

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK

File No.: A

In the Matter of

Respondent

IN REMOVAL PROCEEDINGS

CHARGE: INA § 212(a)(6)(A)(i) Present without admission or parole

APPLICATIONS: INA § 208 Asylum  
INA § 241(b)(3) Withholding of Removal  
8 C.F.R. § 1208.16(c) Convention Against Torture

**ON BEHALF OF RESPONDENT**

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**ON BEHALF OF DHS**

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**DECISION AND ORDERS OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL HISTORY**

... (“Respondent”) is a male native and citizen of Pakistan. [Exh. 1.] He entered the United States at or near Brownsville, Texas, on or about April 8, 2008. *Id.* On April 10, 2008, Respondent was served with a Notice to Appear (“NTA”) by the Department of Homeland Security (“DHS”) and was charged with removability pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”), in that he was present without admission or parole. *Id.* Respondent was detained by DHS, and released upon \$7,000 bond.

Following his release from detention, Respondent filed a motion to change venue from Harlingen, Texas, to this Court, which was granted on June 2, 2008. [Exh. 2.] In the motion to change venue, Respondent admitted the truth of the factual allegations contained in the NTA and conceded removability as charged. Thus, removability has

been established by clear and convincing evidence. *See* INA § 240(c)(3); 8 C.F.R. §§ 1240.8, 1240.10(c). Pakistan was designated as the country of removal. *See* INA § 241(b).

Respondent sought relief in the form of asylum, withholding of removal, and protection under Article 3 of the Convention Against Torture. [Exh. 4.] On December 16, 2011, Respondent appeared before this Court and testified in support of his applications for relief and protection. For the reasons that follow, Respondent's application for asylum will be granted.

## II. EXHIBITS

The following documents were submitted as evidence and made part of the record of proceedings:

- Exhibit 1: Form I-862, Notice to Appear, served April 10, 2008;
- Exhibit 2: Motion for Change of Venue and Motion to Withdraw by prior counsel;
- Exhibit 3: Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum;
- Exhibit 4: Form I-589, Application for Asylum and for Withholding of Removal, filed with the Court on September 23, 2008;
- Exhibit 5: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Pakistan Country Reports on Human Rights Practices - 2007*, (March 11, 2008) ("2007 Country Report");
- Exhibit 6: Respondent's submission of December 29, 2008, Tabs C-J, affidavits and background materials in Pakistan;
- Exhibit 6.1: Respondent's submission of June 4, 2009, Tabs C-J, affidavits;
- Exhibit 7: Respondent's submission of June 4, 2009, Tab K, background materials on country conditions in Pakistan;
- Exhibit 8: Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Pakistan Country Reports on Human Rights Practices - 2010*, (April 8, 2011) ("2010 Country Report").

## III. TESTIMONY

Respondent testified that he first came to the United States on April 8, 2008 across the United States-Mexico border. He stated that he was a member of the Pakistan People's Party ("PPP"), and that he was targeted because of his political activities. He first joined the PPP in January 1996. He was attracted to the PPP because the party "helped poor people," believed that all people should have education and jobs, and believed that the land should not only belong to the rich. Respondent stated that the PPP was opposed by the Muslim League Party, which he described as a party of "rich people" that takes advantage of the uneducated.

Respondent stated that, after he joined the PPP, he used to have political meetings in his home in Gujrat, Pakistan, where he encouraged people to join the PPP. There were generally about 25-30 people at the meetings. Respondent stated that he was a "very good worker" for the PPP.

Respondent first had a problem because of his political activities in July 1997, when a friend named [redacted] was shot in his own home. Respondent described [redacted] as an active member of the PPP who was from Respondent's village. At the time, Respondent was at the home of a fellow villager named [redacted]. After [redacted] was killed, people from the Muslim League came to Respondent's home and surrounded it. One person came inside the home, where Respondent's mother and sister were present. They were cursing at Respondent and said to his mother and sister that if they found him, they would kill him. Respondent's family later made a complaint to the authorities about the death of [redacted], but the inspector asked why they were making the complaint.

Respondent further testified that on May 10, 2006, people from the Muslim League burned his wheat on his farm. He stated that he was sure it was Muslim League people who did this because "there is no other enemy other than these Muslim League people." He stated that they were jealous that he belonged to the PPP and that he was a good worker.

Respondent also described an incident that occurred on June 15, 2006. At the time, he was at a house that belonged to a colleague, when members of the Muslim League came to the home carrying guns. Respondent stated that they identified themselves as members of the Muslim League and stated that, because those present were having a PPP meeting, "we are not going to spare you today." They then started firing on those present, and Respondent ran away. Respondent was not physically harmed during this incident.

Respondent also stated that he was physically attacked on two occasions because of his political activities. On January 10, 2007, he was attending a PPP meeting, when five policemen came inside and started beating Respondent and his friend [redacted].

The police broke up the meeting and said that Respondent should stop working for the PPP, and if he did not, he would be killed. Respondent was beaten, kicked, hit with a butt of the gun, and with cuffs on his back, ribs, and legs. He stated that the police also placed a condition on him that he could not go the hospital or make a report with the police. He was only released following the beating because he and his friend paid the police 20,000 rupees.

Respondent testified that he was also beaten by the police on October 25, 2007 during a gathering at a shop. Respondent was telling the people gathered that Benazir Bhutto would be coming to Pakistan. The police then came and beat members of the group, including Respondent. The police told them to stop having PPP meetings. The owner of the shop gave the police 15,000 rupees, and party members were allowed to

leave. On that day, Respondent was beaten with wooden clubs, kicked, hit with guns, and punched. Respondent stated that he was hit on his back, ribs, arms, and thighs. Following the beating, Respondent received "herbal treatment" from a person who came to his home and massaged his back.

Respondent was motivated to leave Pakistan after the assassination of Benazir Bhutto, the then-head of the PPP, on December 27, 2007. Respondent believes that the Muslim League was responsible for the killing. Respondent attended the procession where she was assassinated, and was about 100 meters from her when she was killed. After she was assassinated, he decided that the country was dangerous and made arrangements to leave. Respondent believed that if Benazir Bhutto could be killed, than he, as a mere worker for the PPP, could be killed as well.

Respondent left Pakistan the day after Benazir Bhutto's assassination, after he paid an "agent" the equivalent of \$6,000. He stated that the agent handled the details of the trip to the United States. Respondent was able to raise the money to leave Pakistan so quickly because he had some money saved. He also received money from his brother and his father. Respondent traveled through Holland, Guatemala, and Mexico before reaching the United States. He stated that he did not seek refuge in any of those countries because there was no one there to help him, and he believed that he would be safe in the United States.

Respondent stated that, if he returns to Pakistan, he will be killed by members of the Muslim League for his prior work with the PPP. He also fears being harmed by the police. He stated that the PPP is currently the ruling party in Pakistan, but in the Punjab state, where he is from, the Muslim League has always been in charge.

Respondent testified that when he first came to the United States, the president of Pakistan was Pervez Musharraf, a member of the Muslim League. However, the president of Pakistan is now Asif Zardari, who belongs to the PPP. Despite the change in power, Respondent still believes that, if he returned to Pakistan, members of the Muslim League would kill him. He believes that the government will not protect him in his home state of Punjab, as his home state is controlled by the Muslim League. He also believes that the police always support the Muslim League and provide them money. Respondent currently receives information about Pakistan from reading the newspapers and watching the television.

Respondent's wife and children remain in Pakistan, and his wife has told him that the situation in Pakistan has not improved and that the Muslim League will not spare him. She told him that the Muslim League has stated when Respondent returns, he will be killed. Respondent was asked whether his wife has had problems with the Muslim League since he has been in the United States, and he replied "a little bit, not much." He stated that they are mostly concerned about him. He stated that if his children go out, they are threatened that they should be back in the home. Respondent's wife does not work in Pakistan, and she is supported by Respondent's father and brother.

Respondent also does not work in the United States. He is supported by a friend named Faisal Aslam, whom he knows from the PPP in Pakistan. Faisal Aslam knows about the problems that Respondent had in Pakistan, but he did not come to Court to testify because he had to travel to Pakistan following the death of his grandmother. Faisal Aslam did not submit a letter to Court because Respondent believed that Faisal Aslam would be available to testify and there would be "no need to give a written statement." Respondent further stated that Faisal Aslam did not personally witness any of the incidents that happened to Respondent. Respondent explained that he did not submit a letter from his wife because she is not educated and did not know that she should submit a letter.

Respondent did not know whether the PPP has a branch in the United States. He does not work and does not drive, so he cannot see other people and find out. He also cannot read English. He stated that he has asked friends if there is a branch in the United States, but they did not know. Respondent did not check on the internet because he does not know how to use it.

Respondent stated that he could not return to Pakistan and reside in another part of the country because if he goes to another area, "there will be more danger" for him. He will not know who in that area belongs to the Muslim League, and he can be killed at any time by members of the Muslim League.

#### IV. LEGAL STANDARDS AND ANALYSIS

##### A. Asylum

##### 1. Credibility

In all applications for asylum, the Court must make a threshold determination of the alien's credibility. *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). For asylum applications filed on or after May 11, 2005, like Respondent's, after considering "the totality of the evidence, and all relevant factors," the Court may base a credibility determination on: the demeanor, candor, or responsiveness of the applicant or witness; the inherent plausibility of the account; the consistency between oral and written statements the internal consistency of such statements; the consistency of such statements with evidence of record; and any inaccuracy or falsehood in such statements, "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim"; or any other factor. INA § 208(b)(1)(B)(iii); see also *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007); *Diallo v. U.S. Dep't of Justice*, 548 F.3d 232, 234 n.1 (2d Cir. 2008).

After a careful review of the record, the Court finds that Respondent testified credibly. Respondent's testimony regarding his claim was generally internally consistent and consistent with his written asylum application and the evidence of record. In addition, he was candid and responsive to questions asked on both direct and cross-

examination. Indeed, DHS has not pointed to any inconsistencies in Respondent's testimony or alleged that Respondent lacked credibility. Therefore, the Court concludes that Respondent was a credible witness.

The Court also finds that Respondent has met his burden of proof to adequately corroborate his claim. Respondent provided the Court with background materials on country conditions in Pakistan, and affidavits from individuals in Pakistan familiar with his political activities. [Exhs. 6; 6.1; 7.] DHS argues that Respondent has not met his burden of proof to provide corroborating evidence because he did not provide a letter from [redacted] or his wife. However, the Court finds that Respondent has reasonably explained these omissions. *See* INA § 208(b)(1)(B)(ii). With regard to Respondent stated that he believed that his friend would have been available to testify but had to make a return trip to Pakistan for a family emergency. With regard to his wife, Respondent explained that his wife does not know how to write, and that in any event, he did not realize the importance of providing a letter from her. The Court is therefore satisfied by the evidence that Respondent in support of his claim, as well as by his credible testimony. The Court concludes that Respondent provided credible testimony and has met his evidentiary burden of proof and persuasion. 8 C.F.R. § 1208.13(b).

## 2. *Statutory Eligibility*

In an asylum adjudication, the applicant bears the burden of establishing statutory eligibility, which requires a showing of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>1</sup> INA §§ 101(a)(42)(A), 208(b)(1)(B). If eligibility is established, asylum may be granted in the exercise of discretion. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); *Abankwah v. INS*, 185 F.3d 18, 22 (2d Cir. 1999).

### a. *Past Persecution on Account of a Protected Ground*

To establish past persecution, the applicant must demonstrate that he suffered persecution in his country of nationality or, if stateless, in his country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and that he is unable or unwilling to return to, or avail himself of the protection of, that country because of such persecution. 8 C.F.R. § 1208.13(b)(1). There is no universally accepted definition of "persecution." "Persecution" has generally been interpreted to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). When evaluating whether persecution has occurred, the Court must consider events cumulatively. *Poradisova v. Gonzales*, 420 F.3d 70, 79-80 (2d Cir. 2005). Evidence that an alien was physically harmed at the hands of government agents after being arrested and detained on account of a protected ground "may preclude a

<sup>1</sup> As an initial matter, the Court finds that there is no one-year bar at issue in this case, as Respondent filed his application for asylum within one year of arriving in the United States, as required by INA § 208(a)(2)(B). Respondent entered the United States on April 8, 2008, and he filed for asylum with the Court on September 23, 2008. [Exhs. 1; 4.]

finding that the conduct is mere harassment.” *Beskovic v. Gonzales*, 467 F.3d 223, 226 (2d Cir. 2006) (quoting *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332, 342 (2d Cir. 2006)).

In a claim of persecution on account of political opinion, the applicant must allege specific facts from which it can be inferred that he holds a political opinion, which is known to his persecutor, and that the persecution was or will be on account of that political opinion. See *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). The applicant may provide either direct or circumstantial evidence to show that the motive for persecution is the applicant’s own political beliefs, real or imputed. See *Castro v. Holder*, 597 F.3d 93, 100 (2d Cir. 2010). Evidence that the applicant “took affirmative action to quell” activity he opposed demonstrates the existence of a political component. *Id.* at 103.

The Court concludes that Respondent has suffered past persecution on account of his political opinion. Respondent credibly testified that on two occasions, he was beaten, kicked, and hit by police officers—mistreatment that rises to the level of persecution. See *Beskovic*, 467 F.3d at 226. In addition to these brutal physical attacks, Respondent was subjected to death threats, was present when shots were fired during a political meeting, and had his property burned. When considering all events cumulatively, the Court has no trouble concluding that physical attacks, threats to Respondent’s life, and property destruction rise to the level of persecution. *Acosta*, 19 I&N Dec. at 233; *Poradisova*, 420 F.3d at 79-80.

Respondent’s testimony and background materials on country conditions in Pakistan support Respondent’s contention that he was abused based on his political opinion. On multiple occasions, Respondent was harmed while he was attending PPP political meetings. On one occasion, the police broke up the meeting and said that Respondent should stop working for the PPP, and if he did not, he would be killed. On another occasion, when a political meeting was broken up, the police told those gathered to stop having PPP meetings. The specific references that the police officers made to Respondent’s political activities tie the abuse he suffered to a protected ground.

The background evidence before the Court supports Respondent’s testimony that the police and members of the Muslim League singled out and abused individuals based on their participation in political activities. For example, the 2007 Country Report, which describes the former regime under Pervez Musharraf, states that in 2007 the then-government “arrested and/or detained over 6,000 lawyers, judges, political party workers/leaders, and civil society activists,” 2007 Country Report at 1, and that “there were reports of politically motivated killings perpetrated by political factions.” *Id.* at 2. The 2007 Country Report also describes politically motivated disappearances, extrajudicial killings, torture, and corruption. See generally 2007 Country Report. The PPP in particular faced intimidation in Pakistan during this time, including following the death of Benazir Bhutto. *Id.* at 20. Respondent’s credible testimony, combined with the background evidence describing the abuses committed by the then-government in

Pakistan against rival political groups, demonstrates that Respondent was persecuted on account of his political opinion.

*b. Well-Founded Fear of Future Persecution*

If past persecution is established, a presumption arises that the applicant has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). This regulatory presumption may be rebutted if DHS establishes by a preponderance of the evidence that the applicant's fear is no longer well-founded due to a fundamental change in circumstances, or that the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.13(b)(1)(i)-(ii).

As Respondent has established that he suffered past persecution, he is presumed to have a well-founded fear of future persecution based on the same claim. 8 C.F.R. § 1208.13(b)(1). However, DHS has argued both that there has been a fundamental change in circumstances in Pakistan and that Respondent could avoid persecution in Pakistan through internal relocation. The Court will consider each of DHS's arguments.

First, DHS argues that there has been a fundamental change in circumstances in Pakistan, in that the Muslim League is no longer in power and President Pervez Musharaff has been replaced by Asif Ali Zardari, widower of the assassinated PPP leader Benazir Bhutto. The Court certainly acknowledges these changes in government, as well as the 2010 Country Report's indication that the PPP currently controls the executive and legislative branches of the national government and three of the four provincial assemblies. [Exh. 8.] However, despite this change in government, the Court finds no fundamental change in circumstances in Pakistan. First, Respondent testified that the provincial government in his home province of Punjab remains in the hands of the Muslim League, which the Court must consider as significant in determining whether Respondent has a well-founded fear of persecution. *Passi v. Mukasey*, 535 F.3d 98, 101-03 (2d Cir. 2008) (holding that the Board of Immigration Appeals improperly found that applicant no longer had a well-founded fear of persecution based on a country report that detailed general improvements, but not considering that applicant's hometown was still troubled by ethnic and political conflict). Second, the 2010 Country Report reflects that the political situation in Pakistan remains fragile, stating that "[p]olitically motivated killings and societal violence, including killings by angry mobs, continued." 2010 Country Report at 1. Moreover, "[d]uring the year the NGO SHARP reported 4,069 cases of torture by police, of which 2,690 allegedly occurred in Punjab alone." *Id.* at 8. In addition, a 2011 article from the newspaper Dawn states that "[p]olitical violence claimed the lives of about 600 people across the country in three months earlier this year." Respondent's submission of January 9, 2012, Tab Q. The article also mentions that the PPP was the second most targeted political party. *Id.* Far from demonstrating a fundamental change in circumstances, the background evidence reflects that political violence continues to pervade daily life in Pakistan, that members of the PPP continue to be the victims of violent acts, and that the political situation remains exceedingly volatile.



DHS has also argued that Respondent could avoid persecution in Pakistan through internal relocation to an area where the PPP controls the provincial government. However, the Court finds that DHS has failed to establish that internal relocation would be reasonable under all the circumstances, in that the record evidence establishes that both politically motivated and sectarian violence is pervasive throughout the country. See Respondent's submission of January 9, 2012. For all the above reasons, the Court finds that the Court finds that DHS has failed to carry its burden to rebut the presumption of a well-founded fear of persecution, and the presumption of a well-founded fear of persecution stands.

### 3. Discretion

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that he merits a grant of asylum as a matter of discretion. INA § 208(b)(1); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987). As there are no adverse factors in this case, the Court finds that Respondent warrants a favorable exercise of discretion as to his asylum claim.

#### **B. Withholding of Removal under INA § 241(b)(3) and the Convention Against Torture**

Since Respondent's asylum application is hereby granted, it is unnecessary to make a finding as to his request for withholding of removal pursuant to INA § 241(b)(3) or pursuant to the Convention Against Torture.

After a careful review of the record, the following orders will be entered:

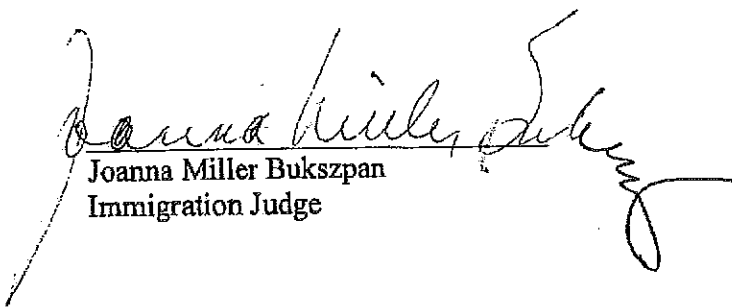
#### **ORDERS**

**IT IS HEREBY ORDERED** that Respondent is removable as charged under § 212(a)(6)(A)(i) of the Immigration and Nationality Act.

**IT IS FURTHER ORDERED** that Respondent's application for asylum under § 208 of the Immigration and Nationality Act be **GRANTED**.

Date

4/30/12

  
Joanna Miller Bukszpan  
Immigration Judge