



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: S [REDACTED], E [REDACTED]**

**A [REDACTED]-220**

**Date of this notice: 3/10/2020**

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:  
O'Connor, Blair  
Greer, Anne J.  
Donovan, Teresa L.

Service:  
Userteam: Docket

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*RL*

Falls Church, Virginia 22041

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File: A [REDACTED]-220 – New York, NY

Date:

**MAR 10 2020**

In re: B [REDACTED] S [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Clarence M. Trocio, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of India, appeals the Immigration Judge's February 16, 2018, decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13, 1208.16-1208.18. The Department of Homeland Security has not filed an opposition to the appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent asserts that he suffered past persecution and has a well-founded fear of future persecution on account of his political opinion (IJ at 3; Exh. 5). The Immigration Judge denied all forms of relief and protection requested by the respondent (IJ at 8). Specifically, the Immigration Judge determined the respondent to be not credible, relying solely on his explanations as to why he did not file corroborating evidence for his application in a timely manner (IJ at 6-7). The Immigration Judge additionally determined that the respondent did not provide adequate corroboration for his applications, and, in the alternative, that his failure to submit timely evidence demonstrated that he did not have a subjective fear of persecution in India (IJ at 7).

The Immigration Judge's adverse credibility determination is clearly erroneous. *See Wu Lin v. Lynch*, 813 F.3d 122, 126-27 (2d Cir. 2016). The respondent attempted to file two submissions of evidence to corroborate his claims for relief and protection, but failed to do so by the deadline previously set by the Immigration Judge and in accordance with the Immigration Court Practice Manual (IJ at 6). After the Immigration Judge rejected the evidentiary submissions, the respondent was asked to provide an explanation for the delayed filings (IJ at 6-7; Tr. at 69-71). The respondent provided three explanations to the Immigration Judge—that his wife forgot to send a letter to support his claims for relief; that there were mistakes in the documents, so he needed to send them back to his family to correct; and that his parents were old, and struggled obtaining the documents (IJ at 6-7). The Immigration Judge determined that these explanations were not persuasive, and, without further discussing the respondent's testimony concerning the merits of his applications for relief, found that the respondent lacked credibility due to the implausible nature of how he obtained his evidence (IJ at 7).

An Immigration Judge may find a respondent not credible if his testimony is inherently implausible. *Yan v. Mukasey*, 509 F.3d 63, 66 (2d Cir. 2007). However, a finding of inherent implausibility must be “tethered to record evidence” and cannot be based on speculation. *Id.* at 66-67; *see also Huo Qiang Chen v. Holder*, 773 F.3d 396, 403 (2d Cir. 2014). Here, the Immigration Judge did not give specific, cogent reasons for rejecting the respondent’s testimony concerning the merits of his claim. *See Zhi Wei Pang v. Bureau of Citizenship and Immigration Servs.*, 448 F.3d 102, 108 (2d Cir. 2006) (“Although the [Immigration Judge] is not required to credit [the respondent’s] explanation, the [Immigration Judge] is required to present specific, cogent reasons for rejecting it.”). Rather, the Immigration Judge’s findings concerning the respondent’s credibility were based on speculation as to the respondent’s methods of gathering evidence, without reference to facts or evidence in the record. The Immigration Judge’s reliance solely on the respondent’s explanations concerning the evidence, without more, is insufficient to support an adverse credibility finding. *Cf. Gurung v. Barr*, 929 F.3d 56, 60 (2d Cir. 2019) (stating that an Immigration Judge’s “factual findings—including her adverse credibility determinations—merit deference so long as they are supported by substantial evidence”).

As such, a remand of the record is appropriate for the Immigration Judge to make findings of fact regarding the respondent’s claim, including the events alleged by the respondent, and a reassessment of the respondent’s credibility. *See generally Yan Juan Chen v. Holder*, 658 F.3d 246, 252 (2d Cir. 2011); *Biao Yang v. Gonzales*, 496 F.3d 268, 273 (2d Cir. 2007). On remand, the respondent should be given the opportunity to present the evidence that was previously excluded, as well as any additional evidence, in order to update the record. The Immigration Judge should then assess whether the respondent is credible and if the respondent has corroborated his claim for relief and protection. If the respondent is credible, the Immigration Judge should make findings regarding whether the respondent has established past persecution or a well-founded fear of future persecution. If the respondent is ineligible for asylum relief, the Immigration Judge should also determine the respondent’s eligibility for withholding of removal and protection under the Convention Against Torture. We express no opinion as to the ultimate outcome of this decision. Accordingly, the following order will be entered.

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




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FOR THE BOARD