



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: V [REDACTED] -C [REDACTED], J [REDACTED]

A [REDACTED] -875

Date of this notice: 5/10/2019

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:
Wendtland, Linda S.
Donovan, Teresa L.
Noferi, Mark

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-875 – York, PA

Date:

MAY 10 2019

In re: J [REDACTED] V [REDACTED]-C [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Matthew J. Archambeault, Esquire

APPLICATION: Withholding of removal; Convention Against Torture

The applicant, a native and citizen of Honduras who is in withholding-only proceedings, timely appeals an Immigration Judge's November 26, 2018, decision denying his applications for withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) (2012), withholding of removal under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2) (2018), and deferral of removal under the Convention Against Torture pursuant to 8 C.F.R. § 1208.17. The applicant's request for oral argument before this Board is denied. *See* 8 C.F.R. § 1003.1(e). The record will be remanded to the Immigration Judge for further adjudication and the entry of a new decision.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the applicant, through counsel, argues that "there were multiple indicia of incompetency that the Immigration Judge simply ignored," and that "[t]he Immigration Judge committed a clear and obvious error in not taking measures in order to determine whether the respondent was competent to participate in these proceedings and to see if and what safeguards should have been put into place" (Applicant's Appeal Br. at 3, 7). We agree that a remand is warranted to assess the applicant's competency. Notably, at the applicant's merits hearing, at which time the applicant was proceeding *pro se*, the applicant repeatedly stated that he was suffering from "psychological trauma" (Tr. at 25-26). At that point, the Immigration Judge asked the applicant whether a doctor had ever told him he had mental issues, to which the applicant replied in the affirmative, and indicated that he was taking nine or ten unidentified pills daily, though he did not know what they were for (Tr. at 26). The applicant then testified to a somewhat convoluted account of past persecution, which the Immigration Judge stated in his decision "could only be described as political intrigue at the highest levels of the government" (IJ at 7). We also observe that the applicant testified that he had suffered a sexual assault while in immigration detention (Tr. at 24-26).

Based on the foregoing, there is good cause to believe that indicia of incompetency were present, and thus, on remand, the Immigration Judge should consider whether the applicant was competent to participate in the hearing under the framework set out in *Matter of M-A-M-*, 25 I&N Dec. 474, 479 (BIA 2011), and take any appropriate actions consistent with that framework. *Id.* at 479-83. In addition, given the applicant's testimony that he was sexually assaulted while in detention, and that he is taking multiple unknown medications, it may be helpful to obtain any pertinent records from the detention center in order to assess the applicant's competency. *Id.* at 480.

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