



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Falls Church, Virginia 22041

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Memphis, TN 38103

Name: [REDACTED]

A [REDACTED]

Date of this notice: 8/19/2013

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

Sincerely,

Donna Carr **COPY**

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.
Donovan, Teresa L.
Wendtland, Linda S.

TranC
User team: Docket

ms



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Name:



A



Date of this notice: 8/19/2013

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Cole, Patricia A.
Donovan, Teresa L.
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Userteam: Docket

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] - Memphis, TN

Date: AUG 19 2013

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: [REDACTED]

ON BEHALF OF DHS: [REDACTED]

Assistant Chief Counsel

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

The respondent, a native and citizen of Jordan, appeals the Immigration Judge's decision dated May 6, 2011. The Immigration Judge denied the respondent's applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3), respectively, and his request for protection under the Convention Against Torture. The appeal will be sustained.

The respondent, while not alleging past persecution, expresses a fear of future persecution based on his efforts to sell land—which his father bestowed to him in 2006—to the Israeli government (I.J. at 4-5, 12). He argues that the government seized the land in question from his father in 2005 and since it continues to occupy such land, he must necessarily negotiate with Israeli authorities in order to sell the property and receive compensation, which he and his family need. However, he states that the Palestinian Authority prohibits Arabs from transferring land to Israelis, while punishing such acts with death, and that Hamas—which is currently in power in Palestine and is supported in Jordan—"has a history of carrying out extrajudicial murders of Palestinians suspected of collaborating with Israelis" (Respondent's Br. at 3-4, 6-7).

We see no clear error in the Immigration Judge's positive credibility finding but disagree with her conclusion that the respondent did not qualify for relief (I.J. at 12-14). See 8 C.F.R. § 1003.1(d)(3)(i)-(ii) (the Board reviews an Immigration Judge's factual and credibility findings for clear error and reviews questions of law and discretion de novo). In particular, we find that the respondent presented a well-founded fear of persecution. Specifically, while the Immigration Judge did not address the issue of nexus, we agree with the respondent that he established a cognizable fear of persecution on account of his imputed political opinion based on his actual or suspected dealings with the Israeli government (Tr. at 43; Respondent's Br. at 6). See *Matter of S-E-G-*, 24 I&N Dec. 579, 588 n.5 (BIA 2008) (whether the respondents established that they were persecuted "on account of" a protected ground is subject to de novo review).

In this matter, the Immigration Judge was satisfied that the respondent met—through his credible testimony and the testimony of his witnesses, along with other corroborating materials—his burden in establishing a subjective fear but that he did not offer sufficient evidence to show the objective reasonableness of his claim (I.J. at 12-13; Respondent's Br. at 5). *See, e.g., Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987); *see also Pilica v. Ashcroft*, 388 F.3d 941, 950-51 (6th Cir. 2004) (an applicant claiming a well-founded fear of persecution bears the burden of proof to show that the potential harm rises to the level of persecution on account of one of the protected grounds and that the government, or persons the government is unable or unwilling to control, is the source of the persecution) (*citing* 8 C.F.R. § 1208.13(a)). While we need not address the entirety of the Immigration Judge's decision, we conclude that the Immigration Judge erred, as a matter of law, in determining that the respondent did not establish that his fears were objectively reasonable.

On appeal, the respondent disputes the Immigration Judge's finding that he has not yet committed acts that will expose him to persecution given that he has not yet entered into an agreement with the Israeli government to sell his land (I.J. at 13; Respondent's Br. at 6-7). We agree with the respondent that the actions already taken by him and his family—based on their negotiations over the past 3 years with the Israeli government to sell the land in order to receive compensation—are probative of his fear of persecution despite the fact that no formal agreement with the government has yet taken place (Tr. at 51-52; Respondent's Br. at 6-7). Specifically, while the Immigration Judge drew a distinction (i.e., based on a recent affidavit from the respondent's Israeli attorney) between the respondent's attempt to lease the land and "an outright sale" thereof, the Immigration Judge did not specifically reject the respondent's assertion that merely being suspected of negotiating land transactions with the Israeli government "is enough to trigger persecution by Hamas and the Palestinian Authority" (I.J. at 13; Respondent's Br. at 6). *See generally Hamdan v. Mukasey*, 528 F.3d 986, 989 (7th Cir. 2008) (noting that the 2004 State Department country report "stated that Palestinian militant groups killed, injured, or arbitrarily detained Palestinians suspected of collaborating with Israel; in fact, the report called the torture of suspected collaborators 'widespread.'").

In addition, given the respondent's uncontested claim that he has no option of dealing with any entity other than the Israeli government in order to receive any form of compensation for the seized property, we conclude that the Immigration Judge erred in holding that he must show that he would be forced to sell the land out of economic necessity (I.J. at 6, 13-14; Tr. at 47-48; Respondent's Br. at 7). Specifically, the Immigration Judge's decision in this regard is not supported by any case law or other legal authority and, moreover, the negotiations over the land transaction have already been initiated and appear to be ongoing (Respondent's Br. at 7-8). Further, while the Immigration Judge cited the lack of financial records of the respondent's family's financial situation, we note that asylum applicants should not be faced with unreasonable demands for corroboration, particularly given that an alien's credible testimony may be sufficient to meet his burden of proof for relief (I.J. at 13; Respondent's Br. at 7). *See Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997).¹

¹ As noted by the Immigration Judge, the respondent's asylum application is not subject to the REAL ID Act of 2005 (I.J. at 8). *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

We also agree with the respondent that he would be at risk for persecution in Jordan given that Jordanian law—as well as the law in Palestine, as noted below—still appears to bar, to some degree, such land transactions with Israel (Group Exh. 5; Respondent's Br. at 8-10). Further, while the Immigration Judge found that the respondent's evidence as to the documented persecution of Palestinians who sell land to Israelis is irrelevant given that the respondent would be removed to Jordan, as opposed to Palestine, we are persuaded by the respondent's account that it is foreseeable that both the Palestinian and Jordanian governments would be notified of such a transfer of land, which is located in an area claimed by both Israel and the Palestinian authority (Respondent's Br. at 10-11). As such, despite the Immigration Judge's concern as to the lack of specific reports "on the transfer of land from Jordanians to Israelis," we agree with the respondent that he presented sufficient evidence establishing a reasonable possibility of facing persecution from the Palestinian Authority, Hamas, or supporters thereof if returned to Jordan (I.J. at 14; Respondent's Br. at 9-11).

Further, while attaching and referencing several news reports on appeal, the respondent states that the Palestinian Authority continues to seek the death penalty for any Arab convicted of selling land to Israelis (Respondent's Br. at 11). See 8 C.F.R. § 1003.1(d)(3)(iv) (allowing the Board to take administrative notice of commonly known facts such as current events). While the Department of Homeland Security (DHS) requests that the Board summarily affirm the Immigration Judge's decision, it has not meaningfully addressed the respondent's appellate brief or proffered materials on appeal.

Based on the foregoing, we find that the respondent has met his burdens of proof and persuasion in demonstrating eligibility for asylum. See *Matter of A-S-*, 21 I&N Dec. 1106, 1112 (BIA 1998). Specifically, given the respondent's credible testimony and supporting evidence, we find that he established a well-founded fear of persecution as contemplated by the Act. We further hold that the respondent is eligible for asylum and that he merits relief as a matter of discretion. As such, we will sustain the respondent's appeal and remand the record so that the required background and security checks may be completed. Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained and the Immigration Judge's decision is vacated.

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(b).


FOR THE BOARD

Temporary Board Member Teresa L. Donovan respectfully dissents without separate opinion.