U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: R[redacted], O[redacted] R[redacted] **A[redacted]-283**

Date of this notice: 10/4/2018

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:
Morris, Daniel

Userteam: Docket

File: [redacted]283 – New York, NY Date: OCT - 4 2018

In re: O[redacted] R[redacted] R[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel E. Salazar, Esquire

ON BEHALF OF DHS: Brandon A. Kennedy
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The Department of Homeland Security ("DHS") appeals from an Immigration Judge's April 23, 2018, decision granting the respondent's application for deferral of removal under the Convention Against Torture. *See* 8 C.F.R. § 1208.17. The appeal will be dismissed.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, a native and citizen of the Dominican Republic, was involved in various criminal activities in the United States between 2000 and 2010, including robberies and drug trafficking, leading to his arrest on drug charges in 2010 (IJ at 1, 4; Tr. at 39-42, 46, 48, 61-62). He then cooperated with law enforcement in investigating other criminals and crimes, including his former associates (IJ at 4; Tr. at 48-49, 84-85). Some of the criminals he named were reportedly back in the Dominican Republic at the time of the hearing (IJ at 4; Tr. at 44). In 2011, two unknown individuals reportedly broke into the respondent's family home in the Dominican Republic, looking for the respondent (IJ at 4; Tr. at 53, 65). One the respondent's brothers was shot and wounded during the incident (IJ at 5; Tr. at 52). The respondent fears harm at the hands of his former criminal associates, and he believes that the Dominican Republic authorities are corrupt, often complicit with criminals and part of the criminal enterprise, and would be unable to protect him (IJ at 5; 41, 56-58, 64, 82).

The Immigration Judge reviewed and considered extensive evidence that has been submitted in this case, documenting the respondent's criminal history, his conviction records, records of his cooperation with the authorities in investigating other criminals, as well as records from the Dominican Republic supporting the accounts of the 2011 incident in the respondent's family home (IJ at 2-3). In reaching her decision, the Immigration Judge also heard the testimony and reviewed written statements from the respondent's relatives, both in the United States and in the Dominican Republic (IJ at 2-3). Moreover, the Immigration Judge considered extensive evidence of the Dominican Republic country reports, as well as written and oral testimony of a proffered expert, Dr. David Brotherton (IJ at 2-3).

The Immigration Judge concluded that the evidence overall demonstrated that the respondent's cooperation with the United States authorities was critical to the arrest and incarceration of individuals involved with international drug trafficking cartels and violent robberies (IJ at 9). The Immigration Judge concluded that it was more likely than not that the respondent faced torture in his native Dominican Republic at the hands of his former co-conspirators and associates with willful blindness of the authorities (IJ at 9).

We agree with the Immigration Judge's conclusion that the respondent established that it is more likely than not that he will be tortured if he returns to the Dominican Republic and is therefore eligible for deferral of removal under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.17(a). The Immigration Judge's predictive findings as to the likelihood that the respondent will be tortured in the Dominican Republic are findings of fact which we review only for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015).

Clear error review is significantly deferential to the factfinder; under that standard, we may not reverse just because we "would have decided the [matter] differently." *Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (quoting in part *Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573 (1985)). On the contrary, clear error review requires affirmance of any "finding that is 'plausible' in light of the full record – even if another is equally or more so." *Id.* We may only reverse when "left with the definite and firm conviction that a mistake has been committed." *Id.* at 1474 (quoting *Anderson*, 470 U.S. at 573-74). Where there are "two permissible" views of the evidence, the factfinder's choice between them cannot be clearly erroneous. *Id.* at 1468 (quoting *Anderson*, 470 U.S. at 574).

While the DHS's appellate arguments persuade us that the Immigration Judge's predictive findings are debatable, consideration of the full record leads us to conclude that they are also "plausible" and "permissible" under the Supreme Court's clear error jurisprudence (*see* DHS's Br. at 13-21). We are not left with "a definite and firm conviction" that they are mistaken. Thus, we are obliged to defer to them. Doing so, we will affirm the conclusion that the respondent is eligible for deferral of removal under the Convention Against Torture.

On appeal, the DHS argues that the Immigration Judge erred by failing to rule on the motion to strike DHS's evidence (consisting of non-precedential decisions of an Immigration Judge and the Board, challenging and discounting Dr. Brotherton's expertise in other immigration cases) or to rule on whether Dr. Brotherton was considered an expert witness (*see* DHS's Br. at 8-10). Specifically, the DHS challenges Dr. Brotherton's qualifications and expertise on the question of torture in the Dominican Republic, pointing out that his research is outdated, and arguing that it is unreliable and irrelevant (*see* DHS's Br. at 9-13).

We are unpersuaded by the DHS's argument regarding the qualifications of Dr. Brotherton and its evidence seeking to challenge his expertise. Specifically, the Immigration Judge based her decision on the entirety of the evidence of record, both oral and written, and she reached her conclusions on consideration of the totality of the circumstances (IJ at 8-9). Indeed, Dr. Brotherton's testimony does not appear to have played a large part in the Immigration Judge's decision (IJ at 6, 8-9).

We are similarly unconvinced by the DHS's argument that the Immigration Judge's decision was improperly based on a series of suppositions. *See Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006) (holding that an alien's eligibility for deferral under the Convention Against Torture cannot be established by stringing together a series of suppositions to show that it is more likely than not that torture will result where the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen) (*see* DHS' Br. at 13-21). As discussed above, the Immigration Judge based her findings of fact and conclusions of law on the entirety of the evidence of record and on the totality of the circumstances. In view of the foregoing, the following 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 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