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]-H[redacted], H[redacted]... **A [redacted]-178**

Date of this notice: 7/9/2019

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:
Donovan, Teresa L.

Userteam: Docket

File: [redacted]-178 – New York, NY Date: JUL - 9 2019

In re: H[redacted] G[redacted] P[redacted]-H[redacted]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Efthimia Barbagiannis, Esquire

APPLICATION: Withholding of removal; Convention Against Torture

The applicant, a native and citizen of Honduras, has appealed from an Immigration Judge's February 1, 2019, decision denying his 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. The Department of Homeland Security has not filed a response to the applicant's appeal. The record will be remanded.

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant alleges on appeal that his former attorney, Mr. Jan Mahmood Tamoor, provided ineffective assistance because he failed to adequately prepare the case, did not conduct a proper legal and factual inquiry, and failed to articulate all of the particular social groups of which the applicant is a member. In addition, the applicant states that the Immigration Judge denied his request to have witnesses testify because the attorney did not prepare the witness list in accordance with the Uniform Rules of Immigration Court Practice. He further argues the attorney's deficient performance prejudiced the outcome of the removal proceedings by depriving him of the opportunity to present direct witness testimony in support of his claim and by foreclosing a viable legal claim.

We conclude that the applicant has substantially complied with the procedural requirements to make an ineffective assistance of counsel claim under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd sub nom. Lozada v. INS*, 857 F.2d 10 (1st Cir. 1988), and the facts on which the ineffective assistance of counsel claim is based are clear on the face of the record. *Yang v. Gonzales*, 478 F.3d 133, 143 (2d Cir. 2007). In addition, we conclude that the applicant has shown prejudice such that a remand for a new hearing is warranted. Specifically, one of the reasons the Immigration Judge precluded the testimony of the applicant's witnesses was because Mr. Tamoor failed to comply with the Uniform Rules of Immigration Court Practice by not providing before the hearing the alien registration numbers of his proposed witnesses and a written summary of their testimony (IJ at 2; Tr. at 30).

Further, during the hearing Mr. Tamoor initially stated that he did not have information about which statutory grounds for withholding of removal the applicant is relying upon (Tr. at 29-30). Later, the attorney had difficulty articulating a specific particular social group. First he stated that

the applicant's particular social group is "a young man who is being sought out for recruiting by the gangs and he is a young man who said no. So he's a young man who's be – who was sought out for being a base, vigilant recruit, he has no tattoos" (Tr. at 31). He clarified that the applicant is a member of a group of "young males with no gang affiliations" (Tr. at 32). When the Immigration Judge asked what Board precedent supports such a particular social group, he cited a case from the United States Court of Appeals for the Third Circuit, even though this case arises in the Second Circuit, and was unable to cite any Board precedent (Tr. at 32-33). Further, Mr. Tamoor admitted in a statement sent to the applicant's attorney that his performance was deficient because he did not distinguish the applicant's particular social group from *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), and *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008), and he did not articulate the potentially viable claim that the applicant was persecuted on account of his membership in a particular social group of "members of the Pineda-Hernandez family" (Applicant's Brief at Attachments C, D).

Thus, we conclude that the applicant's prior attorney provided ineffective assistance, and we will remand the proceedings for a new hearing and for the entry of a new decision containing sufficient factual and legal analysis that is adequate for our appellate review. *See Matter of S-H-*, 23 I&N Dec. 462, 465 (BIA 2002) (noting the Board's limited fact-finding authority and the need for Immigration Judges to include clear and complete findings of fact in their decisions). As such, we need not address the applicant's remaining arguments on appeal. On remand, the parties may present new evidence and arguments relevant to the applicant's request for relief and regarding any other relief for which he may be eligible.

Accordingly, the following order is entered.

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

Terri L Donarum

FOR THE BOARD