U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Falls Church, Virginia 22041

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625 Evans Street, Room 135
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Name: [redacted]

A [redacted]

Date of this notice: 5/18/2017

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

Sincerely,

Cynthia L. Crosby
Acting Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Neal, David L
Kendall Clark, Molly

bashorea
Userteam: Docket

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

Falls Church, Virginia 22041

File: A[redacted] – Elizabeth, NJ Date: MAY 18 2017

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: R. Linus Chan, Esquire

ON BEHALF OF DHS: Linda Chan
Assistant Chief Counsel

APPLICATION: Reconsideration

This matter was last before the Board on January 23, 2017, when we sustained the appeal filed by the Department of Homeland Security (DHS) from the Immigration Judge's decision granting the respondent's applications for asylum and withholding of removal under the Immigration and Nationality Act and denying his application for protection under the Convention Against Torture. The respondent has filed a motion for reconsideration. The DHS has filed an opposition to the motion. The DHS has also filed a motion requesting the Board to clarify its last decision or to remand the record to the Immigration Judge. The DHS observes that the Board's last decision sustained the appeal filed by the DHS and vacated the Immigration Judge's grant of relief but omitted an order of removal. We will grant the respondent's motion to reconsider.[1] Under the circumstances, the motion filed by the DHS is moot.

A motion to reconsider is a request that the Board reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case that was overlooked. *See* section 240(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6); 8 C.F.R. § 1003.2(b); *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006).

The Board's last decision concluded that the respondent was barred from receiving asylum and withholding of removal because he provided "material support" to a terrorist organization. In making this conclusion, the Board agreed with the DHS that the material support bar does not contain a de minimis exception. Accordingly, the Board found that the respondent's one-time payment of $50.00 to Al-Shabaab as part of an agreement made to secure his release from

[1] The parties are responsible for notifying the United States Court of Appeals for the Third Circuit about this decision.

kidnapping, constituted "material support" and prevented the respondent from being granted asylum or withholding of removal. *See* section 212(a)(3)(B)(iv)(VI) of the Act, 8 USC § 1182(a)(3)(B)(iv)(VI). [2]

In his motion to reconsider, the respondent states that he is not arguing that there is an "exception" to the material support bar for de minimis support. Instead, he states that "material support" must always be, in fact, "material." According to the respondent, the plain language of the statute requires "material support" to be something other than de minimis. The respondent further observes that the United States Court of Appeals for the Third Circuit, the controlling circuit in this matter, has held that the word "material" in "material support" must be "ascribed some meaning." *Sesay v. Att'y General*, 787 F.3d 215, 222 (3d Cir. 2015), (citing *Singh-Kaur v. Ashcroft*, 385 F.3d 293, 298 (3d Cir. 2004) (examining Black's Law Dictionary definition of the word)). The respondent correctly argues that the Board's last decision conflicts with the controlling law of the Third Circuit.

Accordingly, we now reconsider our decision insofar as it held that any amount of funds provided to a terrorist organization constitutes "material support" of that organization. We conclude that it was error to give no meaning to the word "material" in "material support." The question that follows is whether the respondent's one-time payment of $50.00 shortly before fleeing Somalia, is sufficient to be material.

The Board has previously indicated that a packed lunch and the equivalent of $4.00 in United States funds would not be material. *See Sesay v. Att'y General*, *supra*, at 221-22, (citing with approval an unpublished Board decision from 2009). In contrast, the Board has determined that the equivalent of $685 in United States funds made in multiple payments over several months was sufficiently substantial by itself to have some effect on the ability of a terrorist organization to accomplish its goals. *Matter of S-K-*, 23 I&N Dec. 936, 945-46 (BIA 2006) (finding it unnecessary to decide whether a small amount of money provided to a terrorist organization would be material support).

The Immigration Judge in this case did not conduct fact-finding concerning the amount the respondent paid to Al-Shabaab and specifically whether it would be sufficiently substantial by itself to have some effect on the ability of the terrorist organization at issue to accomplish its goals. *Id.* Accordingly, we find it necessary to remand the record to the Immigration Judge for further fact-finding. Therefore, we will grant the respondent's motion to reconsider our decision dated January 23, 2017. We will vacate that decision insofar as it found the respondent provided material support to Al-Shabaab, and we will remand the record to the Immigration Judge for further proceedings. On remand, both parties will be given the opportunity to submit additional evidence.

ORDER: The motion to reconsider is granted.

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[2] The decision found that "but for" the material support bar, the respondent was eligible for asylum and was deserving of a grant of asylum.

FURTHER ORDER: The Board's decision dated January 23, 2017, is vacated insofar as it found the respondent provided material support to a terrorist organization.

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.

FOR THE BOARD