



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: R [REDACTED]-S [REDACTED], C [REDACTED]... A [REDACTED]-717

Date of this notice: 4/22/2020

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:
Wilson, Earle B.
Donovan, Teresa L.
Goodwin, Deborah K.

Humady!
Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED]-717 – Philadelphia, PA

Date: **APR 22 2020**

In re: C [REDACTED] R [REDACTED] R [REDACTED] -S [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sigang LI, Esquire

ON BEHALF OF DHS: Georgette Pinillos
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The respondent, a native and citizen of Venezuela, appeals the Immigration Judge's April 19, 2018, decision denying his application for protection under the Convention Against Torture. 8 C.F.R. §§ 1208.13, 1208.16-1208.18.¹ 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 United States Court of Appeals for the Third Circuit has articulated a two-part test in *Myrie v. Att'y Gen of U.S.*, 855 F.3d 509, 516 (3d Cir. 2017), for claims for protection under the Convention Against Torture—first, an Immigration Judge must determine "whether an applicant has met the burden of establishing that it is more likely than not [the respondent] would be tortured if removed," and then the Immigration Judge must consider whether public officials will acquiesce in the likely treatment. See *Quinteros v. Att'y Gen of the U.S.*, 945 F.3d 772, 786 (3d Cir. 2019). In regard to the first prong, the Immigration Judge should assess "(1) what is likely to happen to the petitioner if removed; and (2) does what is likely to happen amount to the legal definition of torture." *Id.* (citing *Kaplun v. Att'y Gen. of U.S.*, 602 F.3d 260, 271 (3d Cir. 2010)). The two parts are to be examined separately; the first question is factual and the second is a legal question. *Kaplun v. Att'y Gen. of U.S.*, 602 F.3d at 271. In regard to government acquiescence, *Myrie* requires an analysis of "how public officials will likely act in response to the harm the petitioner fears" and "whether the likely response from public officials qualifies as acquiescence." *Myrie v. Att'y Gen of U.S.*, 855 F.3d at 516.

¹ Although the Immigration Judge's decision denies the respondent's supposed request for asylum and withholding of removal relief, the respondent indicated on the record that he intended to solely apply for protection under the Convention Against Torture, and has limited his appeal accordingly (Tr. at 61, 88, 120; Exh. 3).

Here, the Immigration Judge has not provided the analysis as required by *Myrie* (IJ at 13-14). The Immigration Judge stated that the respondent no longer faces a likelihood of harm in Venezuela because Hugo Chavez is no longer in power (IJ at 13-14). However, the Immigration Judge did not consider the respondent's written statement that he fears torture in Venezuela because he believes the current administration, which was put into power after Hugo Chavez passed away, would view him as a spy due to the length of time that he resided in the United States (Exh. 7 at 1-3; Tr. at 118-120). Further, the respondent testified that his friend, who also lived in the United States for an extended amount of time, was interrogated by Venezuelan police and then went missing (IJ at 5-7). When the respondent inquired after his friend's disappearance with the Venezuelan police, the respondent's family was threatened (IJ at 6-7). Country conditions reports also describe a state of violence in the country, frequently coupled with torture, promulgated by the current president of Venezuela toward anyone viewed as opposition, including American citizens (Exh. 4 at 1-4, 8, 14-15).

The Immigration Judge did not make any factual findings or legal analysis regarding the likelihood the respondent would face torture in light of the foregoing testimony and evidence, nor did the Immigration Judge determine whether the Venezuelan government would partake in, or acquiesce to, harm the respondent states he may face. As such, we remand the record to provide the Immigration Judge with the opportunity to determine whether the respondent has established eligibility for protection under the Convention Against Torture. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002).

The parties should be allowed to provide further evidence, including country conditions reports and additional testimony. We express no opinion as to the outcome of these proceedings.

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



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