



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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**DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402**

Name: H [REDACTED], A [REDACTED]

[REDACTED] 769

Date of this notice: 08/08/2006

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Acting Chief Clerk

Enclosure

Panel Members:
PAULEY, ROGER

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Falls Church, Virginia 22041

File: A [REDACTED] 769 - York

Date: AUG 08 2006

In re: A [REDACTED] H [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF DHS: William E. Lore
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

Lodged: Sec. 237(a)(2)(B)(i), I&N Act [8 U.S.C. § 1227(a)(2)(B)(i)] -
Convicted of controlled substance violation

APPLICATION: Convention Against Torture

The Department of Homeland Security (DHS) has appealed the March 1, 2006, decision of an Immigration Judge which granted the respondent deferral of removal under the Convention Against Torture (CAT). The respondent has filed a brief in support of the decision of the Immigration Judge. The appeal will be dismissed. The record will be remanded for a determination of whether the background and identity checks are current.

The respondent conceded his removability, and sought deferral of removal under CAT. The Immigration Judge sets out the respondent's testimony in detail, and although we have considered all the relevant facts and evidence, we will not repeat them all here. The thrust of the respondent's claim was that he will face torture at the hands of security personnel upon return to Algeria because he (1) was detained and tortured for several months when he returned to Algeria in 1998, and during this time he disclosed that he had unwittingly in the past delivered some pamphlets for the terrorist organization known as the "FIS," (2) had escaped from that detention by paying a bribe, (3) was a criminal returnee, and (4) was previously an activist for Berber causes, and was arrested and mistreated in the early 1990s on this basis.

The Immigration Judge found that the respondent was a credible witness, and that his description of mistreatment at the hands of government authorities was consistent with reports of past conditions in Algeria. He found that the background evidence indicated that conditions were improving between the government and Berbers in Algeria, and that generally speaking, the country was becoming a more open and less oppressive society. However, the evidence also indicated that human rights abuses still

exist, and that torture is used during interrogation, especially concerning security matters. The Immigration Judge concluded that it was more likely than not that the respondent would come to the attention of security personnel upon return to Algeria, and would be detained and tortured.

The DHS has filed this appeal, and argues that the Immigration Judge's decision is too speculative to be affirmed. The DHS also asserts that certain elements of the respondent's testimony are implausible, such as his claim that he was able to escape from an Algerian prison despite being a suspected terrorist. The respondent has submitted a detailed brief supporting the Immigration Judge. We find the following.

The Board cannot engage in a *de novo* review of findings of fact by an Immigration Judge; rather, facts determined by an Immigration Judge, including credibility determinations, are reviewed to determine whether the findings are "clearly erroneous." 8 C.F.R. § 1003.1(d)(3)(i). The Immigration Judge in this case found the respondent to be a credible witness. In making this determination, he compared the respondent's written and oral statements, and considered the background evidence of record. Although we might reach a different conclusion if reviewing the evidence *de novo*, we do not discern that the Immigration Judge's findings are "clearly erroneous." In reaching this conclusion, we have considered DHS' arguments regarding the testimony, and do not find them convincing enough to warrant reversing the Immigration Judge's findings under our limited power of review.

The next issue is whether the respondent met his burden of proof to show that it is more likely than not that he will be tortured upon return to Algeria by a public official or at the instigation or the acquiescence of such an individual. 8 C.F.R. §§ 1208.16(c)(3); 1208.17. The respondent presented evidence, which was found credible, that he was immediately detained on his last return to Algeria, and subject to mistreatment amounting to torture (*see e.g.* Tr. at 49-50). Further, he disclosed during this detention that he had some unwitting interaction with FIS, but his claim that he had no further affiliation was not believed. The background evidence does state that although the situation is improving, the security forces in Algeria continue to use torture when interrogating persons, and that torture occurred more frequently in military prisons against those arrested on security grounds. *See* 2004 Country Reports, Algeria, at p. 4 (Exh. 5). Further, although such treatment is prohibited, there were no reports of police or security forces receiving punishment for using torture. *Id.*; *see also* Group Exhibit 4, tab C (Amnesty International Report). This evidence, combined with the respondent's past experiences in Algeria, is sufficient to show that it is more likely than not that he will be subject to intentional pain and suffering by authorities upon return to Algeria.

The DHS' main argument is that the Immigration Judge was completely speculating that the respondent would be detained upon return to Algeria, as there is no documentary evidence to establish that criminal deportees are subject to immediate detention and interrogation. This latter assertion is true; however, the Immigration Judge's reasoning is based on the respondent's past experiences, the documented mistreatment of those suspected to pose a threat to security, and the reasonable inference that the respondent will, at the least, be brought to the attention of Algerian officials due to the nature of his return to that country. We do not find that this reasoning is merely a string of suppositions based on solely hypothetical events. *Cf. Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006). The appeal will accordingly be dismissed. The record, however, will be remanded for a determination of whether the security and background checks are current. Appropriate orders will be entered.

ORDER: The DHS' 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 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). *See* Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).



FOR THE BOARD