**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals*
*Office of the Clerk*

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**Name: ROMEIKE, UWE ANDREAS JOSEF** **A087-368-600**
**Riders: 087-368-601 087-368-602 087-368-603 087-368-604 087-368-605 087-368-606**

**Date of this notice: 5/4/2012**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Creppy, Michael J.
Grant, Edward R.
Mullane, Hugh G.

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Files: A087 368 600 - Memphis, TN
A087 368 601
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Date: MAY - 4 2012

In re: UWE ANDREAS JOSEF ROMEIKE
HANNELORE ROMEIKE
DANIEL ROMEIKE
LYDIA JOHANNA ROMEIKE
JOSUA MATTHIAS ROMEIKE
CHRISTIAN IMMANUEL ROMEIKE
DAMARIS DOROTHEE ROMEIKE

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANTS: William Henry Humble, III, Esquire

AMICUS CURIAE FOR APPLICANTS: Lori Windham, Esquire[1]

ON BEHALF OF DHS: Jerry A. Beatmann
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The Department of Homeland Security (DHS) appeals the Immigration Judge's January 26, 2010, decision granting the applicants asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The applicants and an amicus have filed briefs in opposition. The appeal will be sustained.

We review findings of fact, including the determination of credibility, under a clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, including whether the parties have met the relevant burden of proof, and issues of discretion under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii). The applicants' application was filed after May 11, 2005, and therefore is governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

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[1] An entry of appearance and amicus brief in support of the applicants were also filed by John Anthony Simmons, Sr., of the Family Research Council, although no formal request to appear as amicus was filed.

The applicants are a family, namely parents and five children, who are natives and citizens of Germany.[2] They seek asylum in or withholding of removal from the United States on the ground that they were and will be persecuted in Germany because the parents choose to homeschool their children in contravention of German law.

The facts related to the family's experiences in Germany are not disputed. The adult applicants began homeschooling their children in September 2006 primarily for religious reasons. Their decision was in knowing violation of the compulsory school attendance law.[3] Several times in the following months, the applicants were warned verbally and in writing that they were in violation of the compulsory school attendance law. They were fined. Police forcibly escorted the children to school one day. The adult applicants were warned they could lose custody of their children if they continued to refuse to send their children to school. Legal proceedings resulted in the adult applicants being found guilty of violating the compulsory school attendance law. By the time the applicants left Germany, their fines had risen to approximately 7,000 Euros.

The Immigration Judge found the witnesses, including the adult applicants, credible. The Immigration Judge held that the applicants did not suffer past persecution, and thus are not entitled to a presumption of a well-founded fear of future persecution. The Immigration Judge also held the applicants did not establish a claim based on political opinion. The applicants did not appeal these aspects of the Immigration Judge's decision, so we deem those issues waived. The sole issue on appeal is whether they have shown a well-founded fear of persecution in the future on account of religion or membership in a particular social group.

The Board's adjudication of this matter does not involve an assessment of the merit of compulsory school attendance laws or the merit of homeschooling. The German government has the authority to require school attendance and enforce that requirement with reasonable penalties (see Exh. 2, Tab E at 120 (describing decision by European Court of Human Rights upholding German school attendance law)). The compulsory school attendance law at issue in this case is a law of general application. As such, its enforcement and any prosecution under it are not persecution unless the law is selectively enforced or one is punished more severely on account of a protected ground, so as to indicate that application of the law is a pretext for persecution. *See Stserba v. Holder*, 646 F.3d 964, 977-78 (6th Cir. 2011) (addressing generally applicable Estonian law invalidating Russian educational degrees); *see also Li v. Att'y Gen. of the U.S.*, 633 F.3d 136 (3d Cir. 2011); *Long v. Holder*, 620 F.3d 162 (2d Cir. 2010).

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[2] The lead applicant is the husband (A087 368 600), and the other applicants and derivative beneficiaries are his wife and children. Section 208(b)(3) of the Act, 8 U.S.C. § 1158(b)(3); 8 C.F.R. § 1208.3(a). We note that the asylum claims of the lead applicant's wife and children rest upon his claim. They have not filed their own claims for withholding of removal or for protection under the Convention Against Torture. We further note the lead applicant's wife and children are not entitled to assert a derivative claim for withholding of removal or CAT protection. *See Matter of A-K-*, 24 I&N Dec. 275, 279 (BIA 2007).

[3] The text of the specific compulsory school attendance law(s) applicable to the applicants is not in the Record of Proceedings.

The record does not show that the compulsory school attendance law is selectively applied to homeschoolers like the applicants. The applicants argue that pretext is seen in the fact that enforcement is not sought in the same way against truants, and that truants are allowed to be schooled at home or through correspondence school. The only evidence that truants are treated more leniently is two sentences in an affidavit by a German lawyer, Gabriele Eckermann, who represents homeschoolers. She states her opinion that truant children are treated different from homeschooled children because "[i]n some cases" such children are allowed to participate in correspondence school or other home-based learning (Exh. 2, p. 409, ¶14).[4] This anecdotal evidence is not sufficient to establish that the compulsory school attendance law is applied selectively to homeschoolers and is not applied in the same way to truants. Even when truants are allowed to participate in distance learning, the program is administered by the school, not by the child's parents (Tr. at 47-48). Truants are not allowed to be homeschooled in the manner the applicants homeschooled their children.

The fact that some parents receive exemptions from the compulsory school attendance law does not indicate that the law is selectively applied. The record indicates that parents whose occupations preclude them from establishing a firm residence may be exempted from the compulsory school attendance law (*see* Exh. 2, Tab H at 259). It is not clear whether such parents are permitted to homeschool their children or whether other options such as correspondence school or government-authorized tutors are employed. In any event, such exemptions simply recognize the impracticability of consistent public school attendance for some children.

The record also does not demonstrate that the burden of the compulsory school attendance law falls disproportionately on any religious minority, and specifically on the applicants' practice of Christianity. The applicants have not shown that most homeschoolers share their religious beliefs, or that most parents with their religious beliefs choose to homeschool. Homeschoolers in Germany are not a homogenous group. Parents have varied reasons for wanting to homeschool. Not all such reasons are religious-based. German homeschoolers include parents, like the applicants, who think public schools are too liberal and antiauthoritarian, as well as parents who think public schools are too rigid and authoritarian (Exh. 2, Tab J at 397; Tr. at 58-59).

Nothing in the record suggests that the compulsory school attendance law was or will be enforced against the applicants because of their opposition to the law's policy. Rather, the law is being enforced because they are violating it. There is no indication that officials are motivated by anything other than law enforcement. These factors reflect appropriate administration of the law, not persecution.

Nor does the record demonstrate that homeschoolers are more severely punished than others whose children do not comply with the compulsory school attendance law. The applicant's expert witness testified that the punishment the applicants fear most, loss of custody of their children, is a

[4] The expert witness's similar testimony about the different treatment truants receive simply cites Ms. Eckermann and unnamed "other scholars" as the source for his knowledge (Tr. at 46-48).

penalty that is also applied to parents of truants (Tr. at 48).[5] The record does not contain any specific examples of truancy cases to show that parents of truants received smaller fines compared to homeschooling parents.

The applicants also argue that the compulsory school attendance law is categorically pretextual because its purpose is socialization, not education. A judicial ruling in the record describes one of the goals of compulsory school attendance as "counteracting the development of religiously or philosophically motivated 'parallel societies.'" (Exh. 2, Tab. H at 258). The ruling goes on to explain that, "[d]ialogue with such minorities is an enrichment for an open pluralistic society" so children can develop a "sense of experienced tolerance . . . . The presence of a broad spectrum of convictions in a classroom can sustainably develop the ability of all pupils in being tolerant and exercising the dialogue that is a basic requirement of [the] democratic decision-making process." *Id*; *see also* Exh. 2, Tab H at 271, 298.

These statements do not reflect a governmental objective to restrict or suppress religious or philosophical practice. *See Li v. Att'y Gen. of the U.S.*, *supra*, 633 F.3d at 144 (relying on the fact that no record evidence suggested law at issue was intended to silence or punish political dissent). The applicants are free to practice their religion and provide their children any religious or educational instruction they choose. The law simply does not permit them to do so to the exclusion of school attendance. One need not agree with this specific law or its method of enforcement to conclude that socialization of children is a legitimate, nonpretextual government objective that is not inherently hostile to or persecutory of those who advocate less intrusive means of socialization.

The Immigration Judge's findings that "animus and vitriol" underlie the compulsory school attendance law and that the German government is enforcing a "Nazi era law against people that it purely seems to detest" are clearly erroneous (I.J. at 14). To the contrary, German judicial assessment of compulsory school attendance laws is that their purpose includes supporting tolerance and pluralism (Exh. 2, Tab H at 258, 271, 298). As previously discussed, the record does not show that the law is selectively enforced. The record does not contain the text or legislative history of the compulsory school law at issue to support the inflammatory suggestion that it is a Nazi-era law. This case does not involve a totalitarian government enforcing separation of children from parents for the purpose of ideological indoctrination.

It is clear that the applicants homeschool for religious reasons; however, for the foregoing reasons, they have not shown that their religion, their religious-based desire to homeschool, or their status as homeschoolers is a central reason that the compulsory school attendance law was or will be enforced against them. *See* section 208(b)(1)(B)(i) of the Act.

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[5] The witness testified that he is unaware of any parents of truants being criminally prosecuted as some homeschooling parents have been (Tr. at 48). That difference does not necessarily reflect selective enforcement or imposition of disparate punishments. It is possible that parents of truants lack a mens rea required for criminal prosecution, as truants have been described as children who skip school without their parents' knowledge or consent. Without the text of the statute in the record, we cannot further assess this factor.

Even if the applicants had shown that the compulsory school attendance law was selectively enforced against them, or they were punished disproportionately, on account of their status as homeschoolers, we conclude that German homeschoolers are not a particular social group cognizable under the Act. German homeschoolers lack the social visibility required to constitute a particular social group. *See Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006). The United States Court of Appeals for the Sixth Circuit has endorsed the social visibility requirment. *See, e.g., Kante v. Holder*, 634 F.3d 321 (6th Cir. 2011); *Al-Ghorbani v. Holder*, 585 F.3d 980, 994 (6th Cir. 2009).[6] While the record contains some evidence of association and networking among homeschoolers, there is not sufficient evidence that society at large is generally aware of such association to consider homeschoolers a group.[7] While the applicants have professed homeschooling to be fundamental to their conscience, the strength of their conviction does not make homeschoolers a social group perceived by others as such.

German homeschoolers also lack the particularity required to be a cognizable social group under the Act. *See Matter of S-E-G-*, *supra*, at 584-86. The group is amorphous. A family may choose to homeschool one child yet send another child to school, or may homeschool during certain school years and send the child to school other years. One becomes or ceases to be a member of the group by a mutable choice, viz. sending one's children to school or not. Additionally, in relation to the population of Germany, the estimated number of 500 homeschooling families is quite small (Exh. 2, Tab F at 121). Their reasons for homeschooling are disparate (Exh. 2, Tab J at 397; Tr. at 58-59). These factors render homeschoolers too indistinct a group to be a particular social group.

The statutory definition of "refugee" requires persecution on account of one of the grounds specified therein, and does not include all persons who suffer punishment for acts of conscience. *Foroglou v. INS*, 170 F.3d 68, 71 (1st Cir. 1999) (addressing claim of conscientious objector to Greek military service). Having not shown any pretext in the enforcement of the compulsory school attendance law against them, the applicants did not establish a well-founded fear of persecution or the higher threshold of a clear probability of persecution. Accordingly, we will sustain the DHS's appeal, and order the applicants' removal from the United States to Germany.

ORDER: The appeal is sustained.

FURTHER ORDER: The applicants are ordered removed from the United States to Germany.

Edward R. Grant

FOR THE BOARD

[6] The element of social visibility does not mean ocularly visible, as the Immigration Judge's decision suggests (I.J. at 15).

[7] This is not to suggest that homeschoolers are not a particular social group in other countries (including the United States).