



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*

**Painter, Robert Andrew
American Friends Service Committee
570 Broad Street, Suite 1001
Newark, NJ 07102**

**DHS/ICE Office of Chief Counsel - ELZ
625 Evans Street, Room 135
Elizabeth, NJ 07201**

Name: T [REDACTED]-M [REDACTED], J [REDACTED] R [REDACTED]... A [REDACTED]-786

Date of this notice: 3/13/2020

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:
Gemoets, Marcos
Morris, Daniel
Liebowitz, Ellen C

Exported
User team: Docket

For more unpublished decisions, visit
www.irac.net/unpublished/index

RL

Falls Church, Virginia 22041

File: A [REDACTED]-786 – Elizabeth, NJ

Date: MAR 13 2020

In re: J [REDACTED] R [REDACTED] T [REDACTED]-M [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Robert Andrew Painter, Esquire

APPLICATION: Withholding of removal; Convention Against Torture

The applicant, a native and citizen of Honduras, has appealed from the September 23, 2019, decision of the Immigration Judge, denying his applications for withholding of removal and protection under the Convention Against Torture. Section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c), 1208.18(a). The appeal will be sustained.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a “clearly erroneous” standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the applicant to be credible, and that finding is not clearly erroneous (IJ at 5). 8 C.F.R. § 1003.1(d)(3)(i). With respect to the application for protection under the Convention Against Torture, the Immigration Judge found that in comparing the murders of the applicant’s brother and cousin to threats against him, the applicant was trying to string together a series of suppositions without establishing each step in the hypothetical chain of events (IJ at 10-11). *Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006); see *Matter of M-B-A-*, 23 I&N Dec. 474, 479-80 (BIA 2002). The Immigration Judge stated that the applicant’s belief that “the hand of law enforcement” took the lives of his two family members is insufficient to demonstrate that he would be subject to future torture and that authorities would acquiesce to or turn a blind eye to his torture (IJ at 10-11).

The applicant challenges the Immigration Judge’s findings with respect to the likelihood of torture in connection with the murders of his relatives (Respondent’s Br. at 18-25). The applicant testified to the following: his brother was arrested for a minor traffic infraction (not wearing a motorcycle helmet); there were five officers at the scene; the officers refused to allow the applicant to take the valuables in his brother’s possession, which included proceeds from a motorcycle sale and a motorcycle; the applicant was told he could go to the police station the next day for his brother; early the next morning, the brother’s murdered body was found outside of town; the applicant and his cousin went to the police station to file a complaint against the officers who had arrested the brother; the applicant gave the names of three officers at the scene and the patrol car number; the officer on duty told the applicant that what happened to his brother could happen to

the applicant and his family if he made a report; the applicant's cousin disappeared the following day, and he was later found murdered with his eyes and tongue cut out.

"[A] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Matter of R-S-H*, 23 I&N Dec. 629, 637 (BIA 2003). Here, the Immigration Judge's factual finding that the applicant is not likely to be tortured is clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i). When the applicant's credible and uncontradicted testimony is taken as a whole, the events which included the brother's arrest by numerous officers for a simple traffic infraction; the confiscation of the brother's valuables; the brother's murdered body found during a time in which police stated he would be in their custody; violent threats by police to the applicant and cousin after the applicant indicated he could identify the patrol car and some of the officers; the disappearance and murder, with eyes and tongue cut out, of the cousin; and the lack of investigation into the brother's murder clearly are not random and unrelated. *See, e.g., Chavarria v. Gonzalez*, 446 F.3d 508, 519-20 (3d Cir. 2006) (finding asylum applicant's credible testimony did not point to random and unrelated events but showed a violent robbery was an attempt to suppress information about an attack, especially in view of the similar methods of attack). The events indicate the murder of the applicant's brother shortly after being taken into police custody, followed by threats to and subsequent murder of the respondent's cousin to suppress information about the first crime. The murder of the applicant's cousin, who had accompanied the applicant to report the crime but had not been at the scene of the brother's arrest, indicates a likelihood that the applicant would also face the same fate if returned to Honduras.

Additionally, the applicant has established that the torture would likely be "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1). *See Matter of O-F-A-S-*, 27 I&N Dec. 709 (BIA 2019). The applicant's brother was arrested by police officers who were on duty and in their official uniforms and who used handcuffs to take him away in a patrol car. *See id.* at 716 (stating that if a law enforcement officer was on duty and in his official uniform at the time of the torturous conduct, "it is more likely that he acted under color of law"). A police officer at the station demanded the identification documents of the applicant and cousin and threatened that the same thing would happen to them if they brought a complaint against the police, which suggests that he could also be arrested and then murdered. The evidence shows a likelihood that police officers, who arrested and killed the applicant's brother and likely also killed his cousin, would be involved in torturing the applicant following his return to Honduras, and the Immigration Judge's finding to the contrary is clearly erroneous. Accordingly, the applicant has established his eligibility for withholding of removal under the Convention Against Torture.¹ Thus, the following orders will be entered.

ORDER: The appeal is sustained.

¹ Because the applicant has been found eligible for protection under the Convention Against Torture, we will not address his application for withholding of removal under section 241(b)(3)(A) of the Act.

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).



FOR THE BOARD