



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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**Name: H [REDACTED], H [REDACTED]
Riders: [REDACTED]**

A [REDACTED]-017

Date of this notice: 5/30/2019

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:
Kendall Clark, Molly

Elkikar
User team: Docket

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Falls Church, Virginia 22041

Files: A [REDACTED]-017 – Seattle, WA
A [REDACTED]

Date: **MAY 30 2019**

In re: H [REDACTED] H [REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Mari L. Matsumoto, Esquire

ON BEHALF OF DHS: Anne P. McElearney
Assistant Chief Counsel

APPLICATION: Reopening

The respondents, who are natives and citizens of Indonesia and Christians, are a disfavored group in Indonesia. They have filed an untimely motion to reopen, alleging, inter alia, worsening conditions for Christians in Indonesia. The Department of Homeland Security has filed an objection to the motion. Given the potential for individualized risk of harm presented in this proceeding, as well as the other additional evidence presented, the motion will be granted.

The Immigration Judge denied the lead respondent's application for asylum and related relief in 2007. Then, as now, the respondents claimed a fear of persecution on account of their Christianity if they returned to Indonesia. On December 5, 2008, the Board dismissed the appeal.

On July 26, 2018, the respondents filed the instant motion to reopen, alleging changed country conditions for Indonesian Christians.¹ The respondents argue that reopening is warranted due to a recent increase in religious intolerance and religiously motivated violence towards Christians in Indonesia. The respondents assert that Muslim extremism is on the rise and that it is no longer safe for Christians in Indonesia.

The respondents further argue that their individualized risk of persecution is high. In support of the motion, the respondents have submitted their declarations, their children's birth certificates, extensive additional current background evidence indicating conditions for Indonesian Christians have worsened, a new asylum application, and evidence of an individualized risk of harm.

With limited exceptions, a motion to reopen must be filed within 90 days of the date of entry of a final administrative order of deportation or removal. See section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). There is no time or number limit on the filing of a motion to reopen if the basis of the motion is to apply for asylum or withholding of deportation or removal based on changed country conditions or

¹ While the lead respondent filed the original asylum application and named his wife as a derivative, the rider has now filed an asylum application and named the lead respondent as a derivative.

circumstances arising in the country of nationality or the country to which deportation or removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. See section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii); *Matter of S-Y-G-*, 24 I&N Dec. 247 (BIA 2007), *aff'd Shao v. Mukasey*, 546 F.3d 138 (2d Cir. 2008); *Matter of A-N- & R-M-N-*, 22 I&N Dec. 953, 956 (BIA 1999).

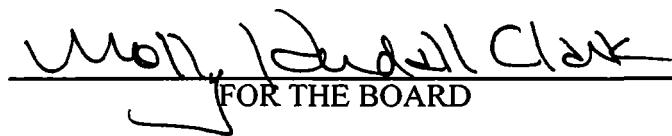
It is undisputed that the respondents are Christians. The respondents have submitted extensive evidence of current country conditions for Christians in Indonesia. In addition, they have attached evidence indicating that their 13 year old United States citizen child, who has an obviously Christian name, is a person with significant disabilities, including Fragile X syndrome, severe autism, and ADHD. The evidence suggests that their son requires constant supervision and care, will not be able to live independently, attracts significant attention when in public situations, and requires sophisticated, specialized care not necessarily available in remoter parts of Indonesia.

Considering the additional evidence presented, as well as the evidence in the record, the respondents have demonstrated that there have been changed conditions and circumstances in Indonesia that are material to the respondents' eligibility for asylum, withholding of removal, and Convention Against Torture protection. Given that the respondents are members of a disfavored group, the current conditions, coupled with the individualized risk associated with caring for the specific needs of their child with significant disabilities, demonstrate that the current conditions are qualitatively different from the harm to Christians presented during their hearing over 12 years ago. See *Salim v. Lynch*, 831 F.3d 1133 (9th Cir. 2016).

Based on the foregoing, the respondents have shown that their motion falls within the exception to the time limitation for a motion to reopen to apply or reapply for asylum or withholding of removal (or Convention Against Torture protection). Given our resolution of the motion, we need not address the other issues raised by the respondents. Accordingly, the following orders will be entered.

ORDER: The motion to reopen is granted.

FURTHER ORDER: The record is remanded for further proceedings in accordance with this decision.


FOR THE BOARD