

Falls Church, Virginia 22041

File: (b)(6) – New York, NY

Date:

DEC 21 2017

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Michael Lehach, Esquire

APPLICATION: Cancellation of removal; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mali, timely appeals an Immigration Judge's January 6, 2017, decision. The Immigration Judge found the respondent removable as charged, denied his applications for cancellation of removal pursuant to section 240A(b)(1) of the Act, 8 U.S.C. § 1229b, withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2), and ordered the respondent removed. The respondent's request for oral argument before this Board is denied. *See* 8 C.F.R. § 1003.1(e). On appeal, the respondent contests the denial of all three forms of relief. The appeal will be sustained, and the record will be remanded to the Immigration Judge for required background checks.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

As to the respondent's application for cancellation of removal, the only issue in dispute is whether the respondent has established that his removal would result in exceptional and extremely unusual hardship to his three United States citizen children, who were ages 8 years, 7 years, and 3 months, respectively, at the time of the respondent's hearing (IJ at 2, 7; Exh. 3; Tr. at 22-23). The principal hardship alleged by the respondent is the risk that his three United States citizen daughters would be forced to undergo female genital mutilation ("FGM"), per the cultural and religious beliefs of his family in Mali. In her decision, the Immigration Judge found that "[i]f the respondent had established that his daughters would be subjected to FGM, the court would have found that such a procedure clearly constitutes exceptional and extremely unusual hardship, and that the respondent's removal from the U.S. would put his daughters in jeopardy if they were to accompany him to Mali" (IJ at 8). However, she found that the respondent had not established that he would be unable to protect his daughters from FGM (*Id.*). We find clear error in the Immigration Judge's predictive finding, and will reverse it. *See Hui Lin Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012) (holding that an Immigration Judge's determination as to the likelihood of a future event occurring is a question of fact that we review for clear error); *Matter of Z-Z-O-* at 586.

In this case the Immigration Judge found the respondent to be credible (IJ at 8). The respondent testified that in his family, every girl is circumcised, without exception (Tr. at 25, 26). He stated that he learned in 2007 that his eldest daughter, who was born in and remains in Mali, was forcibly circumcised in 2007, at age 4, against his express wishes and efforts (Tr. at 24-25, 38). Moreover, this was done by the respondent's aunt, despite the efforts of his wife to block it (Tr. at 27). Due to a difficult financial and living situation in the United States, the respondent sent his eldest United States citizen daughter to live with his sister and her husband in Mali in 2009, where she remained for 4 years, until 2013 (Tr. at 28, 51). He testified that he eventually called for his daughter to be returned to him, as his sister's efforts to keep the respondent's daughter from being circumcised were being thwarted, and the pressure from the respondent's family to circumcise his daughter became too intense (Tr. at 53-54, 61-62). The respondent testified that he would not be able to prevent his family members from coming for his daughters and circumcising them if they were in Mali, as both he and his wife would need to work during the day and leave the children in the care of someone else, and his family feels so strongly about the requirement that they be circumcised (29-30, 31-32).

Given these uncontested factual findings, we are persuaded that the respondent's United States citizen daughters would be at a high risk of being forcibly circumcised at the behest of his family, and will reverse the Immigration Judge's finding to the contrary. Notably, the respondent's eldest daughter was in fact circumcised against his wishes, and he was only able to avoid having his second daughter circumcised by placing her in the custody of his sister, who, like him, objected to the procedure and undertook efforts to keep her from the respondent's family. Even then, once it became too risky to have her remain in Mali, the respondent called for his sister to send her back to the United States. Finally, given that the respondent's eldest daughter was taken away to be circumcised by the respondent's aunt unbeknownst to the respondent and his wife, and the respondent credibly testified that she or another family member would likely do the same with his other children while he and his wife were at work if they returned to Mali, we find that the likelihood of his daughters undergoing FGM would be significant if the respondent were removed to Mali and his wife (who is also a native and citizen of Mali) and daughters followed him there, and that such risk constitutes exceptional and extremely unusual hardship to them. As the respondent has met the other statutory requirements for cancellation of removal, and in the absence of evidence that would warrant a negative exercise of discretion, we will reverse the Immigration Judge's denial of cancellation of removal, and remand for required background checks.

Given the foregoing, we do not reach the respondent's applications for withholding of removal or cancellation of removal, or the respondent's related arguments on appeal.

Accordingly, the following orders will be entered.

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).

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FOR THE BOARD