In the Matter of:

████████████████

Respondent.

File Number: A █████████ 8

In Removal Proceedings

CHARGE: Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA" or the "Act"), in that that after admission as a nonimmigrant under section 101(a)(15), you have remained in the United States for a time longer than permitted.

APPLICATIONS: Asylum pursuant to INA § 208(a); Withholding of Removal pursuant to INA § 241(b)(3); Withholding and Deferral of Removal under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c).

ON BEHALF OF RESPONDENT:
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ON BEHALF OF DHS:
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DECISION OF THE IMMIGRATION JUDGE

I. Procedural History

Respondent is a native and citizen of ████. Exh. 1. He was admitted to the United States at Houston, Texas on or about September 7, 2017, as a nonimmigrant B-2 visitor with authorization to remain in the United States for a temporary period not to exceed March 6, 2018. *Id.* Respondent remained in the United States beyond that date, without authorization. *Id.* Respondent filed an affirmative Form I-589, Application for Asylum and for Withholding of Removal, with United States Citizenship and Immigration Services (USCIS), which was referred to the Immigration Court on November 8, 2018. Exh. 2. On March 13, 2019, the Department of Homeland Security (DHS) personally served Respondent with a Notice to Appear (NTA). *Id.* The NTA charged Respondent with removability under section 237(a)(1)(B) of the Act. *Id.* On March 14, 2017, DHS filed the NTA with the Houston Immigration Court, vesting the Court with jurisdiction and initiating removal proceedings. *See id.*; 8 C.F.R. § 1003.14(a) (2021).

On March 15, 2019, Respondent admitted the allegations and conceded the charge in the NTA. *See* Exh. 1. Based on Respondent's admissions and the evidence in the record, the Court

Because Respondent has established both a subjectively and objectively reasonable fear of future persecution, the Court finds that a well-founded fear of future persecution. *See Eduard*, 379 F.3d at 189.

d. Discretion

Asylum may be denied as a matter of discretion, even if the applicant is statutorily eligible. *See* INA § 208(b)(1)(A). Serious adverse factors can include the fraudulent circumvention of orderly refugee procedures or participation in violent crime. *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987). However, "the danger of persecution should generally outweigh all but the most egregious . . . adverse factors." Pula, 19 I&N Dec. at 474.

In this case, the Court considers the adverse discretionary factors present: Respondent's conduct in the raid exercises ordered by the soldiers and Commander at his military school. Notably, during these exercises, Respondent did not himself commit violent acts. The Court considers it relevant in its discretionary analysis that Respondent was a child acting under orders by those who drugged him and his classmates to gain their compliance. Moreover, Respondent testified regarding the persecution he fears upon return in the future and the persecution he suffered as a child soldier and as a result of his attempt to escape the military school and deployment to a battle in 2017. The Court finds that the significant danger of persecution in this case outweighs the negative discretionary factors present, and accordingly finds Respondent deserving of a discretionary grant of asylum.

Because Respondent is eligible for asylum and discretionarily deserving of asylum, the Court will grant his application for asylum.

VI. Withholding of Removal

As the Court has granted Respondent's application for asylum, it is unnecessary to consider his application for withholding of removal under the Act. *See Bagamasbad*, 429 U.S. at 25 (stating that "[a]s 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."). In the alternative, if the persecutor or serious nonpolitical crime bars apply and Respondent is ineligible for asylum, the Court observes that those same bars apply to withholding of removal under the Act and under the Convention Against Torture. *See* INA §§ 241(b)(3)(B)(i), (iii); 8 C.F.R. § 1208.16(d)(2). Accordingly, if Respondent's application for asylum is barred, then his application for withholding of removal is, as well.

VII. Protection Under the Convention Against Torture

The Court has found, *supra*, that Respondent is eligible for, and discretionarily deserving of, a grant of asylum. In so finding, the Court held that Respondent's past conduct did not constitute a bar to asylum. In the alternative, even if Respondent's past conduct precludes him from asylum and withholding of removal pursuant to the persecutor bar or the serious nonpolitical crime bar, the Court finds him eligible for deferral under the Convention Against Torture.

An applicant may be granted withholding or deferral of removal under the Convention Against Torture ("CAT"). 8 C.F.R. §§ 1208.16-1208.17. An applicant who is subject to the

Accordingly, the Court enters the following orders:

ORDERS

IT IS HEREBY ORDERED that Respondent's application for **ASYLUM** pursuant to INA § 208(a) is **GRANTED**.

IT IS FUTHER ORDERED that Respondent's application for **WITHHOLDING OF REMOVAL** pursuant to INA § 241(b)(3) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Respondent's application for **PROTECTION UNDER THE CONVENTION AGAINST TORTURE** pursuant to 8 C.F.R. § 1208.16(c) is **DENIED AS MOOT**, and that **DEFERRAL UNDER THE CONVENTION AGAINST TORTURE** pursuant to 8 C.F.R. § 1208.17(a) is **GRANTED IN THE ALTERNATIVE**.

RIGHT TO APPEAL

The parties are advised that they have a right to appeal this decision to the Board. 8 C.F.R. § 1003.38(a). Any appeal must be received by the Board within <u>30 days</u> of the date this written decision is mailed. *Id.* § 1003.38(b). Failure to comply with the deadline will result in a waiver of the party's right to appeal, and the present order will become administratively final. *See id.*

July 11, 2022

Date

Date: 2022.07.11 12:39:15 -05'00'

Immigration Judge