



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] - P [REDACTED], P [REDACTED]

A [REDACTED] -600

Date of this notice: 2/28/2020

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:
Wilson, Earle B.
O'Connor, Blair
Donovan, Teresa L.

1006
User team: Docket

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Ng

Falls Church, Virginia 22041

File: [REDACTED]-600 – Arlington, VA

Date:

FEB 28 2020

In re: P [REDACTED] G [REDACTED]-P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin R. Winograd, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case is before us pursuant to the March 7, 2019, decision of the United States Court of Appeals for the Fourth Circuit granting the government's motion to remand. The record will be remanded to the Immigration Court for further proceedings consistent with this decision.

On August 27, 2018, this Board dismissed the respondent's appeal from the Immigration Judge's July 6, 2017, decision, denying the respondent's applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), respectively, as well as protection under the Convention Against Torture. In the government's motion to remand before the Fourth Circuit, the government's requested that this Board further consider whether the respondent demonstrated a due process violation and any other relevant issues. Accordingly, we will address those issues at this time.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Turkson v. Holder*, 667 F.3d 523 (4th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The primary issue on appeal involves a conversation between the Immigration Judge and an unidentified speaker after the respondent's hearing had adjourned. In our prior decision we noted that, "[w]hile the transcript does reveal that the Immigration Judge had an in-depth conversation with someone about the merits of this case after the Judge adjourned the hearing and neglected to turn the audio recorder off, (Tr. at 87-102), there is no evidence indicating that the Immigration Judge was having an improper ex parte conversation with DHS counsel." We further considered the respondent's argument that the Immigration Judge was belittling the respondent and determined that, while it was unclear from the transcript whether the Immigration Judge's tone was inappropriate, the transcript did not establish an improper ex parte conversation or that the respondent's due process rights were violated.

In the government's motion to remand before the Fourth Circuit, the government requested that that this Board further assess the evidence, including a review of the audio recording. We have reviewed the audio recording of the hearing, in particular the conversation between the Immigration Judge and the unidentified speaker. This is not a clear case of bias or prejudice, nor is there concrete evidence of an inappropriate ex parte conversation. In fact, at one point, the

Immigration Judge admitted to the unidentified speaker that he was unsure of how the case would be resolved (Tr. at 96-97). We do acknowledge, however, that the Immigration Judge's tone and characterization of the evidence to the unidentified speaker was at times insensitive, bordering on inappropriate. While we conclude on the evidence before us that this was not a clear violation of the respondent's due process rights, we will, out of an abundance of caution and to eliminate any possibility of bias, remand the record to a different Immigration Judge for a new hearing.¹ On remand, the Immigration Judge should provide the parties the opportunity to submit new evidence and consider all new and relevant case law.



FOR THE BOARD

¹ The Immigration Judge who presided over the respondent's former hearing is no longer serving as an Immigration Judge.