



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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New York, NY 10278**

Name: K [REDACTED], R [REDACTED]

A [REDACTED]-855

Date of this notice: 8/10/2020

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:
MONSKY, MEGAN FOOTE

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-855 – New York, NY

Date: **AUG 10 2020**

In re: R [REDACTED] K [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Laura Perez, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture; remand

The respondent, a native and citizen of India, timely appeals an Immigration Judge's June 22, 2018, decision. The Immigration Judge denied the respondent's application for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c), 1208.18. On appeal, the respondent contests the denial of all three forms of relief and protection. He has also filed a motion to remand. The record will be remanded to the Immigration Judge for further adjudication and the entry of a new decision.

The Immigration Judge denied the respondent's claims principally due to an adverse credibility finding. The adverse credibility finding, in turn, was predicated almost exclusively on inconsistencies the Immigration Judge identified between the respondent's testimony and the statements he provided at the time of his September 22, 2011, credible fear interview before an Asylum Officer (IJ at 5-7; Exh. 5). On appeal, the respondent asserts that he was provided an incomplete copy of this exhibit (Respondent's Br. at 14-15). Moreover, he asserts that, because the exhibit was not paginated, it was impossible for him to have known that pages of the exhibit were missing at the time of the hearing. The respondent has provided the portion of Exhibit 5 that he was provided, which appears to support his claim of having received an incomplete exhibit.¹ The Department of Homeland Security has not responded to the respondent's appeal or motion to remand. Under these circumstances, we determine that a remand is required. *See* section 240(b)(4)(B) of the Act, 8 U.S.C. § 1229a(b)(4)(B) (stating that an alien "shall have a reasonable opportunity to examine the evidence against the alien").

On remand, the Immigration Judge should ensure that the respondent has been provided a full and complete copy of Exhibit 5, and allow the parties to offer additional arguments based on the complete record. If necessary, the Immigration Judge may hold a new hearing and issue a new decision taking into account any new arguments made by the parties. We express no opinion as to the outcome of these proceedings. Accordingly, the following order will be entered.

¹ It appears that the respondent's version of Exhibit 5 is missing at least one page of the Record of Determination/Credible Fear Worksheet, as well as pages 1, 4 and 6 of the Credible Fear Notes (Exh. 5).

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD