

Falls Church, Virginia 22041

File: ██████████ Cleveland, OH

Date:

APR 11 2008

In re: ██████████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark M. Nesbit, Esquire

CHARGE:

Notice: Sec. 237(a)(1)(A), I&N Act [8 U.S.C. § 1227(a)(1)(A)] -
Inadmissible at time of entry or adjustment of status under
section 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -
Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum

The respondent, a native and citizen of Mauritania, appeals the Immigration Judge's July 17, 2006, decision denying her application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, as untimely, but granting her withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3). The appeal will be sustained, and the respondent will be deemed eligible for asylum.

The Immigration Judge pretermitted the respondent's asylum application after finding that the respondent failed to establish by clear and convincing evidence that her asylum application was filed within 1 year after the date of her arrival in the United States (I.J. at 3-4). See section 208(a)(2)(B) of the Act. The Immigration Judge initially decided that, while an alien's credible testimony may alone be sufficient to meet her burden of proof for asylum, *see generally Chen v. Gonzales*, 447 F.3d 468, 476 (6th Cir. 2006), it does not necessarily meet the higher clear and convincing standard of proof for establishing the timeliness of her asylum application (I.J. at 4). The Immigration Judge further found that the respondent's testimony about her arrival in the United States was "not particularly detailed" and that, in the absence of live corroborating testimony or reliable documentary evidence, the respondent failed to demonstrate that she arrived in the United States on April 8, 2002, the date of her claimed arrival (I.J. at 4; Tr. at 21; Group Exh. 3, Tab 2; Group Exh. 4, Tabs 26, 27; Exh. 2).¹

¹ The respondent's documentary evidence consists of affidavits from her husband, a friend, and a neighbor (Group Exh. 3, Tab 2; Group Exh. 4, Tabs 26-27). The Immigration Judge deemed this evidence unreliable because none of the affiants appeared in person at the hearing (and, hence, were

(continued...)

We disagree with the Immigration Judge. The clear and convincing evidence standard of proof requires that the evidence proffered produce a firm belief of conviction in the mind of those charged with reviewing that evidence. *See Matter of Patel*, 19 I&N Dec. 774, 783 (BIA 1988); *Matter of Carrubba*, 11 I&N Dec. 914, 917 (BIA 1966). We find no authority indicating that an asylum applicant cannot meet this burden of proof based solely on her own testimony, for the purposes of establishing the timeliness of her asylum application. And we see no reason to *require* an alien to produce corroborating evidence in this context to satisfy a clear and convincing standard of proof, at least where the alien's testimony is credible, consistent, and sufficiently detailed. *Cf. Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998) (providing that specific, detailed, and credible testimony is sufficient to prove a case for asylum, but that the weaker the testimony, the greater the need for corroborative evidence); *see generally Vera-Villegas v. INS*, 330 F.3d 1222, 1225 (9th Cir. 2003) (providing that an alien's lack of documentary evidence to prove his physical presence in the United States is not an adequate basis for rejecting the alien's application for suspension of deportation if the oral and written testimony offered is otherwise sufficient).

Accordingly, even assuming for purposes of this appeal that the respondent's documentary evidence in this case is of limited probative value, that is still not fatal to her claim if her testimony, standing alone, is sufficient to meet her burden of proof. Upon review of the record, we conclude that the respondent's testimony regarding the circumstances and date of her arrival in the United States was consistent and sufficiently detailed to satisfy a clear and convincing standard of proof (Tr. at 20-21; Exh. 2). Moreover, the Immigration Judge made no adverse credibility finding in this case. Therefore, we conclude that the respondent established that she timely filed her application for asylum notwithstanding any failure to offer live witnesses or reliable documentary proof of the date she arrived in the United States.

The Department of Homeland Security does not challenge the Immigration Judge's decision that the respondent is entitled to withholding of removal to Mauritania because she faces a clear probability of future persecution on account of her race and her membership in a particular social group (I.J. at 5). Inasmuch as the respondent has met her burden of proof for withholding of removal, she has necessarily met her lower burden of proving that she has a well-founded fear of future persecution in Mauritania that would warrant a grant of asylum. *See* 8 C.F.R. § 1208.16(b)(2); *cf. Ceraj v. Mukasey*, 511 F.3d 583, 594 (6th Cir. 2007) (finding that an alien who has failed to meet her burden of proof for asylum cannot satisfy the more stringent standard of proof for withholding of removal). We see no indication in the record that any of the mandatory grounds for denying asylum apply in the instant case. *See* sections 208(a)(2), (b)(2) of the Act; 8 C.F.R. § 1208.13(c). Moreover, there being no adverse factors of record, we will favorably exercise discretion in this case and deem the respondent eligible for asylum.

Accordingly, the following orders will be entered.

¹ (...continued)

not observable to the Immigration Judge or available for cross-examination), the respondent's husband was a "self-interested witness," and the respondent's neighbor could not provide any details about the date of the respondent's arrival in the United States (I.J. at 3-4).

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ORDER: The appeal is sustained.

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). See Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals, 70 Fed. Reg. 4743, 4752-54 (Jan. 31, 2005).


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