



U.S. Department of Justice

Executive Office for Immigration Review

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Name: C [REDACTED], Q [REDACTED]

A [REDACTED]-001

Date of this notice: 9/1/2020

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:
Goodwin, Deborah K.
Donovan, Teresa L.
Pepper, S. Kathleen

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RC

Falls Church, Virginia 22041

File: A [REDACTED]-001 – New York, NY

Date: SEP - 1 2020

In re: Q [REDACTED] C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thuy Pham, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of the People's Republic of China, appeals from the Immigration Judge's March 29, 2018, decision denying his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, and withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as a request for protection under Article 3 of the Convention Against Torture, as implemented by 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security has not responded to the appeal. The appeal will be sustained. The record will be remanded.

We review findings of fact, including credibility findings, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We reverse the Immigration Judge's adverse credibility determination. "It has been held that '[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)) (additional internal quotation marks removed). We may not overturn a factual finding merely because we would have weighed the evidence differently or decided the facts differently had we been the factfinder. *Id.* (citations omitted). Under our review for clear error, an Immigration Judge's credibility determinations are due "even greater deference." *Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (citation omitted).

Under the provisions of the REAL ID Act, an Immigration Judge may base a credibility determination on any inconsistency, inaccuracy, or falsehood, without regard to whether that inconsistency, inaccuracy, or falsehood goes to the heart of an applicant's claim. *See* section 208(b)(1)(B)(iii) of the Act; *Matter of J-Y-C-*, 24 I&N Dec. at 262 ("The credibility standard, as amended, is intended to allow Immigration Judges to follow a 'commonsense' approach while 'tak[ing] into consideration the individual circumstances of the specific witness and/or applicant.'"). In assessing credibility, an Immigration Judge must consider the totality of the circumstances and all relevant factors. *See* section 208(b)(1)(B)(iii) of the Act.

The respondent testified that he practiced Catholicism both in China and the United States. The Immigration Judge rejected this testimony, finding that the respondent had an evasive and deceptive demeanor when cross-examined about his alleged Catholic beliefs (IJ at 4-5). Adverse credibility findings based in part on demeanor findings warrant “particular deference.” *Dong Gao v. BIA*, 482 F.3d 122, 126-27 (2d Cir.2007).

This deference, however, has limits. The United States Court of Appeals for the Second Circuit has expressly rejected the premise that “a certain level of doctrinal knowledge is necessary in order to be eligible for asylum on grounds of religious persecution.” *Rizal v. Gonzales*, 442 F.3d 84, 90 (2d Cir. 2006). “Both history and common sense make amply clear that people can identify with a certain religion, notwithstanding their lack of detailed knowledge about that religion’s doctrinal tenets, and that those same people can be persecuted for their religious affiliation.” *Id.*

The respondent is a forklift driver with a high school education (IJ at 5; Tr. at 43). He attends church with his family and does not claim to be a religious teacher or church leader (IJ at 5; Tr. at 24-25, 37-40). There are some “instances in which the nature of an individual applicant’s account would render his lack of a certain degree of doctrinal knowledge suspect and could therefore provide substantial evidence in support of an adverse credibility finding—for instance, where an applicant claims to have been a teacher of, or expert in, the religion in question. But this [is] not the case here.” *Id.*

The Immigration Judge clearly erred in characterizing a question posed and the respondent’s answer. The respondent was asked “What’s [sic] the highest member of the Catholic church in the religious hierarchy?” (Tr. at 46). The respondent apparently hesitated before correctly answering the Pope (IJ at 5; Tr. at 46). The Immigration Judge inaccurately simplified this question by describing it as “who was the head of the Catholic church” (IJ at 5). We cannot fault the respondent for hesitating before correctly answer a convoluted question.

We acknowledge that the respondent did not know the difference between a bishop and a priest and did not know who his bishop was in China (IJ at 5; Tr. at 46). We do not view this doctrinal ignorance as undercutting the respondent’s credibility in claiming to be a Catholic. We further note that the respondent could not remember specific details about a Palm Sunday service occurring the prior weekend, other than mentioning the sermon discussed the sufferings of Jesus (IJ at 5; Tr. at 47-49). The respondent had previously immediately stated that Easter Sunday was the coming Sunday (Tr. at 47). A person can undoubtedly be considered to practice a religion without remembering the specific details of the prior week’s service.

In sum, although some evidence supports the adverse credibility finding, we have a definite and firm conviction that this finding is clearly erroneous. We also cannot affirm the Immigration Judge’s determination that the respondent presented insufficient corroborating evidence, as this analysis is inextricably intertwined with the credibility determination. *See* section 208(b)(1)(B)(ii) of the Act (“The testimony of the applicant *may* be sufficient to sustain the applicant’s burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant’s testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.”) (emphasis added).

We will remand the record for further evaluation of the respondent's claim. On remand, the parties may update the evidentiary record. We express no opinion on the ultimate outcome of this case.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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



FOR THE BOARD