U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: M[redacted], Y[redacted]

A [redacted]-250

Date of this notice: 10/8/2020

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:
Morris, Daniel
Geller, Joan B
Liebowitz, Ellen C

Userteam: Docket

File: A[redacted]-250 – Oakdale, LA

Date: OCT - 8 2020

In re: Y[redacted] M[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Anthony J. Moreno, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cameroon, appeals the Immigration Judge's May 5, 2020, decision denying his application for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208(b)(1)(A) and 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. §§ 1208.16(c), 1208.18. The appeal will be sustained, and the record will be remanded.

We review findings of fact determined by the Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's application for asylum on the basis that he had sought admission after July 16, 2019, and had not applied for protection in any country en route to the United States (IJ at 2). *See* 8 C.F.R. § 1208.13(c)(4). This regulation codified an interim final rule which, with limited exceptions, categorically barred asylum applicants who sought to enter the United States at its southern border unless they first applied, and were rejected, for similar protection in at least a single third country through which they transited. *See* Asylum Eligibility and Procedural Modifications, 84 Fed. Reg. 33,829, 33,830 (July 16, 2019). However, on June 30, 2020, the United States District Court for the District of Columbia vacated the interim final rule. *See Capital Area Immigrants' Rights Coal. v. Trump*, Nos. 19-2117 and 19-2530, 2020 WL 3542481 (D.D.C. June 30, 2020). Thus, regardless of when the respondent appeared at the southern border, in light of this intervening case law, the respondent is no longer barred from seeking asylum (Respondent's Br. at 10-13).

In the alternative, the Immigration Judge denied the respondent's application based on the merits of his claim (IJ at 3-10). The Immigration Judge found the respondent credible (IJ at 4). He determined, however, that the respondent did not establish that the harm he suffered in Cameroon rises to the level of persecution, or that any past or future harm would be on account of a protected ground enumerated in the Act (IJ at 2-9). He also determined that the respondent did not meet his burden to establish his eligibility for protection under the Convention Against Torture (IJ at 9-10). Upon our review of the record, we agree with the respondent that the Immigration Judge's decision contains incomplete factual findings and legal analysis such that the record should be remanded for reconsideration (Respondent's Br. at 16-24). *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (remand appropriate where Immigration Judge's decision almost completely

lacked factual findings and legal analysis); *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999) (stating that the Immigration Judge is "responsible for the substantive completeness of the decision").

When discussing his 2017 arrest, the respondent testified and wrote in his declaration that during his 3 day detention, he was beaten on his feet with a machete and burned on his side with flames, leaving scars (Tr. at 29-32; Exh. 4). He also wrote in his declaration that he was not given any food or water during that time (Exh. 4). Despite those claims, in finding the respondent did not suffer persecution, the Immigration Judge simply noted that the respondent was detained for 3 days, suffered no injuries, and did not see a doctor (IJ at 5). The Immigration Judge did not consider any of the other harm the respondent suffered. Similarly, the respondent testified and wrote in his declaration that he was arrested while attending a protest in support of the Anglophones in Cameroon (Tr. at 29-30; Exh. 4). Despite that testimony, the Immigration Judge found "there is no connection between [the arrest] and any political conduct of the respondent other than the fact that he was in school and he said he was arrested at, the Court would assume, a march there" (IJ at 5). The Immigration Judge did not explain why he found "no connection" when the respondent stated he was arrested at a political protest.

When discussing the 2019 arrest, the respondent wrote in his declaration, and discussed during his credible fear interview, that the government attacked his village, blocked the entrances and exits, and checked identification cards "to eliminate all male youths because they believe everyone is taking or supporting the separatists" (Exhs. 3, 4). When the respondent resisted showing his identification, the military official stabbed him and took him away in a truck, but he escaped when Separatist forces intervened and engaged in a shootout with the military (Tr. at 32-40, Exhs. 3, 4). Without considering the respondent's assertions, the Immigration Judge found "there is no connection between [the stabbing] and politics" (IJ at 5). Further, the Immigration Judge found that the arrest warrant issued for the respondent, which states the respondent is wanted for "hostilities against the fatherland," does not indicate the respondent was arrested for any political purposes because there was a shootout between the Separatists and the government (IJ at 5-8). The Immigration Judge's findings, however, do not seem to consider the respondent's testimony that he was arrested *before* the shootout, that he was not carrying a weapon, and that there is no evidence he was involved in the shootout (Tr. at 32-40).

In this regard, we note that the Immigration Judge points out that it is the respondent's burden to establish his eligibility for the relief and protection he seeks. While that is true, it is also the Immigration Judge's duty to consider all of the evidence in the record and ensure that the respondent has a full and fair opportunity to present his case. *See Matter of J-F-F-*, 23 I&N Dec. 912, 922 (BIA 2006) ("It is appropriate for Immigration Judges to aid in the development of the record, and directly question witnesses, particularly where an alien appears pro se and may be unschooled in the deportation process."); *Matter of S-M-J-*, 21 I&N Dec. 722, 729 (BIA 1997) ("Testimony is not a discrete, self-contained unit of evidence examined and weighed without context; it is part of the body of evidence which is intertwined and considered in its total."). The Immigration Judge did not consider the respondent's statements in his declaration, and he did not ask the respondent, who was pro se, sufficient questions about his claim. For example, although the Immigration Judge states the respondent "has not gone in to any details of what his political activities were" (IJ at 5), the record reveals that neither the Immigration Judge nor government counsel ever asked the respondent about his political activities (*see* Tr. at 29-46).

Similarly, the Immigration Judge gives limited weight to the respondent's corroborating evidence, but he does not adequately explain why (IJ at 2; Exh. 4). For example, the Immigration Judge states that he "cannot accept what [the respondent] is calling the hospital book concerning his injuries while he was in the hospital," but he does not explain why he will not accept the document, which is written in English (IJ at 2; Exh. 4). Further, the Immigration Judge does not consider the photographs submitted by the respondent because they were not properly authenticated (IJ at 2; Exh. 4). However, the record does not support the Immigration Judge's assertion that he asked the respondent about the photographs and that the respondent was not able to provide much information about the photographs (IJ at 2; *see* Tr. at 24-51). Our review of the record reveals that the respondent was asked only about the letters submitted by his family members (Tr. at 43-46).

Finally, when considering the respondent's claim for protection under the Convention Against Torture, the Immigration Judge stated the following: "In assessing whether the applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture and I have so considered and I find none" (IJ at 10). The Immigration Judge provided no factual basis or legal analysis explaining why he determined that the respondent did not meet his burden to establish his eligibility for protection under the Convention Against Torture. His conclusory statement that he considered all the evidence is insufficient, on its own, to establish that he properly considered the respondent's application for protection under the Convention Against Torture.

Accordingly, we will remand the record to the Immigration Judge for preparation of a full decision that contains clear and complete findings of fact as well as legal analysis. Upon remand, the parties should have the opportunity to supplement the record with additional evidence if they deem it necessary. In remanding the record, we express no opinion as to the ultimate outcome of this case.

Accordingly, the following order is entered.

ORDER: The appeal is sustained, and the record is remanded for the entry of a new decision consistent with this decision.

FOR THE BOARD