at
15 664. In Hong Ying Gao, we stated that broad dicta in Gomez's
16 general statement of the law should not be read "as setting an a
17 priori rule for which social groups are cognizable." Hong Ying
18 Gao, 440 F.3d at 69. Rather, Gomez should be read as standing
19 for the proposition that an individual will not qualify for
20 asylum if he or she fails to show a risk of future persecution on
21 the basis of the membership claimed in the particular social
22 group. Id. This reading of Gomez gives proper deference to the
23 BIA's reasonable interpretation of the particular social group
24 statutory language and accords with the approach taken by our
25 sister circuits. See Castillo-Arias, 446 F.3d at 1196 (11th Cir.
26 2006); Thomas v. Gonzales, 409 F.3d 1177, 1184-87 (9th Cir. 2005)

1 (en banc), vacated on other grounds, 547 U.S. 183 (2006) (per
2 curiam); Niang, 422 F.3d at 1199 (10th Cir. 2005); Silva v.
3 Ashcroft, 394 F.3d 1, 5 (1st Cir. 2005); Castellano-Chacon, 341
4 F.3d at 546-48 (6th Cir. 2003); Mya Lwin, 144 F.3d at 512 (7th
5 Cir. 1998); Fatin, 12 F.3d at 1239-40 (3d Cir. 1993).

6 D. Acosta Test Applied to the Present Case

7 We analyze now whether the BIA correctly applied the law in
8 this case by looking at whether the BIA's decision here was
9 compatible with its own reasonable and precedential decision in
10 Acosta. Here, the BIA concluded that Koudriachov did not belong
11 to a particular social group because the evidence did not
12 establish that defected KGB agents maintain "any associational
13 relationship" or share "any recognizable and discrete
14 characteristic." While the basis of the BIA's holding is
15 somewhat unclear, it appears that the BIA may have misapplied its
16 own Acosta test in reaching this determination. The Board's
17 observation that Koudriachov presented no evidence that defected
18 KGB agents associate with one another is correct; however, it is
19 also not on point. No such associational relationship is
20 required under Acosta. As the BIA recently clarified in In re C-
21 A-: "Under Acosta, we do not require a 'voluntary associational
22 relationship' among group members." In re C-A-, 23 I. & N. Dec.
23 at 956-57.

24 The Board also noted that the group of defected KGB agents
25 lack "any recognizable and discrete characteristic" but failed to
26 explain why the shared past experience of having served in and

1 defected from the KGB does not constitute such a characteristic.
2 Under Acosta and In re C-A-, it is clear that a shared past
3 experience, such as prior military leadership, can be the type of
4 immutable characteristic that will characterize a particular
5 social group. See Acosta, 19 I. & N. Dec. at 233 (listing a
6 "shared past experience such as former military leadership" as an
7 example of a "shared characteristic" that unites a particular
8 social group); In re C-A-, 23 I. & N. Dec. at 958. There is no
9 additional requirement that members of a group share an "element
10 of 'cohesiveness' or homogeneity." In re C-A-, 23 I. & N. Dec.
11 at 957.

12 It is not our task to determine, in the first instance,
13 whether the group of defected KGB agents constitute a particular
14 social group. Rather, in accordance with the Supreme Court's
15 mandate in Gonzales v. Thomas, 547 U.S. 183, 126 S. Ct. 1613
16 (2006) (per curiam), we remand to the BIA for additional
17 investigation or explanation with respect to the question of
18 whether defected KGB agents form a particular social group under
19 the INA. See id. at 1615 (stating that "the proper course,
20 except in rare circumstances, is to remand to the agency" for an
21 initial determination of whether a group of persons falls within
22 the statutory term "particular social group"). The Board may
23 conclude that defected KGB agents -- despite their shared past
24 experiences -- do not constitute a particular social group. But,
25 if such is the Board's finding, it must make its reasons for that
26 finding clear and explain how the finding comports with

1 established BIA precedent so as to afford meaningful appellate
2 review. See Poradisova v. Gonzales, 420 F.3d 70, 77 (2d Cir.
3 2005) ("Despite our generally deferential review of IJ and BIA
4 opinions, we require a certain minimum level of analysis from the
5 IJ and BIA opinions denying asylum, and indeed must require such
6 if judicial review is to be meaningful.").

7 Importantly, if the BIA finds that defected KGB agents do
8 constitute a particular social group under the INA, that alone
9 will not establish Koudriachov's eligibility for asylum. Rather,
10 petitioner must establish two additional elements: (1) that he
11 has a well-founded fear of persecution, and; (2) that he is a
12 target of persecution primarily on account of his status as a
13 member of the group of defected KGB agents and not on account of
14 some other factor. See 8 U.S.C. § 1101(a)(42)(A); see also In re
15 C-A-, 23 I. & N. Dec. at 958-59.

16 III Persecution on the Basis of a Political Opinion

17 The Board also found appellant had failed to demonstrate
18 that he has a reasonable fear of persecution on account of a
19 political opinion. To establish persecution on account of a
20 political opinion, an asylum applicant must show that the
21 persecution arises from his or her own actual or imputed
22 political opinion. See INS v. Elias-Zacarias, 502 U.S. 478, 482
23 (1992); Chun Gao v. Gonzales, 424 F.3d 122, 129 (2d Cir. 2005).
24 It is not sufficient that the persecutor acts simply out of a
25 generalized political motive. Elias-Zacarias, 502 U.S. at 482.
26 Rather, "an applicant for refugee status must establish a fear of

1 reprisal that is different in kind from a desire to avoid the
2 exactions (however harsh) that a foreign government may place
3 upon its citizens." Xin-Chang Zhang v. Slattery, 55 F.3d 732,
4 751 (2d Cir. 1995), abrogated on other grounds by statute, 8
5 U.S.C. § 1101(a)(42).

6 As noted, we have adopted the widely endorsed proposition
7 that "an imputed political opinion, whether correctly or
8 incorrectly attributed, can constitute a ground of political
9 persecution within the meaning of the Immigration and Nationality
10 Act." Chun Gao, 424 F.3d at 129. We explained that the relevant
11 question is not whether an asylum applicant subjectively holds a
12 particular political view, but instead whether the authorities in
13 the applicant's home country perceive him to hold a political
14 opinion and would persecute him on that basis. See id.

15 In this case, the BIA ruled as follows:

16 Although the respondent testified that
17 [Sergeyevich] believed erroneously that he
18 wanted to defect, nothing in the respondent's
19 testimony revealed that [Sergeyevich]
20 attributed any political opinion to the
21 respondent's desire. Consequently, the
22 respondent failed to establish that he held a
23 political opinion or that one was imputed to
24 him. For that reason, the respondent failed
25 to establish a nexus between the harm he
26 suffered and his political opinion and
27 thereby failed to establish eligibility for
28 relief on the basis of his political opinion.
29

30 From this language, it appears the Board may have inappropriately
31 limited its analysis to the question of whether Koudriachov was
32 persecuted, while in Russia, on account of his political opinion.
33 This is not the claim petitioner makes. Koudriachov has

1 consistently maintained that he will be persecuted if he returns
2 to Russia because the authorities will view his defection from
3 the KGB as a sign of disloyalty to the established regime. He
4 explained: "[T]hese people don't forgive the ones who defect.
5 They consider them traitors to their mother land."

6 Moreover, the BIA's conclusion that nothing in petitioner's
7 testimony demonstrated that Sergeyevich attributed any political
8 opinion to Koudriachov's desire to defect suggests that it
9 focused only on whether Sergeyevich imputed a political opinion
10 to petitioner. Koudriachov's claim, however, is not that narrow.
11 He does not aver that his fear of persecution is limited to
12 Sergeyevich; rather, Koudriachov fears that, if returned to
13 Russia, other government actors will subject him to persecution
14 on account of the adverse political opinion they will impute to
15 him. Consequently, we must remand this case for the additional
16 purpose of allowing the Board to determine whether Koudriachov
17 has a well-founded fear of persecution on account of any
18 political opinion that may be imputed to him because of his
19 defection.

20 CONCLUSION

21 For the foregoing reasons, we grant the petition for review
22 and remand this case to the BIA for additional explanation and
23 investigation into (1) whether the group of defected KGB agents
24 constitute a particular social group under the INA and whether
25 petitioner has a well-founded fear of future persecution based on
26 his membership in such a group, and (2) whether the petitioner

1 has a well-founded fear of persecution on account of any
2 political opinions that may be imputed to him as a result of his
3 defection. The petition for review of the BIA's December 12,
4 2003 decision denying the motion to reopen is dismissed as moot.

5 Petition granted in part, and dismissed in part.