



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: N [REDACTED], C [REDACTED] S [REDACTED]

A [REDACTED] -231

Date of this notice: 2/12/2019

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:
Adkins-Blanch, Charles K.
Kelly, Edward F.
Mann, Ana

User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-231 – Eloy, AZ

Date: **FEB 12 2019**

In re: C [REDACTED] S [REDACTED] N [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Cecile H. Nantchouang, Esquire

ON BEHALF OF DHS: Gwendolyn T.D. Franks
Assistant Chief Counsel

APPLICATION: Asylum

The respondent, a native and citizen of Cameroon, appeals from the Immigration Judge's decision dated September 6, 2018, which denied his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, but granted withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231. The appeal will be sustained.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge 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 the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent was credible and statutorily eligible for asylum, but did not establish that he merits asylum in the exercise of discretion. On appeal, the respondent argues that the Immigration Judge erred in failing to consider and weigh all relevant favorable and adverse factors before denying asylum in the exercise of discretion (Brief at 3). *See Kalubi v. Ashcroft*, 364 F.3d 1134 (9th Cir. 2004). The Immigration Judge's decision focused on evidence that the respondent had submitted a visa application in 2017, before the events which form the basis of his claim for asylum, wherein he falsely attested that he was an actor in order to improve his chances of obtaining a visa to attend a school to study theatre arts (IJ at 2). When the visa was denied, the Immigration Judge cited to evidence that the respondent persisted in his attempted fraud by appealing the decision (IJ at 2). However, an applicant's entry into the United States using false documentation is worth little if any weight in balancing positive and negative factors. *See Mamouzian v. Ashcroft*, 390 F.3d 1129, 1138 (9th Cir. 2004) (noting that such deception rather supports than detracts from a claim to fear persecution). Further, misrepresentations by genuine refugees may be wholly consistent with a fear of persecution and are not, by themselves, a reason for denial of asylum. *See Akinmade v. INS*, 196 F.3d 951, 955 (9th Cir. 1999).

The Immigration Judge also cited to the respondent's acknowledgement that he traveled through twelve countries on his way to the United States without seeking asylum in any of those countries, and intentionally discarded his passport to avoid deportation in Guatemala (IJ at 2, 7).

On appeal, the respondent argues that his case is similar to the facts in *Gulla v. Gonzales*, 498 F.3d 911 (9th Cir. 2007) (holding the Immigration Judge's discretionary denial of asylum based on the fact that he traveled through several other countries without seeking asylum, used fraudulent documents to get to the United States, and circumvented the usual process, was an abuse of discretion). *See also* 8 C.F.R. § 1208.15 (setting forth the criteria for determining whether an alien should be considered firmly resettled in another country). The Department of Homeland Security argues in the brief on appeal that *Gulla* is distinguishable from the present facts because in this case the respondent lied to immigration officials before he suffered the harm that formed the basis of his asylum claim. We do not agree. The Immigration Judge found the respondent was credible in his testimony that Anglophones were being oppressed in Cameroon prior to his personal experience with such persecution, such that he warranted a grant of withholding of removal. The timing of his personal experience with that persecution is not enough to outweigh the positive factors in this case which support his application for asylum.

Given the respondent's clear opposition to the authorities, the respondent's credible testimony as to his past persecution based on his political opinion, and the Immigration Judge's positive credibility finding, we conclude that the respondent has established eligibility for asylum based on his well-founded fear of being persecuted on account of his political opinion.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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).



FOR THE BOARD

Board Member Ana Mann respectfully dissents without opinion.