U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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[redacted]

DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: R[redacted] M[redacted], H[redacted] **A [redacted]-581**

Date of this notice: 7/2/2020

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Gemoets, Marcos
Hunsucker, Keith
Morris, Daniel

Userteam: Docket

File: A[redacted]-581 – San Francisco, CA Date:

JUL - 2 2020

In re: H[redacted] R[redacted] M[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Matthew S. Gabe
Assistant Chief Counsel

APPLICATION: Asylum, withholding of removal; Convention Against Torture; remand

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's decision dated April 30, 2018, denying his applications for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A), and for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.18. The respondent has also filed a motion to remand to apply for asylum. The record will be remanded.

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 de novo questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent urges that pursuant to *Mendez Rojas v. Johnson*, 305 F. Supp.3d 1176 (W.D. Wash. 2018), he should be permitted to pursue his asylum application notwithstanding his delay in filing it (Respondent's Notice of *Mendez Rojas* Class Membership). The Department of Homeland Security (DHS) argues that the respondent has not submitted evidence of his membership in the *Mendez Rojas* class (DHS's Opposition to Motion to Hold Briefing and Appeal in Abeyance"). We disagree. The respondent has submitted a copy of an I-826, indicating that he was released from DHS custody after he was deemed to have a credible fear of persecution. The DHS did not address this submission in its most recent filing. Accordingly, pursuant to orders entered in the above-noted class action litigation, we conclude that a remand of this record is required to permit the Immigration Judge an opportunity to determine if the respondent is a designated class member under *Mendez-Rojas*. *See Mendez Rojas v. Nielsen*, No. 2:16-cv-01024-RSM, Interim Stay Agreement at 1-2 (W.D. Wash. July 17, 2018). If the Immigration Judge determines that the respondent is a class member and that he should be permitted an opportunity to have his asylum application considered, the Immigration Judge should render a decision on that application based on the evidence of record. In the event that it is deemed necessary by the Immigration Judge, the parties should be permitted to introduce additional evidence bearing on the issue on remand.

A remand is also warranted for the Immigration Judge to reevaluate the respondent's application for withholding of removal. Specifically, the United States Court of Appeals for the

Ninth Circuit, in whose jurisdiction this case arises, has held that the "one central reason" nexus standard that is applicable in asylum proceedings, is not applicable to an alien's claim for withholding of removal. *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017) (holding that "a reason" is a less demanding standard than the "one central reason" test and that "a reason" is the correct standard to be applied to withholding of removal claims).

Here, the Immigration Judge relied solely on the "one central reason" asylum analysis in denying the respondent's application for withholding of removal (IJ at 6-8). For instance, the Immigration Judge found that the respondent's family membership was not at least one central reason for his past experience with the gang (IJ at 8). However, the Immigration Judge did not find whether respondent's family membership could be "a reason" for his past and feared future harm for withholding of removal purposes under the *Barajas-Romero* standard. *Barajas-Romero v. Lynch*, 846 F.3d at 360. Therefore, the Immigration Judge's decision is incomplete with respect to the withholding of removal claim. Such a determination requires fact-finding, which is not our function. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (stating that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error). We conclude that further factual development and legal analysis are needed with regard to the respondent's withholding of removal claim under the standards applicable in the Ninth Circuit. *Barajas-Romero v. Lynch*, 846 F.3d at 351. Therefore, we will remand the record to the Immigration Judge for supplemental fact-finding and for the entry of a new decision that more fully addresses the merits of the respondent's eligibility for withholding of removal. We express no opinion regarding the ultimate outcome of these removal proceedings. *See Matter of L-O-G-*, 21 I&N Dec.413 (BIA 1996).

Accordingly, the following order shall be entered.

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