



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**Chhetry, Khagendra Gharti
Chhetry & Associates, P.C.
363 7th Avenue
New York, NY 10001**

**DHS - ICE Office of Chief Counsel -
OAKDALE 2
1010 E. Whatley Rd.
OAKDALE, LA 71463**

Name: [REDACTED], M [REDACTED] F [REDACTED]

A [REDACTED]-834

Date of this notice: 9/13/2019

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:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

DC

Falls Church, Virginia 22041

File: A-834 – Oakdale, LA

Date: **SEP 13 2019**

In re: M-F-I

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Khagendra G. Chhetry, Esquire

ON BEHALF OF DHS: Michael J. Smith
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Bangladesh, has appealed from the Immigration Judge's April 3, 2019, written decision denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3); and protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16-18. The Department of Homeland Security opposes the appeal. For the reasons set out below, the record will be remanded to the Immigration Judge for the issuance of a new decision.

We review an Immigration Judge's findings of fact, including credibility determinations, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

In the proceedings below, the respondent pursued applications for relief based on his claim that members of the Awami League Party (ALP) attacked him on October 26, 2017, and March 30, 2018 (IJ at 6-7; Tr. at 41-51). The respondent believed that he was attacked because he refused to quit his own party, the Liberal Democratic Party (LDP), and join the ALP (IJ at 6-7; Tr. at 41, 46). However, the Immigration Judge denied the respondent's applications for relief based, in significant part, on an adverse credibility determination (*see* IJ at 5-7, 9).

An adverse credibility determination is based on a "totality of the circumstances" and an Immigration Judge must provide "specific and cogent reasons" for a determination. *Singh v. Sessions*, 880 F.3d 220, 225 (5th Cir. 2018) (citations and internal quotation marks omitted). An Immigration Judge may base an adverse credibility determination on relevant factors, including demeanor, responsiveness, inherent plausibility, consistency between statements, consistency between statements and other evidence, and inaccuracies, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor." Section 208(b)(1)(B)(iii) of the Act. In addition, an adverse credibility determination may rely on an omission. *See Ghotra v. Whitaker*, 912 F.3d 284, 289 (5th Cir. 2019).

We conclude that a remand is warranted in this case because the Immigration Judge's adverse credibility determination is clearly erroneous. First, the Immigration Judge found that the respondent's testimony that he was alone during the October 2017 attack was inconsistent with his statement during the credible fear interview¹ that five people attacked "us." (IJ at 6; *compare* Tr. at 54-55 with Exh. 4A at 8). However, during his credible fear interview, the respondent also indicated that he was traveling "by [him]self" in a rickshaw with a puller (Exh. 4A at 8). Consequently, there is not an inconsistency because the "us" apparently references the respondent (who was traveling alone) and the rickshaw puller. Second, although the respondent did not mention in his credible fear interview that he was attacked with a butcher knife in October 2017 or hockey sticks in March 2018 (*see* IJ at 6; Tr. at 55-56, 68-69; Exh. 4A), he did reference these specific means of attack in the statement accompanying his asylum application (Form I-589) (Exh. 3B).

Third, in assessing these omissions, and the respondent's overall credibility, the Immigration Judge was required to consider the "totality of the circumstances." However, the Immigration Judge did not address much of the respondent's corroborative evidence in conjunction with his adverse credibility determination (*see* IJ at 5-7 and Group Exh. 3). Fourth, regarding the respondent's medical treatment and injuries, we conclude that (a) the respondent's testimony that he suffered severe injuries, including to his hand/wrist, is not necessarily inconsistent with the more specific diagnosis in a doctor's note of a fractured hand/wrist (*compare* Tr. at 56-58 with Exh. 3T at 75); and (b) the Immigration Judge's finding that a prescription would not be written in English in the country of Bangladesh is based on conjecture (*see* IJ at 6; Tr. at 60-65). *See Wang v. Holder*, 569 F.3d 531, 537 (5th Cir. 2009) (stating that credibility determinations may not be based on pure speculation).

Finally, we conclude that the remaining reasons cited by the Immigration Judge, including immaterial inconsistencies regarding the issuance or use of a passport, are insufficient to support an adverse credibility determination. Consequently, we find it appropriate to remand the record to the Immigration Judge to reassess the respondent's credibility, particularly in light of the extensive evidence submitted to corroborate his claims of past harm. On remand, the Immigration Judge should also consider whether the respondent has met his burden of proof for relief based on the merits (irrespective of the adverse credibility determination).² Accordingly, the following order is entered.

ORDER: The record is remanded to the Immigration Judge for the issuance of a new decision consistent with the foregoing decision.



FOR THE BOARD

¹ The credible fear interview notes state that they are not a verbatim transcript of the credible fear interview (Exh. 4A at 3).

² Although the Immigration Judge's decision appears to have an alternative finding on the merits, it still relies, in part, on the adverse credibility determination, particularly when analyzing the respondent's application for protection under the Convention Against Torture.