U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: T[redacted] S[redacted], B[redacted] A[redacted]... **A [redacted]-315**

Date of this notice: 1/10/2020

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

Userteam: Docket

File: [redacted]-315 – Eloy, AZ

Date: JAN 10 2020

In re: B[redacted] A[redacted] T[redacted] S[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Zachary S. Brugman, Esquire

ON BEHALF OF DHS: Ryan J. Goldstein
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's July 17, 2019, decision granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A). The respondent, a native and citizen of Nicaragua, opposes the appeal. The appeal will be dismissed and the record remanded for updated background and security checks.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge's factual findings have not been shown to be clearly erroneous, and we agree with the Immigration Judge that the respondent met his burden to establish eligibility for asylum.

The arguments raised by the DHS on appeal do not establish clear error in the Immigration Judge's positive credibility finding (IJ at 4-6; DHS Br. at 9-18). *See* sections 208(b)(1)(B)(iii), 240(c)(4)(C) of the Act, 8 U.S.C. §§ 1158(b)(1)(B)(iii), 1229a(c)(4)(C); 8 C.F.R. § 1003.1(d)(3)(i). The Immigration Judge acknowledged an inconsistency in the respondent's testimony regarding whether protestors used mortar bombs during the protests he participated in, but found without clear error that the inconsistency did not diminish the respondent's overall credibility in light of the totality of his testimony (IJ at 5; Tr. at 39; 104-07, 114-15). The Immigration Judge also found that the respondent reasonably explained why he did not submit evidence corroborating the threats he received through Facebook, rejected the DHS's argument that certain aspects of the respondent's testimony were implausible, and found that the respondent's demeanor "reinforced" his credibility (IJ at 5-6).

To the extent the DHS perceives an inconsistency between the respondent's testimony that he received death threats and was shot at and his mother's affidavit, which did not refer to those specific incidents, the omission of such details is insufficient to establish clear error in the

credibility finding (DHS Br. at 12-14; Exh. 5B). *See Lai v. Holder*, 773 F.3d 966, 971 (9th Cir. 2014) (observing that "omissions are less probative of credibility than inconsistencies" and that "the mere omission of details is insufficient to uphold an adverse credibility finding") (internal quotation marks and citations omitted). Because she found the respondent's testimony credible, the Immigration Judge did not err in not requiring the respondent to submit additional corroborating evidence (DHS Br. at 18-20). *See* section 208(b)(1)(B)(ii) of the Act (providing that an applicant's testimony may be sufficient to sustain his burden of proof without corroboration if his testimony is "credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee").

Lastly, the DHS contends that it rebutted the presumption of a well-founded fear of persecution by showing by a preponderance of the evidence that there has been a fundamental change of circumstances such that the respondent no longer has a well-founded fear of persecution in Nicaragua (Notice of Appeal).[1] *See* 8 C.F.R. § 1208.13(b)(1)(i)(A); *see generally Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). The Immigration Judge evaluated the evidence of record and concluded that the passage of an amnesty law and the release of some political prisoners were insufficient to rebut the presumption (IJ at 11-12; DHS Closing Argument, Tabs A-E; Respondent's Reply, Tab A; Exh. 5, Tab E). Specifically, the Immigration Judge found that conditions in Nicaragua for political opponents "remain[s] tenuous and unstable" (IJ at 11). We discern no clearly erroneous factual finding or errors of law in the Immigration Judge's analysis.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

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

[1] The DHS did not contest that the respondent established past persecution on account of a protected ground or argue that he could avoid persecution by relocating to another part of Nicaragua and that it would be reasonable for him to do so (IJ at 11).