U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: C[redacted]-D[redacted], X[redacted] C[redacted]... **A [redacted]-474**

Date of this notice: 12/11/2018

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:
Greer, Anne J.
O'Connor, Blair
Crossett, John P.

Userteam: Docket

File: A[redacted]-474 - Seattle, WA

Date: DEC 1 1 2018

In re: X[redacted] Q[redacted] C[redacted]-D[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: James J. Stratton, Esquire

ON BEHALF OF DHS: Mark Hardy
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the decision of the Immigration Judge, dated August 16, 2017, denying her applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the Convention Against Torture. *See* 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including determinations as to credibility and the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i*); see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. The respondent claims that she experienced two types of harm prior to departing Mexico. First, she claims that she was sexually abused on five occasions (IJ at 4-5). The respondent testified that she was twice assaulted by her uncle as a child, once by her manager at her place of employment, and once by a romantic partner of her mother, and lastly by another uncle just prior to leaving Mexico (IJ at 4-5). The respondent claims that she experienced this harm on account of her membership in a particular social group of "women in Mexico." Second, she claims to have been extorted by a criminal gang in relation to her employment at a furniture store (IJ at 3-4). The respondent asserts that she experienced this harm on account of her membership in a particular social group of "imputed business owners." She fears she will be subjected to additional harm if she returns to Mexico. The respondent also asserts that she is eligible for protection under the Convention Against Torture.

The Immigration Judge concluded that the respondent did not establish eligibility for asylum or withholding of removal under the Act because she did not establish a nexus between the harm she experienced and fears and a ground protected under the Act (IJ at 5-6). With regard to protection under the Convention Against Torture, the Immigration Judge concluded that the

respondent did not establish that any public official has or will acquiesce in the harm she experienced and fears in Mexico (IJ at 6).

As previously stated, the respondent asserts that she belongs to two particular social groups, comprised of "women in Mexico" and "imputed business owners." To establish that these groups are cognizable under the asylum and withholding of removal statutes, the respondent must prove that the groups are: "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Mexican] society...." *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

We first affirm, as not clearly erroneous, the Immigration Judge's determination that, even assuming "imputed business owners" is a cognizable particular social group, the respondent has not established a nexus between the harm she experienced and fears and that membership (IJ at 5). *See Matter of N M-*, 25 I&N 526, 529 (BIA 2011) (holding that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error); *see also Ayala v. Holder*, 640 F.3d 1095, 1097 (9th Cir. 2011) (even if membership in a particular social group is established, an applicant must still show that "persecution was or will be on account of his membership in such group"). The respondent's statement on appeal does not convince us of clear error in the Immigration Judge's finding that the perpetrators of the extortion and other related crimes were motivated by a desire to obtain money, rather than a desire to overcome a protected characteristic, such as membership in the particular social group of "imputed business owners" or any other basis protected under the Act. *See Ayala v. Sessions*, 855 F.3d 1012, 1020-21 (9th Cir. 2017) (noting that extortion qualifies as past persecution only when the extortion is motivated by a protected ground); *Zetino v. Holder*, 622 F.3d 1007 (9th Cir. 2010) ("An alien's desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground"); *see also Matter of M-E-V-G-*, 26 I&N Dec. at 235 ("[A]sylum and refugee laws do not protect people from general conditions of strife, such as crime and other societal afflictions.").

However, we conclude that remand is warranted for additional consideration of the respondent's claim based on her asserted membership in the particular social group of "women in Mexico." Specifically, we conclude that remand is warranted for the Immigration Judge to (1) determine whether "women in Mexico" is a cognizable particular social group under the pertinent legal authority in light of the record presented here;[1] (2) determine whether the record establishes

[1] Following the Immigration Judge's decision and during the pendency of this appeal, the Attorney General issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316, clarifying the criteria required to establish an asylum claim based on membership in a particular social group. Moreover, the Immigration Judge should specifically apply the analytical framework set forth by the Board in *Matter of M-E-V-G-*, 26 I&N Dec. 227 and *Matter of W-G-R-*, 26 I&N Dec. 208, and reaffirmed in *Matter of A-B-*. Finally, the Immigration Judge should also consider the guidance provided in *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010) (holding Guatemalan women may

that the harm the respondent experienced and fears has a nexus to her actual (or assumed) membership in the social group of "women in Mexico;"[2] (3) make sufficient findings of fact regarding the nature of the sexual abuse (and other gender-based harm) the respondent claims to have experienced in Mexico and assess whether this harm is of sufficient severity to constitute persecution; and (4) consider whether the respondent has demonstrated the Mexican government was or is unable or unwilling to control the people who have harmed or may harm her. *See Matter of A-B-*, 27 I&N Dec. at 320, 343-44; *see also Ochoa v. Gonzales,* 406 F.3d 1166, 1170 (9th Cir. 2005) (explaining that asylum and withholding of removal require proof of persecution by a "government official or persons the government is unable or unwilling to control").

We also conclude that the Immigration Judge's consideration of the respondent's application for protection under the Convention Against Torture is insufficient and legally incorrect. The Immigration Judge concluded that the respondent did not establish eligibility for protection under the Convention Against Torture solely on the basis that she did not show that the government of Mexico would acquiesce in the harm she fears by private actors (IJ at 6). 8 C.F.R. §§ 1208.18(a)(1), (7).

In arriving at this conclusion, the Immigration Judge relied on two factors. First, the Immigration Judge noted that there is no evidence that collusion between government officials and private actors engaging in extortion schemes is a government policy (IJ at 6). Second, the Immigration Judge reasoned that the fact that local police refused to investigate the respondent's report of being sexually assaulted does not establish that the entire government acquiesces to this harm (IJ at 6).

Both aspects of the Immigration Judge's analysis are legally incorrect. An applicant for protection under the Convention Against Torture does not need to establish that a government official who engages in torture or acquiesces to torture is doing so in furtherance of official governmental policy. *Barajas-Romero v. Lynch*, 846 F.3d at 360-65. Additionally, an applicant for protection under the Convention Against Torture does not need to show that the entire foreign government would consent to or acquiesce in her torture. *Tapia-Madrigal v. Holder*, 716 F.3d 499, 509-10 (9th Cir. 2013).

In light of the foregoing, we conclude that remand for additional consideration of the respondent's application for protection under the Convention Against Torture is warranted. In the remanded proceedings, the Immigration Judge should: (1) clearly articulate what harm, if any, the respondent is likely to experience upon her return to Mexico; (2) how likely the respondent is to

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constitute a cognizable social group). *Accord Ticas-Guillen v. Whitaker*, No. 16-72981, -- F. App'x – (9th Cir., Nov. 30, 2018), *available at* 2018 WL 6266766.

[2] In considering this issue, the Immigration Judge should apply the appropriate standard applicable to the respective forms of relief. *See Parussimova v. Mukasey*, 555 F.3d 734, 740 41 (9th Cir. 2009) (stating that the REAL ID Act requires that a protected ground represent "one central reason" for an asylum applicant's persecution); *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017) (holding that a ground protected under the Act must be "a reason" for the persecution in order to establish a nexus for purposes of withholding of removal under section 241(b)(3) of the Act).

experience such harm; (3) whether the respondent could avoid being harmed by internally relocating in Mexico; (4) whether any harm the respondent is likely to experience is "torture" as a matter of law; and (5) whether any public official would commit or acquiesce to the harm under the pertinent legal standards. 8 C.F.R. §§ 1208.16(b)(2), 1208.18(a); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012) (holding that what is likely to happen to an alien upon removal is a question of fact but whether that harm is torture is a question of law). We express no opinion on the ultimate outcome of these proceedings.

Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceeding consistent with the forgoing opinion and for the issuance of a new decision.

FOR THE BOARD