File: ---

Date: JAN 27 2011

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mitchell Zwaik, Esquire

CHARGE:

Notice: Sec. 212(a)(4)(A), I&N Act [8 U.S.C. § 1182(a)(4)(A)] - Public charge

Sec. 212(a)(6)(C)(i), I&N Act [8 U.S.C. § 1182(a)(6)(C)(i)] - Fraud or willful misrepresentation of a material fact

Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal

The respondent, a native and citizen of Pakistan, has timely filed an appeal of an Immigration Judge's decision dated September 25, 2009. The respondent contests the Immigration Judge's denial of his application for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, respectively, 8 U.S.C. §§ 1158 and 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c). On appeal, the respondent contests the denial of asylum and withholding of removal. The record will be remanded for further proceedings.

Initially, we observe that the respondent's application for relief is governed by the amendments to the Immigration and Nationality Act brought about by the passage of the REAL ID Act of 2005. *See* I.J. at 14; section 208(b)(1)(B)(iii) of the Act; *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). We review the Immigration Judge's factual findings, including findings as to the credibility of testimony, only to determine whether they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review *de novo* questions of law, discretion, and judgment. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent claims that he fears returning to Pakistan due to a long feud between his family and a politically connected family in Pakistan. He claims that some of his relatives were injured due to the family feud.

The respondent contends that the Immigration Judge erred in finding that he failed to establish extraordinary circumstances to the 1-year filing deadline for his asylum application. The respondent sought admission into the United States in October 2003 based on a visa petition filed by his father's second wife on his behalf (I.J. at 2-3). The respondent was placed in removal proceedings the day after his arrival in the United States (I.J. at 2). However, he only filed his asylum application in 2008 (I.J. at 14).

The respondent claimed extraordinary circumstances based on his belief that the pending visa petition for his father filed by his father's United States citizen spouse would be approved at some point in time and that it was only after his father's death on December 23, 2007, that he realized that his father did not have lawful status in the United States (I.J. at 15; Tr. at 113). The respondent contends on appeal that it was reasonable for him to believe that his father's visa petition would be approved because the Department of Homeland Security ("DHS") had not denied it in 4 years and the Immigration Judge had adjourned his case for 4 years (Respondent's brief on appeal at 8-9). The respondent contends that he filed his asylum application within a year of the denial of the visa petition filed on his father's behalf.

We find that the respondent has established extraordinary circumstances to excuse the untimely filing of his asylum application. The record indicates the proceedings were continued on numerous occasions for 4 years based on the anticipated approval of the visa petition. Furthermore, even though the respondent has been in proceedings since 2003, the Immigration Judge did not set a filing deadline for his asylum application or any other applications for relief until a hearing on July 30, 2008, when she required that the respondent file his asylum application that same day (Tr. at 42-45). The respondent filed his asylum application less than a year of his father's death. Based on the foregoing, we reverse the Immigration Judge's denial of asylum based on the 1-year filing deadline. *See* section 208(a)(2)(D) of the Act; 8 C.F.R. § 1208.4(a)(5).

The respondent also contests the Immigration Judge's adverse credibility finding. The Immigration Judge based her adverse credibility finding on the respondent's false statement to immigration officers upon his arrival to the United States that his mother was dead (I.J. at 17). The Immigration Judge also based her adverse credibility finding on the respondent's false testimony at his merits hearing that he did not work in the United States until his father died in 2007 (I.J. at 17; Tr. at 144). The Immigration Judge observed that the respondent only admitted that he began working in the United States in November 2003 and worked continuously from 2003 until 2006 during cross-examination by the DHS attorney at the hearing (I.J. at 17; Tr. at 147-48).

Although adverse credibility findings no longer need to rely on discrepancies that go to the heart of the asylum claim, the Immigration Judge must still consider the totality of the circumstances. *See* section 208(b)(1)(B)(iii) of the Act. The Immigration Judge did not assess the respondent's evidence regarding the merits of his claim, including police reports and medical records (Exhs. 8-9). We find that remand is appropriate in this case for consideration of evidence related to the merits of the respondent's claim.

The Immigration Judge also observed that a newspaper article submitted to document his claim that his family's home was attacked in 2008 was found to be false by the Library of Congress (Exh. 8). The respondent claims that this cannot be a basis for the adverse credibility finding

because he did not know that it was false when he submitted it to the Court. The respondent cites *Corovic v. Mukasey*, 519 F.3d 90, 97-98 (2d Cir. 2008). In that case, the United States Court of Appeals for the Second Circuit, in whose jurisdiction this case arises, held that an Immigration Judge must make an explicit finding that the asylum applicant knew the document was fraudulent before the Immigration Judge can rely on the document as a basis for an adverse credibility finding. *Corovic v. Mukasey*, *supra*, at 97-98. In the instant case, the Immigration Judge did not make an explicit and substantiated finding that the respondent knew about the fraud in the creation of the false document. Therefore, unless the Immigration Judge makes such a finding on remand, she cannot rely on the false newspaper article to find the respondent incredible.

Based on the foregoing, we find that the Immigration Judge should reconsider her adverse credibility finding taking into account *Corovic v. Mukasey*, *supra*, and the testimony and evidence relating to the merits of the respondent's claim. Upon reconsideration, the Immigration Judge shall enter a new credibility finding.

Accordingly, the following order will be entered.

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

FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents from the overturning of the time bar, see Matter of T-M-H- & S-W-C-, 25 I&N Dec. 193 (BIA 2010), but otherwise concurs in the decision to remand.