



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 1939
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Name: GEBRETSADIK, SAMUEL

A088-335-756

Date of this notice: 12/14/2009

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pauley, Roger

*Received
12/15/09
78*

Falls Church, Virginia 22041

File: A088 335 756 - San Antonio, TX

Date:

DEC 14 2009

In re: SAMUEL GEBRETSADIK

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF DHS: Justin F. Adams
Assistant Chief Counsel

CHARGE:

Notice: 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; remand

The respondent, a native and citizen of Eritrea, has timely appealed the Immigration Judge's January 24, 2008, decision. The respondent contests the Immigration Judge's denial of his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c). During the pendency of his appeal, the respondent filed several motions to remand proceedings to the Immigration Judge. The respondent's request for oral argument before this Board is denied. *See* 8 C.F.R. § 1003.1(e). The record will be remanded to the Immigration Judge for further proceedings.

Initially, we observe that the respondent's application for relief is governed by the amendments to the Immigration and Nationality Act brought about by the passage of the REAL ID Act of 2005, Div. B of Pub. L. No. 109-13, 119 Stat. 302 ("REAL ID Act"). *See* Exh. 2; *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). We note that this Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review *de novo* questions of law, discretion, and judgment. 8 C.F.R. § 1003.1(d)(3)(ii); *see also* *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008); *Matter of A-S-B-*, 24 I&N Dec. 493 (BIA 2008).

The respondent claims that he belongs to the Medhane Alem Church and that he was jailed by the Eritrean government because of his religious beliefs. The Immigration Judge found the respondent incredible based, in part, on an inconsistency in the respondent's credible fear interview and testimony at the hearing regarding the dates of the respondent's alleged detention. The Immigration Judge also based her finding on the lack of detail regarding the respondent's claim. The

Immigration Judge also found that the respondent failed to provide supporting evidence to establish his church membership. The respondent contests these findings.

While his case was pending on appeal with this Board, the respondent filed several motions to remand for new evidence. First, he requested remand for consideration of a DVD depicting a sermon he delivered to his congregation in Eritrea in 2004. The Department of Homeland Security ("DHS") filed an opposition to this motion. The respondent later requested that we remand for consideration of a translation of the DVD and letters from the respondent's friend and mother regarding how the DVD was obtained. Lastly, the respondent filed a motion to remand for consideration of a declaration from Futsum Berhan Hadish, a member of his church who was detained with the respondent. The DHS did not file responses to these subsequent requests for remand.

Motions to remand are subject to the same substantive requirements as motions to reopen. *Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992). The evidence must be previously unavailable and could not have been discovered or presented at the former hearing. 8 C.F.R. § 1003.2(c)(1). A party who seeks to remand proceedings to pursue a discretionary grant of relief from removal bears a "heavy burden" of demonstrating that if the motion to remand were granted, the new evidence presented would likely change the result in the case. *Matter of Coelho, supra*, at 473. The motion must state the new facts to be proved and must be supported by evidentiary material. *Id.*

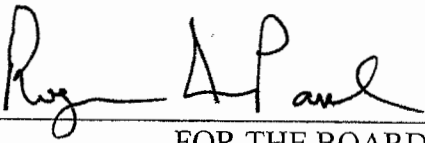
The respondent provided a letter from the respondent's friend explaining why he was unable to locate footage of the respondent until after his hearing. The respondent also submitted a declaration stating that his friend in Eritrea only obtained Mr. Hadish's e-mail address in late May 2008. Mr. Hadish's declaration indicates that the respondent contacted him in June 2008, and that although he first refused to assist him for fear of his own safety, he later decided to do so. Based on the foregoing, we find that the evidence in the motions to remand was previously unavailable.

Inasmuch as the documents submitted by the respondent on appeal address some of the reasons for the Immigration Judge's denial of relief, we find it appropriate to remand the record to the Immigration Judge for consideration of new evidence in this case. *See Matter of Coelho, supra*. Therefore, we will not address the merits of the respondent's appeal at this time.

Based on the foregoing, the following orders will be entered.

ORDER: The motion to remand is granted.

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