



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: H [REDACTED], Y [REDACTED]**

**A [REDACTED]-948**

**Date of this notice: 9/24/2020**

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:  
Grant, Edward R.  
Goodwin, Deborah K.  
Donovan, Teresa L.

Userteam: Docket

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*RC*

Falls Church, Virginia 22041

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File: A-948 – Dallas, TX

Date: SEP 24 2020

In re: Y-H

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas J. Tarigo, Esquire

ON BEHALF OF DHS: Joshua S. Levy  
Assistant Chief Counsel

APPLICATION: Asylum, withholding of removal, Convention Against Torture

The respondent, a native and citizen of China, has filed a timely appeal of an Immigration Judge's April 3, 2018, decision, denying her applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3); as well as denying her request for protection from removal under the Convention Against Torture, for failure to meet her burden of proof. The appeal will be sustained.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, and the likelihood of future events, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). The Board reviews questions of law, discretion, judgment, and all other issues in an appeal from an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the respondent to be generally credible (IJ at 5), and determined that the respondent had established past persecution based on the incidents described (*i.e.*, the two forcible abortions conducted by the Chinese Family Planning officials pursuant to China's coercive family planning policies) (IJ at 6). A finding of past persecution creates a rebuttable presumption of a well-founded fear of future persecution (IJ at 6-7). *See* 8 C.F.R. § 1208.13(b)(1)(i)(A). Nonetheless, even assuming the respondent does not have an objective basis to fear future persecution due to enforcement of China's coercive family planning policies on account of the speculative conclusions cited by the Immigration Judge (*e.g.*, the respondent is now 52-years-old and is no longer of child-bearing age), considering the severity of the past persecution in this case (*i.e.*, the respondent is the victim of two forcible abortions conducted by the Chinese Family Planning officials), the respondent has established compelling reasons for being unwilling to return to her country) (IJ at 7; Respondent's Br. at 6). *See Matter of L-S-*, 25 I&N Dec. 705, 711-12 (BIA 2012); *see also* 8 C.F.R. § 1208.13(b)(1)(iii)(A).


Thus, on de novo review, and considering the severity of the harm (physical, psychological, and emotional) experienced by the respondent in this case on account of her two forced abortions, we find the respondent has established compelling reasons for being unwilling to return to her

country, and therefore the respondent has established that she merits a grant of humanitarian asylum in the exercise of discretion. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A).

Accordingly, the following orders are entered.

ORDER: The appeal is sustained, the denial of asylum is vacated, and the respondent is found eligible for this form of relief.

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 DHS 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).

  
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FOR THE BOARD