



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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P.O. Box 1128
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Name: *F-WU, BIN

A71-779-922

Date of this notice: 07/09/2003

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey Fratter". The signature is written in a cursive style.

Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:

BRENNAN, NOEL A.
FILPPU, LAURI S.
HESS, FRED

Falls Church, Virginia 22041

File: A71 779 922 - Oakdale

Date:

In re: BIN WU

JUL - 9 2003

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Theodore N. Cox, Esquire

ON BEHALF OF DHS: Jerry A. Beatmann
Assistant District Counsel

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

Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Deferral of removal; protection under Article 3 of the United Nations
Convention Against Torture.

In a decision, dated January 31, 2002, the Immigration Judge denied the respondent's application for deferral of removal under the Convention Against Torture ("CAT") and ordered the respondent removed to China. *See* 8 C.F.R. §§ 1208.16-18 (2002). Pursuant to a joint motion to remand filed by the respondent and the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service), this Board remanded the proceedings to the Immigration Court for the purpose of amending the order of removal to reflect the Dominican Republic as the country of removal (BIA Order, dated May 10, 2002). On remand, the Immigration Judge ordered the respondent removed to the Dominican Republic, with alternatives to Taiwan and China. The respondent has appealed. The appeal will be sustained.

The respondent is a native and citizen of China (Tr. at 6; Exh.1). On November 7, 1990, the respondent was admitted to the United States as a nonimmigrant exchange visitor (Exhs. 1 and 2). On September 17, 1993, the respondent was "convicted in the United States District Court, Eastern District of Virginia, for the offense of Transfer of funds from outside the U.S. to U.S. with intent to promote an unlawful activity, in violation of Title 18, United States Code, Section 1956(a)(1)(A)(i)" (Exh. 1). The respondent testified that if he returns to China, the Chinese government will convict him of espionage and torture him on account of his cooperation with the Federal Bureau of Investigation ("FBI") against the Chinese Ministry of State Security ("MSS").

In his decision, dated January 31, 2002, the Immigration Judge did not make a specific credibility finding. However, the Immigration Judge expressed concern with regard to the respondent's credibility (I.J. at 8-10). Additionally, the Immigration Judge denied the respondent the CAT relief after finding that the respondent failed to sustain his burden of proof. The Immigration Judge ordered the respondent removed to Taiwan, or China in the alternative.

On appeal, the respondent avers that he offered credible testimony and that the Immigration Judge abused his discretion in denying him the CAT relief. Additionally, the respondent asserts that his appeal does not contest his removal to the Dominican Republic or Taiwan, but rather, challenges the alternative destination of removal to China (Respondent's Brief at 5, 28).

Through its memorandum filed in response to the respondent's brief, the DHS requests that the Board affirm the Immigration Judge's decision, and dismiss the respondent's appeal. Alternatively, the DHS "requests a remand for the introduction of newly discovered evidence relating to the validity of the Dominican Republic passport issued to the respondent" (DHS's memorandum at 14).¹ The respondent filed a reply reasserting his eligibility for the CAT relief.

In order to sustain a claim for relief under the CAT, an applicant must sustain his burden of proof. The burden rests solely on the applicant to establish such eligibility. 8 C.F.R. § 1208.16(c)(2).

An applicant for protection under the CAT must establish that it is more likely than not that he would be tortured if returned to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2); *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000).

"Torture" is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1).

In assessing whether it is more likely than not that a respondent would be tortured in the proposed country of removal, all evidence relevant to the possibility of future torture shall be considered, including, but not limited to:

- (i) Evidence of past torture inflicted upon the respondent;
- (ii) Evidence that the respondent could relocate to a part of the country of removal where he or she is not likely to be tortured;
- (iii) Evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable; and

¹ The DHS has not explained how any questions regarding the validity of the passport relate to the issue of the CAT relief. Since the DHS has not established a sufficient basis for a remand, the request is denied.

(iv) Other relevant information regarding conditions in the country of removal.

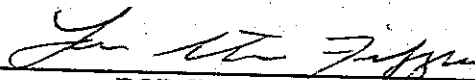
8 C.F.R. § 1208.16(c)(3).

Based upon our evaluation of the individual circumstances of the respondent, coupled with the evidence of record, we agree with the respondent that he has carried his burden in demonstrating that it is more likely than not he would be subjected to treatment in China which would amount to torture. The respondent offered testimony that he is a Chinese dissident and that he aided the FBI. The Immigration Judge found this portion of the respondent's testimony credible. Furthermore, the DHS's FBI witness, corroborated the respondent's testimony concerning the respondent's cooperation with the FBI. Most notably, the aforementioned witness described the respondent as a valuable source of information to the FBI, and confirmed that the respondent disclosed the names of Chinese spies to the FBI (Tr. at 155-156, 172-173).²

In light of the public nature of the respondent's trial, and the extensive media coverage surrounding it, there is a clear probability that the Chinese government is aware of the respondent's involvement with the FBI. Moreover, considering the respondent's expert witness's testimony, as well as, the country condition reports outlining China's deplorable human rights record and its history of torture, it is more likely than not that the respondent will be tortured upon his return to China (Tr. at 131-132; I.J. at 7; Exhs. 3, 4, and 6). Accordingly, we conclude that the respondent has sustained his burden of proof regarding the CAT. However, our grant of the aforementioned relief to the respondent is restricted to China.

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is sustained.



FOR THE BOARD

² We understand the Immigration Judge to have viewed the respondent as a "double agent" who only disclosed information to the FBI consistent with the wishes of China's security apparatus. Even if that is true, the respondent's dissident past, his active involvement with the FBI, and his period of custody in United States hands make it likely, in our judgment, that China will employ methods amounting to torture to best ensure it learns everything the respondent has to tell about his time in the United States.