U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Howard, Shawna Elaine
Lopez Law Firm
5701 Executive Drive Suite 102
Charlotte, NC 28212

DHS/ICE Office of Chief Counsel - CHL
5701 Executive Ctr Dr., Ste 300
Charlotte, NC 28212

Name: A[redacted]-P[redacted], L[redacted] R... **A[redacted]-515**
Riders:[redacted]

Date of this notice: 8/14/2020

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:
Grant, Edward R.
Mullane, Hugh G.
RILEY, KEVIN W.

Userteam: Docket

Files: [redacted]-515 – Charlotte, NC

Date: AUG 14 2020

In re: L[redacted] R[redacted] A[redacted]-P[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Shawna Howard, Esquire

APPLICATION: Asylum, withholding of removal; Convention Against Torture

The respondents are a mother and her minor child, natives and citizens of Honduras. They appeal from an August 15, 2018, decision of an Immigration Judge, denying applications for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16 – 1208.18. The respondents filed a brief concerning the decision of the Immigration Judge, while the Department of Homeland Security (DHS) has not responded to the appeal. The case will be remanded to the Immigration Judge for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondents contend that the Immigration Judge erred, as he did not provide the lead respondent with an opportunity to offer testimony in support of the applications for relief and protection at a full evidentiary hearing (Respondents' Br. at 4-8). We agree.

An applicant for asylum has a statutory right to "a reasonable opportunity ... to present evidence." Section 240(b)(4)(B) of the Act, 8 U.S.C. § 1229a(b)(4)(B). In assessing whether an alien has met the burden of proving eligibility for relief from removal, the statute provides that "the immigration judge shall weigh the credible testimony with other evidence of record." Section 240(c)(4)(B) of the Act.

The regulations mandate that applications for asylum and withholding of removal will be decided by the Immigration Judge "after an evidentiary hearing to resolve factual issues in dispute," 8 C.F.R. § 1240.11(c)(3), and that during the removal hearing, the respondent "shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf." 8 C.F.R. § 1240.11(c)(3)(iii).

The Board has held that, in most cases, the testimony of a respondent, beyond asking whether the information in the application is complete and correct, is pivotal to a fair asylum proceeding. *Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989) (stating that, "[i]n the ordinary course ... we consider the full examination of an applicant to be an essential aspect of the asylum adjudication process for reasons related to fairness to the parties and to the integrity of the asylum process itself."). Therein, the Board recognized the importance of considering the oral testimony of an asylum applicant, stating that "there are cases where an alien establishes eligibility for asylum by means of his oral testimony when such eligibility would not have been established by the documents alone." *See also Atemnkeng v. Barr*, 948 F.3d 231, 242 (4th Cir. 2020) (remanding for testimony, citing *Matter of Fefe*, and observing that the Board in *Fefe* "emphasized how important it is for an IJ to consider an [asylum] applicant's live testimony"); *Matter of E-F-H-L-*, 26 I&N Dec. 319, 323-24 (BIA 2014) (acknowledging that Immigration Judges have a duty to fully develop the record), *vacated on other grounds by Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018); Respondents' Br. at 7-9.

The Board noted an exception to the requirement of testimony in the situation in which the parties stipulate that "the applicant's testimony would be entirely consistent with the written materials and that the oral statement would be believably presented." *Matter of Fefe*, 20 I&N Dec. at 118. The parties entered into no such stipulation here. Rather, the Immigration Judge stated that by signing her I-589, Application for Asylum and for Withholding of Removal, the lead respondent agreed that the application and supporting documentation was true and correct (Tr. at 16; Exh. 3), but the respondents did not request that the application be decided without consideration of the lead respondent's own testimony.

Because the Immigration Judge evaluated the respondents' claim based solely on the asylum application, the Form I-870, "Record of Determination/Credible Fear Worksheet," and the lead respondent's declaration (Exhs. 2, 3, 5) without taking any testimony from the lead respondent (IJ at 2-4, 6-7; Tr. at 15-19), under the circumstances the respondents were prevented from fully and fairly presenting their case.

We therefore find that a remand to the Immigration Court is warranted in order to permit the respondents to present their claims at an appropriate hearing. At such a hearing, the respondents must indicate "the exact delineation of any proposed particular social group" that they present. *Matter of A-B-*, 27 I&N Dec. 316, 344 (A.G. 2018). Accordingly, the following orders shall be entered.

ORDER: The respondents' appeal is sustained.

FURTHER ORDER: The records are remanded to the Immigration Court for further proceedings not inconsistent with this decision.

FOR THE BOARD