U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: G[redacted], T[redacted] K[redacted] **A [redacted]-108**

Date of this notice: 3/5/2020

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:
Noferi, Mark

Ma[illegible]r
Userteam: Docket

File: A[redacted]-108 – Omaha, NE

Date: MAR - 5 2020

In re: T[redacted] K[redacted] G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Karine E. Sokpoh, Esquire[1]

ON BEHALF OF DHS: Heather E. Caylor
Assistant Chief Counsel

APPLICATION: Deferral of removal

The Department of Homeland Security ("DHS") has timely appealed the Immigration Judge's decision dated September 5, 2019, granting the respondent deferral of removal to South Sudan under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)-.18. The respondent, a native of Ethiopia and citizen of South Sudan, has filed a brief *pro se* opposing the DHS's appeal. The appeal will be dismissed.

We review an Immigration Judge's findings of fact, including findings with regard to credibility and the likelihood of future events, to determine whether they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i); *see Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review de novo all questions of law, discretion, and judgment and any other issues in appeals from decisions of Immigration Judges. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent testified that he is a member of the Nuer tribe (IJ at 3; Tr. at 62). The respondent fears that he will be tortured by the government and government-affiliated Dinka tribespeople in South Sudan, especially those commanded by President Kiir (IJ at 14).[2]

The Immigration Judge credited the respondent's testimony (IJ at 6). The Immigration Judge found that the respondent had met his burden of proof to establish that it is more likely than not that the respondent, a Nuer, would be tortured in South Sudan (IJ at 14-15). *See* 8 C.F.R. § 1208.16(c)(2). The Immigration Judge found that torture is occurring in South Sudan (IJ at 14). *See* 8 C.F.R. § 1208.18(a)(1), (a)(4). The Immigration Judge based this finding on factual findings of, inter alia, documented killings, acts of attempted genocide, and other serious human rights violations perpetrated by the government and its associates and agents, in the context of a conflict in South Sudan between Dinka and Nuer, after reviewing country conditions evidence (IJ at 14-

[1] The respondent states that he was represented below but is not represented on appeal (Respondent's Br. at 2). We will provide a copy of this decision to the respondent's counsel below.

[2] The Immigration Judge found that the respondent was not tortured in the past in South Sudan (IJ at 14).

15). The Immigration Judge further found that fighting between President Kiir's Dinka and associated forces and Vice-President Machar's Nuer has displaced over 3 million people since 2013, and featured mass murder, burning alive, mass rape, including children, disabled and elderly, and has resulted in hundreds of civilian deaths (IJ at 14). The Immigration Judge also found that the United States has found the conflict to be directed by leadership on both sides (IJ at 15). The Immigration Judge also found there was a "prevalence of Nuer tribespeople as victims" (IJ at 15). The Immigration Judge also found that the respondent could not reasonably relocate away from torture in South Sudan (IJ at 14). *See* 8 C.F.R. § 1208.16(c)(3)(ii).

The DHS contends on appeal that the Immigration Judge erred in determining that the respondent met his burden of proving that it is more likely than not that he would be tortured in South Sudan (DHS's Br. at 2). The DHS contends that the testimony of the respondent and his witnesses, which the Immigration Judge found to be credible, was too vague and too speculative to support a finding that the respondent would be tortured in South Sudan (IJ at 6; DHS's Br. at 8). The DHS argues that even if there are gross, flagrant, or mass violations of human rights, there must be specific grounds indicating that the respondent would be personally at risk of being tortured (DHS's Br. at 8). The DHS contends that neither the respondent's evidence nor country conditions support that "anyone in South Sudan, much less the government, is particularly disposed to harm him" (DHS's Br. at 13).

Based on the record before us, we are not persuaded that the Immigration Judge clearly erred in his factual findings regarding the conflict between the Nuer and the Dinka. 8 C.F.R. § 1003.1(d)(3)(i); *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-74 (1985) (holding that where there are two permissible views of the evidence, the fact finder's choice between them cannot be deemed clearly erroneous); *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (stating that the Board may overturn an Immigration Judge's findings of fact only when it "is left with the definite and firm conviction that a mistake has been committed.") (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)) (internal quotation marks omitted). The DHS contends that some of the Immigration Judge's findings conflict with the evidence in the record. As an example, the DHS cites the Immigration Judge's "general characterization of ethnic Nuer as being in conflict with a Dinka-controlled government where country reports instead state that Nuer compose one of the two majority governing groups together with the Dinka." DHS's Br. at 13 (citing Exh. 5 at 159). However, country condition materials in the record provide the civil war in South Sudan is "rooted in a rivalry between President Salva Kiir, from the Dinka ethnic group, and then-Vice President Riek Machar, a Nuer" (Exh. 5 at 67). Moreover, the country conditions materials provide that the 2013-2015 conflict was fought primarily along ethnic lines with Dinka supporting President Kiir and Nuer supporting Vice-President Machar (Exh. 5 at 32).[3]

We also discern no clear error in the immigration judge's prediction as to what would likely happen to the respondent if removed. *Matter of R-A-F-*, 27 I&N Dec. 778, 779 (A.G. 2020) (Board

[3] The DHS also argues that the Immigration Judge did not address the current ceasefire (DHS's Br. at 13). However, evidence in the record questioned the viability of the peace agreement. *See, e.g.*, Exh. 5 at 81, 251-52.

reviews predictive factual determinations for clear error). The Immigration Judge cited the ethnic conflict between the Dinka, led by President Kiir, and the Nuer, led by former Vice-President Machar, and found that killing, immolation, mass rape, and acts of attempted genocide "are being perpetuated by the government and its associates and agents . . . as it engages in 'scorched earth' tactics in the late stages of the Dinka/Nuer conflict" (IJ at 14). Furthermore, the Immigration Judge pointed out the "prevalence of Nuer tribespeople as victims" and credited the respondent's claim that he is Nuer (IJ at 14-15). The DHS argues that the Immigration Judge impermissibly strung together a series of suppositions to find that the respondent is more likely than not to be tortured (DHS Br. at 12). *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006). However, given the evidence of the nature, extent, and severity of the acts committed against individuals similarly situated to the respondent, i.e. of the same tribe, we are not persuaded that the Immigration Judge clearly erred in finding that the respondent would be targeted for harm. *See* 8 C.F.R. § 1003.1(d)(3)(i); IJ at 14-15; *see, e.g.*, Exh. 5 at 32, 138, 159; *cf. Atsiz v. Gonzales*, 231 F. App'x 526, 528 (8th Cir. 2007) (interpretation of and weight given to reports regarding similarly situated individuals in country of removal are factual determinations).

We affirm the Immigration Judge's determination that what would likely happen to the respondent would amount to torture. While the immigration judge's prediction as to what would likely happen to the respondent if removed is a factual determination that the Board reviews for clear error, whether that predicted outcome satisfies the regulatory definition of torture constitutes a legal judgment subject to de novo review, as it necessarily involves applying the law to decided facts. *Matter of R-A-F-*, 27 I&N Dec. at 779 (citations and internal quotations omitted). The Immigration Judge found that torture is occurring in South Sudan under 8 C.F.R. §§ 1208.18(a)(1), (a)(4), based on findings of human rights violations such as mass murder that are being directed by governmental officials (IJ at 14-15). Given the Immigration Judge's finding that the respondent would be targeted for harm, in which we discern no clear error, we affirm on our *de novo* review the determination that what would likely happen to the respondent would amount to torture.

Based on the foregoing, we affirm the Immigration Judge's determination that the respondent has demonstrated eligibility for deferral of removal to South Sudan. 8 C.F.R. § 1208.17. However, remand is necessary to allow the DHS to complete relevant background examinations and investigations.

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 Department of Homeland Security 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