



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: V V A 3-678

Date of this notice: 10/4/2013

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:
Adkins-Blanch, Charles K.

lucasd
User team: Docket

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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A 3 678 – San Francisco, CA

Date:

OCT 4 2013

In re: V V

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Feroli, Esquire

APPLICATION: Deferral of removal

The respondent, a native and citizen of Thailand, has appealed from the Immigration Judge's decision dated May 29, 2013, to the extent that the Immigration Judge denied the application for deferral of removal. The record will be remanded to the Immigration Judge.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of S-H-*, 23 I&N Dec. 462, 464-65 (BIA 2002). The Board reviews questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The respondent, who was convicted in the United States for a controlled substance violation, fears being prosecuted and imprisoned in Thailand based on her past criminal activity. The respondent, on appeal, argues that the Immigration Judge required the respondent to meet an incorrect burden of proof. The respondent also argues that the Immigration Judge did not consider relevant evidence and relevant case law of the United States Court of Appeals for the Ninth Circuit.

We do not conclude that the Immigration Judge required the respondent to meet an incorrect burden of proof. Specifically, the respondent argues that, when the Immigration Judge stated that a showing of a "clear probability" of torture was required, he was exceeding the required standard of "more likely than not." The relevant federal regulation states that the burden of proof is on the applicant to establish that it is "more likely than not" that he or she would be tortured if removed. 8 C.F.R. § 1208.16(c)(2). The regulation does not use the term "clear probability." However, the "more likely than not" standard and the "clear probability" standard have been found to be equivalent. *See I.N.S. v. Stevic*, 467 U.S. 407, 425 (1984). Thus, the Immigration Judge did not require the respondent to meet an incorrect burden of proof.

The respondent also argues that the Immigration Judge did not consider relevant evidence and relevant case law. The Immigration Judge's decision does not reflect that he considered the submission by Woraphong Leksakulchai, Esquire (Exh. 4). *See Cole v. Holder*, 659 F.3d 762

(9th Cir. 2011). In addition, the Immigration Judge's decision does not reflect that he considered certain evidence related to prison conditions in Thailand (Exh. 4). The Immigration Judge's decision also does not address the applicability of *Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2008), to the respondent's case, especially with regard to the issue of specific intent. We also note that the Immigration Judge's decision states that "the evidence has not shown by a clear probability [] that anyone would intentionally torture the respondent even if she were in prison." (I.J. at 7). It is unclear from this statement whether the Immigration Judge is concluding that prison conditions alone cannot constitute torture but that an additional act would have to occur to someone while in prison.

Under the circumstances of this case, and in an abundance of caution, we find it appropriate to remand the record for the Immigration Judge to include, in his analysis of the deferral of removal claim, consideration of all relevant evidence and case law. On remand, both parties may submit additional evidence. In addition, on remand, the Immigration Judge, who in the decision stated that it is "possible" that the respondent would be prosecuted, that it is "possible" that she would be imprisoned in Thailand, and that it is "possible" that she would be subjected to deplorable conditions in prison, should clearly delineate the difference between his understanding of "possible" and "more likely than not" in the context of this case.

Accordingly, the following order will be entered.

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