

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1919 SMITH STREET, 14TH FLOOR
HOUSTON, TX 77002

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In the matter of

DATE: May 20, 2022

- Unable to forward - No address provided.
- Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk

- Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT

- Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
- Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

X Other:

IS ORDER

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IMMIGRATION COURT

cc:

FF

On March 15, 2022, the Board of Immigration Appeals, in a decision issued by a single appellate immigration, remanded the case back to the Court. The Court respectfully certifies the case to the Board, given what appears to be a misreading of the Court's decision, relevant and controlling Fifth Circuit precedent that is not addressed in the Board's decision, and an unclear directive in the remand.

I. History of the Case

Respondents are natives and citizens of El Salvador who arrived in the United States on or about October 4, 2016. Exhs. 1, 1A. On October 14, 2016, the Department of Homeland Security (DHS) personally served respondents with a Form I-862, Notice to Appear (NTA), charging them as being inadmissible pursuant to INA § 212(a)(7)(A)(i)(I). Exhs. 1, 1A.

The Court sustained the removal charge(s). The lead respondent applied for asylum under INA § 208(a), and withholding of removal under INA § 241(b)(3). The minor respondent sought asylum as a derivative of her mother's application. On May 14, 2019, the Court held a hearing on the merits of the lead respondent's application(s). At the conclusion of testimony, the U.S. Department of Homeland Security stated their opposition to the relief application. Tr. at 63.

At its conclusion, the Court denied the lead respondent's applications for asylum under INA § 208(a), and withholding of removal under INA § 241(b)(3). *See* Decision of the Immigration Judge and *Statement of Law* (May 14, 2019). The Court first found the lead respondent's testimony credible. *Id.* at 7-8. The Court further determined that the harm experienced by the lead respondent in El Salvador, vis-à-vis her alleged persecutor, demonstrated acts rising to the level of persecution. *Id.* at 8-9. However, the Court, acknowledging evidence of "acts of criminal violence intended to harm" the lead respondent, determined that the harm she experienced could not be attributed to a cognizable social group. *Id.* at 12-14. The Court's findings, consistent with the Board's precedent decisions in *Matter of M-E-V-G-*, 26 I&N Dec. 227, 231 (BIA 2014), *Matter of W-G-R-*, 26 I&N Dec. 208, 212 (BIA 2014), and *Matter of A-R-C-G-*, 26 I&N Dec. 388, 392-395 (BIA 2014), which instruct an immigration judge to conduct case-specific analysis of record evidence, concluded that the lead respondent had not demonstrated past persecution for purposes of asylum under INA § 208(a) or withholding of removal under INA § 241(b)(3). *Id.* at 9-14. The Court, recognizing controlling precedent, considered the record evidence presented and found that the lead respondent's claim failed to establish that her alleged persecutor was motivated to cause her harm on account of the proposed social groups. *Id.* at 9-11; *see also INS v. Elias-Zacharias*, 502 U.S. 478, 483 (1992). The Court, referencing *Matter of C-A-*, 23 I&N Dec. 951, 955 (BIA 2006)¹ and based on a case-specific review of the record evidence presented, concluded that, *inter alia*, the lead respondent's past harm and fear of future harm at the hands of her partner did not relate to a protected ground. *Id.* at 11-14. The Court's reliance on *Matter of C-A-*, as relates to case-specific review, complies with the Board's long standing precedent that persecution relates to "an individual who is a member of a group of persons...". *Matter of C-A-*, 23 I&N Dec. at 955.

In so holding, the Court did not rely, cite or even mention former Attorney General Session's decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), but rather conducted a case-specific review of the evidence presented in these specific proceedings. *See* Decision of the Immigration Judge (May 14, 2019). This is because *Matter of A-B-* had no bearing on its decision. Rather, the Court relied on on-point Fifth Circuit and Board precedent. *Id.* at 9-17.

¹ The immigration judge's decision provides an incorrect page citation; however, refers to the *Matter of C-A-* discussion of a "particular social group".

On June 7, 2019, respondents filed a Notice of Appeal, and, on April 9, 2021, an appeal brief, with the Board. On March 15, 2022, a single appellate immigration judge, although “acknowledg[ing] and appreciat[ing] the [underigned’s] reasoning and decision,” remanded the case back to the Court. Decision of the Board of Immigration Appeals, at 1 (Mar. 15, 2022). This was purportedly because “subsequent to the Immigration Judge’s decision, the Attorney General, in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021), vacated the prior *Matter of A-B-* decisions in their entirety.” *Id.* at 1-2. The Board’s decision stated that “[u]nder these circumstances, and in an abundance of caution, the record will be remanded to the Immigration Judge to reevaluate the lead respondent’s eligibility for relief based on current case law.” *Id.* at 2.

II. Analysis

The Board erroneously remanded this case without any legal predicate for doing so. As previously stated, the Board remanded this case given the vacatur of former Attorney General Session’s decision in *Matter of A-B-*. However, *Matter of A-B-* was not relied upon, cited or referenced at all in the Court’s May 14, 2019 decision. Instead, the Court explicitly relied on Board decisions and controlling Fifth Circuit precedent, to conduct a case-specific analysis, consistent with the statutory framework for the claims raised. This analysis and discussion, unrelated to *Matter of A-B-*, was not considered or cited in the Board’s remand. The Court further notes that other dispositive factors are not addressed in the Board’s decision.

Of further concern is the fact that the Board’s remand failed to consider, to any extent, the Fifth Circuit’s precedential decision in *Jaco v. Garland*, 24 F.4th 395 (5th Cir. 2021), which occurred after the vacatur of *Matter of A-B-*. In *Jaco*, the Fifth Circuit reaffirmed the validity of *Gonzales-Veliz v. Barr*, 938 F.3d 219 (5th Cir. 2019), which contained similar holdings to those in *Matter of A-B-*. See *Jaco v. Garland*, 24 F.4th at 405. Indeed, *Jaco* interpreting *Gonzales-Veliz*, elucidates that Fifth Circuit law on the construction of “particular social group” has not changed despite the vacatur of *Matter of A-B-*. *Id.* at 405-06.

The Court notes that other immigration judges sitting within the Fifth Circuit have also received remands purportedly because, like the instant case, “the Attorney General, in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021), vacated the prior *Matter of A-B-* decisions in their entirety.” BIA at 2. Said remands have occurred despite the fact that Fifth Circuit precedent, and not *Matter of A-B-*, was relied upon in the predicate immigration judges’ decisions. Consequently, the Court in this case requests actual, meaningful review of its May 14, 2019 decision.

The Court further requests clarification of the Board’s decision that requires its reevaluation of “the respondents’ eligibility for relief based on current case law”. BIA at 2. The Board’s decision, in part, generally refers to cases that address forms of relief that were not and have not been presented by the parties in these proceedings. Tr. at 5-6, 23-24, and 34; see also *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021) (discussing the authority of an Immigration Judge to administratively close proceedings); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) (discussing the Court’s authority to consider humanitarian asylum when past persecution has been established). To the extent these forms of relief have not been raised by the parties, in the underlying proceedings or on appeal, the Court requests clarification regarding how the cases referenced in the Board’s decision should be applied to this case. To the extent the Board proposes humanitarian asylum, the Board’s remand has not sufficiently addressed the predicate requirement of past persecution and the Court’s determination that it has not been established in this case.

For the foregoing reasons, the Court certifies the instant case to the Board pursuant to 8 C.F.R. § 1003.1(c). The Court requests that the Board vacate its March 15, 2022 decision, and again review the Court's May 14, 2019 decision denying the lead respondent's applications for asylum under INA § 208(a), withholding of removal under INA § 241(b)(3) and withholding of removal under the Convention Against Torture.

ORDER OF THE IMMIGRATION JUDGE

It is hereby ordered that that the instant case be certified to the Board of Immigration Appeals under 8 C.F.R. § 1003.1(c).

May 20, 2022
Date



Marcos Gemoets
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN'S ATTY/REP ☒ DHS
DATE: 5/20/22 BY: COURT STAFF KHS
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other
