



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

McGuire, Kerry
Immigrant Law Center of Minnesota
450 Syndicate St N
Suite 200
St. Paul, MN 55104

DHS/ICE Office of Chief Counsel –BLM
(MSP)
1 Federal Drive, Suite 1800
Ft. Snelling, MN 55111

Name:

A

Date of this notice: 1/7/2021

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:
Pepper, S. Kathleen

Wjesurk
User team: Docket

DL



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

A (b)(6)

KANDIYOHI COUNTY JAIL
2201 23RD STREET NE
WILLMAR, MN 56201

DHS/ICE Office of Chief Counsel –BLM
(MSP)
1 Federal Drive, Suite 1800
Ft. Snelling , MN 55111

Name: (b)(6)

A (b)(6)

Date of this notice: 1/7/2021

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. §1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Pepper, S. Kathleen

W/Res: [redacted]
Userteam: Docket

Falls Church, Virginia 22041

File: A (b)(6) - Fort Snelling, MN¹

Date:

JAN - 7 2021

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kerry McGuire, Esquire

ON BEHALF OF DHS: Luke R. Nelson
Assistant Chief Counsel

APPLICATION: Cancellation of removal under section 240A(a) of the Act; asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security ("DHS") timely appeals the Immigration Judge's July 27, 2020, decision granting the respondent's application for deferral of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The respondent, a native of Thailand and citizen of Burma (Myanmar), and lawful permanent resident of the United States, opposes the appeal, and filed a cross appeal of the Immigration Judge's denial of his applications for cancellation of removal under section 240A(a) of the Act, 8 U.S.C. § 1229b(a), and asylum and withholding of removal under sections 208(b)(1) and 241(b)(3) of the Act, 8 U.S.C. §§ 1158(b)(1), 1231(b)(3), as well as withholding of removal under the CAT. The appeals will be dismissed and the record will be remanded to the Immigration Judge for any necessary background and security investigations.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i) (2020). We review de novo all other issues, including issues of law, judgment, or discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

Initially, we adopt and affirm the Immigration Judge's decision that the respondent's conviction for simple robbery in violation of Minnesota Stat. § 609.24, was a conviction for a particularly serious crime that precludes eligibility for withholding of removal (IJ at 8-10; Notice of Appeal; Exh. 8). *Matter of Burbano*, 20 I&N Dec. 872 (BIA 1994). To determine whether the "particularly serious crime" bar is applicable, the Immigration Judge examines the nature of the conviction, the type of sentence imposed, and the circumstances and underlying facts of the conviction. *Matter of N-A-M-*, 24 I&N Dec. 336, 342 (BIA 2007); *Matter of Frentescu*, 18 I&N

¹ The respondent was located in the Bloomington Detention Center, and the Immigration Judge sitting in the Immigration Court in Fort Snelling, MN, heard the case through video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A).

Dec. 244, 247 (BIA 1982). We agree with the respondent that a particularly serious crime finding is not purely categorical and cannot rest solely on the elements of a conviction alone (Notice of Appeal). Nevertheless, the Immigration Judge properly determined that the elements of the respondent's crime involved the use or threatened use of force against a person – and crimes against persons are properly deemed to be within the ambit of a particularly serious crime (IJ at 9-10, n.5). See *Matter of N-A-M-*, 24 I&N Dec. at 342- 43; *Matter of Frentescu*, 18 I&N Dec. at 244. Furthermore, the Immigration Judge appropriately accorded greater weight to the criminal documents over the respondent's testimony in determining that the respondent produced a handgun during the commission of his crime – and that the facts and circumstances of the respondent's conviction rendered it particularly serious (IJ at 9-10; Exh. 8; Notice of Appeal).

Additionally, although the respondent expressed general disagreement in his notice of appeal regarding the Immigration Judge's denial of his applications for cancellation of removal for certain lawful permanent residents, asylum, and withholding of removal, he did not set forth any detailed arguments pertaining to those claims in his appeal brief (see Notice of Appeal; Respondent's Br.). Therefore, we deem the matters waived. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 n.2 (BIA 2018).

The Immigration Judge found that the respondent had established that it is more likely than not he would be subject to torture that is "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" if returned to Burma. 8 C.F.R. §§ 1208.17, 1208.18(a)(1)-(5). It is undisputed that the respondent never experienced past torture in Burma, a country he left when he was 1 month old (IJ at 3). The respondent fears that he will be tortured and killed by the Tatmadaw (the Burmese military) in Burma due to his Karen ethnicity, his Christianity, and/or his criminal history and drug use (IJ at 11).

In rendering her decision, the Immigration Judge made several findings. First, she determined that, despite a cease fire agreement, there were high tensions between the military and ethnic minority populations, including the Karen, particularly in areas with a large military presence (IJ at 13; Exh. 7). She further concluded that the record showed that reported abuses included killings, beatings, torture, forced labor, forced relocations, and rapes of members of ethnic groups by government soldiers (IJ at 13; Exh. 7). The Immigration Judge also found that there was an escalation of hostilities between the Karen National Union ("KNU") and the Tatmadaw since 2018, which resulted in the displacement of Karen civilians, as well as Tatmadaw offensive operations in and near Karen villages that have caused civilian injuries and human rights concerns, as well as the targeted shelling of Karen villages (IJ at 13-14; Exh. 7). Finally, the Immigration Judge determined that it would be unreasonable to expect the respondent to relocate in a non-Karen area of Burma (IJ at 14-15; Exhs. 7, 8, 13).

On appeal, the DHS asserts that the Immigration Judge did not make sufficient predictive factual findings about what is likely to happen to the respondent if he is returned to Burma and summarily concluded that the respondent would be subjected to torture or be killed as a result of the documented incidents between the Tatmadaw and armed Karen rebel groups in the past few years as well as general country conditions evidence (DHS's Br. at 13-25). However, clear error review is significantly deferential to the factfinder; under that standard, we may not reverse even if we "would have decided the [matter] differently." *Cooper v. Harris*, 137 S. Ct. 1455, 1465

(2017) (quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985)). The DHS's appellate arguments persuade us that the Immigration Judge's findings were debatable, but not that they were implausible or reflective of an impermissible view of the evidence taken as a whole (IJ at 10-15; DHS's Br. at 13-25). Consequently, we defer to the Immigration Judge's findings.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is dismissed.

FURTHER ORDER: The DHS's appeal is dismissed.

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 DHS 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



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk



5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

AHMAD, SAAD
SAAD AHMAD & ASSOCIATES
39111 PASEO PADRE PKWY # 217
FREMONT CA 94538

DHS/ICE OFFICE OF CHIEF COUNSEL - SFR
P.O. BOX 26449
SAN FRANCISCO CA 94126-6449

Name:

(b)(6)

A

(b)(6)

Date of this Notice: 1/28/2021

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:

Malphrus, Garry D.
Liebowitz, Ellen C
Morris, Daniel

Userteam: Docket



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

(b)(6)

DHS/ICE OFFICE OF CHIEF COUNSEL - SFR

P.O. BOX 26449

SAN FRANCISCO CA 94126-6449

Name: (b)(6)

A (b)(6)

Date of this Notice: 1/28/2021

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Malphrus, Garry D.

Liebowitz, Ellen C

Morris, Daniel

Userteam: Docket

Falls Church, Virginia 22041

File: A (b)(6) – San Francisco, CA

Date:

JAN 28 2021

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Saad Ahmad, Esquire

ON BEHALF OF DHS: Vincent D. Pellegrini
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The Department of Homeland Security (“DHS”) appeals from the Immigration Judge’s May 25, 2017, decision granting the respondent’s application for deferral of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). 8 C.F.R. § 1208.17.¹ The respondent has filed a brief on appeal. We will dismiss the appeal, and remand the record for background checks.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge’s May 25, 2017, decision details the lengthy history of these proceedings (IJ at 1-2, May 25, 2017). We affirm the Immigration Judge’s decision that the evidence of past torture, combined with evidence that the respondent has an outstanding criminal case in Burma, that the Burmese military have asked the respondent’s wife for his whereabouts, and that human rights abuses by the military continue in Burma, establish a likelihood of future torture and support a grant of CAT deferral of removal.

Contrary to the DHS’s arguments on appeal, the Immigration Judge’s finding that the respondent testified credibly with respect to the predicate facts supporting his CAT claim – which were the facts regarding his multiple detentions, interrogations, and beatings by the military – is

¹ In prior decisions, the Immigration Judge denied the respondent’s applications for asylum and withholding of removal under the Immigration and Nationality Act on the basis of the persecutor bar (IJ at 22-23, Dec. 11, 2009). Sections 208(b)(2)(A)(i), 241(b)(3)(B)(i) of the Act, 8 U.S.C. §§ 1158(b)(2)(A)(i), 1231(b)(3)(B)(i). The respondent has not contested the denial of his claims for asylum or withholding of removal on the basis of the persecutor bar, and the Immigration Judge’s December 11, 2009, denial of those claims on that basis remains undisturbed. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (failure to substantively address on appeal an issue addressed in the Immigration Judge’s decision results in waiver of the issue).

not clearly erroneous as it is supported by the record. *See Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (Immigration Judge’s findings of fact are clearly erroneous if they are “illogical or implausible,” or without “support in inferences that may be drawn from the facts in the record”), *clarified on other grounds*, 28 I&N Dec. 199 (A.G. 2021).

The respondent testified consistently before the asylum officer and during his removal proceedings that he had been detained, interrogated, and beaten multiple times by the military in Burma, and that the military targeted him because he did not follow orders when issuing a sentence in a particular case, and also to learn more about the respondent’s affiliation with the NLD, a political party that was opposed to Burma’s then-ruling regime, and which won parliamentary elections in 2015 (IJ at 9-10, May 25, 2017; Exh. 18 at 1; Exh. 3 at 5-7; June 29, 2009, Tr. at 72-79).

We agree with the Immigration Judge that the beatings and injuries that the respondent endured at the hands of the Burmese military, which have resulted in significant permanent damage to his eye, rise to the level of torture, and thus the respondent has established that he suffered past torture in Burma (IJ at 4, 9-10, May 25, 2017). 8 C.F.R. §§ 1208.16(c)(3)(i), 1208.18(a). *See Akosung v. Barr*, 970 F.3d 1095, 1105 (9th Cir. 2020) (“Past torture is a relevant consideration in deciding whether an applicant faces a likelihood of future torture”).

Moreover, we discern no clear error in the Immigration Judge’s prediction as to what is likely to occur if the respondent returns to Burma. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (a determination as to what will occur in the future is a factual finding reviewed for clear error). We agree with the Immigration Judge that the respondent has established that he is more likely than not to be tortured “by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” upon return to Burma. 8 C.F.R. § 1208.18(a)(1). The record reflects that there is an outstanding criminal case pending against the respondent in Burma, and that the military intelligence has been to his home and asked his wife for his whereabouts (IJ at 4, 12, May 25, 2017; Exh. R-5 at 1; Exh. RR-3; Nov. 7, 2016, Tr. at 271-72). Further, the country conditions evidence in the record reflects that human rights abuses by the military continue in Burma, despite the election of the NLD in 2015 (IJ at 11, May 25, 2017). Thus, on this record, the Immigration Judge properly granted CAT protection. 8 C.F.R. § 1208.17. Accordingly, the following orders will be issued.

ORDER: The DHS’s appeal is dismissed.

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



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*



5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

**BLUMENAU, STEPHANIE M.
LAW OFFICE OF JOSHUA J. MIKRUT,
1880 28TH ST. SW
WYOMING MI 49519**

**DHS/ICE OFFICE OF CHIEF COUNSEL - DET
333 MT. ELLIOTT ST., RM. 204
DETROIT MI 48207**

Name:

A

Date of this Notice: 4/9/2021

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:

Pepper, S. Kathleen
Liebmann, Beth S.
O'Connor, Blair

Userteam: Docket

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U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)
A (b)(6) MDOC
CARSON CITY CORRECTIONAL FACI
10274 BOYER RD
CARSON CITY MI 48811

DHS/ICE OFFICE OF CHIEF COUNSEL - DET
333 MT. ELLIOTT ST., RM. 204
DETROIT MI 48207

Name: (b)(6)

A (b)(6)

Date of this Notice: 4/9/2021

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Pepper, S. Kathleen
Liebmann, Beth S.
O'Connor, Blair

User team: Docket

Falls Church, Virginia 22041

File: A (b)(6) – Carson City, MI¹

Date: **APR - 9-2021**

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Stephanie M. Blumenau, Esquire

ON BEHALF OF DHS: Namratha Ravikant
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The respondent, a native and citizen of Burma, has appealed the Immigration Judge's October 9, 2020, decision denying the respondent's request for deferral of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT) (8 C.F.R. §§ 1208.16-.18). 8 C.F.R. § 1208.17.² The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (holding that determinations as to the likelihood of future events are findings of fact that are reviewed for clear error). This Board reviews questions of law, discretion, and judgment in appeals from decisions of Immigration Judges de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

¹ Removal proceedings before the Immigration Judge in this matter were complete in Carson City, MI, where the respondent was located and the hearing docketed. The Immigration Judge conducted the hearing remotely from Detroit, MI, through a video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A). The docketed hearing location is within the geographic area of the United States Court of Appeals for the Sixth Circuit. Therefore, we will apply the law of that circuit. *See Matter of R-C-R-*, 28 I&N Dec. 74, 74 n.1 (BIA 2020) (explaining that the circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location).

² The respondent has filed documentation on appeal consisting of documents that are already part of the official administrative record (Respondents' Br. Exhs. B-C). We note, however, that providing duplicate submissions of evidence already in the record is a disfavored practice; instead, briefs should simply cite to the relevant portions of the transcript, documents and/or exhibits from the official administrative record.

We conclude that the record is not adequate for appellate review because the decision does not fully address several aspects of the respondent's case. *See Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (stating that an Immigration Judge must fully explain a decision's reasoning in order to allow the applicant a fair opportunity to contest the decision and the Board an opportunity for meaningful appellate review).

For instance, the Immigration Judge did not adequately assess whether the respondent's past rape at knife point, as a 12-year old, by a Burmese military soldier constituted past torture or whether the Burmese military terrorizing his village and his conscription into the Burmese military as a 13-year old child soldier constituted flagrant violations of human rights (Tr. at 43-49).³

Additionally, there are various portions of the background documentation that support the respondent's claims that Christians and Chin minorities are targeted for violent attacks, sexual violence, and torture by the governmental authorities, but the Immigration Judge did not adequately assess these documents (Exhs. 4I, 4N; Respondent's Br. at 14). *Haider v. Holder*, 595 F.3d 276, 289 (6th Cir. 2010); *see generally Xia v. U.S. Att'y Gen.*, 608 F.3d 1233, 1239 (11th Cir. 2010) (observing that an Immigration Judge may not select portions of a country condition report that undermine an asylum applicant's claim while ignoring other portions that support the claim).

The respondent also argues on appeal that the Immigration Judge erred in not admitting and considering the letter of a proposed witness⁴ supporting his claimed country conditions in Burma (Exh. 8A; Respondent's Br. at 13-14). Here, the Immigration Judge permissibly determined that the proposed witness, who had not submitted a curriculum vitae explaining her position within the organization or the basis of her knowledge on the subject, was not qualified to provide this evidence (IJ at 2 n.1; Tr. at 25-26). We are not persuaded by the respondent's argument that the Immigration Judge erred in not admitting the proposed witness's letter. *Francis v. Barr*, 781 F. App'x. 495, 500 (6th Cir. 2019) (holding the Immigration Judge permissibly declined to certify witnesses as experts for lack of curriculum vitae prior to the hearing); 8 C.F.R. § 1003.10(b).

Given our limited fact-finding authority, we will remand the record to the Immigration Judge to further consider the respondent's eligibility for deferral of removal. 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding authority and stating that the Board may remand the proceeding to the Immigration Judge where further fact-finding is needed). At

³ The Immigration Judge must consider all evidence relevant to the possibility of future torture, including evidence of past torture, evidence of gross, flagrant or mass violations of human rights and other country conditions, and whether the applicant could relocate to a part of the country where he or she is not likely to be tortured. 8 C.F.R. § 1208.16(c)(3).

⁴ The respondent contends that the witness was not being offered as a formal "expert witness." However, providing a letter of support claiming to have significant knowledge of country conditions in Burma and knowledge of a particular ethnic group and the problems this group faces is de facto speaking as an expert on this topic. Without a curriculum vitae, the Immigration Judge is unable to decide whether or not to credit the letter or the information contained in the letter.

A (b)(6)

remanded proceedings, the Immigration Judge should provide the parties an opportunity to submit further testimony and documentary evidence, including current country reports relevant to the respondent's application. We express no opinion regarding the ultimate outcome of these proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following order will be entered.

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



FOR THE BOARD



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*



*5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

(b)(6)

A (b)(6)

**COFFIELD UNIT
2661 FM 2054
TENNESSEE COLON TX 75884**

**DHS/ICE OFFICE OF CHIEF COUNSEL - HOU
126 NORTHPOINT DRIVE, SUITE 2020
HOUSTON TX 77060**

Name: (b)(6)

A (b)(6)

Date of this Notice: 6/14/2021

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

RILEY, KEVIN W.

User team: Docket

h/

Falls Church, Virginia 22041

File: A (b)(6) - Huntsville, TX

Date:

In re: (b)(6)

JUN 14 2021

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Convention Against Torture

This matter was last before the Board on November 6, 2019, when we dismissed the respondent's appeal, vacated the Immigration Judge's grant of deferral of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), and remanded the record for further consideration of the respondent's eligibility for deferral of removal and for clarification regarding the respondent's citizenship and the designated country of removal.

Upon remand, the Immigration Judge determined that the respondent is a citizen of Burma and does not have a claim to citizenship in Thailand (Tr. at 12-14). He further determined that the respondent did not establish eligibility for deferral of removal under the regulations implementing the Convention Against Torture (IJ at 4-7).¹ Finally, the Immigration Judge ordered the respondent removed to Thailand, with an alternate order of removal to Burma (IJ at 8). The respondent appeals from this decision.

We review the Immigration Judge's factual findings, including the credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree, for the reasons set forth in the Immigration Judge's decision, that the respondent has not demonstrated eligibility for deferral of removal under the regulations implementing the Convention Against Torture (IJ at 4-7). Despite the respondent's assertions in his Notice of Appeal (Form EOIR-26)² that his life will be in danger in Burma, we find no clear error in the

¹ The Immigration Judge previously found the respondent ineligible from asylum, withholding of removal, and protection under the Convention Against Torture based on his 2017 conviction for aggravated robbery (IJ at 2). The respondent did not challenge this finding previously on appeal and the issue was deemed waived (Decision of Board, dated November 6, 2019, at 1).

² The respondent indicated that he did not intend to file a separate written brief or statement after filing his Notice of the Appeal (Form EOIR-26, Q. 8).

Immigration Judge's factual findings, including that the respondent did not demonstrate that he would more likely than not be tortured upon his return to Burma and that such torture would be with the consent or acquiescence of the Burmese government (IJ at 6-7). 8 C.F.R. § 1208.16(c)(2), 1208.17(a); *Efe v. Ashcroft*, 293 F.3d 899, 907 (5th Cir. 2002) (recognizing that Convention Against Torture protection has a higher burden of proof than persecution, requiring an alien to show that it is more likely than not that he will be tortured) *see also Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006) (holding that a CAT claim cannot be granted by stringing together a series of suppositions).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



FOR THE BOARD