



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals

Office of the Clerk

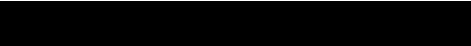
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041



Yale-Loehr, Stephen
Cornell Law School
Myron Taylor Hall Cornell University
Ithaca NY 14853

DHS/ICE Office of Chief Counsel - PIS
27991 Buena Vista Blvd
Los Fresnos TX 78566

Name:



Date of this Notice: 5/30/2023

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

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket



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Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

NOT FOR PUBLICATION

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

MATTER OF:

[REDACTED]

Respondent

FILED

May 30, 2023

ON BEHALF OF RESPONDENT: Stephen Yale-Loehr, Esquire

IN REMOVAL PROCEEDINGS

On Appeal from a Decision of the Immigration Court, Los Fresnos, TX

Before: Malphrus, Deputy Chief Appellate Immigration Judge; Petty, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Petty

PETTY, Appellate Immigration Judge

This matter was last before the Board on September 30, 2022, when we remanded the case to the Immigration Judge to locate the missing digital audio recording of the respondent's June 1, 2022, hearing. On October 12, 2022, the Immigration Judge issued an order of removal. On October 17, 2022, the Immigration Judge issued an Order of Administrative Return/Certification to Board, indicating the missing segment of the recording had been located. On November 13, 2022, the respondent, a native and citizen of El Salvador, appealed the Immigration Judge's June 1, 2022, decision denying his application for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture ("CAT").¹ See sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act ("INA"), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c)-1208.18. The respondent also appealed the October 12, 2022, removal order. The record will be remanded for further proceedings and for the entry of a new decision.²

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review

¹ 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). 8 C.F.R. §§ 1208.16(c)-1208.18.

² On April 19, 2023, the respondent filed a "Motion to Add Complete Hearing Transcript to the Record of Proceedings." We will deny this motion as moot as the June 1, 2022, transcript is currently available in the eROP.

all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent asylum and withholding of removal because he did not establish past persecution or a well-founded fear of future persecution on account of his particular social group or any other protected ground (IJ at 8-10; Exh. 2B). The Immigration Judge denied the respondent protection under the CAT because he did not establish that it was more likely than not he would be subjected to torture by, or with the consent or acquiescence of, a public official or other person acting in an official capacity. The respondent now appeals.

The respondent filed an Application for Asylum and Withholding of Removal (Form I-589) asserting past persecution and fear of future persecution on account of his particular social group (Tr. at 11; Exh. 2B). The respondent appeared pro se at his individual hearing (Tr. at 1). The Immigration Judge analyzed the respondent's asylum and withholding of removal claim based on his fear of MS gang members due to his membership in his particular social group the Immigration Judge defined as "family of former gang members who have been shot and whom the gang wants to replace" (IJ at 9; Tr. at 44-45).

On appeal, the respondent does not meaningfully challenge the Immigration Judge's determination that this particular social group, based on fear of reprisal for refusing to join the MS gangs, is not cognizable (IJ at 8-10). *See Orellana-Monson v. Holder*, 685 F.3d 511, 521 (5th Cir. 2012). He has not explained how any proposed particular social group associated with his refusal to join the MS gang meets the requirements for cognizability under the INA. *See, e.g., Suate-Orellana v. Barr*, 979 F.3d 1056, 1061 (5th Cir. 2020) (holding that Honduran women who have been targeted for and resisted gang recruitment after the murder of a gang-associated partner was not sufficiently distinct from anyone that resisted gang recruitment). Instead, the respondent asserts the Immigration Judge should have considered a particular social group related to his nuclear family in relation to his fear of harm by the MS gang (Respondent's Br. at 21-22).

However, we discern no clear error in the Immigration Judge's determination that the harm the respondent encountered or fears from MS gangs was not and would not be on account of any protected ground (IJ at 8-10). *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by us for clear error"). The Immigration Judge found that gang members were targeting the respondent for extortion purposes (IJ at 9-10). *See Morales v. Sessions*, 860 F.3d 812, 815 (5th Cir. 2017) (affirming that a gang member's extortion reflects a criminal purpose and not a protected ground); *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015) (stating that economic extortion is not recognized as a form of persecution under immigration law). She considered the respondent's familial relationship to his brother, but concluded the record did not establish that the gang members extorted or recruited him more aggressively because his brother was a former gang member (IJ at 9; Tr. at 28-34, 44-45). She noted the passage of time since the respondent's brother's death in 2008 (IJ at 9; Tr. at 25, 28-33, 45). She also considered that the respondent's other brother remains in El Salvador and has experienced harassment but has not been recruited or extorted by the MS gangs (IJ at 9; Tr. at 27, 36).

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We discern no clear error in the Immigration Judge's nexus determination and weighing of the evidence. *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) (noting that an Immigration Judge may make reasonable inferences from direct and circumstantial evidence in the record and is not required to accept a respondent's account where other plausible views of the evidence are supported by the record). Thus, we affirm the Immigration Judge's determination that the respondent did not meet his burden to establish the required nexus between any past or feared harm by MS gang members and his membership in a particular social group or any other protected grounds enumerated in the INA (IJ at 8-10). INA §§ 208(b)(1)(B)(i), 241(b)(3)(C), 8 U.S.C. §§ 1158(b)(1)(B)(i), 1231(b)(3)(C). *See Matter of N-M-*, 25 I&N Dec. at 529 (an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be "at least one central reason" of the claimed persecution).

However, we conclude remand is warranted as to the respondent's asylum and withholding of removal claims based on his fear of authorities in El Salvador. The Immigration Judge's decision does not provide sufficient factual findings and legal analysis as to the respondent's claim he was persecuted and fears future persecution by the Salvadoran military and police officers in retaliation for a lawsuit his family filed against the police for killing his brother (Tr. at 46; Exh. 2B at 5-6, Supp. B; Respondent's Br. at 16-19). *See Cabrera v. Sessions*, 890 F.3d 153, 162 (5th Cir. 2018) (stating that while an adjudicator need not specifically address every piece of evidence, the decision "must reflect a meaningful consideration of all the relevant evidence supporting an asylum seeker's claims"); *Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that an Immigration Judge's decision should accurately summarize relevant facts, reflect analysis of applicable legal precedents, and clearly set forth legal conclusions); *see also Arteaga-Ramirez v. Barr*, 954 F.3d 812, 813 (5th Cir. 2020) ("Particularly where an alien appears pro se, the IJ should 'facilitate the development of testimony.'" (internal citation omitted)).

On his Form I-589, the respondent asserted "The police murdered my brother and my mother filed a complaint against them and because of that complaint I received harassment and mistreatment and I was accused of a crime by the inefficient authorities of my country" (Exh. 2B at 5). In response to the question on the Form I-589 as to who caused the harm and who he believed would cause harm in the future, the respondent included "the authorities of my country" and "the authorities for the complaint filed against them" (Exh. 2B at 5). The respondent also stated he was "accused of kidnapping and groups by the corrupt authorities of my country to pressure my father to withdraw a lawsuit he had filed against the police for having murdered my brother... that is why I have been a victim of harassment and mistreatment by the authorities in my country" (Exh. 2B at 6). In his Supplement B to his Form I-589, the respondent also detailed his fear of harm by authorities in El Salvador based on the lawsuit his mother filed (Exh. 2B at 12). The respondent also testified that his mother tried to file a report but the authorities retaliated, and they detained and falsely accused him (Tr. at 46).

The Immigration Judge did not make any findings or conduct any analysis related to the respondent's claim based on his fear of authorities in El Salvador. On remand, the Immigration Judge should engage in further fact finding and legal analysis as to the respondent's claim on this basis. The respondent should also clearly delineate, and the Immigration Judge should analyze,

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any proposed particular social groups based on his fear of harm by authorities (Respondent's Br. at 19-21).

We also conclude a remand is warranted for additional consideration of the respondent's claim for protection under the CAT (IJ at 10-11; Respondent's Br. at 26-37). The respondent fears torture in El Salvador by MS gang members and authorities (Exh. 2B at 6). The Immigration Judge's limited factual findings and analysis regarding the respondent's eligibility for CAT does not allow the Board to meaningfully review her decision. For example, the Immigration Judge did not fully address the respondent's testimony that the police refused to accept his reports (Tr. at 36-37). He also asserted that the police detained him and falsely accused him of crimes as a result of his mother reporting his brother's murder to the police (Tr. at 24; Exh. 2B at 5-6, 12). Additionally, the Immigration Judge did not consider that although officials exonerated him from these crimes in 2016, military and police officers beat him in 2019 (Tr. at 22-23, 41-44; Exh. 2B at 12; Exh. 2-N).

Upon remand, the Immigration Judge should consider "all evidence relevant to the possibility of future torture," including, but not limited to, evidence of past torture, evidence of ability to relocate, evidence of gross, flagrant, or mass violations of human rights within El Salvador, and any other relevant information regarding conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3); *see also Morales-Morales v. Barr*, 933 F.3d 456, 465 (5th Cir. 2019) (providing that "all evidence relevant to the possibility of future torture shall be considered" in analyzing a claim for CAT protection). Such evidence includes the respondent's testimony, documents, and country conditions materials as they pertain to his individualized risk of torture and the involvement of any state actors. *See* 8 C.F.R. § 1208.18(a). Evidence of past torture is relevant but not dispositive of the applicant's likelihood of future torture. *See* 8 C.F.R. § 1208.16(c)(3).

Consequently, we will remand the record for the Immigration Judge to engage in further fact finding and legal analysis and enter a new decision. The Immigration Judge may take any other action she deems appropriate for resolution of the respondent's case. In remanding, we express no opinion regarding the ultimate outcome of these proceedings.

In light of our remand, we need not reach the respondent's other appellate arguments (Respondent's Br. at 37-38). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("As 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."). Accordingly, the following order will be entered.

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