



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: A [REDACTED], M [REDACTED] H [REDACTED]**

**A [REDACTED]-784**

**Date of this notice: 3/15/2019**

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:  
Donovan, Teresa L.  
Greer, Anne J.  
Wendtland, Linda S.

.. ..  
User team: Docket

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Falls Church, Virginia 22041

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File: A █████ -784 – Fort Snelling, MN

Date: **MAR 15 2019**

In re: M █████ H █████ A █████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rebecca Sharpless, Esquire

ON BEHALF OF DHS: Kenneth R. Knapp  
Assistant Chief Counsel

APPLICATION: Reopening

The respondent appeals a May 3, 2018, decision by the Immigration Judge denying the respondent's untimely motion to reopen proceedings. The appeal will be sustained, proceedings will be reopened, and the record will be remanded to the Immigration Judge for further adjudication and the entry of a new decision.

The somewhat lengthy procedural history of this matter was set forth in detail by the Immigration Judge in her May 3, 2018, decision on appeal, and will not be repeated in full here. Briefly, the respondent, a native and citizen of Somalia, was admitted to the United States as a refugee on December 13, 2000 (Exh. 1). He was placed in removal proceedings via the issuance of a Notice to Appear on June 13, 2013, and subsequently applied for several forms of relief, including asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3) (2012), respectively, and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2) (2018) (Exh. 14). In a decision dated November 19, 2013, a prior Immigration Judge issued a decision denying all forms of relief (Exh. 28). The respondent did not appeal this decision.

On April 13, 2018, the respondent filed a motion to reopen before the Immigration Judge (Exh. 29). On May 3, 2018, the Immigration Judge issued an order denying the respondent's motion, finding that the motion was untimely, and that he had not shown materially changed country conditions in Somalia in order to warrant untimely reopening. The respondent has appealed that decision to the Board.

The respondent sought reopening before the Immigration Judge in order to re-apply for relief from removal, including asylum, withholding of removal, and protection under the Convention Against Torture. The respondent sought asylum and associated relief based on claims of changed conditions in Somalia. He claimed to have been a putative deportee aboard a flight to Mogadishu that was rerouted and returned to the United States on December 7, 2017, and that he was a class member in *Ibrahim v. Acosta*, 2018 WL 3069242 (S.D. Fla. June 21, 2018) (defining the petitioners as Somali nationals with final removal orders, including 92 Somalis present on the flight on December 7, 2017) (Respondent's Mot. at 5-6, 10-11, Tabs C, F-Z, AA-EE). He argued that due to media coverage of both the December 7, 2017, flight and *Ibrahim v. Acosta*, he faced a risk of

persecution and torture in Somalia. He also argued that changing conditions in Somalia, to particularly include the weakening of the Somali government and the growth in power, influence, and territory by Al Shabaab (an affiliate of Al Qaeda) have increased the chances he would be persecuted or tortured if he were to return to Somalia.

The Immigration Judge found that the flight situation was solely a change in the respondent's personal circumstances, and thus the new evidence did not warrant reopening (IJ at 6). We disagree. While the flight itself took place outside of Somalia, the respondent presented evidence that the flight, and the fact that it was filled with Somali deportees, was widely covered by the media inside Somalia (Motion, Tabs D and E). While the Immigration Judge observed that the respondent had not presented evidence that he was personally named in the media coverage, we do not believe that this fact alone would eliminate the danger to the respondent based on the coverage of the flight within Somalia.

In addition, the Immigration Judge's decision does not reflect consideration of the claimed changes in the conditions in Somalia in the context of the respondent's newly-stated persecution and torture claims. Notably, in 2013, the Immigration Judge found that the respondent had shown past persecution on the basis of his membership in the Darod clan, but found that the Department of Homeland Security had rebutted the presumption of a well-founded fear on the basis of such clan membership (IJ dated 11/19/13, at 12-14). In so finding, the Immigration Judge found that the presumption had been rebutted by evidence that the transitional federal government in Somalia had taken over Al-Shabaab strongholds and security was being effectively maintained by the African Union ("AU") and the African Mission in Somalia ("AMISOM") (IJ dated 11/19/13 at 13).

In the respondent's motion he now asserts a fear that Al-Shabaab will persecute and torture him on account of his views as a moderate Muslim (religion), his views against the establishment of an authoritarian state along the lines envisioned by Al-Shabaab and ISIS-Somalia (political opinion), and his membership in the particular social group of "Americanized Somalis or Somali-Americans" (Respondent's Mot. at 2). The Immigration Judge's decision does not articulate these claims, or directly address whether the conditions in Somalia have materially changed insofar as it would affect these claims. Nevertheless, we observe that the evidence presented along with the respondent's motion, to particularly include very detailed declarations by Somali country experts, describes a failing Somali federal government and a decreased AU and AMISOM presence in Somalia, and indicates that Al-Shabaab's power and territorial control over Somalia has grown significantly in recent years. See Exh. 29, Tabs D and E. Such declarations show evidence of changed country conditions vis-à-vis the Immigration Judge's prior related findings in 2013, such that we determine that reopening is warranted.

Accordingly, we will sustain the respondent's appeal, proceedings will be reopened, and the record will be remanded to the Immigration Judge to enable the respondent to re-apply for relief from removal. The Board, however, expresses no opinion at this time regarding the ultimate outcome of this case.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained, and proceedings are reopened.

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

Teresa L. Brown  
FOR THE BOARD