



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: B [REDACTED]-P [REDACTED], L [REDACTED]

A [REDACTED]-918

Date of this notice: 9/2/2020

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:
Liebowitz, Ellen C
Morris, Daniel
Creppy, Michael J.

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED] 918 – Lumpkin, GA

Date:

SEP - 2 2020

In re: L [REDACTED] B [REDACTED] - P [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew P. Nickson, Esquire

ON BEHALF OF DHS: Gretchen Otto
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cuba, appeals from the March 16, 2020, decision of the Immigration Judge denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18.¹ The appeal will be sustained.²

We review the 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 questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent argues that the Immigration Judge erred in determining that he did not experience harm rising to the level of persecution on account of his political opinion (IJ at 4; Respondent’s Br. at 12-19). He also argues that because he has met his burden to establish past persecution on account of his political opinion, he is entitled to a presumption of a well-founded fear of persecution that has not been rebutted (Respondent’s Br. at 19-20). *See* 8 C.F.R. § 1208.13(b)(1). For the reasons explained below, we agree with the respondent and conclude that he has established his eligibility for asylum.

The Immigration Judge found the respondent to be credible (IJ at 2). The respondent testified that he used to work as a sports teacher in Cuba and that he expressed his anti-government opinions to his students (IJ at 3; Tr. at 51). On November 1, 2018, the respondent was arrested at the school, taken to the police station and beaten by police officers who told him that they were going to

¹ The respondent does not challenge the denial of his application for withholding of removal on appeal. We, therefore, deem any issues in that regard waived. *See Matter of N-A-I-*, 27 I&N Dec. 72, 73 n.1 (BIA 2017).

² The respondent’s request for oral argument is denied. 8 C.F.R. § 1003.1(e)(7). The motion filed by respondent’s counsel to withdraw his request for dismissal of the appeal is granted.

change the way he thinks (IJ at 2; Tr. at 52-53; Exh. 2). He was detained for three days during which time he was provided food once a day and unclear water, and was beaten in an interrogation room (IJ at 2; Tr. at 52). After his release from detention, the respondent lost his job as a teacher and started a business selling clothes from his home (IJ at 3; Tr. at 52-53). The police came to his home with a warrant on November 16, 2018, and January 25, 2019, and seized his merchandise (IJ at 3; Tr. at 53-55; Exh. 2). The respondent tore down and burned two pro-government posters on February 22, 2019, and a government official came to his home with a summons to vote in an election (IJ at 3; Tr. at 55). The respondent destroyed the summons and told the official that he destroyed the posters (IJ at 3; Tr. at 55). The police arrested and beat the respondent in front of his home on the same day (IJ at 3; Tr. at 55; Exh. 2). During his subsequent 10-day detention, he was beaten by officers on his face and ribs (IJ at 3; Tr. at 62). On one occasion after the respondent refused to vote on February 24, 2019, three officers beat him, spit on him, and urinated on him (IJ at 3; Tr. at 57). The three officers then took him into a dark cell where one of the officers assaulted him by penetrating his anus with his finger (IJ at 3; Tr. at 57, 63). After his release from the detention, the respondent's cousin, a doctor, provided the respondent with medication and ointment to treat his pain and bruises (IJ at 3-4; Tr. at 63-64).

The Immigration Judge assumed, and we agree based on the credible testimony, that the mistreatment experienced by the respondent was on account of his political opinion (IJ at 4). However, the Immigration Judge also determined that the harm that the respondent suffered was not severe enough to rise to the level of persecution (IJ at 4). On de novo review, we disagree with the Immigration Judge and conclude that the facts established by the respondent show that the harm he suffered amounts to past persecution. *See Matter of A-S-B-*, 24 I&N Dec. 493, 496 (BIA 2008) (explaining that whether facts in the record amount to past persecution is a legal question subject to de novo review), *overruled on other grounds by Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). Specifically, we conclude that the cumulative mistreatment suffered by the respondent, including harassment by the authorities, repeated detention and beatings with limited food and water, being spit and urinated on, and the sexual assault, constitutes harm rising to the level of persecution. *See Nifaliev v. U.S. Att'y Gen.*, 504 F.3d 1211, 1217 (11th Cir. 2007) (holding that harassment, searches, arrests, beatings, and 15-day detention with limited food and water amounted to past persecution); *Ayala v. U.S. Att'y Gen.*, 605 F.3d 914, 949 (11th Cir. 2010) (noting that sexual assault may constitute persecution).

As the respondent has established that he suffered past persecution in Cuba on account of his political opinion, he is entitled to a rebuttable presumption of a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). We conclude that this presumption has not been rebutted because the record does not show by a preponderance of the evidence that there has been a fundamental change in circumstances since the respondent's 2019 departure such that the respondent no longer has a well-founded fear of persecution in Cuba, or that the respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i). We, therefore, conclude that the respondent has established his eligibility for asylum under section 208(b)(1) of the Act. Moreover, there is nothing in the record to indicate that the respondent does not deserve a favorable exercise of discretion.

Given our disposition of this matter, we need not address the respondent's arguments regarding his application for protection under the Convention Against Torture.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).


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