



U.S. Department of Justice

Executive Office for Immigration Review

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Name: B [REDACTED], H [REDACTED]

A [REDACTED] 608

Date of this notice: 7/26/2016

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:
Pauley, Roger
Greer, Anne J.
Wendtland, Linda S.

EJRM

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED] 608 – Lumpkin, GA

Date:

JUL 26 2016

In re: H [REDACTED] B [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Carlos M. Polanco, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent appeals from the Immigration Judge's January 20, 2016, decision denying his application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture, and ordering him removed to Bangladesh. The appeal will be sustained.

The respondent, a 20-year-old native and citizen of Bangladesh, claims that he joined the Bangladesh Nationalist Party (BNP) in 2011, and that he was appointed to a leadership position in his BNP student wing (Tr. at 377-80). He testified that because of his active involvement in the BNP, Awami League (AL) members physically assaulted him in February of 2013, and in December of 2014, and both beatings resulted in unconsciousness and hospitalizations of 7 days and 5 days, respectively (Tr. at 380-84, 388-90). The respondent also received death threats by AL members during the December of 2014 confrontation (Tr. at 388-90). The respondent was also effectively chased out of college and prevented from taking an exam by AL members, his family's store was vandalized and robbed, and, in an incident that was specifically linked to him, the respondent's mother and father were physically attacked when members of the AL could not find him (Tr. at 387, 388, 396). He then left Bangladesh in March of 2015, arrived in the United States in June of 2015, and he filed for asylum in November of 2015. The respondent testified that he did not file a police report because BNP leaders advised his father that it was useless to report to the police because the police were associated with the AL that was in power, they had refused to take others' reports, and they had even filed false cases against other accusers (Tr. at 382-84).

The Immigration Judge found the respondent's testimony to be credible and that the harm the respondent endured was on account of his political opinion (I.J. at 12, 17). The Immigration Judge found that even though the respondent appears to have lost consciousness both times he was attacked, the mistreatment he experienced did not rise to the level of past persecution (I.J. at 18). The Immigration Judge also found that even assuming that the harm the respondent

experienced rose to the level akin to persecution, the respondent failed to demonstrate that he was persecuted by the government of Bangladesh or persons the government of Bangladesh is unable or unwilling to control (I.J. at 18, 19; *Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005). The Immigration Judge found that the respondent's belief that the police would not be responsive does not convincingly demonstrate that the Bangladeshi government in general cannot and will not control the violence against the respondent perpetrated by members of the AL's student wing (I.J. at 19).

The respondent maintains on appeal that the Immigration Judge erred as a matter of law in determining that he did not suffer harm sufficiently severe to rise to the level of past persecution (Resp. Brief at 24-27). Upon de novo review, we disagree with the Immigration Judge that, notwithstanding the respondent's credible testimony, he did not carry his burden of proof to establish that the past mistreatment he experienced was sufficiently severe to qualify as persecution (I.J. at 18).

Past persecution is an extreme concept and does not include every form of mistreatment that our society regards as offensive. *See Gonzalez v. Reno*, 212 F.3d 1338, 1355 (11th Cir. 2000); *see also Shi v. United States Attorney General*, 707 F.3d 1231, 1236 (11th Cir. 2013). Although the United States Court of Appeals for the Eleventh Circuit, the jurisdiction in which this case arises, does not impose a rigid definition for persecution, it defines harm rising to that level as "requir[ing]...more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty." *See Gonzalez v. Reno*, *supra*, at 1355; *see also Shi v. United States Attorney General*, *supra*, at 1235; *Sepulveda v. United States Attorney General*, 401 F.3d 1226, 1231 (11th Cir. 2005). When considering whether past persecution has been established, we are required to examine the cumulative effects of any alleged mistreatment. *See Delgado v. United States Attorney General*, 487 F.3d 855, 861 (11th Cir. 2007), *citing Ruiz v. Gonzales*, 479 F.3d 762, 766 (11th Cir. 2007); *see also Mejia v. United States Attorney General*, 498 F.3d 1253, 1257-58 (11th Cir. 2007).

We conclude, when considering the treatment cumulatively, that the respondent's encounters with AL members were pervasive enough and accompanied by sufficiently severe harm to qualify as persecution. Moreover, as noted above, the Immigration Judge determined that the harm endured was on account of the respondent's political opinion (I.J. at 17).

Where the respondent expresses fear of harm from private actors, he must also establish that the government is unable or unwilling to protect him from these individuals (I.J. at 18, 19). *See Malu v. United States Attorney General*, 764 F.3d 1282, 1291 (11th Cir. 2014); *Ayala v. United States Attorney General*, 605 F.3d 941, 950 (11th Cir. 2010); *Lopez v. United States Attorney General*, 504 F.3d 1341, 1345 (11th Cir. 2007); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). Merely alleging government inaction is not enough; the respondent must show that the government condoned the private conduct or at least demonstrated a complete helplessness or unwillingness to protect the victim. The respondent testified that his father was advised by local BNP leaders not to report the incident to the police as doing so would be futile or lead to adverse consequences (Tr. at 382-84; Respondent's Brief at 32). This is supported by the country conditions evidence of record, specifically the Bangladesh 2014 Human Rights Report (Country

Report), which indicates that political violence is widespread, there were reports that the government (which is controlled by the Awami League) or its agents committed arbitrary or unlawful killings, that official corruption and impunity remained a problem, and that no cases involving security force abuse and killing resulted in criminal punishment (Respondent's Brief at 32; Exh. 2, Tab 9). Given the documented politically motivated violence in the country condition evidence together with the respondent's testimony that local BNP leaders advised his father not to report the abuse, we conclude that the Immigration Judge's finding that the government of Bangladesh is willing or able to control the respondent's persecutors is clearly erroneous.

Having demonstrated past persecution, the respondent is presumed to have a well-founded fear of future persecution. See 8 C.F.R. § 1208.13(b)(1). The Department of Homeland Security bears the burden of rebutting that presumption. See *Matter of H-*, 21 I&N Dec. 337 (BIA 1996); see also 8 C.F.R. § 1208.13(b). The record contains no evidence that would rebut the presumption and there is no indication that the respondent would refrain from active BNP participation upon return to Bangladesh. Therefore, we conclude that the respondent is statutorily eligible for asylum pursuant to section 208 of the Act. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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 Department of Homeland Security 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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