



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 20530*

Lim Derek, Esq.  
Attorney at Law  
3100 Mowry Avenue, Suite 204  
Fremont, CA 94538

DHS/ICE Office of Chief Counsel - SFR  
P.O. Box 26449  
San Francisco, CA 94126-6449

Name: [REDACTED]

A 205-563-123

Date of this notice: 8/28/2014

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:  
Creppy, Michael J.

Trans  
User team: Docket

RECEIVED  
BY JC DATE 9/3/14

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 20530

---

File: ██████████ San Francisco, CA

Date: AUG 28 2014

In re: ██████████

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Derek D. Lim, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of the ██████████, appeals from an Immigration Judge's decision dated March 6, 2013, denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A), and his request for protection under the Convention Against Torture ("CAT"), 8 C.F.R. §§ 1208.16(c), 1208.18. The record will be remanded to the Immigration Judge.

We review the findings of fact made by the Immigration Judge, including any determination of credibility, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). Since the respondent's application for asylum was filed after May 11, 2005, it is governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

As an initial matter, we find that the Immigration Judge erred in requiring the respondent to produce corroborative evidence to show that he qualified for an exception to the filing deadline. See 8 C.F.R. §§ 1208.4(a)(4), 1208.4(a)(5). The Ninth Circuit Court of Appeals has held that the corroborative requirement for the REAL ID Act does not apply to the requirement that the application for asylum be timely filed. See I.J. at 4-5; *Singh v. Holder*, 649 F.3d 1161, 1167 (9th Cir. 2011) (concluding that the BIA erred in requiring corroboration, to an applicant's otherwise credible testimony, to show that he timely filed an application for asylum). Accordingly, it is necessary to remand for the Immigration Judge to reassess whether the respondent established that he qualified for an exception to the filing deadline.

The Immigration Judge's decision lacks a clear credibility finding. The Immigration Judge found the respondent not credible, based on her determination that the record lacked specific evidence to substantiate the respondent's claim of a well-founded fear of persecution on account of his religion. Section 208(b)(1)(B)(i) of the Act. The Immigration Judge did not note any specific inconsistencies but determined that the respondent failed to submit sufficient, reasonably available corroborating evidence to support his claim (I.J. at 7-11). Specifically, she noted that the respondent did not submit sufficient evidence regarding his ██████████ activities in the United States. She noted that he did not submit evidence to corroborate that he was ██████████ in the

United States, the existence of his [REDACTED] and that [REDACTED] authorities have knowledge of his

The absence of such corroborating evidence can lead to a finding that an applicant has failed to meet his or her burden of proof. See section 208(b)(1)(B)(ii) of the Act (“Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”); *Aden v. Holder*, 589 F.3d 1040, 1045 (9th Cir. 2009); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). However, under Ninth Circuit law, under the REAL ID Act, if corroboration is needed, the Immigration Judge must give the applicant notice of the corroboration that is required and an opportunity either to produce the requisite corroborative evidence or to explain why that evidence is not reasonably available before ruling that the applicant has failed to meet his burden of proof. *Zhi v. Holder*, 751 F.3d 1088 (9th Cir. 2014); *Ren v. Holder*, 648 F.3d 1079, 1093 (9th Cir. 2011). It is not clear that the Immigration Judge did so here.

Consequently, it is necessary to remand the record for preparation of a new decision by the Immigration Judge. On remand the Immigration Judge should make new findings regarding credibility, clarifying and supporting her credibility findings with specific and cogent reasons; determine whether it is necessary for the respondent to corroborate his claim, and whether he has done so and identify the corroborating evidence that she requires; make clear findings of fact; and to issue a new decision. In the remanded proceedings, the parties shall be permitted an opportunity to present additional evidence relevant to the respondent’s claim, including testimony and updated country condition material. We express no opinion regarding the merits of the claim for relief. Accordingly, the following order will be entered.

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

\_\_\_\_\_  
FOR THE BOARD

1  
OVD