

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [REDACTED] - Chicago, IL

Date:

[REDACTED] 2012

In re: [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: [REDACTED]

ON BEHALF OF DHS: [REDACTED]

Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(1)(C)(i), I&N Act [8 U.S.C. § 1227(a)(1)(C)(i)] -  
Nonimmigrant - violated conditions of status

APPLICATION: Asylum

The respondent, a native and citizen of The Gambia, has appealed from the May 19, 2010, decision of the Immigration Judge finding that the respondent had established eligibility for withholding of removal, but denying the respondent's application for asylum because she failed to file her application within 1 year of entry.

Regarding the 1-year filing requirement, the respondent entered the United States on August 10, 2006, as a student. She filed her Application for Asylum and Withholding of Removal (Form I-589) on January 29, 2010. Although the respondent clearly filed her asylum application beyond the 1-year filing deadline, she argues that she has presented evidence of changed and extraordinary circumstances that excuse the delay in filing.

The respondent stopped taking college classes in May of 2007, after learning that the uncle that had been paying for her education expected her to return to The Gambia, be circumcised, and marry him (Tr. at 23-26; Exh. 3, Tabs 1, 2, 3). The respondent also learned that her father supported this plan and he threatened to kill her if she did not comply (Tr. at 26). We agree with the respondent that these circumstances constitute changed circumstances that materially affect the respondent's eligibility for asylum. See 8 C.F.R. § 1208.4(a)(4)(i)(B). Further, the respondent experienced stress and anxiety after learning of the arrangement between her uncle and her father, ultimately leading to her hospitalization in July of 2009 (Tr. at 26-27; Exh. 3, Tabs 1, 9). We determine that the respondent's mental state constituted an extraordinary circumstance for failing to meet the 1-year filing deadline. See 8 C.F.R. § 1208.4(a)(5)(ii). The respondent filed her asylum application on January 29, 2010, about 6 months after her hospitalization. Under these circumstances, we find that the respondent has established an exception to the 1-year filing requirement. Consequently, we find that the respondent is not barred from eligibility for asylum.

A [REDACTED]

The Immigration Judge granted withholding of removal, which has a higher standard than asylum and the Department of Homeland Security did not contest that finding. Consequently, we find that the respondent has established eligibility for asylum and the record will be remanded for completion of the requisite background checks.

ORDER: The Immigration Judge's order finding the respondent ineligible for asylum is vacated.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

  
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FOR THE BOARD