



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: B [REDACTED] B [REDACTED] [REDACTED]

Date of this notice: 2/2/2010

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:

Filppu, Lauri S.
Greer, Anne J.
Pauley, Roger

lucasd

Falls Church, Virginia 22041

File: [REDACTED] Hartford, CT

Date:

FEB -2 2010

In re: B [REDACTED] B [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jean Koh Peters, Esquire

ON BEHALF OF DHS: Amit Patel
Assitant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(A)(iii), I&N Act [8 U.S.C. § 1227(a)(2)(A)(iii)] -
Convicted of aggravated felony

APPLICATION: Convention Against Torture

The respondent timely appeals the Immigration Judge's July 8, 2009, decision denying the respondent's application for protection under the Convention Against Torture.¹ The respondent argues on appeal that the Immigration Judge erred in concluding that he failed to meet his burden of proof and violated his due process rights. The Department of Homeland Security ("DHS") argues that the Immigration Judge's decision is correct and should be affirmed.

The respondent is a native and citizen of Haiti who alleges that he will more likely than not be tortured in Haiti because he will be imprisoned as a criminal deportee, denied access to medication and treatment for his diabetes and mental health, and physically harmed by prison guards or prisoners because of his tattoos, lack of familial support in Haiti, and medical conditions. The Immigration Judge considered the evidence presented, entered findings of fact regarding the harm the respondent faces, and concluded that the respondent failed to meet his burden of proof.

The respondent's claim is multifaceted. The respondent suffers from diabetes, Post Traumatic Stress Disorder, Impulse Control Disorder, Bipolar Disorder, and Psychotic Disorder (I.J. at 3). The respondent's fragile medical and mental condition can only be maintained through regimented medication. One of the most important medications the respondent takes, insulin, requires refrigeration. The respondent claims that he will not be provided medication in prison and that even

¹ We incorporate by reference the procedural history of this case as outlined in the Immigration Judge's July 8, 2009, decision (I.J. at 1-2).

if he were provided medication, he would be unable to refrigerate his insulin and it would become useless. The respondent and his experts assert that if he is denied useable insulin, he will develop erratic, noncompliant behavior and will become irritable, combative, and unresponsive within a very short period of time (one to four days). (Tr at 98-102). Due to his psychological disorders, the respondent will likely become mentally unstable and develop suicidal ideation. (Tr. at 99-100). The respondent further claims that he is at a higher risk of being detained longer because he has no family in Haiti. (I.J. at 6) (noting witness who testified that detainees who do not have family in Haiti may be held longer than those who have family in Haiti); (Tr. at 88-89). The respondent ultimately claims that his foreseeable erratic behavior in combination with his tattoos place him at heightened risk of harm from other inmates, harm that the guards will either participate in or acquiesce.

Based upon our review of the evidence and factual findings, we conclude that the respondent's claim is distinguishable from *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002), wherein this Board found that substandard prison conditions in Haiti and evidence of isolated incidents of torture were insufficient to meet the respondent's burden of proof for withholding of removal. Unlike the respondent in *Matter of J-E-*, the current respondent suffers from multiple medical and mental problems, which without proper medication will result in severe and debilitating symptoms that bear a high probability of eliciting negative attention from those around him. Accordingly, we find that he has sufficiently established that an inability to have access to insulin and other medications, which will trigger psychotic symptoms, in combination with his lack of familial resources and the presence of tattoos, will more likely than not result in the respondent being persecuted by other inmates or security guards, who will either punish the respondent for his behavior or acquiesce in the other inmates' behavior. 8 C.F.R. § 1208.18(a).² In other words, the respondent has established eligibility for deferral of removal.

Finally, we note that a request for humanitarian parole or deferred action arising from the recent devastating earthquake in Haiti and its aftermath are matters beyond the jurisdiction of the Board and the Immigration Judges. See section 244(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1254a(b)(1); *Matter of Medina*, 19 I&N Dec. 734 (BIA 1988); 18 I&N Dec. 348 (BIA 1982) (deferred action status, giving person permission to remain indefinitely, is a matter of prosecutorial grace). Further, while the Department of Homeland Security has decided to invoke the Temporary Protected Status provisions of the Act for Haitians, this respondent would not be eligible for TPS due to his aggravated felony conviction.


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

² Due to the particular and extensive evidence submitted by the respondent, we also find this case distinguishable from *Pierre v. Gonzales*, 502 F.3d 109 (2d Cir. 2007) (affirming the Board's finding that the mere fact that the alien had diabetes requiring medication that would not likely be available in Haiti did not establish eligibility for CAT).

[REDACTED]

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