



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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A [REDACTED]-844

Date of this notice: 1/17/2019

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:
Adkins-Blanch, Charles K.

Userteam: Docket

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Falls Church, Virginia 22041

File: A-844 – El Paso, TX

Date: JAN 17 2019

In re: V-J-M-L

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Ernesto A. Sanchez, Esquire

ON BEHALF OF DHS: William M. Hunt
Assistant Chief Counsel

APPLICATION: Withholding of removal; Convention Against Torture

The applicant, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated August 29, 2018, denying her applications for withholding of removal pursuant to section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c)-.18. The Department of Homeland Security opposes the appeal. The record will be remanded.

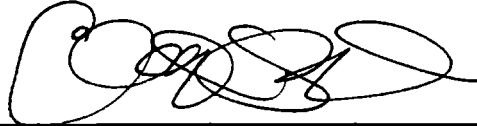
We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien in withholding-only proceedings has the right to a reasonable opportunity to present evidence on his or her behalf. 8 C.F.R. § 1240.10(a)(4); *see also* 8 C.F.R. § 1208.2(c)(3) (stating that withholding-only proceedings shall be conducted in accordance with the same rules of procedure as removal proceedings). At the outset of the hearing on August 28, 2018, the Immigration Judge questioned the applicant about her previous encounters with immigration officials (Tr. at 23-40). Based on the applicant's responses to these questions, the Immigration Judge found that she was not a credible witness and denied her applications based solely on that negative credibility determination (Tr. at 32; IJ at 14-16). Because the applicant was not provided the opportunity to testify in support of her claim, we will remand the record for further proceedings.

On remand, both parties shall be permitted to update the record with additional evidence and to make additional legal arguments. After the parties have been given the opportunity to present additional evidence, the Immigration Judge should render a new credibility finding and further consider whether the applicant has met her burden of proof. In doing so, the Immigration Judge should specifically identify any evidence relied on and explain the reasons for his conclusions in his decision. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002); *Matter of A-P-*, 22 I&N Dec. 468, 474 (BIA 1999).

In remanding, we express no opinion regarding the merits of the applicant's applications. See *Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996). The following order shall be entered.

ORDER: The record is be remanded to the Immigration Judge for further proceedings and the entry of a new decision.

A handwritten signature in black ink, appearing to be "C. J. Smith", written over a horizontal line.

FOR THE BOARD