



OPPOSITION TO CORRUPTION AS A POLITICAL OPINION SUPPORTING A GRANT OF ASYLUM: RUQIANG YU V. HOLDER AND ITS PREDECESSORS

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On September 7, 2012, the Court of Appeals for the Second Circuit issued a precedential opinion in [Ruqiang Yu v. Holder, No. 11-2546-ag](#), reaffirming that opposition to corruption may under some circumstances qualify as a political opinion upon which a grant of asylum can be based under U.S. immigration law. According to *Ruqiang Yu*, this may be the case even if an asylum applicant has failed to prove that similar corruption exists elsewhere in his or her native country beyond the specific context in which he or she opposed it.

Ruqiang Yu was initially denied asylum by an Immigration Judge (IJ) and the Board of Immigration Appeals (BIA) despite their acceptance of his testimony that he had been mistreated after opposing corruption at the state-owned factory where he worked in China. As the Court described the facts:

The IJ found that Yu credibly testified that, while an employee and a team leader at a state-run airplane factory in Shanghai, his employer corruptly refused to pay the wages of workers on his team and that, when Yu's efforts to aid the workers and to bring the corruption to the attention of government officials was discovered, he was jailed and later fired.

Ruqiang Yu, slip op. at 2. Despite these findings, the BIA “concluded that Yu failed to establish that his actions ‘constitute a political challenge directed against a governing institution’ since he was objecting to ‘aberrational’ corruption by individuals.” *Id.* at 5. “Yu’s actions, the BIA reasoned, were “a personal dispute against his individual employers for misusing funds he

believed should have gone toward the unpaid wages of the laborers on whose behalf he sought to intervene." *Id.*

The BIA and the IJ in *Ruqiang Yu* appear to have acknowledged that under Second Circuit case law, "opposition to government corruption may constitute a political opinion, and retaliation against someone for expressing that opinion may amount to political persecution." [Castro v. Holder, 597 F.3d 93, 100 \(2d Cir. 2010\)](#). As the Second Circuit had said in case law to which it appears that the BIA was referring in its decision when it set out the criteria that Mr. Yu purportedly had not met:

In considering whether opposition to corruption constitutes a political opinion, "the important questions ... are whether the applicant's actions were 'directed toward a governing institution, or only against individuals whose corruption was aberrational,' and "whether the persecutor was attempting to suppress a challenge to the governing institution, as opposed to isolated, aberrational acts of greed or malfeasance."

Castro, 597 F.3d at 101 (quoting [Yueqing Zhang v. Gonzales, 426 F.3d 540, 548 \(2d Cir. 2005\)](#), and [Mamouzian v. Ashcroft, 390 F.3d 1129, 1135 \(9th Cir. 2004\)](#)).

Before the Second Circuit's decision in *Ruqiang Yu*, but after the Second Circuit's decisions in *Castro* and *Yueqing Zhang*, the BIA had also recognized in a published opinion that "in some circumstances, opposition to state corruption may provide evidence of an alien's political opinion or give a persecutor reason to impute such beliefs to an alien." [Matter of N-M-, 25 I&N Dec. 526 Matter of N-M-, 25 I&N Dec. 526, 528 \(BIA 2011\)](#). In *Matter of N-M-*, the BIA cited the Second Circuit's *Zhang* decision, but found that at least with regard to asylum applications subject to the REAL ID Act because they were filed after May 11, 2005, more than retaliation for opposing acts of corruption linked in some way to a political system was required:

Since the passage of the REAL ID Act, a showing of retaliatory harm for exposing acts of corruption, coupled with evidence that the corruption is in some way linked to a political system, would appear insufficient to demonstrate that a victim's anticorruption beliefs are "one central reason" for retaliation against him. Instead, an alien must persuade the trier of fact not just that the alleged persecutor was motivated in some measure by the alien's

actual or imputed political belief, but that the protected trait was “one central reason” for the persecution.

Matter of N-M-, 25 I&N Dec. at 532.

The BIA in *Matter of N-M-* described three factors that an IJ could use to determine whether actual or imputed political opinion was a central reason for retaliation against one who had expressed an anticorruption belief. The first is “whether and to what extent the alien engaged in activities that could be perceived as expressions of anticorruption beliefs” such as whether the “alien denounced corruption in public or at work, published articles criticizing governmental corruption, or organized fellow victims of government extortion against this behavior.” *Matter of N-M-*, 25 I&N Dec. at 532. The second factor is “any direct or circumstantial evidence that the alleged persecutor was motivated by the alien’s perceived or actual anticorruption beliefs,” such as “statements indicating that the persecutor viewed the alien as a political threat or subversive and was motivated as such.” *Id.* The third factor described by BIA in *Matter of N-M-*, citing the Second Circuit’s decision in *Castro*, looks to whether corruption was pervasive in an asylum applicant’s country:

*An Immigration Judge should also consider evidence regarding the pervasiveness of government corruption, as well as whether there are direct ties between the corrupt elements and higher level officials. Where the alien threatens to expose the corrupt acts of rogue officials acting without the support of the governing regime, it seems less likely that the act would be perceived as politically motivated or politically threatening. However, if corruption is entrenched in the ruling party, a challenge to the corrupt practices of this party may be more likely to represent a challenge to the political position of the ruling party, and not just the financial standing or reputation of a small group of corrupt officials. See *Castro v. Holder*, 597 F.3d 93, 104 (2d Cir. 2010) Whether the governing regime, and not just the corrupt individuals, retaliates against an alien for expressing anticorruption beliefs is relevant to this inquiry.*

Matter of N-M-, 25 I&N Dec. at 533.

The Second Circuit in *Ruqiang Yu* concluded that the BIA had applied an

erroneous legal standard in determining whether the corruption opposed by an asylum applicant was “aberrational” for purposes of the test that the Second Circuit itself had set out in *Yueqing Zhang* and *Castro*. As the Second Circuit reminded the BIA: “Because the form and nature of political opposition can vary widely, the assessment of when opposition to corruption becomes an expression of a political opinion involves a context-specific, case-by-case determination.” *Ruqiang Yu*, slip op. at 7. For several reasons, the Second Circuit did not find the BIA to have performed such a determination properly in Yu’s case:

First, we note that the BIA’s factual conclusion that Yu opposed “aberrational” corruption is not supported by the record. Conduct is “aberrational” if it is “a deviation or departure from what is normal, usual, or expected” or something that is “abnormal, diverging from the norm.” Oxford English Dictionary (June 2012, online ed.) (defining “aberration”). Yu’s application indicated that “quite a few . . . workers in other groups did not get paid for a few months,” and that he personally escorted ten of them to confront factory officials. These facts indicate that the non-payment of wages was apparently recurring, not aberrational.

Second, the appropriate inquiry does not focus simply on the number of corrupt acts, but on an assessment of the overall climate and context in which the opposition takes place. Where opposition to corruption transcends self-protection and represents a challenge to state-sanctioned modes of official behavior, a petitioner may be eligible for asylum. . . .

The fact that the protests organized by Yu challenged corruption at a single workplace does not render the corruption categorically aberrational without regard to the nature of Yu’s conduct. In several ways, Yu’s conduct is typical of political protest (and may have been perceived as such by the authorities). Thus, the record indicates that Yu had no personal, financial motive to oppose the corruption, undertook to vindicate the rights of numerous other persons as against an institution of the state (a state-owned factory), and suffered retaliation by an organ of the state – the police.

Id. at 7-8.

The single-workplace issue, the Second Circuit noted, was “sharply presented” because Yu had “failed to present . . . evidence of more broad-based corruption at state-owned factories in his native land.” *Id.* at 8 n.2. Nonetheless, the IJ and BIA erred by not “assess Yu’s claim in its full factual context” to determine whether Yu’s activities were “a challenge to the legitimacy of the government’s entrenched modes of conduct”, or whether the authorities had imputed a political opinion to him (which could be a basis for an asylum claim even if he did not hold such an opinion). *Id.* at 8-10.

One should not lose sight even after *Ruqiang Yu* of the importance of submitting evidence of systemic, country-wide corruption in an asylum applicant’s home country, if possible. This author recently represented a client whose application for asylum was granted by the New York Asylum Office based on past persecution and a fear of future persecution relating to his opposition to corruption at a Russian state-owned enterprise (and who has agreed that this limited information about his case can be made public). In that case, we submitted voluminous evidence of widespread corruption in Russia. We would do the same today: even within the Second Circuit and even after *Ruqiang Yu*, it is still highly advisable if at all possible to submit such background evidence regarding the prevalence of corruption in the country of feared persecution, because it will assist greatly in showing that the applicant’s claim relates to “a challenge to the governing institution” under *Yueqing Zhang* and *Castro*. Outside the Second Circuit, evidence of pervasive corruption throughout the country of feared persecution is even more important, under the BIA’s reasoning in *Matter of N-M*.

However, *Ruqiang Yu* teaches that at least within the Second Circuit (and perhaps elsewhere if the BIA or other Courts of Appeals accept the Second Circuit’s reasoning), some claims of asylum based on opposition to corruption may be viable even if evidence regarding country-wide corruption is for some reason unavailable. In cases where reliable background evidence regarding the corruption in a particular country or region simply cannot be obtained despite vigorous efforts, applicants and attorneys need not despair.