



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Manes, Austin
Kramer Levin Naftalis & Finkel LLP
990 Marsh Road
Menlo Park, CA 94025

DHS/ICE Office of Chief Counsel - SDC
146 CCA Road, P.O.Box 248
Lumpkin, GA 31815

Name: S [REDACTED] G [REDACTED], R [REDACTED] A [REDACTED] A [REDACTED] -107

Date of this notice: 7/7/2020

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:
Greer, Anne J.
Swanwick, Daniel L.
Goodwin, Deborah K.

GilbeauR
Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-107 – Lumpkin, GA

Date: JUL 7 2020

In re: R [REDACTED] A [REDACTED] S [REDACTED] G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Austin W. Manes, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, has timely filed an appeal from an Immigration Judge's decision dated August 19, 2019, finding him removable as charged, and denying his applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively, and for protection under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.13, 1208.16-.18. The respondent's appeal will be sustained and the record will be remanded to the Immigration Court for further proceedings.

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* questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims eligibility for asylum and withholding of removal based on his political opinion (IJ at 2; Tr. at 46; Exh. 2). The Immigration Judge found that the respondent was credible, but he denied relief in this case based on the conclusion that the respondent did not demonstrate past persecution, a well-founded fear of future persecution, or that it is more likely than not that he will be persecuted in Cuba on account of political opinion (IJ at 2-6).

The respondent testified that the authorities in Cuba repeatedly arrested, detained, harassed, and intimidated him; they also searched his home, issued him warnings, and summoned him to the police station between September 2015 and September 2018 because of his anti-government political opinion and activities (IJ at 2-4; Tr. at 46-48, 67-69, 71-72, 77, 80-81; Exhs. 2, 3). His arrests in February 2016 and November 2016 resulted in detentions for 72 hours, he was left naked in a cold room and was sprayed with water with a pressure hose, and he was beaten resulting in injuries including a broken tooth and numerous cuts and lacerations (IJ at 2-4; Tr. at 46-48, 67-69; Exh. 2). After the respondent left Cuba in August 2018, the authorities reportedly looked for him at his mother's home (and they detained the mother for 24 hours), and he was issued official citations to appear at a police station for interviews (IJ at 4-5; Tr. at 72-73, 75-76; Exhs. 2, 3). The respondent fears harm at the hands of the authorities upon his return to Cuba (IJ at 4-5; Tr. at 45-46; Exh. 2).

On *de novo* review, and considering the harm that the respondent suffered cumulatively, we conclude that the harm was sufficiently severe to rise to the level of past persecution. Although the respondent is not shown to have suffered any life-threatening or seriously debilitating injuries,

he was repeatedly arrested and detained, intimidated, beaten and injured, left in a cold room naked and sprayed with high pressure cold water, and deprived of food. Overall, the evidence supports a conclusion that the respondent suffered significant and sufficiently severe harm to rise to the level of persecution at the hands of the Cuban authorities. *See Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1235-36 (11th Cir. 2013) (holding that a determination of what constitutes persecution is a highly fact-intensive inquiry and must be based on the totality of the circumstances on a case-by-case basis).

Moreover, we see legal and clear error in the Immigration Judge's finding that the respondent has not demonstrated a well-founded fear of future persecution in that the entirety of the evidence of record reflects that his subjective fear of harm on account of his political opinion is objectively reasonable. A future persecution claim presents a mixed question of law and fact, with the fact question being what harm is likely to happen if the applicant is returned to his country and the legal question being whether the predicted harm "meet[s] the legal standard for a well-founded fear of persecution." *Zhu v. U.S. Att'y*, 703 F.3d 1303, 1312 (11th Cir. 2013). The BIA can reweigh evidence before the IJ but only if it is "through the prism of clear error." *Id.* at 1315.

Specifically, the respondent credibly testified that the authorities repeatedly arrested, harassed, detained, and harmed him, and they issued him numerous letters of warning and citations because he engaged in anti-government political activities, and because he was viewed as a counter-revolutionary (IJ at 2-4). Moreover, the authorities continued to look for the respondent after he departed Cuba (IJ at 4-5). The respondent fears that what happened to him in the past will be repeated in the future.

In view of the foregoing, we conclude that the totality of evidence reflects that the respondent suffered past persecution and that he has a well-founded fear of persecution in Cuba on account of his political opinion; his fear is subjectively genuine and is shown to be objectively reasonable. *See* 8 C.F.R. § 1208.13(b)(2). Consequently, the respondent has demonstrated eligibility for asylum and, in the absence of any adverse discretionary factors in this case, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the Immigration Judge's August 19, 2019, decision denying asylum is vacated.¹

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD

¹ In view of our decision finding the respondent eligible for asylum, we need not address his applications for withholding of removal or protection under the Convention Against Torture.