U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: P[redacted] R[redacted], M[redacted] **A[redacted]-004**

Date of this notice: 11/14/2018

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:
Wendtland, Linda S.

Userteam: Docket

File: A[redacted]-004 – San Francisco, CA Date: NOV 14 2018

In re: M[redacted] P[redacted] R[redacted] a.k.a. [redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Christina H. Lee, Esquire

ON BEHALF OF DHS: Vanessa Woodman De Lazo
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The Department of Homeland Security (DHS) appeals from the decision of the Immigration Judge, dated June 1, 2018, denying the respondent's application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, in the exercise of discretion, but granting his application for withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and concluding that his application for protection under the Convention Against Torture is moot. *See* 8 C.F.R. §§ 1208.16-.18. The respondent has filed a brief opposing the DHS's appeal. The appeal will be dismissed, and the record will be remanded for the requisite background checks.

We review the findings of fact made by the Immigration Judge, including determinations as to credibility and the likelihood of future events, for clear error. 8 C.F.R. § 1003.1(d)(3)(i); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

As a threshold matter, we affirm, as not clearly erroneous, the Immigration Judge's finding that the respondent is not mentally competent for purposes of these proceedings (IJ at 3). *See Matter of J-S-S-*, 26 I&N Dec. 679 (BIA 2015) (holding that an Immigration Judge's finding of competency is a finding of fact reviewed by the Board for clear error); *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

The Immigration Judge appropriately evaluated the respondent's mental competency. Based on the totality of the record, including a judicial competency inquiry and medical records proffered by the DHS, the Immigration Judge found that the respondent was not mentally competent with respect to these removal proceedings. The parties have not challenged this finding on appeal and our review of the evidentiary record does not disclose any error of law or clear error of fact in the Immigration Judge's assessment of the respondent's competency.[1]

[1] The parties also do not challenge the safeguards the Immigration Judge utilized to ensure the fundamental fairness of these proceedings. *Matter of M-J-K-*, 26 I&N Dec. 773, 776 (BIA 2016).

The respondent claims that he was harmed in the past on account of his membership in a particular social group of "the family of [redacted]" (IJ at 7). He also contends that if he returns to Mexico he will be persecuted on account of his membership in a particular social group of "Mexican individuals who suffer from incurable delusional disorder and who experience auditory and visual hallucinations" (IJ at 8). The Immigration Judge concluded that the respondent did not deserve a grant of asylum in the exercise of discretion (IJ at 4-6).[2] However, the Immigration Judge concluded that the respondent established that he is more likely than not to be persecuted on account of his membership in his particular social group relating to his mental health condition, and granted the respondent withholding of removal under section 241(b)(3) of the Act (IJ at 7-10).[3]

Upon de novo review, we agree with the Immigration Judge that the respondent's particular social group defined as "Mexican individuals who suffer from incurable delusional disorder and who experience auditory and visual hallucinations" is legally cognizable (IJ at 8-9). *See Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1163 (9th Cir. 2013) (stating that whether a group constitutes a "particular social group" is a question of law); *see also Temu v. Holder*, 740 F.3d 887 (4th Cir. 2014) (finding "individuals with bipolar disorder who exhibit erratic behavior" to be a legally cognizable particular social group).

Contrary to the DHS's arguments on appeal, we conclude the respondent's proposed group is described with sufficient particularity and is socially distinct, given, inter alia, the Immigration Judge's findings regarding the existence of largely unenforced laws prohibiting discrimination against persons with mental disabilities and showing that individuals exhibiting symptoms of mental illness are at risk for abuses in institutions in Mexico (IJ at 9; Exh. 5 at 71, 165; Exh. 8 at 438-39). *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (stating that an applicant for asylum or withholding of removal based on membership in a particular social group must establish that the group is "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question"); *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in part and vacated and remanded in part 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). Given the record in its totality, we agree with the Immigration Judge's determination that the respondent has articulated a cognizable particular social group.

Further, upon review of the record and the DHS's arguments, we are not persuaded of clear error in the Immigration Judge's finding that it is more likely than not that the respondent will be persecuted in Mexico on account of his membership in his particular social group (IJ at 7-9). *See Anderson v. City of Bessemer City, North Carolina*, 470 U.S. 564, 573-74 (1985) (where there are two permissible views of the evidence, the fact finder's choice between them cannot be deemed clearly erroneous); *see also Barajas-Romero v. Lynch*, 846 F.3d 351, 358 (9th Cir. 2017) (holding

[2] Because she denied asylum in the exercise of discretion, the Immigration Judge elected not to consider whether the respondent is ineligible for asylum because he did not file his application for that relief within 1 year of arriving in the United States (IJ at 4).

[3] Because she granted the respondent withholding of removal under the Act, the Immigration Judge did not adjudicate his application for protection under the Convention Against Torture (IJ at 10).

that, for purposes of withholding of removal, an applicant must demonstrate that a protected ground will be "a reason" for any alleged persecution).

While we acknowledge that a lack of access to medications and mental health treatment does not, in itself, constitute persecution, *Mendoza-Alvarez v. Holder*, 714 F.3d at 1165, the record also contains reports detailing abuse of mentally ill patients in Mexico's mental health system, including the use of physical and chemical restraints, physical and sexual abuse, and misuse of electric shock therapy (IJ at 8; Exh. 5 at 71, 87, 92-96, 105; Exh. 8 at 440). We have considered the DHS's arguments on appeal, and conclude that they do not establish clear error in the Immigration Judge's findings. *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) (stating that "[a]n Immigration Judge is not required to accept a [party's] assertions, even if plausible, where there are other permissible views of the evidence based on the record"), *remanded on other grounds, Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015). *Cf. Matter of J-R-G-P-*, 27 I&N Dec. 482 (BIA 2018) (where evidence plausibly established that abusive or squalid conditions in mental health institutions in country of removal were result of neglect, a lack of resources, or insufficient training and education, rather than a specific intent to cause severe pain and suffering, Immigration Judge's finding that applicant did not establish a sufficient likelihood of experiencing torture was not clearly erroneous).

For the reasons above, the following orders will be entered.

ORDER: The Department of Homeland Security's 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