



Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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DHS/ICE Office of Chief Counsel - NYC  
26 Federal Plaza, Room 1130  
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Name: [REDACTED]

A [REDACTED]

Date of this notice: 2/1/2013

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Donovan, Teresa L.  
Pauley, Roger  
Wendtland, Linda S.

yungc  
Userteam: Docket

Falls Church, Virginia 22041

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File: [REDACTED] - New York, NY

Date:

FEB - 1 2013

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alan Lee, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -  
Present without being admitted or paroled

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of China, appeals from the Immigration Judge's February 10, 2012, decision. The Immigration Judge granted the respondent's application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), but denied her applications for asylum under section 208 of the Act, 8 U.S.C. § 1158, and protection under the Convention Against Torture.<sup>1</sup> The appeal will be sustained, and the record will be remanded as set forth below.

We review findings of fact, including credibility findings, under the "clearly erroneous" standard. See 8 C.F.R. § 1003.1(d)(3)(i); see also *Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues *de novo*. See 8 C.F.R. § 1003.1(d)(3)(ii). Because the respondent's Application for Asylum and for Withholding of Removal (Form I-589) was filed on or after May 11, 2005, it is subject to the provisions implemented by the REAL ID Act of 2005, Pub. L. No. 109-13, Div. B, 119 Stat. 231 (I.J. at 2-3).

This matter was last before the Board on March 22, 2010, when we remanded the record to the Immigration Judge for further proceedings with respect to the respondent's applications for asylum, withholding of removal, and protection under the Convention Against Torture. The respondent initially asserted a fear of returning to China based on China's coercive population control policy. During remanded proceedings, the respondent asserted, as an additional basis for asylum and related protection, a fear of returning to China based on her practice of Christianity and intention to worship in an illegal underground church if removed to China (I.J. at 1-3; Tr. at 1, 9, 13; Exh. A, Tab A). The Immigration Judge granted the respondent's application for

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<sup>1</sup> Because the respondent has not challenged the Immigration Judge's denial of her application for protection under the Convention Against Torture on appeal, we decline to address such determination. See, e.g., *Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) (expressly declining to address an issue not raised by a party on appeal); *Matter of Gutierrez*, 19 I&N Dec. 562, 565 n.3 (BIA 1988) (same).

withholding of removal based on her religious persecution claim, but denied her application for asylum, concluding that she did not establish that she qualifies for an exception to the filing deadline (I.J. at 3-4).

On appeal, the respondent argues that the Immigration Judge erred in concluding that she did not demonstrate circumstances sufficient to excuse her from the 1-year filing deadline for asylum. Specifically, she asserts that the event of her mother's religious persecution in China constitutes a qualifying "changed circumstance" under section 208(a)(2)(D) of the Act and that she advanced her religion-based asylum claim before the Immigration Judge within a reasonable period following such event.<sup>2</sup>

Upon *de novo* review, we conclude that the respondent established that she qualifies for an exception to the 1-year filing deadline based on "changed circumstances," which materially affect her eligibility for asylum. See sections 208(a)(2)(B) and (D) of the Act; 8 C.F.R. § 1208.4(a)(4)(i). The respondent testified that she became a Christian in China, but did not experience any problems as a result of her religious practices while living in China (I.J. at 2; Tr. at 20). She also testified that she fears returning to China because her mother, who is a practicing Christian in China, was arrested in April 2010, due to her participation in religious activities (I.J. at 2; Tr. at 15; 22).<sup>3</sup> The respondent apprised the Immigration Judge of her newly-developed fear of religious persecution in June 2010 (I.J. at 1-2; Tr. at 1; Exh. A). Although the Immigration Judge determined that the respondent testified credibly and that she had exhibited "changed personal circumstances," the Immigration Judge concluded that such circumstances did not suffice to excuse the respondent from the 1-year filing deadline (I.J. at 3).

While we agree with the Immigration Judge that "changed personal circumstances" do not, in and of themselves, constitute an exception to the filing deadline for asylum, we recognize that changed personal circumstances may form the basis of an exception under section 208(a)(2)(D) of the Act (I.J. at 3). See *Guan v. BIA*, 345 F.3d 47, 49 (2d Cir. 2006) (per curiam); *Matter of C-W-L-*, 24 I&N Dec. 346, 352 (BIA 2007) (observing that section 208(a)(2)(D) of the Act and 8 C.F.R. § 1208.4 contemplate an exception based on "changed personal circumstances"). In the present matter, although the respondent practiced Christianity prior to her arrival in the United States in 2002, she credibly testified that she did not fear returning to China on account of her Christian religion until learning of her mother's arrest by Chinese officials in 2010 (I.J. at 2; Tr. at 26; Exh. A, Tab A; Exh. B, Tab I). Because the arrest of her mother gave rise to her subjective fear of returning to China, we conclude that such arrest constitutes a changed circumstance that materially affects her eligibility for asylum. See 8 C.F.R. § 1208.4(a)(4)(i); *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004) (stating that a well-founded fear of persecution requires credible testimony from an alien that she subjectively fears persecution);

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<sup>2</sup> We do not address the Immigration Judge's determination regarding the respondent's coercive population control claim, as the respondent has not raised any argument with respect to that determination on appeal (I.J. at 3). See, e.g., *Matter of Cervantes*, *supra*, at 561 n.1; *Matter of Gutierrez*, *supra*, at 565 n.3.

<sup>3</sup> While the Immigration Judge indicated that the respondent's mother was arrested in May 2010, the testimonial and documentary evidence of record reflects that the arrest occurred in April 2010 (I.J. at 2; Tr. at 15, 22; Exh. B, Tab I, at 23; Respondent's Brief at 1 n.1).

*cf. Shi Jie Ge v. Holder*, 588 F.3d 90, 94-95 (2d Cir. 2009) (concluding that the Board erred in focusing on the date the applicant joined a political party, rather than on the date government authorities in his home country found out about his political activities).

Moreover, we conclude that the respondent advanced her religion-based claim within a reasonable period of the qualifying changed circumstance, as she notified the Immigration Judge of the new claim (to be added to her pending asylum application) approximately 2 months after her mother's arrest in China (I.J. at 1-2; Tr. at 1; Exh. A). See *Matter of T-M-H- & S-W-C-*, 25 I&N Dec. 193 (BIA 2010). Therefore, we conclude that the respondent has demonstrated that she qualifies for an exception to the 1-year filing deadline, and her application for asylum is not time-barred. See 8 C.F.R. §§ 1208.4(a)(4)(i)-(ii).

Because the untimeliness of the respondent's asylum application was the only potential bar to eligibility identified below, we conclude that the respondent has established her eligibility for asylum. The Immigration Judge concluded that the respondent demonstrated a clear probability of future persecution in China on account of her religion, and there is no dispute from the parties on appeal that she met her burden of proof to establish eligibility for withholding of removal (I.J. at 3-4).<sup>4</sup> Thus, it necessarily follows that she has met the lower burden of proof required to establish a well-founded fear of persecution for purposes of demonstrating eligibility for asylum. See *Ramsameachire v. Ashcroft*, *supra*, at 178. The record does not reflect the presence of any negative discretionary factor that would warrant the denial of the respondent's asylum application in the exercise of discretion. See *Huang v. INS*, 436 F.3d 89, 98 (2d Cir. 2006) (observing that "[t]he danger of persecution will outweigh all but the most egregious adverse factors") (citations omitted). Therefore, we will sustain the respondent's appeal, vacate the Immigration Judge's denial of the respondent's application for asylum, and remand the record to allow the DHS the opportunity to complete the required background and security checks.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained, and the respondent's application for asylum is granted.

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(h).

  
FOR THE BOARD

<sup>4</sup> The Department of Homeland Security ("DHS") has not appealed the Immigration Judge's grant of withholding of removal or submitted a reply brief contesting the respondent's appellate arguments. Moreover, the DHS indicated below that it would accept the Immigration Judge's grant of withholding of removal as final (Tr. at 27).