



U.S. Department of Justice

Executive Office for Immigration Review

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Name: A -G -, E Y

A -756

Date of this notice: 11/13/2019

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:
Greer, Anne J.
Wendtland, Linda S.
Noferi, Mark

Userteam: Docket

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RL

Falls Church, Virginia 22041

File: A-756 – Arlington, VA

Date: **NOV 13 2019**

In re: E-Y-A-G-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Heain Lee, Esquire

ON BEHALF OF DHS: Elizabeth M. Dewar
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's April 17, 2019, decision denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. § 1208.16(c). The Department of Homeland Security ("DHS") opposes the appeal. 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 a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We conclude that a remand is appropriate for the Immigration Judge to reassess the respondent's credibility. The Immigration Judge made an adverse credibility finding, but, as the respondent argues on appeal, he was not confronted with and given an opportunity to explain the perceived discrepancies and omissions relied upon by the Immigration Judge (IJ at 2-5; Respondent's Br. at 14-15). The Board defers to an adverse credibility finding where, among other things, "a convincing explanation for the discrepancies and omissions" has not been supplied by the respondent. *Matter of A-S-*, 21 I&N Dec. 1106, 1109 (BIA 1998). As the respondent points out, the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case arises, has reasoned, with respect to corroboration, that "[t]he requirement that the applicant provide a reasonable explanation . . . 'presumes that the IJ offers a petitioner an opportunity to explain . . .'" *Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007) (quoting *Obale v. Att'y Gen. of U.S.*, 453 F.3d 151, 163 (3d Cir. 2006)).

If the respondent is found credible on remand, we conclude that his asylum application should be treated as timely filed. *See* sections 208(a)(2)(B), (D) of the Act; 8 C.F.R. § 1208.4(a)(2), (4)(i)(B). The Immigration Judge found that the respondent's claim regarding his brothers' gang activity is not time-barred, a determination that the DHS does not challenge on appeal (IJ at 6). Further, assuming the facts as presented by the respondent to be true, including the respondent's testimony that his cousins were killed in 2014, we disagree with the Immigration Judge that the respondent did not establish changed circumstances regarding his claim of persecution on account

of his political opinion (IJ at 5-6; Tr. at 92; Exh. 5). *See Zambrano v. Sessions*, 878 F.3d 84, 88 (4th Cir. 2017) (holding that “[n]ew facts that provide additional support for a pre-existing asylum claim can constitute a changed circumstance”).

Additionally, the Immigration Judge determined that, even assuming that the respondent was credible and that his asylum application was timely filed, the respondent did not demonstrate that his fear of future persecution in El Salvador was well-founded or that he is more likely than not to be persecuted in El Salvador (IJ at 6-7). The Immigration Judge specifically found it “plausible that persecution based on a protected ground could be found,” assuming credibility and timeliness (IJ at 6).

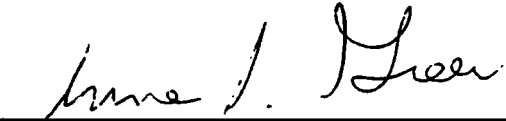
Given this apparent past persecution finding, the respondent is entitled to a presumption of a well-founded fear of persecution or, in the withholding of removal context, a presumption that his life or freedom would be threatened in the future on the basis of the original claim. 8 C.F.R. §§ 1208.13(b)(1), 1208.16(b)(1)(i). That presumption may be rebutted by the DHS upon a showing, by a preponderance of the evidence, that there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution or that he could avoid future persecution by relocating to another part of El Salvador and that, under all the circumstances, it would be reasonable to expect him to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A), (B), (ii), 1208.16(b)(1)(i)(A), (B), (ii); *see Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008) (discussing the burden-shifting that occurs if an Immigration Judge finds that an applicant established past persecution).

It is unclear whether the Immigration Judge properly shifted the burden to DHS (IJ at 6). *See Matter of D-I-M-*, 24 I&N Dec. at 451 (remanding where an Immigration Judge “did not explicitly apply the presumption and failed to shift the burden of proof to the DHS to prove by a preponderance of the evidence that the respondent can avoid future persecution by relocating to another part of Kenya and that it would be reasonable for him to do so”). Further, although the Immigration Judge concluded that the respondent could safely relocate, the respondent correctly points out that the Immigration Judge did not make any findings regarding whether relocation would be reasonable under all the circumstances (IJ at 6; Respondent’s Br. at 16-18). *See* 8 C.F.R. §§ 1208.13(b)(3) (setting forth the factors to consider in determining the reasonableness of internal relocation), 1208.16(b)(3) (same).

The Board has limited fact-finding abilities in deciding appeals. *See* 8 C.F.R. § 1003.1(d)(3); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We will therefore remand the record to the Immigration Judge for further proceedings. In the remanded proceedings, the Immigration Judge should afford the respondent an opportunity to explain any discrepancies and omissions identified by the Immigration Judge as supporting the adverse credibility finding and then reassess his credibility. The Immigration Judge should also determine whether the DHS carried its burden to establish that the respondent can avoid future persecution by relocating within El Salvador, and whether relocation is reasonable under all of the relevant circumstances. In light of the remand to reassess the respondent’s credibility and whether the DHS rebutted the presumption of a well-founded fear of persecution, we decline to address the respondent’s remaining appellate arguments at this time.

Accordingly, the following order is entered.

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



FOR THE BOARD