U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted], N[redacted] K[redacted]

A [redacted]-425

Date of this notice: 3/31/2016

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Wendtland, Linda S.
O'Herron, Margaret M
Pauley, Roger

Userteam: Docket

File: [redacted] 425 – San Antonio, TX

Date: MAR 3 1 2016

In re: N[redacted] K[redacted] B[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Feroli, Esquire

ON BEHALF OF DHS: Philip A. Barr
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Asylum

The Department of Homeland Security ("DHS") appeals from a November 26, 2012, Immigration Judge decision granting the respondent's application for asylum under section 208 of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1158. Because the Immigration Judge granted the respondent's asylum application, she did not address his withholding of removal application under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), or his request for protection under the Convention Against Torture. We will dismiss the DHS's appeal.

We review findings of fact, including credibility findings, under the "clearly erroneous" standard and we review all other issues de novo, including questions of law, discretion, and judgment. *See* 8 C.F.R. §§ 1003.1(d)(3)(i), (ii); *Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002).

The respondent is a native and citizen of Pakistan, and is a member of a minority religious sect in Pakistan known as Ahle Quran that emphasizes the study of the Quran and rejects the study of the Hadith, which is a "narration of the prophet Muhammad's life and actions" (IJ. at 2-3). He was admitted to the United States on October 11, 2010, as a nonimmigrant B1 visitor with permission to remain until April 10, 2011. He did not depart the country. The respondent filed his asylum application on June 23, 2011, alleging past persecution and a well-founded fear of persecution on account of his religion. Because of the filing date, the respondent's application for relief is governed by the amendments to the Act brought about by the passage of the REAL ID Act of 2005. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge found the respondent credible (I.J. at 10) and made the following relevant and proper findings of facts: The respondent was born into a Sunni Muslim family, was raised in the city of Gujranwala, and practiced the Sunni form of Islam until 1992, when he was introduced to a sect of Islam known as Ahle Quran. The respondent, his wife, and his children practice this faith. The respondent began practicing his faith in the open in 2009, and started having problems in Pakistan soon thereafter. In 2009, members of an extremist religious organization known as Sipah-e-Sahaba came to the respondent's travel agency in the city of Lahore. When they did not find the respondent there, they told the respondent's landlord that they would kill the respondent and would file a blasphemy suit against him for abandoning his religion and insulting the "Prophet." They also sought to have the respondent thrown out of his office space. The landlord called the respondent and told him that he should leave the building in the interest of security. The respondent tried to keep the business open by working from home during the day while his staff was in the office, but he had to close the business in December 2009 because of lack of business due primarily to his lack of physical presence and the religious extremists' threatening people not to patronize him (I.J. at 3-4).

After closing his shop, the respondent traveled to the United States to help a friend with a rice export venture. In July 2010, while the respondent still was in the United States, neighbors in Pakistan threatened his family because of their religion, and one of the neighbors said that something should be done against the family. The respondent returned home in August 2010 and moved his family about six or seven kilometers from that neighbor out of fear for their safety (I.J. at 4).

The respondent returned to the United States in October 2010 to continue pursuing the rice business deal. In January 2011, the respondent's wife received threatening telephone calls regarding the respondent. In July 2011, the respondent's oldest son was kidnapped while driving home from a university class. One of his captors told the respondent's son that the respondent was a traitor because he denied the Hadith and they wanted to kill him. This same captor told the respondent's son that he would kill him if the respondent did not return to Pakistan. The respondent's son was kept blindfolded, but was later dropped off near his home. The respondent thinks the kidnappers were the same ones who threatened him in 2009 (I.J. at 4).

On appeal, the DHS does not challenge the Immigration Judge's positive credibility finding; nor does it dispute the occurrence of the instances of abuse and threats experienced by the respondent and his family at the hands of an extremist organization in his most recent city of residence. However, the DHS asserts that the Immigration Judge erred in concluding that the respondent established that it is not reasonable for the respondent to internally relocate in Pakistan.

We note at the outset that, contrary to another contention of the DHS, the Immigration Judge did not determine whether the respondent suffered past persecution. Pursuant to *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008), the Immigration Judge should have made a determination as to whether the respondent suffered past persecution. However, the error was harmless in this instance because we are upholding the ultimate ruling in the respondent's favor. The Immigration Judge did conclude that the respondent had shown a well-founded fear of future persecution, and that he had shown it was not safe or reasonable for him to internally relocate.

Thus, given that the DHS has not explicitly contested the former determination, the only issue on appeal is whether the respondent can safely and reasonably internally relocate. It is the applicant's burden to establish that internal relocation is unsafe or unreasonable, where, as here, the alleged persecutor is neither the government nor government-sponsored when no past persecution has been shown, which we will assume arguendo is the case here. 8 C.F.R. § 1208.13(b)(3)(i).

In our view, the outcome of this appeal ultimately turns on the standard of review applicable to the Immigration Judge's conclusion that the respondent demonstrated that he "could not safely and reasonably relocate within Pakistan if forced to return to that country" (I.J. at 17). In *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33, 36 (BIA 2012), we addressed the substantive elements of relocation, concluding that (1) in order for an applicant to be able to internally relocate safely, there must be an area of the country where the circumstances are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim; and that (2) to determine whether relocation is reasonable, an adjudicator must balance the factors set forth at 8 C.F.R. § 1208.13(b)(3) in light of the appropriate burden of proof. Those factors include, but are not limited to, "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints such as age, gender, health, and social and familial ties." 8 C.F.R. § 1208.13(b)(3).

We did not, however, address in *Matter of M-Z-M-R-, supra*, the standard of review applicable to either of these determinations. In *Brezilien v. Holder*, 569 F.3d 403, 413-14 (9th Cir. 2009), the court specifically noted that there was tension among our precedent decisions as to whether relocation was a question of law, to which a de novo standard would apply, or was one of fact reviewable only for clear error, and urged the Board to resolve the issue. The Ninth Circuit pointed out that in *Matter of D-I-M-*, *supra*, at 451, the Board seemed to indicate that the question of internal relocation was a factual one subject to "clear error" review, whereas in *Matter of A-S-B-*, 24 I&N Dec. 493, 497-98 (BIA 2008), the Board intimated that internal relocation was a legal conclusion subject to de novo review. *Brezilien v. Holder*, *supra*, at 413-14; *see also Matter of Z-Z-O-*, 26 I&N Dec. 586, 590-91 (BIA 2015) (overruling *Matter of A-S-B-* and concluding that an Immigration Judge's predictive findings of what may or may not occur in the future are findings of fact).

We conclude that the first element from *Matter of M-Z-M-R-*, *supra* - whether an alien can "safely" relocate - constitutes a factual determination because it involves a predictive question of fact as to whether there are other areas of the country that are substantially safer than the one(s) in which the alien lived. In reaching this conclusion, we look to the standards of review for "well-founded fear" and for "exceptional and extremely unusual hardship." To determine whether an alien has demonstrated a well-founded fear of persecution, we first review whether an Immigration Judge has clearly erred in making findings regarding the predictive question of fact as to what will happen if an alien is returned to his native country. Then we determine de novo whether those facts demonstrate a well-founded (objectively reasonable) fear of persecution. *Matter of Z-Z-O-*, *supra*, at 590-91. Similarly, in deciding whether an alien has shown the requisite hardship for non-lawful permanent resident cancellation of removal, we first review for clear error the Immigration Judge's findings as to what kind of hardships may be

suffered by qualifying relatives if an alien is returned to his home country, and then determine de novo whether the hardships rise to the level of being exceptional and extremely unusual. *Id.* at 591 (citing *Waldron v. Holder*, 688 F.3d 356, 361 (8th Cir. 2012). In assessing internal relocation, then, we must first discern whether an Immigration Judge clearly erred in finding whether an area of a country is "safe." If an Immigration Judge has not clearly erred in finding that a potential area of relocation is indeed "safe," or *has* clearly erred in finding that it is *not* safe, we then must determine whether it would be reasonable to expect the respondent to undertake such relocation. The "clearly erroneous" standard does not entitle the reviewing body to reverse the finding of a trier of fact merely because the reviewing body is convinced it would have decided the case differently. *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 574 (1985). When there are two permissible views of the evidence, the fact-finder's choice between the two cannot be deemed clearly erroneous. *Id.*

Here, the DHS argues that the record shows that the respondent could return to his home town of Gujranwala,[1] and safely avoid future persecution because he testified that the main reason he did not wish to return there was that his children were pursuing Master's degrees and the higher education institutions are better in Lahore, where they and his family are located and where the 2009 and 2010 incidents occurred (DHS's Brief at 11-13; Tr. at 53-55, 79-80, 98). The DHS also argues that the respondent himself did not suffer any harm in his home town and that he lived there without problems for many years following his conversion to his sect, and before being even indirectly threatened in Lahore in 2009 by the extremist organization he fears, which also kidnapped his son (DHS's Brief at 9-10, 11-12). The respondent counters that he only was able to live without incident before 2009 because he did not openly express his beliefs until then (Respondent's Brief at 18-19).

We disagree with the DHS's arguments. Rather, the Immigration Judge found, without clear error, that country conditions in Pakistan indicate there is a climate of intolerance against religious minorities throughout the country that has become worse since the respondent left (I.J. at 17; Group Exh. 5 at Tab G). The Immigration Judge also determined that the documentary submissions reflect that abuses of religious minorities by extremist groups and some sectors of the government occur throughout Pakistan, and that the government has not shown an ability to prevent such abuses or otherwise protect religious minorities against extremists (I.J. at 17; Group Exh. 5, Tab G at 156, 172-82, 189-92). In addition, the Immigration Judge did not clearly err in crediting the respondent's testimony that the religious extremists will find him no matter where in Pakistan he lives, and that he would not be open to practice his religious beliefs freely and openly anywhere in the country (I.J. at 17; Tr. at 79, 98).

These facts as found by the Immigration Judge demonstrate that there is not an area of the country where the circumstances are substantially better than those giving rise to a well-founded fear of persecution on the basis of the respondent's original claim. *Matter of M-Z-M-R-*, *supra*, at 33. Thus, the properly found facts indicate that this respondent could not safely internally

[1] We take administrative notice that Gujranwala, Pakistan, is only about 43 miles from Lahore, Pakistan. *See* 8 C.F.R. §1003.1(d)(3)(iv).

relocate. *Id.* Therefore, we need not reach the question of what standard of review should be used with regard to an Immigration Judge's determination whether it is "reasonable" for a respondent to internally relocate when it would be "safe" to do so.[2]

Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

[2] The only reported decision on this issue of which we are aware is *Jeune v. U.S. Att'y Gen.*, 810 F.3d 792, 805 n.12 (11th Cir. 2016) (concluding without substantial analysis that the reasonableness of relocation is a factual question not subject to judicial review). We further observe that where, as here, relocation is found not safe, it would appear to follow that it would likewise not be reasonable. However, where relocation is found to be safe, it does not follow that it would necessarily be reasonable.