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Non-detained

**UNITED STATES DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS
FALLS CHURCH, VIRGINIA**

In the Matter of:

Xxxx Xxxx Xxxx
Axxx xxx xxx

In Removal Proceedings

SUPPLEMENT TO MOTION TO REOPEN

I. Statement of the Case

The respondent is a native and citizen of Xxxx, and an applicant for asylum in the United States. The sole basis for this Board's decision to dismiss her appeal from the decision of the Immigration Judge was a finding that the IJ's credibility determination was not clearly erroneous in light of inconsistencies between the respondent's testimony at trial and government records confirming that her alleged abuser was in the United States during periods when Ms. Xxxx testified that he abused her in Xxxx.

On December 17, 2015, the respondent filed a motion to reopen her removal proceedings. That motion was timely filed within 90 days of this Board's decision. With her motion, Ms. Xxxx submitted evidence that she had sought mental health treatment in May of 2014, but that she had not been assigned a behavior health clinician until October of 2015 and that as of

December 15, 2015, she had been diagnosed with post-traumatic stress disorder, but had not yet been assigned to a psychiatrist for full testing and analysis. She indicated that she intended to supplement her motion to reopen with additional evidence and arguments within 60 days.

On January 27, 2016, Ms. Xxxx was evaluated by Dr. Xxxx Xxxx, MD, a Board Certified Psychiatrist at the Law and Psychiatry Service of the Xxxx Hospital. Dr. Xxxx conducted a three hour-long psychiatric assessment of Ms. Xxxx, and on February 11, 2016 authored a comprehensive forensic evaluation. A copy of that evaluation, as well as Dr. Xxxx's *curriculum vitae*, is attached.

II Argument

A. Dr. Xxxx's Forensic Evaluation Will Assist This Board in Assessing the Respondent's Motion to Reopen.

Dr. Xxxx's forensic evaluation answers all of the questions which this Board raised regarding Ms. Xxxx's credibility. The sole purpose of Dr. Xxxx's assessment was "to determine whether or not Ms. Xxxx suffers a psychological condition related to prior domestic violence and whether or not Ms. Xxxx is malingering." [Forensic Evaluation at p1]. After reviewing the decision of the Immigration Judge as well as Ms. Xxxx's appeal brief (which contains a detailed summary of the facts as she articulated them at trial), and after conducting an intensive, three hour-long interview, psychological assessment and a battery of tests, Dr. Xxxx concluded that:

- 1) Ms. Xxxx suffered from "very severe" Post-Traumatic Stress Disorder in 2012, and that although her symptoms had lessened in the years which followed, she continued to exhibit PTSD symptoms today;

- 2) among the many PTSD symptoms which she exhibited in 2012 through the present is dissociation, which he described as “a separation between awareness and feelings and actions. Behaviorally this could appear as gaps in memory; and
- 3) she suffers from a clinical deficiency in cognitive functions relating to organization, planning, attention, and memory.

Indeed, Ms. Xxxx scored only 19 points out of a possible 30 on the Montreal Cognitive Assessment (MOCA) screening, well below normal limits; a score of 26 or above is considered normal. Accordingly, Dr. Xxxx concluded that “Ms. Xxxx had problems with organization, planning, concentration, and memory.” [Forensic Evaluation at p4]. Indeed, he noted specifically that “[s]he had difficulty with specific dates and sequences of events,” but concluded that that difficulty did indicate a lack of veracity on her part; to the contrary, he stated that, “[t]he pattern of her responses was consistent with the known symptoms of PTSD” [Forensic Evaluation at 4-5] and he described her as “a credible evaluatee.” [Forensic Evaluation at 5].

Dr. Xxxx utilized the Clinician-Administered PTSD Scale (CAPS) to assess the diagnostic criteria which Ms. Xxxx exhibited over the course of four years, from the time of her apprehension and detention in 2012 to January of 2016, when he conducted the assessment. He determined that her CAPS score was 86 “soon after and for many months following her detention by U.S. Immigration authorities in 2012,” a score which “indicates a very severe PTSD.” [Forensic Evaluation at p6]. As such, the dissociative behavior which Dr. Xxxx described as interfering significantly with Ms. Xxxx’s ability to organize timelines and to recall dates and sequences of events was likely significantly more pronounced during the course of the

Immigration Court proceedings. Indeed, the fact that she continued to score so low on the MOCA test of cognitive functioning four years later, when her PTSD symptoms were in Dr. Xxxx's words "significantly improved" speaks to the severity of its impact on her, and the degree to which it impeded her ability to recall timelines and sequences of events.

With regard to the veracity of Ms. Xxxx's testimony at trial, Dr. Xxxx reported that the story which she recounted to him was entirely consistent with that contained in the summary of her testimony with one exception: the date on which she met her abuser, Xxxx. Whereas at trial, Ms. Xxxx testified that she had met Xxxx in 2008, she explained to Dr. Xxxx that she had been stalked and raped by another man in approximately 2008, and that he had continued to stalk her until Xxxx began to pursue her in 2011. Dr. Xxxx reported that in her testimony Ms. Xxxx "conflated the two men, the two different abuse events." [Forensic Evaluation at p4]. Given her cognitive deficiencies and clinical diagnosis, he did not find her confusion to be indicative of malingering; indeed, he described her as candid and credible [Forensic Evaluation at 4-5], and concluded that, "It is also my opinion with a reasonable degree of medical certainty that Ms. Xxxx is not malingering and that she was a credible evaluatee." [Forensic Evaluation at 7]. He pointed out that, "[t]he symptoms that Ms. Xxxx reported made clinical sense and were verified using a structured instrument." Her pattern of recovery "made clinical sense" to him, and he noted that the PTSD symptoms which she exhibited "are difficult to fake." [Forensic Evaluation at 7].

The nation's Circuit Courts of Appeals have recognized repeatedly how invaluable expert opinions are in asylum cases. Lusingo v. Gonzales, 420 F.3d 193 (3rd Cir. 2005) (Finding BIA conclusion that petitioner had no well-founded fear of persecution unfounded because it

conflicted with expert testimony); Gramatikov v. INS, 128 F.3d 619 (7th Cir. 1997); Hassani v. Mukasey, 301 Fed. Appx. 602, 603-604 (9th Cir. 2008) (Concluding that “the IJ’s exclusion of expert testimony violated Hassani’s due process rights and prejudiced his case” because “the record is peppered with the IJ’s expressions of doubt where expert testimony might have bolstered Hassani’s claims.”). Indeed, the First Circuit Court of Appeals, in whose jurisdiction this case arises, has reversed the Board when its conclusions stood in conflict with record expert evidence. Gailius v. INS, 147 F.3d 34 (1st Cir. 1998); *See also* Jalloh v. Ashcroft, 103 Fed. Appx. 402, 409 (1st Cir. 2004).

In this case, the Board’s conclusion that Ms. Xxxx’s testimony lacked credibility stands in direct contravention to Dr. Xxxx’s expert opinion. The forensic evaluation which he conducted answers all of the questions upon which this Board rested its determination, and establishes her credibility.

III Conclusion

For all of these reasons, the respondent respectfully moves this Board to reopen her removal proceedings, and to remand for consideration of new, previously undiscoverable evidence.

Respectfully submitted this ____ day of February, 2016

Xxxx Xxxx, by her attorney,
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CERTIFICATE OF SERVICE

I, Ilana Etkin Greenstein, hereby certify that a copy of the enclosed documents were delivered by first class mail, postage prepaid to:

Julie Nelson, Assistant Chief Counsel
Office of Chief Counsel
Department of Homeland Security
PO Box 25158
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this ____ day of February, 2016.

Ilana Etkin Greenstein