



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: [REDACTED]

Date of this notice: 4/10/2013

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:
Liebowitz, Ellen C
Creppy, Michael J.
Mullane, Hugh G.

yungc
User team: Docket

Falls Church, Virginia 22041

File: [REDACTED]

Date: APR 10 2013

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Robert W. DeKelaita, Esquire

ON BEHALF OF DHS: [REDACTED]
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; protection under the Convention Against Torture; remand

The respondent, a native and citizen of Syria, has appealed the Immigration Judge's January 7, 2011, decision which denied her applications for asylum pursuant to section 208 of the Immigration and Nationality Act ("Act"), 8 U.S.C. § 1158, withholding of removal pursuant to section 241(b)(3)(A) of the Act, and for protection under the Convention Against Torture ("CAT"). See 8 C.F.R. §§ 1208.16(c), 1208.18. During the pendency of the appeal, the respondent also filed several motions for consideration of additional evidence. The Department of Homeland Security ("DHS") has requested that the Immigration Judge's decision be affirmed, and the respondent's motions be denied. The appeal will be sustained, and the record remanded for further proceedings before a different Immigration Judge.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met their relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). The respondent's applications for relief from removal are governed by the provisions of the REAL ID Act. See *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge did not credit the respondent's testimony regarding the past mistreatment she claimed to have experienced in Syria based solely on a determination that the respondent never intended to marry her ex-fiancé, [REDACTED], despite obtaining and entering the United States with a K-1 nonimmigrant "fiancé" visa (I.J. at 11-13). We cannot sustain the Immigration Judge's adverse credibility determination, as it was not based on the "totality of the circumstances, and all relevant factors" as required under the REAL ID Act. See section 208(b)(1)(B)(iii) of the Act, 8 U. S. C. § 1158 (b)(1)(B)(iii).

First, we note that the Immigration Judge did not identify actual inconsistencies between the respondent's and [REDACTED] narrative concerning objectively observable facts or details about their relationship (see, e.g., I.J. at 12). Cf., e.g., *Abraham v. Holder*, 647 F.3d 626, 633 (7th Cir. 2011) (finding that applicant testified inconsistently regarding her living situation and timeline of her relationship with fiancé). Significantly, moreover, the Immigration Judge did not identify actual

[REDACTED]

discrepancies in the respondent's testimonial and written account of her past mistreatment in Syria upon which her claim of persecution and torture was based. *Cf., e.g., Abraham v. Holder, supra* (applicant whose testimony relating to her relationship with fiancé contained inconsistencies also provided inconsistent testimony regarding whether her relationship with a Muslim man, who she claimed abused her for failing to convert, was forced or consensual). Rather, the Immigration Judge simply credited [REDACTED] subjective belief that the respondent did not intend to marry him over the respondent's claim to the contrary (I.J. at 11-13).

We agree with the Immigration Judge's general proposition that an asylum applicant's intention for departing the claimed country of persecution may be relevant in certain circumstances. In the instant case, however, [REDACTED] subjective beliefs regarding what the respondent may or may not have intended to do with regard to their relationship, and when the respondent's intention to marry or not marry him was formed, were ultimately conjectural (I.J. at 11-13; *see, e.g., Tr.* at 102, 115-17, 124-29, 139-40). Such subjective beliefs, even if sincere, cannot on their own, and without some nexus to the respondent's asylum claim, be sufficient to render the respondent's claim of past mistreatment wholly unworthy of belief.¹ *See Krishnapillai v. Holder*, 563 F.3d 606, 616-17 (7th Cir. 2009) (the Immigration Judge remains obliged to distinguish between inconsistencies and the like that are material and those that are not under the REAL ID Act). It is also unclear from the record that the respondent's father's alleged attempt to "bribe" [REDACTED] into entering into a fraudulent marriage with the respondent was known or condoned by the respondent, such that her father's acts should be attributable to her (I.J. at 11; *Tr.* at 110-12, 142).

A reading of the remainder of the Immigration Judge's analysis with regard to the corroboration requirement and failure of proof may have been influenced in part by his inadequate determination that the respondent's testimony with regard to her past experience in Syria was not credible (I.J. at 13-18). Accordingly, we conclude it appropriate to remand the record for reconsideration of the respondent's credibility and her eligibility for asylum, withholding of removal under the Act, and for protection under the CAT, based on the totality of the record, as well as for any other relief that may be available to her. Both parties are permitted to submit additional arguments and evidence in remanded proceedings.

We note that the respondent on appeal has requested that the case be remanded to another Immigration Judge due to concerns regarding the Immigration Judge's neutrality at the beginning of the respondent's proceedings (Respondent's Br. at 1-14; *see, e.g., Tr.* at 5-6, 22-26, 31-32, 39). *See Schweiker v. McClure*, 456 U.S. 188, 195 (1982). Based on the totality of the record, we will grant the respondent's request and remand the record for further proceedings before a different Immigration Judge. The following orders shall be entered.

¹ For instance, we note that the Immigration Judge did not indicate that [REDACTED] provided testimony that contradicted details or claims that the respondent provided in support of her applications for relief from removal.


ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to a different Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



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