



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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A [REDACTED], G [REDACTED]
A [REDACTED]-612
JCD
500 HILBIG ROAD
CONROE, TX 77301

**DHS/ICE Office of Chief Counsel
Montgomery Proc Ctr, 806 Hilbig Rd
Conroe, TX 77301**

Name: A [REDACTED], G [REDACTED]

A [REDACTED]-612

Date of this notice: 6/21/2019

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Donovan, Teresa L.
Cole, Patricia A.
Wendtland, Linda S.

MalikAr
Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-612 – Conroe, TX

Date:

JUN 21 2019

In re: G [REDACTED] A [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Adam Jovanovic
Assistant Chief Counsel

APPLICATION: Remand

The respondent, a native and citizen of Ghana, appeals from the Immigration Judge's December 18, 2018, written decision, finding her ineligible for all relief. The record will be remanded to the Immigration Judge.¹

We review the findings of fact, including the determination of credibility, made by the Immigration Judge for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of law and issues of discretion, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The record will be remanded to the Immigration Judge for new proceedings, and for the entry of a new decision which includes all necessary findings of fact. *See Matter of A-P-*, 22 I&N Dec. 468, 473 (BIA 1999) (vesting the Immigration Judge with the responsibility for ensuring the "substantive completeness of the decision"); *see also Matter of A-B-*, 27 I&N Dec. 316, 340-41 (A.G. 2018) (emphasizing the importance of Immigration Judges as fact-finders).

First, the Immigration Judge's adverse credibility finding is clearly erroneous. *See Wang v. Holder*, 569 F.3d 531, 537 (5th Cir. 2009) (requiring that "an adverse credibility determination still 'must be supported by specific and cogent reasons derived from the record.'" (quoting *Zhang v. Gonzales*, 432 F.3d 339, 344 (5th Cir. 2005))). The Immigration Judge found the respondent not credible because her testimony was internally inconsistent and inconsistent with her credible fear interview (IJ at 2). The main inconsistency specified by the Immigration Judge was that the respondent testified she was a member of the Ewe religion, but she was previously listed as a Christian (IJ at 2, citing Tr. at 14, Form I-213). However, the Immigration Judge did not question the respondent about this perceived inconsistency, so we are unable to discern whether the respondent converted at a later date, or if she perceives the Ewe religion to be part of Christianity, or whether she was genuinely inconsistent. *See Matter of B-Y-*, 25 I&N Dec. 236, 242 (BIA 2010) (requiring the Immigration Judge not to rely upon inconsistencies that take an alien by surprise).

¹ The respondent's request for a fee waiver is granted. Her request for oral argument is denied.

Second, the Immigration Judge's finding that the respondent's testimony was inconsistent with her credible fear interview is not supported by the record (IJ at 2; *compare* Tr. at 14-23, with Credible Fear Interview at 6).² Third, the Immigration Judge did not make necessary findings regarding the basis of the claim. *See Mwembie v. Gonzales*, 443 F.3d 405, 413 (5th Cir. 2006) (describing as "most troubling" an Immigration Judge's "lack of familiarity with the record").

Apart from the credibility finding, the record does not reflect that the Immigration Judge issued the necessary advisals to the respondent. The respondent was not informed of her right to apply for asylum despite a positive finding that she had a credible fear of persecution, and her handwritten statement alleging she had been raped and feared return to Ghana. The Immigration Judge did not provide her with the Form I-589, or instruct her on her right to counsel at no expense to the government, nor provide her the opportunity to obtain such counsel if she so wished. 8 C.F.R. § 1240.11(c)(1)(i)-(iii); *Matter of C-B-*, 25 I&N Dec. 888, 889-91 (BIA 2012); *see also* section 240(b)(4) of the Act, 8 U.S.C. § 1229a(b)(4); 8 C.F.R. §§ 1003.16(b), 1240.3, 1240.10(a).

On remand, the Immigration Judge should provide the respondent with an asylum application and carefully instruct her, on the record, of her rights. *Id.* The Immigration Judge should consider all of the evidence, including the affidavit of the respondent's brother which she has submitted on appeal. The Immigration Judge should then act as a neutral arbiter. *See Wang v. Holder*, 569 F.3d at 540 ("[A] due process violation can be premised upon the absence of a neutral arbiter.").

In sum, on remand, the Immigration Judge should: provide the application and advisals as stated above. He should include in his decision clear and complete findings of fact that are supported by the record and are in compliance with controlling law. *See Matter of S-H-*, 23 I&N 462 (BIA 2002).

Accordingly, the following order is 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.

Teresa L. Doran

FOR THE BOARD

² Notably, the respondent maintained her best language is Twi, but her credible fear interview was conducted in English (*Compare* Tr. at 3, 7, with Credible Fear Interview at 1).