U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: L[redacted], G[redacted]... **A [redacted]-275**

Date of this notice: 1/22/2020

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:
Kelly, Edward F.
Mullane, Hugh G.
Liebmann, Beth S.

Userteam: Docket

File: A[redacted]-275 – Baltimore, MD

Date:

JAN 22 2020

In re: G[redacted] L[redacted]-P[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Suzanne L. Capriotti, Esquire

ON BEHALF OF DHS: Nicole K. Barmore
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, has appealed the February 1, 2017, decision of the Immigration Judge denying her applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), and protection under the United Nations Convention Against Torture, 8 C.F.R. §§ 1208.16 - 1208.18. The Department of Homeland Security (DHS) has filed a reply opposing the appeal. The appeal will be dismissed in part and the record will be remanded.

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).

The Immigration Judge's findings of fact are not clearly erroneous. We affirm and adopt the Immigration Judge's decision regarding asylum and withholding of removal. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). In particular, the respondent did not establish past persecution or a well-founded fear of future persecution on account of a protected ground (IJ at 1-9; Tr. at 8-38; Exh. 7). Contrary to the respondent's appellate contention (Respondent's Br. at 7-9), flight from gang recruitment is not a protected ground under the Act. *See Zelaya v. Holder*, 668 F.3d 159, 166-67 (4th Cir. 2012); *Matter of S-E-G-*, 24 I&N Dec. 579, 589 (BIA 2008). The respondent's reliance upon *Martinez v. Holder*, 740 F.3d 902 (4th Cir. 2014), *as revised* (Jan. 27, 2014), (Respondent's Br. at 9) is misplaced as that case is factually distinguishable, insofar as the respondent is not a former gang member. In particular, in *Martinez v. Holder*, the Fourth Circuit determined that the alien's membership in a group consisting of former members of a gang in El Salvador was an immutable characteristic to determine whether the group qualified as a particular social group. Consequently, we will dismiss the respondent's appeal of the Immigration Judge's denial of asylum and withholding of removal.

Regarding protection under the Convention Against Torture, the respondent maintains that the Immigration Judge failed to consider all the record evidence (Respondent's Br. at 15), and only referenced that the respondent made no effort to contact law enforcement (IJ at 9). An Immigration Judge's decision that lacks sufficient analysis does not provide an adequate opportunity to the alien

to contest the Immigration Judge's determinations on appeal and leaves the Board without adequate means of reviewing the bases for the Immigration Judge's decision in light of the respondent's arguments on appeal. *See Matter of A- P-*, 22 I&N Dec. 468 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that an Immigration Judge must fully explain the reasons for denying a motion in order to allow the respondent a fair opportunity to contest the decision and the Board an opportunity for meaningful appellate review). The United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this case lies, has recently emphasized this point, joining other circuits in insisting that Immigration Judges and the Board must aggregate the risks of torture in adjudicating claims under the Convention Against Torture. *See Rodriguez-Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019) (noting that an Immigration Judge should consider all evidence relevant to the possibility of future harm in assessing whether it is more likely than not that torture would occur). *See also Cabrera-Vasquez v. Barr*, 919 F.3d 218 (4th Cir. 2019); 8 C.F.R. § 1208.16 (c)(3).

Here, the respondent advanced testimony relevant to her fear of rape and to news reports concerning collusion among police and gangs. The Immigration Judge did not evaluate these in his analysis of the respondent's claim for protection under the Convention Against Torture. Because the Board may not engage in fact-finding in the course of deciding appeals (*See* 8 C.F.R. § 1003.1(d)(3)(iv)), we find remand appropriate here for further fact-finding. On remand, the Immigration Judge may receive any additional evidence he deems appropriate to the full resolution of this matter. While we conclude that remanded proceedings are warranted, we express no opinion regarding the ultimate outcome of these proceedings at the present time. *See Matter of L- O-G-*, 21 I&N Dec. 413 (BIA 1996).

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal of the Immigration Judge's denial of asylum and withholding of removal is dismissed.

FURTHER ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and for the entry of a new decision regarding protection under the United Nations Convention Against Torture, 8 C.F.R. §§ 1208.16 - 1208.18.

FOR THE BOARD

Board Member Hugh G. Mullane would also affirm the Immigration Judge's denial of protection under the Convention Against Torture and so dissents without further opinion from that portion of the majority's decision.