



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**Feroli, James, Esq.
IMMIGRANT & REFUGEE APPELLATE
CENTER, LLC
3602 Forest Drive
Alexandria, VA 22302**

**DHS/ICE Office of Chief Counsel - NYC
26 Federal Plaza, Room 1130
New York, NY 10278**

Name: [REDACTED]

Date of this notice: 11/30/2012

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:
Liebowitz, Ellen C

yungc

Userteam: Docket

Falls Church, Virginia 22041

File: [REDACTED] New York, NY

Date:

NOV 30 2012

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Feroli, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was previously before the Board on November 28, 2011, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his application for asylum and withholding of removal under sections 208(a)(1) and 241(b)(3) of the Immigration and Nationality Act ("Act"), 8 U.S.C. §§ 1158(a)(1), 1231(b)(3), and his request for protection under the Convention Against Torture. The respondent subsequently filed a motion to reopen, which was denied by the Board on May 7, 2012.

On July 18, 2012, the United States Court of Appeals for the Second remanded the case to the Board pursuant to the parties' stipulation and order of settlement and dismissal. We, in turn, will remand the record to the Immigration Judge for further proceedings.

The stipulation stated that the Board should re-evaluate the Immigration Judge's adverse credibility finding and his determination that the respondent failed to submit reasonably available corroborative evidence in support of his claim. Particularly, we should determine whether the Immigration Judge considered the sufficiency of the respondent's timely submitted documents in Exhibit 3 in finding that he failed to corroborate his claim. It was further stated that we could re-assess the Immigration Judge's adverse credibility finding, and re-examine our identification of an inconsistency not cited by the Immigration Judge and determine whether the respondent had an opportunity to explain the perceived inconsistency.

The respondent has since filed a brief which requests that we reverse the Immigration Judge or alternatively remand the record for further proceedings. The Department of Homeland Security has not submitted any response to the brief. In light of the stipulated order, the passage of time, and our limited fact-finding ability, we will remand the record to the Immigration Judge for further proceedings. *See generally Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We note that it is unclear from the record whether the Immigration Judge considered timely submitted evidence presented by the respondent in support of his claim (Exh. 3). On remand, the respondent will have the opportunity to address any perceived inconsistencies in this case,

including his testimony that his brother had not lived in Nepal since 2001 (I.J. at 12, 14; Exhs. 2, 4, 4B; Tr. at 22, 24-29, 43-47, 51-57). Further, the parties should be permitted to update the evidentiary record, and the Immigration Judge should issue a new decision evaluating the respondent's request for relief and protection.

ORDER: The Board's prior decisions are vacated, and 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