U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted] B[redacted], A[redacted] H[redacted]

A [redacted]-502

Date of this notice: 8/31/2018

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:
Malphrus, Garry D.
Creppy, Michael J.
Hunsucker, Keith E.

[redacted]
Userteam: Docket

File: A[redacted]-502 – Eloy, AZ

Date: AUG 31 2018

In re: A[redacted] H[redacted] A[redacted] B[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jesse Evans-Schroeder, Esquire

ON BEHALF OF DHS: Jennifer Wiles
Senior Attorney

APPLICATION: Convention Against Torture

The Department of Homeland Security (DHS) appeals the Immigration Judge's decision of October 4, 2017, granting the respondent, a native and citizen of Iraq, deferral of removal under the Convention Against Torture. 8 C.F.R. § 1208.17. The appeal will be dismissed and the record remanded for the completion of background checks.

We review findings of fact determined by an 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).

The Immigration Judge fully considered the record evidence, including the extensive background materials, expert testimony, and the testimony of the respondent, his wife and his cousin. The Immigration Judge concluded that if the respondent is returned to Iraq, he will be immediately subjected to inspection by Iraqi security forces, where it is highly likely that he will be identified as the spouse of a former U.S. Department of Defense interpreter (IJ at 22). The Immigration Judge found that due to widespread fear among Iraqi security officers of U.S. espionage, the respondent is very likely to be taken to a secondary detention center where he would be subjected to harm constituting torture (IJ at 22-23). The Immigration Judge found that this torture would occur at the hands of Iraqi security officers, sanctioned by the government (IJ at 23). The Immigration Judge also found that relocation to avoid harm would not be feasible, as the respondent would be detained immediately upon his arrival (IJ at 23). Thus, the Immigration Judge concluded that the respondent met his burden of showing that it is more likely than not that he will be tortured in Iraq by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1).

On appeal, the DHS argues that the respondent, his wife, and his cousin were not credible based on inconsistencies in the record. The Immigration Judge acknowledged some inconsistencies in the testimony, but found the witnesses credible under the totality of the circumstances. *See* section 240(c)(4)(c) of the act. We are not persuaded that the Immigration Judge's credibility finding is clearly erroneous. *See Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (the Board may only find clear error where the findings of fact "are illogical or

implausible," or without "support in inferences that may be drawn from the facts in the record" (citation omitted)). Furthermore, there is no dispute that the respondent's wife was an interpreter for the U.S. Department of Defense in Iraq, which is the basis for the respondent's fear of torture. Thus, even if the inconsistencies present in the record were sufficient to establish an adverse credibility determination, such finding would not, by itself, necessarily defeat a claim under the Convention Against Torture. *See Kamalthas v. INS*, 251 F.3d 1279, 1282–83 (9th Cir. 2001). Rather, in determining whether a respondent will more likely than not be tortured if returned to his or her home country, "all evidence relevant to the possibility of future torture shall be considered." 8 C.F.R. § 1208.16(c)(3). The Immigration Judge relied not only on the respondent's testimony, but that of the expert witnesses and the background country evidence presented.

Similarly, we review only for clear error the Immigration Judge's predictive findings of fact regarding what is likely to befall the respondent on return to Iraq. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015). Considering our standard of review, we are unable to find that the Immigration Judge's findings of fact, including his predictive findings of fact, were clearly erroneous. Clear error review precludes us from reversing the trier of fact even if we would have decided the case differently had we been the factfinder. *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-74 (1985); *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003). On the contrary, where there are two permissible views of the evidence, the factfinder's choice between them cannot be deemed clearly erroneous. *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. at 574 (internal cites omitted); *see also Matter of A-B-*, 27 I&N Dec. at 341.

Contrary to the argument by the DHS on appeal, the Immigration Judge considered the evidence relevant to the possibility of future torture, including the documentary and expert testimony evidence of country conditions, and evidence of gross, flagrant, or mass violations of human rights and other relevant information regarding conditions in Iraq. 8 C.F.R. § 1208.16(c)(3); *Barajas-Romero v. Lynch*, 846 F.3d 351, 363-64 (9th Cir. 2017); *Madrigal v. Holder*, 716 F.3d 499, 510 (9th Cir. 2013). We cannot find persuasive the DHS's argument that the respondent failed to meet his burden of proof because his parents continued to live safely in Iraq for many years, because there is no indication in the record that the respondent's parents were similarly situated to the respondent. *See, e.g., Kumar v. Gonzales*, 444 F.3d 1043, 1055 (9th Cir. 2006) (reversing the Board's denial of asylum in part because the Board had considered the continued safety of family members who were not similarly situated to the petitioner). Moreover, while DHS raised some issues regarding whether some of the documentation evidence would support the respondent being singled out for torture, the Immigration Judge found the expert testimony to be persuasive in opining that the respondent would likely be tortured by government officials. DHS did not present contrary evidence in this regard and has not shown that it was an impermissible view of evidence for the Immigration Judge to find the respondent's experts persuasive. After consideration of the record, appellate arguments, and the deference to be accorded to the Immigration Judge's factual findings, the Immigration Judge's decision is based on a permissible view of the evidence. Thus, we cannot reverse the Immigration Judge's ultimate determination that the respondent established that he is more likely than not to be tortured by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Accordingly, the following orders will be entered.

ORDER: The DHS 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