

Falls Church, Virginia 22041

File: [REDACTED] - Chicago, IL

Date:

MAY 14 2013

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Robert W. DeKelaita, Esquire

ON BEHALF OF DHS: [REDACTED]
Assistant Chief Counsel

APPLICATION: Reconsideration

The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reconsider our decision dated February 15, 2013, dismissing his appeal from the Immigration Judge's July 7, 2011, decision which found him removable and denied his applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The Department of Homeland Security opposes his motion. He also presents new evidence, and thus we construe the motion as also being a motion to reopen proceedings. The construed motion to reopen will be granted.

The respondent's motion filed on March 12, 2013 (and supplemented on April 1, 2013), is timely. The affidavits of his parents (Supplemental Motion Exh.) state that since the U.S. troops departed from Iraq in December of 2011, conditions for Assyrian Christians have gotten worse.

In the respondent's motion to supplement he asks us to take administrative notice of conditions as they currently exist in Iraq. The 2013 Annual Report of the U.S. Commission on International Religious Freedom (April 2013) ["2013 USCIRF Report"] at 85 states that the diminished numbers [of Assyrian Christians] that remain in Iraq face *official* discrimination, marginalization, and neglect.

The United States Court of Appeals for the Seventh Circuit stated in *Borovsky v. Holder*, 612 F.3d 917, 922 (7th Cir. 2010) that discrimination may constitute persecution only if the government perpetrates it or is unable or unwilling to protect the alien from the responsible parties. Official discrimination means that the Iraqi Government perpetrates it. The 2013 USCIRF Report at 85 also states that the Iraqi Government has proven unable to stop religiously-motivated attacks from occurring and lacks the will or capacity to investigate attacks and bring perpetrators to justice. We conclude that the respondent shows prima facie eligibility for asylum and withholding of removal. Because we will grant his construed motion to reopen, we need not address his motion to reconsider.

Accordingly, the following orders will be entered.

ORDER: The construed motion to reopen is granted.

[REDACTED]

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

A handwritten signature in black ink, appearing to be "Neil P. L.", written over a horizontal line.

FOR THE BOARD