



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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Name: [REDACTED]

Date of this notice: 9/23/2013

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

Lulseges
Userteam: Docket

Falls Church, Virginia 22041

File [REDACTED] MD

Date:

SEP 28 2013

In re [REDACTED] #

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: David L. Cleveland, Esquire

ON BEHALF OF DHS: Roger K. Picker
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] -
In the United States in violation of law

APPLICATION: Asylum; withholding of removal; Convention Against Torture

In a decision dated November 26, 2007, the Immigration Judge found the respondent removable under section 237(a)(1)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(1)(B), and denied him asylum under section 208 of the Act, 8 U.S.C. § 1158, withholding of removal to Cameroon under section 241(b) of the Act, 8 U.S.C. § 1231(b), and protection under the Convention Against Torture ("CAT"), *see* 8 C.F.R. §§ 1208.16-.18. The respondent appealed. On October 23, 2009, the Board remanded the record. On November 8, 2011, the Immigration Judge again denied asylum, withholding of removal and protection under the CAT. The respondent appealed. The request for oral argument is denied. The record will be remanded.

The respondent is a native and citizen of Cameroon. He arrived in the United States on or about April 11, 2006, as a visitor, but he remained longer than permitted. He applied for asylum on or about November 1, 2006. The Notice to Appear was issued on January 11, 2007. The respondent claims fear of persecution in Cameroon because of his tribe or nationality and his political opinion. According to the respondent, he was an active member of the Union of Democratic Forces of Cameroon ("UFDC") since January 13, 2003, having resigned from the ruling Democratic Rally of the Cameroon People ("RDPC").

The respondent claimed he was arrested and beaten on December 18, 2003, at the police academy where he worked as a martial arts instructor, for refusing an assignment to train a special police force. He was arrested at the airport on April 10, 2004, because he was bringing into Cameroon materials and t-shirts with the UFDC logo. He was arrested a third time on February 16, 2006, at home at a meeting of the UFDC. In each case, he alleges he was beaten and kept under severe conditions.

The Immigration Judge denied asylum and withholding of removal because he determined that the respondent was not credible and failed to carry his burden of proof. *See Gandziami-Mickhou v. Gonzales*, 445 F.3d 351 (4th Cir. 2006) (stating that asylum applicant must present candid, credible, and sincere testimony). The Immigration Judge found the respondent's testimony was not consistent with his application and supporting evidence. In particular, he noted that a medical document from Cameroon stated that the beating in connection with the first arrest took place on January 10, 2004, when the respondent stated he was released from prison on January 9, 2004. He also submitted on remand photographs of himself taken in prison and after his release. The Immigration Judge found that these photographs appeared to have been taken at the same time and not several weeks apart, as represented, because the clothes are the same (although the respondent claimed they were different) and the blood spots are in the same places. Further, the Immigration Judge found inconsistent the affidavit of the head of the UFDC, Dr. Victorin Bieleu, stating he knew the respondent since 1990, in view of the respondent's testimony that he had known Dr. Bieleu for 8 to 10 years or (the Immigration Judge stated) since 1999-2001. The Immigration Judge also found it improbable that the respondent would visit the United States twice in 2004, after he had been arrested and beaten, but not ask for asylum. He noted the respondent had traveled to several other countries, including Egypt and Ghana, after his first two arrests without asking for asylum.

We review findings of fact, including credibility determinations, 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, and judgment and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

Omissions, inconsistent statements, contradictory evidence, and inherently improbable testimony are appropriate reasons for making an adverse credibility determination. *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011) (contradictions in alien's testimony supported adverse credibility finding). Nevertheless, the mistaken date of the beating on the report from the doctor in Cameroon cannot be given significant weight as it was the date of the examination, and could be a simple error on the part of the doctor, as we indicated in our previous decision. Also, the statement that the founder of the UFDC, Dr. Bieleu, had known the respondent since 1990 could be an intended reference to 1999, or the witness may merely be saying he has known of the respondent since 1990. However, the reasons given by the Immigration Judge support his determination that the photographs submitted on remand cannot be as represented by the respondent, and we discern no clear error in that determination, particularly in view of the respondent's admissions through counsel in his appeal brief (I.J. at 11-13). In that brief, the respondent concedes that the presentation of a contrived photograph constitutes a serious breach of the duty to tell the truth, but he argues that the other evidence he submitted nevertheless suffices to prove his claim. We note that the provision of false evidence creates serious doubts as to the respondent's overall credibility regarding the entire claim. *See Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998). Moreover, the Immigration Judge properly found that the respondent did not explain reasonably why he did not want to apply for asylum on his visits to the United States and other countries despite already having been arrested and beaten. *See Bassanguen v. Holder*, 511 F. App'x 277, 282-83 (4th Cir. 2013); *Hassan v. Holder*, 571 F.3d 631 (7th Cir. 2009).

On the other hand, the respondent submitted background evidence on the general conditions in Cameroon, which document human rights abuses against those who oppose the government

and impunity for the violations. He has submitted evidence on his martial arts training, his political activities beginning in 1992, and his connections with the sports federation. He has numerous letters and statements from friends, family, fellow UFDC members (whom the Immigration Judge did not mention) and his witnesses, which reference various parts of his story. He also has the letter from his wife, who was purportedly present at (or, in one case, immediately learned about) each arrest, contrary to the Immigration Judge's findings. Although the Immigration Judge in his analysis dismissed much of the evidence as not independent, it is not necessary or even possible that all evidence be completely independent (*I.J.* at 15). *See, e.g., Tassi v. Holder*, 660 F.3d 710, 720 (4th Cir. 2011) ("corroborating evidence supporting an asylum application cannot be rejected solely because it does not strictly comport with the rules of evidence or because it lacks its own corroborating evidence."); *Nken v. Holder*, 585 F.3d 818, 822 (4th Cir. 2009) (adverse credibility determination against applicant did not in and of itself render subsequent letter from applicant's brother unbelievable). Further, the respondent submitted a medical report from an (apparently independent) internist at George Washington University (Exh. 3G), which documented that the respondent had scars, posture, musculature, demeanor, and health complaints that were consistent with the mistreatment he had described. We note that the Immigration Judge mentioned only the report's discussion of the scars, and that the report could not reasonably be expected to itself confirm that the scars resulted from persecution or torture. Additionally, while the Immigration Judge noted that the letter from UFDC leader Dr. Bieleu was not based on a personal witnessing of the alleged persecution but on reports from others, the United States Court of Appeals for the Fourth Circuit has held that this kind of letter from a party leader can still corroborate an applicant's claims. *See, e.g., Tassi v. Holder, supra*, at 722.

The submitted evidence cumulatively may be sufficient to rehabilitate the respondent's credibility or establish independently past persecution or a well-founded fear of persecution. *See Camara v. Ashcroft*, 378 F.3d 361 (4th Cir. 2004). However, it is the province of the Immigration Judge to undertake such an evaluation, properly considering all pertinent factors, in the first instance. Therefore, we will remand for additional fact-finding and a new decision. *See Turkson v. Holder*, 667 F.3d 523 (4th Cir. 2012); *see also Zuh v. Mukasey*, 547 F.3d 504 (4th Cir. 2008). In view of this disposition, we do not reach the respondent's other appellate arguments at this time.

Accordingly, the record will be remanded.

ORDER: The record is remanded for further proceedings consistent with the above decision.


FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents and would find no clear error in the adverse credibility determination, and would affirm the Immigration Judge's decision.