



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Cohen, Mitchell Jonathan, Esquire
501 Golden Isles Drive
Suite 205
Hallandale Beach, FL 33009-0000

U.S. INS/KRO
18201 SW 12th St.
Miami, FL 33194

Name: [REDACTED]

A [REDACTED]

Date of this notice: 03/18/2003

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:

GRANT, EDWARD R.

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: A [REDACTED] - Miami

Date:

MAR 18 2003

In re: [REDACTED]

IN ASYLUM PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mitchell J. Cohen, Esquire

ON BEHALF OF SERVICE: [REDACTED] Assistant District Counsel

APPLICATION: Withholding of removal and deferral of removal under Article 3 of the
Convention Against Torture

The respondent appeals the Immigration Judge's November 6, 2002, decision denying the respondent's application for withholding of removal under section 241(b) of the Act, and deferral of removal pursuant to Article 3 of the Convention Against Torture, 8 C.F.R. § 208.17 ("Convention" or "C.A.T."). The appeal will be sustained in part.

The respondent was born in Haiti, and fears that if he returns to Haiti he will be subject to indefinite detention due to his prison record. He further fears that he will be viewed as demonic on account of his epileptic condition, and denied medical treatment. We take notice that criminal detainees from the United States such as the respondent have been incarcerated for an indefinite period upon removal to Haiti in order to discourage crime there. Reports indicate that detainees must contend with very poor conditions in Haitian prisons. *See e.g.*, United States Department of State's "Profile of Asylum Claims and Country Conditions - Haiti," Office of Asylum Affairs, Bureau of Democracy, Human Rights and Labor, United States Department of State, March 31, 1998 ("Profile").

Torture is an extreme form of intentionally cruel and inhuman treatment or punishment. *See* 8 C.F.R. § 208.18 *et seq.* Federal regulations provide that an alien must establish that it is more likely than not that he or she would be tortured if returned to the proposed country of removal. 8 C.F.R. § 208.16(c)(2). An applicant is not required to demonstrate that he or she would be tortured on account of a particular belief or immutable characteristic. The regulations require that the harm be "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. § 208.18(a)(1). *See Matter of S-V-*, Interim Decision 3430 (BIA 2000).

A [REDACTED]

We find that the respondent has satisfied his burden of proof in these proceedings for a grant of deferral of removal. The respondent has established that he is mentally ill, that he needs treatment to control his serious condition, and that he will be imprisoned upon return to Haiti. This case can and should be distinguished from those that resulted in a denial of C.A.T. deferral in *Matter of J-E-*, 23 I&N Dec. 291 (BIA 2002) (holding that neither indefinite detention nor generally poor prison conditions in Haiti constitute torture where there is no evidence that the authorities intentionally and deliberately detain deportees in order to inflict torture). The respondent is likely to suffer intentionally severe abuse in prison which constitutes torture under the standards we articulated in *Matter of J-E-*, *supra* and *Matter of G-A-*, 23 I&N Dec. 366 (BIA 2002) (holding that an Iranian Christian of Armenian descent demonstrated eligibility for deferral of removal by establishing that it is more likely than not that he will be tortured if deported to Iran based on a combination of factors, including his religion, his ethnicity, the duration of his residence in the United States, and his drug-related convictions in this country).


Information on Haiti indicates that acts of intentional torture occur at times in Haitian detention facilities. See "*Profile*," *supra*. We note that the behavior of mentally ill individuals can be extremely erratic or eccentric at times. In the respondent's condition, his ability to conform to prison discipline requirements may be limited, especially if his medication is not provided.

We believe that the existence of the respondent's mental condition makes it more likely than not that he would be severely punished for non-standard behavior, and may likely result in a longer period of incarceration. Moreover, we believe, based on evidence of conditions in Haitian prisons in general, that it is more likely than not that the treatment that the respondent would experience in Haiti would constitute torture within the regulatory definition found at 8 C.F.R. § 208.18. There is sufficient evidence in the record to establish that it is more likely than not that the respondent will be subjected to torture upon his return.

For these reasons, we will grant the respondent deferral of removal pursuant to 8 C.F.R. § 208.17. The Immigration Judge's decision on the issue of asylum and withholding of removal under section 241(b) of the Act is affirmed.

ORDER: The appeal is sustained in part.

FURTHER ORDER: The respondent is granted deferral of removal under the Convention.



FOR THE BOARD