

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: ██████████ - San Antonio, TX

Date:

OCT 29 2008

In re: ██████████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Feroli, Esquire

ON BEHALF OF DHS: Thomas G. Crossan, Jr.
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent appeals from the decision of the Immigration Judge denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. The Department of Homeland Security (DHS) has filed a motion for summary affirmance of the Immigration Judge's decision. The appeal is sustained and this matter will be remanded for further proceedings.

The Immigration Judge's reliance upon the I-213 (record of inadmissible/deportable alien), and the minor discrepancies between the in-court testimony and the credible fear testimony is insufficient to support an adverse credibility finding. In the case of the I-213, there is no sworn record of an interview to indicate if the respondent was asked about whether he feared returning to Burma. In addition, the Immigration Judge's finding that in Burma an individual would not be released from prison and allowed to return to school is speculative, and unsupported by any specific reference to country conditions. *See Mwembie v. Gonzales*, 443 F.3d 405, 410 (5th Cir. 2006) (adverse credibility findings which are not supported by the record or are supported by speculation or conjecture will not be upheld).

Therefore, we will remand these proceedings to the Immigration Judge to enter new findings. The Immigration Judge should also consider the new translations of several documents submitted with the appellate brief, and make a decision on their reliability.

ORDER: The appeal is sustained and the record is remanded to the Immigration Judge for further proceedings not inconsistent with this opinion.



FOR THE BOARD