

## Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

<http://www.justice.gov/eoir/immigration-law-advisor>

In *Matter of C-C-I-*, 26 I&N Dec. 375 (BIA 2014), the Board held that removal proceedings may be reopened to consider termination of an alien's deferral of removal pursuant to 8 C.F.R. § 1208.17(d)(1) if the Government presents previously unconsidered evidence, whether or not previously unavailable, that is relevant to the possibility that the alien will be tortured in the country to which removal was deferred. Additionally, the Board held that the doctrine of collateral estoppel does not bar an Immigration Judge from reevaluating the alien's credibility in light of additional evidence presented at a de novo hearing conducted under 8 C.F.R. § 1208.17(d)(3). The Department of Homeland Security ("DHS") moved for a hearing under 8 C.F.R. § 1208.17(d) to terminate the respondent's deferral of removal to Nigeria based on evidence that the claim underpinning the grant of deferral was fraudulent. At the de novo hearing, the Immigration Judge found that the respondent lacked credibility because of fundamental inconsistencies between his testimony at his original removal proceedings and at the termination hearing. The Immigration Judge also found that the respondent had presented insufficient corroborating evidence to overcome his lack of credibility and terminated the grant of deferral. The Immigration Judge additionally found the respondent ineligible for a section 212(c) waiver of inadmissibility. On appeal, the Board explained that pursuant to 8 C.F.R. § 1208.17(d), termination of deferral of removal involves a two-step process. First, the DHS's motion for a hearing to consider terminating the deferral grant must be supported by evidence that was not presented at the previous hearing and that is "relevant to the possibility" that the alien would be tortured. Second, if the motion is granted an Immigration Judge must conduct a de novo hearing to consider if deferral should be terminated. This second step requires an Immigration Judge to determine whether the alien can again establish that he is more likely than not to be tortured if returned to the country designated for deferral. The evidence supporting DHS's motion included a report from the Nigerian Embassy's Consular Anti-Fraud Unit stating that the Nigerian Government no longer practiced violence against members of the respondent's tribe and that the documents the respondent submitted to establish his claim for deferral were fraudulent. The Board concluded that this evidence was sufficiently "relevant to the possibility" that the alien would be tortured to support reopening under 8 C.F.R. § 1208.17(d)(1). In addition, the Board found no clear error in the Immigration Judge's adverse credibility determination and concurred with the Immigration Judge's finding that the respondent had not satisfied his burden of proof with sufficient corroborating evidence. The Board concluded that the respondent had not proven that he was more likely than not to be tortured if returned to Nigeria. As a consequence, the Immigration Judge properly terminated the respondent's deferral of removal to that country. Turning to the respondent's argument that the Immigration Judge was collaterally estopped from reevaluating his original testimony and comparing it with testimony offered at the termination hearing, the Board reasoned that such an approach would negate the purpose of 8 C.F.R. § 1208.17(d)(3). That regulation requires an Immigration Judge to make a de novo determination based on the record, the initial application, and any new evidence regarding the likelihood of torture. Additionally, the Board observed that deferral of removal is a temporary form of relief, so further

review of an alien's claim is inherently contemplated. Consequently, the Board rejected the respondent's collateral estoppel argument. Finally, the Board disagreed with the Immigration Judge's determination that the respondent was ineligible for a section 212(c) waiver because his lawful permanent resident status terminated when he was ordered removed in 1999. The Board noted that, pursuant to the regulations, reopening is warranted if a respondent can show that they were eligible for section 212(c) relief prior to the entry of a removal order. Insofar as the respondent had established that he was eligible for a 212(c) waiver prior to 1999, the Board found that remand for further consideration of the respondent's application for section 212(c) relief was warranted. The Board found that intervening precedent, namely, *Judulang v. Holder*, 132 S. Ct. 476 (2011), and *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014), also warranted remand.