## U.S. Department of Justice

Executive Office for Immigration Review

Falls Church, Virginia 22041

File: - Boston, MA

Date:

JUL 1 0 2009

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In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT:

James Feroli, Esquire

APPLICATION:

Asylum; withholding of removal; protection under the Torture Convention

The respondent, a native and citizen of Cameroon, appealed from the decision of an Immigration Judge dated April 4, 2008, which found the respondent subject to removal as charged and denied the respondent's requests for asylum, withholding of removal and for protection under the Torture Convention, and ordered her removed. The appeal will be sustained and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof and issues of discretion, under a de novo standard. 8 C.F.R. §§ 1003.1(d)(3)(ii) and (iii); Matter of A-S-B-, 24 I&N Dec. 493 (BIA 2008).

The respondent is a native and citizen of Cameroon who claims that she has been and will be persecuted in that country because she is an active member of the Social Democratic Front (SDF) and the Southern Cameroon National Congress (SCNC). In her assessment of the respondent's case, the Immigration Judge found that the respondent was not credible and the respondent challenges this determination on appeal.

We find that the inconsistencies cited by the Immigration Judge are either not present in the record, are not substantial, or have been adequately explained by the respondent. See Matter of A-S-, 21 I&N Dec. 1106 (BIA 1998). The Immigration Judge cited the respondent's inability to remember whether she told the asylum officer that she was raped but such observation as to what a rape victim would remember is conjecture and speculative. See e.g. Perez-Alvarez v. INS, 857 F.2d 23, 24 (1st Cir. 1988). The Immigration Judge also cited the discrepancy between the respondent's first asylum application with her affidavit and testimony. The record reflects, and the Immigration Judge found, that such was a simple mistake which the respondent herself corrected. See Ly v. Mukasey, 524 F.3d 126 (1st Cir. 2008). The record also undermines the Immigration Judge's conclusion that the respondent was unfamiliar in major aspects with political organizations in Cameroon. In fact her unfamiliarity on the position of Mr. Mukete may be due to the fact that the respondent joined the organization after Mr. Mukete left Cameroon. On other aspects, the respondent

reflected detailed knowledge of Cameroon politics (Tr. at 52, 88-9). Finally the Immigration Judge's comment that the respondent's asylum request was similar to other applications from Cameroon that the Immigration Judge has adjudicated was inappropriate. The record reflects that the respondent testified in a detailed and consistent manner regarding her political activities, crucial dates significant to her claim, and the circumstances of her detentions and mistreatment.

An alien may establish eligibility for asylum by showing that he suffered persecution in the past on account of a protected ground. 8 C.F.R. § 1208.13(b)(1). In our review, we find that the respondent has demonstrated past persecution that was motivated on account of her political beliefs and activities. See Singh v. Ilchert, 63 F.3d 1501 (9th Cir. 1995). We find that the respondent has demonstrated that her mistreatment was motivated on account of her political beliefs, and her support for the SDF and SCNC. The police mentioned these activities as the basis for her detention and mistreatment. The respondent's mistreatment by the police, including the beatings and rape, was so severe as to rise to the level of persecution. Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988).

Once an alien has established past persecution, a presumption arises that the alien has a well-founded fear of persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). In such case, the burden of proof then shifts to the Department of Homeland Security ("DHS") to rebut the presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(ii). The DHS may meet this burden by showing, by a preponderance of the evidence, that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution." 8 C.F.R. § 1208.13(b)(1)(A). The DHS may also rebut the presumption of a well-founded fear of persecution by showing that the applicant for asylum could avoid future persecution by internal relocation to another part of the country where he or she fears persecution, and if, "under all circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(B).

In the present case, the DHS has not met its burden to show that the respondent could relocate in Cameroon or that conditions have changed so that the respondent no longer possesses a well-founded fear based on events since the respondent's departure. We shall remand proceedings however so that the respondent can comply with the required background checks.

ORDER: The appeal is sustained.

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 the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

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