



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: Y■, S■ G■

A ■-192

Date of this notice: 9/24/2018

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:
Morris, Daniel

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-192 – New York, NY

Date: **SEP 24 2018**

In re: S [REDACTED] G [REDACTED] Y [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jan Potemkin, Esquire

ON BEHALF OF DHS: Hayden Windrow
Assistant Chief Counsel

APPLICATION: Reopening

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s February 8, 2018, decision denying its motion to reopen the respondent’s removal proceedings. The respondent, a native and citizen of China, opposes the appeal. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges. 8 C.F.R. § 1003.1(d)(3)(ii).

On January 28, 2014, the Immigration Judge granted the respondent’s application for asylum. On December 29, 2017, the DHS filed a motion to reopen the respondent’s removal proceedings. The DHS seeks reopening for the purpose of terminating the respondent’s grant of asylum, alleging that it was fraudulently obtained because one of the respondent’s former attorneys was convicted of fraud for preparing fraudulent asylum applications.

We affirm the Immigration Judge’s denial of the motion. The Immigration Judge found that evidence demonstrating that the respondent’s former counsel had been involved in a conspiracy to commit immigration fraud, such as the grand jury indictment dated December 12, 2012, and the U.S. Attorney’s Office press release naming the respondent’s former counsel as a defendant dated December 18, 2012, was available and could have been presented at the respondent’s hearing on January 28, 2014 (IJ at 3). *See Matter of Coelho*, 20 I&N Dec. 464, 472 (BIA 1992) (noting that “the Board must deny a motion to reopen in the absence of previously unavailable, material evidence”). The Immigration Judge noted that, while some of the evidence supporting the motion, such as conviction documents, was not previously available, the pertinent information, i.e., that the respondent’s former counsel had been engaged in a fraudulent asylum application scheme, was available to present at the time of the respondent’s hearing. Although the respondent’s former counsel had not yet been convicted, the DHS could have examined the respondent or other

witnesses about the then-alleged fraud, and more specifically about the preparation of his own asylum application, at the time of the respondent's hearing.¹

The Immigration Judge also denied the DHS's motion because it was not supported by evidence that the respondent's asylum application was fraudulent (IJ at 4). *See* 8 C.F.R. § 1003.23(b)(3) (providing that a motion to reopen "shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary material"). We agree with the Immigration Judge that some showing of fraud in the respondent's specific application is required for the DHS to meet its burden for reopening as well as for termination. The DHS did not present evidence with its motion, or identify or explain what evidence it would present in reopened proceedings, to establish that at least one of the grounds for termination of the respondent's asylum status would apply. *See* 8 C.F.R. §§ 1208.24(a), (f). In particular, the DHS has not explained how it would demonstrate by the preponderance of the evidence that there was fraud in the respondent's application and that the fraud was such that the respondent was not eligible for asylum at the time it was granted. *See Matter of P-S-H-*, 26 I&N Dec. 329 (BIA 2014).

Accordingly, we affirm the Immigration Judge's denial of the DHS's motion to reopen. The appeal will be dismissed.

ORDER: The DHS's appeal is dismissed.



FOR THE BOARD

¹ The respondent's now-convicted former attorney helped him prepare his Form I-589 but did not represent the respondent at his individual hearing.