

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Memphis, Tennessee

File Nos.: A 087 368 600
A 087 368 601
A 087 368 602
A 087 368 603
A 087 368 604
A 087 368 605
A 087 368 606

January 26, 2010

In the Matter of)
)
UWE ANDREAS JOSEF ROMEIKE)
HANNELORE ROMEIKE)
DANIEL ROMEIKE)
LYDIA JOHANNA ROMEIKE)
JOSHUA MATHIAS ROMEIKE)
CHRISTIAN IMMANUEL ROMEIKE)
DAMARIS DOROTHY ROMEIKE) IN ASYLUM PROCEEDINGS
)
Respondents)

CHARGE:

APPLICATIONS:

ON BEHALF OF RESPONDENTS:

William Henry Humble, III, Esquire

ON BEHALF OF DHS:

John F. Cook, II
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

The Romeikes are a family from Germany that arrived in the United States August 17, 2008, and were admitted under the visa waiver program. They failed to depart within the 90 day time limit of that program.

The asylum application is based primarily on religion, but

also political opinion and particular social group. The background facts are as follows. The two adult Romeikes, Uwe and Anna Laura, are both music teachers. In the summer of 2006, they made the decision to take their children out of school and to homeschool their children. The children involved in that particular decision were Daniel and Lydia, who were currently in school, and Joshua who was about to start school. The adult respondents are both 38 years of age, Daniel is 12, Lydia is 11, Joshua is 9, Christian is 7, and Damaris is 2 years of age.

The reasons they decided to homeschool their children was the fear that there were negative influences in school. They felt that school engendered a negative attitude toward family and parents and would tend to turn children against Christian values, as the Romeikes saw it.

Specifically, the Romeikes objected to the teaching of evolution, the endorsement of abortion and homosexuality, the implied disrespect for parents and family values, teaching of witchcraft and the occult, ridiculing Christian values and sex education.

Although the Court is still not exactly sure what the witchcraft and occult studies are, in German public schools, the other aspects are fairly typical criticisms of public schools in the United States as well.

The Romeikes decided to enroll their children in the Philadelphia School. The Philadelphia school was, at one time, a

government sanctioned private school, but it no longer has classes as such, it operates as a private Christian correspondence school, assisting homeschoolers throughout Germany. Daniel, Lydia and Joshua were enrolled in the Philadelphia School.

Once the notification to the local school was received, respondents began to get attention from the government of their municipality. They actually cancelled the enrollment of their three children on September 15, 2006, and on September 20, 2006, Principal Rose came to visit them. Mr. Rose informed them that homeschooling is illegal in Germany and on the next day after they informed him that they were actually attending the Philadelphia School, he returned and told them that the Philadelphia School is not an approved government school.

October 9, 2006, they got a letter from the mayor informing them that they would suffer a fine of about \$45 per child, per day, and, if necessary, the government would use force. The Romeikes ignored that. On October 20, 2006, two armed police officers came to the house to take the children to school. This produced a very upsetting scene for the children, the children were crying and were upset, as the three children that were of school age were herded off to go to school. Apparently, the police had no warrant or other authorization to do this, however, the Romeikes were not aware that they had any basis to resist legally, so they allowed the children to go to school. However,

Mrs. Romeike retrieved the children at lunch hour.

On October 23, 2006, the police appeared in force this time to take the children to school. However, the neighborhood apparently had been alerted and neighbors blocked the police from taking action. At that point, the government backed off for a while, obviously they were not sure what to do. Apparently these situations are fairly rare and apparently had not occurred in this town previously.

In December of 2006, the government began to get tough, they informed the Romeikes that the children must attend school and there would be a fine of about \$672 initially, which would only escalate in the future if they continued to resist.

Also the mayor informed them that in addition to the fines, which would escalate, that they might lose custody of the children. There is a social work organization, in Germany, called the Jugendamt, which apparently means youth office in German, and they have the authority to remove children from parents under certain circumstances.

Respondents did go to Court over this and explained the situation. The Judge did not accept their explanation, he found them guilty of not sending their children to school, which is a crime.

Respondents took various legal measures over the ensuing months and they were not successful at any level. They faced escalating fines which would eventually be more than they could

afford to pay. The applicant makes about 12,000 Euros a month, and the family had been fined about 7,000 Euros at the time they left the country and the fines would only increase. If they were not able to pay the fines, they also stood to lose their property, but most importantly, they stood to lose custody of their children, and that was their main fear. There also is a possibility that they could have been sent to jail, as these are criminal statutes.

Michael Donnelly, a staff attorney, with the Homeschooling Legal Defense, testified very compellingly. He not only is an expert who has made intense study of the homeschooling situation worldwide, but he in fact has actually spoken to nearly all of the German parents who have been mentioned in the background evidence, and has virtually personal knowledge of their situations. He testified that there are very few homeschoolers in Germany, and it is not allowed by law. Further, the German Courts are not at all friendly towards homeschoolers. He testified that there are associations, that exist in Germany, about four of five of them, none of them very large. The problems started in the 1990's and they have accelerated as more people, such as the Romeikes, found out that it was possible to homeschool their children, if not legal. Mr. Donnelly stated that the fines could run from 50 Euros all the way up to 50,000 Euros, obviously a crushing fine, that the Jugendamt, would, in certain circumstances, take custody of the children, place them

in foster homes or orphanages, and send them to public school from there. Although some people have been sentenced to imprisonment, not very many have actually served in jail. The Schmidt family served 14 days in jail. The Dudek family was sentenced to 90 days in jail, but they appealed, and apparently their case has been remanded. Once again the Dudeks and the Schmidts were found guilty of not sending children to school, and are considered to be school refusers. Mr. Donnelly further testified that there are private schools, in Germany, but the private schools must be government approved, and they must use the government curriculum, which contains the items which the Romeikes find offensive. Although there may be some places in Germany where the law is not enforced at the local level, that is not a legal place of refuge, that is merely just a case of the local officials not taking action, so there is actually no safe place in Germany for the Romeikes, or people like them, to live without having these problems. Mr. Donnelly also testified that if fines are levied, which cannot be paid, property is attached and seized and the Jugendamt does take children into foster homes and orphanages. He discussed the case of the Gorbers, whose child was placed in a foster home for six months, and placed in public school, and they could not visit the child for six months. Even more disturbing, is the case of Melissa Vusekros. When her parents kept her out of school, she was treated as if she had a psychiatric affliction known as school phobia and she was

actually placed in an asylum for the mentally ill while she was tested. This frankly is reminiscent of the Soviet Union treating political opposition as a psychiatric problem, not only a human rights violation, it is a misuse of the psychiatric profession. He discussed the Gile family, who were attempting to hide their children, having an underground school essentially, rather than something like the Philadelphia School, however, the social workers found them out and threatened them with a 75,000 Euro fine, which is well over \$100,000 U.S. When asked if some people were able to escape these penalties, Mr. Donnelly said yes they have, but it is only because they have fled from Germany, and he proceeded to list the various homeschoolers who have fled to many other countries, both in Europe and elsewhere, to escape fines, loss of custody of their children, and criminal sanctions. When asked whether there were any exceptions, he indicated the only real exception would be medical reasons, that if the child could be diagnosed with some psychological problem that would prevent being around other children, it might be possible to homeschool, although, in that case, what the government does is send in their own teachers who teach from the government curriculum. So even if that would work, and there is no evidence, in this case, that any of the children have any psychological problems, it would not achieve the goal.

The scariest thing that Mr. Donnelly testified to is the motivation of the German government in this matter. I certainly

would have assumed that the motivation would be concern for the children. We certainly do some odd things, in the United States, out of concern for children, but the explanation is always given that the Government has a right and an interest to look after children in their country. However, that does not seem to be the explanation. Mr. Donnelly described the judicial decisions, in Germany, not so much being interested in the welfare of the children, as being interested in stamping out groups that want to run a parallel society, and apparently there is a fair amount of vitriol involved in this attempt to stamp out these parallel societies. I found that odd. Another interesting fact, is the fact that this law has not always existed in Germany, it was enacted in 1938, when Adolph Hitler and the Nazi Party was in power in Germany, and it was enacted specifically to prevent parents from interfering with state control of their children, and we all know what kind of state control Hitler had in mind. It certainly was not for the good of the children, not even facial.

Now obviously Germany has changed since 1938. Germany is a Democratic country, Germany is an ally of the United States, and Germany does provide due process of law. However, this one incidence of Nazi legislation appears to still be in full force and effect, and that is the situation that Mr. Donnelly described, and the Romeikes fear.

On cross-examination, the Government attorney discussed,

with Mr. Donnelly, his claim that there was a petition, before the European Union, that was still open. Apparently there was a case that had been fought in the European High Court of Human Rights, in Strasbourg, which was rejected. Mr. Donnelly stated that it was rejected on some unknown ground. Mr. Cook, the Government attorney, pointed out that apparently it had been rejected on jurisdictional grounds. Regardless of who is right about that, it does not really affect the basic situation, that the European government is no more willing, than the German government, to make an exception for homeschooling for religious or philosophical reasons.

Oddly enough, although European countries are significantly less interested in the family than we are here in the United States, there is no other country, in Europe, that flat out bans homeschooling. Some of the other countries make it difficult, but the problems that I have been describing, that were described, by Mr. Donnelly, are largely restricted to Germany, they are nowhere near as bad in other European countries.

In the United States, no state bans homeschooling. There has been a lot of litigation regarding homeschooling, obviously the educational establishment, in many cases, wants to have control of children. However, the State Supreme Courts have, without exception, ruled in favor of the parents. For that reason no case has gone to the Supreme Court. However, in Wisconsin v. Yoder, 406 U.S. 205 (1972), the Supreme Court made

very clear how it would rule in this matter. That was a case of Amish parents who, for religious reasons, wanted their children taken completely out of the school, after just getting basic reading, writing and arithmetic. That was not homeschooling; that was no school. And in that case, the Supreme Court found that there was a fundamental right of a parent to establish a home and bring up the children and worship God according to the dictates of his own conscious.

This is a central right, in America. Justice Brandeis described it as part of the greater right, the right to be let alone, that the Government does not own people, that people should control the Government. So, in the United States, obviously, the Romeikes would have no problem with their homeschooling.

However, our Constitution is not in effect everywhere in the world. Maybe the world would be a better place if it were, but it is not, and we do not necessarily have any right to expect other countries to do exactly the way we do in everything. It is not just the homeschooling, religion is not free in other countries, the United Kingdom, obviously, has an established religion, which is prohibited by our Constitution, but is central to theirs, it is not an unfree country, the right to freedom of speech, that we take for granted, is not nearly as strong, in the United Kingdom, or other parts of Europe, many things that we would consider to be perfectly acceptable and protected are not

protected, and that is not necessarily persecution.

ASYLUM LAW

To qualify for asylum, pursuant to Section 208 of the Act, the applicant must show that he is a refugee within the meaning of Section 101(a)(42)(A) of the Act; that is that he suffered past persecution, or that he has a well-founded fear of future persecution in his country, on account of race, religion, nationality, membership in a particular social group or political opinion. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

To qualify for withholding of removal, under Section 241(b)(3) of the Act, the applicant must show a clear probability that his life or freedom would be threatened on account of one of those factors. This is a higher burden of proof than for asylum.

The applicant is not applying for Convention against Torture protection.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

First of all, as to credibility, I find that the Romeikes, and Mr. Donnelly, and all of their evidence is entirely credible and believable. They are clearly honest and decent people. Mr. Donnelly, although he certainly is a partisan in this dispute, has been a highly credible expert witness, and the Court was very impressed with his testimony.

As to what happened to the respondents, in Germany, I do not find that it is past persecution. This Court sits in the Sixth Circuit and the mistreatment that they suffered, as scary as it

might be, certainly does not rise to the level of persecution. See Ali v. Ashcroft, 366 F.3d 407 (6th Cir. 2004). So no presumption arises, respondents have to demonstrate that they have a well-founded fear of persecution, or a likelihood of persecution, to qualify for asylum or withholding of removal.

As I stated, persecution is an extreme concept that normally does not include harassment, discrimination, or similar things, as morally reprehensible, as that may be. See Sako v. Gonzales, 434 F.3d 857 (6th Cir. 2006).

Normally economic deprivation, and employment discrimination fall short of persecution. Matter of H-M-, 20 I&N Dec. 683 (BIA 1993). However, severe economic deprivation, which constitutes a threat to the life or freedom of the applicant, would be persecution. Kovac v. INS, 407 F.2d 102 (9th Cir. 1969).

The central issue, in this case, is whether this situation, where a family is denied the right to homeschool their children, denied the right to educate their children in their religious faith, and in their way of thinking, would necessarily be persecution under the Act.

Respondents' counsel argues that there are three factors which constitute a nexus to the factors for which asylum can be granted. Those factors are political opinion, religion and membership in a particular social group.

As to political opinion, I do not really see a political opinion here. Obviously any opinion could be a political

opinion, if you look at it that way, however, applicant and his family have never been involved in any kind of political organization, they have never taken a formal stand on anything, other than the homeschooling, they have never spoken out and I do not believe there is any political opinion in this case.

As to religion, the Government attorney argues that their religion is a bit on the vague side. They do not appear to belong to any particular church whose rigid doctrines they are attempting to enforce. In fact, almost all Christians, in Germany, do send their children to public school, or at least government private schools. Applicant has been somewhat vague as to his religious beliefs. He has not really identified a denomination that he belongs to. Nonetheless, there is no way the Court can look at this record and say the Romeikes do not have a religion. They clearly have a religion. It may be vague and unformed in some aspects, but it is quite specific in other aspects. Specifically the raising of their children, and Mr. Romeike made it very clear that this is not just his opinion, that he feels this is God's opinion, that he wants to raise his family and also his wife wants to raise the family, in accordance with God's wishes as they understand them. There is no religious test, in the United States, and this Court is not going to have a religious test. There is certainly no reason to believe that the religious beliefs, that the Romeikes have, are anything other than entirely genuine and they certainly seem the basis of a

problem here. However, is the government attempting to suppress their religion? Not really, the government is not acting against their religion, the government is only acting against their activities, which are very simple, not sending their children to school. The government is not trying to overcome their religious beliefs, however, the government is attempting to circumscribe their religious beliefs, and if the Romeikes remained in Germany, they would not be able to exercise their religion as they see it.

As to particular social group, initially I did not see that either. However, after listening to Mr. Donnelly's testimony, it does appear that there is animus and vitriol involved here, that the government of Germany really resents the homeschoolers, not just because they are not sending the children to school, but because they constitute a group that the government, for some unknown reason, wishes to suppress. I do not attempt to understand exactly what the government would mean by suppressing a parallel society, because it is so silly, obviously there are parallel societies in Germany, as everywhere. There are different ethnic groups, there are different religions, there is a large Turkish population, in Germany, that has been there many generations. Clearly they are somewhat of an alternate society than made of Christian Germans. Yet, for some reason the government is not focused on that, the government is attempting to enforce this Nazi era law against people that it purely seems to detest because of their desire to keep their children out of

school.

A problem with finding a particular social group is that whatever this particular social group is, parents who choose to homeschool, or however you define it, do not have any social visibility. There is no way you could tell a homeschoolers from an un-homeschooler walking the street. Therefore, under the Board's case law this would not constitute a particular social group for that reason.

However, the Board's social visibility standard has been harshly criticized in the Seventh Circuit, which held that it is actually nonsensical. I certainly do not think it is nonsensical, but the Seventh Circuit does. The Sixth Circuit, in which we sit, has never specifically impeached the social visibility standard, however, in a very recent case, Al-Ghorbani v. Holder, 585 F.3d 980 (6th Cir. 2009), the Sixth Circuit held that membership in a group opposing the repressive and discriminating customs governing marriage, in Yemen, would be considered to be a particular social group. Now the Sixth Circuit, as I stated, did not really address the social visibility issue, although clearly, in the Al-Ghorbani case, there was no social visibility, so it does appear that in the Sixth Circuit, whether or not it has actually followed the Seventh Circuit all the way, the Sixth Circuit certainly believes that there are particular social groups that do not have social visibility.

Since the group of homeschoolers, that respondents belong to, has been fined, imprisoned, had the custody of their children taken away from them, in case after case after case, and since there actually seems to be a desire to overcome something, in the homeschooling movement, even though the Court cannot really understand what that might be, I do find that the homeschoolers are a particular social group for the purpose of asylum law, in the Sixth Circuit. Currently it more than meets all the requirements set out in Al-Ghorbani. In fact, Al-Ghorbani was largely a personal situation involving a particular marriage, whereas in this case we are dealing with principle and opposition to the government policy.

So, therefore, although I do not find that there is a political opinion in this case, I do find that the religious beliefs of the Romeikes are being frustrated, and the practice of their religion will not be permitted under current German law, dealing with homeschooling, and also I find that they belong to a particular social group of homeschoolers who, for some reason, the government chooses to treat as a rebel organization, a parallel society, for reasons of its own.

As I stated above, this is not traditional German doctrine, this is Nazi doctrine, and it is, in this Court's mind, utterly repellant to everything that we believe in as Americans.

Religious freedom is in many ways the most basic freedom in this country, certainly most of the original refugees that came

to the United States, in colonial times, and in the early days of the republic, were religious refugees, many of them from Germany, such as the Amish and the Mennonites and many other groups and, therefore, I find that it is not just a question of enforcing our Constitution on a foreign country, but rather the rights that are being violated in this case are basic to humanity, they are basic human rights which no country has a right to violate, even a country that is in many ways a good country, such as Germany.

Therefore, I find that respondents do have a well-founded fear of persecution if they returned to Germany. Although the fines could be considered to be not severe enough to be persecution, it does appear that the fines are constantly increased to the point where they cannot be paid, and that would destroy the economic life of the Romeikes. The possibility that the children could be taken away from them, I find, to be persecution. I think most parents would rather serve two or three years in jail than to lose custody of their children during their minority. So the loss of custody is a very scary sanction, which is persecution. Then there is a possibility of jail as well, although it has not been imposed in too many cases, partly because people have fled the country. The very fact that some many of the homeschoolers have fled the country, after taking the legal system in Germany as far as they could, is certainly proof that this is no frivolous position. The Romeikes have uprooted themselves. They have not moved from a third world, they have

moved from a country just as wealthy as the United States, with a very nice welfare system, free medical care, many things that some people think we need in this country. But if Germany is not willing to let them follow their religion, not willing to let them raise their children, then the United States should serve as a place of refuge for the applicants.

There is nothing in the exercise of discretion that would bar asylum to the applicants. The biometrics have been checked and there are no problems. Therefore, the Court will grant asylum in the exercise of discretion to Mr. Romeike and, as derivatives, to his wife and children.

In the light of an asylum grant, I am not going to make any ruling on withholding of removal.

The Court's orders are as follows:

- (1) Asylum is granted to all respondents;
- (2) any order of removal that has been entered by the Department of Homeland Security is vacated;
- (3) these proceedings will be terminated.

LAWRENCE O. BURMAN
United States Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE LAWRENCE O. BURMAN, in the matter of:

UWE ANDREAS JOSEF ROMEIKE, A 087 368 600

HANNELORE ROMEIKE, A 087 368 601

DANIEL ROMEIKE, A 087 368 602

LYDIA JOHANNA ROMEIKE, A 087 368 603

JOSHUA MATHIAS ROMEIKE, A 087 368 604

CHRISTIAN IMMANUEL ROMEIKE, A 087 368 605

DAMARIS DOROTHY ROMEIKE, A 087 368 606

Memphis, Tennessee

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.


Cindy B. Whitlock, Transcriber
Free State Reporting, Inc.

March 23, 2010
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
that a Sony BEC/T-147, 4-channel transcriber or equivalent and/or
CD, as described in Section C, paragraph C.3.3.2 of the contract,
was used to transcribe the Record of Proceeding shown in the above
paragraph.