



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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155 So. Miami Ave., Rm. 500
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Name: HAMDAN, MOHAMMED

A75-861-562

Date of this notice: 09/29/2003


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

Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:

COLE, PATRICIA A.
FILPPU, LAURI S.
HESS, FRED

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INGRAMJ

Falls Church, Virginia 22041

File: A75 861 562 - Miami

Date: SEP 29 2003

In re: MOHAMMED ABDELLAZIZ HAMDAN

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Thomas Hutchins, Esquire

ON BEHALF OF DHS: Steven A. Goldstein
Assistant District 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

In a decision dated March 10, 2000, the Immigration Judge found the respondent credible, and determined that he had suffered past persecution in Sudan on account of his Umma political opinion (I.J. 9-10). She denied relief after determining that the Department of Homeland Security ("the DHS," formerly the Immigration and Naturalization Service) proved the respondent did not face a well-founded fear in Sudan (I.J. at 17-27). The respondent has appealed the denial of his applications 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 for relief under Article 3 of the United States Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment of Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51 at 197, U.N. Doc. A/39/51 (1984) (Convention Against Torture); *see also* 8 C.F.R. § 1208.18. The Immigration Judge has also certified this case for review. 8 C.F.R. § 1003.7. The appeal will be sustained and the respondent will be granted asylum in the United States.¹

The issue both on appeal and certified by the Immigration Judge is whether the DHS rebutted the regulatory presumption that, having suffered past persecution, the respondent faces a well-founded fear of persecution in Sudan on the basis of his original claim. 8 C.F.R. § 1208.13(b)(1). We find that the DHS did not meet its burden. We note that we agree with the Immigration Judge's finding that the evidence in the record shows that "conditions in Sudan have not improved and [the DHS] does not argue otherwise Sudan today remains the same as it did

¹ The respondent's request for oral argument is denied. 8 C.F.R. § 1003.1(e).

when [the r]espondent was beaten in 1995 and when he left in 1997" (I.J. at 17). *See e.g.*, Exh. 13 at Tab 1. And, after considering the record as a whole, we conclude that the DHS did not demonstrate by a preponderance of the evidence that there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution in Sudan.

Accordingly, we find the respondent eligible for asylum. Section 208 of the Act; 8 C.F.R. 1208. Because there is no adverse factor contravening a favorable exercise of discretion regarding his application, we conclude that the respondent merits a grant of asylum in the exercise of discretion. Inasmuch as the respondent's asylum application will be approved, we need not address his applications for withholding of removal or relief under the Convention Against Torture.

ORDER: The appeal is sustained and the respondent is granted asylum pursuant to section 208 of the Act.



FOR THE BOARD