U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: F[redacted]-M[redacted], J[redacted] [redacted] **A [redacted]-834**

Date of this notice: 10/2/2020

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:
Goodwin, Deborah K.
Greer, Anne J.
Donovan, Teresa L.

Lucas D
Userteam: Docket

File: A[redacted]834 – Kansas City, MO Date: OCT - 2 2020

In re: J[redacted] I[redacted] F[redacted]-M[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Matthew L. Hoppock, Esquire

ON BEHALF OF DHS: Ian Tomasic
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's March 26, 2018, decision denying his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, and withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3).[1] The Department of Homeland Security (DHS) opposes the appeal. The record will be remanded.

We review findings of fact, including credibility findings, for clear error. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We review questions of law, discretion, or judgment, and all other issues de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied asylum and withholding of removal after rejecting the respondent's three proposed particular social groups. A particular social group must be composed of members who share a common immutable characteristic that is defined with particularity and is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), *vacated in part on other grounds*, *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016). The respondent proposed the following three groups: 1) former Guatemalan business owners, 2) former Guatemalan business owners who resist drug traffickers, and 3) former Guatemalan business owners who make police reports against drug traffickers.

Upon careful consideration, we conclude that the Immigration Judge's decision does not contain sufficient fact finding and analysis regarding these proposed groups and whether the respondent was harmed on account of his membership in this group (IJ at 10-12; Respondent's Br. at 6-8). *See Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002). "The resolution of such issues is . . . inherently factual in nature." *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (citations omitted). "While we review the ultimate determination whether a proposed group is cognizable de novo, we review an Immigration Judge's factual findings underlying that

[1] The respondent on appeal has not meaningfully addressed the Immigration Judge's denial of protection under the Convention Against Torture, and that claim is waived on appeal. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 586 n.1 (BIA 2015).

determination for clear error." *Id.* The Immigration Judge's decision does not contain sufficient fact finding for us to conduct our appellate review.

Although we are remanding the record, we reject two due process arguments from the respondent that lack merit. He first argues that the Immigration Judge erred by requiring written pleadings (Respondent's Br. at 9). Even assuming that this requirement constituted error, we discern no prejudice. *See Tun v. Gonzales*, 485 F.3d 1014, 1026 (8th Cir. 2007) ("To be entitled to relief based on an alleged due process violation, a petitioner under the immigration laws must show prejudice."). "In this context, prejudice means a showing that the outcome of the proceeding may well have been different had there not been any procedural irregularities." *Id.* (citation omitted). The respondent has not shown that the factual allegations are incorrect or that he is not inadmissible as charged.

Second, he argues that the transcript contains numerous errors. We are not convinced that he was prejudiced in this context as well. The respondent notes four examples. The first involves a statement from the Immigration Judge regarding written pleadings (Tr. at 8). This indiscernible statement is not material, as it is uncontested that pleadings were written. Additionally, we have found no prejudice from the Immigration Judge using this format for pleadings. Second, a comment about one of the respondent's exhibits by the Immigration Judge is indiscernible (Tr. at 43). This exhibit was not timely filed (Tr. at 42-43). This indiscernible is not prejudicial, as the record reflects that the Immigration Judge admitted that exhibit.

The respondent points to two untranslated portions of his testimony regarding the name of his elementary school and the name of his business (Tr. at 27, 31). We are not convinced that the absence of an elementary school name prejudiced the respondent's case, given that the respondent's case is about his adult life. The respondent's business name was properly translated later and is acknowledged in the Immigration Judge's decision (IJ at 3; Tr. at 32).

Accordingly, the following order will be entered.

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

Teresa L Donnan
FOR THE BOARD

Appellate Immigration Judge Deborah K. Goodwin respectfully dissents without opinion.