



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: B [REDACTED] A [REDACTED], A [REDACTED] [REDACTED]... A [REDACTED]-491

Date of this notice: 2/21/2019

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:
Guendelsberger, John

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-491 – Haskell, TX

Date:

FEB 21 2019

In re: A [REDACTED] [REDACTED] B [REDACTED] A [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Jonathan Ng, Esquire

ON BEHALF OF DHS: Paul B. Hunker III
Chief Counsel

APPLICATION: Reopening

The final administrative order in this matter was entered by an Immigration Judge on July 17, 2015. The respondent filed two motions to reopen with the Immigration Judge, and each of these was denied. The matter was previously before the Board on appeal from the Immigration Judge's decision denying the respondent's second motion to reopen. The Board dismissed the appeal. The respondent has now filed a motion to reopen with the Board. The Department of Homeland Security (DHS) has filed an opposition to the motion. Proceedings will be reopened pursuant to 8 C.F.R. § 1003.2(a).

The respondent states in his motion that he seeks asylum, withholding of removal, and protection under the Convention Against Torture. He claims that there are changed country conditions in his native Libya and also that he did not understand the asylum process when he appeared before the Immigration Judge on July 17, 2015. He specifically states that he did not understand that an asylum application would be confidential.

While there is no transcript of the hearing below, a review of the audio recording raises significant questions concerning whether the respondent was provided a sufficient explanation of his rights, including the asylum process.

The hearing was attended by 21 individuals, most of whom spoke Spanish, and all of whom appeared before the Immigration Judge by video conference while being detained. The group was provided some basic information in English and Spanish, including information about obtaining a lawyer and the asylum process. There was no translation into the respondent's native Arabic. Only after he was called to speak to the Immigration Judge individually was the respondent asked whether he spoke English. He said that he did. However, he was never asked if his language skills

were sufficient for him to proceed with his hearing without an interpreter. Nor was the respondent asked whether he had understood any of the instructions given prior to that point in the hearing.

The respondent clearly stated that he did not want an order of removal to Libya and wanted to “fight his case.” He expressed a fear of return to Libya. When given the opportunity to select a country for removal in the event he were removed, he selected the Czech Republic, saying he did not want to return to Libya. He asked if he could have a chance to continue his education in the United States. He also asked if the Immigration Judge had received the papers showing why he had previously stopped going to school, which is what put him out of status and made him subject to removal. The Immigration Judge stated that he had not received anything from the respondent.¹

The respondent was then asked several questions and the respondent answered those questions, though we note that the respondent asked on multiple occasions to have questions repeated. The respondent stated that he could not return to Libya because it was too dangerous. The Immigration Judge acknowledged that Libya had been very dangerous for a long time. When asked if he wished to apply for asylum, the respondent said “no sir” several times. He was not asked any questions about why he did not want to apply, and he was not advised that this would be his only opportunity to apply. He was told he did not qualify for other relief and was asked if he wanted to receive voluntary departure, which would allow him to return to the United States. He said that he did. He was granted voluntary departure with an alternative order of removal to the Czech Republic and then to Libya.²

Given the respondent’s allegations that he did not understand the asylum process, the serious questions we have concerning the respondent’s understanding of his hearing (based on the audio recording), and the evidence in the record concerning conditions in Libya, we will reopen proceedings pursuant to 8 C.F.R. § 1003.2(a). The record will be remanded to the Immigration Judge for further proceedings in which the respondent will be permitted to apply for any relief for which he may be eligible.

ORDER: The proceedings in this matter are reopened pursuant to 8 C.F.R. § 1003.2(a).

FURTHER 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.



FOR THE BOARD

¹ The attorney for the DHS acknowledged having the documents and said that the DHS had sent the documents to the Immigration Judge.

² A September 2, 2015, order by the Immigration Judge, denied the respondent’s motion to reopen and ordered the respondent removed to Libya. That order did not reference the Czech Republic, the country selected by the respondent for removal and included in the Immigration Judge’s original order.