



U.S. Department of Justice

Executive Office for Immigration Review

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Name: T [REDACTED], A [REDACTED]

A [REDACTED]-370

Date of this notice: 10/16/2018

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:
Cole, Patricia A.

Gilbert
Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-370 – York, PA

Date: **OCT 16 2018**

In re: A [REDACTED] T [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra Greene, Esquire

ON BEHALF OF DHS: Keith Hoppes
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals the Immigration Judge's August 17, 2017, decision granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A). The appeal will be dismissed, and the record will be remanded for the completion or updating of any required background and security checks.

We review the findings of fact made by the Immigration Judge, including determinations of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo, including questions of law, judgment, discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the DHS argues that the Immigration Judge erred in finding that the respondent testified credibly and in determining that the respondent established his eligibility for asylum (DHS's Br. at 6-13). We disagree.

At the hearing below, the respondent, a native and citizen of Haiti, testified that he fears harm in Haiti due to a land dispute between his family and a powerful family known as the R [REDACTED] family (IJ at 4-5; Tr. at 48-49, 58). The respondent further testified that violence between the families began in 2000, when the R [REDACTED] family attempted to take the land by force by removing things from the land that belonged to the respondent's family (IJ at 4; Tr. at 48-49). The respondent stated that after 2 days of fighting, the father of the R [REDACTED] family died, and members of the R [REDACTED] family accused the respondent's family for causing his death (IJ at 4; Tr. at 54). The respondent further stated that during the struggle between the families, the respondent's father was injured and received medical treatment for his injuries (IJ at 4; Tr. at 50-51). The respondent testified that his father went to the police to report the dispute, but they did nothing because the R [REDACTED] family has seized properties from other families as well and the police always took their side (IJ at 4; Tr. at 51-53, 62, 86-87). The respondent also testified that in 2014, he was approached by a member of the R [REDACTED] family, who brandished a weapon, accused the respondent of being responsible for his father's death, and threatened to kill the respondent (IJ at 5; Tr. at 47, 59-61).

We conclude the Immigration Judge's favorable credibility finding is not clearly erroneous. See 8 C.F.R. § 1003.1(d)(3)(i). The Immigration Judge based her credibility determination on a

thorough review of the record, including the respondent's testimony and the documentary evidence submitted by the parties, and provided a detailed analysis to support her credibility finding (IJ at 13-15). See section 208(b)(1)(B)(iii) of the Act; see *Matter of R-S-H-*, 23 I&N 629, 637 (BIA 2003) (stating that a "factfinding may not be overturned simply because the Board would have weighed the evidence differently or decided the facts differently had it been the factfinder") (internal quotation marks and citation omitted). Here, the record supports the Immigration Judge's conclusions.

On appeal, the DHS argues that the Immigration Judge erred in finding the respondent credible because it claims that his testimony is uncorroborated and inconsistent with statements he made during his credible fear interview (DHS's Br. at 7-10). Specifically, the DHS contends that during his initial encounter with Customs and Border Patrol (CBP) officers, the respondent stated that he had no fear of returning to Haiti, which contradicts his testimony and asylum claim (DHS's Br. at 9; see Exh. 2 (Record of Sworn Statement) at 3). The Immigration Judge considered the statements made by the respondent during his credible fear interview, but also noted that the respondent testified that prior to entering the United States, he traveled through eleven countries in over 2 months before being apprehended and detained by CBP officers (IJ at 8-9, 12, 18; Tr. at 75-76). Significantly, contrary to the DHS's claims, the Immigration Judge found that the respondent's testimony was sufficiently corroborated insofar as he submitted, inter alia, proof of his family's land title in Haiti, evidence of country conditions demonstrating ongoing land disputes in Haiti, as well as a supporting statement from his brother (IJ at 17-19; Exh. 4 at 5-21, Exh. 5 at 43-44, Exh. 7 at 1).

Upon our de novo review, we affirm the Immigration Judge's determination that the respondent established that the harm he suffered and fears is on account of his membership in a particular social group comprised of "land owners who lost their lands to more powerful families" (IJ at 15-19). See section 208(b)(1)(B) of the Act; 8 C.F.R. §§ 1208.13(b)(1), (2)(A); see also *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (stating that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error). We are not persuaded by the DHS's appellate argument that the Immigration Judge erred in finding that the respondent's proffered particular social group is socially distinct within Haitian society as required under *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) (DHS's Br. at 12-13), to the extent that the DHS has not pointed to any record evidence to support its argument. *Id.* at 237 (setting forth the criteria for establishing a valid particular social group for asylum and withholding of removal purposes); see *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016); see e.g., *Cordoba v. Holder*, 726 F.3d 1106, 1114 (9th Cir. 2013) (recognizing that landownership may form the basis of a particular social group); *Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 668 (7th Cir. 2005) (recognizing a particular social group consisting of "members of the educated, wealthy, landowning class in Colombia" who were persecuted by members of the FARC, as cognizable); see also *Ramirez v. U.S. Att'y Gen.*, 187 F. App'x 228, 231 (3d Cir. 2006) (unpublished) (stating that "there is support for the proposition that certain manifestations of property holding, such as owning land, could constitute the type of 'immutable characteristic' that would make up a 'particular social group' under the BIA's definition of that term") (internal citation omitted).

Specifically, the Immigration Judge found that the respondent testified credibly that members of his family were involved in a violent land dispute with the R family, a wealthy and powerful family in Haiti, this family still holds an animus against the respondent's family, and the Haitian police will not protect the respondent (IJ at 16). Moreover, the Immigration Judge found that record evidence of country conditions in Haiti reflects that land disputes persist, particularly following the 2010 earthquake, and in some instances, the Haitian government can take away an individual's land without due process (IJ at 19; *see* Exh. 4 at 9-21, Exh. 7 at 1).

Consequently, we affirm the Immigration Judge's determination that the respondent is eligible for asylum as he has established that he has suffered past persecution and has a well-founded fear of persecution on account of a protected ground under the Act (IJ at 15-19).¹ *See* section 208(b)(1)(A) of the Act. Accordingly, the following orders will be entered.

ORDER: The 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

¹ In light of our decision, we find it unnecessary to address any additional issues raised by the DHS on appeal. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976)).