



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: V [REDACTED], M [REDACTED] C [REDACTED]

A [REDACTED]-468

Date of this notice: 9/25/2020

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

Shari G.
Userteam: Docket

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RC

Falls Church, Virginia 22041

File: A-468 – Elizabeth, NJ

Date: SEP 25 2020

In re: M-C-V

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Lauren B. Major, Esquire

APPLICATION: Reopening; reconsideration; remand

This case was last before us on June 3, 2020, when the respondent withdrew his appeal from an Immigration Judge's decision denying his application for deferral of removal under the Convention Against Torture. *See* 8 C.F.R. § 1208.16-1208.18 (2020).¹ That same day, the respondent, a native and citizen Liberia, moved to reopen his removal proceedings, alleging that reopening was warranted based on material information that could not have been presented at his removal hearing—namely, his homosexuality (Respondent's Mot. at 7; Respondent's Amended Mot. at 5-11). *See* 8 C.F.R. § 1003.2(c)(1).² Although the respondent concedes he was homosexual at the time of his removal hearing, he asserts that he was afraid to reveal this information to the Immigration Judge because he was incarcerated in a State prison during proceedings, and he feared the guards and other inmates would discover his homosexuality and that he would be targeted for beatings and sexual assault based on his sexual orientation (Respondent's Mot. at 7-8; Respondent's Amended Mot. at Tab D, 28-29). He is now in immigration custody and feels more comfortable revealing this information (Respondent's Amended Mot. at Tab D, 29). *See Shardar v. Att'y Gen. of U.S.*, 503 F.3d 308, 313 (3d Cir. 2007) ("Facts presented in the motion to reopen are 'accepted as true unless inherently unbelievable.'" (citation omitted)). Appended to his motion is documentary evidence reflecting that homosexuals

¹ The Immigration Judge concluded that the respondent was statutorily ineligible for asylum and withholding of removal under the Act and the Convention Against Torture based on his conviction for an aggravated felony and a particularly serious crime (IJ at 8-9). Sections 208(b)(2)(A)(ii), (B)(i), 241(b)(3)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(2)(A)(ii), (B)(i), 1231(b)(3)(B)(ii) (2018); 8 C.F.R. § 1208.16(d)(2). The respondent did not challenge these findings on appeal and subsequently withdrew his appeal, but in his amended motion, he requests reconsideration of these findings (Respondent's Amended Mot. at 16-21). Because the respondent could have, but did not, challenge the Immigration Judge's findings regarding his eligibility for asylum and withholding of removal on appeal, further consideration of those findings is not warranted. *See Anderson v. C.I.R.*, 698 F.3d 160, 166-67 (3d Cir. 2012); *Matter of O-S-G*, 24 I&N Dec. 56, 58 (BIA 2006).

² He later filed an amended motion with additional evidence. Although we generally do not entertain motions in cases where an appeal is deemed withdrawn and the Immigration Judge's decision remains undisturbed, we will certify the respondent's motion to ourselves pursuant to 8 C.F.R. § 1003.1(c). *See Matter of Mladineo*, 14 I&N Dec. 591, 592 (BIA 1974).

are targeted for violence and mistreatment in Liberia (Respondent's Amended Mot. at Tab I, 73-360). The Department of Homeland Security has not filed an opposition to the respondent's motion.

Considering the totality of the circumstances, we conclude that reopening is warranted. *See* 8 C.F.R. § 1003.2(c). His removal proceedings will be reopened, and the record will be remanded to the Immigration Court for further proceedings. On remand, the Immigration Judge should consider whether, in light of his homosexuality, the respondent has established his eligibility for deferral of removal under the Convention Against Torture and any other issues she deems appropriate. The parties should be given an opportunity to present additional evidence and arguments on remand regarding the respondent's eligibility for deferral of removal. Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

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



FOR THE BOARD