



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**TATUNG, CELESTINE  
TATUNG & TATUNG ASSOCIATES LLC  
9701 APOLLO DRIVE  
# 331  
LARGO, MD 20774**

**DHS/ICE Office of Chief Counsel - SDC  
146 CCA Road, P.O.Box 248  
Lumpkin, GA 31815**

**Name: F [REDACTED], E [REDACTED]**

**A [REDACTED]-241**

**Date of this notice: 9/8/2020**

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.  
Greer, Anne J.  
Donovan, Teresa L.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-241 – Lumpkin, GA

Date:

SEP - 8 2020

In re: E [REDACTED] F [REDACTED] a.k.a. [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Celestine Tatung, Esquire

ON BEHALF OF DHS: Devin K. Rees  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Cameroon, appeals from the Immigration Judge's September 6, 2019, decision denying his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, and withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as a request for protection under Article 3 of the Convention Against Torture, as implemented by 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security opposes the appeal. The appeal will be sustained. The record will be remanded.

We review findings of fact, including credibility findings, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues *de novo*. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We reverse as clearly erroneous the Immigration Judge's finding that the respondent was not a credible witness. "It has been held that '[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" *Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)) (additional internal quotation marks removed). We may not overturn a factual finding merely because we would have weighed the evidence differently or decided the facts differently had we been the factfinder. *Id.* (citations omitted).

Under the provisions of the REAL ID Act, an Immigration Judge may base a credibility determination on any inconsistency, inaccuracy, or falsehood, without regard to whether that inconsistency, inaccuracy, or falsehood goes to the heart of an applicant's claim. *See* section 208(b)(1)(B)(iii) of the Act; *Matter of J-Y-C-*, 24 I&N Dec. at 262 ("The credibility standard, as amended, is intended to allow Immigration Judges to follow a 'commonsense' approach while 'tak[ing] into consideration the individual circumstances of the specific witness and/or applicant.'"). In assessing credibility, an Immigration Judge must consider the totality of the circumstances and all relevant factors. *See* section 208(b)(1)(B)(iii) of the Act.

The respondent claims that in July 2018 his newly-built house in a village was burned down by separatists (IJ at 5-6; Declaration at 3; Tr. at 73). He did not live in this house (IJ at 5-6; Tr. at 85-86)). He claims he was targeted because he was a teacher, and the separatists had imposed a ban on schools (IJ at 6; Declaration at 3).

The respondent also testified that separatists kidnapped him in September 2018 (IJ at 6; Tr. at 66-67). They blindfolded him and took him to an unknown location (IJ at 6; Tr. at 67). These separatists poured water on him and beat his legs and feet with the flat side of a machete (IJ at 6; Tr. at 67). The respondent testified that he was bruised, but the machetes did not break his skin (IJ at 5-6; Tr. at 68-71). He was repeatedly asked why he continued to teach in spite of the separatist's ban (Tr. at 67).

After 4 days, a former student helped the respondent escape into a forest after wading a river (IJ at 6-7; Tr. at 70, 72). He was given a ride by a bike rider and then walked for 2-3 hours (Tr. at 72-73). After escaping, he sought treatment from a nurse, because he feared that he would be arrested by the Cameroonian military if he went to a hospital (IJ at 7; Tr. at 70, 73).

The respondent was a member of the South Cameroon National Council (SCNC) and attended meetings regularly (IJ at 6). He testified that an arrest warrant was issued for him in September 2018 (Tr. at 100-01). The respondent then testified that he was arrested by the police on October 1, 2018 (IJ at 7; Tr. at 91). He claims the police hit him with their firearms and broke his jaw (Tr. at 80). These police officers accused him of telling students to stay away from school (Tr. at 88-89). The police found SCNC fliers regarding the independence movement (IJ at 7; Tr. at 91).

The respondent testified that he was handcuffed and beaten at the police station, and he was then transferred to a military camp (IJ at 7; Tr. at 82). He was held there for approximately 3 months, where he stated he was tortured every 12 hours (IJ at 7; Tr. at 82-83). The respondent testified that a burning cigarette was put on his anus and that he was kept handcuffed the entire time in an unsanitary cell (Tr. at 82-83).

The respondent testified that his wife was able to bribe a guard, who helped him escape (IJ at 7; Tr. at 90). The respondent was released onto a bridge and walked for 9 days to Nigeria (Tr. at 84-85). His wife informed him that Cameroonian soldiers had called his house and asked after him (Exh. 2 at Respondent's Declaration).

The Immigration Judge found implausible the respondent's manner of escape from both instances of captivity given the respondent's having to undertake an arduous journey after enduring beatings in captivity (IJ at 3). However, this conclusion is speculative.

The Immigration Judge also did not provide sufficient analysis in other parts of the adverse credibility finding. The Immigration Judge noted, for example, a "suspiciously dated" arrest warrant, without explaining why the warrant was suspicious (IJ at 6). The Immigration Judge also mentions inconsistencies between the respondent's testimony and credible fear interview without detailing those inconsistencies or why they support an adverse credibility finding in the totality of the circumstances (IJ at 6). Additionally, the Immigration Judge observed inconsistencies

between the respondent's testimony and his attorney's affidavit, without detailing what those inconsistencies were.

We recognize that the Immigration Judge also relied on what he deemed to be inconsistencies. In particular, the respondent claimed in his credible fear interview that he was bleeding from wounds inflicted by the separatist, but testified that he was not bleeding from his machete wounds (IJ at 5-6; Credible Fear Interview at 7; Tr. at 68-69, 71). The respondent did testify that he "didn't have any cuts. No major cuts" (Tr. at 69). This testimony is at most a minor inconsistency. The respondent's asylum application indicates that police hooked electricity to him, but testified that he was beaten with electric cords (IJ at 6; Exh. 2 at 6; Tr. at 107). The asylum application indicates that the captors "electricity connected to torture me" (Exh. 2 at 6). We are not convinced that these statements are inconsistent.

Accordingly, we have a definite and firm conviction that the adverse credibility finding is clearly erroneous under the totality of the circumstances. We also cannot affirm finding of insufficient corroborating evidence. This case is governed by the corroboration standards set forth in the REAL ID Act. *See* section 208(b)(1)(B)(ii) of the Act. "The testimony of the applicant may be sufficient to sustain the applicant's burden without corroboration, but only if the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant" warrants a grant of asylum. Section 208(b)(1)(B)(ii) of the Act.

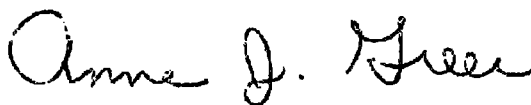
The Immigration Judge's analysis of insufficient corroborating evidence is inextricably tied to the adverse credibility finding. That is, we are not confident that the finding that the respondent failed to carry his burden of proof due to insufficient corroborating evidence exists independently of the adverse credibility finding. Moreover, to the extent that the Immigration Judge made a decision on the merits of the case, we cannot separate that decision from the credibility finding we have reversed.

In sum, we will remand the record for further consideration of the merits of the respondent's claim. On remand, the parties may update the evidentiary record. We express no opinion on the ultimate outcome of the case.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: ORDER: The record is remanded for further proceedings consistent with this decision and for the entry of a new decision.



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FOR THE BOARD

Appellate Immigration Judge Earl B. Wilson dissents without opinion.