U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: P[redacted] C[redacted], [redacted] A[redacted]... **A [redacted]-784**

Date of this notice: 7/11/2019

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:
Wendtland, Linda S.

Userteam: Docket

File: [redacted]-784 – Cleveland, OH

Date: JUL 11 2019

In re: [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lisa Splawinski, Esquire

ON BEHALF OF DHS: Dustin T. Roth
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from the Immigration Judge's January 25, 2019, decision granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A). The appeal will be dismissed, and the record will be remanded for the completion or updating of any required background and security checks.

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

On appeal, the DHS argues that the Immigration Judge erred in granting the respondent's application for asylum. Specifically, the DHS argues that indirect evidence in the record established that an offer of firm resettlement existed and was made available to the respondent, a native and citizen of Cuba, in Brazil (DHS's Br. at 5-7). The respondent opposes the DHS's arguments in his reply brief, arguing that the Immigration Judge correctly applied the firm resettlement framework and was correct in finding that the DHS had not met its burden of providing prima facie evidence of his firm resettlement in Brazil (Respondent's Br. at 8-17).

At the hearing below, the respondent testified, credibly (IJ at 8),[1] that he was arrested on two separate occasions in Cuba in 2016 because he spoke out publicly against the Castro regime and human rights abuses (IJ at 5-6; Tr. at 47-48). The respondent further testified that while he was in detention, he was beaten and kicked by police officers causing two of his teeth to be knocked out and causing him to sustain injuries to the left side of his mouth (IJ at 5-6; Tr. at 57-68). The respondent stated that during his time in detention, he was held in poor sanitary conditions and did not receive any medical treatment for his injuries (IJ at 7; Tr. at 61-62, 67-68). The respondent testified that he was never charged with any crime by police and, before his release from detention, police officers threatened him with death if he continued expressing his views against the

[1] The DHS does not challenge the Immigration Judge's favorable credibility determination or otherwise dispute the respondent's credibility on appeal (IJ at 16-19; DHS's Br. at 5-7).

government (IJ at 6-7; Tr. at 62-63). The respondent stated that he left Cuba on October 21, 2016, and travelled to Guyana, and then to Brazil (IJ at 7; Tr. at 69). While he was in Brazil, the respondent stated, he had temporary refugee status, which he was able to renew for 1 year only (IJ at 8-9; Tr. at 92-93).

Upon our de novo review, we affirm the Immigration Judge's determination that the DHS has not met its burden of presenting prima facie evidence of an offer of firm resettlement (IJ at 21-24).[2] In *Matter of A-G-G-*, 25 I&N Dec. 486, 501-03 (BIA 2011), we held that the following criteria apply in making a firm resettlement determination: (1) the DHS bears the burden of presenting prima facie evidence of an offer of firm resettlement; (2) the alien can rebut the DHS's prima facie evidence of an offer of firm resettlement by showing that such an offer has not, in fact, been made or that he or she would not qualify for it; (3) the Immigration Judge must consider the totality of the evidence presented by the parties to determine whether the alien has rebutted the DHS's evidence of an offer of firm resettlement; and (4) if the Immigration Judge finds the alien firmly resettled, the burden then shifts to the alien to establish that an exception to firm resettlement applies by a preponderance of the evidence. *See* 8 C.F.R. § 1208.15(a), (b); *see also Hanna v. Holder*, 740 F.3d 379, 393 (6th Cir. 2014).

In the present case, as noted by the Immigration Judge, the record does not contain any direct evidence of the respondent's status while he resided in Brazil, and the DHS does not point to any such evidence on appeal (IJ at 21; DHS's Br. at 5-7). The respondent testified that he resided in Brazil for 1 year and 7 months and while he was there, he was granted temporary refugee status, which he was able to renew for 1 year only, and that his temporary status could not be renewed after that (IJ at 9, 21; Tr. at 48, 90, 92-93, and 97). The Immigration Judge noted that excerpts from Brazilian law, which were submitted by the respondent, show that a permanent visa may be granted to an alien who holds refugee or asylum status and has resided in Brazil for at least 4 years in refugee or asylum status (IJ at 22-23; *see* Exh. 4 at 119-20). We are not persuaded by the DHS's argument that "the Immigration Judge incorrectly found that the respondent's renewable refugee status in Brazil was not an offer of firm resettlement even though the respondent left Brazil without prior authorization before accruing the four years of residence necessary to apply for a permanent visa" (DHS's Br. at 7). The DHS does not cite to any legal authority which provides that an alien who leaves a third country while in temporary status – and before accruing the time necessary for permanent status – has firmly resettled in that country. *See, e.g., Garadah v. Ashcroft,* 86 F. App'x 76, 81 (6th Cir. 2004) (unpublished) (rejecting the Immigration Judge's finding of firm resettlement because the length of the petitioner's stay in a third country and temporary residency permits could not be construed as an offer of permanent resident status); *cf. Ali v. Reno,* 237 F.3d 591, 595 (6th Cir. 2001) (affirming the Board's ruling that an asylum applicant had firmly resettled in Denmark because the applicant received a Danish passport and residence permit). The

[2] We note that the DHS does not contest the Immigration Judge's determination that the respondent has established past persecution on account of a protected ground, and does not otherwise argue that he has not established his eligibility for asylum, apart from its firm resettlement argument (IJ at 24-26; *see* DHS's Br.).

Immigration Judge also noted that the respondent did not testify that his temporary status in Brazil entitled him to receive any government assistance or support (IJ at 23).

Consequently, in light of the foregoing, we affirm the Immigration Judge's determination that the respondent is not precluded from a grant of asylum based on the firm resettlement bar (IJ at 21-24).[3] Thus, we will affirm the Immigration Judge's decision finding the respondent eligible for asylum. Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

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 DHS 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).

Linda D. Wendtland

FOR THE BOARD

[3] In light of our decision, we find it unnecessary to address any additional issues raised by the parties on appeal. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (stating that, as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976)).