



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED], S [REDACTED] S [REDACTED]

A [REDACTED]-836

Date of this notice: 5/23/2019

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:
Grant, Edward R.

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-836 – Detroit, MI

Date:

MAY 23 2019

In re: S [REDACTED] S [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

Motion

ON BEHALF OF RESPONDENT: Eman H. Jajonie Daman, Esquire

ON BEHALF OF DHS: Robert Melching
Assistant Chief Counsel

APPLICATION: Reopening

The respondent is a native and citizen of Iraq. On March 21, 2014, this Board dismissed his appeal from the Immigration Judge's decision denying his application for deferral of removal under the Convention Against Torture. On August 11, 2017, the Board denied the respondent's first motion to reopen proceedings. On September 11, 2017, the respondent filed a second motion to reopen. The Department of Homeland Security (DHS) appears to have filed an opposition to the motion, but the Board's attempts to obtain a copy of the opposition from the DHS have been unsuccessful.¹ The respondent's motion to reopen will be granted and the record will be remanded.

With certain exceptions, an alien is entitled to file only one motion to reopen and that motion must be filed not later than 90 days after the final administrative order. *See* section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). There is an exception, however, to the filing requirements for motions to reopen that seek to apply or reapply for asylum or withholding based on changed country conditions or circumstances. *See* 8 C.F.R. § 1003.2(c)(3)(ii) (providing an exception for motions that are to apply for asylum or withholding based on changed circumstances arising in the country to which deportation has been ordered, if the respondent presents evidence that is material and was not available and could not have been discovered or presented at the previous hearing); *see also* section 240(c)(7)(C)(ii) of the Act. Motions to apply for protection under the Convention Against Torture fall within this exception.

The respondent asserts that his present motion is based on changed conditions in Iraq since his last hearing, which was in 2013. The respondent also claims that his prior motion to reopen was filed by an attorney who provided ineffective assistance of counsel. In this regard, the respondent has set out a claim against his former attorney, James Hoare, and has complied with the procedural requirements for ineffective assistance of counsel claims as established in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

¹ The Board does have the respondent's reply to the DHS's opposition, as well as the DHS's "Response to Amici Brief," and the "Brief on Behalf of Amici Curiae in Support of the Respondent."

We first address the claim of changed conditions in Iraq. The respondent has submitted evidence indicating that conditions for persons similarly situated to him have changed in Iraq since the last hearing in this matter. The evidence includes the declaration of Daniel W. Smith, a researcher specializing in Iraq who lives in that country. Smith explains that he has conducted interviews with more than 100 torture victims in Iraq, has “firsthand observation of arrest, interrogation and torture by Iraqi security forces” and has reviewed “reports of official use of torture” (Mot. Attach. at 47). Other declarations, media articles, and country conditions reports have also been included with the motion. We conclude that there is sufficient evidence of changed conditions that are material to the respondent’s application for protection under the Convention Against Torture to support granting the motion to reopen.

Separately, we conclude that the respondent has established ineffective assistance of counsel by James Hoare. The respondent has submitted documentation showing that the attorney aided a non-lawyer in the unauthorized practice of law and that this non-lawyer held himself out as an attorney and prepared the respondent’s first motion to reopen (Mot. Attach. 1-37). The motion was signed by Hoare and filed under his name. The motion was not accompanied by actual evidence, and a supplemental filing did not include evidence that supported the respondent’s claim. Furthermore, the respondent alleges that the motion was plagiarized and that the respondent was charged for a fictitious filing fee (Mot. at 26).² Given the respondent’s evidence, we conclude that he has established ineffective assistance of counsel that prejudiced him in his attempt to seek reopening. *See Allabani v. Gonzales*, 402 F.3d 668 (6th Cir. 2005).

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.



FOR THE BOARD

² The Board has no record of Mr. Hoare’s replying to the allegations against him after being informed of the allegations by the respondent.