



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: [REDACTED], T [REDACTED] A [REDACTED]**

**A [REDACTED] 688**

**Date of this notice: 1/26/2018**

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:  
Pauley, Roger

Smrthw  
Userteam: Docket

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Falls Church, Virginia 22041

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File: [REDACTED] 688 – Fort Snelling, MN

Date: JAN 26 2018

In re: T [REDACTED] A [REDACTED] [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Linus Chan, Esquire

ON BEHALF OF DHS: Daniel J. Pornschloegl  
Assistant Chief Counsel

APPLICATION: Withholding of removal

The Department of Homeland Security (“DHS”) timely appeals from the Immigration Judge’s July 18, 2017, decision granting the applicant’s application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1231(b)(3). The DHS argues that the Immigration Judge erred in reaching that decision. The applicant argues that the Immigration Judge’s decision is correct and should be affirmed. The appeal will be dismissed.

The applicant, a native and citizen of Ethiopia, was granted withholding of removal on April 13, 2009 (Exh. 1). The applicant subsequently departed the United States and entered Canada (IJ at 3). The applicant reentered the United States in September of 2016 and was apprehended by the Border Patrol, who initiated reinstatement of the applicant’s prior removal order (IJ at 3). After it was determined that the applicant has a reasonable fear of persecution, the applicant’s case was referred to the Immigration Judge. The Immigration Judge determined that because DHS did not file a motion to terminate the applicant’s grant of withholding of removal under 8 C.F.R. § 1208.24(f), the prior grant of withholding of removal remained valid. The DHS argues on appeal that the Immigration Judge erred in requiring formal termination of withholding of removal because those rules do not apply to reinstatement of removal and withholding only proceedings (DHS’s Br. at 5-7).

As found by the Immigration Judge, withholding of removal is a mandatory prohibition against the United States from removing an alien to a country where one’s life or freedom would be threatened and the governing regulations provide that withholding of removal can be terminated only when the DHS meets certain requirements (IJ at 3-4). 8 C.F.R. § 1208.24(f). In this instance, the regulations require the DHS to file a motion to reopen with the Immigration Judge, establishing by a preponderance of the evidence one or more of the grounds for termination under 8 C.F.R. § 1208.24(a) or (b). The DHS has not filed a motion to reopen requesting termination of the applicant’s prior grant of withholding of removal. Thus, the Immigration Judge found that the applicant’s prior grant of withholding of removal remains valid.

The DHS argues that reopening the former removal proceedings is prohibited by statute after reinstatement of an order of removal. Section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). While we recognize that section 241(a)(5) of the Act states that a reinstated order “is not subject to being

reopened,” the limitation is present to preclude reopening by the alien. To allow otherwise would thwart one of the purposes of expedited removal proceedings: to ensure that appropriate cases are expedited. *See Matter of Lujan-Quintano*, 25 I&N Dec. 53, 56 (BIA 2009) (noting important purpose of expedited removal proceedings is to expedite removal).

Moreover, to find that the applicant must reapply for withholding of removal would violate the doctrine of res judicata. *See Matter of Ramon*, 27 I&N Dec. 178 (BIA 2017) (outlining application of res judicata in administrative law). Thus, based on the foregoing, we will dismiss the appeal.

ORDER: The appeal is dismissed.

  
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
FORT SNELLING, MINNESOTA

File: [REDACTED] 688

July 18, 2017

In the Matter of

T [REDACTED] A [REDACTED] [REDACTED]  
RESPONDENT

)  
) IN WITHHOLDING ONLY PROCEEDINGS  
)  
)

CHARGES:

APPLICATIONS: Withholding of removal.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: LAURA TROSEN

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a citizen and native of Ethiopia and was brought to this Court subsequent to a filing of a notice of referral to the Immigration Judge that was dated on March 13, 2014. The Department of Homeland Security, subsequent to an interview of the respondent, found that the respondent had a reasonable fear of persecution or torture. The Court has reviewed this document, which will be marked as Exhibit 1, and several subsequent exhibits, in making the decision that the respondent has a prior grant of withholding to Ethiopia and a subsequent hearing is not required on a new claim.

The Court has considered the following exhibits as part of its determination here today. Exhibit 1 is the notice of referral to the Immigration Judge, which also contains a statement from the respondent. The last page of Exhibit 1 has an order dated April 13, 2009 from Judge DePaolo from San Diego, indicating that the respondent was granted an application for withholding of removal and both parties waived appeal. Exhibit 1 also contains a notice of intent/decision to reinstate the prior order, which was dated September 20, 2016. Exhibit 2 is a letter from Immigration Judge Kristin W. Olmanson asking for some assistance to the University of Minnesota Law School regarding his withholding only claim. Exhibit 3 is a motion to appear as amicus curiae from the University of Minnesota Law School. Exhibit 4 is a submission from the respondent that contains various articles on country information related to his new claim for withholding. Exhibit 5 is the respondent's new 589 application for withholding of removal that was received by the Court on May 10 of 2017. Exhibit 6 is another submission from the respondent in relation to his application for withholding. This exhibit contains various country information and is numbered to page 78. Exhibit 7 is a page Home Office Country information related to the Oromo people in Ethiopia. Exhibit 8 is an order of this Judge dated June 6, 2017 allowing for the appearance of an amicus curiae brief in this case. Exhibit 9 is the brief of the amicus curiae from the University of Minnesota. Exhibit 10 is the adjustment grant regarding withholding only proceedings.

The Court has received no testimony as it relates to the application before it.

#### FINDINGS OF FACT

The respondent is a citizen and national of Ethiopia. On April 13, 2009, the respondent received a grant of withholding of removal subsequent to an order

removing him from the United States. Judge DePaolo provided a summary order indicating that the respondent's application for withholding of removal was granted and both the parties waived appeal on that date. This order was contained at the last page of Exhibit 1. No other documents have been provided by either party from the prior record of proceedings in relation to this prior grant.

Respondent, based on his statement in Exhibit 1, lived in Canada from 2013 to 2016, where he applied for asylum. That application was subsequently denied. An appeal of that decision may currently be pending. He then re-entered the United States from Canada in September of 2016, where he was apprehended by Border Patrol at the border at North Dakota. On September 20, 2016, the Border Patrol reinstated his prior order of removal. That order, which is contained also in Exhibit 1, indicates that the respondent executed his prior removal order on June 9 of 2013. That reinstatement of the prior removal order indicates that as of February of 2017, he did not contest the reinstatement determination.

On March 13, 2017, the Department of Homeland Security made a determination that the respondent has a reasonable fear of persecution or torture and subsequently referred his claim to an Immigration Judge. That notice was received by the Court on March 22 of 2017.

#### STATEMENT OF THE LAW

Section 241(b)(3) of the Act provides for a mandatory prohibition against the United States Government from removing an alien to a country where one's life or freedom would be threatened. The regulations under 8 C.F.R. 1208.24(b) dictates when the Government can terminate a prior grant of withholding of removal. Thus, termination may be based on one of three grounds: (1) a fundamental change in circumstances; (2) fraud in the underlying application; or (3) a finding that the alien

committed an act which would have been ground for denial in the original application.

To terminate a prior grant of withholding of removal, the Government must either reopen the prior proceeding or provide notice of intent to terminate this prior grant. In seeking termination of withholding, the Government must prove by a preponderance of the evidence one or more of the previously stated grounds to terminate.

Reinstatement is subject to 8 C.F.R. 241.8(c), which mandates that the alien shall be removed under the previous order of exclusion, deportation or removal in accordance with Section 241(a)(5) of the Act.

#### FINDINGS AND CONCLUSIONS OF THE COURT

The Court finds that the respondent has a valid withholding of removal grant that bars the United States Government from removing him to Ethiopia. The Government is free to reinstate in accordance with that prior grant of withholding of removal and is free to remove him in accordance with the regulations. However, the Government has not moved and has not provided notice to terminate his prior grant of withholding of removal, and that mandatory prohibition against his removal from the United States to Ethiopia, where there is a previous finding that his life or freedom would be threatened, is in place. And absent terminating that prior order, the Court has determined that there is nothing before it to decide.

The respondent did indicate that he is seeking asylum here. The Court notes that it does not have jurisdiction to hear an asylum claim and there is no need to hear a new withholding claim because nothing has terminated the prior grant and neither party has provided any case law establishing that his removal from the United States has terminated the prior grant in any way.

#### ORDER

IT IS HEREBY ORDERED that the respondent's request for withholding of removal is granted insofar as it was granted on April 13, 2009 by Judge DePaolo and there is nothing further for this Court to decide or hear in this case.

Date: July 18, 2017

**Please see the next page for electronic**

**signature**

RYAN R. WOOD  
Immigration Judge