



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

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Date of this Notice: 5/20/2022

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:

Brown, Denise G
Liebowitz, Ellen C
Manuel, Elise

Userteam: Docket

NOT FOR PUBLICATION

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

MATTER OF:



FILED

May 20, 2022

Respondents

ON BEHALF OF RESPONDENTS: Juan Reyes, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Liebowitz, Appellate Immigration Judge; Manuel, Temporary Appellate Immigration Judge; Brown, Temporary Appellate Immigration Judge¹

Opinion by Appellate Immigration Judge Liebowitz

LIEBOWITZ, Appellate Immigration Judge

The respondents, who are natives and citizens of El Salvador,² appeal the Immigration Judge's March 21, 2019, decision denying their application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158(b)(1)(A), withholding of removal under INA section 241(b)(3)(A), 8 U.S.C. § 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture ("CAT").³ The Department of Homeland Security

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

² The respondents are a family. The father is the lead respondent, and references to a singular "respondent" are to him. The mother and minor child filed their own asylum applications and are also derivative applicants on the lead's asylum application. The respondents have not meaningfully challenged the Immigration Judge's denial of their claims for protection under the Convention Against Torture; thus, we deem those issues waived. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 n.2 (BIA 2018) (declining to address issue not pursued in brief).

³ The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994).

[REDACTED]

("DHS") has not filed a brief in opposition. We will sustain the appeal and remand the record to the Immigration Court.⁴

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii). The Immigration Judge found the respondent credible.

The respondents' claims are based on their fear of harm from gang members due to the lead respondent's political activism and refusal to cooperate with them. We disagree with the Immigration Judge's holding that the respondents did not establish a nexus to a protected ground.

The Immigration Judge acknowledged the respondent's testimony that the police suspected that gang members targeted the respondent because he worked with the FMLN party (IJ at 5; Tr. at 115). The Immigration Judge concluded, however, that this political motivation was merely incidental, tangential, superficial, or subordinate to the gang's other motivations (IJ at 6). In so doing, the Immigration Judge too narrowly construed the meaning of "one central reason" in INA section 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i) and clearly erred in her assessment of the motive of the gang.

The respondent explained the link between his community involvement and the FMLN party (Tr. at 67-69, 96, 98-100, 132). He also testified that the police told him they were investigating other cases like his that were linked to political activity and explained to him that the gang was trying to damage the images of perceived political opponents (Tr. at 115). We conclude that the circumstances of this case, including the police's explication that the respondent was probably targeted because of his politically-linked activity, demonstrate that the respondent's political opinion played more than a minor role in motivating the gang to target him. That evidence establishes that political opinion was at least one central reason the respondent was targeted. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 213 (BIA 2007) (examining the meaning of "incidental" and "tangential" with respect to motive).

The respondent also argues that he established a nexus between the harm he fears and his membership in the Community Coordinators of Puerto Parada ("CCPP") organization. The Immigration Judge concluded this group lacked the requisite particularity because it could include members throughout El Salvador with varying characteristics such as gender, age, and economic background (IJ at 7). However, a particular social group does not need to be homogenous to have particularity. Rather, "the focus of the particularity requirement is whether the group is discrete or is, instead, amorphous." *Matter of W-G-R-*, 26 I&N Dec. 208, 214 (BIA 2014), *aff'd in part and rev'd in part on other grounds by Garay Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016). Members of the CCPP are a group with distinct boundaries, namely membership in the organization.

⁴ The respondents filed a "Motion to Accept Untimely Filing of Notice of Appeal." However, their notice of appeal was timely filed within 30 days after the date on which the Immigration Judge's decision was mailed. *See* 8 C.F.R. § 1003.38(b).

[REDACTED]

The Immigration Judge clearly erred in finding that the record lacks evidence that Salvadoran society perceives the CCPP to be a distinct group (IJ at 7). The record contains documentation showing the CCPP is well-established, works in cooperation with other organizations and governmental entities, and is very active in the community (IJ at 4; Exh. 7 at 9-15, 40, 44, 50-51). The Immigration Judge acknowledged the breadth of the CCPP's community involvement (IJ at 4). Given the CCPP's profile in the community, the respondents met their burden to show that members of the CCPP are a socially distinct group. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 244 (BIA 2014) (describing the evidentiary burden to demonstrate the social distinction of a group).

In light of the Immigration Judge's determination that the respondent's particular social groups are not cognizable under the INA, the Immigration Judge did not address whether the harm the respondent fears would be on account of his membership in the CCPP. If necessary, the Immigration Judge can address this nexus issue on remand.

The Immigration Judge denied the respondents' claims for asylum and withholding of removal solely due to lack of nexus. Because we have determined that the respondents met their burden to show the harm they fear bears the requisite nexus to a protected ground, we will sustain the appeal and remand the record to the Immigration Judge to make findings on and assess the other eligibility requirements for asylum and withholding of removal under the INA.⁵

ORDER: The appeal is sustained, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

⁵ On appeal, the respondents argue they were denied due process because the testimony was not completed in a single hearing and because the Immigration Judge delayed issuing a decision until 7 months after the hearing. In light of our disposition of the appeal, we need not address this issue except to note that the Immigration Judge has broad latitude as to how she conducts the proceedings.