U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: R[redacted], A[redacted] H[redacted]

A [redacted]-593

Date of this notice: 12/16/2019

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:
Wilson, Earle B.

Userteam: Docket

File: A[redacted]-593 – El Paso, TX Date: DEC 16 2019

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

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kristine A. Rembach, Esquire

ON BEHALF OF DHS: Lorely R. Fernandez
Senior Attorney

APPLICATION: Reopening; stay of removal

The respondent, a native and citizen of Iraq, appeals from an Immigration Judge's March 23, 2018, decision denying his motion to reopen removal proceedings. The Department of Homeland Security ("DHS") opposes the respondent's appeal and his recently filed request to stay removal. The record will be remanded to the Immigration Court for further proceedings, and the respondent's request for a stay of removal will be granted.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

In an April 6, 2006, decision, an Immigration Judge observed that the respondent had been previously found ineligible for asylum, withholding of removal under the Immigration and Nationality Act, and withholding of removal under the Convention Against Torture because of his criminal convictions including for an aggravated felony, also deemed a particularly serious crime, and he denied the respondent's application for deferral of removal under the Convention Against Torture. No appeal from that decision had been filed.

On February 21, 2018, the respondent filed a motion to reopen proceedings, seeking to apply for deferral of removal under the Convention Against Torture based on changed country conditions in his native Iraq. He also requested the Immigration Judge to exercise sua sponte authority to reopen proceedings. The respondent submitted extensive evidence in support of his motion, including a newly executed Form I-589. By a February 22, 2018, order, the Immigration Judge observed, inter alia, that there was no regulatory exception to the 90-day filing deadline for a motion to reopen based on changed country conditions insofar as the application was for deferral of removal under the Convention Against Torture. The Immigration Judge ordered the DHS to file a written response to the respondent's motion to reopen.

The DHS submitted a detailed response to the respondent's motion to reopen as directed, wherein it stated, inter alia, that the regulatory 90-day deadline to file a motion to reopen based on changed country conditions was applicable to applications for deferral of removal under the Convention Against Torture, and that the Immigration Judge should consider this exception in his decision (*see* DHS's Opposition to the Respondent's Motion to Reopen at 4-6).

In his March 23, 2018, decision, the Immigration Judge acknowledged that the respondent filed a "motion to reopen removal proceedings resulting in an order of removal to Iraq." He stated that he "carefully" considered the motion, as well as the "well-written" response from the DHS, and that he agreed with the DHS's position. As such, the Immigration Judge denied the respondent's motion for the reasons articulated by the DHS in its written response to the motion.

We will remand the record to the Immigration Court for further consideration of the respondent's motion. As the respondent argues on appeal, the Immigration Judge did not enter necessary factual findings and conclusions of law with respect to the extensive arguments set forth by the respondent in his motion to reopen and the documentary evidence submitted by both parties. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994). Moreover, as the respondent points out, the DHS's opposition to the respondent's motion to reopen contained a number of arguments and, having simply adopted this opposition as his decision, the Immigration Judge deprived the respondent of his opportunity to challenge the specific reasoning adopted, and has deprived us of an opportunity to review that reasoning on appeal (*see* Respondent's Br. at 9-11). On remand, the Immigration Judge should reassess whether the new evidence presented below - viewed in its entirety - establishes the respondent's prima facie eligibility for deferral of removal under the Convention Against Torture, and he should articulate his reasons for the conclusions reached with specificity in accordance with controlling law, regulations, and precedent decisions. In remanding the record, we intimate no opinion regarding the ultimate outcome of the respondent's motion or applications for protection. Accordingly, the following orders will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

FURTHER ORDER: The respondent's request for a stay of removal is granted.

FOR THE BOARD