



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
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**Name: D [REDACTED]-A [REDACTED], M [REDACTED] A [REDACTED] A [REDACTED]-603
Riders: [REDACTED]**

Date of this notice: 2/11/2020

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:
Swanwick, Daniel L.

It is hereby
User team: Docket

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RC

Falls Church, Virginia 22041

Files: [REDACTED]-603 – San Francisco, CA

Date:

FEB 11 2020

In re: M [REDACTED] A [REDACTED] D [REDACTED] A [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Karen Wynholds Schulz, Esquire

ON BEHALF OF DHS: Matthew S. Gabe
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents,¹ natives and citizens of El Salvador, have appealed from an Immigration Judge's May 24, 2018, decision denying their application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and their request for protection under Article 3 of the Convention Against Torture, as implemented by 8 C.F.R. §§ 1208.16-.18. The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (holding that determinations as to the likelihood of future events are findings of fact that are reviewed for clear error); *see also Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2012). This Board reviews questions of law, discretion, and judgment in appeals from decisions of Immigration Judges de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

We are concerned that the record before us is inadequate for appellate review. *See generally Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999); *Matter of M-P-*, 20 I&N Dec. 786, 787-88 (BIA 1994) (stating that an Immigration Judge must fully explain a decision's reasoning in order

¹ The respondents are a family consisting of a mother and her four children (IJ at 1-2). The lead respondent is the mother (A206-736-603) and she will be referred to as the respondent throughout this decision.

to allow the respondent a fair opportunity to contest the decision and the Board an opportunity for meaningful appellate review). Specifically, the United States Court of Appeals for the Ninth Circuit, in whose jurisdiction this case arises, has held that the “one central reason” nexus standard that is applicable in asylum proceedings, is not applicable to an alien’s claim for withholding of removal. *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017) (holding that “a reason” is a less demanding standard than the “one central reason” test and that “a reason” is the correct standard to be applied to withholding of removal claims).

Here, the Immigration Judge relied solely on the “one central reason” asylum analysis in denying the respondent’s application for withholding of removal (IJ at 5, 6-7). For instance, the Immigration Judge found that the respondent’s anti-gang political opinion was not at least one central reason for her past mistreatment where she encountered gang violence committed in furtherance of the gang’s criminal activities. However, the respondent’s anti-gang political opinion could be “a reason” for her past and feared future harm for withholding of removal purposes under the *Barajas-Romero* standard, yet there is no discussion of this issue. *Barajas-Romero v. Lynch*, 846 F.3d at 360. Therefore, the Immigration Judge’s decision is incomplete with respect to the withholding of removal claim. Such a determination requires fact-finding, which is not our function. See 8 C.F.R. § 1003.1(d)(3)(iv); see generally *Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011) (noting particular facts and case-by-case evidence should be assessed by the Immigration Judge in the first instance).

We conclude that further factual development and legal analysis are needed with regard to the respondent’s withholding of removal claim under the standards applicable in the Ninth Circuit. *Barajas-Romero v. Lynch*, 846 F.3d at 351. Accordingly, we will remand the record to the Immigration Judge for supplemental fact-finding and for the entry of a new decision that more fully addresses the merits of the respondent’s eligibility for withholding of removal. We express no opinion regarding the ultimate outcome of these removal proceedings. See *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996). In light of this disposition, we need not address the respondent’s remaining arguments on appeal.

Accordingly, the following order shall 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.



FOR THE BOARD