

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Eloy, Arizona

File No. : [REDACTED]

February 17, 2005

In the Matter of

[REDACTED]

Respondent

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)
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)
)

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(6)(A)(i) Immigration and Nationality Act, alien unlawfully present, not being admitted or paroled.

APPLICATIONS: Asylum, withholding of removal, relief under Convention against Torture, and-or voluntary departure at conclusion of proceedings.

ON BEHALF OF RESPONDENT:

Pro se

ON BEHALF OF DHS:

Sarah Hartnett
Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

This is a removal proceeding brought by Immigration and customs Enforcement against the named respondent when he was served with the Notice to Appear, which was filed with the Court, Exhibit 1. The respondent admitted the allegations and conceded the charge, designating El Salvador for removal should that become necessary. Based upon the admissions and concession, removability was established by clear and convincing evidence. As relief, the respondent seeks asylum in the United States and has submitted an application in support thereof, group Exhibit 6.

This is also considered as a request for the withholding of his removal to El Salvador pursuant to Section 241(b)(3) INA. It is also considered as a request for relief under the Convention against Torture. In the alternative, the respondent seeks at these proceedings conclusion voluntary departure.

A copy of the application was forwarded to the Department of State requesting an advisory opinion, Exhibit 6-A, but no reply was received. The Government avers that all record checks have been completed.

The respondent submitted additional documentary materials in support of his claim, group Exhibit 8. **Additionally**, a copy of documentation from the Government **was** received without objection, group Exhibit 9, as well as articles submitted by the Government on today's date, group Exhibit 10. **No** witnesses other than the respondent testified.

Concerning the respondent's testimony, generally I have found him to be credible.

For asylum, the respondent needs to show that he **has** been persecuted or has a well-founded fear of persecution **based upon** his race, his religion, his nationality, his membership in a particular social group and-or his political opinion. See definition of refugee, Section 101(a)(42) INA. See also Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987). See also INS v. Cardoza-Fonseca, 107 S.Ct. 1207 (1987).

Asylum is discretionary in nature.

Requests for relief under Section 241(b)(3) INA **require that** an individual show that it is **more likely than not that** they would face persecution based upon any of the five enumerated grounds. This relief has no element of discretion contained therein. A person is eligible unless they are shown to have been convicted of a particularly serious crime or have persecuted another individual.

For relief under the Convention against Torture, an individual must show that it **is** more likely than not that they would face torture at the hands of the government, government officials or persons acting with the awareness of government officials.. There is no element of discretion **contained** in this form of relief. See also Zheng v. Ashcroft, F.3d , case no. 02-70193 (9th Cir. June 18, 2003). See also Matter of J-E-, 23 I&N Dec. 291 (BIA 2002).

An issue in this case, as the respondent is **claiming** eligibility **for asylum**, is the **fact** that he **came** to the United States in 1999 without inspection and never previously applied for asylum in the **United States**. **There is a** requirement that an application be **submitted within** one year of arrival in the United states unless an individual falls within an exception to that filing deadline. Under 8 C.F.R. 208.4(a)(5)(ii), there is an exception for legal disability. Legal disability includes an **applicant** who is an unaccompanied minor or who **suffered from a mental impairment** during the one-year period after arrival. I

IT IS FURTHER ORDERED that removal to El Salvador be withheld pursuant to Section 241(b)(3) INA.

JEFFREY ZLATOW
Immigration Judge

CERTIFICATE PAGE

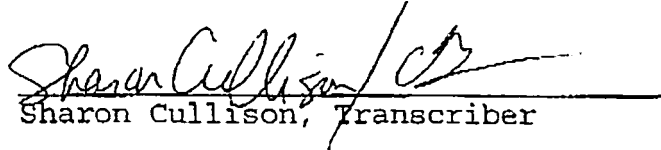
I hereby certify that the attached proceeding before
JUDGE JEFFERSY ZLATOW, :in the matter of:

[REDACTED]

A [REDACTED]

Eloy, Arizona

is an accurate, verbatim transcript of the cassette tape as
provided by the Executive Office for Immigration Review and that
this is the original transcript thereof for the file of the
Executive Office for Immigration Review.


Sharon Cullison, Transcriber

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April 26, 2005
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
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U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED]

Date: JUN 28 2005

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

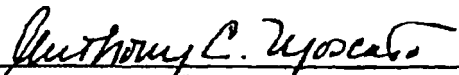
ON BEHALF OF RESPONDENT: Rajesh S. James, Esq.

ON BEHALF OF DHS: Paul R Foster
Assistant Chief Counsel

APPLICATION: Withholding of removal, Convention Against Torture

ORDER:

PER CURIAM. The Immigration Judge's January 13, 2005, decision, granting the respondent's application for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), as well as granting his request for deferral of removal under the Convention Against Torture, is adopted and affirmed based upon and for the reasons set forth in that decision. See *Matter of Burbano*, 201 & N Da. 872, 874 (BLA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision.") Furthermore, we find the Immigration Judge's decision to grant the respondent's application for withholding of removal and relief pursuant to the Convention Against Torture supported by the record and applicable law. The Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) raises no arguments on appeal that would cause us to reverse the Immigration Judge's decision. Accordingly, the Immigration Judge's decision is affirmed and the appeal is dismissed.



FOR THE BOARD