



U.S. Department of Justice

Executive Office for Immigration Review

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**Name: P [REDACTED], J [REDACTED] C... A [REDACTED]-738
Riders: [REDACTED]**

Date of this notice: 8/9/2019

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:
Creppy, Michael J.
Liebowitz, Ellen C
Noferi, Mark

Userteam: Docket

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Falls Church, Virginia 22041

Files: [REDACTED]-738 – San Diego, CA

Date: **AUG 09 2019**

In re: J [REDACTED] C [REDACTED] P [REDACTED] I [REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Rose M. Thompson, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents,¹ natives and citizens of Honduras, appeal the Immigration Judge's January 24, 2018, decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18. The Department of Homeland Security ("DHS") has not filed any response. The record will be remanded to the Immigration Judge.

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).

On appeal, the respondents argue that the Immigration Judge erred in denying their applications for relief because they demonstrated past persecution and a well-founded fear of persecution on account of their family-based particular social group (Respondents' Br. at 6-7, 8-11). The respondents argue that, because the Immigration Judge did not make an adverse credibility finding, the respondents are presumed credible, and thus the Immigration Judge erred by not giving them notice and an opportunity to bolster the lead respondent's credible testimony with corroborating evidence (Respondents' Br. at 7). The respondents also argue that the Immigration Judge erred in denying their motion to accept untimely-filed additional evidence (Respondents' Br. at 7-8). The respondents also claim that the Immigration Judge erred in denying their applications for protection under the Convention Against Torture (Respondents' Br. at 11-12).

¹ The respondents are a mother ([REDACTED]-738), the lead respondent, and her two minor children ([REDACTED]), the co-respondents. They each filed their own applications for asylum, withholding of removal, and protection under the Convention Against Torture, and the co-respondents are also derivative beneficiaries of the lead respondent's asylum application.

The Immigration Judge's decision states that "the Court does not find that [the lead respondent] has testified falsely in this case." (IJ at 6). We therefore presume on appeal that the lead respondent's testimony was credible in this case. See section 208(b)(1)(B)(iii) of the Act (stating that "if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.").

The United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, has held that an Immigration Judge must give an otherwise credible asylum applicant "notice of the corroboration required" and "an opportunity to either provide that corroboration or explain why he cannot do so." *Ren v. Holder*, 648 F.3d 1079, 1091-92 (9th Cir. 2011). In this case, the Immigration Judge found that the respondents did not present sufficient evidence to meet their burden of demonstrating their eligibility for relief (IJ at 10-12). Specifically, the Immigration Judge's decision states that the respondents did not present sufficient evidence to demonstrate why the lead respondent's father was killed, why they received threats after the killing, whether the Honduran government was unable or unwilling to control those making the threats against them, and whether internal relocation within Honduras was reasonable (IJ at 10-12).

Upon our review of the record as a whole, we are not convinced that the Immigration Judge gave sufficient notice of the corroborating evidence required by the respondents in this case consistent with Ninth Circuit precedent. See *id.* Thus, we will remand for the Immigration Judge to give the respondents notice of the corroboration required in this case and "an opportunity to either provide that corroboration or explain why [they] cannot do so." *Id.*; see also 8 C.F.R. § 1003.1(d)(3)(iv) (limiting the Board's fact-finding authority and stating the Board may remand the proceeding to the Immigration Judge where further fact-finding is needed); *Matter of Fedorenko*, 19 I&N Dec. 57, 74 (BIA 1984) (noting that "[t]he Board is an appellate body whose function is to review, not create, a record").

On remand, both parties should have the opportunity to submit additional evidence and arguments, and after assessing the record evidence the Immigration Judge should make a new determination as to whether the respondents have established their eligibility for asylum, withholding of removal, or protection under the Convention Against Torture. We express no opinion on the outcome of proceedings on remand.

Accordingly, the following order will be entered.

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


FOR THE BOARD