U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: U[redacted], A[redacted] **A[redacted]-341**

Date of this notice: 9/20/2019

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.

Sch[illegible]A
Userteam: Docket

File: A[redacted]-341 – Hartford, CT Date: SEP 20 2019

In re: A[redacted] U[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Dalia H. Fuleihan, Esquire

ON BEHALF OF DHS: Courtney Gates-Graceson
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security ("DHS") has appealed from an Immigration Judge's April 2, 2019, decision denying the respondent's applications for asylum and withholding of removal pursuant to sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), but granting his application for withholding of removal under the Convention Against Torture. The respondent has filed a brief in opposition to the DHS's appeal. The appeal will be dismissed.

We review the Immigration Judge's factual findings for clear error. 8 C.F.R. § 1003.1(d)(3)(i). Questions of law, discretion and judgment and all other issues are reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Uzbekistan who entered the United States on November 12, 1999, as a nonimmigrant B1/B2 visitor with authorization to remain in the United States for a temporary period not to exceed February 2, 2000. He has remained in the United States since that time.

I. The Respondent's Claim for Asylum

The respondent filed an application for asylum with the Immigration Court on January 30, 2019 (Exh. 4). Because he filed the application almost 20 years after his arrival in the United States, the Immigration Judge found that his application is untimely (IJ at 8; Exhs. 1, 4); section 208(a)(2)(B) of the Act; 8 C.F.R. § 1208.4(a)(2). The respondent argued before the Immigration Judge that he qualifies for an exception to the 1-year filing deadline. The Immigration Judge found that the respondent articulated three different claims for asylum and issued separate rulings on whether the respondent qualifies for an exception to the filing deadline for each basis.

First, the respondent claimed eligibility for asylum on account of his Muslim religion. The Immigration Judge found that the respondent did not demonstrate that a change in conditions in Uzbekistan qualifies him for an exception to the filing deadline and that even if there were changed conditions in Uzbekistan for Muslims, he did not file his application within a reasonable period of

time (IJ at 8-9). The respondent has not challenged this finding on appeal, and thus any such challenge is waived.

With respect to the respondent's asylum claims based on his imputed political opinion and his membership in a particular social group of "detained and deported Uzbek expatriates," the Immigration Judge found that his detention constitutes changed circumstances qualifying him for an exception to the 1-year filing deadline and that he filed his application within a reasonable period from the date of the changed circumstances (IJ at 9). The DHS has not challenged the Immigration Judge's finding of an exception to the filing deadline in this regard, and thus, the respondent's asylum application based on his fear of persecution on account of his imputed political opinion and his membership in a particular social group is considered timely.

However, the Immigration Judge denied the respondent's application for asylum based on his imputed political opinion and membership in a particular social group. He found the respondent has failed to establish a nexus between his feared harm and his imputed political opinion (IJ at 10-11). In addition, the Immigration Judge found that the respondent did not establish that he is a member of a cognizable particular social group (IJ at 11-12).

We conclude that we cannot reach the respondent's argument in his appellate brief that the Immigration Judge erred in denying him asylum on the merits of his claims because he did not file a cross-appeal. As the DHS argues in its objection to the respondent's brief, the Supreme Court has held that an appellee may not attack a decree with a view either to enlarging his own rights thereunder or of lessening the rights of his adversary, whether what he seeks is to correct an error or to supplement the decree with respect to a matter not dealt with below. *Jennings v. Stephens*, 135 S. Ct. 793, 798 (2015); *see also Greenlaw v. United States*, 554 U.S. 237, 244-45 (2008) (under the cross-appeal rule, an appellate court may not alter a judgment to benefit a non-appealing party, and "it takes a cross-appeal to justify a remedy in favor of an appellee"). Here, the respondent is not seeking the same relief as was awarded by the Immigration Judge or urging in support of a decree in the record. *See United States v. American Ry. Express Co.*, 265 U.S. 425, 435 (1924); *Jennings v. Stephens*, 135 S. Ct. at 800; *see also Lopez v. Att'y Gen.*, 914 F.3d 1292, 1299-1300 (11th Cir. 2019). Rather, he is seeking additional relief from removal that was denied by the Immigration Judge. Thus, we conclude that the respondent has not properly challenged the Immigration Judge's denial of asylum by filing a cross-appeal, and the Immigration Judge's decision will be affirmed.

II. Convention Against Torture

The Immigration Judge granted the respondent's application for protection under the Convention Against Torture. The Immigration Judge held that, based on testimony from a country conditions expert and the 2017 State Department Report, the respondent has shown that he is personally at risk of torture because the evidence shows that the government views Uzbekistanis who have lived in the United States for long periods with particular suspicion, and the National Security Services regularly engages in torture (IJ at 16; Exh. 8 at Tab C).

The DHS argues on appeal that the Immigration Judge clearly erred in finding the respondent credible after finding part of his testimony implausible and that there were multiple, material

inconsistencies in his testimony, a finding of fraud by the State Department, and material misrepresentations on his applications for permanent residence. In addition, the DHS argues that the Immigration Judge erred by not making any factual findings regarding the specific harm the respondent will suffer upon his return to Uzbekistan, and that the record is devoid of any corroboration that the government considers him a suspicious person and will more likely than not torture him.

With regard to the respondent's credibility, the Immigration Judge found that the respondent's testimony that he has not communicated with his wife since she returned to Uzbekistan in April 2018 is not plausible (IJ at 7). However, the Immigration Judge found that, despite some minor inconsistencies in the record, the remainder of his testimony is credible, and he has sufficiently corroborated his claim (IJ at 7).

We discern no clear error in the Immigration Judge's finding that, apart from his testimony about his lack of communication with his wife since she returned to Uzbekistan in April 2018, the rest of his testimony is credible as there are only some minor inconsistencies in the record (IJ at 7). The DHS cites in its brief some testimony about the respondent's reasons for coming to the United States, his contacts with other Uzbeks, and a letter from the Federal Bureau of Investigation (DHS's Br. at 6; Tr. at 113, 116, 119-22, 159, 162, 164, 168-69; Exh. 8, Tab BBB). Clear error review is significantly deferential to the factfinder; under that standard, we may not reverse just because we "would have decided the [matter] differently." *Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (quoting in part *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573 (1985)). On the contrary, clear error review requires affirmance of any "finding that is 'plausible' in light of the full record—even if another is equally or more so." *Id.* We may only reverse when "left with the definite and firm conviction that a mistake has been committed." *Id.* at 1474 (quoting *Anderson*, 470 U.S. at 573-74). Where there are "two permissible" views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *Id.* at 1468 (quoting in part *Anderson*, 470 U.S. at 574). We conclude that the Immigration Judge did not clearly err in finding only minor inconsistencies and concluding that the respondent's testimony should be credited.

Additionally, we discern no legal or clear factual error in the Immigration Judge's conclusion that the respondent is eligible for protection under the Convention Against Torture. The Immigration Judge found persuasive the declaration from country conditions expert Noah Tucker, stating that Uzbekistani citizens like the respondent who emigrated in the 1990s and have lived in the United States for long periods are viewed as a particular threat and with suspicion from the National Security Services and that it would be unreasonable to assume that the respondent would *not* be subject to interrogation and intense scrutiny by the National Security Services upon his return (IJ at 16; Exh. 8, Tab C).

Moreover, the Immigration Judge relied upon the 2017 Department of State Country Report, which is a reliable source of information on country conditions. *See Matter of H-L-H- & Z-Y-Z-*, 25 I&N Dec. 209, 213 (BIA 2010) ("State Department reports on country conditions . . . are highly probative evidence and are usually the best source of information on conditions in foreign nations."), *rev'd on other grounds, Hui Lin Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012). The report indicates that the Uzbekistani government commonly uses torture and cruel, inhuman, or

degrading treatment in prisons, pretrial facilities, and local police and security service precincts for those arrested or detained on religious or extremism charges (IJ at 16; Exh. 8, Tab I). The Immigration Judge also cited reports from Amnesty International, Human Rights Watch, and USCIRF detailing the use of torture and found that given the respondent's situation as a whole, he will more likely than not be tortured (IJ at 16; Exh. 8, Tabs K, L, M, N, and O).

Although the DHS may disagree, it has not identified any factual findings that were clearly erroneous. The Immigration Judge's finding as to the likelihood of future torture in this case was supported by the testimony of the respondent, the declaration of an expert witness, and the objective country condition information in the record. The DHS's appellate arguments to the contrary do not persuade us that the Immigration Judge's findings were reflective of an impermissible view of the evidence taken as a whole. As we are not left with "a definite and firm conviction that a mistake has been committed," we defer to the Immigration Judge's findings.

In conclusion, the DHS has neither demonstrated clear error in the Immigration Judge's factual findings nor proved that he erroneously applied the applicable law to those facts. Thus, we affirm the Immigration Judge's decision granting the respondent's application for protection under the Convention Against Torture.

Accordingly, the following orders will be entered.

ORDER: The Department of Homeland Security'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 Department of Homeland Security 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).

Linda S. Wendtland

FOR THE BOARD