



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: S [REDACTED] P [REDACTED], J [REDACTED]

A [REDACTED]-869

Date of this notice: 8/4/2020

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:
Mann, Ana
Gorman, Stephanie
Mullane, Hugh G.

Userteam: Docket

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RL

Falls Church, Virginia 22041

File: A [REDACTED]-869 – New York, NY

Date:

AUG - 4 2020

In re: J [REDACTED] S [REDACTED] P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lisa de la Fé, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, has appealed the Immigration Judge's December 10, 2019, decision denying his applications for asylum, withholding of removal, and request for protection under the Convention Against Torture. Sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13, 1208.16-1208.18. The record will be remanded.

We review an Immigration Judge's findings of fact, including the credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues involving questions of law, judgment and discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal the respondent contends that he did not knowingly and voluntarily waive his right to counsel (Respondent's Br. at 2-10). While the record does not support a finding that the respondent was denied counsel, nevertheless the regulations clearly and specifically mandate that an Immigration Judge "require the respondent to state then and there whether he or she desires representation" at the opening of a removal proceeding. 8 C.F.R. § 1240.10(a)(1). Here, although the Immigration Judge discussed the respondent's right to representation, the respondent was not asked to state whether he desired representation (Tr. at 8-10). Therefore, the record shall be remanded to the Immigration Judge to provide the advisals in full compliance with the provisions of 8 C.F.R. § 1240.10(a), and for any appropriate further proceedings.

Accordingly, the following order shall be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings in accordance with this decision.



FOR THE BOARD