



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: SANCHEZ HERNANDEZ, YULIETH A 213-351-166

Date of this notice: 7/27/2020

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:
Swanwick, Daniel L.

Userteam: Docket

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Falls Church, Virginia 22041

File: A213-351-166 – Eloy, AZ

Date:

JUL 27 2020

In re: Yulieth SANCHEZ HERNANDEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Alinka T. Robinson, Esquire

ON BEHALF OF DHS: Ashley N. Garcia
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal

The respondent, a native and citizen of Cuba, appeals from the Immigration Judge's February 7, 2020, decision denying her 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 appeal will be sustained in part and the record will be remanded for the completion of background and security checks.

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 found that the respondent was ineligible for asylum due to the regulatory provision at 8 C.F.R. § 1208.13(c)(4), which states that, "[n]otwithstanding the provisions of 8 CFR 208.15, any alien who enters, attempts to enter, or arrives in the United States across the southern land border on or after July 16, 2019, after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, shall be found ineligible for asylum . . ." (IJ at 5). In the alternative, the Immigration Judge found that the respondent had established a well-founded fear of persecution on account of her political opinion in Cuba, and that if the mandatory bar were not applicable, the respondent warranted a grant of asylum (IJ at 5).

During the pendency of this appeal, the United States District Court for the District of Columbia vacated the regulatory provision relied on by the Immigration Judge to deny the respondent's application for asylum. *Capital Area Immigrants' Rights Coalition v. Trump*, — F. Supp. —, 2020 WL 3542481 (D.D.C. 2020). Accordingly, the respondent is no longer barred from a grant of asylum by virtue of this regulation.

¹ The respondent has not meaningfully appealed 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).

We discern no legal or clear factual error in the Immigration Judge's alternative conclusion that the respondent demonstrated that she has a well-founded fear of persecution on account of her political opinion in Cuba, and that she is therefore eligible for asylum (IJ at 5). Accordingly, the record will be remanded for the Immigration Judge to grant the respondent's application for asylum following the completion of the required background and security checks.

Accordingly the following order will be entered.

ORDER: The respondent's appeal is sustained.

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 Department of Homeland Security 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).

Duffie
FOR THE BOARD