



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: W [REDACTED], M [REDACTED] A [REDACTED] A [REDACTED]-929

Date of this notice: 5/17/2019

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:
Noferi, Mark

User team: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-929 – Omaha, NE

Date:

MAY 17 2019

In re: M [REDACTED] A [REDACTED] W [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mariana L. Hanna, Esquire

ON BEHALF OF DHS: Alexandra R. Tinkham
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from an Immigration Judge's September 18, 2017, decision granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A). The appeal will be dismissed, and the record will be remanded for the completion or updating of any required background and security checks.

We review the findings of fact made by the Immigration Judge, including determinations of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo, including questions of law, judgment, discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the DHS argues that the Immigration Judge erred in granting the respondent's application for asylum. Specifically, the DHS disputes the Immigration Judge's finding that the respondent, a native and citizen of Somalia, established a well-founded fear of persecution based on his political opinion or membership in a particular social group (DHS's Br. at 9-14).

At the hearing below, the respondent testified, credibly (IJ at 8),¹ that he is a member of the Ashraf clan, which is a minority group in Somalia that comprises less than 5% of the population (IJ at 2; Tr. at 62). The respondent further testified that he, his father, brother, and brother-in-law, all worked at a car service shop in Somalia, which primarily worked on government and military vehicles (IJ at 3; Tr. at 70-71). He stated that the shop owners received a letter in 2010 from a terrorist group known as Al Shabaab, which opposes the Somali government, threatening to kill everyone in the shop if the business did not shut down (IJ at 3-4; Tr. at 68, 72). The respondent further stated that because the owners did not take the threat seriously, the shop was attacked in 2011 and again in 2012, by members of the Al Shabaab (IJ at 3-4; Tr. at 73-74). The respondent testified that in September of 2014, his brother and brother-in-law were killed by the Al Shabab while they were working in the shop (IJ at 4; Tr. at 76-78). Additionally, because the respondent's father spoke out against Al Shabaab to people in the community, he, too, was murdered on

¹ The DHS does not challenge the Immigration Judge's favorable credibility determination or otherwise dispute the respondent's credibility on appeal.

September 20, 2014, by members of the Al Shabaab (IJ at 5; Tr. at 83-85). The respondent also stated that after his father's killing, he was threatened with death by the Al Shabaab if he did not stop working at the shop (IJ at 5; Tr. at 91-92, 95).

Upon our de novo review, we affirm the Immigration Judge's determination that the respondent has established a well-founded fear of persecution based on his imputed political opinion (IJ at 9-11). See section 208(b)(1)(B) of the Act; 8 C.F.R. § 1208.16(b)(3)(i) (explaining that where an applicant has not established cognizable past persecution, he bears the burden of establishing by a preponderance of the evidence that it would not be reasonable for him to internally relocate); see *Matter of Z-Z-O-*, 26 I&N Dec. 586, 591-92 (BIA 2015); *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008); see also *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (stating that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error). Specifically, the Immigration Judge correctly found that the respondent's credible testimony demonstrated that he has a subjectively and objectively reasonable fear of persecution based on his imputed political opinion in support of the Somali government and against the Al Shabaab (IJ at 10). See *Castillo-Gutierrez v. Lynch*, 809 F.3d 449, 452 (8th Cir. 2016) (explaining that "[a] fear of future persecution is 'well founded' if it 'is both subjectively genuine and objectively reasonable'" (internal citation omitted); *Perinpanathan v. INS*, 310 F.3d 594, 598 (8th Cir. 2002) (stating that "[f]or an alien's fear of persecution to be objectively reasonable, the fear must have basis in reality and must be neither irrational nor so speculative or general as to lack credibility") (citation omitted). The Immigration Judge noted that the respondent's brother and brother-in-law were killed by the Al Shabaab while working at the car service garage because Al Shabaab viewed them as supporters of the government and anti-Islamic (IJ at 10-11). Significantly, the Immigration Judge noted that reports on country conditions in Somalia show that civilian killings, which are primarily caused by Al Shabaab, continue to persist (IJ at 11).

Contrary to the DHS's appellate arguments, we affirm the Immigration Judge's finding that the respondent has demonstrated that the harm he fears in Somalia was or would be inflicted by the government or by individuals or groups that the government is unable or unwilling to control (IJ at 11; DHS's Br. at 9-10). See *Matter of A-B-*, 27 I&N Dec. 316, 337-38, 343-44 (A.G. 2018); see also *Saldana v. Lynch*, 820 F.3d 970, 976 (8th Cir. 2016) (explaining that "to establish persecution based on the conduct of private actors, an applicant must show that the government either condones the conduct or is unable to protect the victims" and that whether a government is unable to control a private actor is a factual question). There is no clear error in the Immigration Judge's finding based on evidence of country conditions that the Somali government has been generally ineffective in protecting its citizens and controlling the Al Shabaab (IJ at 11). On appeal, the DHS does not dispute the country conditions evidence relied upon by the Immigration Judge; instead, it points to other evidence in the record which reflects that Somalia has recently made efforts, in conjunction with international partners, to eradicate the Al Shabaab (DHS's Br. at 9-10; see Exh. 5). As the Immigration Judge's decision and the State Department reports make clear, however, the Al Shabaab continues to operate throughout Somalia, and as the respondent testified credibly, the group targets individuals who it perceives to support the Somali government and to be against them (IJ at 6; Tr. at 102-03). Cf. *Saldana v. Lynch*, 820 F.3d at 977 ("Instability to control private actors is an imprecise concept that leaves room for discretion by the agency."); see also *Gathungu v. Holder*, 725 F.3d 900, 909 (8th Cir. 2013) (citing *Sarhan v. Holder*, 658 F.3d 649, 660 (7th Cir. 2011) ("Attempted reform, like a bill that fails to become law, does not count as concrete government action.")).

We are also not persuaded by the DHS's appellate argument that the respondent can safely return to his hometown of Mogadishu based on its claim "that the government of Somalia is in control of the respondent's hometown" (DHS's Br. at 13), to the extent that the DHS has not cited to record evidence to support its argument.

Consequently, in light of the foregoing, we affirm the Immigration Judge's determination that the respondent is eligible for asylum as he has established a well-founded fear of persecution on account of a protected ground under the Act (IJ at 9-12).² See section 208(b)(1)(A) of the Act.

Accordingly, the following orders will be entered.

ORDER: The 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

² In light of our decision, we find it unnecessary to address any additional issues raised by the parties on appeal. See *Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976)).