



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: R [REDACTED] -A [REDACTED], E [REDACTED] O [REDACTED] ... A [REDACTED] -056

Date of this notice: 11/8/2018

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:
Guendelsberger, John
Adkins-Blanch, Charles K.
Kendall Clark, Molly

Userteam: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-056 – Pearsall, TX

Date: NOV - 8 2018

In re: E [REDACTED] O [REDACTED] R [REDACTED]-A [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Timothy Patton, Esquire

ON BEHALF OF DHS: Sarah M. Ellison
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's May 29, 2018, decision denying his 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), as well as his request for protection under the Convention Against Torture, 8 C.F.R. § 1208.16(c). The Department of Homeland Security (DHS) moves for summary affirmance. The record will be remanded.

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, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).”

The record reflects that the respondent, appearing pro se, filed his asylum application (Form I-589) and only checked the Torture Convention box (Exh. 2). However, the Immigration Judge considered the respondent's applications for asylum and withholding of removal in addition to his request for protection under the Convention Against Torture (IJ at 3). The Immigration Judge found the respondent credible, but denied his application for asylum finding that he did not establish a nexus to a protected ground enumerated under the Act (*Id.*). Since the respondent was pro se and did not indicate a protected ground on his asylum application, the Immigration Judge construed his claim as “fear of gangs” (*Id.*). She then denied his application for asylum finding that threats by gang members in their pursuit of a criminal purpose is not a protected ground for purposes of asylum and cited *Morales v. Sessions*, 860 F.3d 812 (5th Cir. 2017), and its reference to two other Fifth Circuit decisions addressing particular social group (PSG) based on the perception of being wealthy (*Enriquez v. Holder*, 690 F.3d 667, 688 (5th Cir. 2012) and based on political opinion (*Thuri v. Ashcroft*, 380 F.3d 788, 792-93 (5th Cir. 2004)). The Immigration Judge made no further findings on the respondent's application for asylum and cursorily denied withholding of removal based on her denial of asylum (IJ at 3-4).

On appeal, the respondent argues that the Immigration Judge never considered that he was a member of a PSG related to his nuclear family. He argues that his membership was apparent from his testimony, but more importantly, was found and indicated on his credible fear interview by the DHS (Respondent's Br. at 1, 14). While we acknowledge that the respondent did not raise his membership in a PSG before the Immigration Judge, we agree that there were indications in the record the respondent's claim was based on his membership in his nuclear family as it relates to his sons. In her decision, the Immigration Judge does not address the respondent's PSG related to his family nor does she make sufficient findings of fact regarding the alleged persecutor's motivations and whether the respondent's PSG was one central reason for the persecution he suffered or fears in El Salvador. *See Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017).

We conclude that a remand is appropriate for the Immigration Judge to further assess whether the respondent has established membership in a PSG and the requisite nexus to a protected ground for purposes of asylum and withholding of removal. A remand will enable the Immigration Judge to engage in any fact-finding that may be necessary to resolve the issues in this case. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (discussing the Board's limited fact-finding authority); *see also Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by us for clear error."). On remand, both parties should be afforded the opportunity to update the evidentiary record and present additional legal arguments, and the Immigration Judge should reassess the respondent's eligibility for asylum, withholding of removal, and protection under the CAT as appropriate.

Accordingly, the following order will be entered.

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



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