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

Wylie, Brenda C
Greeen Evans-Schroeder
130 West Cushing Street
Tucson, AZ 85701

DHS/ICE Office of Chief Counsel - EAZ
Eloy Detention Ctr,1705 E. Hanna Rd
Eloy, AZ 85131

Name: A[redacted] L[redacted], M[redacted] ... **A [redacted]-952**

Date of this notice: 5/4/2020

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:
Gemoets, Marcos

Userteam: Docket

File: A[redacted]-952 – Eloy, AZ

Date: MAY - 4 2020

In re: M[redacted] R[redacted] A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Brenda C. Wylie, Esquire

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

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated November 4, 2019, granting the respondent's application for asylum pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A). The respondent,[1] a citizen of Mexico, opposes the appeal. The appeal will be dismissed.

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).

The Immigration Judge found that the respondent is a member of a particular social group, which he considered to be "individuals who assisted law enforcement in the arrest of cartel members" (IJ at 4). Although the Immigration Judge determined that the respondent did not suffer past harm rising to the level of persecution, he found that based on the respondent's circumstances she had established a well-founded fear of future persecution (IJ at 4-6). The Immigration Judge also found that the respondent has shown that the government of Mexico is unable or unwilling to protect her (IJ at 5-8). The DHS challenges these findings on appeal.

We have considered the DHS's arguments but are not persuaded that the Immigration Judge's decision granting the respondent's application for asylum should be reversed. First, we agree with the Immigration Judge that based on the circumstances articulated in this record, the respondent's proposed group is cognizable for purposes of asylum (IJ at 4). The DHS does not challenge the Immigration Judge's finding that the respondent is a member of this proposed group (IJ at 4).

[1] The Court held a joint merits hearing for the respondent and her mother, [redacted], as both respondents were represented by the same Counsel, their claims stemmed from the same facts, and Counsel intended to use the same expert witness for both cases. The cases were not formally consolidated due to the respondent's age, rather, the hearings were held jointly in light of efficiency. The Immigration Judge issued one decision for both the respondent and her mother.

Instead, it argues that the proposed group lacks social distinction (DHS's Br. at 10-12). *See Matter of W-G-R-*, 26 I&N Dec. 208, 211-12 (BIA 2014) ("To be socially distinct, a group . . . must . . . be perceived as a group by society."), vacated in part and remanded on other grounds by *Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), cert. denied sub nom. *Reyes v. Sessions,* 138 S. Ct 736 (2018); *see also, Conde Quevedo v. Barr,* 947 F.3d 1238, 1242 (9th Cir. 2020) (noting that a "conclusion regarding social distinction - whether there is evidence that a specific society recognizes a social group - is a question of fact"); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007) (reiterating that "a factual finding is not 'clearly erroneous' merely because there are two permissible views of the evidence") (citing *United States v. Nat 'l Ass 'n of Real Estate Bds.*, 339 U.S. 485, 495 (1950)).

We acknowledge the DHS's assertion that the Immigration Judge improperly relied on *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013), which involved an individual who testified against two gang members publicly in an open court (DHS's Br. at 10). However, *Henriquez-Rivas*, did not foreclose the possibility that other individuals who report crime, in limited circumstances similar to those of the respondent, could establish eligibility for asylum depending on society specific evidence. *See Conde Quevedo v. Barr,* 947 F.3d at 11243 (9th Cir. 2020) (upholding the Board's determination that the proposed social group of persons who report criminal activity of gangs to police in Guatemala was not cognizable because of the lack of supporting evidence on the record, but noting that, "reporting gang violence to police could suffice to establish eligibility . . . if there were evidence that, in a specific country, people in the community knew who reported crimes to the police, or if there were laws protecting those who did, the proposed group potentially could be cognizable"); s*ee also Pirir-Boc v. Holder,* 750 F.3d 1077, 1084 (9th Cir. 2014) (a particular social group may not be rejected solely because a similar group in a different society was previously found to lack social distinction or particularity).

The evidence on record supports a showing that the proposed group is recognized and perceived by Mexican society as a distinct group (IJ at 4; Exh. 4, Tab K). The Immigration Judge cited to evidence discussing the degree of cooperation between individuals and law enforcement officials, and how such individuals face disproportionate levels of consequential harm (IJ at 4; Exh. 4, Tab K). The respondent's amount of participation facilitated a law enforcement investigation and was sufficiently socially recognized (IJ at 6-7). Based on our review of the record, we are not "left with the definite and firm conviction that a mistake has been committed." *United States v. United States Gypsum Co.,* 333 U.S. 364, 395 (1948). Although the Immigration Judge conceivably could have weighed the evidence differently and come to a different conclusion, the clearly erroneous standard of review precludes us from reversing the trier of fact simply because we are convinced that the case could have been decided differently, or the evidence weighed differently. *See Anderson v. City of Bessemer City, N.C.,* 470 U.S. 564, 573-74 (1985).

The DHS also argues that the Immigration Judge erred by finding that the government of Mexico is unable or unwilling to protect the respondent from the cartel (DHS Br. at 12-14). *See* sections 101(a)(42)(A) and 208(b)(1)(B)(i) of the Act. This is a factual determination that we review for clear error. *See Matter of Z-Z-O,* 26 I&N Dec. 586, 590 (BIA 2015) (predictive findings about what might happen in future are factual).

Although the DHS is correct that the respondent received past assistance, this alone does not undermine the extensive country condition reports and expert witness testimony that supports the Immigration Judge's finding that the government of Mexico is unable to protect the respondent from the cartels in the future (IJ at 7-8; Tr. at 138-39; Exh. 4, Tabs K-BB). *See Madrigal v. Holder*, 716 F.3d 499, 507 (9th Cir. 2013) (noting that while Mexico's national government was willing to control the drug cartel that attacked the petitioner, it was not necessarily able to do so, in part because state and local officials were involved with drug traffickers); *see also Bringas-Rodriguez v. Sessions*, 850 F.3d 1051 (9th Cir. 2017). We discern no clear error in the Immigration Judge's finding that the government of Mexico is unable or unwilling to protect the applicant based on the specific record in this case.

In sum, given the evidence presented, we uphold the Immigration Judge's decision granting the applicant's application for asylum.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

FURTHER 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).

FOR THE BOARD