U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: M[redacted] R[redacted], J[redacted] **A [redacted]-865**

Date of this notice: 8/20/2020

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:
Liebowitz, Ellen C

Wijesuriti
Userteam: Docket

File: A[redacted]-865 – Arlington, VA Date: AUG 2 0 2020

In re: J[redacted] M[redacted] R[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark Feldman, Esquire

ON BEHALF OF DHS: David J. Kelly
Deputy Chief Counsel

APPLICATION: Convention Against Torture

This case was last before the Board on December 13, 2019, when we remanded the record to the Immigration Judge to reconsider her decision granting the respondent deferral of removal under the Convention Against Torture. On remand, in a decision dated March 4, 2020, the Immigration Judge again granted the respondent deferral of removal. The Department of Homeland (DHS) appeals the Immigration Judge's decision. The respondent, a native and citizen of Mexico, opposes the DHS's appeal. The appeal will be dismissed.

We review findings of fact determined by the Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

In our prior decision, we discerned no clear error in the Immigration Judge's factual findings relating to the likelihood of harm the respondent would endure upon his return to Mexico (BIA at 2). We remanded, however, for the Immigration Judge to make additional factual findings, based upon consideration of the DHS's evidence, about the issues of specific intent and acquiescence of a public official or person acting in an official capacity in Mexico (BIA at 3; Exh. 5).

In her March 4, 2020, decision, the Immigration Judge considered the evidence submitted by the DHS regarding the efforts to improve the mental health system in Mexico (IJ at 4-5). Even considering that evidence, the Immigration Judge found that the harm the respondent would likely endure in Mexico would be specifically intended to cause severe pain or suffering and that it would be by or with the acquiescence of a public official or person acting in an official capacity in Mexico (IJ at 4-8). We will affirm the Immigration Judge's decision.

We have considered the DHS's appellate arguments regarding specific intent (DHS's Br. at 5-13). However, the Immigration Judge provided a detailed and reasoned decision based on the evidence in the record to support her specific factual findings (IJ at 4-8; Exhs. 5, 6). *See Oxygene v. Lynch*, 813 F.3d 541, 548-49 (4th Cir. 2016) (explaining that *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002) requires an applicant to show that "a state actor who mistreats him desires to cause his severe pain and suffering" and that "it is the prerogative of the factfinder to make the inferential

leap from knowledge to desire"), *abrogated in part on other grounds by Nasrallah v. Barr*, 140 S. Ct. 1683 (2020).

The Immigration Judge may make "reasonable inferences from direct and circumstantial evidence of the record as a whole," and she did so in this case. *Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011). We do not discern clear error in the Immigration Judge's interpretation of the evidence. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (holding that the clear error standard of review "plainly does not entitle a reviewing court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently"); *Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (explaining that the Board cannot "override" the Immigration Judge's factual findings because we would have interpreted them differently). Moreover, we uphold the Immigration Judge's conclusion that "the deprivations that the Immigration Judge found the respondent likely to experience upon return to Mexico would rise to the level of torture under the governing [Convention Against Torture] regulations and relevant precedents." *Matter of R-A-F-*, 27 I&N Dec. 778, 780 (A.G. 2020); *see also Cruz-Quintanilla v. Whitaker*, 914 F.3d 884 (4th Cir. 2019). Therefore, we affirm the Immigration Judge's decision.

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).

Ellen Liebowitz
FOR THE BOARD