

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
OAKDALE, LOUISIANA

~~AUG 19 2015~~

AUG 20 2015

SCANNED

IN THE MATTER OF

IN REMOVAL PROCEEDINGS

Respondent

CHARGE:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS:

Asylum
Withholding of Removal pursuant to INA § 241(b)(3)
Withholding of Removal pursuant to the Convention Against Torture

ON BEHALF OF RESPONDENT:

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ON BEHALF OF THE DEPARTMENT:

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DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. PROCEDURAL & FACTUAL HISTORY

On February 3, 2015, the U.S. Department of Homeland Security, Immigration and Customs Enforcement ("DHS") issued Respondent a Notice to Appear ("NTA"), alleging that he is a native and citizen of Bangladesh who applied for admission to the United States at the Laredo, Texas Port of Entry on January 2, 2015, and did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. Based on these allegations, the DHS charged Respondent as removable pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("Act").

At the hearing on April 2, 2015, Respondent admitted the factual allegations contained in the NTA. Based on Respondent's admissions and the evidence submitted into the record, the Court found Respondent removable as charged. Respondent declined to designate a country of removal; the Court designated Bangladesh. Respondent indicated that he would seek asylum,

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withholding of removal, and relief under the Convention Against Torture as relief from removal. The case was reset for him to submit Form I-589, Application for Asylum and for Withholding of Removal.

On May 6, 2015, Respondent appeared before the Court and submitted his completed application but indicated that it contained several errors. The Court reset the case to July 15, 2015. At that hearing, Respondent, through counsel, submitted an amended application for relief. Respondent then provided testimony in support of his application and the Court reserved a decision on the matter. The Court now issues this written decision regarding Respondent's application for relief from removal.

II. APPLICABLE LAW

A. Credibility

The REAL ID Act expressly requires the applicant to prove that his or her testimony is credible. See REAL ID Act § 101(a)(3)(B)(ii). For applications filed on or after May 11, 2005, the following factors may be considered in the assessment of an applicant's, or witness's, credibility: his or her demeanor, candor, and responsiveness; the inherent plausibility of his or her account; the consistency between his or her oral and written statements; the internal consistency of such statements; the consistency of such statements with other evidence of record; any inaccuracies or falsehoods in such statements; whether or not such inaccuracy, falsehood, or inconsistency goes to the heart of his or her claim; and any other relevant factor. INA § 208(b)(1)(B)(iii). There is no presumption of credibility; however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal. Id.

Uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the alien's burden of proof. See INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.16(c)(2). However, where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence must be provided as long as the applicant has the evidence or can reasonably obtain it. Id.

B. Statutory Bars to Asylum and Withholding of Removal

An applicant is barred from seeking asylum and withholding of removal under the Act if he or she has engaged in terrorist activity or is a member of a terrorist organization or political or social group that endorses or espouses terrorist activity. INA §§ 208(b)(2)(v); 241(b)(3)(B)(iv); see also INA § 212(a)(3)(B)(i), (iv). The term "engage in terrorist activity" includes committing an act that the actor knows, or reasonable should know, affords material support, including a safe house, transportation communication, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons, explosives, or training to a terrorist organization or any member thereof. INA § 212(3)(B)(iv).

As to the materiality of the support, neither the Fifth Circuit nor the BIA has resolved this issue. However, the BIA noted that Congress has not expressly indicated its intent to provide an exception for contributions that are *de minimis*. See Matter of S-K-, 23 I&N Dec. 936, 945 (BIA 2006). Though there is no *de minimis* standard, the term "material" cannot be overlooked when evaluating the significance of support given. In fact, the BIA acknowledged that the argument

that “material” should be given independent content is not a frivolous argument. *Id.* The term “material” is defined as: (1) of or relating to matter; physical; (2) having some logical connection with the consequential facts; (3) of such a nature that knowledge of the item would affect a person's decision-making; significant; essential. BLACK’S LAW DICTIONARY 1066 (9th ed. 2009).

C. Asylum

In order to establish an asylum claim, the applicant must demonstrate that he or she is included within the definition of refugee under section 101(a)(42)(A) of the Act. INA § 208(b)(1)(A). The Act defines “refugee” as one who is unable or unwilling to return to the country of removal because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Persecution is defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon those who differ in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222-23 (BIA 1985). The applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecution. INA § 208(b)(1)(B)(i). The applicant must also establish that the persecution was or will be inflicted by the government of the country of removal or by individuals or groups the government is unable or unwilling to control. *Acosta*, 19 I&N Dec. at 222.

An applicant may qualify as a refugee if he or she suffered past persecution. 8 C.F.R. § 1208.13(b). An applicant who is found to have established past persecution shall also be presumed to have a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). That presumption may be rebutted if the DHS demonstrates, by a preponderance of the evidence, either: (1) a fundamental change in circumstances; or (2) the applicant could avoid future persecution by relocating to another part of the country and it would be reasonable to expect him or her to do so. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

An applicant may also qualify as a refugee if he or she has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b). The applicant has a well-founded fear of persecution if: (1) he or she fears persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility that he or she will suffer such persecution upon his or her return; and (3) he or she is unable or unwilling to return or avail himself or herself of the protection of the country of removal. 8 C.F.R. § 1208.13(b)(2)(i)(A)-(C). Nevertheless, there is no well-founded fear of persecution if the applicant could avoid future persecution by relocating to another part of the country and it would be reasonable to expect him or her to do so. 8 C.F.R. § 1208.13(b)(2)(ii).

D. Withholding of Removal pursuant to INA § 241(b)(3)

In order to establish a withholding of removal claim, the applicant must establish a clear probability that his or her life or freedom would be threatened in the country directed for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3)(A); see *INS v. Stevic*, 467 U.S. 407 (1984). This means that he or she must establish that it is more likely than not that he or she would be subject to persecution on account of one of the specified grounds. *Id.* The applicant bears the same burden of proof and the Court shall make the same credibility determinations as with asylum. INA § 241(b)(3)(C).

Withholding of removal is not a discretionary form of relief. If the applicant establishes eligibility, his or her application must be granted. INA § 241(b)(3).

An applicant may qualify for withholding of removal if he or she suffered past persecution. 8 C.F.R. § 1208.16(b)(1). An applicant who is found to have established past persecution shall also be presumed to have a fear of future persecution. Id. That presumption may be rebutted if the DHS demonstrates, by a preponderance of the evidence, either: (1) a fundamental change in circumstances; or (2) the applicant could avoid future persecution by relocating to another part of the country and it would be reasonable to expect him or her to do so. 8 C.F.R. § 1208.16(b)(1)(i)(A)-(B).

An applicant may also qualify for withholding of removal if his or her life or freedom would be threatened in the future. 8 C.F.R. § 1208.16(b)(2). The applicant must establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. Id. There is no fear of persecution if the applicant could avoid future persecution by relocating to another part of the country and it would be reasonable to expect him or her to do so. Id.

E. Withholding of Removal pursuant to the Convention Against Torture

An applicant seeking protection under the Convention Against Torture must establish that it is more likely than not that he or she would be tortured if returned to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). “Torture” is defined as severe physical or mental pain or suffering that is intentionally inflicted upon a person for purposes such as: (1) obtaining information or a confession; (2) punishment for an act committed or suspected of having committed; (3) intimidation or coercion; or (4) any reason based on any kind of discrimination. 8 C.F.R. § 1208.18(a)(1). Torture is an extreme form of cruel and inhuman treatment that does not include pain or suffering arising from lawful sanctions. 8 C.F.R. § 1208.18(a)(2) & (3).

Furthermore, the pain and suffering must be inflicted “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.” 8 C.F.R. § 1208.18(a)(1). The Fifth Circuit has recently adopted the Attorney General’s interpretation of “acting in an official capacity” as “acting under color of law.” Garcia v. Holder, 756 F.3d 885, 891 (5th Cir. 2014). Under this standard, an act is under color of law when it constitutes a “misuse of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” Id. at 891-92. The inquiry turns upon the nexus between the applicant, the public official, and the official’s performance of his or her official duties. Id. With regards to “acquiescence,” the public official must have had prior awareness of the tortuous activity and thereafter breached his or her legal duty to intervene. 8 C.F.R. § 1208.18(a)(7). “Willful blindness” is sufficient to prove acquiescence. Ontunez-Tursios v. Ashcroft, 303 F.3d 341 (5th Cir. 2002).

In assessing whether an applicant has satisfied the burden of proof, the Court must consider all evidence relevant to the possibility of future torture, including: (1) evidence of past torture; (2) evidence that the applicant could relocate to a part of the country of removal where he or she is not likely to be tortured; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal; and (4) other relevant information regarding country conditions. 8 C.F.R. § 1208.16(c)(3).

III. EVIDENCE PRESENTED

A. Documentary Evidence

- Exh. 1: Notice to Appear (dated February 3, 2015)
- Exh. 2: Form I-589 Application for Asylum and for Withholding of Removal (Amended July 15, 2015) (Tab A)
- Exh. 3: Respondent's Submission of Documents (Tabs A-M)¹
- Exh. 4: DHS's submission of Documents (Tabs A-FF)
- Exh. 5: Form I-867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act

B. Testimony of Respondent

Respondent was born on November 15, 1988, in Raipura, Bangladesh. On February 26, 2014, he flew from Bangladesh to Dubai, from Dubai to Brazil, and from Brazil to Ecuador before ultimately traveling by vehicle from Ecuador to the United States. Respondent testified that he ultimately arrived in the United States on January 2, 2015, and stated that he did not apply for asylum in any of the nations that he traveled through. Upon arriving at the United States border, he surrendered himself to immigration officials and requested asylum.

Respondent testified that he was threatened with death, tortured, and beaten on several occasions in Bangladesh by the Awami League ("AL") (the ruling party of Bangladesh), their allies, and the police as a result of his political affiliation with, and ties to, the Bangladesh National Party ("BNP"). He explained that he worked for the BNP and stated his father held a leadership position within the organization.

Respondent stated that he first encountered the AL sometime between 2010 and 2011. During that time, he received threatening telephone calls; however, he explained that AL members ultimately approached him at his rice shop and threatened him with harm if he and his father did not stop working for the BNP. Respondent then affirmed that despite such encounters, he was not physically harmed by members of the AL until August of 2011. On that incident, he and two other individuals were apprehended by AL members as they made their way home from a BNP meeting. Upon being questioned regarding his whereabouts, Respondent told the assailants that he was returning home from the local marketplace. He then claimed that the assailants further questioned him regarding his reason for going to the market place, accused him of attending the BNP meeting, and proceeded to beat him. In an attempt to save his life, Respondent managed to escape and ran towards the jungle.

Upon further questioning regarding this event, Respondent testified that he was certain that the individuals who apprehended him in August of 2011 were AL members because he recognized some of the men from the incident at his shop. Respondent then claimed that but for

¹ The Court entered the documents contained within the exhibit into evidence over the DHS's objection but indicated that it would accord the documents the weight deemed necessary.

his political beliefs, he has no enemies in Bangladesh. He explained that after escaping into the jungle, he returned home. The next day, he went to the police station to file a complaint against the assailants; however, he stated that upon informing the police of the assailant's identities, police refused allow him to file a complaint and informed him that they could take any complaints against members of the ruling party. Respondent then indicated that upon making this request, AL members who were at the police station instructed the police to detain him. The police complied with their requests and detained Respondent for two days. He testified that during that time, he was deprived of food and water, bound by his arms and legs, and consistently beaten. He then explained that his father paid 20,000 Bangladeshi Taka ("BDT") to secure his release and was told not to participate in any BNP activities.

Respondent testified that he was again approached by members of the AL after being released from police detention. On that occasion, AL members entered his rice shop and stole bags of rice. He explained that despite their actions, he was unable do or say anything out of fear.

Respondent further testified that he encountered AL members for a third time on November 10, 2012. On that date, the local BNP branch organized a meeting to discuss the wrongdoings of the government. Approximately 30 minutes after the meeting commenced, 40 to 50 members of the AL entered the meeting place and began beating the 200 to 300 BNP individuals who were in attendance. He was certain that this attack was orchestrated by the AL because the assailants used AL symbols and slogans. Upon further questioning, Respondent explained that eight to ten police officers were also present during this attack but testified that they assisted the AL members rather than diffusing the situation or providing BNP members with protection.

Respondent testified that when the November 10, 2012, attack occurred, he, his father, and other senior BNP officials attempted to shelter themselves inside of the BNP office; however, he explained that police officers soon thereafter broke down the doors of the building in which they were hiding. At that point, the police physically and verbally abused him before ultimately detaining him for six days. Respondent then claimed that the police later informed him that even though no complaints were filed against him, he was being detained because of he worked and was affiliated with the BNP.

When further questioned regarding this detainment, Respondent stated that upon being transported to the local police station, officers bound him by the arms and legs and beat him until his skin cracked. That night, he was questioned by the police chief regarding his reasoning for continuing to work for the BNP despite previous threats and warning by AL members. Respondent informed the police chief that he had a constitutional right to participate in and affiliate with the political party of his choice; however, he explained that upon doing so, the police chief became extremely angry, held a gun to his head, and threatened to kill him and hide his remain. He then stated that despite making such treats, the police chief later offered to spare his life in exchange for a fee of 50,000 BDP. Respondent was then detained for an additional five days until his father was able to produce the requested fee. Upon being released, he immediately sought medical treatment and was hospitalized for two days.

Respondent further stated that he was again attacked by the AL on the night of December 5, 2013. He explained that on that occasion, a group of men arrived at his home and began

shouting for him to go outside.² Upon noticing that these individuals were AL members, he was too afraid to go outside. He then explained that in an attempt to distract the individuals, his mother went outside and spoke to them while he attempted to escape out of a back door of his home; however, the AL members noticed him and threw iron rods and sticks at him. He then explained that he sustained cuts on his legs and back as a result of being struck but was able to flee and seek medical treatment.

Respondent testified that there was an election in Bangladesh on January 5, 2014. In anticipation that the election would spark another attack by AL members, he attempted to avoid harm by going into hiding. Respondent then testified that AL members searched for him on January 8, 2014, as he predicted. On that occasion, the assailants questioned his parents about his location and ransacked their home. He claimed that his father then called him and suggested that in the interest of his safety, he should not return home. Respondent explained that he remained at his sister's home until February 26, 2014, but ultimately departed the nation because he feared that his presence would subject his family to future harm.

Respondent testified that his father is the president of his area's local BNP branch. He stated that despite holding a leadership position, his father was not harmed because he is elderly. Respondent also claimed that the AL believed that by injuring him, rather than his father, they could end his father's involvement with the BNP, explaining that his father is unable to conduct activities without his assistance. He then claimed that even though he himself was only a lay member of the party, his involvement within the party and the assistance he provided to his father gave him great potential to rise within the party's ranks. Respondent explained that he gathering public opinions of BNP candidates during elections and distributed items during national disasters. He further affirmed that at no point during his involvement with the BNP did he participate in or support violent activities.

On cross-examination, Respondent testified that he used his own passport to travel between Bangladesh and Dubai but explained that his passport was taken from him by smugglers as he traveled between Columbia and Panama. He confirmed that he did not take any other identity documents with him on his journey to the United States. Respondent then stated that he submitted school records and other documents from his father and the BNP; however, he explained that his father was unable to send his birth certificate or national identification card. When the DHS attorney questioned him regarding the citizenship and character certificate he submitted into evidence, Respondent explained that his father was able to obtain the document from a branch of the national government.

When questioned by the DHS attorney regarding his involvement with the BNP, Respondent clarified that he began assisting his father in political activities in 2007 but did not officially register as a member of the party until 2008. Respondent confirmed that he was interviewed by an immigration official upon entering the United States. He indicated that he could not recall the exact questions the interviewing officer asked regarding the date of his initial involvement in the BNP but was certain that he told the interviewing officer that he began

² Respondent's Counsel asserted that Respondent's declaration attached to his I-589 application includes a typographical error on page three, paragraph two, line two where it indicates that "Some unwanted league members came to my house" He then asserted that the line should properly reflect that "Some *Awami* league members came to my house" See Exh. 2.

assisting the party at either the end of 2006 or beginning of 2007. When the DHS attorney pointed out that the record of the interview indicates that he told the officer that he became affiliated with the BNP in 2005, Respondent was unable to recall whether he told the officer he began working for the party in 2005 but affirmed that even though he did not officially become a registered member of the party until 2008, he began assisting his father before that time. He further explained that at the time of that interview, he had not eaten for days and his anxiety levels were extremely high.

Respondent testified that the BNP flag is red and green and contains a symbol of prosperity. To retain membership in the party, he paid an annual membership fee of 5 BDP and explained that he joined the BNP because it promotes democracy. He stated that the BNP last participated in a national election on December 29, 2008. Upon further questioning regarding that election, Respondent stated that to his knowledge, the BNP candidate received approximately 30% of the nation's votes; however, he was uncertain as to how many individuals in Bangladesh are BNP members.

Respondent confirmed that his father is the president of his local BNP chapter. He explained that his father is well-liked and respected by many people. Respondent confirmed that he did not belong to any BNP student groups but explained that he attended many BNP meetings, including those regarding his local chapter's governance. When the DHS attorney questioned him regarding the frequency of such meetings, Respondent stated that his local chapter held a monthly party meeting but clarified that impromptu meetings frequently occurred when issues arose. He then confirmed that he neither spoke at any of the meetings he attended nor did he attend any political rallies or make any financial contributions other than his annual dues. Respondent also testified that he did not provide the BNP with food or water but clarified that he assisted his father and the local relief committee in passing out supplies to individuals in need after natural disasters.

Respondent clarified that in 2010, he was threatened by AL members at his home and twice over the telephone. He then explained that he was not physically harmed by AL members in 2010 but stated that such individuals went to his store and advised him to cease his involvement in and affiliation with the BNP. Respondent further clarified that the harm and threats he experienced was not always inflicted by the same members of AL. He confirmed that he submitted a detailed statement into evidence regarding the harm he suffered in Bangladesh. When the DHS attorney noted that the document does not contain information regarding the harm he suffered in 2010, Respondent affirmed that he specifically indicated in his statement that he was threatened by AL members prior to the 2011 attack. The DHS attorney then questioned Respondent as to whether there were any reasons as to why the record of his sworn statement obtained by immigration officials shortly after he arrived in the United States did not include information regarding the 2010 threats he experienced. In response, Respondent indicated that (at the time of the interview) he was under the impression that he was being questioned about the incidents of physical harm. He then explained that he did not specifically discuss such threats at that time because he did not believe that the threats alone were relevant to his claim of persecution.

Respondent confirmed that he submitted a certificate from the Creative Social Organisation [sic] ("CSO"), a local organization he volunteered with to help the poor in his hometown. He affirmed that the CSO was not affiliated with any political parties.

When the DHS attorney questioned Respondent regarding the incidents of physical harm he experienced in Bangladesh, he confirmed that the first incident of harm occurred in 2011 as he made his way home from a BNP meeting. He explained that on that occasion, approximately eight to ten AL members attacked him and his friends and beat them with sticks. He sustained injuries on his back and confirmed that he sought treatment from an uncertified village doctor before seeking police assistance. When further questioned, Respondent stated that he returned to the same doctor after being released from detention and explained that he did not mention either incident of treatment in his submitted declaration because the treatment he received did not come from a certified doctor or established medical facility that could provide documentation.

Respondent testified that he feared for his life after being detained by the local police in August of 2011. He explained that despite such fears, tried his hardest to remain in Bangladesh and had hope that there would be some form of political change. Respondent confirmed that he was physically harmed a second time on November 10, 2012, but affirmed that he encountered AL members prior to that event, including the incident in which AL members stole rice from his store. Respondent then stated that he reduced the amount of BNP activities he participated in after the August 2011 incident but explained that he continued some BNP events and assisted his physically disabled father in carrying out his political duties.

Respondent confirmed that he attended a BNP meeting on November 10, 2012. When the DHS attorney noted that Respondent's declaration indicates that he attended that meeting as a "lesoner," Respondent stated that the declaration contains several misspelt words. He then confirmed that he was merely an audience "listener" and that he did not speak at the meeting. Upon further questioning regarding this meeting, Respondent confirmed that the BNP did not invite AL members to this meeting. When the DHS attorney later noted that his I-589 application indicates that his father conducted a meeting on that day with the opposing party, Respondent explained that in Bangladesh, the BNP party is known as the opposition party.

Respondent testified that Meszhbah Uddin Abur Nur, a BNP leader and former chairman of the BNP union, was in attendance at the November 10, 2012, meeting. Respondent then stated that Mr. Nur is the current vice president of the Raipura branch of the BNP and explained that he holds a higher ranked position than his father, who is the president of a unit within Raipura branch. When further questioned regarding the AL attack that occurred at the November 10, 2012, meeting, Respondent confirmed that he, his father, Mr. Nur, and approximately seven or eight other senior BNP leaders locked themselves in the party office. He affirmed that despite such efforts to protect themselves, the police and AL members broke down the doors and discovered them. Respondent then confirmed that even though he was beaten and detained by such individuals upon being discovered inside the party's office, neither his father nor any of the other senior leaders were physically harmed or detained.

Respondent further confirmed that as a result of that event, he was transported to the local police station where he was further detained and beaten by police officers before being summoned by a higher ranked police official. Upon speaking to that official, he was further

beaten and detained without food, water, or medical treatment for an additional five days. He confirmed that upon being released from police detention, he immediately sought medical treatment for the injuries he sustained during his detainment. As a result of that incident, Respondent experienced severe and persistent pain and multiple lacerations. He further explained that despite being detained for five day after being beaten with sticks, his wounds were still bleeding when he obtained medical treatment upon his release.

Respondent confirmed that AL members again subjected him to physical harm on December 5, 2013. When the DHS attorney questioned him regarding his encounters with the AL between the November 2012 incident and that time, he stated that he was threatened on several incidents but was not physically harmed. He also stated that the AL did not subject him to as much harm during that time because he reduced his participation in BNP activities. Respondent also confirmed that due to his father's reliance on his assistance, it is his belief that AL members harmed him in an attempt to stop his father's involvement with the BNP.

When the DHS attorney further questioned Respondent regarding the December 2013 incident, he affirmed that he was struck with sticks and a metal rod as he ran from his home. As a result of this incident, he sustained cuts and marks on his legs and other areas of his body. He confirmed that he immediately sought medical treatment; however, when the DHS attorney noted that the medical report submitted into evidence regarding that event states that he was bleeding, had marks on legs and tail area, and had been struck by a knife, Respondent explained that he sustained several cuts upon falling into a thorny plant during his escape. He then stated that he did not include information regarding this event in his first I-589 application because he had very little time to complete the application and that he struggles with the English language. He also noted that at his first hearing, he informed the Immigration Judge that his application contained errors and requested an opportunity to amend it.

Respondent confirmed that he understands some English and testified that he was later able to draft the four page document attached to his application for relief entitled "Why do you like or support B.N.P." He explained that despite his difficulty with the English language, he had ample time to draft the document, yet notes that it contains several grammatical errors and misspelled words.

Respondent testified that his parents are alive and both reside in Bangladesh. He has one brother and four sisters; however, he confirmed that none of his siblings are members of the BNP. He testified that in order to travel from Bangladesh to the United States, he paid a smuggler approximately \$16,000 USD from funds his father acquired by selling part of his homestead. Respondent then confirmed that upon departing Bangladesh, he traveled through various nations but explained that he did not apply for asylum in any of those nations due to their substandard safety and human rights conditions.

On redirect examination, Respondent testified that Bengali is his best language. He explained that he is somewhat able to read in English but affirmed that he is not proficient. Respondent then affirmed that he was not provided an opportunity to read the record of sworn statement that was generated from his initial interview with immigration officials in January of 2015.

Upon further questioning, Respondent stated that to his knowledge, he does not believe that any of his encounters with AL members in 2010 resulted in a physical attacks. He explained that in Bangladesh, his family is considered to be a part of the middle class and stated that it was very difficult for his father to collect \$16,000 for him to travel to the United States.

Respondent confirmed that he submitted his I-589 application to the Immigration Court on May 6, 2015, but explained that he submitted a second application on July 1, 2015. When questioned regarding his applications, he stated that the second application he submitted is more accurate because, unlike the first application, he had adequate time to prepare the July application.

C. Country Conditions

The Court takes notice of the Bangladesh 2013 Human Rights Report ("Country Report") released by the U.S. Department of State, Bureau of Democracy, Human Rights, and Labor. Exh. 4, Tab CC; Exh. 3, Tab L. The Country Report has significant probative value because general background information about a country, where applicable, must be included in the record as a foundation for an applicant's claim for asylum and withholding of removal. Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997). The U.S. Department of State is the most appropriate source to obtain information on the political atmosphere in foreign countries. Rojas v. INS, 937 F.2d 186, 190 n.1 (5th Cir. 1991). In the absence of contradictory evidence, the Country Report is entitled to considerable deference. Matter of T-M-B-, 21 I&N Dec. 775, 779 (BIA 1997).

According to the Country Report, the most serious human rights problems in Bangladesh included: arbitrary arrests and detentions; extrajudicial killings; politically motivated violence; societal violence; and pervasive official corruption. The Country Report indicates that there were reports that the government or its agents committed arbitrary or unlawful killings. The Country Report states that official corruption and impunity remained problems, and the government did not take comprehensive steps to investigate and prosecute cases involving security force abuse and killing. There were reports that no cases resulted in criminal punishment. Though there were few instances in which the government brought charges, those found guilty were generally subjected merely to administrative punishment.

On the other hand, the Country Report states that the government took steps to improve police professionalism, discipline, training, and responsiveness and to reduce corruption. Despite its efforts, security forces continued to commit abuses with impunity. The Country Report also states that the government took steps to address widespread police corruption, and the inspector general of the police continued to train police to address corruption and create a more responsive police force.

The Country Report asserts that 189 individuals were killed and 10,048 persons were injured in political violence from January to September. The report also asserts that there was intraparty violence. The ruling party is the Awami League ("AL"). Within the party, there were 135 incidents of internal violence, resulting in 15 deaths and injuries to 1,738 individuals. The opposition party is the Bangladesh Nationalist Party ("BNP"). Within that party, there were 75 incidents, resulting in six deaths and 945 injured persons. The Country Report notes that these incidents of violence were often linked to criminal activities, rather than political motives. However, incidents of nonlethal, politically motivated violence also occurred.

Furthermore, the Country Report states that political affiliation sometimes played a factor in the arrest and prosecution of members of opposition parties. However, the government did not prosecute individuals solely for political reasons. In addition, the Country Report states that the government interfered with the right of opposition parties to organize public functions and restricted the broadcasting of their events. However, arbitrary arrests occurred, usually in conjunction with political demonstrations, and the government held persons in detention without specific charges, sometimes in an attempt to collect information about other suspects.

IV. FINDINGS & ANALYSIS

A. Credibility

The Court has carefully considered all of the evidence submitted into the record and finds that Respondent is credible. His testimony was plausible, persuasive, and overall consistent with the statements he provided in his I-589 application and attached statement. It was also supported by the declarations of his father and doctor. Additionally, the demeanor he displayed during his testimony suggests that he testified genuinely.

Although the DHS pointed out a few minor discrepancies, such were not so egregious as to warrant an adverse credibility finding. Nonetheless, the Court will address the DHS's concerns. First, the DHS asserted that Respondent was inconsistent regarding the time in which he first became affiliated with the Bangladesh Nationalist Party ("BNP"). Though he testified that he did not become a registered member of the party until 2008, he explained that he had long assisted his father (the president of his local BNP chapter) prior to his 2008 registration. As such, the Court finds that such a discrepancy is immaterial to his claim.

The DHS also asserted that Respondent was less than forthcoming regarding the injuries and medical treatment he received as a result of the physical attacks he experienced. Though the DHS claimed that Respondent's I-589 application and attached declaration fail to discuss receiving medical treatment, he provided documentation from the health medical officer at Upazila Health Complex in Belabo, Narsingdi, Bangladesh regarding the incidents that occurred on November 10, 2012, and December 5, 2013. See Exh. 3, Tabs E & F. However, in reference to the incident that occurred in August of 2011, Respondent explained that he did not include information regarding it in his application for relief because he obtained treatment from an uncertified village doctor and was aware that he would not be able to obtain documentation to support his claim. Likewise, the DHS asserted that in contrast to Respondent's testimony regarding the December 5, 2013, incident, the document provided by the health complex indicates that he was sustained a knife wound. However, as the document states that Respondent was "hitted [sic] by stcik [sic] and had mark on his legs and tai [sic] area in different locations" and had been "striped by knife," the Court is unable to determine with certainty that Respondent sustained knife wounds. See Exh. 3, Tab F. Rather, when questioned regarding the incident, Respondent explained that he received multiple lacerations as a result of falling into a thorny bush and affirmed that at no point during that incident did he sustain a knife wound.

Likewise, the DHS also claimed that Respondent was inconsistent regarding the incident that occurred on November 10, 2012. Though Respondent testified that he was attacked on that date while attending BNP meeting, the DHS pointed out that Respondent's declaration attached to his I-589 application states that he attended the meeting as a "Lesoner." See Exh. 2. However,

when questioned regarding this discrepancy, Respondent explained that the declaration contained a typographical error and affirmed that he attended the meeting as a “listener.” Nonetheless, the Court finds that Respondent’s explanation is supported by the fact that his I-589 application and attached documents contain numerous spelling and grammatical errors, including multiple instances in which he incorrectly used the word “lesson” instead of “listen.” Id.

Furthermore, the DHS asserts that in contrast to his testimony, Respondent’s declaration and record of sworn statement fail to mention the 2010 incident in which he was threatened by Awami League (“AL”) members. However, the Court notes that Respondent’s declaration attached to his I-589 application clearly indicates that he was threatened by AL members *prior* to the physical attack he experienced in August of 2011. Similarly, the Court will afford little weight to Form I-870, Record of Determination/Credible Fear Worksheet. The document is not a verbatim transcript of the interview but simply consists of notes recorded to assist the Asylum Officer in making the credible fear determination. The summary of the interview is less reliable than a verbatim account or transcript because Respondent’s responses were filtered through the Asylum Officer’s understanding and assessment of the statements given. Nonetheless, the Court recognizes that there are cultural and language barriers that shape a person’s perception of statements. In fact, despite Respondent’s statement during that interview that he spoke Bengali and a “little English and little Hindi,” the form indicates that the interview was conducted in Spanish. As such, the Court is reluctant to read the officer’s notes with intense scrutiny and notes that there may be areas of Respondent’s claim that were not explored or documented for purposes of the threshold screening. Accordingly, the Court finds that Respondent is generally credible.

B. Statutory Bars to Asylum & Withholding of Removal

The Court notes that the DHS suggested that Respondent may be barred from asylum due to his affiliation with the Bangladesh Nationalist Party (“BNP”). However, Respondent testified that he never participated in violent acts nor did he ever support violent activities. Though he testified that he is a member of the BNP, one of the largest political parties in Bangladesh, he asserted that he did not hold a leadership position nor did he provide any financial contributions other than his annual membership dues. Exh. 4, Tab GG. Moreover, the evidence dispels the conclusion that BNP is a terrorist organization. Although the evidence submitted by the DHS casts an unfavorable light upon the BNP and highlights an alarming increase in political violence in Bangladesh, it reflects that political violence has long been a part of the political landscape in Bangladesh. Exh. 4, Tabs B, C, and K. Though the evidence specifically notes that terroristic organizations, such as Jamaatul Mujahidin Bangladesh (“JMB”) exist in Bangladesh, the record does not include any statement from a U.S. governmental body suggesting that the BNP is a terroristic organization. Id. at Tab E. Rather, the evidence indicates that the BNP supports democracy and has often fallen victim to a number of violent incidents at the hands of the ruling party (Awami League) (“AL”), JMB, and corrupt police and governmental authorities. See Id. at Tabs C, E, K, CC; Exh. 3, Tab L. Accordingly, in light of Respondent’s testimony and the evidence in the record, the Court finds that he is not affiliated with a terrorist organization and therefore is not barred from seeking asylum.

C. Asylum

The Court finds that Respondent established that he suffered past persecution. He claims that while residing in Bangladesh, various members of the controlling political party (Awami League, hereinafter "AL") threatened him with harm on several occasions before physically attacking him in August of 2011. Respondent testified that upon seeking medical and police assistance for such harm, he was informed that he could not file a police report against members of the AL and was subsequently arrested, detained, bound by the arms and legs, beaten, and deprived of food and water for two days. Upon being released, AL members further threatened Respondent and subjected him to economic harm by stealing and ruining the products he sold as a means of income. Likewise, Respondent testified that in November of 2012, he was arbitrarily arrested, bound by the arms and legs, severely beaten by various ranked officials within the police force as a result of attending a BNP meeting; however, he explained that unlike his previous detention, the chief of police held him at gun point, threatened with death, and detained for a total of six days without food, water, or medical attention for the injuries he sustained. Moreover, Respondent testified that upon being released from detention in November of 2012, he was hospitalized for two days and was further subjected to harm at the hands of AL members. These acts included subjecting him to additional threats of harm, searching for him on multiple occasions, striking him with an iron rod and sticks, chasing him, and ransacking his home. As such, the Court finds that even though isolated incidents of threats or intimidation generally do not constitute persecution when standing alone, the aggregation of harm experienced by Respondent amounts to persecution. See Matter of R-A-, 22 I&N Dec. 906, 941 (BIA 2001) (holding that even if a single isolated incident does not rise to the level of persecution, the cumulative effect of several incidents may constitute persecution); see also Abdel-Masieh v. US INS, 73 F.3d 579, 583-84 (5th Cir. 1996) (establishing that persecution need not be physical, but may take other forms, such as the deprivation of food, housing, employment, or other essentials of life); Eduard v. Ashcroft, 379 F.3d 182, 187-88 (5th Cir. 2004) (recognizing that harassment may rise to the level of persecution when coupled with physical punishment, infliction of harm, or a significant deprivation of liberty, such interrogation, detainment, arrest, or conviction on account of a protected ground).

Respondent also established that that the harm he experienced was on account of a protected ground. Although the DHS objected to the authenticity and reliability of the supporting affidavits and other corroborating evidence submitted by Respondent regarding his claims of past harm, the Court notes that Respondent provided credible testimony, which is sufficient to sustain his burden of proof. See INA § 208(b)(1)(B)(ii) (asserting that an applicant can sustain the burden of proof without corroboration if he or she provides credible testimony). He testified that he experienced the above mentioned persecution in Bangladesh as a result of his political affiliation. Respondent then explained that both the police and AL consistently subjected him to harm solely on account of being a BNP member and the son of a BNP official who had the potential to rise within the ranks of the party. He also stated that due to his father's advanced age and reliance on him for carrying out local BNP events and activities, the AL believed they could cease both his and his father's involvement with the BNP by subjecting him to harm. Consequently, Respondent was consistently attacked (physically and economically) and threatened with additional harm for exercising his political rights and continuing to assist his father in fulfilling his political duties. Given the incidents that contributed to Respondent's persecution derived from exercising his political speech and his constitutional right to change the

government through peaceful means, the Court finds that the harm he experienced was on account of his political opinion. See Exh. 4, Tab CC; Exh. 3, Tab L (indicating that Bangladeshi citizens have a constitutional right to participate in elections and to change their government peacefully).

Furthermore, Respondent testified that he attempted to file a complaint with the police upon first experiencing physical harm at the hands of AL members in August of 2011. However, he explained that upon doing so, the police informed him that reports against AL members were not permitted to be filed and subsequently detained, bound, physically abused, and deprived him of food and water for days as a consequence of attempting to file such a complaint. Likewise, Respondent asserted that on November 10, 2012, eight to ten police officers not only witnessed, but assisted 40 to 50 AL members conduct a mass attack on BNP members at a scheduled party meeting. During that event, Respondent was beaten by police, arbitrarily arrested, and transported to the local police station. There, he where he was bound and severely beaten by officers, held at gunpoint and threatened with death by the chief of police, and detained without food, water, or medical treatment for six days. Accordingly, the evidence reflects BNP members are often treated badly, arrested on account of their political affiliations, and are frequently subjected to severe property damage and family displacement. See Exh. 3, Tab K. Likewise, the Country Report reflects that police corruption is a widespread issue and that arbitrary arrest and detention is a serious problem in Bangladesh. Id. at Tab L; Exh. 4, Tab CC. In fact, since 2014, thousands of BNP members have been arrested on account of their political affiliations. Id.; Exh. 3, Tab K. As such, the Court finds that Respondent has not only demonstrated that the Bangladeshi government is unwilling or unable to control organizers and leaders of the AL (-because they are the direct beneficiaries of the violence and intimidation asserted upon those who are perceived as threats to their regime, he established that the persecution he experienced was directly inflicted by the Bangladeshi government. Acosta, 19 I&N Dec. at 222.

Furthermore, because Respondent was subjected to past persecution, he is entitled to a presumption of future persecution. As such, the government bears the burden of overcoming this presumption by establishing that there has been a fundamental change in circumstances such that Respondent's life or freedom would no longer be threatened on account of a protected ground or that he could avoid future persecution by relocation within Bangladesh. C.F.R. § 1208.16(b)(1)(i)(A)-(B). However, the Court notes that the government failed to offer sufficient evidence to defeat the presumption of future persecution. Rather, the record reflects that persecution on account of political affiliation is a historical and ongoing problem in Bangladesh. See Exh. 4, Tabs K & CC; Exh. 3, Tab L. In fact, Respondent's testimony reflects that a recurrent pattern of persecution exists and is centered on political affiliation. Although he escaped Bangladesh after being threatened and searched for in January of 2014, the evidence suggests that the police and AL have continued to target other BNP members in retaliation for exercising their political rights. Exh. 4, Tab B; Exh. 3, Tab K. Similarly, Country Report indicates that several BNP members were recently harmed and/or killed as a result of expressing their political opinions. See Exh. 3, Tab L, Exh. 4, Tab CC. As such, the Court finds that Respondent is entitled to a presumption of future persecution.

For the reasons set forth above, the Court concludes that the Respondent has established a well-founded fear of persecution on account of a protected ground. As Respondent has met the

burden of proof in establishing his claim for asylum, the Court will not consider his applications for withholding of removal or relief under the Convention Against Torture.


Accordingly, the following orders shall be entered:

ORDERS: IT IS HEREBY ORDERED that Respondent's application for asylum is GRANTED.

IT IS HEREBY ORDERED that Respondent's application for withholding of removal pursuant to INA § 241(b)(3) is PRETERMITTED.

IT IS HEREBY FURTHER ORDERED that Respondent's application for withholding of removal pursuant to the Convention Against Torture is PRETERMITTED.

08/17/2015
Date


John A. Duck, Jr.
Immigration Judge