



U.S. Department of Justice

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Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name:

A

Date of this notice: 8/17/2007

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:

GRANT, EDWARD R.
HOLMES, DAVID B.
MILLER, NEIL P.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A: Baltimore, MD

Date:

AUG 17 2007

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mitchell C. Zwaik, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Withholding of removal

The respondent appeals the Immigration Judge's decision dated February 22, 2006. In that decision, the Immigration Judge denied as untimely the respondent's application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; and denied on the merits his application for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and his request for protection under the Convention Against Torture. The Immigration Judge also denied voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). The Department of Homeland Security (DHS) has not responded. We find it necessary to remand the record to the Immigration Judge for further proceedings.

We note that the respondent has indicated in the Preliminary Statement and Facts of the Case sections of his brief that the Immigration Judge erred in rejecting his asylum claim as untimely, but he has presented no additional arguments specifically challenging the Immigration Judge's findings on this issue. We further note that the respondent mentions in his brief that the Immigration Judge has denied his requests for voluntary departure and protection under the Convention Against Torture, but he does not challenge these denials on appeal. Therefore, we consider these issues waived on appeal, and will discuss the merits of the respondent's persecution claim only in so far as they relate to his application for withholding of removal.

The respondent is a native and citizen of Pakistan. He claims persecution by the government on account of his political activities with the Pakistan People's Party (PPP). The respondent testified to arrests and beatings while in police custody on four occasions between 1990 and 1999 due to his PPP activities (Tr. at 20-25, 29; Exh. 2, Tab B).¹ The Immigration Judge mentions in her decision that the respondent has not shown that he has a basis for future fear based on events to which he

¹ As the Immigration Judge has not made an explicit adverse credibility finding, and in the absence of contrary evidence, we will accept the respondent's testimony as credible. See *Menshesh v. Gonzales*, 450 F.3d 142, 144 (4th Cir. 2006).

testified occurred between 1990 and 1994 (I.J. at 7). However, the Immigration Judge has not indicated in her decision whether the facts presented are sufficient to support a finding that the respondent sustained his burden of establishing past persecution on account of a protected ground. Such a showing would result in a rebuttable presumption that the respondent would be threatened in the future on the basis of the original claim, and in the respondent establishing that he is eligible for withholding of removal. *See* 8 C.F.R. § 1208.16(b)(1). Therefore, given our limited scope of review, we find it necessary to remand the record for the Immigration Judge to consider in the first instance whether the respondent has established past persecution for withholding of removal purposes only. *See* 8 C.F.R. § 1003.1(d)(3)(i).

Next, we will address the respondent's contention that the Immigration Judge erred in sustaining the DHS' objection to the admission of documents that the respondent contends corroborates his persecution claim. Specifically, the Immigration Judge excluded from the record purported First Incident Reports (FIRs) dated in 1990, 1991 and 1999; arrest warrants dated August and November 2003; and the respondent's PPP membership card on the basis that the translation certifications for these documents did not come close to meeting the regulatory requirements for translation of documents (I.J. at 4; Tr. at 8-9; Exh. 4, Tabs A to E and G).

According to 8 C.F.R. § 1003.33, any foreign language document that a party seeks to submit must be accompanied by an English language translation and a certification signed by the translator. The translation certification must "include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities." *Id.* In this case, the Immigration Judge has not stated in her decision or on the record during the hearing why the excluded documents do not satisfy the regulations. Upon our review, we note that all the excluded documents were accompanied by English language translations done by the same translator. We also note that certifications were included.² We acknowledge that the statements in the certifications are not worded exactly as the language in the regulation. Nevertheless, we agree with the respondent that the statement that the translator "can read, write and understand both English and Urdu languages" and that the English translation "is true to the best of [the translator's] knowledge and abilities[.]" sufficiently comply with the certification requirements under 8 C.F.R. § 1003.33. Therefore, we find that the Immigration Judge erred in excluding the documents under Exhibit 4, Tabs A to E, and G. As we are remanding the record on other grounds, we find it unnecessary to discuss whether the respondent has been prejudiced by the Immigration Judge's error.

Accordingly, the following order will be entered.

² We note that the FIR dated 1999 under Exhibit 4, Tab C is signed by the translator, but does not include any statement.

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



FOR THE BOARD