



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: A [REDACTED], D [REDACTED] A [REDACTED]

A [REDACTED]-079

Date of this notice: 9/26/2019

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:
Kelly, Edward F.
Liebmann, Beth S.
Adkins-Blanch, Charles K.

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User team: Docket

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RL

Falls Church, Virginia 22041

File: [REDACTED]-079 – Pearsall, TX

Date: **SEP 26 2019**

In re: D [REDACTED] A [REDACTED] A [REDACTED] a.k.a. [REDACTED]¹

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Kevin M. Benedicto, Esquire

ON BEHALF OF DHS: Ross Kurtz
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated April 19, 2019, denying her applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and her request for protection under the Convention Against Torture. The appeal will be sustained.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent timely filed her asylum application, and the Immigration Judge determined that she testified credibly (IJ at 4). The respondent is a transgender 23-year-old woman who is a member of the Garifuna ethnic group and is HIV positive. She has suffered numerous types of trauma throughout her life in Honduras. Such harms have included extortion and harassment by police officers, an assault where she was cut with a knife and punched, severe discrimination by her teacher and employers as well as society at large, and rape and domestic violence perpetrated against her as a child. The Immigration Judge found that the respondent suffered harm rising to the level of past persecution, on account of a protected ground under the Act (IJ at 6).

Moreover, we find clear error in the Immigration Judge's finding that the respondent did not demonstrate that the harm she experienced was inflicted by persons that the government of Honduras was unwilling or unable to control (IJ at 6-7). *See Matter of V-T-S-*, 21 I&N Dec. 792, 799 (BIA 1997). As the Immigration Judge noted, the respondent did not report the abuses she suffered to the police (IJ at 6; Tr. at 63, 69-70). However, we are persuaded by the respondent's argument on appeal that voluminous country conditions evidence in the record, as well as her own credible testimony regarding her experiences with the Honduran authorities, demonstrate that

¹ The respondent is a transgender female who has adopted the name "Alexa." We therefore use the female pronoun to refer to her.

reporting would have been futile. *See* Resp. Brief at 11-16; *Gonzalez-Veliz v. Barr*, No. 18-60174, 2019 WL 4266121 (5th Cir. September 10, 2019) (noting that an alien must show that his or her home government has “more than difficulty...controlling private behavior.”).

Documentary evidence of record reflects that the government has made insufficient progress to combat severe, pervasive violence inflicted against transgender women such as the respondent (Exhs. 4, 5). Moreover, transgender women continue to experience physical and sexual abuse, as well as harassment, at the hands of police officers themselves (Exh. 4; Exh. 5 at Tab EE). This is consistent with the respondent’s testimony that she has personally been harassed and extorted by Honduran police officers (Tr. at 64, 69; Exh. 4). Given these facts, we conclude that the respondent sufficiently demonstrated that the persecution was inflicted by individuals that the government was unwilling or unable to control. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (concluding that an applicant suffered past persecution even if she did not report the persecution to government authorities, where the evidence showed that if she turned to the government for help, they would have been unable or unwilling to control the perpetrator’s conduct).

In light of the foregoing, we conclude that the respondent has demonstrated that she suffered past persecution on account of a protected ground, and that she therefore benefits from a presumption of a well-founded fear of persecution. *See Matter of D-I-M*, 24 I&N Dec. 448 (BIA 2008). Furthermore, the DHS did not sufficiently rebut the presumption under the facts presented in this case, given the extensive country conditions evidence in the record. We also conclude that the respondent merits a favorable exercise of discretion, and thus find her eligible for asylum.² Therefore, we will sustain the respondent’s appeal and remand the matter solely for the required security checks.

Accordingly, the following orders will be entered.

ORDER: The respondent’s appeal is sustained, and the record is remanded solely for the required security checks.

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

² In light of our disposition of this matter, we need not address the Immigration Judge’s denial of the respondent’s application for withholding of removal and her request for protection under the Convention Against Torture.