



U.S. Department of Justice

Executive Office for Immigration Review

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Name: D- G- , A- L-

A- -287

Date of this notice: 3/14/2018

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:
Pauley, Roger
Greer, Anne J.
Crossett, John P.

Printed Name:

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Falls Church, Virginia 22041

File: [REDACTED] 287 – Baltimore, MD

Date: MAR 14 2018

In re: A [REDACTED] L [REDACTED] D [REDACTED] -G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Maureen A. Sweeney, Esquire

ON BEHALF OF DHS: Billy J. Sapp
Senior Attorney

APPLICATION: Asylum; withholding of removal; Convention Against Torture

On July 6, 2017, the United States Court of Appeals for the Fourth Circuit remanded this case to the Board. The motion to remand filed by the Department of Homeland Security (“DHS”) before this Board will be denied. Our prior decision in this case will be vacated, the respondent’s original appeal of the Immigration Judge’s decision will be sustained, and the record will be remanded for required background and security investigations.

We review findings of fact, including determinations as to credibility and the likelihood of future events, under the “clearly erroneous” standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Turkson v. Holder*, 667 F.3d 523, 529-30 (4th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review all other issues under a de novo standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On December 16, 2016, this Board dismissed the respondent’s appeal of the Immigration Judge’s decision dated September 29, 2015. We affirmed the Immigration Judge’s determinations that the respondent, a native and citizen of El Salvador, did not establish a nexus to a protected ground under the Act and that the respondent did not establish that the Salvadoran government was unable or unwilling to protect her. The respondent filed a petition for review with the Fourth Circuit.

The Fourth Circuit granted the Government’s unopposed motion to remand. The Government sought remand for further analysis regarding whether the respondent established a nexus between her fear of harm in El Salvador and a particular social group in light of the following Fourth Circuit cases: *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017); *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015); *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015); and *Cordova v. Holder*, 759 F.3d 332, 340 (4th Cir. 2014). The court also stated that the Board may further consider the respondent’s claims related to fear of persecution on account of an imputed political opinion and whether the Salvadoran government was unable or unwilling to protect the respondent in light of her testimony relating to her 2013 interaction with the police.

Upon remand to this Board, the DHS filed a motion to remand this case to the Immigration Judge. The DHS argues that the Immigration Judge did not address the respondent’s contention

that gang members threatened her in 2013 after she filed a report with the police. The DHS argues that further fact-finding is required to determine whether these threats were on account of her imputed political opinion or membership in a particular social group. The respondent opposes the DHS's motion to remand. The respondent argues that the Immigration Judge rendered a decision on the issue and that no further fact-finding is required. We conclude that remand is not necessary in this case because the Immigration Judge made relevant factual findings about the October 9, 2013, police report (IJ at 7, 11-12).

Given the undisputed cognizability of the particular social group in this case, we apply intervening Fourth Circuit case law and conclude that the respondent has established a nexus between the threats she received and her membership in a particular social group. *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error") (citations omitted); section 208(b)(1)(B)(i) of the Act (an asylum applicant must establish "that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant"); *see, e.g., Cruz v. Sessions*, 853 F.3d at 127-31; *cf., Velasquez v. Sessions*, 866 F.3d 188 (4th Cir. 2017).

Furthermore, we conclude that the respondent has established that the Salvadoran government was unable or unwilling to protect her because the respondent was threatened due to her attempt to obtain assistance from the police (IJ at 7-8). *See Crespin-Valladares v. Holder*, 632 F.3d at 128 (whether a government is unable or unwilling to control private actors is a factual determination); 8 C.F.R. § 1003.1(d)(3)(i).

Based on the foregoing, we will vacate our prior decision and reverse the Immigration Judge's determination that the respondent has not established a well-founded fear of persecution on account of her membership in a particular social group. *See* 8 C.F.R. § 1208.13(b)(2). Based on this record, we find the respondent eligible for asylum. Furthermore, having considered the totality of the evidence, we do not find a sufficient basis on the record before us to deny the respondent's asylum application in the exercise of discretion. *See Matter of Pula*, 19 I&N Dec. 467, 474 (BIA 1987). We therefore conclude that the respondent warrants asylum in the exercise of discretion. However, remand is necessary to allow the DHS to complete relevant background examinations and investigations. Lastly, inasmuch as the respondent is statutorily eligible for asylum, we need not address her appeal of the denial of withholding of removal and protection under the Convention Against Torture.

Accordingly, the following orders will be entered.

ORDER: The Board's December 16, 2016, decision is vacated.

FURTHER ORDER: The DHS's motion to remand for fact-finding on the respondent's statutory eligibility for asylum is denied.

FURTHER ORDER: The respondent's appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).



FOR THE BOARD

Board Member Roger A. Pauley respectfully dissents inasmuch as the proposed particular social group of persons known to have filed criminal charges or assist police in prosecutions of the MS-13 gang is not socially distinct within Salvadorian society. *See Matter of M-E-V-G-*, 26 I&N Dec. 217 (BIA 2014) (holding that social distinction is determined by the perception of society as a whole, not by perception of the persecutor).