



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
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**Name: M [REDACTED] -P [REDACTED], A [REDACTED] E... A [REDACTED] -795**

**Date of this notice: 3/16/2020**

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:  
Gemoets, Marcos  
Creppy, Michael J.  
Liebowitz, Ellen C

U.S. Department of Justice  
User team: Docket

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*RC*

Falls Church, Virginia 22041

File: A [REDACTED]-795 – Pearsall, TX

Date: MAR 16 2020

In re: A [REDACTED] E [REDACTED] M [REDACTED]-P [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Alejandra Martinez, Esquire

ON BEHALF OF DHS: Ross Kurtz  
Assistant Chief Counsel

APPLICATION: Withholding of removal; Convention Against Torture

The applicant, a native and citizen of El Salvador, appeals the Immigration Judge's September 20, 2019, decision denying his application for withholding of removal and protection under the Convention Against Torture. See section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c)-1208.18. The Department of Homeland Security (DHS) has filed a motion for summary affirmance. We will sustain the appeal and remand the record to the Immigration Court.

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 applicant and his expert witness credible.

The applicant's claims are based on fear of harm by gang members and by police, both of whom have harmed him in the past. The applicant does not challenge the Immigration Judge's determination that none of the social groups the applicant proffered is a cognizable particular social group under the Act (Applicant's Br. at 19 n.1).

We conclude that we must remand the record to the Immigration Judge to adjudicate the applicant's eligibility for withholding of removal based on nexus to political opinion and to adjudicate his request for protection under the Convention Against Torture, neither of which is adequately addressed in the Immigration Judge's decision.

The Immigration Judge summarily rejected the applicant's political opinion claim on the basis that it is a reiteration of the claim based on the particular social group of those opposed to gangs (IJ at 22-23). However, the applicant alleges political expression, not simply general opposition to gangs. The Immigration Judge should make findings on the specific nature of the applicant's claimed political expression and determine whether there is a nexus between such and the harm he suffered and fears. See generally *Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580, 586-87 (BIA 2011) (holding harm was inflicted on account of failure to cooperate rather than imputed political opinion); *Matter of S-E-G-*, 24 I&N Dec. 579, 589 (BIA 2008) (rejecting claim that gangs

persecuted Salvadoran youth on account of political opinion because there was no evidence of expression of political opinion or other political involvement).

The Immigration Judge denied the applicant's Convention Against Torture claim solely on the ground that he did not establish a nexus to a cognizable particular social group (IJ at 20). Protection under the Convention Against Torture does not require a nexus to any of the protected grounds specified in the definition of refugee. Rather, it requires a showing of a clear probability of torture by, or with the consent or acquiescence of, a public official. 8 C.F.R. § 1208.18(a). The Immigration Judge should make specific findings with respect to the likelihood of torture and the requisite state involvement. *See Tamara-Gomez v. Gonzales*, 447 F.3d 343, 350-51 (5th Cir. 2006) (describing the two-step process of "first, is it more likely than not that the alien will be tortured upon return to his homeland; and second, is there sufficient state action involved in that torture").

Accordingly, we will sustain the appeal and remand the record to the Immigration Judge. We express no opinion regarding the ultimate outcome of these proceedings. *See generally Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996).

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.

  
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FOR THE BOARD