U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Date of this Notice: 9/5/2023

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

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

MATTER OF:

Emilio GUTIERREZ SOTO, [redacted]
Oscar GUTIERREZ SOTO, [redacted]

Respondents

FILED
Sep 05, 2023

ON BEHALF OF RESPONDENTS: Eduardo Beckett, Esquire

ON BEHALF OF DHS: Christopher R. Miller, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, El Paso, TX

Before: Greer, Appellate Immigration Judge; O'Connor, Appellate Immigration Judge; Saenz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge O'Connor

O'CONNOR, Appellate Immigration Judge

The respondents, a father and his son, natives and citizens of Mexico[1], have appealed from the Immigration Judge's February 28, 2019, decision denying their applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively, and for protection under the regulations implementing the Convention Against Torture ("CAT").[2]

We assume the parties' familiarity with the lengthy and extensive procedural history of this case, which is not in dispute or at issue before us. In pertinent part, the Immigration Judge initially denied the respondents' application for relief and protection from removal in an order dated July 19, 2017, and the respondents appealed. On May 15, 2018, we remanded the record to the Immigration Judge for further proceedings on the respondents' application for relief and protection

[1] Both respondents filed an application for relief and protection from removal, Form I-589 (IJ at 1, July 19, 2017; Tr. at 50-53, January 21, 2011; Exhs. 2, 3). All references to the respondent in the singular refer to the lead respondent.

[2] The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16-.18.

from removal, to include consideration of new and previously unavailable evidence that was submitted by the respondents on appeal.

On February 28, 2019, the Immigration Judge again denied the respondents' applications for asylum and withholding of removal (under the INA and the CAT).[3] The respondents again appealed the denial of relief and protection. The Department of Homeland Security ("DHS") opposes the respondents' appeal. The respondents' appeal will be sustained, and the record will be remanded to the Immigration Court for the required background and security checks.[4]

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).[5]

The respondent claims eligibility for relief from removal based on imputed political opinion and on membership in a proposed particular social group, described as "former Mexican reporter[s] who criticized the Mexican Military" (IJ Dec. 2 at 12).

On February 28, 2019, the Immigration Judge denied the respondents' application for relief and protection based on an adverse credibility determination and, in the alternative, on the merits (IJ Dec. 2 at 6-16). Specifically, the Immigration Judge stated that he had previously found the respondent to be not credible in his July 19, 2017, decision, and that he did find any reason to alter that determination in the remanded proceedings (IJ Dec. 2 at 6). He also concluded that the newly submitted evidence in support of the claim, which we directed the Immigration Judge to consider on remand, did not demonstrate eligibility for the forms of relief sought (IJ Dec. 2 at 6-16).

In support of his adverse credibility determination, the Immigration Judge identified inconsistencies in the respondent's claim, including whether he reported the threats that he received in Mexico to the police or other authorities, as well as whether and when the authorities responded to these reports (IJ 1 at 24-25). Furthermore, the Immigration Judge found implausible the respondent's claim that he wrote many articles over a period of some 8 years, yet he was able to file only one example of such an article with the Immigration Court (IJ 1 at 25-26).

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[3] The Immigration Judge's July 19, 2017, decision will be referred to as "IJ Dec. 1," and the decision dated February 28, 2019, will be referred to as "IJ Dec. 2." The transcripts of hearings, notices of appeal ("NOA"), and briefs on appeal will correspondingly be referred to as "1" and "2."

[4] In view of our decision concluding the respondents are eligible for asylum, their request for a change of venue is moot.

[5] During the pendency of the respondents' appeal, the Board increased the appeal brief page limit from 25 pages to 50 pages. *See* BIA Practice Manual §§ 3.3(c)(3), 4.6(b). The respondents' 92-page brief on appeal clearly exceeds the new page limit. Although we have considered the entirety of the respondents' brief in this instance, the respondents' counsel is directed to comply with the BIA practice manual in the future.

Likewise, the Immigration Judge found the respondent's account of his encounter with the military officers who confronted and threatened him in public in February 2005 to be implausible (IJ 1 at 26). Moreover, the Immigration Judge concluded that the respondent did not sufficiently corroborate his claim of having written numerous articles critical of the military and having received death threats as a result (IJ 1 at 27-28). The Immigration Judge also found that the respondent avoided providing direct and clear answers to some of the questions asked during the hearing (IJ 1 at 28-29).

On the record before us, we are unable to affirm the Immigration Judge's adverse credibility determination, and we will therefore reverse it as clearly erroneous. Section 208(b)(1)(B)(iii) of the INA, 8 U.S.C. § 1158(b)(1)(B)(iii); *Wang v. Holder*, 569 F.3d 531, 538 (5th Cir. 2009) (stating that an adverse credibility determination may be supported by "any inconsistency or omission," provided that "the totality of the circumstances establishes that an asylum applicant is not credible") (internal quotation marks, emphasis, and citation omitted); *cf. Suate-Orellana v. Barr*, 979 F.3d 1056, 1060-61 (5th Cir. 2020) (upholding the adverse credibility determination where the applicant did not dispute the presence of several of the identified inconsistencies and omissions, and where the applicant's "arguments regarding the adverse credibility determination amount[ed] to a disagreement with the agency's conclusions").

We are persuaded by the respondent's detailed argument on appeal addressing and persuasively explaining the concerns raised by the Immigration Judge in support of his adverse credibility determination (Respondents' Br. 1 at 22-46). Specifically, the respondent persuasively explained the perceived inconsistencies involving whether or not he reported the threats at the hands of the military to the authorities, what response he received, and why he was unable to further corroborate his claim with evidence identified by the Immigration Judge (Respondents' Br. 1 at 22-26). The respondent explained the pertinent facts and circumstances giving rise to his individualized fear of harm based on the threats he received at the hands of the military in Mexico and has demonstrated why the Immigration Judge's credibility and lack of corroboration concerns are unsupported in the context of the totality of the available evidence of record and objective evidence of the country conditions in Mexico. The respondent's claim has likewise been corroborated by numerous letters and extensive declarations in support of the respondent, as well a witness who testified on his behalf. As such, we reverse the Immigration Judge's adverse credibility determination as clearly erroneous.

In view of our conclusion that the Immigration Judge's adverse credibility determination is clearly erroneous, and without deciding whether the harm that the respondent suffered in the past was sufficiently severe to rise to the level of persecution, we conclude that the respondent's subjective fear of persecution upon return to Mexico is objectively reasonable and well-founded.

Here, the evidence reflects that the respondent worked as a journalist in Mexico, and he came to the attention of the Mexican military because he wrote articles that were critical of and exposed the corruption of the military (IJ 2 at 4-5; Tr. 1 at 261-64, 268-71). After coming to the United States, the respondent continued his journalistic work, including by publishing more articles critical of the Mexican government and military, and by publicly criticizing the Mexican authorities (IJ 2 at 9-10). As such, his activities and journalistic work rose to a level of significant

prominence, leading to national recognition and establishing a reputation of being a vocal critic of the Mexican government and military (IJ 2 at 4-5, 9-10). The respondent has been awarded numerous prestigious awards and recognitions for his journalistic work (IJ 2 at 4-5).

Moreover, general evidence of country conditions in Mexico reflects that journalists in Mexico are sometimes subject to physical attacks, harassment, and intimidation due to their reporting, making Mexico one of the most dangerous places in the world, outside war zones, for journalists (IJ 2 at 3; Exh. R7). In addition, the two letters from the United States Department of State, dated in February 2018 and in December 2022, of which we take administrative notice pursuant to 8 C.F.R. § 1003.1(d)(3)(iv), reflect that the respondent was threatened in Mexico because of his journalistic work that was critical of the military, that the respondent's work history of being a journalist active in areas considered dangerous was confirmed by the United States Embassy in Mexico City, and that, due to the attention that the respondent's case has generated, the Mexican authorities, including the military, would be aware of the respondent's return to Mexico.

Overall, based on the totality of the evidence of record, we conclude that the respondent's subjective fear of persecution in Mexico based on his political opinion (actual and imputed), as well as his membership in the particular social group consisting of former Mexican reporters who criticized the Mexican military, is objectively reasonable.

In sum, the respondent has been a vocal critic of the Mexican government and the military over a period of many years and his prominence has increased while in the United States; the Mexican authorities would be aware of the respondent's return to the country; and, fearing persecution at the hands of the Mexican authorities, the respondent's fear of persecution is presumed to be country-wide. 8 C.F.R. § 1208.13(b)(3)(ii); *Munoz-Granados v. Barr*, 958 F.3d 402, 407 (5th Cir. 2020) (holding that, where there is no showing of past persecution, petitioner bears the burden to demonstrate that relocation is unreasonable, unless the persecution is by a government or is government-sponsored); *Gonzales-Veliz v. Barr*, 938 F.3d 219, 231 (5th Cir. 2019) (holding that membership in a particular social group must be a central reason for the harm, and reasons incidental, tangential, or subordinate will not suffice).

In view of the foregoing, we conclude that the totality of evidence reflects that the respondent has a well-founded fear of persecution in Mexico on account of his political opinion and particular social group membership, and that his fear is subjectively genuine and is shown to be objectively reasonable. 8 C.F.R. § 1208.13(b)(2). Consequently, the respondent has demonstrated eligibility for asylum and, in the absence of any adverse discretionary factors in this case, the following orders will be entered.

ORDER: The respondents' appeal is sustained, the Immigration Judge's July 19, 2017, and February 28, 2019 decisions denying asylum are vacated, and the respondents are found eligible for asylum.[6]

[6] In view of our decision finding the respondents eligible for asylum, we need not address the applications for withholding of removal under the INA or protection under the CAT.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and for the entry of an order granting asylum as provided by 8 C.F.R. § 1003.47(h).