U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: P[redacted]-J[redacted], D[redacted]

A [redacted]-170

Date of this notice: 8/7/2020

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:
Creppy, Michael J.
Liebowitz, Ellen C
Morris, Daniel

Userteam: Docket

File: A[redacted]-170 – Atlanta, GA

Date: AUG - 7 2020

In re: D[redacted] P[redacted]-J[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eduardo Soto, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, appeals from the Immigration Judge's decision dated January 29, 2020, denying her applications for asylum and withholding of removal under 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), and protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.18. The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be sustained, and 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 Immigration Judge found the respondent did not meet her burden of proof for asylum, withholding of removal, and protection under the Convention Against Torture (IJ at 5-7).[1] He determined, inter alia, that she did not establish past harm rising to the level of persecution and otherwise did not establish a well-founded fear of persecution. The respondent challenges these determinations on appeal, and asserts that she established that all past harm and future harm would be on account of her political opinion (Respondent's Br. at 5-9).

The Immigration Judge did not explicitly address credibility in his decision, but his decision treats the respondent's testimony as credible. Moreover, there is a rebuttable presumption of

[1] The Immigration Judge denied the respondent's application for asylum on the basis that she had sought admission after July 16, 2019, and had not applied for protection in any country en route to the United States (IJ at 5). *See* 8 C.F.R. § 1208.13(c)(4). This regulation codified an interim final rule which, with limited exceptions, categorically bars asylum eligibility for an alien who sought to enter the United States at its southern border unless he or she first applied, and was rejected, for similar protection in at least a single third country through which he or she 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*, --- F.Supp.3d ----, 2020 WL 3542481 (D.D.C. June 30, 2020). Accordingly, the respondent is not barred from asylum on this basis, and we evaluate the Immigration Judge's alternative reasons for denying asylum.

credibility on appeal and there is no argument from the DHS that the respondent is not credible. *See* section 208(b)(1)(B)(iii) of the Act. Accordingly, we treat the respondent as a credible witness. Moreover, we disagree with the Immigration Judge that her past harm did not rise to the level of persecution.

The respondent recounted that she has been detained and mistreated in Cuba by the police and the Cuban authorities (IJ at 2-4; Tr. at 18-36). In October 2017, the police entered her home without a warrant and detained her for 12 hours without food or water (IJ at 3; Tr. at 18-19). After the respondent told the police officers that she was tired of the dictatorship in Cuba, the police officers threatened her with harm for opposing the government and pushed her onto a chair (*Id.*). In November 2017, the police came to her house, handcuffed her, took her away and held her for approximately 24 hours (IJ at 3; Tr. at 21-22). The police threatened that if she continued to oppose the government, they would make an attempt on her life (IJ at 3; Tr. at 21-22). The respondent further testified that the police grabbed her by the arms and pushed her against a wall and her head struck the wall, resulting in headaches for 15 days, so severe that she vomited due to the pain (IJ at 3; Tr. at 22-24). Further, the police officers beat her for approximately 30 to 40 minutes, striking her with their hands and pulling her hair, resulting in bruises and a lingering head pain (Tr. at 23-24). In April 2019, the respondent was leaving Cuba and was placed in a room, told that she was an anti-revolutionary, and was not allowed to leave, though she was eventually permitted to board the aircraft (IJ at 3-4; Tr. at 26, 34-35, 41-43).

Upon our de novo review, we agree that the past harm the respondent experienced cumulatively rises in severity to the level of persecution as a matter of law. *See generally Matter of O-Z-& I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1996); *see also Ruiz v. U.S. Att'y Gen.*, 479 F.3d 762, 766 (11th Cir. 2007) (finding that the cumulative effect of beatings, threatening phone calls, and kidnapping constituted past persecution); *Niftaliev v. U.S. Att'y Gen.*, 504 F.3d 1211, 1217 (11th Cir. 2007) (finding past persecution based on the cumulative effect of discrimination, the numerous beatings and threats, and a fifteen-day detention); *Cf. Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1231 (11th Cir. 2005) (finding that isolated incidents of verbal intimidation and mere harassment does not amount to persecution); *see also Djonda v. U.S. Att'y Gen.*, 514 F.3d 1168, 1174 (11th Cir. 2008) (finding that minor physical abuse of only scratches and bruises does not compel a finding of past persecution).

As it is uncontested that the harm was inflicted on account of an enumerated ground (*see e.g.*, IJ at 7), and as the respondent's fear of future harm is related to the past persecution, the respondent is entitled to a rebuttable presumption of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). In turn, the DHS bears the burden of rebutting that presumption, for example by establishing a fundamental change in circumstances showing that that the respondent no longer has a well-founded fear of persecution in Cuba. *See* 8 C.F.R. § 1208.13(b)(1)(i), (ii).

We will accordingly remand the record for the Immigration Judge to address whether the DHS can meet its burden of proof to rebut the presumption of a well-founded fear of persecution.[2] In remanding, we do not express an opinion regarding the ultimate outcome of the respondent's case.

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 for the entry of a new decision.

Ellen Liebowitz
FOR THE BOARD

[2] In light of our decision, we will not address at this time the Immigration Judge's denial of the respondent's claims for withholding of removal or protection under the Convention Against Torture (IJ at 7).