



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**Perez-Salazar, Jessica L.
MIGRA 411
PO BOX 1630
BUFORD, GA 30515**

**DHS/ICE Office of Chief Counsel - SDC
146 CCA Road, P.O.Box 248
Lumpkin, GA 31815**

Name: A [REDACTED]-R [REDACTED], Y [REDACTED] ... A [REDACTED]-914

Date of this notice: 9/3/2020

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:
Greer, Anne J.
Donovan, Teresa L.
Pepper, S. Kathleen

Userteam: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

RC

Falls Church, Virginia 22041

File: A-914 – Lumpkin, GA

Date:

SEP 3 2020

In re: Y-A-A-R-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jessica L. Perez-Salazar, Esquire

ON BEHALF OF DHS: Susan Onyewuchi
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, appeals the Immigration Judge's February 19, 2020, decision denying his applications for asylum and withholding of removal pursuant to sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), as well as his request for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16-1208.18. The record will be remanded.

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).

The respondent sought relief claiming that he has been and will be persecuted by Cuban authorities on account of his anti-government political opinion (IJ at 2; Exh. 2). In support of his claim, the respondent testified that he was repeatedly detained and beaten by authorities between 2015 and 2019 (IJ at 2; Tr. at 60-62, 66-68). He specifically recalled that he was first arrested and beaten with a baton in 2015; he suffered a broken rib as a result of this beating, and was treated in a hospital for 20 days (IJ at 2-3; Tr. at 60-61, 63). He also noted that, in 2018, an officer pushed him to the ground causing him to break his tooth (IJ at 3; Tr. at 67). He lastly noted that he was slapped by authorities in 2019 after refusing to participate in an election (IJ at 3; Tr. at 62, 64-65). The Immigration Judge deemed the respondent credible, but denied his application for asylum concluding that he did not demonstrate that his past harm constituted persecution, or that he had an objectively reasonable well-founded fear of future persecution (IJ at 3-5). On appeal, the respondent maintains that he established that he suffered past persecution and that he has a well-founded fear of future persecution on account of his political opinion (Respondent's Br. at 10-18).

We agree with the respondent's appellate contention that the Immigration Judge erred in finding that his past harm did not amount to persecution (Respondent's Br. at 10-12). The respondent credibly testified that he was repeatedly threaten and beaten over a four year period (IJ at 2; Tr. at 60-62, 66-68). During the first of these beatings, authorities used a baton to break the respondent's rib, and he subsequently spent 20 days being treated in a hospital (IJ at 2-3; Tr. at 60-61, 63). Later, in 2018, authorities pushed the respondent to the ground, causing him to break his

tooth (IJ at 3; Tr. at 67). Additionally, although not considered by the Immigration Judge, the record reflects that the respondent also indicated that, while working at shop that belonged to the Department of Agriculture in 2019, he was summoned to a director's office after failing to participate in a political event and admonished; he was subsequently let go from his position (Tr. at 62, 71-72; Respondent's Br. at 7). Therefore, considering the cumulative harm to the respondent upon our de novo review, we conclude this harm amounted to past persecution. *See Niftaliev v. U.S. Att'y Gen.*, 504 F.3d 1211, 1217 (11th Cir. 2007) (finding past persecution based on the cumulative effect of discrimination, numerous beatings and threats, and a fifteen-day detention); *see also Matter of T-Z-*, 24 I&N Dec. 163, 171 (BIA 2007) (noting that nonphysical forms of harm, such as the deliberate imposition of severe economic disadvantage or deprivation of employment, or other essentials of life, may amount to persecution).

Therefore, we will remand proceedings for the Immigration Judge to determine in the first instance whether this past persecution was inflicted on account of the respondent's political opinion.¹ Should the Immigration Judge determine that the past persecution was inflicted on account of a protected ground, he should further consider whether the DHS has met its burden to rebut the presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1).² The respondent does not challenge the Immigration Judge's denial of his request for protection under the Convention Against Torture, and we therefore deem any such argument to be waived (IJ at 5-6). *See Matter of M-D-C-V-*, 28 I&N Dec. 18, 18 n.1 (BIA 2020) (collecting cases and explaining that absent a meaningful challenge to the Immigration Judge's denial of relief or protection, the issue is not properly before the Board). Consequently, on remand, the Immigration Judge need only reassess the respondent's eligibility for asylum and withholding of removal. The parties may supplement the record on remand.

Accordingly, the following order will be entered.

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



FOR THE BOARD

¹ We note that the Immigration Judge assumed without deciding that the respondent was harmed on account of his political opinion for the purposes of his past persecution analysis (IJ at 3).

² Although the Immigration Judge also found that the respondent did not establish a well-founded fear of persecution, he did not shift the burden of proof to the DHS as to that issue (IJ at 3-5).