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Obah v. Gonzales

United States Court of Appeals for the Eighth Circuit

June 14, 2007, Submitted ; June 20, 2007, Filed

No. 06-1594

Reporter

241 Fed. Appx. 348 *; 2007 U.S. App. LEXIS 14761 **

Helen Adaeze Obah, Petitioner, v. Alberto Gonzales, Attorney General of the United States of America, Respondent.

Notice: **[**1]** PLEASE REFER TO FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1 GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: Petition for Review of an Order of the Board of Immigration Appeals.

Core Terms

documents, credibility, Torture, asylum, recognizance, poster, removal, alien, cards

Case Summary

Procedural Posture

Petitioner alien applied for asylum, withholding of removal under *8 U.S.C.S. § 1231(b)(3)*, and relief under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 85, [23 I.L.M. 1027](#). An immigration judge (IJ) denied relief, and the Board of Immigration Appeals (BIA) affirmed. The alien sought review.

Overview

The alien, a Nigerian, claimed that she arrived in the United States on January 29, 1999, and timely applied for asylum on February 11, 1999. However, the IJ found that the alien failed to establish that her application was timely under *8 U.S.C.S. § 1158(a)(2)(B)* because her accounts of her entry into the United States were inconsistent and unsupported, and the IJ's determination was unreviewable pursuant to §

1158(a)(3). Substantial evidence supported the IJ's finding that the alien was not eligible for withholding of removal or relief under the CAT. The alien claimed to have been persecuted and tortured because she engaged in pro-democracy activities. However, the IJ found that the alien lacked credibility. Corroborating documents, which included purported membership cards for political organizations, a police "wanted" poster, and a criminal recognizance, appeared to use the same type face and contained multiple misspellings, with the same misspelled word appearing in more than one document; the IJ concluded that the documents were fraudulent. There also were inconsistencies and improbable statements regarding how the alien obtained the documents.

Outcome

The BIA's judgment was affirmed.

LexisNexis® Headnotes

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Eligibility for Asylum

[HN1](#) **Asylum, Eligibility for Asylum**

To be eligible for asylum, an alien must demonstrate by clear and convincing evidence that she filed an application for asylum within one year of arriving in the United States. *8 U.S.C.S. § 1158(a)(2)(B)*.

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Eligibility for Asylum

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Judicial Review

Immigration Law > Judicial Proceedings > Judicial Review > Scope of Review

CAT protection. [8 C.F.R. § 1208.16\(c\)\(3\)](#).

[HN2](#) **Asylum, Eligibility for Asylum**

8 U.S.C.S. § 1158(a)(3) is clear: no court shall have jurisdiction to review any determination of the United States Attorney General under § 1158(a)(2). An immigration judge's finding that an alien failed to meet the one-year requirement for filing an asylum application is a determination of the Attorney General under § 1158(a)(2)(B).

Immigration Law > Asylum, Refugees & Related Relief > Restriction on Removal > Eligibility Requirements

[HN3](#) **Restriction on Removal, Eligibility Requirements**

Withholding of removal is available if the United States Attorney General decides that an alien's life or freedom would be threatened in the country of removal because of the alien's race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C.S. § 1231(b)(3). The standard for mandatory withholding of removal is stringent: a clear probability that he or she will face persecution in the country to which he or she will be deported. Under this standard, the petitioner must show that more likely than not he or she would be subjected to persecution on account of one (or more) of the statutory grounds.

Evidence > Burdens of Proof > Allocation

Immigration Law > Asylum, Refugees & Related Relief > Convention Against Torture

[HN4](#) **Burdens of Proof, Allocation**

If an immigration judge determines that an alien is more likely than not to be tortured in a country of removal, the alien is entitled to protection under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Dec. 10, 1984, 1465 U.N.T.S. 85, [23 I.L.M. 1027](#). [8 C.F.R. § 1208.16\(c\)\(4\)](#). The alien bears the burden of proof for

Administrative Law > Judicial Review > Standards of Review > Deference to Agency Statutory Interpretation

Immigration Law > ... > Judicial Review > Standards of Review > De Novo Standard of Review

Immigration Law > Judicial Proceedings > Judicial Review > Scope of Review

Immigration Law > ... > Judicial Review > Standards of Review > Substantial Evidence

[HN5](#) **Standards of Review, Deference to Agency Statutory Interpretation**

As the final agency decision, an order of the Board of Immigration Appeals (BIA) is the subject of a court of appeals' review. Where the Board adopted an immigration judge's (IJ's) findings, the court also reviews the IJ's decision and order as part of the final agency decision. The court affirms a decision supported by reasonable, substantial, and probative evidence. To reverse a BIA finding a court must find that the evidence not only supports that conclusion, but compels it. In other words, the Board's factual findings are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. 8 U.S.C.S. § 1252(b)(4)(B). The court reviews the Board's legal conclusions de novo, but defers to its interpretation of the Immigration and Nationality Act.

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Administrative Proceedings

[HN6](#) **Asylum, Administrative Proceedings**

An applicant's presentation of a fraudulent document to prove a central element of the claim in an asylum adjudication, in the absence of an explanation regarding such presentation, creates serious doubts regarding the applicant's overall credibility. Such fraud tarnishes the applicant's veracity and diminishes the reliability of his other evidence.

Immigration Law > Asylum, Refugees & Related Relief > Asylum > Administrative Proceedings

Immigration Law > ... > Judicial Review > Standards of Review > General Overview

[HN7](#) **Asylum, Administrative Proceedings**

An immigration judge (IJ) is in the best position to make credibility findings in a relief from removal case because he or she sees the witness as the testimony is given. For this reason, a reviewing court defers to the IJ's credibility finding when it is supported by specific, cogent reasons for disbelief.

Counsel: For Helen Adaeze Obah, Petitioner: Herbert Igbanugo, IGBANUGO PARTNERS, Minneapolis, MN.

For Alberto Gonzales, Attorney General of the United States of America, Respondent: Kristin A. Cabral, Lindsay Chichester, Richard M. Evans, Assistant Director, U.S. DEPARTMENT OF JUSTICE, Office of Immigration Litigation, Washington, DC; Lisa J. Stark, U.S. DEPARTMENT OF JUSTICE, Civil Rights Division-Appellate Section, Washington, DC.


Judges: Before BYE, RILEY, and BENTON, Circuit Judges.

Opinion

[*348] PER CURIAM.

Helen Adaeze Obah, a Nigerian, entered the United States without inspection. The government began removal proceedings in 2001. After four evidentiary hearings, the [*349] immigration judge denied asylum, withholding of removal, and relief under the Convention Against Torture, ordering her removed to Nigeria. The Board of Immigration Appeals affirmed the IJ, dismissing Obah's appeal. This court affirms.


I.

The government argues that "this court lacks jurisdiction to consider whether petitioner is eligible for [**2] asylum." [HN1](#)  "To be eligible for asylum, an alien must demonstrate by clear and convincing evidence that she filed an application for asylum within one year of arriving in the United States." [Aden v. Ashcroft, 396 F.3d 966, 968 \(8th Cir. 2005\)](#). See 8 U.S.C. §§ 1158(a)(2)(B). Obah filed for asylum on February 11,

1999 - the issue is when she arrived in the United States. Obah claims she arrived on January 29, 1999. But the IJ found her "utterly incredible," and her accounts of entry into the United States are inconsistent and unsupported:


In her written statement, she's dressing up like a man to leave [Nigeria]. In her testimony in Court she can't recall doing that. We have no tickets, no boarding passes, no luggage claims, no travel documents for certain, to show how respondent left Nigeria and came to the United States. We simply have the mysterious Madam Coker who apparently handled all the arrangements. The respondent entered in a van, using a Nigerian passport. She was never questioned. The Court finds claims such as these to be very questionable.

The IJ concluded: "The Court does not believe that the respondent has met her burden [**3] of proof with the documentation and testimony offered. . . . the absence of solid documentary proof of her entry is a further bar to her receiving asylum."

Like the petitioner in *Aden*, Obah claims her testimony on this issue was credible, and that the IJ erred. But [HN2](#)  *section 1158(a)(3)* is clear: "no court shall have jurisdiction to review any determination of the Attorney General under" *section 1158(a)(2)*. The IJ's finding that Obah failed to meet the one-year requirement is a "determination of the Attorney General under" *section 1158(a)(2)(B)*. Therefore, this court lacks jurisdiction to consider her asylum claim. See [Aden, 396 F.3d at 968](#).

II.

Obah does not qualify for withholding of removal, or relief under the Convention Against Torture.

[HN3](#)  Withholding of removal is available "if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1231(b)(3). "The standard for mandatory withholding of removal is stringent, a 'clear probability that he or she will face persecution in [**4] the country to which he or she will be deported.'" [Ruzi v. Gonzales, 441 F.3d 611, 614-15 \(8th Cir. 2006\)](#) (quoting [Eta-Ndu v. Gonzales, 411 F.3d 977, 986 \(8th Cir. 2005\)](#)). "Under this standard, the petitioner must show that 'more likely than not' he or she would be subjected to persecution on account of one (or more) of the statutory grounds." [Id. at 615](#).

[HN4](#) ↑] "If the immigration judge determines that the alien is more likely than not to be tortured in the country of removal, the alien is entitled to protection under the Convention Against Torture." [8 C.F.R. 1208.16\(c\)\(4\)](#). The alien bears the burden of proof for CAT protection. [8 C.F.R. 1208.16\(c\)\(3\)](#).

Obah testified she was persecuted and tortured in Nigeria in the 1990s for opposing the military government of General [*350] Sani Abacha. Specifically, Obah claims she was arrested four separate times for engaging in pro-democracy activities, and while in custody was beaten, repeatedly gang-raped, and otherwise abused by her captors, who worked for the government. She fears the same treatment if returned.

[HN5](#) ↑] As the final agency decision, the Board's order is [*5] the subject of this court's review. [Ismail v. Ashcroft, 396 F.3d 970, 974 \(8th Cir. 2005\)](#). Because the Board adopted the IJ's findings, this court also reviews the IJ's decision and order as part of the final agency decision. *Id.* This court affirms a decision supported by "reasonable, substantial, and probative evidence." [INS v. Elias-Zacarias, 502 U.S. 478, 481, 112 S. Ct. 812, 117 L. Ed. 2d 38 \(1992\)](#). "To reverse the BIA finding we must find that the evidence not only supportsthat conclusion, but compels it." [Id. at 481 n.1](#) (emphasis in original). In other words, the Board's factual findings are "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." [8 U.S.C. § 1252\(b\)\(4\)\(B\)](#). This court reviews the Board's legal conclusions de novo, but defers to its interpretation of the Immigration and Nationality Act. See [Nyirenda v. INS, 279 F.3d 620, 623 \(8th Cir. 2002\)](#).

This court agrees with the IJ: "If the respondent had been subjected to the abuse she described in her testimony and in some of her documents, the Court would very likely grant her relief." This court [*6] also agrees that "[t]he real issues in this case entirely turn on [Obah's] credibility."

The IJ found Obah "utterly incredible." Obah offered purported membership cards for several political organizations, as well as photocopies of a Nigerian police wanted poster and a criminal recognizance issued for her by the police. After commenting on "some very definite similarities between the typed [sic] used on all of the respondent's political identity cards and the Nigerian police documents," the IJ found it "utterly implausible that one office would issue identity cards for three different political organizations." One card

misspells the word "bearer." The wanted poster "uses the old style of type used on 'old west' wanted posters," and "the word military in the middle of the page is spelled with two L's." A handwritten statement from Obah also misspells "military" with two Ls. The poster also misspells the words "Nigerian" (N-I-G-I-R-I-A-N) and "physical" (P-H-I-S-I-C-A-L), leading the IJ to describe it as "an extremely shaky document." Oddly, the criminal recognizance identifies Obah as the complainant and the government of Nigeria as the defendant, using "similar type face [*7] to all the previously mentioned documents" and misspelling "military" with two Ls. The IJ viewed the recognizance as "another fraudulent document prepared on the same typewriter as the political cards." The Department of Homeland Security's Forensic Document Laboratory concluded that Obah's documents "could not be effectively authenticated" and "should be considered suspect." Describing the poster and the recognizance as "just laughable," the IJ concluded that "this Court has every reason to believe that this respondent phoned up these documents herself."

The documents' origin is similarly dubious. First, Obah testified that a friend went to Obah's husband's house in Lagos, retrieved "all the documents I brought [to the hearing]," and gave them to her before she left Nigeria in January 1999. At the second hearing, Obah testified that she got the wanted poster and the criminal recognizance from someone named "Bukky" or "Bukola," who traveled to Nigeria and retrieved these documents for Obah. The IJ [*351] was appropriately skeptical about "the ubiquitous Bukky":


[S]ome person that the respondent just happened to run into at the Mall of America, and who was willing to travel back [*8] to Nigeria to obtain documents or information for the respondent. The mysterious nature of this person, including her never leaving means for the respondent to contact her, or a last name to assist in locating her, indicates just what a preposterous story this is.

At the third hearing, Obah testified that another friend gave her the photocopy of the recognizance before she left Nigeria. None of these people testified.

Obah produced a facsimile copy of a letter confirming her membership in the Campaign for Democracy. The IJ is justified in concluding that "the flaming fraud of the documents discussed previously [membership cards, wanted poster, criminal recognizance], heavily outweighs the one document that she has presented that has any hope of validity." See, e.g., [Sterkaj v.](#)

[Gonzales, 439 F.3d 273, 277 \(8th Cir. 2006\)](#) ([HN6](#))

"An applicant's presentation of a fraudulent document to prove a central element of the claim in an asylum adjudication . . . in the absence of an explanation regarding such presentation[] creates serious doubts regarding the [applicant's] overall credibility. [S]uch fraud tarnishes [the applicant's] veracity and diminishes the [****9**] reliability of his other evidence." (citations omitted) (brackets in original).

[HN7](#)) The IJ "is in the best position to make credibility findings because he [or she] sees the witness as the testimony is given." [Gemechu v. Ashcroft, 387 F.3d 944, 947 \(8th Cir. 2004\)](#). For this reason, "we defer to the IJ's credibility finding when it is supported by specific, cogent reasons for disbelief." [Onsongo v. Gonzales, 457 F.3d 849, 852 \(8th Cir. 2006\)](#) (citing [Eta-Ndu, 411 F.3d at 982](#)). Here, the IJ's credibility finding is supported by many specific, cogent reasons to doubt Obah's credibility. Obah's "inconsistent testimony" and "suspect corroborating evidence" support the IJ's finding. See [id. at 853](#). Far from thinking that "a reasonable factfinder would be compelled by the record to credit the disputed testimony," this court finds the IJ's decision persuasive. See [id.](#)

Obah offered testimony from Dr. Patricia Shannon with the Center for Victims of Torture. On appeal, Obah complains that "the IJ completely disregarded the photographs of Obah's scars/injuries, the CVT reports concerning her psychological problems and the torture she [****10**] suffered, and Dr. Shannon's testimony." The photographs show that Obah has scars on her body and is missing a tooth - they do not prove the cause was torture. The information contained in the reports, and the testimony of Dr. Shannon, are based on statements made by Obah herself. Obah's "overall credibility" is tarnished by the "flaming fraud" of her other documents. See [Sterkaj, 439 F.3d at 277](#).

III.

The judgment of the Board is affirmed.

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