U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: A[redacted], A[redacted] R[redacted]

A [redacted]-199

Date of this notice: 3/13/2020

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:
O'Connor, Blair
Donovan, Teresa L.
Greer, Anne J.

Userteam: Docket

File: [redacted]-199 – San Francisco, CA Date: MAR 13 2020

In re: A[redacted] R[redacted] A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jaspreet Singh, Esquire

APPLICATION: Asylum; withholding of removal

The respondent, a native and citizen of India, appeals from an Immigration Judge's September 17, 2019, decision granting his application for withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) (2012), but denying his application for asylum under section 208 of the Act, 8 U.S.C. § 1158. The Department of Homeland Security has not challenged the grant of withholding of removal and has not responded to the appeal of the respondent's asylum application. The appeal will be sustained and the record will be remanded.

This Board reviews the Immigration Judge's factual findings, including credibility findings and predictions as to the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

It is undisputed that the respondent did not file his asylum application within 1 year after his arrival in the United States, as required under section 208(a)(2)(B) of the Act, given that he was admitted to the United States as an F1 nonimmigrant student on January 14, 2015, and he filed his application on November 6, 2018 (IJ at 1, 4; Tr. at 3, 21; Exhs. 1-2). The Immigration Judge determined that the respondent established eligibility for the exception to the time bar based on "extraordinary circumstances" while he maintained lawful immigration status during his studies and subsequent authorized employment, which expired on October 1, 2017 (IJ at 4; Tr. at 21). *See* 8 C.F.R. § 1208.4(a)(5)(iv). However, the Immigration Judge concluded that the delay between that date and the filing of the respondent's asylum application on November 6, 2018, was unreasonable under all the circumstances. *See id.* The Immigration Judge further ruled that continuing threats against the respondent by members of rival political parties and the Indian government do not constitute "changed circumstances" materially affecting his eligibility for asylum, but are instead a continuation of the circumstances that existed when the respondent departed India (IJ at 4). *See* 8 C.F.R. § 1208.4(a)(4).

We are persuaded by the respondent's argument that the Immigration Judge erred in holding that he does not qualify for the "changed circumstances" exception to the 1-year filing deadline (IJ at 4-5; Respondent's Br. at 3-4). The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this proceeding arises, has held that "changed circumstances" need not constitute an entirely new conflict in the country of origin, nor does that term preclude an individual who has always feared persecution from seeking asylum because the risk of that

persecution increases. *Vahora v. Holder*, 641 F.3d 1038, 1044 (9th Cir. 2011). Thus, an applicant is not required to file an asylum application when he believes his claim to be weak; rather, the applicant may rely on changed circumstances that strengthen a claim. *Id.* at 1044-45; *see also Zambrano v. Sessions*, 878 F.3d 84, 88 (4th Cir. 2017) (holding that held that "[n]ew facts that provide additional support for a pre-existing asylum claim can constitute a changed circumstance"); *Mandebvu v. Holder*, 755 F.3d 417, 426-28 (6th Cir. 2014) (even an "incremental change" in country conditions that strengthens an applicant's already existing asylum claim is sufficient to constitute a change materially affecting an applicant's eligibility for asylum for purposes of section 208(a)(2)(D) of the Act).

The respondent testified that after he worked for a company in the United States for 1 year and his F1 nonimmigrant student status expired, he wanted to seek employment in India, thinking that the rival political parties who had persecuted him had forgotten about him while he was living in this country for 3 years (IJ at 5; Tr. at 48-49, 59-60). The respondent then reconsidered after his parents informed him that political parties had contacted them by telephone and threatened the respondent's life (IJ at 4; Tr. at 49, 60). In addition, Congress party members looked for the respondent at his parents' home in April and July of 2019 because of political propaganda the respondent had posted on social media platforms, and beat the respondent's father (IJ at 4; Tr. at 53, 57-64). The respondent persuasively argues that these incidents materially strengthened his asylum claim, as opposed to only representing a continuation of the circumstances which existed when he left India. Therefore, we reverse, pursuant to *Vahora,* the holding that the respondent has not met his burden of demonstrating eligibility for the "changed circumstances" exception to the asylum time bar. *See* 8 C.F.R. § 1208.4(a)(4)(i). Moreover, in light of the Immigration Judge's granting of the respondent's application for withholding of removal, we find the respondent eligible for asylum, which is governed by a less stringent burden of proof (IJ at 5-6). *See Pedro-Mateo v. INS*, 224 F.3d 1147, 1150 (9th Cir. 2000).

Accordingly, the following orders are entered.

ORDER: The appeal is sustained and the respondent is found eligible for asylum.

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