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

Irina Manelis, Esq.
Manelis Law, PLLC
4860 Cox Rd., Ste. 200
Glen Allen, VA 23060

DHS/ICE Office of Chief Counsel - WAS
1901 S. Bell Street, Suite 900
Arlington, VA 22202

Name: G[redacted]... **A[redacted]-994**
Riders:[redacted]

Date of this notice: 7/25/2019

Enclosed is a courtesy 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

Files: [redacted]-994 – Arlington, VA

Date: JUL 25 2019

In re: [redacted]

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENTS: Pro se[1]

APPLICATION: Reconsideration

The respondents are natives and citizens of El Salvador. The lead respondent is the mother of the co-respondent. The respondents have filed a motion to reconsider an October 12, 2018, decision in which we dismissed their appeal from an Immigration Judge's September 21, 2017, decision denying the lead respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)-1208.18. The motion will be granted in part and the record will be remanded.[2]

A motion to reconsider must specify the asserted errors in the prior decision and be supported by relevant authority. Section 240(c)(6)(C) of the Act, 8 U.S.C. § 1229a(c)(6)(C); 8 C.F.R. § 1003.23(b)(2); *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006) (discussing procedural requirements for motions to reconsider). A motion to reconsider challenges the original decision as defective in some respect, based on the previous factual record. *Matter of Cerna*, 20 I&N Dec. 399, 402-03 (BIA 1991). The filing of a motion to reconsider is not a process through which a party may submit, in essence, the same brief and seek reconsideration by generally alleging error in the prior decision. *Matter of O-S-G-*, 24 I&N Dec. at 58. The movant must specify the factual and legal issues raised that were erroneously decided or overlooked in the initial decision, or show how a change in the law materially affects the prior decision. *Id.*

The respondents argue that the Board erroneously affirmed the denial of the lead respondent's application for asylum and withholding of removal by relying on *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (Respondents' Mot. to Reconsider at 7-9). We disagree. In upholding the Immigration Judge's "nexus" determination, we cited *Matter of A-B-* for the proposition that, in general, claims pertaining to crime and violence will not qualify for asylum. *See id.* at 320, 339.

[1] An attorney filed the motions on behalf of the respondents. However, the attorney did not file a Notice of Appearance (Form EOIR-27). We will nevertheless provide the attorney with a courtesy copy of the decision.

[2] Thus, the respondents' additional motion to stay their removal is moot.

However, we did not prejudge the lead respondent's claim on this basis, as the respondents assert in their motion to reconsider. On the contrary, we discerned no clear error in the Immigration Judge's overall nexus determination based on his specific findings concerning the facts underlying the lead respondent's claim, which we likewise found not to be clearly erroneous. We therefore conclude that we did not erroneously decide the issue of "nexus" by relying on *Matter of A-B-* to support a blanket denial of claims based on crime and violence. *See Matter of O-S-G-*, 24 I&N Dec. at 58.

We also disagree with the respondents' contention that the Board improperly applied controlling precedent of the United States Court of Appeals for the Fourth Circuit in affirming the Immigration Judge's finding that the lead respondent did not establish the required "nexus" to a protected ground (Respondents' Mot. to Reconsider at 11). *See id.* In our prior decision, we applied Fourth Circuit precedent construing the "at least one central reason" requirement. In particular, we held that the respondents did not persuasively argue that the Immigration Judge had ruled that as a matter of law, there can be only one central reason for persecution; rather, we upheld his determination that, in this particular case, the respondents did not show that any additional motive to gang members' desire to further their financial interests existed (IJ at 7). *See Cruz v. Sessions*, 853 F.3d 122, 127-28 (4th Cir. 2017); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949-50 (4th Cir. 2015); *Cordova v. Holder*, 759 F.3d 332, 339-40 (4th Cir. 2014).

Moreover, we discerned no clear error in the Immigration Judge's factual determination that the lead respondent did not demonstrate a "nexus" to her membership in the proposed particular social groups "single mothers who are business owners in El Salvador" and her family based on the lead respondent's own testimony concerning a home invasion by gang members that she and the co-respondent experienced on July 17, 2014 (IJ at 5-7). The lead respondent testified that the gang members threatened to kill her and the co-respondent unless she started paying them "rent" to continue operating her business (Tr. at 21-23, 34). She further testified that this was common whenever a business was doing well and growing (Tr. at 45-46). While the home invasion, death threats, and extortion attempts described by the lead respondent are disturbing, she did not testify that the assailants made any comments indicating that her membership in the particular social groups she identifies was at least one central reason why they took this action against her, and not another person. *Cf. Alvarez Lagos v. Barr*, 927 F.3d 236, 250-52 (4th Cir. 2019) (holding that the respondent's credible testimony about her encounters with a gang member who referenced her status as a mother and a female, as well as expert testimony about country conditions, compelled the conclusion that the respondent had not only been victimized by crime, but also been persecuted on account of political opinion and membership in her proposed particular social group "unmarried mothers in Honduras living under the control of gangs"). Consequently, we conclude that we properly applied Fourth Circuit precedent in upholding the Immigration Judge's "nexus" finding. *See Matter of O-S-G-*, 24 I&N Dec. at 58.

On the other hand, we conclude that *Alvarez Lagos* materially affects our prior decision upholding the Immigration Judge's denial of the lead respondent's application for protection under the Convention Against Torture. *See Matter of O-S-G-*, 24 I&N Dec. at 58. The respondents correctly observe that the Immigration Judge did not evaluate all evidence relevant to the possibility of the lead respondent's future torture in denying her application, as required pursuant to 8 C.F.R. § 1208.16(c)(3) (IJ at 8-9; Respondents' Mot. to Reconsider at 4-7). In these circumstances, we agree that a remand is required for the Immigration Judge to evaluate the

relevant evidence presented by the respondents and for the entry of a new decision. *See Alvarez Lagos v. Barr*, 927 F.3d at 255-56; 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may remand when additional fact-finding is required in a given case).

Specifically, the Immigration Judge should consider the impact of: (1) the lead respondent's testimony about the aforementioned home invasion; (2) the death threats against the respondents; (3) gang members' questioning about the lead respondent's whereabouts when they kidnapped her sister and held her for 1 day before releasing her upon payment of $1,000 ransom; (4) the lead respondent's testimony that gang members have continued to ask her mother where she is; and (5) the country conditions evidence of record (Respondents' Br. at 37-38). *See Alvarez-Lagos v. Barr*, 927 F.3d at 256. The Immigration Judge should then newly determine whether the lead respondent has demonstrated that she more likely than not will suffer torture by or with the consent or acquiescence (including the concept of willful blindness) of a public official in El Salvador. *See* 8 C.F.R. §§ 1208.16(c) and 1208.18(a); *see also Rodriguez-Arias v. Whitaker*, 915 F.3d 968, 973 (4th Cir. 2019) (holding that the risks of torture from all sources should be combined when determining whether an applicant is more likely than not to be tortured in a particular country); *Cruz-Quintanilla v. Whitaker*, 914 F.3d 884, 889-92 (4th Cir. 2019) (an Immigration Judge's prediction of how a government would likely act in response to harm that an applicant fears is a finding of fact subject to clear error review; whether the likely response from government officials qualifies as acquiescence is a legal question subject to de novo review); *Turkson v. Holder*, 667 F.3d 523, 528-30 (4th Cir. 2012) (holding that the Board must review for clear error an Immigration Judge's factual predictions regarding what will likely happen to an alien upon removal); *Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (same).[3]

Finally, as noted in our prior decision, protection under the Convention Against Torture may not be granted on a derivative basis. Therefore, on remand, the co-respondent may file his own application.

Accordingly, the following order is entered.

ORDER: The motion is granted in part, and the record is remanded for further proceedings and the entry of a new decision consistent with this opinion.

Linda S. Wendtland
FOR THE BOARD

[3] Given our remand of the lead respondent's claim to protection under the Convention Against Torture, we need not address at this time her contention that we applied an incorrect standard of review to the Immigration Judge's previous resolution of that claim.