



**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

**Gannon, Brian V  
Abod & Caruso, LLC  
2200-A University Boulevard West  
Wheaton, MD 20902**

**DHS/ICE Office of Chief Counsel - BAL  
31 Hopkins Plaza, Room 1600  
Baltimore, MD 21201**

**Name: R [REDACTED], E [REDACTED] M [REDACTED]  
Riders: [REDACTED]**

**A [REDACTED]-583**

**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:  
Grant, Edward R.  
Guendelsberger, John  
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

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Files: A [REDACTED]-583 – Baltimore, MD  
A [REDACTED]

Date: **MAY 24 2019**

In re: E [REDACTED] M [REDACTED] R [REDACTED]  
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Brian V. Gannon, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents are a mother (hereinafter, “the lead respondent”) and her child (hereinafter, “the minor respondent”) who are natives and citizens of El Salvador. They appeal an Immigration Judge’s January 17, 2018, decision denying them asylum, and denying the lead respondent withholding of removal and protection under the Convention Against Torture. The appeal will be sustained, and the record will be remanded for further proceedings.

We review the findings of fact 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 de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The lead respondent, whose credibility has never been at issue, testified that she has been persecuted and will be persecuted by members of the “18” gang in El Salvador on account of her family ties to the minor respondent. According to the lead respondent, “18” gang members came to her house in October 2015, banged on the door, and threatened to kill her and the minor respondent if she did not turn the minor respondent over to them for recruitment purposes (IJ at 5; Tr. at 20-25). “18” gang members also directly threatened the minor respondent on a separate occasion that if he did not join the gang, he and his mother would be killed (IJ at 5-6; Tr. at 26). Gang members continue to appear at the respondents’ house in El Salvador to try to recruit the minor respondent and/or his brothers (IJ at 5-6; Tr. at 27-28).

We find error in the Immigration Judge’s ultimate conclusion that the lead respondent has not demonstrated past persecution on account of her membership in a particular social group (IJ at 7-8). In the United States Court of Appeals for the Fourth Circuit, the jurisdiction in which this case arises, death threats from gang members qualify as past persecution. *See e.g., Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (finding past persecution where the petitioner received death threats from Mara 18); *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011) (finding that three death threats from MS-13 constituted persecution).

Moreover, the lead respondent has shown that the gang members who threatened her and the minor respondent were motivated, for at least one central reason, by a protected ground under the Act. *See* section 208(b)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C.


§ 1158(b)(1)(B)(ii). One's membership in a family can qualify as membership in a particular social group for purposes of asylum or withholding of removal. *See Salgado-Sosa v. Sessions*, 882 F.3d 451, 457 (4th Cir. 2018); *Velasquez v. Sessions*, 866 F.3d 188, 194 (4th Cir. 2017); *Hernandez-Avalos v. Lynch*, 784 F.3d at 949; *Crespin-Valladares v. Holder*, 632 F.3d at 124-25. In this case, the "18" members who were threatening the lead respondent were clearly targeting her, for one central reason, because she was the mother of the minor respondent, and not out of any personal animus against the lead respondent herself.

Because the lead respondent has demonstrated that she suffered past persecution based on her familial ties to the minor respondent – a protected ground under the Act – she is afforded the regulatory presumption that she has a well-founded fear of future persecution in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1). The Department of Homeland Security (DHS) may rebut this presumption by showing by a preponderance of the evidence either that: (1) "[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality," or (2) "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality ... and under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. §§ 1208.13(b)(1)(i)(A), 1208.13(b)(1)(i)(B). Accordingly, the appeal will be sustained, and the record will be remanded to afford the DHS an opportunity to do so before the Immigration Judge. On remand, both parties may introduce additional evidence, both testimonial and documentary, with respect to any and all relevant issues in this case prior to the entry of a new decision.<sup>1</sup>

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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

  
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FOR THE BOARD

<sup>1</sup> Given our disposition of this matter, we need not address the respondents' remaining contentions on appeal.