U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: H[redacted], W[redacted] G[redacted]

A [redacted]-874

Date of this notice: 6/19/2020

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:
MONSKY, MEGAN FOOTE
Swanwick, Daniel L.
O'Connor, Blair

Userteam: Docket

File: A[redacted]3-874 – Detroit, MI

Date: JUN 19 2020

In re: W[redacted] G[redacted] H[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Shanta Driver, Esquire

ON BEHALF OF DHS: Gretchen M. Weiss
Assistant Chief Counsel

APPLICATION: Reopen; remand

The respondent, a native and citizen of Iraq, appeals the decision of the Immigration Judge dated June 24, 2019, denying his untimely motion to reopen removal proceedings.[1] The respondent's appeal will be sustained and proceedings will be remanded.

We review the Immigration Judge's factual findings for clear error and all other issues de novo. 8 C.F.R. § 1003.1(d)(3).

The Immigration Judge denied the respondent's untimely motion to reopen in a short order noting that "the issues were considered and decided adverse to the respondent in the February 26, 2018, written decision."

On appeal, the respondent, who is a Chaldean Christian, argues that he fears torture in Iraq based on his religion and perceived Westernization (*See* respondent's appeal brief at 14-19). The respondent has submitted numerous country condition documents that were not available at his previous hearing. The respondent has requested the Board reopen his proceedings and remand the record for the Immigration Judge to consider this evidence. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact finding authority); *see also Matter of Fedorenko*, 19 I&N Dec. 57, 73-74 & n.10 (BIA 1984).

Given the particular evidence and arguments presented, which include a prima facie showing that government-backed militia forces have engaged in abuses against Christians, we conclude that

[1] On February 14, 2018, the Immigration Judge pretermitted the respondent's application for withholding of removal under the Convention Against Torture as he had been convicted of a particularly serious crime (IJ at 13-14). Further, the Immigration Judge determined that the respondent did not meet his burden of proof for deferral of removal pursuant to the Convention Against Torture (IJ at 14-19). On February 26, 2018, the Immigration Judge issued an amended order as he failed to include an order of removal in the February 14, 2018, decision. The respondent did not appeal the Immigration Judge's decision; however, on June 18, 2019, the respondent filed a motion to reopen removal proceedings claiming changed country conditions in Iraq. The Department of Homeland Security (DHS) filed an opposition to the respondent's motion.

the respondent has established a material change in country conditions since the time of his final hearing. *See Amir v. Gonzalez*, 467 F.3d 921, 927 (6th Cir. 2006) (holding that "willful blindness" to torture falls within the definition of "acquiescence" to torture); *see also Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

We therefore enter the following orders.

ORDER: The appeal is sustained and the 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.

FOR THE BOARD