U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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4730 Paris St., Albrook Center
Denver, CO 80239

Name: A[redacted], C[redacted] **[redacted]689**

Date of this notice: 05/11/2000

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Very Truly Yours,

Paul W. Schmidt
Chairman

Enclosure

Panel Members:
COLE, PATRICIA A.
FILPPU, LAURI S.
HEILMAN, MICHAEL J.

RECEIVED
BY DATE
5/12/2000

File: A[redacted] 689 - Aurora

Date: MAY 11 2000

In re: C[redacted] A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

RECEIVED
BY DATE
5/12/2000

ON BEHALF OF SERVICE: Leila Cronfel
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] - In United States in violation of law

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] - Convicted of aggravated felony

Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] - Convicted of controlled substance violation

APPLICATION: Withholding of removal; withholding of removal under the Convention Against Torture

The respondent, a native and citizen of Côte d'Ivoire, has timely filed an appeal of an Immigration Judge's decision dated April 30, 1999. The Immigration Judge found the respondent removable as charged, denied 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) and withholding of removal under Article 3 of the United Nations Convention Against Torture.[1] The record will be remanded to the Immigration Judge.

1 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature February 4, 1985, G.A. Res. 39/46. 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/RES/39/708 (1984), *reprinted in* 23 I.L.M. 1027 (1984), *modified in* 24 I.L.M. 535 (1985). *See* 8 C.F.R. § 208.16(c) (2000).

The Immigration Judge concluded that the respondent had not met his burden of showing eligibility for either form of relief. Although the respondent alleged that he had been persecuted in the past on account of his political opinion, the Immigration Judge made no finding regarding past persecution, and thus no finding regarding the application of the presumption that he will be persecuted unless the preponderance of the evidence shows that conditions have changed. *See* 8 C.F.R. § 208.16(b)(2).

The respondent also contends that the Immigration Judge disregarded statements which corroborated the respondent's claim contained within the State Department report on conditions in Côte d'Ivoire. *See* United States Department of State, Committee on Foreign Relations and International Relations, 106th Cong., 1st Sess., *Country Reports on Human Rights Practices for 1998*, (Joint Comm. Print 1999) (Report) (Exh. 7). The Immigration Judge noted the government's poor human rights condition and that police have used torture and have used violence to break up demonstrations (I.J. at 6). However, the Immigration Judge diminished the seriousness of the police violence by noting that there have been many student protests and that a police officer who killed a student protester was convicted and sentenced to imprisonment (I.J. at 6). While the one police officer was convicted, the Immigration Judge failed to acknowledge the statements in the report that the government often failed to bring perpetrators of arbitrary arrest, extrajudicial killings, and beatings of detainees to justice. Report at 2. The Immigration Judge also largely disregarded the reports of human rights abuses, arbitrary arrests, violations of rights of detainees, and the harsh conditions in prisons, including the deaths of many prisoners. *See* Report at 2-6.

The respondent also argues that the Immigration Judge erred in opining that the respondent would not be tortured, because "he would be rather foolish to take part in any activities if he were returned there . . . " (I.J. at 7). It is unclear if the Immigration Judge meant that he found it implausible that the respondent would join in student protests upon return, as the respondent was no longer a student. From the evidence and testimony presented, there is no reason to believe that the respondent would not be interested in protesting government abuses. More importantly, it is inappropriate for the Immigration Judge to suggest that the respondent should remain silent and inactive upon return.

Based on the foregoing, we find it appropriate to remand the record to the Immigration Judge. Upon remand, the Immigration Judge should consider the respondent's claim based upon all the evidence contained in the record and should also make a specific finding regarding the respondent's claim of past persecution and the possibility of future persecution.

ORDER: The appeal is sustained.

FURTHER ORDER: The Immigration Judge's decision of April 30, 1999, is vacated, and this matter 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