File: (b) (6)

Date:

In re: (b) (6)

OCT 30 2009

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: D. Ryan Nayar, Esquire

APPLICATION: Asylum; withholding of removal; Torture Convention

This case is currently before the Board pursuant to an order by the United States Court of Appeals for the (b) (6) vacating our summary affirmance of an Immigration Judge's denial of the respondent's applications for asylum, withholding of removal and protection under the Torture Convention. The record will be remanded to the Immigration Judge.

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a *de novo* standard. 8 C.F.R. § 1003.1(d)(3)(ii); *see also Matter of A-S-B-*, 24 I&N Dec. 493, 496 (BIA 2008).

The respondent is seeking relief based upon her claim of a well-founded fear of persecution in Ethiopia on account of her political opinion, her Amhara ethnicity, and her membership in a particular social group, namely her family. The Immigration Judge found the respondent credible but determined that she had not established that her fear of persecution was objectively reasonable. We affirmed the Immigration Judge's decision, and the respondent filed a petition for review with the (b) (6) Court of Appeals.

Although the Court of Appeals upheld the Immigration Judge's determination that the respondent had not established a well-founded fear based on her ethnicity or political opinion, it found that the Immigration Judge did not fully analyze the respondent's particular social group claim. In this regard, it noted that the Immigration Judge failed to address whether the respondent's family constituted a particular social group. It also noted that the Immigration Judge minimized the current restrictions placed on the respondent's father due to his past association with the former regime and completely failed to discuss the treatment of the respondent's mother and uncles in Ethiopia. The appeals court also noted that the Immigration Judge did not evaluate whether the respondent had established a "pattern or practice" of persecution against the respondent's social group. *See* 8 C.F.R. § 1208.13(b)(2)(iii).

The Court of Appeals further found that the Immigration Judge erred in according more weight to the Country Reports than to the credible testimony of the respondent and her uncle regarding the respondent's risk of persecution. It also found that the Immigration Judge "selectively chose to

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highlight certain portions of the Country Reports, while ignoring other portions that were favorable" to the respondent.

In light of these deficiencies and our limited fact-finding ability on appeal, we will remand the record to the Immigration Judge for further proceedings. *See* 8 C.F.R. § 1003.1(d)(3)(iv). We note that the Court of Appeals took judicial notice of the 2005 and 2007 Country Reports in assessing the respondent's claim, and we direct the Immigration Judge to consider these, and the most recent, Country Reports in analyzing the respondent's well-founded fear of persecution on remand. Accordingly, the following orders will be entered.

ORDER: The Immigration Judge's June 29, 2006, decision is hereby vacated.

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

FOR THE BOARD

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CHICAGO, ILL.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
(b) (6)

File No: (b) (6) Date: September 22, 2010

In the Matter of:	)	
	)	
(b) (6)	)	In Removal Proceedings
	)	
Respondent.	)	

CHARGE: Section 237(a)(1)(C) of the Immigration and Nationality Act (INA or Act), 8 U.S.C. § 1227(a)(1)(B) – failure to maintain or comply with the conditions of status

APPLICATIONS: Section 208 of the INA – Asylum

Section 241(b)(3) of the INA – Withholding of Removal.

Section 1208.17(a) of Title 8 of the Code Federal Regulations– Deferral of Removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture or CAT).

Section 240B(b) of the INA– Voluntary Departure

FOR THE RESPONDENT:
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FOR THE GOVERNMENT:
Christine Young, Esq.
Department of Homeland Security
(b) (6)

DECISION OF THE IMMIGRATION JUDGE

I. Background

The respondent is a thirty-five-year-old native and citizen of Ethiopia. She first entered the United States in 1992 with a student visa, and in March 5, 2002 she received an H-1B visa. Later that year, though, the respondent failed to maintain that status when she stopped working. As a result, on August 6, 2003 the government charged her with removability under section 237(a)(1)(C)(i) of the INA. *See* Exh. 1.

On August 6, 2003 the respondent appeared before the Immigration Court in Chicago, Illinois and, through counsel, conceded removability under the above charge. She declined, however, to designate a country of removal. Nevertheless, the Court designated Ethiopia, the Country of her nationality and citizenship as her country of removal.

In lieu of removal, the respondent requested asylum, withholding of removal, protection under the Convention Against Torture and voluntary departure. The respondent first applied for asylum with the government in March of 1998, *see* Exh. 2, and she renewed that application before the Court in 2003. Exh. 3. On March 22, 2004 the respondent and one witness appeared and testified on behalf of that application.

The Court ultimately denied her applications for asylum and withholding of removal, but granted her voluntary departure. *See* Decision of the Immigration Judge at 16 (June 29, 2006). Although it found that she had testified credibly, it concluded that she did not have an objectively reasonable fear of persecution. *Id.* at 9, 14. On January 23, 2008 the Board of Immigration Appeals (Board) summarily affirmed the Court's decision.

On (b) (6) the Court of Appeals for the (b) (6) vacated the Board's decision and remanded the respondent's case. *See* (b) (6) *v. Holder*, (b) (6) (b) (6) The Court left much of the decision intact, including the Court's conclusion that the respondent had not shown a reasonable probability of persecution on account of ethnicity or political opinion. *Id.* at (b) (6) It remanded the case to the Board, however, reasoning that the Court did not properly evaluate the respondent's fear of persecution on account of her membership in a particular social group—namely her family. *Id.* at (b) (6) The Board, in turn, remanded the case to this Court on October 30, 2009 with instructions to consider the respondent's claim of persecution on account of membership in a particular social group.

On May 25, 2010 the respondent appeared before me by telephone, and I requested that both parties brief the issues before me on remand. On July 26, 2010 the respondent moved this Court to grant her application for asylum without a further hearing on the merits. *See* Respondent's Motion and Brief (July 26, 2010). She submitted additional evidence and argued that she continues to fear persecution on account of her membership in a particular social group, and is therefore eligible for asylum. *Id.* The Government has not opposed the respondent's motion or otherwise briefed the Court.

II. Evidence Presented

A. Testimonial Evidence

The respondent testified credibly in support of her asylum application in 2004. Her father, (b) (6) was a government minister under the regime of former Ethiopian president, Mengitsu Haile Mariam. When the Mengitsu regime fell to rebels, though, in May of 1991 her father was arrested and remained in prison until 1993. Her

mother and sister fled to Kenya, but they were not even safe there, because the Ethiopian expatriate community in Kenya recognized them as members of family members of individuals in the Mengitsu regime. As a result, her family was mistreated even arrested in Kenya. Her mother, ultimately sought asylum in the United Kingdom.

The respondent testified that she continues to fear persecution in Ethiopia because her status as the daughter of a former member of the Mengitsu regime would make her a target. As an example, she explained that although her father is no longer in custody, the Ethiopian government continues to monitor him, and taps his phone. He also cannot get a job. The respondent believes that she would be persecuted if she returned to Ethiopia.

The respondent's uncle, (b) (6) testified that that the respondent's father is well known in Ethiopia. He corroborated the respondent's account regarding her father's imprisonment, and added that her father was tortured while in prison. Mr. (b) (6) testified that the respondent's father remains under surveillance by the current regime. Mr. (b) (6) added that he himself was imprisoned and tortured during that time.

B. Documentary Evidence

Country reports presented in 2004 described conditions regarding the respondent's ethnicity and political associations, but could not directly address the respondent's claim of persecution on account of her family association. In general, though, the 2006 State Department report reflected that the Ethiopian government's human rights record was problematic but improving. *See* Exh. 11.

The respondent has updated the record with new affidavits and country condition reports. She has submitted, for example, several statements from her mother, (b) (6) (b) (6) Ms. (b) (6) states that her husband, the respondent's father, continues to be monitored by the government, is forbidden from leaving the country, and has had land confiscated from him. Ms. (b) (6) also adds that the government detained and otherwise persecuted her brother, (b) (6) until he died in 1999.

The updated country reports cite numerous human rights violations by the current Ethiopian government. *See* U.S. Dep't of State, 2009 Human Rights Report: Ethiopia (Mar. 11, 2010). Although it does not describe the plight of the respondent's particular family, the report describes abuse and even killings of individuals suspected to oppose the government or sympathize with insurgent groups.

III. Analysis

Under section 208(b) of the INA, asylum may be granted to an alien who is physically present in the United States if the alien meets the statutory definition of a "refugee." A "refugee" is defined as an individual who is unable or unwilling to return to his or her native country "because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social

group, or political opinion." INA § 101(a)(42)(A). Persecution on account of membership in a particular social group includes mistreatment based on an individual's family ties. (b) (6) *v. Holder*, (b) (6)

An alien may show a well-founded fear of persecution based on her individualized fears of returning to her native country or upon a showing a "pattern or practice" of persecution of similarly situated individuals. *See* 8 C.F.R. § 1208.13(b)(2)(3); (b) (6)

In the present case, I conclude that the respondent has a well-founded fear of persecution on account of her family ties—specifically her ties to her father, (b) (6) (b) (6) Her fear is based on the Ethiopian government's pattern or practice of persecution of her family.

At least five members of the respondent's family have been persecuted since the Mengitsu regime fell in Ethiopia. The respondent's father and three of her uncles were imprisoned and tortured, and her father continues to be monitored to this day. Her mother was targeted by Ethiopians even after fleeing to Kenya. The respondent has therefore shown a pattern of persecution against her family.

Finally, I am persuaded by the respondent that this case can be resolved without further evidentiary hearings. The specific facts of this case were adequately developed in 2004, when the respondent and one witness testified. Accordingly, the respondent moved the Court to grant asylum without a further evidentiary hearing. The government has not opposed this motion.

IV. Conclusion

For the reasons explained above, I have concluded that the respondent is eligible for asylum, and that further evidentiary proceedings are unnecessary. Because the respondent has been granted asylum, I need not address the respondent's alternative requests for withholding of removal and protection under the Convention against Torture, or voluntary departure. Accordingly, the following order shall be entered:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the respondent's application for asylum under section 208 of the INA be GRANTED.

Jennie Giambastiani
JENNIE L. GIAMBASTIANI
IMMIGRATION JUDGE 9/22/10

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