**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*

**Wishnie, Michael J., Esq.**
**P.O. Box 06520**
**New Haven, CT 06520**

**U.S. DHS/HAR**
**450 Main St, Room 483**
**Hartford, CT 06103-3060**

**Name** [redacted] [redacted]

**Date of this notice: 3/10/2009**

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:
Kendall-Clark, Molly

spignerc

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] Hartford, CT

Date: MAR 10 2009

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Michael J. Wishnie, Esquire

ON BEHALF OF DHS: Patricia J. Flanagan
Assistant Chief Counsel

This case was last before us on September 18, 2008, at which time we denied the respondent's motion to reopen proceedings as untimely. The respondent has now filed another motion to reopen proceedings on December 24, 2008, which is subject to both the time and number restrictions imposed on motions to reopen. *See* 8 C.F.R. § 1003.2(c)(2). The Department of Homeland Security opposes the respondent's motion to reopen, which will be granted under *our sua sponte* authority pursuant to 8 C.F.R. § 1003.2(a). *See Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997)..

The respondent is a male native and citizen of Haiti who fears being tortured in that country due to his mental illness, his likely incarceration upon return, and the current instability of the country's infrastructure on account of recent hurricanes. The respondent has filed two previous motions to reopen *pro se* but his current motion, filed with the assistance of counsel, outlines many factors which lead us to conclude that further review of the record is warranted.

In his October 17, 2007, decision, the Immigration Judge found that the respondent presented a "significant claim ... that he would be tortured in Haiti because of his mental illness," but found that the respondent had simply failed to present evidence that he would either be detained in Haiti upon his return, or that he would be denied his medications if so incarcerated (I.J. at 7-8). On appeal, and in his two previous motions, the respondent also failed to present sufficient evidence to support his fear of detention. However, with the assistance of counsel, the respondent has now demonstrated that circumstances have changed, and that criminal detainees from the United States are currently routinely incarcerated upon removal to Haiti (Exh. T). The 2007 Country Report on Human Rights Practices for Haiti ("Country Report") indicates that detention of criminal deportees is the current policy of the Haitian government, and that detainees must contend with very poor conditions in Haitian prisons (Exh. T).

While we have held that detention for an unspecified period of time in harsh prison conditions is not torture, we find this case distinguishable from our decision in *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002)(holding that neither indefinite detention nor generally poor prison conditions in Haiti constitute torture where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture.) The record reflects that the respondent is a diabetic dependant

[redacted]

on insulin and has been diagnosed with serious and ongoing psychological disorders which require him to take clonazepam, paroxetine, and doexepin regularly (Exh. D). The respondent has produced evidence that it is likely that he would experience a psychotic break without his medication (Exh. D, F). The 2007 Country Report establishes that it is unlikely that the respondent will receive medical or psychiatric treatment while he is imprisoned (Exhs. D, F, T), and the respondent's resulting behavior without medication will add to the possibility of his mistreatment. *See Pierre v. Gonzales,* 502 F.3d 109 (2007).

As such, we find that the respondent has provided evidence that he would likely suffer intentionally severe abuse in prison, which constitutes torture under standards set forth in *Matter of J-E-, supra.* The Country Report indicates that intentional torture and other forms of abuse by Haitian security forces has been reported (Exh. T). In this regard, we note that in the respondent's condition, his ability to conform to prison discipline may be limited, especially if his medication is not provided. Moreover, the respondent's motion provides evidence that recent hurricanes have debilitated Haiti's already weak infrastructure (Exh. H, K, M, N, X), and we give credence to the respondent's argument that such chaotic conditions may serve to exacerbate the already lax oversight of prison security forces and lessen any chance that he may receive necessary medical care.

Given the respondent's history of mental illness and insulin-dependency, when combined with the harsh prison conditions present in Haiti and the lack of representation in any prior motions presented by the respondent, we find a remand warranted. The respondent has provided demonstrable evidence that he may suffer torture at the hands of or with the acquiescence of a public official, if removed to Haiti. Accordingly, we find reason to remand the record for further proceedings regarding the respondent's request for relief, and we will grant the respondent's motion *sua sponte* pursuant to 8 C.F.R. § 1003.2(a). *See Matter of J-J-, supra.* The following order will, thus, be entered.

ORDER: The motion is granted, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision.

Molly Randall Clarke

FOR THE BOARD