



**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

**Knox, Thomas  
Leyruta  
1110-D Elden St  
Suite 107  
Herndon, VA 20170**

**DHS/ICE Office of Chief Counsel - WAS  
1901 S. Bell Street, Suite 900  
Arlington, VA 22202**

**Name: A [REDACTED]-R [REDACTED], M [REDACTED] I... A [REDACTED]-985  
Riders: [REDACTED]**

**Date of this notice: 5/24/2019**

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:  
Mann, Ana  
Kelly, Edward F.  
Morris, Daniel

Userteam: Docket

**For more unpublished decisions, visit  
[www.irac.net/unpublished/index](http://www.irac.net/unpublished/index)**

Falls Church, Virginia 22041

---

Files: A-985 – Arlington, VA  
A-

Date: **MAY 24 2019**

In re: M-I-A-R-  
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Thomas G. Knox, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, natives and citizens of El Salvador, appeal from the September 21, 2017, Immigration Judge's decision denying their applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16-1208.18. The appeal will be sustained, and the record will be remanded.

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

At the hearing on September 21, 2017, the lead respondent testified concerning her fear of returning to El Salvador. In 2001, when she was pregnant with the second respondent, her husband was fatally shot by gang members. She stated that she thought that the gang members may have killed her husband because they mistakenly believed that he owned the land where he worked tending cattle, although the land belonged to his brother. In 2014, the lead respondent's family home was invaded by armed gang members, who left a message with her mother-in law that they would burn down the residence with everyone inside if the lead respondent did not surrender her son, the second respondent, to join their gang (Exhs. 2, 3 at 28-29; IJ at 4-5; Tr. at 18-27, 34-36, 45-48). The second respondent testified consistently with his mother (Tr. at 65-74). The lead respondent indicated that she was unaware of any connection between the 2001 and 2014 incidents, and the second respondent noted that he was not familiar with the circumstances of his father's 2001 death because he was not born yet (IJ at 5-6; Tr. at 35-36, 73). The Immigration Judge found that both respondents were credible (Tr. at 4). There is no clear error in the Immigration Judge's findings of fact.

The Immigration Judge concluded that the lead respondent had established past harm rising to the level of persecution in that gang members had invaded the family home and threatened to burn it down while occupied (IJ at 6). *See Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (discussing the meaning of the term "persecution" under the Act). However, the Immigration Judge denied

the lead respondent's application for asylum after determining that she had not shown that the past harm was on account of her race, religion, nationality, political opinion, or membership in a particular social group (IJ at 6-7). *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Velasquez v. Sessions*, 866 F.3d 188, 193-94 (4th Cir. 2017).

We disagree. Although the gang members targeted the second respondent for the purpose of recruitment, the gang members targeted the lead respondent for harm because of her actions as a mother who sought to prevent her son, the second respondent, from joining the gang. The record therefore establishes that at least one central reason why the lead respondent suffered past persecution in El Salvador was her membership in a particular social group, specifically her nuclear family. *See Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949-50 (4th Cir. 2015).

Although the lead respondent has demonstrated that she suffered past persecution in El Salvador on account of a ground protected under the Act, she must also show that the government of El Salvador is unwilling or unable to control the gang members who have threatened her. *See id.* at 950-53. "Whether a government is unable or unwilling to control private actors is a factual question that must be resolved based on the record in each case." *Id.* at 951 (quotations and citation omitted). If the respondent is found to have met this burden, she shall be presumed to have a well-founded fear of persecution on the basis of the same claim, and therefore to be eligible for asylum, unless the Department of Homeland Security demonstrates the existence of at least one of certain conditions. *See* 8 C.F.R. § 1208.13(b)(1). We therefore will remand the record to allow the Immigration Judge to conduct appropriate fact-finding and analysis with regard to these points.

Accordingly, we enter the following orders.

ORDER: The appeal is sustained.

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

  
FOR THE BOARD