File: (b) (6) Date: FEB 10 2004

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sandra Greene, Esquire

ON BEHALF OF DHS: Jeffrey T. Bubier
Assistant Chief Counsel

CHARGE:

Notice: 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[1]

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

This case comes to us on remand from the United States Court of Appeals for the (b) (6) In its decision dated (b) (6) the (b) (6) agreed with our decision denying relief under the Convention Against Torture and also agreed with our decision denying asylum and withholding based on the respondent's claim that he was persecuted on account of his religion. (b) (6) *v. Ashcroft*, (b) (6) However, the (b) (6) held that an asylum claim may be based upon imputed membership in a social group, and that we erred in failing to consider the respondent's claim of persecution based on his imputed status as a homosexual. *Id.* The (b) (6) (b) (6) then directed us to further evaluate the respondent's asylum petition by either reaching the merits of his claim of imputed membership in a social group or by discrediting his testimony.[2] *Id.* We choose the latter.

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[1] The Immigration Judge concluded that this charge could not be substantiated by the evidence of record (I.J. Dec. at 2).

[2] The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) argues that further proceedings are moot, because the respondent was removed from the country on March 2, 2002; however, we continue to evaluate the respondent's asylum petition in accordance with the directions of the United States Court of Appeals for the (b) (6)

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An Immigration Judge's adverse credibility decision is appropriately based on inconsistent statements, contradictory evidence, and inherently improbable testimony in view of the evidence on country conditions. *Dia v. Ashcroft,* 353 F.3d 228, 249 (3rd Cir. 2003) (*citing Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997)).

We agree with the Immigration Judge's finding that the respondent lacked credibility (I.J. at 12) based, in part, on inconsistencies between his statements and the evidence of the record. The respondent's entire application for asylum contradicts the information he provided to a United States Immigration Inspector upon his arrival in the United States. In his statement, the respondent told the Immigration Inspector that he would not be harmed if he returned to Ghana (Exh. 4 at Part B). We have considered the (b) (6) decisions discussing airport interviews. *See Balasubramanrim v. INS,* 143 F.3d 157, 164 (3rd Cir. 1998) (airport interview is not valid grounds upon which to base an adverse credibility finding where completeness of record of interview was questionable, questions posed were not designed to elicit details, and assessment of English skills lacked basis); *see also Dia v. Ashcroft, supra,* at 257. We conclude that in the present case the interview was sufficiently valid grounds upon which to base an adverse credibility finding.

We first note that the statement was taken under oath, contains detailed information, and was witnessed by a third individual. Secondly, although the airport interview was conducted in English and not the respondent's native language, the transcript reveals that the respondent conversed fluently in English with the Immigration Judge and, in fact, testified that he could read and write in English (Tr. at 3). Furthermore, the respondent's explanation that he lied at the airport interview, because he feared discovery of his "sexual inclination" (Tr. at 47) is unconvincing, considering his asylum claim is based on his story that he only engaged in homosexual acts in order to make himself appear unacceptable as a human sacrifice. Most importantly, the respondent testified that the written report of the airport interview (Exh. 3 at Part B) accurately contains what he told the immigration officials at the airport (Tr. at 52). The airport interview also contains several additional indicia of validity: his interview story of returning to Canada after a 7-week visit to Ghana is consistent with dates on his airline ticket; the respondent was able to use the name of an obscure town in Ontario as a residence; the respondent stated during the interview that he understood all the questions; and even under suspicion of lying, the respondent revealed that he feared returning due to indebtedness (I.J. at 13-15). For all the foregoing reasons, we conclude that the interview was sufficiently valid grounds upon which to base an adverse credibility finding.

We also agree with the Immigration Judge's findings that a number of implausibilities contribute to the adverse credibility finding (I.J. at 9-11). In so doing, we follow the (b) (6) reasoning in *Dia*, that an implausibility may form the basis for an adverse credibility finding only if it is made against the background of general country conditions such that it is properly grounded in the record. *Dia v. Ashcroft, supra,* at 249. The implausibilities noted by the Immigration Judge in this case were properly made. The respondent claimed that he was not a homosexual, but only engaged in homosexual acts in order to make himself appear unacceptable as a human sacrifice (Tr. at 67). However, his claim that he would be harmed upon return to Ghana as an imputed homosexual is not supported by the evidence in the record that describes the general country conditions in Ghana (I.J. at 11). The asylum report from the United Kingdom's Home Office states that laws against homosexual acts in Ghana are not strictly enforced and homosexuality is generally tolerated in the country (Exh. 7 at 6.12). The tolerance of homosexuality in Ghana also explains two further

implausibilities in the respondent's claim: first, that the respondent would risk certain death for engaging in homosexual acts in order to escape uncertain death by human sacrifice (I.J. at 10), and second, that the respondent, who claimed not to be a homosexual, would "practice" the homosexual act once without observation by the guards, before engaging in the act a second time for the benefit of the guards (Tr. at 36, 67). More plausible explanations are that individuals in Ghana are not at risk of harm if caught engaging in homosexual acts and that the respondent did not engage in the acts solely for the benefit of observation by the guards. The implausible testimony and inconsistent statements were appropriate grounds upon which the Immigration Judge to base his adverse credibility finding. *See Dia v. Ashcroft, supra,* at 249 (*citing Matter of S-M-J-, supra*).

We also agree with the Immigration Judge's holding that the respondent failed to adequately corroborate his claim (I.J. at 8). Once again, we refer to the (b) (6) holding in *Dia* that an Immigration Judge may require corroboration of certain alleged facts where it is reasonable to expect such corroborating evidence, and if the applicant fails to provide such corroboration, he has not adequately explained his failure to do so. *Dia v. Ashcroft, supra,* at 253 (*citing Matter of S-M-J-, supra,* at 725)). In the present case, the respondent failed to corroborate his claim that it is well-known that human sacrifice is currently practiced in Ghana (Tr. at 66; I.J. at 7). It was reasonable of the Immigration Judge to expect corroboration of the practice of human sacrifice in Ghana, because the existence of such a practice is vital to the respondent's asylum claim. The respondent failed to corroborate his claim, as the practice of human sacrifice was not documented in any reputable country reports such as the U.S. State Department's Country Reports on Human Rights Practices in Ghana (Exh. 4 at Part C), the Ghana-Profile of Asylum Claims and Country Conditions (Exh. 4 at Part D), or the asylum report from the United Kingdom's Home Office (Exh. 7). Finally, the respondent failed to adequately explain his failure to corroborate his claim, because if the practice of human sacrifice is widespread, it should be thoroughly documented in the country reports. Therefore, we conclude that the Immigration Judge properly required the respondent to corroborate the existence of human sacrifice in Ghana, and the respondent failed to do so.

We note that the respondent argues that the Immigration Judge wrongfully excluded evidence of human sacrifice (Tr. at 12-16); however, this argument fails. Where the alien's claim is based on allegations which may be independently verified, evidence of general country conditions are relevant to support the applicant's claim. *Matter of S-M-J-, supra,* at 724. To the extent that the respondent sought to introduce evidence of human sacrifice, without making any link that the evidence of human sacrifice related to the country of Ghana, such evidence was not relevant and properly excluded by the Immigration Judge. Furthermore, 8 C.F.R. § 1003.31(c) provides that the Immigration Judge may set time limits for the filing of applications and related documents. Inasmuch as the respondent sought to introduce documentary evidence outside of the set time limits, we find that the Immigration Judge properly refused to accept it.

The lack of corroboration coupled with the lack of credibility support a finding that the respondent failed to satisfy his burden of showing that he was a victim of past persecution or possesses a well-founded fear of future persecution. Inasmuch as the respondent has failed to establish his burden in respect to asylum, he has failed to satisfy the clear probability standard of eligibility required for withholding of removal. *See* section 241(b)(3) of the Act; *INS v. Stevic*, 467 U.S. 407, 429-30 (1984). Accordingly, the appeal will be dismissed.

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ORDER: The appeal is dismissed.

FOR THE BOARD