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**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
BOARD OF IMMIGRATION APPEALS**

In re the Matter of:

File No. A55 555 555

CLIENTWINDER BHAT	)	RESPONDENT'S BRIEF IN
	)	SUPPORT OF APPEAL
Respondent,	)	
	)	
In Deportation Proceedings.	)	
_____	)	

Respondent CLIENTWINDER BHAT submits the following brief in support of his appeal of the April 13, 2001, decision of the Immigration Judge (IJ) denying his applications for asylum pursuant to Section 208(a) of the Immigration and Nationality Act (Act), and withholding of deportation under Section 243(h) of the Act.

**I.**

**FACTS**

Respondent is a twenty-nine year old single man, Hindu, and a citizen of Bangladesh, who, by his own admission, is deportable from the United States on the grounds alleged in the Order to Show Cause (Exhibit 1). In the course of his deportation proceedings, he conceded deportability and sought asylum and withholding of deportation as to Bangladesh, or in the alternative, voluntary departure (Exhibit 2).

Respondent is a Hindu, a religious and ethnic minority in Bangladesh, where Islam is the national religion and its adherents comprise almost 90 percent of the population (Exhibit 6 and Transcript of Hearing, *hereinafter*, TH 33). According to the Department of State country reports, Hindus, Christians and Buddhists together make up roughly ten percent of the population (Exhibit 6). Respondent's parents and grandparents lived in Dhaka when it was still part of India, before the separation of Bangladesh in 1947 (TH 24-26).

Respondent completed two years of science studies at the Dhaka City College. He applied for admission at Dhaka University and took the admissions examination, but was denied admission to the university (TH 21-23). He believes this is because he was discriminated against by virtue of his racial and religious group (TH 126, 198).

Respondent is the youngest member of his family. Respondent's father, Hemlal Bhat, and respondent's brother, Naravan, were both active members of organizations known as the Hindu Buddha Christian Aikya Parishad (HBCAP) and the Bangladesh Society for the Enforcement of Human Rights ("BASEHR"). Respondent's father was assistant secretary to BASEHR's secretary general. In that capacity, respondent's father's activities included regularly organizing movements, rallies and gatherings for the group (TH 27-33, 50). According to the respondent, the main goal of the BASEHR is to help minority people "find their identity,...to do their cultural things and help them not to move out from the country, and also to help them protect [themselves] against the government and fundamental fanatic" groups' torture (TH 29). Respondent described BASEHR as both cultural and political in its goals and activities.

Respondent also testified that the HBCAP group, of which his father and brother were members, had as its objective the enforcement of human rights and support for minority groups, with emphasis on encouraging minorities to remain in Bangladesh and not feel pressured by Muslims to leave the country (TH 31-32).

Although respondent was too young to be admitted as a member of either HBCAP or BASEHR, he helped his father and brother carry out their activities in support of the organizations. This he did by hanging the organizations' posters and banners, usually at night, and by helping them organize various papers (TH 61-62). As a Hindu, respondent was often cursed at, harassed, insulted and chased by Muslims on the street who would call him names equivalent to the term "nigger" simply because he was a Hindu (TH 122, 124, 177, 179).

Respondent had personal knowledge of at least one member of the HBCAP in Dhaka whose family fled the country after he was found dead in his home, his face smashed in with a brick, the handiwork of Muslim fundamentalists of either the local Jamat-E'Islami or Shibir group. No police investigation was ever made into the matter (TH 33-34, 121-124).

Muslim groups also entered Hindu homes, including respondent's, on several occasions. On one occasion, a group of four or five members of the Jamat-E'Islami or Shibir groups entered respondent's home, cursing and threatening the family for its involvement in human rights groups and for being Hindu. These Muslims threatened respondent's father by saying they would wipe out his family, that they would rape the women, and kill them all (TH 45-46).

In a separate instance, about the end of October 1990, members of Muslim fundamentalist groups stormed into respondent's home after their destruction of the national Hindu temple at Dhakeshory Lalbagh in Dhaka, Bangladesh. A group of six to seven Muslims, dressed in the traditional attire of pyjama and caps, entered respondent's home, struck him and his father, and proceeded to destroy most of the family's furniture. Respondent's mother, brother, and sister were also hurt in the attack. The same occurred in the homes of most Hindus across the country on the same date (TH 36, 38-40). These particular attacks upon Bangladeshi Hindus by Muslims are generally attributed to riots in India over the controversy surrounding the Barbri mosque.

In addition to attacks on Hindu people and their homes, Hindu temples in Bangladesh have also been attacked and ruined (TH 41-45). Among these is the temple respondent attended, Dhakeshory Mandir, in Lalbagh, Dhaka, where Muslim fundamentalists broke the front gate and doors, smashed the gardens, broke statues and desecrated the altar. This has happened several times, and the police have not done anything either to protect Hindu temples or to prevent such attacks. Every October during the annual Hindu festival of "durga puja," Muslims attack worshipers during the temple festivities (TH 135-141).

Frequently, Muslims place cow bones in Hindu temples, a sacrilegious act to Hindus, who hold that cows are sacred (TH 163). Muslims also disturb worship services by entering the temples and making lots of noise and stealing offerings of fruit from the altars (TH 164-165). Additionally, the government of Bangladesh has converted several Hindu temples into government offices, and new temples are not allowed to be built (TH 129). Respondent's mother was unable to wear the *bindi*, a dot on her forehead

indicating her Hindu marriage and beliefs, because to do so would open her up to public ridicule and potential mistreatment by Muslims (TH 174-175).

On or about September 2, 1991, a group of police and Muslim civilians forcibly removed respondent's father and brother from a gathering of Hindus in Dhaka. The gathering had been a protest of hateful treatment of Hindus by Muslims in Bangladesh. Respondent's father and brother were forced into a jeep, blindfolded, and taken to an unknown location where they were beaten and held by their captors for two or three days (TH 54-55).

Several months later, on January 11, 1992, policemen arrested respondent's father and brother from the family home and transported them to the Dhaka Central Jail. Once there, they were hung upside down and beaten with a stick. One week before their arrest, respondent's father and brother had attended a Hindu labor rally in Chittagong protesting Muslim business owners and government agencies that do not provide Hindu workers with benefits comparable to Muslim workers, nor adequate work facilities. The police released respondent's father the next day, after threatening to kill him for any activities that would be viewed as anti-Muslim, but the police did not release respondent's brother. Once respondent's father had received medical treatment for his injuries, he and his family returned to the police station to inquire about the brother's release and were told that he had "disappeared." Respondent's brother was never seen again and his body never found; he is believed to be dead. In Bangladesh, it is commonly understood that when one "disappears" while in police custody, that such person has been extrajudicially killed (TH 36, 51-53, 86-88). The State Department country report indicated that the Bangladeshi government continues to restrict or deny many fundamental rights; that it

continues to use national security laws to detain political opponents and other citizens without formal charge; and that police routinely use torture and other forms of mistreatment in interrogating suspects (Exhibit 6).

After this incident and fearing for their lives, respondent and his parents and sister went into hiding for several weeks, leaving their house to stay at a friend's vacant rental property located approximately 30-35 miles from the family home (TH 56, 90). Respondent's father also ceased in his activities with BASEHR, but remained a supporter of the HBCAP (TH 58). After the family returned to once again reside in their home, the police, accompanied by Muslim civilians, came to the family's home several times and began to ask of the respondent's whereabouts and activities. Respondent was usually not at home on these occasions but in school. These Muslim civilians would threaten respondent's family on each occasion, usually striking and threatening to harm, rape or kill them, and breaking their furniture and personal property, while the policemen accompanying them simply stood by and watched. The State Department country report indicates that police rarely obtain warrants to enter homes and that officers violating the procedure are not punished (Exhibit 6). At one point, fearing for his remaining son's safety, respondent's father sent him out of Dhaka to live in Tangain and then Marmenshing for a short time (TH 59, 91).

On August 1, 1992, fearing that either the police or Muslim fanatics would find him and hurt or kill him or members of his family, respondent left Bangladesh. Respondent fled to Calcutta, India, where he spent two days and hired an agent who arranged for him to get a Canadian visa, and then to go from there to the United States. Respondent entered the U.S. without inspection, August 8, 1992, near Blaine,

Washington, after crossing the border with Canada in an automobile (TH 15-19). In October 1992, respondent submitted an application for asylum and withholding of deportation, including a three-page declaration in support of his application (Exhibit 2). Respondent was interviewed by an asylum officer of the Immigration and Naturalization Service on December 8, 1994 (Exhibit 2), and found to be credible by the asylum officer (Exhibit 9).

Respondent maintained contact with his father by mail after his arrival in the United States. One day, respondent received a letter from his father, dated July 3, 1995, informing him that he had been arrested and released after four days of torture in police custody as the result of the contents of a letter he received from respondent. The police had apparently intercepted one of respondent's father's letters responding to anti-government statements in a letter previously written by respondent to his father. The State Department country report indicates that Bangladeshi intelligence services illegally monitor telephones and mail (Exhibit 6). With the father's letter in hand, the police came to his house, searched for respondent's letter, and arrested his father upon finding it. Respondent's letter contained statements decrying the actions against Hindus by the Bangladesh government and Muslim fundamentalists, and mentioning his intent to contact Amnesty International. The police accused respondent's father of being a traitor for attempting to publish anti-Islamic statements outside the country (TH 70-72, 98, 117-120). Later that year, police came to respondent's father's house and ordered him to produce the respondent within a month or face torture by the police until either respondent surrendered himself to them or until his father died (TH 104). In June of

1996, after each of two elections, respondent's father was again harassed at his home because of his membership in the HBCAP (TH 72-74).

Respondent's father owned and operated several businesses including a machinery workshop, a furniture store, and a transportation business in Dhaka. (TH 19-20, 106). Respondent's father was finally forced to sell or abandon his businesses when he ran out of money as a result of many Muslim clients failing, or refusing, to pay him after he had filled their orders (TH 20-21, 107-114). Before the Independence War, respondent's father had owned some agricultural land, but it was appropriated by Muslims after Bangladesh gained independence from Pakistan in 1971 (TH 57, 114). The State Department country report confirms that many Hindus lost landholdings because of anti-Hindu discrimination in application of the law (Exhibit 6). In order to save their lives, respondent's father, along with respondent's mother and only sister, Dharna, left Bangladesh in 1997, and moved to Calcutta, India, where they continue to reside (TH 66). Respondent's only brother, is presumed dead. Respondent has no remaining family in Bangladesh.

## II.

### WITHHOLDING OF DEPORTATION AND ASYLUM.

Deportation of an alien is prohibited by Section 243(h) of the Act where there is a clear probability that his life or freedom would be threatened as a result of persecution on account of political opinion, membership in a particular social group, nationality, race, or religion. INS v. Stevic, 467 U.S. 407, 104 S.Ct. 2489 (1984). For the harm or suffering to be considered persecution, it must be inflicted either by the government or by persons or organizations the government is unwilling or unable to control. Mgoian v. INS, 184

F.3d 1029, 1036 (9<sup>th</sup> Cir. 1999) [the Armenian government is unable or unwilling to stop the persecution of Kurdish-Muslim families]. Discrimination, harassment, and violence by a group that the government is unable or unwilling to control at times may constitute persecution. Arteaga v. INS, 836 F.2d 1227, 1231 (9<sup>th</sup> Cir. 1988).

The Attorney General has discretionary authority to grant an alien asylum in the United States under Section 208(a) of the Act. To be eligible, an alien must meet the definition of a “refugee,” as defined in Section 101(a)(42)(A) of the Act. This requires that an alien show he is unwilling to return to his country either because of persecution or a well-founded fear of persecution, on account of his political opinion, membership in a particular social group, nationality, race, or religion. Cordoza-Fonseca v. INS, 767 F.2d 1448 (9<sup>th</sup> Cir. 1985), *aff’d* 480 U.S. 421, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987); Desir v. Ilchert, 840 F.2d 723 (9<sup>th</sup> Cir. 1988); Matter of Mogharrabi, I.D. #3028 (BIA 1987). For the harm or suffering to be considered persecution, it must be inflicted either by the government or by persons or organizations the government is unable or unwilling to control. Mgoian, *supra* at 1036; Singh v. INS, 94 F.3d 1353, 1360 (9<sup>th</sup> Cir. 1996); Gomez-Saballos v. INS, 79 F.3d 912 (9<sup>th</sup> Cir. 1996); McMullen v. INS, 658 F.2d 1312, 1315 (9<sup>th</sup> Cir. 1981). However, a respondent is not required to show the exact motivation of his “persecutor” where different reasons for actions are possible. An alien is only required to establish facts due to which a reasonable person would fear danger arising on account of one or more of the qualified reasons contained in the Act. Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988).

Either past persecution or a well-founded fear of future persecution may satisfy the statutory requirements for asylum. Matter of Chen, I.D. #3104 (BIA 1989); Desir,

*supra* at 729. The “well-founded fear” standard has both objective and subjective components. Barraza Rivera v. INS, 913 F.2d 1443, 1449 (9<sup>th</sup> Cir. 1990). The subjective component requires that an alien establish that his fear is “genuine.” Hernandez-Ortiz v. INS, 777 F.2d 509, 513 (9<sup>th</sup> Cir. 1985). Credible testimony in support of the subjective fear will satisfy the burden. Duarte de Guinac v. INS, 179 F.3d 1156, 1159 (9<sup>th</sup> Cir. 1999).

The objective component requires a showing, by credible, direct, and specific evidence in the record, of facts that establish that persecution is a reasonable possibility. Barraza Rivera, *supra* at 1449; Devalle v. INS, 901 F.2d 787, 790 (9<sup>th</sup> Cir. 1990). If documentary evidence is not available, the evidence may consist solely of the alien’s own testimony, if it is specific, credible and persuasive. Cordoza-Fonseca, *supra* at 1453. Evidence of past persecution or a threat of future persecution will usually suffice to form the objective component of the evidence requirement. Zacarias v. INS, 908 F.2d 1452, 1458 n.7 (9<sup>th</sup> Cir. 1990); Cordoza-Fonseca, *supra* at 1453. Past persecution does not require corroborative evidence but may be established through the applicant’s own testimony. Garrovillas v. INS, 156 F.3d 1010, 1016-17 (9<sup>th</sup> Cir. 1998). Under the regulations, a person who suffered past persecution is presumed to have a well-founded fear unless by a preponderance of the evidence, the government establishes that conditions have changed in the country of origin *to such an extent* that the applicant no longer has a well-founded fear. 8 C.F.R. § 208.13(b)(1)(i). See Borja v. INS, 175 F.3d 732, 737-38 (9<sup>th</sup> Cir. 1999) *en banc*; Tarubac v. INS, 182 F.3d 1114, 1119-1120 (9<sup>th</sup> Cir. 1999); Leiva-Montalvo v. INS, 173 F.3d 749, 751-52 (9<sup>th</sup> Cir. 1999); Del Carmen Molina v. INS, 170 F.3d 1247, 1250 (9<sup>th</sup> Cir. 1999); Osorio v. INS, 99 F.3d 928, 932 (9<sup>th</sup> cir.

1996) [Presumption in favor of applicant]; Surita v. INS, 95 F.3d 814, 821 (9<sup>th</sup> Cir. 1996) [INS must overcome presumption]; Prasad v. INS, 101 F.3d 614 (9<sup>th</sup> Cir. 1996).

If past persecution is established, then the government, to deny asylum as a matter of discretion, has the burden to establish that the applicant will be safe in other regions of the country where they raise that claim. Singh v. Ilchert, 69 F.3d 375, 379-81 (9<sup>th</sup> Cir. 1995). This includes demonstrating how the INS will accomplish the deportation of the individual to the protected area. Matter of H-, 21 I&N Dec. 337, 347-48 (BIA 1996).

In light of the above, it is submitted that respondent's testimony must be considered factually correct and sufficient, without more, to sustain his burden. If the events he testified to describe past persecution, or conditions such as to reasonably cause a well-founded fear of future persecution, then respondent did meet his burden.

### III.

#### **RESPONDENT ESTABLISHED ELIGIBILITY FOR ASYLUM AND WITHHOLDING OF DEPORTATION**

Viewed in its entirety, the record shows that the respondent established eligibility for asylum and withholding of deportation. The evidence established that respondent is by religion and ethnic background, a Hindu, which in Bangladesh, makes him a member of a particular minority social group, whose members' collective political opinions are in conflict with their Islamic government and Muslim majority population. Respondent testified that he endured verbal and physical harassment all his life or being Hindu. He also testified that he supported his father's and brother's political activities by helping them make and distribute posters and banners for their organizations, as well as helping with paperwork. He further testified that he had suffered grievous discrimination by being denied access to the higher education institutions of his choice due to his Hindu

identity. Evidence established respondent's freedom to worship was constantly threatened and disrupted by Muslim attacks on his temple.

Further, testimony showed that respondent was slapped, hit, and kicked in his own home on several occasions by Muslim intruders and their police escort. Respondent testified that his fear for his life and safety, and that of his father's, was great enough to force him into hiding for several months and finally to flee his country altogether. Evidence established that police later tortured respondent's father and demanded respondent's surrender because of a letter they had intercepted that contained anti-Islamic statements. Country reports submitted government's counsel confirmed the illegal seizure and censure of private correspondence by government authorities. Respondent stated several times throughout his testimony that he feared arrest, torture and death should he be forced to return to Bangladesh.

The evidence established that respondent's father and brother were active members of several human rights groups that advocated for Hindus in Bangladesh. Evidence further established that respondent's father and brother were arrested by the police, detained and tortured for their activities. Respondent testified that his father was released, but not his brother, and that when the family returned to the jail to find his brother, that the police told them he had "disappeared," which the family and Bangladesh citizens at large understand to mean "dead." Respondent's brother was never seen or heard from again. There is no question that the type of harm respondent's father and brother suffered amounts to persecution. They were not arrested or detained for any legitimate purpose, but rather for their political opinion and ethnic-religious identity as Hindus. There is no indication that respondent's father and brother were engaged in any

illegal activities. They never appeared before a tribunal, paid bail, nor had any formal charges brought against them. Respondent's father was released from custody after a day of torture, but not his brother. Since the police were not engaged in legitimate law enforcement activity, it must be presumed that their actions amounted to persecution.

There is no question that the type of harm respondent suffered amounts to persecution. His attackers' threats and assaults on his person, his family, his place of worship, and his racial, religious and social group as a whole, combined with the arrests and subsequent torture of his father and brother, as well as the disappearance and presumed extrajudicial killing of his brother, were so menacing as to cause significant actual suffering and harm to respondent, as he was forced to abandon his educational pursuits and his home, and eventually to flee his country. These events and threats caused respondent mental suffering and anxiety sufficient to force him to leave his college and family. See Sangha v. INS, 103 F.3d 1482 (9<sup>th</sup> Cir. 1997), and Melencio Legui Lim v. INS, 2000 U.S. App. LEXIS 22024, 224 F.3d 929 (9<sup>th</sup> Cir. 2000). He was not pursued or threatened for any legitimate purpose, rather he was singled out because he is Hindu.

The burden of proof in social group cases has been relaxed and does not require the respondent to be "singled out individually for persecution" if there is a "pattern and practice" of persecution of people "similarly situated" to the respondent. 8 C.F.R. §§ 208.13(b)(2)(i), 208.16(b)(3). Proof the government or other persecutor has discriminated against a group to which applicant belongs is always relevant to an asylum claim. Singh v. INS, 94 F.3d 1353, 1359 (9<sup>th</sup> Cir. 1996); Ghaly v. INS, 58 F.3d 1425, 1431 (9<sup>th</sup> Cir. 1995); and Matter of Salama, 11 I&N Dec. 536 (BIA 1966). Respondent

testified that he knew of other Hindus similarly situated, in his family, neighborhood, worship community, and around the region and country, who had been assaulted, harassed, arrested, tortured, and killed. Among these others suffering violence and harassment for being Hindus in Bangladesh, was his own father and brother, who were arrested, detained, threatened, and tortured by groups of both Muslim civilians and policemen.

Additionally, respondent's brother, and a neighbor who had also been a member of the same organization, were killed for their religious and political beliefs, by similar groups. This almost systematic persecution of Hindus, on account of their religious beliefs, ethnic background and political opinions, particularly of those with the courage to protest their harsh treatment by the Bangladeshi Muslim citizenry, is inflicted by both government agencies, such as the police, as well as by persons and organizations the government is unwilling or unable to control.

Evidence of treatment of certain religious groups is probative of a threat against the applicant. Korablina v. INS, 158 F.3d 1038 (9<sup>th</sup> Cir. 1998); Matter of O-Z- & I-Z-, Int. Dec. 3346 (BIA 1998); Matter of Salama, *supra*; Popova v. INS, (9<sup>th</sup> Cir. 2001).

Under Sanchez-Trujillo v. INS, the Ninth Circuit Court recognized several criteria for establishing social group persecution, including whether the group was cognizable, whether the alien qualifies as a member, and whether the group had been targeted because of characteristics as a group. Sanchez-Trujillo v. INS, 801 F.2d 1571, 1574-75 (9<sup>th</sup> Cir. 1986). Respondent's testimony clearly established that Hindus in Bangladesh are an easily recognizable group, that he himself was a Hindu, by both in religion and ethnic background, and that both before and after the vicious personal attacks his family

and neighbors suffered, that Hindus were regularly singled out and assaulted, tormented, or killed. Respondent testified that these practices continue to this day, and that were he to be returned to Bangladesh that it would be likely that he would be attacked, kidnapped, arrested and tortured, or killed. He further testified that this likelihood has increased since his flight to the U.S.

Respondent also established by credible testimony that police authorities in Bangladesh were either unwilling or unable to protect him from either past or future persecution. Worse, that police in his country were often involved with Muslims who target Hindu individuals, families and temples for physical attack and harassment. Respondent indicated that attempts to seek protection from the government are futile because the government is both made up of and supported by Muslims. Respondent believes that he will be assaulted, tortured, or killed were he to return to his country, by Muslim civilians, who are outside the control of Bangladeshi police, and may even be associated with the national and local police forces.

He also fears that the police themselves will locate and arrest him should he return to Bangladesh, as a result of anti-government statements contained in correspondence between respondent and his father, for which his father was arrested and tortured. Based on the prior experiences of his brother and father, as well as knowledge of the experience of other Hindus in Bangladesh, respondent believes that were he to fall into the hands of the police, that they would certainly torture and perhaps kill him for his and his family's political opinions and past associations.

The IJ's sole basis for concluding that respondent had failed to sustain his burden of establishing eligibility for asylum and withholding of deportation was his finding that

respondent was not a credible witness. The finding is not supported by the record. The IJ's decisions in denying asylum and withholding of deportation were incorrect applications of both law and discretion.

The IJ erred in his credibility finding, which was the basis for his decision. Respondent submits that the IJ's decision on credibility did not meet the standards regarding credibility findings as established in Turcios v. INS, 821 F.2d 1396, 1399 (9<sup>th</sup> Cir. 1987). The IJ must not only articulate the basis for the negative credibility finding, but those reasons must be substantial. It is particularly important that the credibility determination be based upon appropriate factors. Because the IJ's credibility finding was erroneous, his determination that respondent therefore could not meet his burden was erroneous as well.

The IJ erred in his credibility finding because he simply forgot evidence that was in the record. The basis of his decision was the incorrect observation that respondent had never, before his deportation hearing, mentioned that the police in Bangladesh had obtained a letter, written by him, criticizing the government. In fact, the respondent had submitted a written statement to the Asylum Office describing the aforementioned letter and the incidents surrounding it (*See* Exhibit 4A). Because this erroneously observed discrepancy was the only basis for the negative credibility finding, respondent's testimony should be regarded as true and correct. Moreover, respondent testified completely in accord with the timely-added Exhibit 4A, and was found credible by the Asylum Office. Further, the record reflects that whenever respondent has testified as to what happened to him, he has been consistent and has never contradicted himself. Therefore, there was every indication that the testimony was truthful.

Respondent plainly suffered persecution on account of his race, religion, membership in a particular social group, and imputed political opinion, qualifying him as a refugee. Background materials corroborated that conditions in Bangladesh remain relatively unchanged for Hindus. Therefore, respondent met his burden of demonstrating a well-founded fear of future harm on account of race, religion, and membership in a particular social group, as well as political opinion imputed to him because of his family's political activities and involvement.

The IJ also erred in faulting respondent with providing more details in his testimony at hearing than had been provided originally in his written application. In particular, the IJ seems perturbed that respondent testified and gave more details about the various occasions respondent's home was invaded by groups of police and Muslim civilians, about various forms of discrimination and harassment suffered by respondent personally, about attacks upon and desecrations of Hindu temples by Muslims, and about a letter respondent wrote to his father for which he was subsequently arrested and tortured, than originally appeared in respondent's application.

Failure to file an application that is not as complete as respondent's testimony does not mean his testimony is not credible. Aguilera-Cota v. U.S. INS, 914 F.2d 1375, 1381 (9<sup>th</sup> Cir. 1990) [Reversed IJ's determination that asylum applicant lacked credibility because his application did not refer to incidents given in his testimony]. Further, failure to file a complete asylum application even if coupled with failure to provide corroborating affidavits is not a basis to make adverse credibility determinations. Lopez-Reyes v. INS, 79 F.3d 908 (9<sup>th</sup> Cir. 1996). Uncorroborated testimony can be sufficient to establish a claim for asylum so long as it is credible, persuasive and specific. *See*

Mogharrabi; Mendoza-Perez v. INS, 902 F.2d 760 (9<sup>th</sup> Cir. 1990) [Testimony concerning a letter without production of the letter].

While an IJ's credibility finding is normally given great weight, such determinations must be: 1) fairly supported by the record, *See* Matter of B-, 21 I&N Dec. 66 (BIA 1995) [IJ's adverse credibility finding reversed, where applicant's testimony was plausible, detailed, internally consistent, consistent with the asylum application and embellished during probing cross-examination], Akinmade, *supra*, Garrovillas, *supra* at 1016, Stoyanov, *supra* at 731, and Martinez-Sanchez v. INS, 794 F.1396, 1400 (9<sup>th</sup> Cir. 1986) [Court reversed denial of asylum where IJ's claim that applicant lacked credibility not supported by the record]; 2) must be based on "a rational and supportable connection between the reasons cited and the conclusion that the petitioner is not credible," Aguilera-Cota, *supra* at 138; 3) must be supported by "specific cogent reasons," Nasseri v. Moschorak, 34 F.3d 723, 726 (9<sup>th</sup> Cir. 1994), Mosa v. Rogers, 89 F.3d 601, 604-05 (9<sup>th</sup> Cir. 1996); and 4) are subject to the substantial evidence standard of review Vilorio-Lopez v. INS, 852 F.2d 1137, 1142 (9<sup>th</sup> Cir. 1988)[Minor inconsistencies in the record such as discrepancies in dates which reveal nothing about an asylum applicant's fear for his safety are not an adequate basis for adverse credibility finding], Turcios, *supra* at 1396 [Reversed IJ's finding that former INA § 243(h) applicant not credible where finding not supported by record. IJ must "offer specific cogent reason for his disbelief"], Hartooni v. INS, 21 F.3d 336, 343 (9<sup>th</sup> Cir. 1994), Ramos-Vasquez v. INS, 57 F.3d 857 (9<sup>th</sup> Cir. 1995), Matter of Kasinga, 21 I&N Dec. 357, 364-65 (BIA 1996) [Explained inconsistencies].

The IJ's adverse credibility finding is not fairly supported by the record. Contrary to the IJ's finding that respondent's testimony was extremely vague regarding his activities supporting his father and brother as members of the HBCAP and BASEHR, the respondent specifically testified that he had helped make and display posters and banners for the organizations' events and rallies, and that he had also helped organize various papers. Additionally, respondent's assistance to his father's and brother's activities and organizations were confirmed by documentary evidence (Exhibits 4A and 4B). The respondent's testimony was clear, precise and detailed. If the IJ was unsatisfied with the sufficiency of detail in respondent's testimony, he was both authorized and required by § 242(b) of the Act to examine and/or interrogate respondent. Additionally, as the trier-of-fact, the IJ is charged with questioning asylum and withholding of removal applicants about omissions or inconsistencies that occur in the record during the hearing. Matter of S-M-J, Int. Dec. 3303 (BIA 1997), Matter of A-S-, Int. Dec. 3336 (BIA 1998).

The IJ's findings were not based on a rational and supportable connection between the reasons cited and the conclusion that respondent was not credible. The IJ stated that respondent had not before his deportation hearing previously mentioned the incident where the police intercepted a letter he had written to his father. This despite the fact that respondent testified that documentary evidence established that respondent had in fact disclosed the situation to the asylum officer, who found respondent to be credible. The IJ also erroneously states that respondent did not demonstrate a legitimate fear for his life or freedom, when respondent specifically testified numerous times during the course of his testimony that he was fearful of returning to Bangladesh as it would likely result in

his arrest, torture and perhaps death. The IJ's reasoning was neither specific nor cogent, but forgetful.

Further, the IJ did not apply the substantial evidence standard of review, but rather relied solely on a few statements made in the State Department's country conditions reports taken out of context, to the exclusion of other statements in the same reports which actually supported respondent's claims. The purpose of country conditions evidence, such as the State Department report, is not to corroborate specific acts of persecution, but to provide information about the context in which the persecution alleged took place, in order that the factfinder may intelligently evaluate the petitioner's credibility. Duarte de Guinac, *supra* at 1162. The country report in respondent's case indicated that minority groups, such as Hindus, often confront violent physical and verbal attacks, discrimination in the work place and in educational institutions, including extremely limited access to government jobs and political office, harassment, as well as social and economic disadvantage. Strangely enough, however, the IJ recognized that such conditions in Bangladesh are little changed from the time that respondent and his family were compelled to flee that country. This not only corroborates respondent's testimony as credible, but proves there continues to be a basis for a well-founded fear.

The IJ also erred because he applied an incorrect standard, as reflected in his oral decision. The IJ made much of the fact that respondent had not himself suffered persecution and also denied on that basis. The IJ erred because he entirely overlooked the well-founded fear standard. The fact that there have been a number of threats or acts of violence against members of an alien's family *is sufficient* to support the conclusion that the alien's life or freedom are endangered. Hernandez-Ortiz, *supra* at 516. Evidence

concerning the treatment of a person's family is probative of a threat against the applicant. Mgoian, at 1035-1036 [Murder of uncle and persecution of other family members who were also Kurdish Muslims in Armenia]; *See also* Abudu v. INS (9<sup>th</sup> Cir. 1986), Chavez v. INS (9<sup>th</sup> Cir. 1984), Shaoee v. INS (9<sup>th</sup> Cir. 1983), Matter of Villalta (BIA 1990), and Matter of Chen (BIA 1989). Also, evidence "suggesting that petitioner's family has been particularly affected by the conditions in their country helps in determining the likelihood of persecution." Del Valle v. INS, 776 F.2d 1407, 1413 (9<sup>th</sup> Cir. 1985). This is based on the notion that "threat of persecution need not be based on the applicant's own personal experience... [but that] evidence concerning relatives... may well show that his fear... of persecution is well-founded." United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status at paragraph 43 at 13. "There can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family." Aguilera-Cota, *supra* at 1380, n.3.

The arrests and torture of respondent's father and brother, and finally his brother's death, are facts that plainly met the standards for a well-founded fear in the cases noted above. Even the IJ, in his oral decision, conceded that respondent's father and brother would have a case for establishing persecution. On this basis, respondent plainly met his burden. The IJ erred in entirely overlooking this aspect of asylum law and precedent.

Respondent was the target of physical and verbal assault, discrimination and harassment on account of his race, religion, membership in a particular social group and imputed political opinion. Respondent testified that he and his family were ethnic and religious Hindus as well as supporters of two well-known human rights groups. It is

irrelevant that he was not a full-fledged member of these groups. He was targeted on account of his identity as a Hindu in Bangladesh. Respondent believes that if he were to return to his country that he is sure to be arrested and detained, and possibly killed, like his brother (TH 63). Therefore, he has demonstrated past persecution, and that he has a well-founded fear of future harm on account of his race, religion, membership in a political social group, and of political beliefs imputed to him because of his family's political activities.

Additionally, the IJ did not find that the Service had rebutted the presumption of future persecution afforded respondent on account of his past persecution. Proof of past persecution raises the presumption that an asylum applicant has a well-founded fear of future persecution, which may be rebutted by a showing, by a preponderance of the evidence, that country conditions have changed sufficiently so as to overcome that presumption. 8 C.F.R. § 208.13(b)(1)(i); Singh v. Ilchert, *supra* at 378. The Service is obligated to “introduce evidence that, on an individualized basis, rebuts a particular applicant’s specific grounds for his well-founded fear of future persecution.” Ernesto Navas v. INS, 217 F.3d 646, 662 (9<sup>th</sup> Cir. 2000). “Information about general changes in the country is not sufficient.” Garrovillas, *supra* at 1017. In respondent’s case, the IJ did not consider whether the Service had met its burden of showing changed country conditions, but rather made selective use of excerpts from the Department of State reports to support his own interpretation of respondent’s claims, even when those excerpts indicated a context and basis for claims of persecution based on religion, race, membership in a particular social group, and political opinions in Bangladesh.

Based on the record, the presumption afforded respondent remains unrebutted. The Service failed to produce evidence showing that country conditions in Bangladesh improved as a general matter, and it failed to introduce evidence to meet its burden of showing that there has been a change in the conditions that would affect respondent individually. Popova v. INS, (9<sup>th</sup> Cir. 2001). In sum, there is nothing submitted by the Service that rebuts respondent's legitimate fears of future harassment, threats, imprisonment, and possibly death, based upon his race, religion, and political opinion, and that of his family members.

Despite the overwhelming consistency between respondent's written application and his testimony both at the asylum office and at his hearing, the IJ ignored extensive corroborative evidence in the record and made errors and false inferences regarding respondent's actual testimony in court.

#### IV.

#### CONCLUSION

Based upon the foregoing, it is respectfully submitted that this appeal should be affirmed, that respondent be granted asylum in the United States, and that the Attorney General be prohibited from deporting him to Bangladesh. In the alternative, the matter should be remanded to the IJ for a decision addressing the issue of a well-founded fear.

Dated: February 4, 2002.

Respectfully Submitted,

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