



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals  
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Name: B [REDACTED]-W [REDACTED], J [REDACTED] M [REDACTED] S [REDACTED] [REDACTED]-109

**Date of this notice: 04/16/2003**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Jeffrey Fratter  
Chief Clerk

Enclosure

Panel Members:  
GRANT, EDWARD R.

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4/17/03

U.S. Department of Justice  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED] 109 - Boston

Date:

In re: J [REDACTED] M [REDACTED] S [REDACTED] B [REDACTED] - W [REDACTED]

APR 16 2003

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF SERVICE: Richard D. Neville  
Assistant District Counsel

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -  
Inadmissible at time of entry or adjustment of status under section  
212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] -  
Fraud or willful misrepresentation of a material fact

APPLICATION: Asylum; withholding of removal; Convention Against Torture

ORDER:

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PER CURIAM. The respondent, a native of Zaire and a citizen of the Democratic Republic of the Congo (as Zaire was renamed), is appealing the May 26, 2000, decision of the Immigration Judge denying his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). The Immigration Judge also denied his request for protection under the United Nations Convention Against Torture, 8 C.F.R. § 1208.16. In addition, the Immigration Judge denied his request for voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). The respondent's appeal fee waiver request is granted. 8 C.F.R. § 1003.8(c). His request for oral argument is denied. 8 C.F.R. § 1003.1(e). The respondent's request for three-member review made pursuant to 8 C.F.R. § 1003.3(f) is also denied. The Immigration and Naturalization Service (the "Service," now the Department of Homeland Security) has filed a brief in support of the Immigration Judge's decision.

The Immigration Judge declined to describe the respondent's testimony in detail, noting that "the transcript should suffice to show what the testimony and arguments were in this case" (I.J. at 4). The Immigration Judge ultimately determined that the respondent presented a fabricated claim of persecution.

Because the Immigration Judge declined to state the facts of the case, it is difficult to discern the nature of the respondent's claim from a review of the Immigration Judge's decision. We find that

it is important for the Immigration Judge to make findings regarding the relevant facts of the case. This is particularly so in the instant case where, as noted by the Service in its appeal brief, "many of the facts of this case [] are in dispute." Service's Appeal Brief at 1. In addition, we believe that complete factual findings are especially important when an Immigration Judge determines that an alien knowingly filed a frivolous asylum application.

Accordingly, we find that the record should be remanded to the Immigration Judge for further factual findings. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (stating that it is especially important in light of new regulations for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law). The Immigration Judge may further consider the validity (or lack thereof) of the respondent's documents in light of the arguments raised by the respondent concerning the propriety of relying upon information about the documents provided by the government of the Democratic Republic of the Congo. Respondent's Appeal Brief at 13-16, 19-23.

In light of the foregoing, the record will be remanded to the Immigration Judge for further consideration of the respondent's claim. On remand, the parties should be afforded an opportunity to present additional evidence, including further testimony and updated country conditions, relevant to the respondent's application for asylum and withholding of removal, as well as his request for protection under the Convention Against Torture. In addition, the respondent should be provided an opportunity to apply for any other relief from removal for which he currently may be eligible.

Accordingly, 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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FOR THE BOARD