



U.S. Department of Justice

Executive Office for Immigration Review

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Name: [REDACTED], K [REDACTED]

A [REDACTED]-553

Date of this notice: 8/5/2020

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

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Falls Church, Virginia 22041

Files: A [REDACTED]-553 – New York, NY

Date: **AUG - 5 2020**

In re: K [REDACTED] I [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mustafu Davlatov, Esquire

ON BEHALF OF DHS: Brooke Jones-Jacques
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision, dated July 17, 2018, granting the respondent, a native and citizen of Tajikistan, asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).¹ The respondent filed a brief in opposition to the appeal. The appeal will be dismissed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that although the respondent's in-court testimony is unreliable regarding the past events that allegedly transpired in Tajikistan, because it is inconsistent with the sworn statements he made at his credible fear interview, independent evidence established that the respondent has a well-founded fear of future persecution in Tajikistan on account of his Salafist Muslim religion (IJ at 3-4). The Immigration Judge also found that the respondent merits asylum as a matter of discretion notwithstanding his dishonesty during his credible fear interview (IJ at 3-5). The DHS contests these findings on appeal (DHS's Br. at 7-18).

The Immigration Judge correctly found that the respondent's dishonesty at his credible fear interview did not foreclose asylum relief (DHS's Br. at 7-15). *See Paul v. Gonzales*, 444 F.3d 148, 154 (2d Cir. 2006) ("[A]n asylum claim based solely on evidence of a well-founded fear of future persecution is not necessarily foreclosed by an IJ's finding that an applicant's anecdotes of past persecution are not believable." (emphasis in original)). The DHS asserts clear error in the Immigration Judge not finding implausible the respondent's explanation for the discrepancies

¹ The respondent also applied for withholding of removal and protection under the Convention Against Torture in the alternative, but the Immigration Judge ordered those alternative applications withdrawn. *See* section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18. Given our disposition of the case, we need not reach the parties' arguments with regard to those alternative, withdrawn applications (DHS's Br. at 18; Respondent's Br. at 10).

between his testimony and credible fear interview (DHS's Br. at 7-8).² However, upon review of the respondent's testimony that he denied past harm or fear of future harm in Tajikistan for fear his statements would accompany him to his country and result in his further suffering, we are not "left with the definite and firm conviction that a mistake has been committed" (IJ at 3-4; Tr. at 92, 95-96, 98-99; Respondent's Br. at 4-5). *See Cooper v. Harris*, 137 S. Ct. 1455, 1474 (2017).

Further, the Immigration Judge did not err in declining to apply the doctrine of *falsus in uno, falsus in omnibus* on this record (DHS's Br. at 7-9). *See Siewe v. Gonzales*, 480 F.3d 160, 170-71 (2d Cir. 2007) (explaining that the doctrine contains several exceptions, including statements made at prior interviews in which aliens "may 'not be entirely forthcoming' . . . due to their perception that it is 'coercive' or 'threatening,' particularly aliens who may have a well-founded fear of government authorities in general" (quoting *Guan v. Gonzales*, 432 F.3d 391, 396 (2d Cir. 2005) (per curiam))); *Lin v. Gonzales*, 445 F.3d 127, 133-34 (2d Cir. 2006) (discussing the doctrine's limitations, including where an alien lies to prevent future persecution). Therefore, we discern no clear error in the Immigration Judge's credibility finding that the respondent's dishonesty at his credible fear interview resulted from a fear of speaking ill of his country and that the dishonesty undermined the reliability of his testimony "regarding the events which he alleges transpired in Tajikistan," but crediting the respondent's testimony and other corroborating testimony and documentation that the respondent is a Salafist Muslim (IJ at 3-4, Tr. at 12-22 (containing witness testimony as to the respondent's religious practice); Exh. 13 (containing witness statements as to the respondent's religious practice)). *See* 8 C.F.R. § 1003.1(d)(3)(i).

Furthermore, the DHS has not meaningfully challenged the Immigration Judge's determination that the respondent established that there is a pattern or practice of Salafist Muslims in Tajikistan for purposes of asylum eligibility (IJ at 4; DHS Br. at 18-19 (referring only to withholding of removal eligibility)). Therefore, we deem any further argument or evidence on this issue to be waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when an alien fails to substantively appeal an issue addressed in an Immigration Judge's decision, the issue is waived before the Board). As such, the respondent has demonstrated statutory eligibility for asylum.

Upon de novo review, we agree that the respondent established that he merits asylum as a matter of discretion (IJ at 5). *See Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987) (discussing the discretionary standard for asylum); *see also* 8 C.F.R. § 1003.1(d)(3)(ii). We agree with the Immigration Judge that the respondent's dishonesty during his credible fear interview is a relevant discretionary consideration, but is not a significant adverse factor in light of the respondent's motivations for disclaiming any mistreatment at the hands of his home country's government (IJ at 5; DHS's Br. at 15-16). *See Matter of Pula*, 19 I&N Dec. at 474 (stating that fraud perpetrated to escape persecution "is not a significant adverse factor" though fraud perpetrated to enter the United States under an assumed identity "is very serious fraud"); *see also Huang v. INS*, 436 F.3d 89, 99 (2d Cir. 2006) ("[I]f testimonial embellishment at the margins, by a proven refugee, were sufficient to justify a denial of asylum, there would be few asylees indeed"). We acknowledge the DHS's argument that the respondent has not established some equitable factors,

² It is undisputed that the respondent's statements during his credible fear interview are inconsistent with his in-court testimony (IJ at 4; Tr. at 62-75, 78, 89-91, 99, 105-06; Exh. 8; DHS's Br. at 11-14; Respondent's Br. at 5).

such as family members, employment history, or long-term residence in the United States, but “the danger of future persecution can overcome all but the strongest adverse factors.” *Huang v. INS*, 436 F.3d at 100 (citing *Matter of H-*, 21 I&N Dec. 337, 348 (BIA 1996)). Therefore, in the absence of any significant adverse factor, we determine that the respondent merits asylum as a matter of discretion (IJ at 5; Respondent’s Br. at 17). See section 240(c)(4)(A)(ii) of the Act; *Matter of Pula*, 19 I&N Dec. at 474.

In sum, given the evidence presented, we uphold the Immigration Judge’s conclusion that the respondent has demonstrated a well-founded fear of future persecution in Tajikistan on account of his religion and that he merits asylum as a matter of discretion. See sections 208(b)(1)(A), 240(c)(4)(A)(i)-(ii) 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