U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b) (6)

Date: DEC 0 9 2004

In re: (b) (6)

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gregory S. Bachmeier, Esquire

APPLICATION: Asylum; withholding of deportation

This case is presently before us pursuant to the (b) (6) decision of the United States Court of Appeals for the (b) (6) The court found that the Board erred in not applying 8 C.F.R. § 1208.13(b)(3), which deals with the reasonableness of internal relocation for persons who have established past persecution or have a well-founded fear of persecution. It remanded the case for the Board to apply the regulation.

Under 8 C.F.R. § 1208.13(b)(3), an adjudicator, in assessing whether an alien could reasonably relocate to another part of the country where he fears persecution, should consider "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and family ties." Further, where an asylum applicant has established past persecution, "it shall be presumed that internal relocation would not be reasonable," and the burden is on the Department of Homeland Security (DHS) to establish that internal relocation would be reasonable.

The present case involves a 27-year-old native and citizen of Somalia. He is a member of the Darood clan. At his deportation hearing, the respondent testified (and the Immigration Judge found his testimony credible) that in January of 1991, a number of armed men, some in the uniform of a militia, some not, came to his home. They broke down the door, and attacked and raped the respondent's (b) (6) They shot and killed the respondent's uncle and grandfather when they attempted to protect the (b) (6). The respondent was hiding in the bathroom and eventually was able to escape out a window. The respondent's father was apparently outside the country at the time, seeking medical attention. The respondent testified that his home and family were attacked because they were Darood. He stated that he knew the leader of the group, who was his neighbor, and had worked with the respondent's father.

The respondent immediately fled his village, and a month and a half later reached a refugee camp in Kenya, where he remained for 3 years. There was no school in the camp, nor was the respondent able to work. He lived in a tent with several other people. The respondent eventually received word that his family had fled to Yemen, and he had begun making plans to join them there when civil war broke out in Yemen and the borders were closed. He then came to the United States with the assistance of an Ethiopian man. He has not seen his family since the day of the attack. He was 13 years old when he fled his home. The respondent further testified that his father was imprisoned for a number of years when the respondent was young because the father's brother had been involved with an attempted coup and the authorities suspected the father might also be involved.

We find that the respondent suffered past persecution in Somalia. In making this finding, we have considered that the respondent witnessed (b) (6) being raped, and the murders of his uncle and grandfather. He was forced to flee his home and family and to live unassisted in a refugee camp starting at the age of 13. We further find that the persecution the respondent suffered was on account of his clan membership, and that this constitutes a particular social group. *See Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

Having found that the respondent suffered past persecution on account of a protected ground, we turn to the question whether the presumption of a well-founded fear has been rebutted by a showing of a fundamental change in circumstances, such as changed country conditions. *See* 8 C.F.R. § 1208.13(b)(1). The most recent Department of State Country Report states that inter and intra-clan violence remains a serious problem in Somalia, and that clan militias still operate effectively in parts of the country and commit serious human rights abuses. It thus appears that there has not been the kind of fundamental change in circumstances such that the respondent's life or freedom would no longer be threatened upon return to Somalia.

Finally, we find that internal relocation would not be reasonable in this case. There is ongoing civil strife in Somalia, and no stable government able to assist and protect its citizens. Further, the respondent has no family members remaining there, as his immediate family lives in a refugee camp in Yemen. Nor does he appear to have any other significant remaining ties to Somalia. Under all these circumstances, we conclude that the presumption that it would not be reasonable to expect the respondent to relocate internally has not been rebutted.

For these reasons, we find that the respondent is eligible for asylum, and we find no reason to deny that relief in the exercise of discretion. *See generally Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Accordingly, the following order will be entered.

ORDER: The decision of the Board in this case dated September 10, 2002, is vacated, the respondent's application for asylum is granted, and the deportation proceedings are terminated.

FOR THE BOARD