



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
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**Name: P [REDACTED] O [REDACTED], S [REDACTED] R [REDACTED] A [REDACTED]-056**

**Date of this notice: 12/20/2018**

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:  
Crossett, John P.  
Wendtland, Linda S.  
Greer, Anne J.

Case # [REDACTED]  
User team: Docket

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Falls Church, Virginia 22041

File: A [REDACTED]-056 – Tucson, AZ

Date: DEC 20 2018

In re: S [REDACTED] R [REDACTED] P [REDACTED] O [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rachel Wilson, Esquire

ON BEHALF OF DHS: Gilda M. Terrazas  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated August 2, 2017, denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture. Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A); 8 C.F.R. §§ 1208.13(b)(1), 1208.16(a), 1208.18. The Department of Homeland Security has submitted a brief in opposition to the appeal. The record will be remanded to the Immigration Judge for further proceedings consistent with this opinion.

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

The respondent's removability is undisputed. Therefore, the issue on appeal is whether the Immigration Judge properly denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture. In support of those applications, the respondent credibly testified that on August 18, 2016, she was abducted and blindfolded in Mexico by unknown individuals, and then held for 2 or 3 days in an unknown location where she was repeatedly raped (IJ at 2-3, 9; Tr. at 124, 127-34). The respondent further testified that immediately following this incident, she went to a hospital where she obtained medical treatment for her injuries, and also went to the police, but a report was not filed because the respondent believes that the authorities were not taking her seriously (IJ at 3; Tr. at 139-43).

Based on the foregoing facts, the respondent argues that she suffered past persecution in Mexico, and also has a well-founded fear of future persecution there, on account of her membership in either of two "particular social groups," which she defines as "Mexican women" and "Mexican women who are victims or potential victims of gender-motivated violence." Although the Immigration Judge agreed with the respondent that the harm she experienced in Mexico was severe enough to rise to the level of past "persecution" (IJ at 13), he determined that the respondent was not eligible for asylum or withholding of removal because neither of her claimed "particular social groups" was cognizable (IJ at 11-13). The respondent challenges that determination on appeal (Respondent's Br. at 4-7).

As previously stated, the respondent asserts that she belongs to two particular social groups, comprised of “Mexican women” and “Mexican women who are victims or potential victims of gender-motivated violence.” To establish that these groups are cognizable under the asylum and withholding of removal statutes, the respondent must prove that the groups are: “(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Mexican] society....” *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff’d in pertinent part and vacated and remanded in part on other grounds sub nom. Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

The Immigration Judge found that although “Mexican women” satisfies the foregoing immutability and social distinction requirements, it lacks “particularity” because it defines a “demographic unit” of great diversity rather than a discrete group, and is “exceedingly broad because it would conceivably include a majority of the population of Mexico” (IJ at 12). The Immigration Judge also found that the group “Mexican women who are victims or potential victims of gender-motivated violence” is not cognizable because it is circular (IJ at 12-13).

We agree with the Immigration Judge’s decision as it relates to “Mexican women who are victims or potential victims of gender-motivated violence.” To be cognizable, a particular social group must exist independently of the harm claimed by its members. *Matter of A-B-*, 27 I&N Dec. at 317, 334-35; *Matter of W-G-R-*, 26 I&N Dec. at 215; *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007). The respondent’s alternative group does not satisfy that requirement because it is defined by reference to the persecution (i.e., “gender-motivated violence”) its members claim to suffer (or fear).

Following the Immigration Judge’s decision and during the pendency of this appeal, the Attorney General issued a precedential decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), clarifying the criteria required to establish an asylum claim based on membership in a particular social group. In light of this intervening precedent decision, we will remand the record to allow the Immigration Judge to supplement his decision and reconsider the respondent’s asylum and withholding of removal claims insofar as they are based on her claimed membership in a particular social group comprised of “Mexican women.” In evaluating the “particularity” of the claimed group, the Immigration Judge should consider *Matter of A-B-* as well as pertinent portions of *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1093–94 (9th Cir. 2013), and *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010). *Accord Ticas-Guillen v. Whitaker*, --- F. App’x ---, No. 16-72981 (9th Cir. Nov. 30, 2018), *available at* 2018 WL 6266766. On remand, the Immigration Judge should also consider whether the respondent has demonstrated a nexus between her proposed particular social group and the past harm she suffered or future harm she fears and whether the Mexican government was (or will be) unable or unwilling to control her persecutors. See *Matter of A-B-*, 27 I&N Dec. at 320, 343-44; see also *Ochoa v. Gonzales*, 406 F.3d 1166, 1170 (9th Cir. 2005) (explaining that asylum and withholding of removal require proof of persecution

by a “government official or persons the government is unable or unwilling to control”). We express no opinion regarding the ultimate outcome of the respondent’s case.<sup>1</sup>

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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FOR THE BOARD

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<sup>1</sup> Our present order contemplates further consideration of the respondent’s applications for asylum and withholding of removal. To avoid piecemeal review, we reserve judgment at this time with respect to the respondent’s eligibility for protection under the Convention Against Torture.