



U.S. Department of Justice

V. de Paena

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: L [REDACTED] R [REDACTED] E [REDACTED] A [REDACTED]

Date of this notice: 5/19/2011

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:

Cole, Patricia A.
Pauley, Roger
Wendtland, Linda S.

Falls Church, Virginia 22041

File: A [REDACTED] - Los Fresnos, TX

Date: **MAY 19 2011**

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Theodore N. Cox, Esquire

ON BEHALF OF DHS: Jason Goodchild
Assistant Chief Counsel

CHARGE:

Notice: 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; Convention Against Torture

The respondent appeals from the Immigration Judge's January 3, 2011, decision denying his application for asylum and withholding of removal under sections 208(a)(1) and 241(b)(3) of the Immigration and Nationality Act ("Act"), 8 U.S.C. §§ 1158(a)(1), 1231(b)(3), as well as his request for protection under the Convention Against Torture ("CAT"), 8 C.F.R. § 1208.16(c). The appeal will be sustained, and the record will be remanded to the Immigration Court for further proceedings.

The respondent, a native and citizen of Venezuela, maintains that he experienced past persecution on account of his political opinion and opposition to President Hugo Chavez (I.J. at 5-6; Exhs. 2, 5A; Tr. at 26-34). He reported receiving numerous threatening telephone calls from supporters of President Chavez, and indicated that he was attacked by three masked men on December 28, 2009, who warned him to stop speaking out against the Chavez government (I.J. at 5-6; Exhs. 2, 5A; Tr. at 34-37). In addition, the respondent explained that he was assaulted by four masked men on February 4, 2010, who noted that he had not learned his lesson from the prior attack and again warned him to stop criticizing the president (I.J. at 6; Exhs. 2, 5A; Tr. at 38-40). He testified that he did not report either incident to the police or seek medical attention because he feared retribution from those aligned with the Chavez government (I.J. at 6; Exhs. 2, 5A; Tr. at 40).

The respondent's asylum application was filed on September 14, 2010 (Exh. 2). His claim is therefore governed by the amendments to the Act brought about by the passage of the REAL ID Act. See REAL ID Act § 101(h)(2); *Matter of S-B-*, 24 I&N Dec. 42, 44-45 (BIA 2006).

Under the REAL ID Act, an Immigration Judge may base his or her credibility determination on the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of the respondent's account; and the consistency between the respondent's written and oral statements, without regard to whether an inconsistency goes to the heart of an applicant's claim. Section 208(b)(1)(B) of the Act, 8 U.S.C. § 1158(b)(1)(B). "To establish that the applicant is a refugee within the meaning of [section 101(a)(42)(A) of the Act], the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." Section 208(b)(1)(B)(i) of the Act, *as amended*; section 101(a)(3) of the REAL ID Act; *see also* 8 C.F.R. § 1208.13(a); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

We review findings of fact, including credibility determinations, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review all other issues under a *de novo* standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii); *see also Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

While the Immigration Judge found that the respondent "testified in a clear and detailed manner," he ultimately concluded that he was not credible (I.J. at 8-10). In particular, the Immigration Judge determined that the respondent lacked credibility because he entered the United States through the use of a smuggler, falsely claimed to be a Mexican citizen after being caught by immigration officials in order to be voluntarily returned to Mexico, and then sought to avoid the authorities when he illegally reentered this country (I.J. at 8-10; Exhs. 2, 5A; Tr. at 48-52, 56-59). As noted by the respondent, the Immigration Judge failed to consider his explanation that he attempted to avoid detection and provided false information to the authorities because he feared returning to Venezuela (Tr. at 50, 58-59; Respondent's Brief at 15-17). The Immigration Judge also found it implausible that the respondent would fear retribution from employees of the hospital who were loyal to President Chavez because "the government or the supporters would already know of the respondent's political opinions" (I.J. at 8). A review of the record reveals that the respondent did not fear that Chavez supporters would discover his political opinions, but that they would inflict further harm because they were aware of his opinions and did not want him to document the prior attacks (Exh. 5, Tab A; Tr. at 28, 59; Respondent's Brief at 21-22). Based on the forgoing, we agree with the respondent that the Immigration Judge's adverse credibility finding is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i).

Because the Immigration Judge's denial of the respondent's asylum application cannot be sustained as written, we will remand the record to the Immigration Court for further proceedings and for the entry of a new decision. The Immigration Judge should determine whether the harm described by the respondent rose to the level of past persecution and, if not, whether he has presented a well-founded fear of future persecution in Venezuela. *See* 8 C.F.R. § 1208.13(b)(1). Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained in part, and the Immigration Judge's decision is vacated.

A [REDACTED]

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


FOR THE BOARD