U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: A[redacted], M[redacted]

A[redacted]-662

Date of this notice: 6/5/2019

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:
Liebowitz, Ellen C

Userteam: Docket

File: A[redacted]-662 – Los Angeles, CA Date: JUN – 5 2019

In re: M[redacted] A[redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Thipphavone P. Ark, Esquire

ON BEHALF OF DHS: James B. Gildea
Assistant Chief Counsel

APPLICATION: Reconsideration; reopening; termination

The respondent, a native and citizen of Syria, filed a motion to reconsider the Board's prior decision and terminate his removal proceedings, and a motion to reopen his removal proceedings. The Department of Homeland Security ("DHS") opposes the motions. The motion to reconsider will be denied, the motion to reopen will be granted, and the record will be remanded to the Immigration Judge.

The respondent's motion to reconsider is untimely. A motion to reconsider in any case previously the subject of a final decision by the Board must be filed no later than 30 days after the date of that decision. *See* section 240(c)(6)(B) of the Immigration and Nationality Act; 8 U.S.C. § 1229a(c)(6)(B); 8 C.F.R. § 1003.2(b)(2). The Board dismissed the respondent's appeal on February 26, 2010. However, the present motion to reconsider was not filed until July 25, 2018.

The respondent argues that his motion to reconsider should be treated as timely because it is subject to equitable tolling (Respondent's Motion at 6-8). *See Socop-Gonzalez v. INS*, 272 F.3d 1176, 1187-93 (9th Cir. 2001) (holding that the filing period for motions to reopen is subject to equitable tolling). Even if equitable tolling applies, the motion will be denied on the merits. The respondent relies on the United States Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), to challenge the validity of the notice to appear that initiated the underlying removal proceedings. Specifically, he contends that because his notice to appear did not specify the time and place of his initial removal hearing, the notice to appear did not vest the Immigration Judge with jurisdiction over his removal proceedings (Respondent's Motion at 3-5). However, the Board held in *Matter of Bermudez-Cota* that a notice to appear that does not specify the time and place of the alien's initial removal hearing vests an Immigration Judge with jurisdiction over the removal proceedings, and meets the requirements of section 239(a)(1) of the Act, 8 U.S.C. § 1229(a)(1), so long as a notice of hearing specifying this information is later sent to the alien. *Matter of Bermudez-Cota*, 27 I&N Dec. 441, 445-47 (BIA 2018). The Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, has recently deferred to the Board's interpretation of the regulations governing jurisdiction. *See Karingithi v. Whitaker*, 913 F.3d 1158, 1161-62 (9th Cir. 2019). Because the record reflects, and the respondent does not contest, that he was served with a hearing notice specifying the time and

place of his initial hearing, the Immigration Judge had jurisdiction over these proceedings. We therefore deny the respondent's motion to reconsider and terminate his removal proceedings.

The respondent has also filed a motion to reopen his removal proceedings to reapply for asylum and related relief based on changed circumstances in Syria. An alien may file a motion to reopen at any time based on changed country conditions arising in the country of nationality if such evidence is material and was not available and could not have been discovered or presented at the previous hearing. *See* section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii). In determining whether there has been a material change in country conditions, we compare evidence submitted with a motion to reopen with evidence reflecting the country conditions that existed at the time of the last hearing. *Matter of S-Y-G-*, 24 I&N Dec. 247, 253 (BIA 2007). Evidence in support of a motion to reopen must be "qualitatively different from the evidence presented at [the] asylum hearing." *Malty v. Ashcroft*, 381 F.3d 942, 945 (9th Cir. 2004).

Insofar as the respondent's motion is based on his Christian religion, the respondent submits a declaration, the obituary for his cousin, the 2017 Department of State International Religious Freedom Report for Syria, and a 2016 Amnesty International article (Respondent's Br., Tabs H, K-M). This evidence reflecting current country conditions for Christians in Syria is qualitatively different from the evidence reflecting conditions in Syria at the time of the respondent's 2008 hearing. *See Malty v. Ashcroft*, 381 F.3d at 945. The 2007 Religious Freedom Report notes only that there was occasional minor tension between religious groups in Syria (Respondent's Br., Tab. J at 1, 4, 6). The other documentary evidence submitted during the respondent's proceedings before the Immigration Judge also discussed only instances of discrimination and isolated violence against Christians, but did not report widespread violence (Exh. 3, Tabs C-F).

In contrast, the evidence discussing current country conditions demonstrates a substantial increase in violence in Syria, resulting in mass deaths and the displacement of half the country's population since the beginning of the civil war in 2011 (Respondent's Brief, Tabs K, L). The evidence also reflects that terrorist organizations target Christians and other religious minorities with killings, kidnappings, physical mistreatment, and arrests, resulting in the deaths of tens of thousands of civilians in the areas of the country they control (Respondent's Br., Tab L at 1-2, 11-13). The 2017 Religious Freedom Report indicates that the Islamic State targets Christians throughout Syria and that it massacred 100 Christians living in one Christian town (Respondent's Br., Tab L at 11-12). The evidence also details the killing and kidnapping of Christian religious leaders and other prominent Christians within the community (Respondent's Br., Tab L at 12-13). Moreover, the respondent indicates in his declaration that his uncle and cousin—who were both Christians—were kidnapped and killed by the Islamic State. *See Bhasin v. Gonzales*, 423 F.3d 977, 986 (9th Cir. 2005) (holding that the Board must accept as true the facts presented in affidavits supporting motions to reopen, unless they are inherently unbelievable). Overall, this evidence demonstrates a material change in country conditions in Syria. *See* section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii).

We are not persuaded by the DHS's argument that the respondent has not established that reopening is warranted because the 2017 Religious Freedom Report does not suggest widespread government action against Christians (DHS's Br. at 2; Respondent's Br., Tab L). As discussed above, the documentary evidence reports that Christians are targeted for killings and other violence

by terrorist organizations in Syria (Respondent's Br., Tab L at 1-2, 11-13). To obtain asylum or withholding of removal, the respondent need not show persecution by the government, although he will need to establish below that the Syrian government is unable or unwilling to control these terrorist organizations. *See Matter of A-B-*, 27 I&N Dec. 316, 337 (A.G. 2018). As the 2017 Religious Freedom Report notes that some areas of Syria are controlled by terrorist groups, a remand is appropriate for further development of this issue (Respondent's Br., Tab L at 4).

The DHS raises no other objections to the motion, and we conclude that the respondent has otherwise satisfied the requirements for reopening. *See Matter of J-G-*, 26 I&N Dec. 161, 169 (BIA 2013); *see also Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003) (noting that a motion to reopen "need only establish a prima facie case for relief, and need not conclusively establish that [the alien] warrants relief"). On remand, however, the respondent will have the burden to show that he can meet all facets of statutory eligibility after both parties have had the opportunity to update the evidentiary record. By remanding, we express no opinion as to the ultimate outcome of these proceedings. Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reconsider and terminate is denied.

FURTHER ORDER: The respondent's motion to reopen is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and for the entry of a new decision.

Ellen Rebowitz
FOR THE BOARD