



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: [REDACTED], S [REDACTED]

A [REDACTED]-729

Date of this notice: 8/29/2019

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:
Guendelsberger, John
Grant, Edward R.
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-729 – Eloy, AZ

Date: **AUG 29 2019**

In re: S [REDACTED] I [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Usman B. Ahmad, Esquire

ON BEHALF OF DHS: Phillip Underwood
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Bangladesh, has filed an appeal from the Immigration Judge's decision denying the respondent's application for asylum, withholding of removal, and protection under Article 3 of 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. §§ 1208.16 - 1208.18. The Department of Homeland Security (DHS) has filed a motion for summary affirmance. The record will be remanded.

We review the Immigration Judge's findings of fact in this matter for clear error. Questions of law, discretion, and judgment, and all other issues are reviewed *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(i), (ii).

The respondent's claims are based on allegations of harm he experienced in Bangladesh after his father disappeared from the family home. The Immigration Judge made an adverse credibility finding in this matter (IJ at 4). The Immigration Judge provided two reasons for the credibility finding. First, the respondent told immigration officers at the border that he was 17 years old (IJ at 2-3). Second, the respondent testified about two events that were not described in his asylum application (IJ at 3-4).

The Immigration Judge's credibility finding is clearly erroneous. The Immigration Judge found that the respondent testified about events not included in his written asylum application, including an attack on the respondent's mother and sister (IJ at 3). The record establishes, however, that the respondent attempted to add information to his asylum application prior to signing it (Tr. at 29). The respondent started to describe an attack on his mother and sister in which his mother's arm was broken (Tr. at 29-30). The respondent, however, was stopped by the Immigration Judge, who said they would "get to all those details" later (Tr. at 30). The Immigration Judge explained

that he wanted the respondent to sign his application first, and that this required the respondent to swear that the contents of the application were true and correct to the best of his knowledge and belief (Tr. at 30). The respondent did so (Tr. at 30-31). The Immigration Judge then began to question the respondent without asking whether he wanted to add information to the asylum application (Tr. at 31).¹

Given that the respondent was not permitted to add information to his asylum application before he signed it, even though he tried to provide additional information, it was improper for the Immigration Judge to then rely on omissions as a basis for an adverse credibility finding. This is especially true in light of the respondent's prior explanation that he did not speak English and that his asylum application was prepared with the assistance of a person in the detention facility who understood "moderate English" (Tr. at 23-24).

The other reason the Immigration Judge gave for finding the respondent not credible was that he told immigration officials at the border that he was 17 years old and admitted only after several weeks had passed that he was 22 years old (Tr. at 32, 38). The respondent testified that one of the many smugglers he encountered told him to say at the border that he was 17 years old (Tr. at 32). Another smuggler allegedly threatened that the respondent would be held in Mexico for an extended period of time if his mother did not agree to send money to pay for false documents showing he was 17 years old (Tr. at 33-38). The respondent testified that his understanding was that he would be able to get shelter if he said he was 17, and that he had travelled from Bangladesh because he needed shelter (Tr. at 39).

The United States Court of Appeals for the Ninth Circuit has held that an asylum seeker's false statements or use of a false identify document to enter the United States or another country, without more, is not a proper basis for finding the individual not credible." *Kaur v. Ashcroft*, 379 F.3d 876, 889 (9th Cir. 2004), *superseded by statute on other grounds as recognized by Singh v. Holder*, 602 F.3d 982, 986 (9th Cir. 2010); *see also Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999) (citations omitted) (distinguishing between "false statements made to establish the critical elements of the asylum claim from false statements made to evade INS officials"). Although the Immigration and Nationality Act as amended by the REAL ID Act of 2005, permits credibility findings to be based on statements that do not go to the heart of the asylum applicant's claim, credibility findings must also be based on the totality of the circumstances. *See* section 208(b)(1)(B)(iii) of the Act. The respondent's statement at the border as to his age, without more, is not sufficient to support the adverse credibility finding here.

Accordingly, we turn to the Immigration Judge's alternative findings that the respondent did not qualify for asylum, withholding of removal, or protection under the Convention Against Torture, even if credible.

The respondent testified that he was not involved in politics but that his father was a member of the Liberal Democratic Party, which was opposed to the ruling Awami League (Tr. at 24, 27-

¹ The respondent also requested a continuance to find an attorney, but his motion was denied (Tr. at 20).

28, 41-43). The respondent testified that in October 2017, his father gave a speech against the Awami League and that he subsequently was in a confrontation with Awami League members and was injured (Tr. at 41-43). A few days after the incident, the respondent was approached by two men in the street (Tr. at 43-44). They asked about the respondent's father, and the respondent said his father was at the family home (Tr. at 43). The respondent told his father about the men and later that night, the respondent's father disappeared from the home (Tr. at 43-44). At the time of the hearing, the father was still missing (Tr. at 43-44).

The respondent described a number of events that occurred after his father's disappearance. The respondent was attacked in November 2017 by men riding motorcycles and was injured and rendered unconscious (Tr. at 28, 44-46). He required stitches for his injuries (Tr. at 46). Twice in December 2017, people came to the family home and yelled curses at the family (Tr. at 49-50). In January 2018, the respondent's mother and sister were attacked while on a rickshaw and the respondent's mother had her arm broken (Tr. at 46-47). In April 2018, between five and seven armed individuals were outside cursing at the family's house and the respondent, who has a hearing limitation, went outside because he did not know anyone was there (Tr. at 50). When he went outside, he was asked about his father's whereabouts and was beaten (Tr. at 28, 50). His mother came outside and the people cursed at her and said that when they came the next time, the family would have to provide information about the respondent's father or the respondent would be killed (Tr. at 50). The respondent testified that he remained in bed for a week because of the injuries he suffered during the incident and that he was in significant pain (Tr. at 51-52).

Contrary to the conclusion of the Immigration Judge, the past harm suffered by the respondent did rise to the level of persecution. In one incident, the respondent was beaten unconscious and required stitches for his wounds. In another incident, the respondent was beaten badly enough that he had to remain in bed for a week. The same people who beat him the second time also said they would kill him. Additionally, the respondent was in his house on two occasions when people came to the house and shouted curses at the family. The Ninth Circuit has held that physical violence ordinarily meets the requirement of severity that characterizes persecution as opposed to mere discrimination. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 n.5 (9th Cir. 2003). The Ninth Circuit has also held that death threats accompanied by "close confrontation" can rise to the level of persecution, even without physical mistreatment. *See, e.g., Ruano v. Ashcroft*, 301 F.3d 1155, 1158 (9th Cir. 2002) (finding past persecution where individual received death threats and was cornered by armed men on several occasions). Here, there was significant physical violence and also a death threat.

We turn next to the issue of nexus. There is no clear error in the Immigration Judge's finding that the harm the respondent suffered in the past and that he fears in the future was not related to his political opinion or his imputed political opinion (IJ at 6). *See Matter of A-B-*, 27 I&N Dec. 316, 343 (A.G. 2018) (affirming that motivation of the persecutor is a classic factual question). Although the respondent's asylum application had a box checked showing his claim was based on "political opinion," the respondent testified that his problems were related to his relationship with his father. As the Immigration Judge correctly observed, there are any number of reasons why the individuals who attacked and threatened the family might be interested in the respondent's father (IJ at 6). Politics is only one of the possible reasons (IJ at 6). Furthermore, there was no evidence presented that anyone imputed a political opinion to the respondent.

The Immigration Judge stated that it appeared the people who attacked the respondent in April 2018 took out their anger on the respondent when they could not find his father (Tr. at 62). Notwithstanding that conclusion, the Immigration Judge did not ask the unrepresented respondent whether he had a family-based claim. Nor did the Immigration Judge analyze whether the respondent's harm was on account of his family membership or whether that family membership constituted a protected ground. *See Barajas-Romero*, 846 F.3d 351 (9th Cir. 2017) (explaining that for withholding of removal, the applicant must show that a reason for the harm is a protected ground); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007) (explaining that a protected ground such as membership in a particular social group must be at least one central reason for the persecutor's treatment of the asylum applicant). Nor was the record developed on this point.²

The record was also insufficiently developed on the issue of the government's ability or willingness to control the people who harmed the respondent (IJ at 7). Furthermore, the Immigration Judge did not explain the evidentiary basis for his finding that the respondent would have been unable to leave the country through an international airport if the people who are looking for his father were being directed by the government (IJ at 7).³

Insofar as the Immigration Judge determined that the respondent could relocate to avoid future harm, the record shows that the respondent attempted to relocate internally. The respondent described trying to relocate, and he said he was warned about going outside since people are not used to newcomers and start to ask questions if they see someone they don't know (Tr. at 47- 48). The respondent also said that he tried to stay with a cousin and her husband, but the husband did not want him because the couple was having a hard time financially (Tr. at 48). Ultimately, the burden of proof on the issue of internal relocation depends on whether the respondent establishes past persecution on account of a protected ground. *See* 8 C.F.R. § 1208.13(b)(1)(ii). Thus, the internal relocation issue should be revisited on remand.

Under the circumstances, we will remand the record for further proceedings in which to develop the record and to consider the nexus between the respondent's past harm, which rose to the level of persecution, and his family relationship to his father; whether that relationship stems from a cognizable particular social group; and also whether the government is unwilling or unable to control the people the respondent fears. *See Rios v. Lynch*, 807 F.3d 1123 (9th Cir. 2015); *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). The Immigration Judge should also again address the issue of internal relocation.

² In concluding that the record was not sufficiently developed, we note that the unrepresented respondent was not asked whether he had anything to add to his testimony after the Immigration Judge and the attorney for the DHS asked their questions.

³ At the hearing, the Immigration Judge advised the respondent that the government did not seem to be tracking him or hunting him (Tr. at 63). However, whether or not the government is hunting the respondent is not necessarily connected to whether the government is unwilling or unable to control the people the respondent fears.

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.



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