



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: E [REDACTED], J [REDACTED] F [REDACTED]**

**A [REDACTED]-977**

**Date of this notice: 9/13/2018**

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.  
Wendtland, Linda S.  
Crossett, John P.

Userteam: Docket

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Falls Church, Virginia 22041

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File: A [REDACTED]-977 – Baltimore, MD

Date: **SEP 13 2018**

In re: J [REDACTED] F [REDACTED] B [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin R. Winograd, Esquire

ON BEHALF OF DHS: Billy J. Sapp  
Senior Attorney

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Nicaragua, appeals from the Immigration Judge's decision dated March 23, 2018, denying his applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16-.18. The Department of Homeland Security opposes the appeal. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, *de novo*. 8 C.F.R. § 1003.1(d)(3)(ii). The Immigration Judge found the respondent credible (IJ at 12).

We will remand for the Immigration Judge to conduct additional fact-finding and analysis regarding whether the respondent was convicted of a particularly serious crime and is thus barred from asylum and withholding of removal. An alien is ineligible for asylum if he or she has been convicted of a "particularly serious crime." Section 208(b)(2)(A)(ii) of the Act; *see also* section 208(b)(2)(B)(i) (stating that a crime is deemed particularly serious if it is an aggravated felony). For withholding purposes, a conviction constitutes a particularly serious crime if it is an aggravated felony resulting in "an aggregate term of imprisonment of at least 5 years" or if the Attorney General determines that it is particularly serious, "notwithstanding the length of sentence imposed." Section 241(b)(3)(B) of the Act.

Here, the Immigration Judge concluded that the respondent's 2011 conviction under Maryland Code Annotated Criminal Law § 5-602 for possession with intent to distribute marijuana was presumptively a particularly serious crime (IJ at 12-15; Exh. 2). *See generally Matter of Y-L-, A-G- & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002). We agree with the respondent's argument on appeal that the presumption set forth in *Matter of Y-L-* only applies to aggravated felony drug trafficking offenses (Respondent's Br. at 13-18). *Id.* at 274 (holding that "aggravated felonies involving unlawful trafficking in controlled substances presumptively constitute 'particularly serious crimes' within the meaning of section 241(b)(3)(B)(ii)."). As both parties agreed, and the Immigration Judge found, that the respondent's conviction is not for an aggravated felony, we conclude a remand is necessary for the Immigration Judge to determine whether the

respondent was convicted of a particularly serious crime by applying the factors set forth in *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007), and *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982), in the first instance (IJ at 13-14 & n.2).

On remand, the Immigration Judge should also reassess the respondent's eligibility for relief in light of the material and previously unavailable evidence that he submitted on appeal. See 8 C.F.R. § 1003.2(c)(1); see also *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992). The new evidence post-dates the Immigration Judge's decision and includes country conditions evidence involving an uprising, and evidence that a family member of the respondent's has been threatened in Nicaragua (Respondent's Br. at 8-10, 12, 23-24, Tabs A-H). We therefore conclude that the respondent has established that remand to the Immigration Judge is warranted for consideration of this new evidence.

Accordingly, the following order will be entered.

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



FOR THE BOARD