

Falls Church, Virginia 22041

File: ██████████ - Dallas, TX

Date: FEB 28 2013

In re: ██████████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James Feroli, Esquire

ON BEHALF OF DHS: Michelle Allen-McCoy
Assistant Chief Counsel

APPLICATION: Asylum, withholding of removal, Convention Against Torture

The respondent, a native and citizen of Eritrea, appeals from the Immigration Judge's decision dated August 2, 2011, denying his applications for asylum pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A), withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c)-.18. The Department of Homeland Security (DHS) opposes the appeal. The record will be remanded.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii). Because the respondent filed his asylum application after May 11, 2005, it is governed by the provisions of the REAL ID Act. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

As an initial matter, we are not persuaded by the respondent's assertion that he was pro se before the Immigration Judge (Respondent's Br. at 9-11). The electronic records reflect that a Form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court, was filed with the court by ██████████ on April 6, 2011.

The respondent challenges the Immigration Judge's adverse credibility finding (I.J. at 16-27). The Immigration Judge expressed several legitimate concerns about the respondent's testimony. For example, the respondent testified that he remained in Kassala, Sudan for 10 days, but his declaration indicates that he stayed there for about 4 months (Tr. at 58; Exh. 7, Tab 1). However, the Immigration Judge's adverse credibility finding was largely based on discrepancies between the respondent's testimony, statements he made to a Customs and Border Protection officer during an interview on November 14, 2010, and statements he made to an asylum officer during a credible fear interview on December 9, 2010 (Exhs. 8, 9). The Immigration Judge appears to have concluded that the December 9, 2010, interview was an asylum interview rather than a credible fear interview (I.J. at 22). Because it is unclear if the Immigration properly considered the scope of these interviews or the circumstances under which the respondent's statements were made, we will remand the record for the Immigration Judge to further consider the respondent's

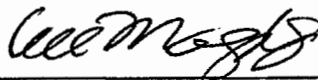
credibility under the totality of the circumstances. See section 208(b)(1)(B)(iii) of the Act (indicating that a credibility determination based on discrepancies in an applicant's written or oral statements must take into consideration the circumstances under which the statements were made).

Further, the respondent claims that he will face future persecution in that country because he is a Pentecostal Christian (Exh. 5 at 5). However, the Immigration Judge's decision does not contain a finding as to whether the respondent is a Pentecostal Christian. Accordingly, on remand, the Immigration Judge should determine in the first instance whether the respondent is a Pentecostal Christian and if so whether he faces a well-founded fear of persecution on this basis. The Immigration Judge should also determine whether the respondent has demonstrated a "pattern or practice of persecution" of persons similarly situated to the respondent on account of an enumerated ground. See 8 C.F.R. § 1208.13(b)(2)(iii)(A).

The Immigration Judge also determined that the respondent did not demonstrate his eligibility for protection under the Convention Against Torture. However, the Immigration Judge did not provide a factual or legal basis for this determination apart from his finding that the respondent was not a credible witness (I.J. at 28-29). Accordingly, on the remand, the Immigration Judge should further consider the Respondent's eligibility for protection under the Convention Against Torture.

In light of the foregoing, the record will be remanded for further proceedings. The following order shall be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings not inconsistent with this order and for the entry of a new decision.



FOR THE BOARD