U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: G[redacted], A[redacted] Y[redacted] **A [redacted]-689**

Date of this notice: 2/27/2020

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:
Hunsucker, Keith
Creppy, Michael J.
Liebowitz, Ellen C

Humadyl
Userteam: Docket

File: A[redacted]-689 – Baltimore, MD

Date: FEB 27 2020

In re: A[redacted] Y[redacted] G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jason A. Dzubow, Esquire

ON BEHALF OF DHS: Amy Donze Sanchez
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Ethiopia, appeals the Immigration Judge's May 10, 2018, decision denying his application for asylum. *See* section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A); 8 C.F.R. § 1208.13. The Immigration Judge granted the respondent's application for withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A).[1] The Department of Homeland Security ("DHS") filed a Motion for Summary Affirmance on appeal. The record will be remanded as set forth below.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge granted the respondent withholding of removal under section 241(b)(3)(A) of the Act (IJ at 11-12). The DHS has not challenged this determination on appeal.

The sole issue on appeal is whether the Immigration Judge correctly determined that the respondent was barred from pursuing his application for asylum from Ethiopia because he firmly resettled in South Africa (IJ at 10-11). *See* section 208(b)(2)(A)(vi) of the Act. An alien "is considered to be firmly resettled if, prior to arrival in the United States, he or she entered into another country with, or while in that country received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement." 8 C.F.R. § 1208.15.

The DHS has the initial burden to provide prima facie evidence of an offer of firm resettlement. *Matter of A-G-G-*, 25 I&N Dec. 486, 501 (BIA 2011); *see also Mussie v. U.S. INS*, 172 F.3d 329, 331-32 (4th Cir. 1999) (noting that once government meets initial burden of introducing some evidence that alien has been "firmly resettled," burden shifts to alien to demonstrate by

[1] As the Immigration Judge granted the respondent withholding of removal under the Act, the Immigration Judge did not reach whether the respondent was also eligible for protection under the Convention Against Torture.

preponderance of the evidence that alien has not been resettled). To meet this burden, the DHS should produce "direct evidence of governmental documents indicating an alien's ability to stay in a country indefinitely," such as a passport or travel document. *Matter of A-G-G-*, 25 I&N Dec. at 501-02. If direct evidence of an offer of firm resettlement is unavailable, "indirect evidence may be used to show that an offer of firm resettlement has been made if it has a sufficient level of clarity and force to establish that an alien is able to permanently reside in the country." *Id.* at 502.

Second, the alien can rebut the DHS's prima facie evidence of an offer of firm resettlement by showing by a preponderance of the evidence that such an offer has not, in fact, been made or that he or she would not qualify for it. *Matter of A-G-G-*, 25 I&N Dec. at 503. Third, the Immigration Judge should consider the totality of the evidence to determine whether an alien has rebutted the DHS's evidence of an offer of firm resettlement. *Id.* Fourth, if the Immigration Judge finds the alien firmly resettled, the burden shifts to the alien to establish that an exception to firm resettlement applies pursuant to 8 C.F.R. §§ 1208.15(a) and (b) by a preponderance of the evidence. *Id.*

We agree with the respondent's argument on appeal that while the Immigration Judge analyzed whether the respondent had "firmly resettled" in South Africa, he did not follow the framework and burden shifting requirements set out in *Matter of A-G-G-* (IJ at 10-11; Respondent's Br. at 8). A remand is therefore warranted to allow the Immigration Judge to apply the four-step framework in *Matter of A-G-G-* in order to determine whether the respondent was "firmly resettled" in South Africa and therefore barred from asylum.

Moreover, on appeal, the respondent has submitted new evidence that is potentially material to the issue of whether he was firmly resettled in South Africa, namely, a letter he claims to be from the South African government that discusses the respondent's immigration status in that country (Respondent's Brief, Tab A). As we are remanding proceedings, the Immigration Judge should allow the respondent an opportunity to present this new evidence and provide the DHS with an opportunity to respond. Accordingly, the following order will be entered.

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

Ellen Lubowitz
FOR THE BOARD