



**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

**Maynard, Imelda  
Catholic Charities of Southern New Mexico  
2215 S. Main Street Suite B  
Las Cruces, NM 88005**

**DHS/ICE Office of Chief Counsel - OTO  
8915 Montana Avenue, Suite O  
El Paso, TX 79936**

**Name: E [REDACTED]-M [REDACTED], F [REDACTED]... A [REDACTED]-357**

**Date of this notice: 6/27/2019**

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

Userteam: Docket

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*MS*

Falls Church, Virginia 22041

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File: A-357 – Chaparral, NM

Date:

**JUN 27 2019**

In re: F-A-E-M-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Imelda Maynard, Esquire

ON BEHALF OF DHS: Ralph Girvin  
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Honduras, has appealed the Immigration Judge's January 8, 2019, decision denying his applications for asylum, withholding of removal, and request for protection under the Convention Against Torture. Sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13, 1208.16-1208.18. The Department of Homeland Security asks that the Board summarily affirm the Immigration Judge's decision. The appeal will be sustained.

We review an Immigration Judge's findings of fact, including the credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues involving questions of law, judgment and discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent seeks relief as he is an openly gay man, and reports that he experienced past harm on account of this fact at the hands of his father, classmates, and gang members. He fears persecution and/or torture on account of his sexual orientation. The Immigration Judge found that the respondent testified credibly. However, she denied the respondent's applications for relief as she found that he did not demonstrate that he experienced past persecution, and/or met his burden of demonstrating that the Honduran government was unable or unwilling to protect him, or would acquiesce in his being tortured (IJ at 6-13).

To be eligible for asylum based on past persecution, "an applicant must show (1) an incident, or incidents, that rise to the level of persecution; (2) that is on account of one of the statutorily-protected grounds; and (3) is committed by the government or forces the government is either unable or unwilling to control." *Niang v. Gonzales*, 422 F.3d 1187, 1194–95 (10th Cir. 2005). Alternatively, the respondent can qualify for asylum if he establishes a well-founded fear of future persecution, which requires "both a genuine, subjective fear of persecution, and an objective basis by credible, direct, and specific evidence in the record, of facts that would support a reasonable fear of persecution." *Karki v. Holder*, 715 F.3d 792, 801 (10th Cir. 2013). The term persecution means not only persecution by the government, but also by private actors or groups that the

government is unwilling or unable to control. *Batalova v. Ashcroft*, 355 F.3d 1246, 1253 (10th Cir. 2004).

The respondent was beaten, sometimes with a belt, strangled, and abused as a young child by his father because he played with dolls and the father did not want to have a gay son. As an adolescent, he faced bullying and sexual assault by his classmates. More recently, gang members targeted him for harm and threats. The Immigration Judge assessed each incident of harm individually and concluded that none of the incidents amounted to persecution (IJ at 6-8). We disagree and find that the harm the respondent suffered, starting as a very young child and considered in the aggregate, rose to the level of persecution. See *Matter of O-Z- & I-Z*, 22 I&N Dec. 23 (BIA 1998). The Immigration Judge did find that the harm the respondent suffered was on account of a protected ground, his sexual orientation. We agree.

The Immigration Judge also concluded that the respondent had not demonstrated that the Honduran government was unable or unwilling to control individuals or groups that persecuted or would seek to persecute or torture him. After his father beat him when he was a child, his mother did not report it to the police because “she took charge of everything in the family” (Tr. at 38). However, as the respondent was 5 years old at the time, he could not have been expected to make a report to the police. When the respondent was attacked in school, initially he was not believed, but when his mother complained, his assailants were suspended from school for one week (Tr. at 42-43). When the respondent went to police to report the gang violence he encountered, the police warned him that if he made a report, he and his family could suffer repercussions by gang members, so no report was made (Tr. at 56-58). The respondent also testified that the police were afraid of the gangs and that they “work together” (Tr. at 57).

The 2017 Department of State report regarding human rights in Honduras cites societal violence against LGBTI persons among the most significant human rights issues in Honduras (Exh. 2E). It also notes accusations that elements of Honduran security forces harassed and abused LGBTIQA persons. That report also states that the Honduran National Police have a Violent Crimes Task Force which investigates crimes against particularly vulnerable victims, including members of the LGBTIQA community (IJ at 8-10; Exh. 2E). Moreover, Honduran law states that sexual orientation merits special protection from discrimination and includes it in a hate crimes amendment to the penal code.

Although the Honduran government has made some efforts to address violence and discrimination against LGBTIQA individuals, societal discrimination against and mistreatment of that community remains widespread. Given the particular facts of this case, where past persecution on account of sexual orientation has been found, we conclude that the respondent has adequately shown that the government of Honduras has not been and is not able to protect him.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

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).

Wally Endell Clark  
FOR THE BOARD

Board Vice Chairman Chuck Adkins-Blanch respectfully dissents without opinion.