

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*

**Simpson, Benjamin Lyle
Cohen Forman Barone, LLP.
950 Third Avenue
11th Floor
New York, NY 10022**

**DHS/ICE Office of Chief Counsel - NYD
201 Varick, Rm. 1130
New York, NY 10014**

Name: S [REDACTED], A [REDACTED] M [REDACTED] ... A [REDACTED]-507

Date of this notice: 1/24/2019

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Kelly, Edward F.

Userteam: Docket

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Falls Church, Virginia 22041

File: A-507 – New York, NY

Date:

Jan 24 2019

In re: A-M-S

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Benjamin L. Simpson, Esquire

ON BEHALF OF DHS: Elizabeth Collins
Assistant Chief Counsel

APPLICATION: Convention Against Torture

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated June 18, 2018, which granted the respondent's application for deferral of removal under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)(4), (d)(2), 1208.17(a).¹ The parties have provided arguments on appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found that the respondent, a native and citizen of the Dominican Republic, met his burden to prove that a gang perceived him as supporting a rival gang; that the gang had threatened him in the past and was interested in harming or killing him should he be deported; that the gang would likely find out if he was in fact deported to the Dominican Republic; and that the government of the Dominican Republic would acquiesce to the gang torturing or killing the respondent (IJ at 2-3, 4-5). We will affirm the Immigration Judge's decision.

Although we acknowledge the arguments on appeal, the DHS does not establish that the Immigration Judge's determination on the respondent's credibility, considering the totality of the circumstances, was clearly erroneous. DHS's Br. at 15-20. *See* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C); *Lin v. Mukasey*, 534 F.3d 162, 167 (2d Cir. 2008). *See also* section 208(b)(1)(B)(iii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(iii); *Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007). Also, in addition to his testimony, the respondent provided other evidence to establish

¹ We acknowledge that the respondent argues that service of the Notice of Appeal was defective. *See* 8 C.F.R. § 1003.3(a)(1). In order to resolve the matter, and given that the respondent has had ample opportunity to proffer his arguments on appeal, the Board takes the appeal on certification. 8 C.F.R. § 1003.1(c).

the gang's continued interest in harming or killing him (Exhs. 4 at Tabs B and C, 16 at Tabs S, T, W, 20 at Tab B). DHS's Br. at 21. The DHS cites no pertinent legal authority to support the suggestion that the respondent was required to report the threats he received to the police. DHS's Br. at 23. We are similarly unpersuaded by the argument that certain actions by police in the Dominican Republic overcome other evidence the Immigration Judge cited in finding likely government acquiescence.² DHS's Br. at 23-24. *See De La Rosa v. Holder*, 598 F.3d 103, 109-11 (2d Cir. 2010). Family members remaining in the country unharmed diminishes a fear of future harm but only insofar as those family members are similarly situated to the respondent. DHS's Br. at 22. *See Melgar de Torres v. Reno*, 191 F.3d 307, 313 (2d Cir.1999). Thus, we will dismiss the DHS's appeal of the Immigration Judge's decision. The record will be remanded to allow the DHS an opportunity to perform or update a background and security investigation. Accordingly, the following orders will be entered.

ORDER: The DHS'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 DHS 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

² In this regard, we note that the Immigration Judge accepted evidence from Dr. Brotherton as evidence of a lay witness with specialized knowledge of conditions in the Dominican Republic (IJ at 3). DHS's Br. at 24-25.