U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: T[redacted] G[redacted], F[redacted] **A [redacted]-218**

Date of this notice: 6/24/2020

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:
Wilson, Earle B.

Userteam: Docket

File: A[redacted]-218 – Fort Snelling, MN

Date: JUN 24 2020

In re: F[redacted] T[redacted] G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kelly L. Cveykus Huntley, Esquire

ON BEHALF OF DHS: Luke R. Nelson
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, appeals from the Immigration Judge's September 27, 2019, decision denying his applications 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), as well as his request for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.13, 1208.16-.18. The Department of Homeland Security (DHS) opposes the appeal. The record will be remanded.[1]

This Board reviews 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 respondent alleges that he experienced past harm on account of his political opinion. He testified that his employer asked him to join the Communist Party in 2014 (IJ at 2; Tr. at 30). After he refused, he was detained on more than 10 occasions that year by police, who questioned him about his refusal (IJ at 2-3; Tr. at 31-35). He further testified that he was forced to leave his job and arrested on November 1, 2017 (IJ at 3-4; Tr. at 35). He was then detained for 7 days, hit on the head with a baton, and told that he was suspected of anti-government activity (IJ at 3; Tr. at 35, 38). He later moved to his sister's home in Havana, where he worked as taxi driver at night for over a year (IJ at 3; Tr. at 36, 54). In January 2019, the respondent returned to his town, where a government official notified him about his appointment to vote and warned him that individuals who did not vote would be cited and investigated (IJ at 3; Tr. at 36-37). The respondent entered the United States in May 2019 (IJ at 1; Exh. 1).

The Immigration Judge found that the respondent established past persecution by Cuban officials on account of his political opinion (IJ at 4-5). However, the Immigration Judge found that the respondent is ineligible for asylum because he could relocate in Cuba (IJ at 5). The

[1] The respondent's fee waiver request is granted.

Immigration Judge also denied the respondent's remaining applications for not meeting the requisite burdens of proof (IJ at 5).

We find that remand is warranted. Where an Immigration Judge finds that an alien is a refugee based on past persecution, the alien is presumed to have a well-founded fear of future persecution on the basis of the original claim, and the burden shifts to the DHS to show either that there has been "a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in [his or her] country of nationality," or that the alien could avoid future persecution "by relocating to another part of [his or her] country of nationality . . . , and under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. §§ 1208.13(b)(l)(i)(A), (B), (ii). Here, the Immigration Judge did not shift the burden of proof to the DHS to prove by a preponderance of the evidence that the respondent could avoid future persecution by relocating within Cuba and that it would be reasonable to expect the respondent to do so (IJ at 5). *See Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012); *Matter of D-I-M-*, 24 I&N Dec. 448, 449-50 (BIA 2008).

The regulations set forth a two-step approach for determining an alien's ability to internally relocate and the reasonableness of expecting such relocation. *See Matter of M-Z-M-R-*, 26 I&N Dec. at 31-32. Under the first step, an Immigration Judge must decide whether "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality." *Matter of M-Z-M-R-*, 26 I&N Dec. at 32; 8 C.F.R. § 1208.13(b)(1)(i)(B). The second step of the inquiry is whether "under all the circumstances, it would be reasonable to expect the applicant to do so." *Matter of M-Z-M-R-*, 26 I&N Dec. at 32; 8 C.F.R. § 1208.13(b)(l)(i)(B). Where, as here, the persecutor is a government and the alien has established past persecution, "it shall be presumed that internal relocation would not be reasonable, unless the [DHS] establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate." *Matter of M-Z-M-R-*, 26 I&N Dec. at 35; 8 C.F.R. § 1208.13(b)(3)(ii); *see also Yang v. Gonzales*, 427 F.3d 1117, 1122 (8th Cir. 2005) ("While it is true that applicants do not have a well-founded fear of persecution if they can avoid harm by simply relocating within their home country, 8 C.F.R. § 1208.13(b)(2)(ii), this is not true when the persecution is by government officials or government sponsored. . . .").

Accordingly, we find it necessary to remand the record to the Immigration Judge for further action. In light of our disposition of this appeal, we decline to address the respondent's additional arguments at this time. Both parties should be permitted an opportunity to present additional relevant evidence on remand. The Immigration Judge may consider the additional evidence submitted by the respondent on appeal (Respondent's Submission, Nov. 12, 2019). The following order will be entered.

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

FOR THE BOARD