U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: YEE, AMOS PANG SANG

A 209-412-251

Date of this notice: 9/21/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:
Greer, Anne J.
Wendtland, Linda S.
Pauley, Roger

SchwarzA
Userteam: Docket

File: A209 412 251 – Chicago, IL

Date: SEP 21 2017

In re: Amos Pang Sang YEE

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Sandra Andrea Grossman, Esquire

ON BEHALF OF DHS: Elizabeth Crites
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security (DHS) appeals from the Immigration Judge's March 24, 2017, decision granting the applicant asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The applicant has filed a brief opposing the DHS's appeal. The appeal will be dismissed.

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

The applicant is a native and citizen of Singapore.[1] The Immigration Judge found that the applicant's prosecution for crimes of general applicability was a pretext to silence his political opinions (IJ at 10). The Immigration Judge further found that the harm inflicted on the applicant rose to the level of persecution (IJ at 8-11). He then concluded that the DHS did not rebut the presumption of the applicant's well-founded fear of future persecution and granted the applicant's asylum application in the exercise of his discretion (IJ at 11).

The applicant was prosecuted for postings on social media that were highly critical of government officials. For these postings, Singaporean authorities charged the applicant with wounding religious feelings and obscenity (IJ at 4; Exh. 5 at 100-12). The applicant opted for jail instead of probation because he believed that he would violate the terms of probation by posting something online, which would lead to a longer jail sentence (IJ at 4; Tr. at 139-43). The terms of his pre-trial release forbade him from posting content on-line because, as the applicant testified, the government of Singapore did not wish him to stimulate ill-will toward the government (IJ at 4; Tr. at 96-97). The applicant did not comply with these conditions and was arrested again (IJ at

[1] The applicant presented evidence regarding a possible mental health condition, but there is no indication that he was limited in his ability to participate in these proceedings and fully present his claim (Exh. 6). No issue of competency has been raised on appeal, and we find no basis to address the issue further. *See generally Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

4; Tr. at 97). The applicant was ultimately confined for 55 days for his first prosecution (IJ at 4; Tr. at 79). He served 2 weeks of this time in a mental health institution (IJ at 4; Tr. at 79, Tr. at 143-44). The applicant testified about extremely poor conditions in the mental health facility (IJ at 4; Tr. at 79-85).

The applicant's second prosecution occurred a few months later, when he was arrested for the crime of wounding religious feelings and other crimes for making derogatory comments about Christianity and Islam (IJ at 4; Exh. 5 at 123-37). The Immigration Judge concluded that the first prosecution and punishment, standing alone, was persecutory, without also considering the second prosecution (IJ at 8).

The DHS contends on appeal that the Immigration Judge erred in finding that the government's first prosecution of the applicant was persecutory (DHS Brief at 19-25). The parties agree that the applicant was prosecuted under laws of general applicability. Such prosecutions generally do not form a basis for asylum, unless the prosecution was made for an invidious reason. *See Sharif v. INS*, 87 F.3d 932, 935 (7th Cir. 1996) (noting that punishment which results from violating a country's laws of general applicability does not form a basis for asylum, absent some showing that the punishment is being administered for a nefarious purpose); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) ("Prosecution for violating travel restrictions and laws of general applicability did not constitute persecution, unless the punishment was imposed for invidious reasons.").

The Immigration Judge found that the first prosecution was a pretext to silence the applicant's political opinions (IJ at 9-11). We discern no clear error in this factual finding, which is well supported by the Immigration Judge's comprehensive decision, citing corroborative evidence, including expert and supporting witness testimony. *See Matter of D-R-*, 25 I&N Dec. 445, 453 (BIA 2011) (noting that an Immigration Judge's determination of the motive of a persecutor is a finding of fact reviewed for clear error), *petition granted and remanded on other grounds sub nom. Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015) (mem.). In making this finding, the Immigration Judge noted the factors set forth in *Matter of S-P-*, 21 I&N Dec. 486, 493-94 (BIA 1996) (IJ at 9-11). The DHS on appeal sets forth arguments weighing these factors differently (DHS Brief at 22-25). However, these arguments do not persuade us that the Immigration Judge clearly erred in this finding. *See Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) (noting that the Board may not overturn factual findings simply because the Board would have weighed the evidence differently or decided the facts differently); *Matter of D-R-*, 25 I&N Dec. at 455 (setting forth that an Immigration Judge is not required to accept a party's plausible version of events when the record reflects other reasonable interpretations).[2]

The Immigration Judge concluded that the harm inflicted on the applicant rose to the level of persecution, which the DHS contests on appeal (DHS Brief at 19). The Immigration Judge considered that the applicant was 16 years old at the time of his first prosecution and that the harm

[2] The DHS also argues that the Immigration Judge ignored the second prosecution of the applicant, and that this prosecution was not for an improper purpose (DHS Brief at 17-19). However, the Immigration Judge did not reach whether the second prosecution was based upon improper motives and did not need to do so (IJ at 8).

a child has suffered may be relatively less than that of an adult and still qualify as persecution (IJ at 8). *See Kholyavskiy v. Mukasey*, 540 F.3d 555, 570 (7th Cir. 2008). Moreover, the Immigration Judge relied on severe mistreatment of the applicant, including being imprisoned with only adults and being placed in a mental institution with difficult conditions. We agree with the Immigration Judge that the cumulative harm in this case rose to the level of persecution, which entitles the applicant to a presumption of a well-founded fear, that has not been rebutted (IJ at 11). Because we discern no clear error in the Immigration Judge's findings of fact, and no basis to disturb conclusions of law supporting the grant of asylum, we will remand the record for any necessary background and security investigations. [3]

Accordingly, the following orders will be entered.

ORDER: The 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

[3] Given the lack of clear error in the Immigration Judge's finding that the prosecution was a pretext to stifle the applicant's political opinion, we need not address a distinct issue. Some laws of general applicability in other countries could restrict political opinion, religion, or other protected grounds. Our decision does not reach the issue of whether a prosecution brought under such a law would be on account of that protected ground, irrespective of a pretextual application.