U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: A[redacted], N[redacted] T[redacted] **[redacted]-777**

Date of this notice: 8/12/2011

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.
Pauley, Roger
Wendtland, Linda S.

Received 8/15/2011

Cite as: N-T-A-, AXXX XXX 777 (BIA Aug. 12, 2011)

File: [redacted] 777 - Arlington, VA

Date: AUG 12 2011

In re: NEBYU TEWELDE ASGEDOM

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF DHS: Nichole Lillibridge
Assistant Chief Counsel

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 is a native and citizen of Ethiopia. This matter was last before us on August 16, 2007, when we remanded for a new hearing. The respondent now appeals the July 14, 2009, denial of his application for asylum, withholding of removal, and protection under the Convention Against Torture. The appeal will be sustained and the record will be remanded for further proceedings.

The respondent testified that he advocated for the United Ethiopian Democratic Party ("UEDP"), which merged into the Coalition for Unity and Democracy ("CUD") (I.J. at 3; Tr. at 33-36). He was arrested during a demonstration on June 8, 2005, and beaten and tortured with electric charges during a 33-day detention (I.J. at 4; Tr. at 37-40, 66). The respondent received traditional holistic treatment upon release (I.J. at 4, 9; Tr. at 40, 66-67). Additionally, near the end of October 2006, the respondent and other taxi drivers used their horns as a form of protest to draw attention to African leaders visiting Ethiopia (I.J. at 5; Tr. at 40-41). Early the next month, the police handed him over to soldiers and did the same with many other taxi drivers (I.J. at 5, 9; Tr. at 41). The respondent was beaten and held for a day, until his family secured his release by bribing a guard (I.J. at 5; Tr. at 41-43). He then fled to Kenya and South Africa (I.J. at 5-6; Tr. at 44-47). Later, he continued on to Brazil, Mexico, and the United States (I.J. at 6; Tr. at 47-48). While in this country, he has demonstrated before the State Department and the White House in November of 2008, January of 2009, and May of 2009 (I.J. at 7; Tr. at 49-51).

The Immigration Judge found credible the respondent's testimony that he was twice detained and mistreated on account of his political activities (I.J. at 16-17). However, she concluded that the mistreatment he experienced did not amount to past persecution (I.J. at 17-19). Specifically, the respondent did not articulate sufficiently what form of "torture" he experienced during his 33-day

detention and he was not seriously injured (I.J. at 18). She further found that the background materials demonstrate that thousands of CUD sympathizers/members like the respondent were arrested during the relevant time (I.J. at 18-19). While these individuals "were somewhat abused and deprived of adequate services during detention," they "ultimately were freed and continued to live their lives in Ethiopia" (I.J. at 19). Also, the respondent's second detention lasted only one day (I.J. at 19).

Whether the respondent has established past persecution is a mixed question of fact and law that we review *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii). We agree with the respondent that the past harm he suffered–a 33-day detention with beatings and electric shocks, followed by another detention with beatings ended only by a bribe–is sufficiently severe to amount to persecution, even though he did not seek out professional medical treatment. *See Baharon v. Holder*, 588 F.3d 228, 232-33 (4th Cir. 2009); *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005). Moreover, the evidence demonstrates that the respondent's political opinion was at least one central reason leading to both detentions. *See* section 208(b)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(i); *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). Consequently, we hold that the respondent has established past persecution, triggering the regulatory presumption of a well-founded fear of persecution. *See* 8 C.F.R. § 1208.13(b); *Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008). The burden thus shifts to the Department of Homeland Security ("DHS") to prove by a preponderance of the evidence that there are changed country conditions, or that the respondent could avoid future persecution by relocating and that it would be reasonable to do so.

In this regard, the Immigration Judge alternatively found that even if the respondent had shown past persecution, the background evidence does not demonstrate a well-founded fear of future persecution (I.J. at 19-22). She noted that the State Department's August 2007 *Profile* indicates that many prominent political leaders arrested in Ethiopia were pardoned in 2007, but again rearrested and exiled (I.J. at 20; Exh. 9). On the other hand, she found insufficient information about individuals such as the respondent who participated in general protests (I.J. at 20). The Immigration Judge also found that the fact that the respondent's parents and siblings have remained in Ethiopia unharmed diminishes the objective reasonableness of his fear of persecution (I.J. at 21). *See Matter of A-E-M-*, 21 I&N Dec. 1157 (BIA 1998). Since the DHS bears the burden of rebutting the presumption of a well-founded fear of persecution, we will remand the record for a new ruling on this issue. The parties should be permitted to present additional pertinent evidence and argument. The Immigration Judge should also speak to the effect of the respondent's political activities in the United States in determining whether the DHS has rebutted the presumption of a well-founded fear of persecution in the respondent's individual circumstances.

Finally, the Immigration Judge determined that the respondent did not testify credibly regarding his stay in South Africa, and in particular whether he applied for asylum (I.J. at 22-23). This conclusion does not affect the foregoing analysis. We also note the absence of any finding that the respondent received an offer of firm resettlement (I.J. at 23-24). Therefore, we hold that the firm

resettlement bar to asylum does not apply (I.J. at 23-24). *See* section 208(b)(2)(A)(vi) of the Act; 8 C.F.R. § 1208.15; *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011).

Accordingly, the following order is entered.

ORDER: The appeal is sustained, the Immigration Judge's decision is vacated, and the record is remanded for further proceedings consistent with this decision.

FOR THE BOARD