U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted], F[redacted] R[redacted]

A[redacted]-750

Date of this notice: 12/27/2019

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:
Creppy, Michael J.

TRAC
Userteam: Docket

File: A[redacted]-750 – Newark, NJ Date:

In re: F[redacted] R[redacted] A[redacted] a.k.a. [redacted]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

DEC 27 2019

APPEAL

ON BEHALF OF APPLICANT: Suchita D. Mathur, Esquire

ON BEHALF OF DHS: Rebecca Patricia McGee
Assistant Chief Counsel

APPLICATION: Deferral of removal under the Convention Against Torture

The Department of Homeland Security ("DHS") appeals the July 3, 2019, decision of the Immigration Judge granting the applicant's request for deferral of removal under the Convention Against Torture. 8 C.F.R. §§ 1208.16(c), 1208.18. The applicant, a native and citizen of the Dominican Republic, opposes the appeal. The appeal will be dismissed. The record will be remanded to the Immigration Judge for any necessary background and security investigations.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review 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).

On appeal, the DHS challenges the Immigration Judge's predictive factual findings forecasting the likelihood that the applicant would be tortured upon return to the Dominican Republic and that Dominican government officials would be willfully blind or otherwise acquiesce to such action (DHS Br. at 11, 13-15). In addition, the DHS argues that the Immigration Judge's findings are a series of unsupported suppositions, and thus, the Immigration Judge's decision is not in accordance with the Attorney General's decision in *Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006) (DHS Br. at 12, 16).

We adopt and affirm the Immigration Judge's decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge made factual findings based on the evidence of record that are without clear error. *See United States v. Nat'l Assn. of Real Estate Bds.*, 339 U.S. 485, 495 (1950) (a factual finding is not "clearly erroneous" merely because there are two permissible views of the evidence).[1]

[1] The DHS does not specifically challenge the Immigration Judge's positive credibility findings with respect to the applicant, his mother, and his expert witness, which are not clearly erroneous (IJ at 7-9; *see* DHS Br. at 3, 16).

While the DHS disagrees with the Immigration Judge's predictive factual findings forecasting the likelihood that the applicant would be tortured upon return to the Dominican Republic and that Dominican government officials would be willfully blind or otherwise acquiesce to such action, given that our standard of review is "clear error," we must affirm the Immigration Judge's factual findings as long as they are based on a permissible view of the evidence, even if we would have made different factual findings had we been the Immigration Judge. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 591 (BIA 2015) (stating that an Immigration Judge's predictive findings of what may or may not occur in the future are findings of fact, which are subject to a clearly erroneous standard of review); *Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (explaining that the Board may only find clear error where the findings of fact "are illogical or implausible," or without "support in inferences that may be drawn from the facts in the record" (internal citation omitted)); *see also Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) explaining that "[a]n Immigration Judge may make reasonable inferences from direct and circumstantial evidence in the record as a whole and is not required to accept a respondent's account where other plausible views of the evidence are supported by the record."). Based on this deferential standard, we discern no clear error in the Immigration Judge's finding that the applicant would more likely than not be tortured in the future "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity," in the Dominican Republic (IJ at 11-16). 8 C.F.R. §§ 1003.1(d)(3)(i), 1208.18(a)(1); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007) (citing *United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. at 495 (explaining that a factual finding is not "clearly erroneous" merely because there are two permissible views of the evidence)).

The applicant's application is based on his claim that he has been an informant on numerous criminal investigations in the United States, which involved individuals based in the Dominican Republic; that the applicant has been threatened in the United States because of his extensive work with the United States government; that his family members have been threatened in the United States and the Dominican Republic because of his extensive work with the United States government; and that the authorities in the Dominican Republic will be willfully blind or otherwise acquiesce to harm amounting to torture that he would face upon return to the Dominican Republic.

The DHS does not identify clear error in the Immigration Judge's findings, but instead argues for a different interpretation of the evidence that is reasonable, but is not compelled by the evidence (DHS Br. at 10-16). The Immigration Judge supported his detailed findings as to each step in his analysis with extensive citations to, and discussions of, the background evidence of record, including the credible testimony of the applicant and Mr. E[redacted], a Drug Enforcement Administration agent, and the Immigration Judge's findings constitute a permissible view of the evidence as a whole (IJ at 11-16). *United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. at 495. Thus, we cannot reverse them.

The DHS asserts that the Immigration Judge erred in relying on dicta from *De La Rosa v. Holder*, 598 F.3d 103, 110 (2d Cir. 2010) in his analysis of acquiescence (DHS Br. at 13). We disagree. In that case, the court noted the Immigration Judge had "made a series of factual findings bearing on the actual involvement of Dominican government actors in the possible killing of De La Rosa." *Id.* at 109. In the present case, the Immigration Judge's factual findings relate to

evidence in the record of government officials who would more likely than not torture the applicant (IJ at 15).

Given the factual predictions of what will likely happen to the applicant upon his return to the Dominican Republic, and by whom, which we have determined are not clearly erroneous, we agree with the Immigration Judge that the harm the applicant would likely suffer meets the legal definition of torture (IJ at 11-16). *See* 8 C.F.R. § 1208.16(a)(1). In this respect, we note that although the DHS challenges the Immigration Judge's factual predictions of future events, the DHS does not contend that the harm predicted by the Immigration Judge does not meet the legal definition of torture (DHS Br. at 11-16). *See id.* The DHS essentially argues that the Immigration Judge impermissibly made inferences based on the testimony and evidence (*Id.*). *See United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. at 495.

However, based on the evidence of record, the DHS has not established that the Immigration Judge's findings that it is more likely than not that the applicant will be tortured, and that Dominican government officials will be willfully blind or otherwise acquiesce to such action, are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of J-F-F-*, 23 I&N Dec. at 917.

We will remand the record of proceedings for completion of the required background checks. Accordingly, the following orders will be entered.

ORDER: The DHS's 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