

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Applicant

FILED

Jan 27, 2025

ON BEHALF OF APPLICANT: Pro se

ON BEHALF OF DHS: Frank A. Jury II, Assistant Chief Counsel

IN WITHHOLDING ONLY PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Clark, Appellate Immigration Judge; Kludt, Appellate Immigration Judge; O'Connor,
Appellate Immigration Judge

Opinion by Appellate Immigration Judge Kludt

Appellate Immigration Judge O'Connor, concur in part, dissent in part, see separate opinion

KLUDT, Appellate Immigration Judge

The applicant, a native and citizen of Nicaragua, appeals the Immigration Judge's August 9, 2024, decision denying his application for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security ("DHS") opposes the appeal.² We will remand the record.

We review findings of fact, including the determination of credibility, determined by an Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant, who was pro se before Immigration Judge, claims that the government of Nicaragua harmed him in the past and will harm him in the future because he participated in anti-government protests and released a viral song in which he criticized the government (IJ at 2-4;

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17; 8 C.F.R. § 1208.18(a) (2020).

² The applicant is in withholding-only proceedings because DHS filed a Form I-863, Notice of Referral to the Immigration Judge, with the Immigration Court indicating that the applicant is subject to a prior order of removal (Exh. 1). See 8 C.F.R. § 1208.2(c)(2).

Tr. at 19-22, 39, 43-44). The applicant claims that he operated a sports academy for children, and that the government was concerned he would teach the children to oppose the government (IJ at 2-3; Tr. at 25-26, 44). The applicant claims that his neighbor, who was a government representative, came to his house 10 or 12 times to threaten him and tell him he had to leave the sports academy (IJ at 3; Tr. at 26-28). The applicant claims that his neighbor sent police officers to arrest him while he was at a public park, and that the police officers detained him for 4 days, during which time they electrocuted him, stomped on his bare feet, and hit him with a baton (IJ at 3-4; Tr. at 29-33). The applicant claims that his neighbor and police officers came to his house to look for him after he fled Nicaragua, and that they detained his uncle, who told them that he had fled the country (IJ at 4; Tr. at 33-37).

The Immigration Judge found the applicant not credible because he concluded that the applicant's claim was implausible and unsupported by corroborating evidence (IJ at 5-8). The applicant challenges the Immigration Judge's adverse credibility finding on appeal (Applicant's Br.). We will reverse the adverse credibility finding because it is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i).

The Immigration Judge found the applicant's testimony that the government did not harm him between November 2022 and September 2023 implausible in light of his testimony that he was a well-known figure in Nicaragua (IJ at 5; Tr. at 28). We conclude that the Immigration Judge clearly erred because the applicant testified that he was in hiding during that period (Tr. at 25, 70; Applicant's Br.).

The Immigration Judge found the applicant's testimony that the police could not arrest him at his house or sports academy implausible (IJ at 5-6; Tr. at 30). On appeal, the applicant contends that it would have been problematic for the police to arrest him at his house or sports academy because he is an important figure in his community (Applicant's Br.). We conclude that the Immigration Judge clearly erred because he did not cite to evidence of record to explain why it is implausible for the police to have refrained from arresting the applicant at his house or sports academy.

The Immigration Judge found the applicant's testimony that he treated his injuries with cream after his detention by police implausible (IJ at 6). We conclude that the Immigration Judge clearly erred because the applicant only testified that he suffered bruises and swelling, and that a doctor advised him to apply cream to help with the swelling after his mother showed the doctor photographs of his injuries (Tr. at 33, 51; Applicant's Br.).

The Immigration Judge found the applicant testified inconsistently regarding the date his neighbor and the police came to his house after he fled Nicaragua (IJ at 6). The applicant first testified that they came to his home on the date he fled Nicaragua, then testified that they came 6 days after he fled, then testified that they came within the first 3 days after he fled, and finally testified that they came 5 or 6 days after he fled (IJ at 6; Tr. at 34-36). On appeal, the applicant contends that his testimony resulted from a misunderstanding (Applicant's Br.). The Immigration Judge also found the applicant omitted his testimony that the police questioned his mother and uncle, and that they took his uncle in for questioning, from the reasonable fear

interview (IJ at 6; Tr. at 36-37; Exh. 1). On appeal, the applicant contends that he did not have an opportunity to provide such testimony during the reasonable fear interview because he could only respond to the interviewer's questions (Exh. 1 at 12-23; Applicant's Br.). We accept the applicant's explanations and conclude that these discrepancies are insufficient to support finding the applicant not credible.

We conclude that the applicant's testimony is credible under the totality of the circumstances. See INA § 240(c)(4)(C), 8 U.S.C. § 1229a(c)(4)(C); *Avelar-Oliva v. Barr*, 954 F.3d 757, 763-64 (5th Cir. 2020). Thus, we need not address the Immigration Judge's findings regarding the applicant's corroborating evidence. See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

The Immigration Judge further determined that the applicant did not suffer past harm rising to the level of persecution (IJ at 8-10). We reverse the Immigration Judge's determination. We conclude that the persistent threats the applicant received, as well as the 4-day detention that he suffered, during which the police beat him and electrocuted him, and after which his neighbor and the police continued to pursue him at his house, demonstrates that he was the victim of an organized, systematic campaign of intimidation and pursuit. See *Aben v. Garland*, 113 F.4th 457, 466 (5th Cir. 2024). Thus, we conclude that the applicant has established past harm rising to the level of persecution. See *id.*

We will remand the record to the Immigration Judge to assess in the first instance whether the applicant established that the Nicaraguan government harmed him on account of his political opinion (Exh. 2 at 5). See *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error."). If the Immigration Judge determines that the applicant established a nexus to his political opinion, and thus that he established past persecution as a matter of law, the Immigration Judge should apply the requisite presumption that the applicant's life or freedom would be threatened and allow DHS an opportunity to rebut the presumption.³ See 8 C.F.R. § 1208.16(b)(1). The Immigration Judge should also reassess the applicant's eligibility for protection under the CAT on remand.

Accordingly, the following order is 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.

³ An unable or unwilling inquiry is unnecessary because the applicant's persecutor is the Nicaraguan government. See *Sanchez-Amador v. Garland*, 30 F.4th 529, 533 (5th Cir. 2022) (acknowledging that an applicant need only show the government is unable or unwilling to control a persecutor when the persecutor is a non-government actor).

(b)(6)

O'CONNOR, Appellate Immigration Judge, concurring in part and dissenting in part.

While I agree with the remainder of the majority's findings regarding the applicant's credibility, I disagree that the Immigration Judge clearly erred by finding the applicant's testimony that the police could not arrest him at his house or sports academy implausible because country conditions evidence in the record demonstrates that the Nicaraguan government and its police forces regularly conduct arbitrary arrests and raid and ransack the homes of citizens in the process (IJ at 6; Exh. 4 at 5-6, 10-12). With respect, authoritarian regimes seldom are concerned about the publicity their human rights abuses may cause, so I do not find the applicant's explanation for the Immigration Judge's implausibility finding to be persuasive. I would allow the Immigration Judge to reassess the applicant's credibility without relying on the clearly erroneous findings, and in light of any additional testimony or evidence presented on remand. I agree with the majority that, accepting the applicant's testimony as credible, his past harm rises to the level of persecution.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Jan 27, 2025

ON BEHALF OF RESPONDENT: Bertha A. Zuniga, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: LeMelle, Appellate Immigration Judge; López, Appellate Immigration Judge; Sáenz,
Appellate Immigration Judge

Opinion by Appellate Immigration Judge LeMelle

LEMELLE, Appellate Immigration Judge

The respondent, a native and citizen of Syria, appeals the Immigration Judge's August 30, 2024, decision denying his application for asylum¹ and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").² The Department of Homeland Security ("DHS") did not respond to the appeal. We will remand the record.

We review findings of fact determined by an Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent worked as a videographer and photographer in Syria and owned a photography business (IJ at 2-3; Tr. at 44-48; Exh. 4 at 5, 19-23). In 2020, people in the respondent's city began protesting the Syrian government, including calling for the ouster of then-President Bashar al-Assad (IJ at 3; Tr. at 48-49; Exh. 4 at 5-7). The respondent photographed the anti-government protests in secret, and he distributed the photographs to news outlets and online activists with the

¹ The Immigration Judge found, and the respondent conceded, that the respondent is ineligible for asylum under the Circumvention of Lawful Pathways ("CLP") Final Rule (IJ at 10; Respondent's Br. at 9). See 8 C.F.R. § 1208.33.

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.18(a) (2020); 8 C.F.R. § 1208.17.

help of drivers who transported memory cards containing the photographs over the border to Lebanon for distribution (IJ at 3; Tr. at 48-57; Exh. 4 at 6-7, 24-29).

In October 2022, members of the Syrian National Defense Forces came to the respondent's photography studio and asked him to take photographs for them (IJ at 3; Tr. at 58-61; Exh. 4 at 7). The respondent declined (IJ at 3; Tr. at 61; Exh. 4 at 7). Two weeks later, a member of the National Defense Forces, Abu Sultan, called the respondent and told him that the National Defense Forces were not asking, but were demanding, that the respondent work for them (IJ at 3; Tr. at 62-63; Exh. 4 at 7). The respondent again declined, and Abu replied that the respondent would see what happens when he rejects orders (IJ at 3; Tr. at 62-63; Exh. 4 at 7). Two weeks later, a group of seven armed men came to the respondent's photography studio, ransacked his equipment, and kicked and beat him with the back of a weapon while telling him he had no choice but to work with the National Defense Forces (IJ at 3-4; Tr. at 71-77, 80-81; Exh. 4 at 7, 17, 30-37). The group was led by Muhannad Mahzar (IJ at 4; Tr. at 73; Exh. 4 at 7). In January 2023, armed men attempted to kidnap the respondent (IJ at 4; Tr. at 83-87; Exh. 4 at 8). Two days after the attempted kidnapping, Muhannad called the respondent and told him that his group had captured one of the respondent's drivers, who informed Muhannad that the respondent had photographed the protests (IJ at 4, 13; Tr. at 89-92; Exh. 4 at 8). Muhannad stated that while the respondent had escaped this time, he would be killed next time (IJ at 4; Tr. at 91; Exh. 4 at 8).

We reverse the Immigration Judge's determination that the respondent did not establish past persecution. The Immigration Judge determined that the respondent did not suffer harm rising to the level of persecution because the beating, attempted kidnapping, and death threats did not involve serious threats to his life or freedom, or the infliction of significant harm (IJ at 11-12). The Immigration Judge found that the threats were exaggerated, non-specific, and not immediate (IJ at 12). The Immigration Judge found that the harm amounted to harassment (IJ at 12). We disagree. Abu, the National Defense Forces member, initially told the respondent he would see what happens when he rejects orders (IJ at 3). Abu's threat was swiftly followed by Muhannad and his group's violent attack on the respondent, which caused his hospitalization (IJ at 3-4). The attack was then followed by the attempted kidnapping, which in turn was followed by Muhannad's credible threat to kill the respondent (IJ at 4). We conclude that the respondent was the victim of an organized, systematic campaign of intimidation and pursuit, and that he has thus established past harm rising to the level of persecution. See *Aben v. Garland*, 113 F.4th 457, 466 (5th Cir. 2024) (citing *Gjetani v. Barr*, 968 F.3d 393, 397 (5th Cir. 2020)).

The Immigration Judge found that Muhannad is aware of the respondent's anti-government political opinion (IJ at 13). The Immigration Judge also found that Muhannad targeted the respondent because he refused to work with the National Defense Forces and photographed anti-government protests (IJ at 4, 13; Tr. at 100-01). We construe this as a determination that Muhannad harmed the respondent on account of his political opinion (Respondent's Br. at 14). We discern clear error in the Immigration Judge's additional finding that the respondent did not show that the Syrian government knew of his political opinion (IJ at 14; Respondent's Br. at 17). As we describe below, the record reflects that Muhannad acted on behalf of the Syrian government. Further, the Immigration Judge's finding that members of the National Defense Forces threatened the respondent because of his refusal to work with them demonstrates that the government was

aware of the respondent's anti-government political opinion and targeted him because of it (IJ at 3).

The Immigration Judge found that Muhannad is not a government actor because the police raided his group (IJ at 13). We agree with the respondent that the Immigration Judge clearly erred in this finding (Respondent's Br. at 20-21). The record evidence indicates that a coalition of militia groups, not the police, raided Muhannad's group (Exh. 5 at 101, 104-06; Respondent's Br. at 20).³ The record evidence, including a declaration from expert witness Dr. (b)(6) as well as the Immigration Judge's own findings that Muhannad and his group possessed military IDs and weapons and targeted the respondent because he refused to work with the National Defense Forces, overwhelmingly indicates that Muhannad and his group acted on behalf of the Syrian government (IJ at 13, 17; Tr. at 72-73, 100, 108-09, 116-17, 120; Exh. 5 at 95-96, 99-100, 103-08, Exh. 7 at 2-3).

The Immigration Judge concluded that the Syrian government is able and willing to protect the respondent because the police actively pursued Muhannad and his group (IJ at 13-14). We reverse this finding based on our explanation above that the Syrian government did not attempt to protect the respondent from Muhannad, but rather actively used Muhannad and his group as a proxy to persecute the respondent. In other words, it is the government itself, not a private party acting alone, that persecuted the respondent in the past, and which the respondent fears will persecute him in the future. As a result, it is unnecessary to engage in an "unable or unwilling" inquiry. See *Sanchez-Amador v. Garland*, 30 F.4th 529, 533 (5th Cir. 2022) (acknowledging that an applicant need only show the government is unable or unwilling to control a persecutor when the persecutor is a non-government actor).

We conclude that the respondent established past persecution as a matter of law.⁴ We will remand the record to the Immigration Judge to apply the requisite presumption of a well-founded fear of future persecution and allow DHS an opportunity to rebut the presumption. See 8 C.F.R. § 1208.13(b)(1). We note that cases where a persecutor is government-sponsored, it is also presumed that internal relocation is not reasonable unless DHS rebuts that presumption. 8 C.F.R. § 1208.13(b)(3)(ii); see also *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33-34 (discussing DHS's burden of proof). We take administrative notice of the fact that on December 8, 2024, during the pendency of this appeal, Syrian rebels ousted President Bashar al-Assad from power.

³ We acknowledge that the article the Immigration Judge cites to states that a "Counter-Terrorism Force" raided Muhannad's group (Exh. 5 at 104). The same article indicates that the government ordered Muhannad's group to assassinate members of the Counter-Terrorism Force (Exh. 5 at 105). Additional evidence explains that the Counter-Terrorism Force was founded by the Syrian Brigade Party, and that the government later disbanded the force and killed its leader (Exh. 5 at 101).

⁴ Because we are remanding for further proceedings, we decline to address the Immigration Judge's denial of the respondent's request for protection under the CAT, or the respondent's arguments contesting that denial, at this time (IJ at 14-17; Respondent's Br. at 22-26). See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

(b)(6)

See 8 C.F.R. § 1003.1(d)(3)(iv). On remand, the Immigration Judge should allow the parties to submit additional evidence and arguments.

Accordingly, the following order is 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.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Feb 05, 2025

ON BEHALF OF RESPONDENT: Ali R. Mirhosseini, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Sáenz, Appellate Immigration Judge

SÁENZ, Appellate Immigration Judge

The respondent, a native and citizen of Iran, appeals from the Immigration Judge's decision dated August 28, 2024, denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security has not responded to the appeal. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent sought relief and protection from removal based on his religion and based on a fear that he will be charged with adultery if he returns to Iran (IJ at 2-4). The Immigration Judge found the respondent to be credible but concluded that he did not establish eligibility for asylum, withholding of removal, or CAT protection (IJ at 4-6).

We determine that a remand is required because the Immigration Judge's decision does not currently contain sufficient factual findings or legal analysis to allow for meaningful appellate review. *See Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (recognizing the heightened importance for Immigration Judges to make comprehensive findings of fact because the Board must defer to the factual determinations of an Immigration Judge in the absence of clear error); *Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (explaining that a decision must accurately

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17; 8 C.F.R. § 1208.18(a) (2020).

reflect the Immigration Judge's analysis of the applicable statutes, regulations, and legal precedents, and clearly set forth the Immigration Judge's legal conclusions). Despite noting that the respondent fears the Iranian government, the Immigration Judge did not address this claim and only analyzed the respondent's claim of persecution from his girlfriend's family (IJ at 2, 5; Tr. at 28, 37-38). Similarly, although the respondent indicated that he sought asylum and withholding of removal on account of his conversion to the Christian religion in his application, the Immigration Judge did not elicit testimony as to this claim while the respondent was pro se, and did not address it in his decision (Tr. at 38; Exh. 2, at 5). Under these circumstances, we conclude that remand is appropriate for the Immigration Judge to make factual findings as to the new evidence, and to fully analyze the respondent's applications for asylum, withholding of removal, and CAT protection before we can review the entirety of this case on appeal.

In addition, on appeal, the respondent has provided new evidence, which we construe as a motion to remand. *See Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) ("The Board is an appellate body whose function is to review, not create, a record."); 8 C.F.R. § 1003.1(d)(3)(iv). This evidence indicates that the government of Iran charged and convicted the respondent in absentia for his affiliation with and activities related to Evangelical Christianity and charged the respondent with "sexual crimes" with an unknown disposition (Respondent's Supplemental Filing, unpaginated). This evidence appears relevant to the Immigration Judge's factual finding that it is speculative that the respondent would be arrested if he returns to Iran (IJ at 5; Tr. at 33).² The Immigration Judge should consider this evidence, along with relevant country conditions, on remand.

In analyzing the respondent's application for asylum, the Immigration Judge should address the respondent's argument that he qualifies for an exception to the Circumvention of Lawful Pathways rule (Respondent's Br. at 2-3).³ *See* 8 C.F.R. § 1208.33(a)(3)(i). Accordingly, the following order will be entered.

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

² We note that the Immigration Judge found that the respondent did not provide any evidence that his girlfriend exists (IJ at 5). The documents also name his girlfriend, (b)(6). This, as well as the copy of (b)(6) Iranian passport, should be considered on remand.

³ The respondent's having travelled through several countries where he did not apply for asylum prior to entering the United States is not dispositive of whether he is ineligible for asylum under the Circumvention of Lawful Pathways rule. The rebuttable presumption that a noncitizen is ineligible for asylum under this rule does not apply to noncitizens who present at a port of entry at a pre-scheduled time or place, or those who demonstrate, by a preponderance of the evidence, that it was not possible to access the scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing serious obstacle, or who sought and were denied asylum or other protection in the countries through which the noncitizen travelled. *See* 8 C.F.R. § 1208.33(a)(2)(ii).

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Applicant

FILED

Feb 19, 2025

ON BEHALF OF APPLICANT: Amanda M. Aguilar, Esquire

ON BEHALF OF DHS: Celestin A. Nkeng, Assistant Chief Counsel

IN WITHHOLDING ONLY PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: LeMelle, Appellate Immigration Judge; Mullane, Appellate Immigration Judge; Nahas,
Appellate Immigration Judge

**Opinion by Appellate Immigration Judge Nahas
Appellate Immigration Judge Mullane, dissents without opinion**

NAHAS, Appellate Immigration Judge

The applicant, a native and citizen of Honduras, appeals the Immigration Judge's August 23, 2024, decision, denying his application for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security ("DHS") opposes the appeal. The record will be remanded.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant, who was pro se before the Immigration Court, sought relief and protection from removal based on a fear of future harm from Honduran police officers and gangs (IJ at 3; Tr. at 54; Exhs. 2, 4). The applicant testified that in (b)(6) of 2018, he was beaten by Mara 18 for failure to make an extortion payment while working in their territory (IJ at 3; Tr. at 56-59). The applicant further testified that 5 years later, in (b)(6) of 2023, he called the police department to file a report on his neighbors for selling drugs from their home (IJ at 3; Tr. at 61). The police asked for his address, and three police officers went over to his house to take a report (IJ at 3; Tr. at 62).

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c), 1208.17; 8 C.F.R. § 1208.18(a) (2020).

Those same three police officers returned to his house 3 days later, stabbed and pulled a gun on the applicant, told him to get in their vehicle, put a bag over his head while they drove him to a dump where they proceeded to beat the applicant, threatened him, and called him a snitch (IJ at 3-4; Tr. at 60-63). The applicant did not report those three police officers to any other police or higher authority following this incident (IJ at 4; Tr. at 63). The applicant also did not seek medical help upon his release (IJ at 4; Tr. at 66).

The Immigration Judge found the applicant was credible but determined that the applicant did not meet his burden to demonstrate eligibility for withholding of removal under the INA or CAT protection (IJ at 5-9). As to withholding of removal, the Immigration Judge determined that the applicant did not show that harm he experienced rose to the level of persecution; that the 2018 incident was on account of a protected ground; and that the government was unable or unwilling to protect him from with respect to the 2023 incident (IJ at 5-9). For CAT, the Immigration Judge determined that the applicant did not establish a clear probability that a state actor would consent or acquiesce to any torture by the police officers who harmed in 2023 (IJ at 8-9). On appeal, the applicant argues that the Immigration Judge erred in finding that there was no state involvement in the harm he experienced and fears and that the harm he experienced rises to the level of past persecution and past torture (Respondent's Br. at 5-16).

Starting with withholding of removal, an applicant must prove that the persecution they fear will be inflicted by the government or by a private actor the government is unwilling or unable to control. See *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Because the applicant here was harmed by police officers during the second incident of harm in 2023, he met the government actor requirement of withholding of removal as to that second incident and does not need to show that the government was unwilling or unable to protect him as to this incident. See *id.* Thus, on remand, the Immigration Judge should decide the other requirements of withholding of removal, such as whether the applicant demonstrated that the harm he experienced and fears is on account of a protected ground, including membership in a particular social group, whether the harm he experienced that is on account of a protected ground (if any) rises to the level of persecution, whether he could internally relocate to avoid harm and whether requiring him to do so would be reasonable, and whether he faces a clear probability of future persecution considering the shifting burdens of proof. See *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (emphasizing that "the Immigration Judge should ensure that the specific group being analyzed is included in his or her decision" and that "[i]f an applicant is not clear as to the exact delineation of the proposed social group, the Immigration Judge should seek clarification").

Turning to CAT protection, an applicant must demonstrate a clear probability of torture "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1) (2020). Here, because the applicant's 2023 incident was perpetrated by police officers, the proper inquiry is whether the harm was "inflicted by . . . a public official or other person acting in an official capacity." *Id.* "[A]cting in an official capacity" means "acting under color of law." *Matter of O-F-A-S-*, 28 I&N Dec. 35, 40 (AG 2020) (*"Matter of O-F-A-S- II"*). Under this standard, the act "need not necessarily be an officially sanctioned state action; instead, an act is under color of law when it constitutes a misuse

of power, possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *Garcia v. Holder*, 756 F.3d 885, 891 (5th Cir. 2014).

In this case, the Immigration Judge’s focus on the government’s efforts to prosecute corruption (IJ at 8-9) is misplaced where the 2023 incident was inflicted by police officers. See *Matter of O-F-A-S- II*, 28 I&N Dec. at 41-42 (“[E]vidence that the government prosecutes’ corrupt law enforcement officers may be relevant to determining whether some high-level official has *acquiesced* in torture . . . but it makes no difference when determining whether a law enforcement officer has *himself* inflicted, instigated, consented to, or acquiesced in torture under color of law.”) (citation omitted) (emphasis in original). Instead, as to the 2023 incident, on remand, the Immigration Judge should determine if the police officers were able to engage in the conduct because of their government position, even if low-level, or whether the officers could have done so without connection to the government. *Matter of J-G-R-*, 28 I&N Dec. 733 (BIA 2023). Upon doing so, the Immigration Judge should reconsider the likelihood that the harm the applicant fears will be by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The Immigration Judge should also evaluate the applicant’s likelihood of future torture, considering the required factors under the regulation, 8 C.F.R. § 2087.16(c)(3), including whether the applicant experienced past torture considering the two incidents of harm he suffered.

On remand, the parties may update the record with additional evidence or argument, which, if submitted, the Immigration Judge’s decision should address. In remanding, we express no opinion as to the ultimate disposition of these proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following order will be entered.

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

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Feb 20, 2025

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Yolanda C. Rodriguez, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

**Before: LeMelle, Appellate Immigration Judge; Mullane, Appellate Immigration Judge; Nahas,
Appellate Immigration Judge**

**Opinion by Appellate Immigration Judge LeMelle
Appellate Immigration Judge Mullane, dissents without opinion**

LEMELLE, Appellate Immigration Judge

The respondent, a native and citizen of Syria, appeals from the Immigration Judge's September 3, 2024, decision denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security opposes the appeal. The record will be remanded.

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from the Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent fears returning to Syria because he claims that he was harassed, extorted, and harmed by security forces over the course of several years due to his race, religion, and political opinion. The Immigration Judge found that the January 2023 incident at the Public Security Office was on account of the respondent's religion, but that the 2022 incidents were the result of a purely personal vendetta (IJ at 11-12). To satisfy his burden, the respondent "must provide some evidence that an alleged persecutor is motivated by a victim's protected trait." *Matter of N-M-*,

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

25 I&N Dec. 526, 532 (BIA 2011). “The relevant question is the motivation of the persecutor.” *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 351 (5th Cir. 2002). We discern no clear error in the Immigration Judge’s finding that personnel from the Public Security Office harmed the respondent because of his religion. However, we conclude a remand is necessary for the Immigration Judge to reassess whether the respondent established that the remaining harm was motivated by a protected ground, and whether such motive was at least one central reasons for the harm.

On appeal, the respondent argues that all the incidents were, at least in part, on account of his race, religion, and political opinion (Respondent’s Br.).² Specifically, the respondent argues that the current regime and its fighters view individuals from the city of Homs and Sunni Muslims, like the respondent, with skepticism and ill contempt because they had posed the greatest resistance to the current regime’s rise to power (Tr. at 38, 74, 84-85). As for the April 2022 incident, the respondent asserts that, when he was being removed from the warehouse where he was working, he protested his removal and expressed criticism of the availability of jobs and the Russian takeover of ports, silos, and factories in Syria under the current regime (Tr. at 42-44). The respondent also asserts that following these statements, he was beaten and called a “traitor,” among other things (Tr. at 44-45). The respondent further argues that he was then threatened for revealing to others what had happened to him (Tr. at 55-56).

As the respondent has identified evidence relevant to his asserted persecutors’ motive that was not addressed by the Immigration Judge, and given this inquiry involves fact-finding, which the Board is not permitted to do, a remand is necessary. We note that the Immigration Judge found the respondent had not expressed a political opinion (IJ at 11). In making necessary factual findings regarding the motive of his asserted persecutors, the Immigration Judge should reassess this finding. “To gain asylum on the basis of persecution due to political opinion, an applicant must show through direct or circumstantial evidence that the persecutor (1) knew of his political opinion, and (2) has or will likely persecute him because of it.” *Aben v. Garland*, 113 F.4th 457, 466 (5th Cir. 2024). Expressing criticism of the government, including its handling of the economy, job availability, and foreign relations, would typically be perceived as a political opinion. See *Ontunez-Tursios*, 303 F.3d at 352 (citing “cases in which the alien acted in direct opposition to government policies and instrumentalities” as examples of political activity); see also (b)(6) v. *Barr*, 794 F. App’x 418, 420 (5th Cir. 2019) (“Criticism of government actions or policies generally may be considered the expression of political opinion.”) (quoting *Li v. Holder*, 559 F.3d 1096, 1111 (9th Cir. 2009)). Even if the Immigration Judge finds that the respondent did not hold a political opinion, the respondent can satisfy his burden by showing “that the persecutor imputed a political opinion to him,” and the Immigration Judge should make relevant findings on the matter. *Aben*, 113 F.4th at 466 (finding that the record showed the military imputed an anti-government political opinion to Aben because he treated separatist fighters).

Upon reconsidering nexus, the Immigration Judge should reevaluate whether those incidents of harm that are on account of a protected ground, if any, cumulatively rise to the level of

² We are unable to provide citations to the specific pages of the respondent’s brief as it is not paginated. See BIA Practice Manual, § 3.3(c)(3) (“Briefs and other submissions should *always* be paginated.”).

persecution consistent with controlling precedent. See *Argueta-Hernandez v. Garland*, 87 F.4th 698, 708 (5th Cir. 2023) (“Threats of death and other serious harms constitute persecution when they are objectively credible.”); *id.* at 707 (“‘Examples of persecution’ can include ‘threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom.’”) (citation omitted); *Gjetani v. Barr*, 968 F.3d 393, 397 (5th Cir. 2020) (stating that “persecution” “has the quality of a sustained, systematic effort to target an individual on the basis of a protected ground”); *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998) (finding persecution where the incidents of harm, in the aggregate, amounted to “more than mere discrimination and harassment”). The Immigration Judge should also make findings as to whether any of the asserted harm was based on legitimate and lawful actions or some other basis, in light of the respondent’s claim that individuals from Homs and Sunni Muslims are subjected to disproportionate mistreatment from the current regime. See, e.g., *Matter of S-P-*, 21 I&N Dec. 486, 493 (BIA 1996) (finding that in determining if prosecution is a pretext for punishing an individual’s political opinion actors to examine include “‘the nature of the crime and the severity of the punishment,’ as well as the applicant’s political opinion, the motives behind his actions, the nature of the act committed, the nature of the prosecution and its motives, and the nature of the law on which the prosecution is based”) (citing *Matter of Izatula*, 20 I&N Dec. 149, 157 (BIA 1990)).

The Immigration Judge should also consider whether he established a well-founded fear of future persecution considering the shifting burdens of proof. The parties may submit, and the Immigration Judge should consider, any evidence of changed country conditions, including a change in regime. Should the Immigration Judge find the respondent established his eligibility for asylum or withholding of removal under the INA, the Immigration Judge should also reassess whether he is subject to the Circumvention of Lawful Pathways rule,³ which would render him ineligible for asylum (IJ at 9). See 8 C.F.R. § 1208.33. The respondent does not dispute that the rule’s rebuttable presumption of asylum ineligibility applies to him. 8 C.F.R. § 1208.33(a)(1). However, the presumption shall be deemed rebutted if the respondent has a “child who would be eligible to follow to join [the respondent] as described in section 208(b)(3)(A) of the Act.” 8 C.F.R. § 1208.33(c).

For the foregoing reasons, the record will be remanded for the Immigration Judge to conduct further fact-finding and legal analysis, supported by the record and applicable legal precedent, as to the respondent’s eligibility for asylum and withholding of removal under the INA and CAT. *Matter of S-H-*, 23 I&N Dec. 462, 463 (BIA 2002). The parties shall have the opportunity to update the record, including the statement accompanying the respondent’s brief, and the Immigration Judge may conduct further proceedings as deemed necessary. In remanding, the

³ The Circumvention of Lawful Pathways, 88 Fed. Reg. 31314 (May 16, 2023) (Final Rule) (effective May 11, 2023), is the subject of active litigation. The rule was previously vacated by a federal district court. *E. Bay Sanctuary Covenant v. Biden*, 683 F. Supp. 3d 1025, 1030, 1054 (N.D. Cal. 2023). However, the United States Court of Appeals for the Ninth Circuit stayed the district court’s order pending appeal and held the appeal in abeyance. (b)(6)
v. Biden, (b)(6) 2023 WL 11662094 (9th Cir. Aug. 3, 2023); (b)(6)
v. Biden, 93 F.4th 1130 (9th Cir. 2024) (mem.). The rule thus remains in effect.

(b)(6)

Board expresses no opinion on the ultimate outcome of the proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following order will be entered.

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

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

May 20, 2025

ON BEHALF OF RESPONDENT: Jonathan L. Levy, Esquire

ON BEHALF OF DHS: Todd Keller, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Goodwin, Appellate Immigration Judge; Mullane, Appellate Immigration Judge;
O'Connor, Appellate Immigration Judge

Opinion by Appellate Immigration Judge O'Connor
Appellate Immigration Judge Mullane, dissents without opinion

O'CONNOR, Appellate Immigration Judge

This matter was last before the Board on March 26, 2024, when we remanded the record for further analysis of the respondent's request for deferral of removal under the Convention Against Torture ("CAT").¹ On July 2, 2024, the Immigration Judge held a second testimonial hearing on the respondent's application, which he denied in a July 12, 2024, decision. The respondent, a native and citizen of El Salvador, appeals this decision. The Department of Homeland Security ("DHS") asks for summary affirmance. The record will be remanded for further proceedings.

We review Immigration Judges' factual findings, including credibility findings, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues in appeals from Immigration Judges' decisions de novo, including issues of law, judgment, and discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent fears he will be detained and tortured in El Salvador under its current "state of exception" on account of his criminal history and past incarceration in both the United States and El Salvador (IJ at 7-8; Exh. 2 at 5-6; Exh. 4). The respondent testified that he was removed from the United States after his 2010 conviction for second degree assault in violation of section 3-203 of the Maryland Criminal Law Code (IJ at 3; Tr. at 21-22; Exh. 4). He was detained in El Salvador for illicit association from 2018 to 2020, during which time gang members targeted him for mistreatment due to his prior military service (IJ at 6-7; Tr. at 25-27, 39-43; Exh. 2 at 5-6; Exh. 8). Upon being released, he reported to a judge every 15 days until he left El Salvador in June 2022

¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. § 1208.16(c)-1208.18(a) (2020).

(IJ at 4, 14; Tr. at 28-31). The respondent's brother has been detained without a hearing for 2 years under the state of exception since being removed to El Salvador (IJ at 7; Tr. at 44; Exh. 6 at 3, 8, 12).

The Immigration Judge found the respondent was not credible and had not adequately corroborated his claim (IJ at 8-11) and determined that his non-testimonial evidence did not independently establish his entitlement to CAT protection (IJ at 11-15). *See Ndifon v. Garland*, 49 F.4th 986, 989 (5th Cir. 2022). On appeal, the respondent challenges the Immigration Judge's adverse credibility finding and argues that he ignored relevant evidence.

As an initial matter, we disagree with the respondent's argument that the Immigration Judge impermissibly considered his credibility on remand because a prior credibility determination was the "law of the case" (Respondent's Br. at 13-14). The law of the case doctrine provides that when an appellate court "decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Musacchio v. United States*, 577 U.S. 237, 244-45 (2016) (quoting *Pepper v. United States*, 562 U.S. 476, 506 (2011)). However, our prior decisions did not address the respondent's credibility. The doctrine also does not apply to factual findings, *see id.*, and the issue of credibility is a finding of fact which the Immigration Judge makes and which we review for clear error. 8 C.F.R. § 1003.1(d)(3)(i).

Further, a "remand is effective for the stated purpose and for consideration of any and all matters" the Immigration Judge may deem appropriate, "unless the Board qualifies or limits the remand for a specific purpose." *Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978). Our remand instructions did not preclude the Immigration Judge from determining whether the respondent was credible in light of the new testimony and evidence that we instructed the Immigration Judge to accept on remand (BIA's March 26, 2024, Dec. at 2). *See* section 208(b)(1)(B)(iii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158(b)(1)(B)(iii) (providing that when evaluating credibility, an Immigration Judge may assess the consistency between the applicant's written and oral statements "whenever made", and "the consistency of such statements with other evidence of record").

We also disagree that, after conducting a second testimonial hearing, the Immigration Judge was not allowed to reject parts of the respondent's testimony which were deemed credible after the first testimonial hearing (Respondent's Br. at 14-15). An Immigration Judge is free to "accept[] all, none, or some of the alien's testimony" if the adverse credibility finding is supported by the record in light of the totality of the circumstances. *Garland v. Ming Dai*, 593 U.S. 357, 366 (2021).

Despite the foregoing, upon reviewing the record, we are "left with the definite and firm conviction that a mistake has been committed" regarding the respondent's credibility, *Cooper v. Harris*, 581 U.S. 285, 309 (2017) (quoting *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985)), because the Immigration Judge's adverse credibility finding impermissibly conflates credibility and corroboration and is otherwise unsupported by the record. *See* INA § 208(b)(1)(B)(ii), (iii), 8 U.S.C. § 1158(b)(1)(B)(ii), (iii) (outlining separate corroboration and credibility requirements); *Nkenglefac v. Garland*, 34 F.4th 422, 429

(5th Cir. 2022) (providing that an adverse credibility finding must be ““supported by specific and cogent reasons *derived from the record*””) (internal citations omitted).

The Immigration Judge’s credibility determination relies almost entirely on his observation that the respondent’s affiants did not confirm his belief that police murdered his son in El Salvador in 2023, characterizing this corroboration issue as a series of inadequately explained omissions (IJ at 8-11; Respondent’s Br. at 16-17). *See Avelar-Oliva v. Barr*, 954 F.3d 757, 767 (5th Cir. 2020) (explaining that an Immigration Judge may base an adverse credibility finding on any inconsistency or omission, so long as the “totality of the circumstances” establishes that the respondent is not credible). This determination suffers from two defects.

First, the respondent’s affiants’ failure to confirm his suspicion about his son’s cause of death may affect whether this part of his testimony is adequately corroborated, persuasive, or entitled to weight, *see Ming Dai*, 593 U.S. at 372, considering the totality of the circumstances—including the respondent’s explanation that he did not understand why police would have killed his son (Tr. at 38). However, we are not convinced that this evidentiary comparison reveals an “omission” that affects his credibility (Respondent’s Br. at 16-17).

Second, the respondent was not asked to explain why his affiants’ statements did not mention police involvement in his son’s death (Tr. at 14-16, 33-39; *cf.* IJ at 9-11). *See Nkenglefac*, 34 F.4th at 429 (noting that a respondent should be given an adequate opportunity at the hearing to explain perceived inconsistencies). The Immigration Judge asked the respondent what he learned about what happened to his son (IJ at 9; Tr. at 34). The respondent replied that his family did not “like to explain many things because of fear that they’re being recorded on calls . . .” (Tr. at 34). The Immigration Judge appears to have taken this statement out of context and found it to be an “implausible” explanation for perceived omissions in the respondent’s affiants’ statements, despite the respondent never being directly asked about these omissions (IJ at 9; Tr. at 34).

The record also does not support the Immigration Judge’s finding that the respondent’s sister’s affidavit “makes no specific reference to threats or danger that the respondent himself may be detained, punished, and harmed in any way” in El Salvador (IJ at 11). While her April 23, 2024, declaration makes no such reference, the respondent’s sister’s (b)(6) 2024, affidavit expressly states that he “was pursued by criminal groups” who “told [him] that if he was arrested he would not last alive in prison since they would kill him upon entry” (*Compare* Exh. 6 at 12, *with* Exh. 8 at 9).

The Immigration Judge’s adverse credibility finding is not supported by any other observations about relevant credibility factors (IJ at 8-11). Given the foregoing, we find the Immigration Judge’s adverse credibility finding is not affirmable as currently constituted. We will therefore remand proceedings for the Immigration Judge to re-assess credibility and corroboration as separate issues. On remand, the Immigration Judge must reconsider whether the respondent’s sister’s affidavit adequately corroborates that he was incarcerated in El Salvador (IJ at 15; Exh. 8 at 9).

Next, we turn to the respondent’s request for CAT deferral of removal. The Immigration Judge’s adverse credibility finding played a key role in the analysis of the

respondent's request for CAT protection, leading the Immigration Judge to discredit the respondent's entire testimony and seemingly reverse an earlier finding that the respondent spent 2 years in prison for illicit association from 2018 to 2020, which was the basis of the prior Immigration Judge's particularly serious crime determination (*compare* IJ at 13, 15 with IJ's June 20, 2023, Dec. at 6). We will therefore remand the record for the Immigration Judge to enter a new decision on this application.

In addition, a remand is required because the Immigration Judge did not comply with our previous remand instructions, despite referring to them (IJ at 2). We reiterate that the Immigration Judge must take the following actions.

First, the Immigration Judge must "assess whether and to what extent DHS' inadvertent disclosure affects" the respondent's likelihood of torture, as we have twice instructed (BIA's Mar. 26, 2024, Dec. at 2; BIA's Oct. 17, 2023, Dec. at 2). Second, in order to "evaluate the likelihood that the respondent would be detained if removed to El Salvador in light of his past criminal history," as we previously instructed (BIA's Mar. 26, 2024, Dec. at 2), the Immigration Judge's decision must consider whether and to what extent the respondent's criminal history in the United States affects his likelihood of torture (Exh. 3; Respondent's Br. at 18-19). *See Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (explaining that the Board's limited fact-finding ability on appeal heightens the need for Immigration Judges' decisions to include clear and complete factual and legal findings). Finally, beyond the Immigration Judge's finding that the respondent's past treatment from gangs while detained did not constitute torture because it was not sufficiently severe and did not occur with the government's acquiescence (IJ at 13-14), the Immigration Judge must make a separate forward-looking determination about "respondent's likelihood of torturous harm by gangs or other private actors (both in and outside of detention)[,]" as we instructed (IJ at 2; BIA's Mar. 26, 2024, Dec. at 2).

On remand, the Immigration Judge should consider the respondent's appellate arguments, including the country conditions evidence highlighted in his appellate brief. Our decision to remand does not constitute an opinion on these proceedings' outcome. *See generally Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). The following order will be entered.

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

Appellate Immigration Judge Hugh Mullane dissents without opinion.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Jun 13, 2025

ON BEHALF OF RESPONDENT: Thomas K. Ragland, Esquire

ON BEHALF OF DHS: Celestin Nkeng, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Creppy, Appellate Immigration Judge; Goodwin, Appellate Immigration Judge; Mullane,
Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The respondent, a native and citizen of Sudan, appeals the Immigration Judge's February 10, 2022, decision denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A).¹ DHS opposes the appeal. We will remand the record.

We review findings of fact determined by an Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge entered an oral decision in the respondent's case on August 28, 2018. On December 21, 2021, we remanded the respondent's case to the Immigration Judge for further factfinding and analysis of the respondent's application for asylum and withholding of removal under the INA. On February 10, 2022, the Immigration Judge issued a written decision, in which he adopts and amends his August 28, 2018, oral decision.

¹ The Immigration Judge granted the respondent's request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). 8 C.F.R. §§ 1208.16(c)-1208.18. (IJ at 2, 6, Feb. 10, 2022; IJ at 4, Aug. 28, 2018). The Department of Homeland Security ("DHS") has not appealed the Immigration Judge's grant of protection under the CAT.

The Immigration Judge found that the respondent suffered past harm rising to the level of persecution and torture in Sudan (IJ at 1-2, Feb. 10, 2022). The respondent is a member of the Zaghawa tribe and is from Darfur (IJ at 2, Feb. 10, 2022; Tr. at 77-78; Exh. 9 at 1). The respondent's older brother, (b)(6) attended university in Khartoum, where he joined a political group called the Darfur Association of Students, which opposed the Sudanese government (IJ at 3, Feb. 10, 2022; Tr. at 87-88, 107-08; Exh. 9 at 2). Hasan told the respondent that he spoke out against the Sudanese government while at university (IJ at 4, Feb. 10, 2022; Exh. 9 at 2-3). In June 2013, the respondent stopped hearing from (b)(6) and in April 2014, he traveled to (b)(6) university to look for him (IJ at 3, Feb. 10, 2022; Tr. at 89-92; Exh. 9 at 3). When the respondent asked university security about his brother's whereabouts, they told him that (b)(6) had been arrested (IJ at 3, Feb. 10, 2022; Tr. at 109; Exh. 9 at 3). Then, Sudanese government officials arrested the respondent (IJ at 2, 4, Feb. 10, 2022; Tr. at 92-94; Exh. 9 at 3). The officials imprisoned the respondent from April to October 2014, during which time they tortured him, called him derogatory terms for members of the Zaghawa tribe, and interrogated him about (b)(6) (IJ at 2, 4, Feb. 10, 2022; Tr. at 94-103; Exh. 9 at 3-6). The officials imprisoned the respondent again for 15 days in August 2015, during which time they tortured him, called him derogatory terms, said he wanted to rule Sudan, and interrogated him about (b)(6) as well as (b)(6) associates and other Zaghawa people (IJ at 2, 4, Feb. 10, 2022; Tr. at 115-18; Exh. 9 at 6-7).

The Immigration Judge denied the respondent's application for asylum and withholding of removal under the INA because he determined that the respondent did not establish a nexus between his past and feared future persecution and any protected ground, including his imputed political opinion (IJ at 1-6, Feb. 10, 2022). Instead, the Immigration Judge found that the singular, central reason why the officials persecuted and tortured the respondent was to gain information about (b)(6) and his student organization (IJ at 5, Feb. 10, 2022).

We reverse the Immigration Judge's nexus finding. The Immigration Judge's findings that the Sudanese government views members of the Zaghawa tribe as rebel sympathizers, and that the officials repeatedly interrogated the respondent about his brother's political activities and other Zaghawa people while calling him derogatory terms and saying he wanted to rule Sudan, establish that at least one central reason why the officials detained and tortured him was on account of his imputed political opinion (IJ at 2-5, Feb. 10, 2022; Tr. at 95-97, 100-03, 117, 156-58; Respondent's Br. at 10-12). See *Aben v. Garland*, 113 F.4th 457, 466-67 (5th Cir. 2024) (finding that persecutors targeted an applicant on account of his imputed political opinion when they accused him and people of similar heritage of fighting the government); *Argueta-Hernandez v. Garland*, 87 F.4th 698, 710 (5th Cir. 2023) ("[A] court must consider the existence of multiple motives for the persecutor's actions when such evidence exists").

We conclude that the respondent has established past persecution as a matter of law. We will remand the record to the Immigration Judge to apply the requisite presumption of a well-founded fear of future persecution and allow DHS an opportunity to rebut the presumption. See 8 C.F.R. § 1208.13(b)(1).

(b)(6)

Accordingly, the following order is entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Jul 17, 2025

ON BEHALF OF RESPONDENT: Rosana K. Cheung, Esquire

ON BEHALF OF DHS: Frank A. Jury II, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Hunsucker, Appellate Immigration Judge; McCloskey, Temporary Appellate
Immigration Judge; Gemoets, Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Hunsucker

HUNSUCKER, Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, appeals the Immigration Judge's decision, dated January 24, 2025, denying his applications for cancellation of removal for certain nonpermanent residents, asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture ("CAT").² Sections 208(b)(1)(A), 240A(b)(1), and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1229b(b)(1), 1231(b)(3)(A). The Department of Homeland Security has filed a motion for summary affirmance. The record will be dismissed in part and remanded in part.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We affirm the Immigration Judge's decision to deny the respondent's applications for asylum, withholding of removal, and protection under the CAT (IJ at 6-10). The Immigration Judge

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

(continued...)

concluded that the respondent's asylum application was time-barred and that he did not establish an exception to the 1-year filing deadline (IJ at 6). The Immigration Judge further determined that the respondent did not show (1) his proposed particular social groups of "Salvadoran truck drivers" or "bus driver[s] in El Salvador" are legally cognizable under the INA or (2) a nexus between his past or future harm and his proposed social group membership (IJ at 3, 6-8; Tr. at 37, 89).³

On appeal, the respondent does not challenge any of these determinations above. Therefore, we deem any further argument or evidence on these issues waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that issues not raised on appeal are deemed waived). This waiver is dispositive of the respondent's asylum and withholding claims. *See* INA § 208(a)(2)(B), 8 U.S.C. § 1158(a)(2)(B) (providing that, with limited exceptions, an asylum applicant must file his application within 1 year of his arrival in the United States); INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i) (stating that an asylum applicant "must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant"); INA § 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A) (stating that an applicant for withholding of removal must show that his "life or freedom would be threatened . . . because of the alien's race, religion, nationality, membership in a particular social group, or political opinion").⁴

Furthermore, we agree with the Immigration Judge that the respondent did not establish eligibility for protection under the CAT (IJ at 9-10). The Immigration Judge considered the entirety of the evidence and properly concluded that the respondent did not show it is more likely than not anyone would intentionally inflict severe pain or suffering that constitutes torture upon him in El Salvador. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1). The respondent does not argue that he was tortured in the past. His contention that the Salvadoran government intends to torture him due to his criminal history in the United States is unduly speculative (Respondent's Br. at 6-8). *See Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006). As the Immigration Judge determined, while country conditions evidence shows that Salvadoran officials may investigate and punish some individuals who were convicted of certain crimes, the respondent did not present sufficient particularized evidence to establish that any state actor would inflict torturous harm upon him or be willfully blind to such harm (IJ at 10; Exhs. 6, 7 at Tab H). *See L.N. v. Garland*, 109 F.4th 389,

³ Before the Immigration Judge, the respondent did not allege that he was or would be harmed on account of any other statutorily protected ground (Exh. 5 at 5).

⁴ On appeal, the respondent asserts that the Board should remand his case to determine if he can "show a nexus of family membership as one central reason for their [sic] fear of return to Columbia [sic]" (Respondent's Br. at 9). However, the respondent did not raise any family-based particular social group before the Immigration Judge. We will not consider the respondent's attempts to add or modify a particular social group on appeal. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018) (holding that a respondent "must clearly indicate on the record before the Immigration Judge the exact delineation of any proposed particular social group"); *see also Santos-Alvarado v. Barr*, 967 F.3d 428, 440 n.13 (5th Cir. 2020) (upholding the Board's authority to not consider an argument or claim that could have been, but was not, advanced before the Immigration Judge).

399-400 (5th Cir. 2024). Evidence of the general possibility of torture by prison officials does not meet the respondent's burden of establishing it is more likely than not that he personally will be subjected to such treatment. *See Matter of A-A-R-*, 29 I&N Dec. 38, 41-42 (BIA 2025); *Matter of J-E-*, 23 I&N Dec. 291, 303 (BIA 2002).

On appeal, the respondent argues that recent country reports indicate that criminals and former criminals from the United States are targeted, imprisoned, and subjected to due process violations by the Salvadoran government (Respondent's Br. at 6-8). We discern no reason to remand the record based on possible new developments in country conditions (Respondent's Br. at 6). The respondent did not submit any evidentiary materials in support of his contentions. *See* INA § 240(c)(7)(B), 8 U.S.C. § 1229a(c)(7)(B) (explaining that a motion to reopen or remand "shall be supported by affidavits or other evidentiary material"). He also has not demonstrated that any new country conditions evidence would make him *prima facie* eligible for asylum, withholding of removal, or protection under the CAT. *See INS v. Abudu*, 485 U.S. 94, 104 (1988).

Nevertheless, with respect to the respondent's application for cancellation of removal, we conclude that remand is necessary. The Immigration Judge pretermitted the respondent's application based on his 2011 conviction for two counts of "aiding and abetting the improper entry of an illegal alien" in violation of 8 U.S.C. §§ 1325, 1329 and 18 U.S.C. § 2 (IJ at 2-3; Exh. 2 at 8-14). The Immigration Judge concluded that the respondent's offenses are aggravated felonies under section 101(a)(43)(N) of the INA, 8 U.S.C. § 1101(a)(43)(N), thus rendering him ineligible for cancellation of removal. *See* INA § 240A(b)(1)(C), 8 U.S.C. § 1229b(b)(1)(C).

Upon our *de novo* review, we agree with the respondent that his offenses are not aggravated felonies under section 101(a)(43)(N) of the INA, 8 U.S.C. § 1101(a)(43)(N) (Respondent's Br. at 5-6). That provision defines an aggravated felony as:

[A]n offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter.

INA § 101(a)(43)(N), 8 U.S.C. § 1101(a)(43)(N) (emphasis added).

As the respondent emphasizes on appeal, he was not convicted under 8 U.S.C. § 1324, but under 8 U.S.C. § 1325 (Exh. 2 at 8-14; Respondent's Br. at 5). Although the Immigration Judge cited to *Ruiz-Romero v. Reno*, 205 F.3d 837 (5th Cir. 2000), in support of his conclusion that the respondent here was convicted of an aggravated felony, the respondent in *Ruiz-Romero* was convicted under 8 U.S.C. § 1324(a)(1)(A) (IJ at 2-3). Meanwhile, according to precedent decisions from the United States Court of Appeals for the Fifth Circuit and the Board, an offense under 8 U.S.C. § 1325 is not an aggravated felony as defined in section 101(a)(43)(N) of the INA, 8 U.S.C. § 1101(a)(43)(N). *See Santos-Sanchez v. Holder*, 744 F.3d 391, 392 n.1 (5th Cir. 2014); *Rivera-Sanchez v. Reno*, 198 F.3d 545, 547 (5th Cir. 1999); *Matter of Alvarado-Alvino*, 22 I&N Dec. 718, 720-21 (BIA 1999).

Consequently, we will remand the record for the Immigration Judge to determine whether the respondent otherwise meets the statutory requirements for cancellation of removal and merits that relief in the exercise of discretion. We will dismiss the respondent's appeal of the denial of his applications for asylum, withholding of removal, and CAT protection. On remand, both parties should have an opportunity to update the record. The Immigration Judge may take any other action he deems appropriate for resolution of the respondent's case. In remanding, we express no opinion regarding the ultimate outcome of these proceedings.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal of the Immigration Judge's denial of asylum, withholding of removal, and protection under the CAT is dismissed.

FURTHER 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.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Jul 25, 2025

ON BEHALF OF RESPONDENT: Amanda M. Aguilar, Esquire

ON BEHALF OF DHS: Alexandra Jackson, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Malphrus, Chief Appellate Immigration Judge; Mullane, Appellate Immigration Judge;
McCloskey, Temporary Appellate Immigration Judge¹

Opinion by Temporary Appellate Immigration Judge McCloskey

MCCLOSKEY, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Cuba, appeals from the Immigration Judge's January 23, 2025, decision denying her applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), protection under the regulations implementing the Convention Against Torture ("CAT"),² and cancellation of removal. The Department of Homeland Security has responded to the appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims persecution based on political opinion and her relationship with her father (IJ at 9). The respondent testified that, on (b)(6) 2019, the police came to her house and an officer hit her on the knee with a plastic baton (IJ at 5; Tr. 58-59). On (b)(6) 2019, the respondent was hit multiple times while being taken to the police station (IJ at 5; Tr. 53-57). The

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See generally 8 C.F.R. § 1003.1(a)(1), (4).

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

Immigration Judge denied the respondent's applications for asylum, withholding of removal, and cancellation of removal based on the finding that the respondent was not credible (IJ at 8).

We conclude that the Immigration Judge's adverse credibility finding is clearly erroneous under the totality of the circumstances as it is not adequately supported by specific and cogent reasons. See INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C), 8 U.S.C. §§ 1158(b)(1)(B)(iii), 1231(b)(3)(C); see also *Singh v. Sessions*, 880 F.3d 220, 225 (5th Cir. 2018) (an Immigration Judge "may rely on any inconsistency or omission in making an adverse credibility determination as long as the 'totality of the circumstances' establishes that an asylum applicant is not credible") (citation omitted); *Zhang v. Gonzales*, 432 F.3d 339, 344 (5th Cir. 2005) ("an adverse credibility determination must be supported by specific and cogent reasons derived from the record"); *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007).

The Immigration Judge found that the respondent testified inconsistently as to whether she spoke to her mother. (IJ at 7). However, the Immigration Judge failed to provide a sufficient opportunity to the respondent to explain the seeming discrepancy (Tr. 24, 71), which the Immigration Judge identified for the first time when making her findings (IJ at 82). The respondent, apparently, attempted to provide an explanation at that time, but the evidentiary record had been closed. (Tr. at 82). Having failed to provide an opportunity to the respondent to explain the apparent discrepancy, the Immigration Judge failed to adequately address the issue in the credibility determination.

The Immigration Judge also found that the respondent testified inconsistently as to the number of times that she was hit in the March 2019 incident (IJ at 7). When the Immigration Judge asked the respondent how many times she was hit in March 2019, the respondent answered: "I'm not able to tell you if it was once or twice" (Tr. at 54). The Immigration Judge repeated the question, stating: "If you don't know, say don't know," and the respondent stated: "Five, six, seven- - I wouldn't know exactly how many times" (Tr. at 54-55). The Immigration Judge did not adequately explain why the explanation was unreasonable. These findings are clearly erroneous..

Accordingly, we conclude that a remand is appropriate. See *Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (recognizing the heightened importance for immigration Judges to make comprehensive findings of fact because the Board must defer to an Immigration Judge's factual findings in the absence of clear error). On remand, the Immigration Judge should comprehensively assess the credibility of the respondent anew to consider the applicant's eligibility for the applications under the correct evidentiary standards. In remanding, we express no opinion on the ultimate outcome of these proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). Accordingly, the following orders are entered, and evaluate the sufficiency of the record evidence with respect to all of her applications for relief.

Accordingly,, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with this order and for the entry of a new decision.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Applicant

FILED

Aug 13, 2025

ON BEHALF OF APPLICANT: Denise L. Gilman, Esquire

ON BEHALF OF DHS: Linda L. Chavez, Assistant Chief Counsel

IN WITHHOLDING ONLY PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Malphrus, Chief Appellate Immigration Judge; Mullane, Appellate Immigration Judge;
Goodwin, Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Malphrus

MALPHRUS, Chief Appellate Immigration Judge

The applicant, a native and citizen of El Salvador, appeals the Immigration Judge's July 5, 2024, decision denying his application for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A), and for protection under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security ("DHS") opposes the appeal. The appeal of the Immigration Judge's July 5, 2024, decision will be sustained, and the record will be remanded for further proceedings.²

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant claims past harm and a fear of future harm in El Salvador on account of his membership in a particular social group comprised of "Salvadoran men with tattoos who are

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

² During the pendency of this appeal, the applicant also filed an appeal of the Immigration Judge's July 29, 2024, decision denying the applicant's motion to reopen proceedings to consider additional evidence, which we address in a separate decision.

rejected by their families and as a result lack identification documents” (IJ at 3-6). The applicant specifically asserts a fear of future harm from police in El Salvador due to his status as a deportee from the United States with tattoos and a criminal record in El Salvador, particularly under the ongoing State of Exception in that country (IJ at 3-6). The Immigration Judge did not credit the applicant’s testimony but acknowledged that he testified to the following. The applicant stated that his birth was never registered by his parents in El Salvador, and thus he does not have any identification (IJ at 3; Tr. at 80, 83-84; Exh. 3 at Tab A). The applicant was previously removed to El Salvador in 2014 (IJ at 3; Tr. at 85; Exh. 2). The applicant was harassed and beaten by police repeatedly in 2014 and 2015 because he lacked identification (IJ at 3; Tr. at 86-87; Exh. 3 at Tab A). On one occasion in 2015, the applicant was questioned by police outside a store and beaten severely, resulting in a (b)(6), because he did not have identification, and the police accused him of being a gang member because of the applicant’s tattoos (IJ at 3-4; Tr. at 87-88, 91-93; Exh. 3 at Tab A). In 2016, police officers detained the applicant on false charges of extortion, beat him for 2 hours, stepped on his neck until he lost consciousness, and put him in jail (IJ at 4; Tr. at 93-95, 98-102; Exh. 3 at Tab A). The applicant stated that the police officers lied at his hearings and ultimately had the applicant convicted of falsified theft charges in (b)(6) 2017 (IJ at 4-5; Tr. at 102-07, 109-10, 112-18; Exh. 3 at Tab A). Because the police officers had accused the applicant of being a gang member, he was assigned to a “punishment sector” cell, denied food and water, and pepper sprayed (IJ at 5; Tr. at 119-22; Exh. 3 at Tab A). The applicant was released from prison in (b)(6) 2022 (IJ at 5; Tr. at 122-23; Exh. 3 at Tab A). Days later, two of the same police officers who arrested the applicant picked him up from a friend’s house, took him to an alley, and started to beat him again (IJ at 5; Tr. at 123-28; Exh. 3 at Tab A). One officer drew a gun and threatened to shoot the applicant but stopped when a car drove up and a man confronted the officers (IJ at 5-6; Tr. at 128-29; Exh. 3 at Tab A). The applicant tried to report the incident when he went to the courthouse for a parole check-in, but stated the secretary there would not take his complaint because he lacked identification (IJ at 6; Tr. at 129-30; Exh. 3 at Tab A). The applicant left El Salvador shortly thereafter and arrived in the United States on (b)(6) 2023 (IJ at 3; Exh. 1 at 12).

In denying the applicant’s requests for relief and protection, the Immigration Judge found the applicant’s testimony not credible and determined his corroborative evidence did not rehabilitate his testimony, and thus he did not meet his burden of proof for withholding of removal under the INA (IJ at 8-13). The Immigration Judge further concluded that the applicant did not meet his burden to prove it is more likely than not he would be tortured with the consent or acquiescence of a public official in El Salvador and was thus ineligible for CAT protection (IJ at 14-17). The applicant challenges these determinations on appeal (Applicant’s Br. at 9-32).

We conclude the Immigration Judge’s adverse credibility determination requires reconsideration (IJ at 8-11). An adverse credibility finding may be based on the applicant’s demeanor, candor, and responsiveness, the inherent plausibility of the account, and inconsistencies within and between statements, when considering the totality of the circumstances and all relevant factors. INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C), 8 U.S.C. §§ 1158(b)(1)(B)(iii), 1231(b)(3)(C). The Board is “significantly deferential” to the Immigration Judge as the fact finder and may reverse a credibility finding only if it is clearly erroneous. *Concrete Pipe & Prod. Of Cal., Inc. v. Construction Laborers Pension Tr. for S. Cal.*, 508 U.S. 602, 623 (1993); *Anderson v. City of*

Bessemer City, N.C., 470 U.S. 564, 573-74 (1985); see also *Matter of S-H*, 23 I&N Dec. 462, 464-65 (BIA 2002). To reverse a credibility determination, we must, upon consideration of “the entire evidence,” be “left with the definite and firm conviction that a mistake has been committed.” *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948). For the reasons outlined below, we conclude the Immigration Judge’s adverse credibility finding is not affirmable as constituted, and we will remand the record.

With respect to the instances of past harm, the Immigration Judge found the applicant’s testimony incredible regarding the number of times he was harmed by police, when the incidents occurred, and which police officers were present, relying on alleged inconsistencies between the applicant’s testimony and his reasonable fear interview (IJ at 9; Tr. at 86-102, 123-30; Exhs. 1, 3 at Tab A). We conclude that the Immigration Judge’s factual findings related to this credibility factor are not supported by the record (Applicant’s Br. at 24-27). For instance, the Immigration Judge’s decisions states that the applicant “failed to notify the asylum officer” about an encounter with police in 2015, and that the applicant told the asylum officer he was only harmed twice, in 2016 and in 2022 (IJ at 9). However, the record reflects that the applicant twice stated to the asylum officer that he was tortured by police on 3 occasions (IJ at 9; Exh. 1 at 33, 41). The record further reflects that the applicant was given the opportunity to provide further details on the 2022 incident with police and harm from any other individuals but was not asked about the two prior incidents with police (Exh. 1 at 33-40). Moreover, the applicant’s testimony that the police who harmed him in 2022 were the same officers who beat and arrested him in 2016, and that those officers were present at the 2015 incident, is consistent with his written statement and with the reasonable fear interview notes (Tr. at 93-94, 123-29; Exhs. 1 at 32-33, 41, 3 at Tab A). On the record before us, we cannot affirm the Immigration Judge’s finding that the applicant’s testimony on this issue lacked credibility (IJ at 9).

The Immigration Judge also relied on an alleged inconsistency between the applicant’s testimony and his reasonable fear interview regarding the gender of the court clerk who spoke to the applicant when he tried to file a report against the police officers who attacked him in 2022 (IJ at 9). The Immigration Judge found that the applicant testified that a female employee denied the applicant’s attempt to file a report, but that the applicant told the asylum officer that a male employee denied his report (IJ at 9). We agree with the applicant that these factual findings are not supported by the record (Applicant’s Br. at 27-28). The record does not reflect that the applicant testified inconsistently regarding the gender of the court employee who refused to accept his report. As the Immigration Judge observed, the applicant’s testimony was consistent with his written statement that he spoke with a female clerk (IJ at 9; Tr. at 129-30; Exh. 3 at Tab A). The record does not reflect that the applicant was asked to specify or clarify the gender of this court employee by the asylum officer during his reasonable fear interview. Rather, the notes of the applicant’s description of the event during his reasonable fear interview repeatedly use the pronouns “they” and “them” (Exh. 1 at 36-38). Moreover, the applicant’s substantive account of the incident, including that he was denied the ability to make a report because he lacked proper identification, is consistent throughout the record (Tr. at 129-30; Exhs. 1 at 36-38, 3 at Tab A). Thus, the Immigration Judge’s finding in this regard is unsupported by the record.

The Immigration Judge also found an inconsistency between the applicant's testimony and reasonable fear interview regarding events that occurred immediately before and after the 2022 incident with police (IJ at 9). The Immigration Judge found the applicant testified that he stayed alone in an abandoned house for several days before leaving for the United States, but that he told the asylum officer he stayed in a house with 3 friends (IJ at 9; Tr. at 147; Exh. 3 at Tab A). However, the record reflects the applicant told the asylum officer he left the scene of the incident with some friends and stayed with them for 3 days, without specifying where he stayed or how many individuals were with him (Exh. 1 at 34). The reasonable fear interview notes are not inconsistent with the applicant's written statement that he was hiding in an abandoned house following the incident with police, but prior to checking in with the court (Exh. 3 at Tab A). Moreover, although the applicant stated during cross-examination that he was by himself after the encounter with police, he testified to other events occurring between the incident with police and his departure from El Salvador, including his attempt to make a report with the court clerk (IJ at 9; Tr. at 128-29, 147; Exh. 3 at Tab A). When considering the applicant's specific responses to the questions posed and taking into account the applicant's explanation including repeated concerns with the accuracy of the notes from the reasonable fear interview, we cannot conclude that this minor discrepancy is a sufficient consideration to support an adverse credibility determination in this case. See *Santos-Alvarado v. Barr*, 967 F.3d 428, 439 (5th Cir. 2020) (explaining that, although an Immigration Judge is not required to accept an explanation offered where there are other reasonable views of the evidence, any adverse credibility determination that rejects explanations offered must still be supported by specific and cogent reasons under the totality of the circumstances).

Finally, we note that the Immigration Judge also relied on the applicant's proposed particular social group in making the adverse credibility determination, specifically regarding whether the applicant had been rejected by his family (IJ at 9-10). The Immigration Judge observed a discrepancy between the delineation of the proposed group in a submitted legal brief, "Salvadoran men with tattoos who are rejected by their families and as a result lack identification documents.," and the applicant's statement in the reasonable fear interview that he has been in touch with one sister and one cousin in El Salvador (IJ at 10; Exh. 1 at 35-36). We cannot conclude that these findings can support an adverse credibility determination. The applicant told the asylum officer that he was only able to get in contact with his sister after he left El Salvador, and that his sister only relayed information provided to her by the applicant's cousin (Exh. 1 at 35-36). Moreover, the Immigration Judge relies on a formulation of a particular social group proposed in a legal brief submitted by the applicant's counsel (IJ at 10). The applicant testified consistently regarding his lack of identity documents, his father's refusal to register the applicant's birth, and his lack of contact with any other family members (IJ at 3; Tr. at 80, 83-84, 91, 95, 125; Exhs. 1 at 31, 3 at Tab A). Under the totality of the circumstances, we cannot conclude that this is an appropriate basis to support an adverse credibility finding. See *Avelar-Oliva v. Barr*, 954 F.3d at 764 (stating adverse credibility findings must be supported by specific and cogent reasons derived from the record).

We acknowledge that the applicant admitted to using a false name and date of birth upon entry into the United States in 2023 (IJ at 8-9; Tr. at 73-75; Exhs. 2, 3 at Tab A). Although the use of a

(b)(6)

false identity at the border is a proper consideration, it is not sufficient to alone support the adverse credibility finding, particularly given the other issues discussed above.

In view of the foregoing, we will remand the record to the Immigration Judge for further proceedings. The Immigration Judge should issue a new decision which separately addresses credibility and whether the applicant's corroborating evidence is sufficient to meet his burden of proof for withholding of removal under the INA. See INA § 241(b)(3)(C), 8 U.S.C. § 1231(b)(3)(C). The Immigration Judge should then reassess the applicant's request for CAT protection and determine whether the applicant has met his burden of proof to demonstrate the requisite likelihood of future torture. See 8 C.F.R. §§ 1208.16(c)(3), 1208.18(a); *Matter of A-A-R-*, 29 I&N Dec. 38, 41-43 (BIA 2025) (explaining it is the applicant's burden of proof to demonstrate that he is personally more likely than not to be subjected to harm rising to the level of torture if removed); *Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006) (same).

Given our disposition of the applicant's appeal, and our directive that the Immigration Judge reevaluate the applicant's credibility and eligibility for relief, we need not address the applicant's remaining appellate arguments (Applicant's Br. at 32-49). See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach). We express no opinion as to the ultimate outcome of these proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following orders will be entered.

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

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Sep 26, 2025

ON BEHALF OF RESPONDENT: Bryan S. Johnson, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Gemoets, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge;
McCloskey, Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Hunsucker

HUNSUCKER, Appellate Immigration Judge

The respondent, a native and citizen of Turkey, appeals an Immigration Judge's February 10, 2025, decision denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").² The Department of Homeland Security ("DHS") has not filed a response to the appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent asserts past persecution and a fear of future persecution and torture in Turkey due to his affiliation with the Gulen movement, also known as the Hizmet movement (IJ at 2-6; Tr. at 14-19; Exh. 2). The respondent became a member of the Gulen movement in late 2008 or early 2009 and regularly participated in activities, including the religious gatherings, related to the movement (IJ at 2; Tr. at 16-18). He testified that in July 2016, the Gulen movement was blamed for a failed coup attempt, leading to the movement being labeled as a terrorist

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

² The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18(a).

organization by the Turkish government (IJ at 2-3; Tr. at 18-19; Exh. 7 at 4-5). On (b)(6), 2018, the police detained the respondent at the border for being a member of the Gulen movement and charged him as a member of a terrorist organization (IJ at 3; Tr. at 19-20, 27; Exh. 7 at 5). During his detention, the police interrogated him, beat him, and sexually assaulted him over the course of 3 days to the point that he lost consciousness (IJ at 3-4; Tr. at 22-23; Exh. 7 at 5-6). On (b)(6), 2018, when he went to court, the respondent was arrested again for being a member of the Gulen movement and taken to a prison where he was detained for 25 months and subjected to psychological and physical abuse (IJ at 4; Tr. at 27). The respondent was eventually convicted and sentenced to 6 years and 3 months in prison, but the judge released him on parole pending the outcome of his appeal and banned him from leaving the country (IJ at 5; Tr. at 29; Exh. 7 at 6). On (b)(6), 2022, the police detained the respondent for 3 hours, interrogated him, and accused him of business people structuring, but did not physically harm him (IJ at 5; Tr. at 54-55). In May 2023, the respondent was accused of providing support to a terrorist organization, and an arrest warrant was issued for the respondent in December 2023 (IJ at 5; Tr. at 30-31, 55). He fears that upon return to Turkey, he will be harmed by the Turkish government for his participation in the Gulen movement, for leaving the country in violation of the conditions of his parole, and for providing support to a terrorist organization (IJ at 6; Exhs. 2, 7).

The Immigration Judge found the respondent credible (IJ at 6). The Immigration Judge concluded that the harm the respondent suffered the first time he was detained by the police rose to the level of persecution (IJ at 7). However, the Immigration Judge determined that the respondent did not suffer harm because of his political opinion, but rather, the police arrested and detained him as a member of a terrorist organization, which was suspected of being involved in a 2016 coup attempt (IJ at 8). The Immigration Judge also found that the respondent's proposed particular social group of "active followers of the Gulen movement" was not cognizable (IJ at 8-9; Tr. at 5). The Immigration Judge further determined that the respondent did not have a well-founded fear of persecution because his fear of being punished for leaving the country in violation of the conditions of his parole and failure to appear for a court hearing constituted a fear of punishment for violating the laws of his country (IJ at 9). The Immigration Judge found that while the respondent will be pursued by the Turkish government upon his return, it would be due to lawful sanctions, and not because of his political opinion or membership in his proposed particular social group (IJ at 9-10). The Immigration Judge denied the respondent's request for protection under the CAT upon finding that while the respondent was subjected to torture the first time he was detained by the police, there is no evidence that this is likely to occur again and that his imprisonment upon return to Turkey would arise from lawful sanctions for violating the conditions of his parole and failure to appear for his court hearing (IJ at 11-12).

We conclude that further fact-finding and analysis is necessary because the Immigration Judge's decision is not clear or complete enough for appellate review. *See Matter of S-H*, 23 I&N Dec. 462, 466 (BIA 2002) (declaring that an Immigration Judge's decision cannot be affirmed on the basis that he or she decided the case with incomplete findings of fact). The Immigration Judge's decision does not adequately address the respondent's asylum and withholding of removal applications. The respondent maintains on appeal that his terrorism charges are pretextual and politically or religiously motivated, and that he is being targeted by the Turkish government based on his participation in the Gulen movement and perceived as being

anti-government (Respondent's Br. at 4-10, 12-14). The Immigration Judge discussed what she perceived to be due process following the judicial proceedings based on her determination that the respondent was prosecuted for a perceived legitimate reason, i.e. terrorism (IJ at 8-10). However, the Immigration Judge did not analyze the respondent's applications on account of his actual or imputed political opinion or religion, based upon his active participation in the Gulen movement and religious gatherings related to the movement (Respondent's Br. at 5-10). It is also not clear whether the Immigration Judge considered the country conditions evidence that the Turkish government utilizes the anti-terror legislation passed in 2018 to arrest and imprison Turkish citizens suspected of ties to the Gulen movement (IJ at 7-10; Exh. 3 at 34, 39-40, 83, 85-86, 92-93, 116-17).

On remand, the Immigration Judge should determine whether the harm the respondent claimed to have suffered, and the harm he fears, is on account of a ground enumerated in the "refugee" definition.³ INA § 101(a)(42)(A), 8 U.S.C. § 1101(a)(42)(A). In this regard, the Immigration Judge specifically should reassess whether such harm has a nexus to the grounds of political opinion and religion. The Immigration Judge should also determine whether the terrorism charge against the respondent was a pretextual targeting of a perceived political opponent.

Additionally, the Immigration Judge rejected the respondent's particular social group of "active followers of the Gulen movement" based solely on the ability of its members to leave the group (IJ at 8-9). This determination, however, is not dispositive if, for example, the shared characteristic is so fundamental to identity or conscience that it should not be expected to be changed. *See Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (common and immutable characteristics are those attributes that members of the group "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences"). On remand, the Immigration Judge should reassess whether the respondent's membership in his particular social group is so fundamental to his identity that he should not be required to change. The Immigration Judge should also make specific determinations on whether the respondent's proposed particular social group has the requisite particularity and social distinction. *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

The respondent also asserts that the Immigration Judge incorrectly denied his CAT claim by determining that the respondent was punished with lawful sanctions (Respondent's Br. at 12-14, 15-17). He argues that the Immigration Judge erred by ignoring the documentary evidence and not addressing whether prospective punishment of him in retaliation for his involvement with the Gulen movement would defeat the object and purpose of the CAT (Respondent's Br. at 13-14, 15-17). The Immigration Judge found that the respondent's treatment in police custody the first time amounted to torture, but denied the respondent's CAT claim because there is no evidence in the record that this is likely to occur again as the respondent was in police custody at least twice after he was released in 2021 and the police did not subject him to

³ We decline the respondent's request to remand the record to a different Immigration Judge (Respondent's Br. at 1, 10, 17). *See Matter of Y-S-L-C-*, 26 I&N Dec. 688, 690-91 (BIA 2015)(explaining when remand to a different Immigration Judge is needed).

similar treatment (IJ at 11). The Immigration Judge found that while it was likely that the respondent would be arrested upon his return to Turkey, his potential imprisonment would be arising from lawful sanctions for his violation of the conditions of his parole and failure to appear for his court hearing (IJ at 11).

On remand, the Immigration Judge should address whether the sanctions to which the respondent was subjected are excluded from the definition of lawful sanctions because they defeat the object and purpose of the CAT. *See* 8 C.F.R. § 1208.18(a)(3) (stating that lawful sanctions “do not include sanctions that defeat the object and purpose of the [CAT] to prohibit torture”); *see also Matter of H-C-R-C-*, 28 I&N Dec. 809, 813 (BIA 2024) (stating that per regulation, a lawful sanction must be “judicially imposed” or otherwise “authorized by law,” and concluding that while incarceration is a lawful sanction, rape by fellow inmates is not). Additionally, the Immigration Judge should consider whether it is more likely than not that the respondent would be tortured in Turkey, including all evidence relevant to the possibility of future torture. *See* 8 C.F.R. § 1208.16(c)(3) (explaining an Immigration Judge must consider all evidence relevant to the possibility of future torture in assessing the likelihood of future torture to a specific respondent, including evidence of past torture inflicted on that respondent). When doing so, the Immigration Judge should fully engage with the country conditions evidence presented, including those that address the likelihood of the respondent being harmed and jailed as a supporter of the Gulen movement and for his prior violations of law. *See Ndifon v. Garland*, 49 F.4th 986, 991 (5th Cir. 2022) (explaining the need to consider country condition evidence in deciding CAT claims).

The parties may make additional arguments and update the record on remand. We express no opinion regarding the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

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.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Oct 10, 2025

ON BEHALF OF RESPONDENT: Ali R. Mirhosseini, Esquire

ON BEHALF OF DHS: James B. Phillips, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Malphrus, Chief Appellate Immigration Judge; Gemoets, Appellate Immigration Judge;
Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker

HUNSUCKER, Appellate Immigration Judge

The respondent, a native and citizen of Iran, appeals from the Immigration Judge's April 15, 2025, decision, denying the respondent's application for asylum, withholding of removal, and his request for protection under the regulations implementing the Convention Against Torture ("CAT").¹ See sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c)-1208.18. The Department of Homeland Security ("DHS") opposes the appeal.² The respondent included additional evidence in his appeal, which we will construe as a motion to remand. The appeal will be sustained, and the motion to remand will be granted.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent alleged past persecution and a fear of future persecution based on his conversion to the Christian religion and the alleged particular social group of "Christian converts in Iran" (Exhs. 3-4, 10 at 2). The respondent alleged his neighbor, who worked for the

¹ The Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18(a) (2020).

² DHS filed a "Motion for Summary Affirmance."

Islamic Revolution Guard Corps, discovered the respondent's Christian discussions, and asked if the respondent changed his religion and "he said just be careful," because if the respondent did change religions, the respondent "would get in trouble" (IJ at 2-3; Tr. at 39-40; Exhs. 3 at 8; 4 at 19; 11 at 14-15). The respondent alleged he lived with his in-laws after this conversation with this neighbor (IJ at 5; Tr. at 49; Exhs. 3-4). The respondent additionally alleged that he participated in the (b)(6) protests in 2022 and was hit with batons by the police (IJ at 3; Tr. at 43, 90-93; Exhs. 3 at 8-9; 4; 7; 11 at 15).

The Immigration Judge denied the respondent's asylum and withholding applications, finding that the respondent was not credible (IJ at 6-9). In the alternative, the Immigration Judge found the respondent was barred from asylum relief due to the Circumvention of Lawful Pathways Rule (IJ at 9-11). On appeal, the respondent challenges the Immigration Judge's adverse credibility finding, specifically arguing that the Immigration Judge failed to identify any material inconsistencies, contradictions, or implausibilities in the respondent's testimony that would justify a negative credibility assessment (Respondent's Br. at 11).

We discern no clear error in the adverse credibility findings as an Immigration Judge can rely on any inconsistency or omission in making an adverse credibility finding, regardless of whether they go to the heart of the claim, but he or she must provide specific cogent reasons for the finding. *See Wang v. Holder*, 569 F.3d 531, 537 (5th Cir. 2009) (requiring an adverse credibility determination to be "supported by specific and cogent reasons derived from the record"); *Cordero-Chavez v. Garland*, 50 F.4th 492, 496 (5th Cir. 2022) (explaining that in making an adverse credibility determination, an Immigration Judge can rely on inconsistencies between the respondent's statements made at a credible fear interview, testimony, and asylum application); *Arulnanthy v. Garland*, 17 F.4th 586, 593 (5th Cir. 2021) (same); *see also Avelar-Oliva v. Barr*, 954 F.3d 757, 763-64 (5th Cir. 2020).

Here, among other things, the Immigration Judge permissibly determined that the respondent was not consistent about whether he had been arrested in Iran in connection with the protest he participated in 2022 (IJ at 3, 8). The respondent indicated in his Form I-589, that during the protest, his son was arrested, but in his credible fear interview, the respondent indicated that both he and his son were arrested, and he paid the police to let them go (IJ at 3, 8; Exhs. 3; 11 at 18). The respondent during direct examination testified he was not arrested or detained by the police after the protest, but was able to run away because "there were too many people" and the police "couldn't follow us, so we ran" (IJ at 8; Tr. at 43). When confronted with this inconsistency at the hearing, the respondent testified that he was never arrested by the police, but both he and his son were participating in the protest, and he paid money to free his son (Tr. at 90-93). Regarding the discrepancy between the Form I-589 that stated only his son was arrested and the CFI where the respondent stated both were arrested, the respondent testified: "Yes, that is correct. Exactly what happened. We both were participating in that protest. Once they came and they took my son, I had to go pay money to free him. I swear that is exactly based on fact." (IJ at 8; Tr. at 90-93).

These inconsistencies and omissions are supported by the record, and the respondent on appeal does not show how the Immigration Judge erred in his analysis of the specific reasons for the adverse credibility finding. As such, the Immigration Judge's adverse credibility finding is not

clearly erroneous. *See id.*; *see also Cooper v. Harris*, 581 U.S. 285, 299, 309 (2017) (stating under clear error review, reversal is appropriate only when “left with the definite and firm conviction that a mistake has been committed”) (internal citation omitted); *see Matter of D-R-*, 25 I&N Dec. 445, 454 (BIA 2011) (finding that an Immigration Judge is not required to interpret the evidence in the manner advocated by the applicant).

However, the Immigration Judge’s decision refers to the respondent’s conversion to Christianity, without expressly finding a lack of credibility as to the claimed conversion (IJ at 6-9). Upon remand, the Immigration Judge should clarify his findings regarding the credibility of the respondent’s claimed conversion to Christianity. Thereafter, the Immigration Judge should further address the respondent’s applications for asylum and withholding of removal consistent with the additional findings. *See* INA §§ 208(b)(1)(B)(i) and 241(b)(3)(A), 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3)(A).

We will also remand for further consideration of the Immigration Judge’s denial of the respondent’s application for protection under the CAT (IJ at 11-12). *See* 8 C.F.R. §§ 1208.16(c)-1208.18; *see also Ndifon v. Garland*, 49 F.4th 986, 989 (5th Cir. 2022) (emphasizing country conditions evidence must be considered even if an adverse credibility finding has been entered). The country condition reports detail that Christian converts from Islam report being detained and forced to sign commitments to refrain from further Christian activities or ordered to attend Islamic re-education sessions (Exh. 6 at 128). Further, Iranian law considers Islam the official state religion, “prohibits Muslims from changing or renouncing their religious belief,” “considers conversion from Islam to be apostasy, a crime punishable by death,” and judges may issue the death penalty to someone accused of apostasy under other charges, such as “corruption on earth” and “outrage against high-ranking officials.” (Exh. 6 at 133-34).

Lastly, we construe the respondent’s submission of new evidence on appeal as a motion to remand. 8 C.F.R. § 1003.2(c); *see Parada-Orellana v. Garland*, 21 F.4th 887, 893 (5th Cir. 2022); *see also Matter of Coelho*, 20 I&N Dec. 464, 472-73 (BIA 1992) (explaining that a party who seeks a remand or reopening of proceedings bears a “heavy burden” of proving that “the new evidence offered would likely change the result in the case”). On appeal, the respondent submitted court summonses and arrest warrants issued by the Islamic Revolutionary Court outlining apostasy and national security charges, sworn affidavits from the respondent’s brother and son, medical documentation of the respondent’s wife’s medical condition, and country condition reports (Respondent’s Br., Tabs K-M).

In light of the country condition reports detailing that conversion from Islam to be apostasy, a crime punishable by death, and the new evidence detailing the apostasy charges against the respondent, we will grant the motion to remand for the Immigration Judge to address this new evidence, determine its credibility, and issue a new decision (Exh. 6 at 133-34).

In remanding, we express no opinion as to the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following orders will be entered.

(b)(6)

ORDER: The appeal is sustained, and the record is remanded for further proceedings in accordance with this opinion.

FURTHER ORDER: The motion to remand is granted.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Oct 31, 2025

ON BEHALF OF RESPONDENT: Naveen Flores-Dixit, Esquire

ON BEHALF OF DHS: Frank A. Jury II, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Malphrus, Chief Appellate Immigration Judge; Mullane, Appellate Immigration Judge;
Gemoets, Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Malphrus

MALPHRUS, Chief Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's February 18, 2025, decision denying his application for deferral of removal under the regulations implementing the Convention Against Torture ("CAT").¹ The Department of Homeland Security opposes the appeal. The record will be remanded to the Immigration Judge for further proceedings and the entry of a new decision.²

We review findings of fact determined by an Immigration Judge under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

¹ The Convention Against Torture and Other Cruel, Inhuman or degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18.

² The respondent does not challenge on appeal the Immigration Judge's determination that he is statutorily ineligible for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158, 1231(b)(3) (IJ at 2-3), due to his misconduct relating to a serious non-political crime in El Salvador. Therefore, we deem any further argument or evidence on these issues waived. See *Matter of P-B-B-*, 28 I&N Dec. 43, 44 n.1 (BIA 2020) (stating that arguments not raised on appeal are deemed waived).

(continued...)

The respondent testified that he fears removal to El Salvador as he is gay and has gang related tattoos due to his past gang affiliation (Tr. at 179-80, 183-84). The Immigration Judge found that in 2009, Salvadoran police tortured the respondent upon deportation from the United States (IJ at 3; Tr. at 182-86). The Immigration Judge further determined that the respondent suffered torture in 2015, when gang members sexually abused him while imprisoned (IJ at 3; Tr. at 193-94). The Immigration Judge further determined that Salvadoran officials when informed endeavored to respond to these attacks by relocating the respondent to a different detention facility (IJ at 5). The Immigration Judge recognized that the respondent may likely be “detained and screened”; however, denied his application because he did not establish he would more likely than not be tortured upon return (IJ at 4-5).

The respondent contends that the Immigration Judge erred in denying him protection under the CAT (Respondent’s Br. at 6-22).³ In particular, the respondent argues that the Immigration Judge did not consider the following evidence: (1) his sexual orientation and gang tattoos; (2) the 18th gang severely beat him in 2014, (b)(6) in 2015, threatened to kill him and his family in 2015, and after his prison release in 2020; (3) an (b)(6) made up of (b)(6) (b)(6) and the (b)(6) tortured him in 2021; and (4) country conditions evidence that the government is interested in imprisoning Salvadoran men with his characteristics (Respondent’s Br. at 6-15, 17-21). The respondent also asserts that, although the Immigration Judge considered his past torture at the hands of the police the day of arrival in El Salvador in 2009, he failed to consider this evidence when determining the likelihood of torture during his detention and screening at the airport (Respondent’s Br. at 11-12, 15-17). Lastly, the respondent argues that the Immigration Judge did not aggregate the sources of torture upon release or detention, including the (b)(6), (b)(6), and gang members (Respondent’s Br. at 11-12, 19-22).

We conclude that the Immigration Judge’s decision does not contain sufficient findings of fact for our appellate review. The decision does not show that the Immigration Judge made specific factual findings about what will happen to the respondent upon his removal. See *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019) (explaining that to establish a likelihood of torture, the respondent must present evidence regarding “the likelihood state actors will torture any particular person,” including the applicant). In particular, the Immigration Judge’s analysis should include findings regarding how the harm the respondent suffered in 2021 at the hands of Salvadoran authorities would contribute to whether the respondent will more likely than not be tortured upon removal. The Immigration Judge should also consider if the combination of the respondent’s characteristics, namely his gang tattoos and his sexual orientation, impacts the likelihood of future

³ To the extent the respondent argues that the Immigration Judge failed to develop the record regarding whether anyone is looking for the respondent since he left El Salvador, we conclude that the Immigration Judge adequately developed the record of proceeding (Respondent’s Br. at 21-22). The record reflects that the Immigration Judge properly examined the respondent to ascertain the contours of his claim for deferral of removal (Tr. at 178-212). See *Artega-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020) (explaining that the Immigration Judge has a duty to develop the record, but not to advocate for the respondent). The record further reflects that at the conclusion of the Immigration Judge’s examination, he gave the respondent the opportunity to expand upon his testimony in support of his application (Tr. at 224-26).

torture analysis. *See Matter of G-A-*, 23 I&N Dec. 366, 368 (BIA 2002) (explaining that the combination of a respondent's traits should be examined when determining if the respondent is more likely than not to be tortured). Moreover, the Immigration Judge should consider the aggregate risk of torture from all sources. *See Matter of J-R-G-P-*, 27 I&N Dec. 482, 484 (BIA 2018) (noting that a CAT claim "must be considered in terms of the aggregate risk of torture from all sources, and not as separate, divisible . . . claims.") (citation omitted). As necessary, the Immigration Judge should further analyze the respondent's eligibility for deferral of removal under CAT. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a); *Tabora Gutierrez v. Garland*, 12 F.4th 496, 502-503 (5th Cir. 2021) (discussing the standards for analysis under the CAT); *see also Matter of A-A-R-*, 29 I&N Dec. 38 (BIA 2025) (discussing CAT in relation to the state of exception in El Salvador); *Matter of A-A-F-V-*, 29 I&N Dec. 118 (BIA 2025) (same).

In remanding this case, we express no opinion regarding the respondent's ultimate eligibility for deferral of removal under the CAT.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion.

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED
Nov 05, 2025

ON BEHALF OF RESPONDENT: Anna Roberson, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Gemoets, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge;
Volkert, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker

HUNSUCKER, Appellate Immigration Judge

The respondent, native and citizen of Afghanistan, appeals the Immigration Judge's February 11, 2025, 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 ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), but granting withholding of removal under the regulations implementing the Convention Against Torture ("CAT").¹ The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent, through counsel, argues that the decision to waive appeal was not a knowing and intelligent one (Respondent's Br. at 8-10). *See generally Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1322 (BIA 2000) (explaining that "it is important that any waiver be knowingly and intelligently made"). The Board has reviewed the respondent's arguments on appeal, as well as the transcripts, specifically, those of the respondent's February 7, 2025, and February 11, 2025, hearings, and considered the totality of the facts and circumstances (Tr. at 81-107). Although the Immigration Judge found that the pro se respondent waived appeal, the record does not demonstrate that the respondent's waiver was knowing and intelligent (Tr. at 105). *See Matter of Rodriguez-Diaz*, 22 I&N Dec. at 1322. The discussion between the

¹ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). 8 C.F.R. §§ 1208.16(c)-1208.18(a).

(b)(6)

Immigration Judge and the respondent concerning the implications of waiving appeal did not adequately demonstrate that the respondent understood that he was irrevocably waiving his right to appeal (Tr. at 93-105).

As a complete decision is necessary for our review of this matter, we will return the record to the Immigration Court for further action. Upon receipt of the record, the Immigration Judge shall issue a full and complete decision with the requisite findings of fact and conclusions of law.

Accordingly, the following order will be entered.

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

NOT FOR PUBLICATION

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

MATTER OF:

(b)(6)

Respondent

FILED

Dec 08, 2025

ON BEHALF OF RESPONDENT: Caya Simonsen, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Pearsall, TX

Before: Mann, Appellate Immigration Judge

MANN, Appellate Immigration Judge

ORDER:

Due to an error in the decision regarding when the annual asylum fees are due and payable, the Immigration Judge's (b)(6) 2025, decision is vacated, and the case is remanded to the Immigration Judge for further consideration of the merits of the respondent's applications for asylum and related relief and protection.