



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED], M [REDACTED] M [REDACTED]

A [REDACTED]-983

Date of this notice: 11/25/2019

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.
Greer, Anne J.
Rosen, Scott

U.S. Department of Justice
User team: Docket

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RC

Falls Church, Virginia 22041

File: A █████-983 – Atlanta, GA

Date: **NOV 25 2019**

In re: M █████ M █████ S █████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Cristina P. Carrier, Esquire

ON BEHALF OF DHS: Ryan T. Bautista
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Bangladesh, has appealed from the decision of the Immigration Judge dated June 6, 2019. In that decision, the Immigration Judge made an adverse credibility finding, and denied the respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and withholding of removal under the Convention Against Torture (IJ at 10, 4-11). *See* 8 C.F.R. § 1208.16(c).

On appeal, the respondent argues that the Immigration Judge erred by excluding his May 30, 2019, submission of documentary evidence, which he submitted in support of his asylum claim (IJ at 2-3; Respondent's Br. at 4, 14). The respondent also contends that the Immigration Judge improperly denied his motion to present telephonic testimony from his expert witness on country conditions in Bangladesh (Respondent's Br. at 14). For the following reasons, the respondent's appeal will be sustained, and the record will be remanded for further proceedings and the entry of a new decision.

The Immigration Judge directed the respondent to file his application for asylum (Form I-589) at the next master calendar hearing, which occurred on May 15, 2019.¹ Subsequently, the respondent retained counsel and submitted a significant amount of documentary evidence in addition to a witness list and a motion requesting that his expert witness be permitted to testify telephonically at the merits hearing scheduled for June 6, 2019 (IJ at 2-3; Tr. at 2-31).

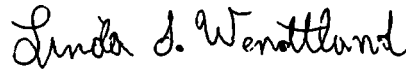
The Immigration Judge, however, excluded the evidentiary submission because he deemed it to have been untimely filed (IJ at 3). In this case, the Immigration Judge only specified a filing deadline for the Form I-589, not for the respondent's supporting evidence. Accordingly, his statement to the contrary in the June 6, 2019, decision is clearly erroneous and, therefore, does not

¹ Although the Immigration Judge instructed the respondent to file his I-589 at a master calendar hearing on May 2, 2019, the master calendar hearing did not actually occur until May 15, 2019, at which time the respondent did file his Form I-589.

support the exclusion of the respondent's evidence on timeliness grounds. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also* *U.S. Commodity Futures Trading Com'n v. Hunter Wise Commodities, LLC*, 749 F.3d 967, 974 (11th Cir. 2014).

Finally, the adverse credibility finding is not dispositive of the respondent's claims unless he has also submitted insufficient corroborative evidence. *See Lyashchynska v. U.S. Att'y Gen.*, 676 F.3d 962, 967 (11th Cir. 2012) ("An adverse credibility determination coupled with a lack of corroborating evidence for a claim of persecution means that the applicant's claim fails." (citing *Averianova v. Mukasey*, 509 F.3d 890, 895 (8th Cir. 2007))). Because the respondent was entitled to consideration of his evidentiary submission, the record will be remanded to the Immigration Court. The parties also should be permitted to update the record by introducing additional testimonial and documentary evidence.² The following order will be entered.

ORDER: The respondent's appeal is sustained, and the record is remanded for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD

² With respect to the respondent's motion to allow telephonic expert witness testimony, should he renew that request on remand, we note that the Immigration Judge has broad discretion to allow or disallow witnesses to testify remotely. *See, e.g., Stewart v. U.S. Att'y Gen.*, 776 F. App'x 573, 577 (11th Cir. 2019); *cf. United States v. Rodriguez-Lopez*, 363 F.3d 1134, 1138 n.4 (11th Cir. 2004) ("While unpublished opinions are not binding on this court, they may nonetheless be cited as persuasive authority." (citing *United States v. Futrell*, 209 F.3d 1286, 1289 (11th Cir. 2000))).