



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

Geng, Ting
The Law Office of Geng & Zhang PLLC
3907 prince street
Suite 3e
Flushing, NY 11354

DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, 11th Floor
New York, NY 10278

Name: C [REDACTED], Y [REDACTED]

A [REDACTED]-991

Date of this notice: 8/3/2020

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:
Goodwin, Deborah K.
Wilson, Earle B.
Pepper, S. Kathleen

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Falls Church, Virginia 22041

File: A [REDACTED]-991 – New York, NY

Date: AUG - 3 2020

In re: Y [REDACTED] C [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Ting Geng, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of China, appeals from the Immigration Judge's April 20, 2018, decision denying her application for asylum and withholding of removal, as well as her request for protection under the Convention Against Torture. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.13, 1208.16-18. The appeal will be sustained, the Immigration Judge's decision will be vacated, and the record will be remanded.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent argues that she suffered past persecution on account of China's coercive population control program (Exhs. 2-3). Specifically, she claims that she was forced to undergo an abortion in December 2009, because her boyfriend was under the marriage age. The Immigration Judge denied the respondent's applications for asylum and related relief and protection from removal, finding that she was not credible and did not adequately corroborate her claim (IJ at 7-11). This appeal followed.

It is undisputed that the respondent was admitted to the United States on a B-2 visitor visa with her husband in 2013, overstayed, and filed a timely asylum application (IJ at 6-7; Exhs. 1-2). In determining the respondent not credible, the Immigration Judge found that the respondent "affirmatively and with forethought and planning engaged in a nefarious illegal scheme to hoodwink and deceive the US Embassy adjudicators [in China] in qualifying for a non-immigrant visa to come to the United States to visit" in 2013 (IJ at 8-9). The Immigration Judge also found that "[t]he respondent claimed that she really wanted to come to [the] US to seek asylum and admitted that she never told the US representative she wanted asylum or that she had a fear in remaining in her home country" (IJ at 8).

The Immigration Judge's adverse credibility determination is clearly erroneous. *See* section 208(b)(1)(B)(iii); *see also* *Xiu Xia Lin v. Mukasey*, 534 F.3d 162, 163-64 (2d Cir. 2008). The Immigration Judge did not rely upon specific, record-based evidence in making these findings. The transcript of proceedings does not reflect testimony regarding what happened at the Chinese Embassy and does not contain pertinent documentation submitted in support of the visa application. Further, the respondent testified that she first told her husband about her 2009 forced

abortion at the end of 2013, when they were already in the United States, and that she did not know that coercive family planning was a basis for seeking asylum until she accompanied her husband to their attorney's office (Tr. at 39-40). These statements conflict with the Immigration Judge's explicit finding that the respondent affirmatively lied in obtaining her visa in such a way that undermines the factual basis of her forced abortion claim (IJ at 8). Moreover, the record does not reflect that the respondent was provided an opportunity to address the Immigration Judge's assertion that she affirmatively lied in obtaining her visa. *See Matter of Y-I-M-*, 27 I&N Dec. 724 (BIA 2019).

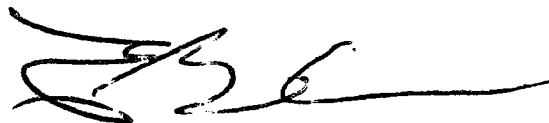
The Immigration Judge also found that the respondent was not credible because her asylum application did not list the address of the apartment where she briefly hid from family planning officials in 2009 (IJ at 8; Exh. 2). We are unable to defer to this aspect of the adverse credibility determination, as the respondent reasonably explained that it was a temporary residence while in hiding that she did not think needed to be included in her residential history (Tr. at 45-46). Moreover, one address discrepancy standing alone does not support an adverse credibility determination on this record. *See Hong Fei Gao v. Sessions*, 891 F.3d 67, 77 (2d Cir. 2018) ("A trivial inconsistency or omission that has no tendency to suggest a petitioner fabricated his or her claim will not support an adverse credibility determination" even under the REAL ID Act).

The Immigration Judge further found that even if the respondent was credible, she did not corroborate her claim with reasonably available corroborating evidence (IJ at 10). However, we are unable to defer to this determination, as the respondent reasonably explained that she had no documentary evidence regarding her now ex-boyfriend, with whom she has not been in contact with since 2009, and was unable to obtain detailed medical documents from China regarding the alleged 2009 pregnancy and abortion (Tr. at 52-58).

In light of the foregoing, we will remand for the Immigration Judge to reassess the respondent's claim. The Immigration Judge may reassess the respondent's credibility based on record evidence and other appropriate factors. With regard to corroboration, we note that the respondent argues on appeal that the Immigration Judge did not consider her testimonial and documentary evidence that a United States doctor examined her and found that she has uterine damage consistent with an abortion (Respondent's Br. at 10-11). We express no opinion as to the ultimate outcome of this matter. Accordingly, the following orders are entered.

ORDER: The respondent's appeal is sustained, and the April 20, 2018, decision is vacated.

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



FOR THE BOARD