



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: T [REDACTED], C [REDACTED]

A [REDACTED]-676

Date of this notice: 12/18/2019

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:
Liebowitz, Ellen C
Creppy, Michael J.
Cassidy, William A.**

**Handled
Userteam: Docket**

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Falls Church, Virginia 22041

File: A █████ -676 – Chaparal, NM¹

Date:

DEC 18 2019

In re: C █████ T █████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Nancy Oretskin, Esquire

ON BEHALF OF DHS: Amanda J. Marlatt
Assistant Chief Counsel

APPLICATION: Asylum

On August 27, 2018, the Immigration Judge denied the respondent's applications for asylum pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c)-.18, but granted his application for withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3). The respondent, a native and citizen of Cameroon, has appealed the Immigration Judge's denial of asylum. The Department of Homeland Security (DHS) opposes the appeal. The appeal will be sustained.

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).

The respondent seeks relief based on a fear of the Cameroonian government (IJ at 2-3; Tr. at 28, 46-48). He testified that he was detained and mistreated by the Cameroonian government after taking pictures of protests (IJ at 2-3; Tr. at 51). The Immigration Judge found the respondent credible and granted his application for withholding of removal (IJ at 4, 6-7). However, the

¹ In accordance with Operating Policies and Procedures Memorandum No. 04-06, removal proceedings before the Immigration Judge in this matter were completed in the Otero County Processing Center, Chaparal, NM. The case was docketed for hearing in Chaparal, NM, the respondent was located in Chaparal, NM, and the Immigration Judge sitting in the Immigration Court in El Paso, TX, heard the case through video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A). Accordingly, we will consider the respondent's claim under the precedent decisions of the United States Court of Appeals for the Tenth Circuit.

Immigration Judge denied his asylum application as a matter of discretion. The sole issue on appeal is whether the respondent has established that he merits asylum as a matter of discretion.²

Upon de novo review, we disagree with the Immigration Judge that the respondent has not established that he merits asylum in the exercise of discretion (IJ at 6). *Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987); *Matter of H-*, 21 I&N Dec. 337, 347 (BIA 1996). To determine whether a favorable exercise of discretion is warranted, we must consider the totality of the circumstances. *Matter of Pula* 19 I&N Dec. at 473; see also *Htun v. Lynch*, 818 F.3d 1111, 1121 (10th Cir. 2016). Relevant factors include general humanitarian considerations, the respondent's fear of persecution, the circumvention of any of orderly refugee procedures, the presence any relatives living legally in the United States, and whether he passed through, or sought asylum in, any country on the way to the United States. *Matter of Pula*, 19 I&N Dec. at 473-74; see also *Matter of A-B-*, 27 I&N Dec. 316, 345 n.12 (A.G. 2018).

The respondent has presented factors weighing in favor of a positive exercise of discretion. Most significantly, the Immigration Judge found that it is more likely than not that the respondent's life or freedom would be threatened in Cameroon on account of his political opinion (IJ at 4-7). We also consider that he presented himself at the San Ysidro, California, Port of Entry, (IJ at 1). The record does not indicate that he has a criminal history anywhere in the world other than the arrests in Cameroon that gave rise to his claim for asylum (Exh. 2).

The only factor weighing against a positive exercise of discretion identified by the Immigration Judge is the respondent's failure to apply for asylum or other protection in any of the countries he traveled through on his way to the United States despite interacting with immigration authorities and successfully obtaining immigration permits to pass through some of those countries (IJ at 6-7; Tr. at 97-102). We acknowledge the serious and legitimate concerns expressed by the Immigration Judge. However, in considering the totality of the circumstances, we find that based upon the record before us, this one factor does not outweigh the other factors in the record in favor of a positive exercise of discretion. *Matter of Pula*, 19 I&N Dec. at 474 (stating that the danger of persecution should generally outweigh all but the most egregious of adverse factors); see also *Htun v. Lynch*, 818 F.3d at 1120 ("[T]he BIA may not rely on a single fact in exercising its discretion" to grant or deny an application for asylum). Under these circumstances, we conclude that the respondent merits a favorable exercise of discretion.

Since the respondent has satisfied the more stringent burden of establishing eligibility for withholding of removal, he necessarily has shown eligibility for asylum (IJ at 7).

In light of the foregoing, the appeal will be sustained and the record will be remanded to allow the DHS to conduct the necessary background checks. The following orders will be entered.

² The DHS did not appeal the Immigration Judge's decision granting the respondent withholding of removal, and the respondent did not appeal the Immigration Judge's denial of his application for protection under the Convention Against Torture. Those issues are thus waived. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012); *Bronson v. Swensen*, 500 F.3d 1099, 1104 (10th Cir. 2007).

ORDER: The appeal is sustained, and the Immigration Judge's August 27, 2018, decision is vacated to the extent that it denied the respondent's application 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).



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