



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*

**Gottlieb, David J.
David J. Gottlieb
7012 Hunter Ln.
Hyattsville, MD 20782**

**DHS/ICE Office of Chief Counsel - PSD
566 Veterans Drive
Pearsall, TX 78061**

Name: N [REDACTED], A [REDACTED] [REDACTED]

A [REDACTED] -730

Date of this notice: 7/24/2019

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

User team: Docket

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Falls Church, Virginia 22041

File: A-730 – Pearsall, TX

Date:

JUL 24 2019

In re: A- I- N-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David J. Gottlieb, Esquire

ON BEHALF OF DHS: Jonathan M. Graham
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The Department of Homeland Security (“DHS”) appeals the Immigration Judge’s February 7, 2019, decision granting the respondent’s asylum application under section 208(a) of the Immigration and Nationality Act, 8 U.S.C. § 1158(a), on discretionary grounds.¹ The DHS concedes that the respondent warrants withholding of removal, but argues that he does not merit discretionary asylum. The respondent has submitted a brief opposing the DHS’ appeal. The appeal will be dismissed. We also deny the DHS’ request for three-Board-Member review, as this case does not fall under the categories warranting such review. 8 C.F.R. § 1003.1(e)(6).

We review the factual findings, including the Immigration Judge’s credibility determination, under the “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

Notwithstanding the DHS’ arguments, we agree with the Immigration Judge that the respondent established that he warrants asylum on discretionary grounds (IJ at 4-8). The Immigration Judge properly considered the totality of the circumstances and thoroughly evaluated and weighed the favorable factors presented on the respondent’s behalf against the adverse considerations (IJ at 5-8). Sections 208(b)(1) and 240(c)(4)(A)(ii) of the Act, 8 U.S.C. § 1229a(c)(4)(A)(ii); *Matter of Pula*, 19 I&N Dec. 467, 473-75 (BIA 1987) (setting forth factors relevant to a discretionary analysis of an asylum claim); *Matter of A-B-*, 27 I&N Dec. 316, 345 n.12 (A.G. 2018). Although the respondent’s assault during detention is certainly a negative consideration, we agree with the Immigration Judge that the absence of criminal charges – much less a conviction – is a mitigating consideration (IJ at 6). Nor are we persuaded that the Immigration Judge’s discretionary analysis misapplied *Matter of Pula*. Overall, we agree that the respondent’s positive equities outweigh his negative considerations, and he merits asylum as a matter of discretion.

¹ This case was previously before the Board on December 26, 2018, when we concluded that the respondent met his burden of establishing his eligibility for asylum, as he demonstrated, inter alia, past persecution in Somalia and a well-founded fear of future persecution should he return.

Accordingly, the following orders are 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).



FOR THE BOARD