



U.S. Department of Justice

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Name: M [REDACTED]-M [REDACTED], A [REDACTED] ... A [REDACTED]-694

Date of this notice: 7/30/2018

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.

SmithKi
Userteam: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 694 – Arlington, VA

Date:

JUL 30 2018

In re: A [REDACTED] B [REDACTED] M [REDACTED] -M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Valentino W. Villarreal, Esquire

ON BEHALF OF DHS: James Rust
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's February 9, 2018, decision denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as his request for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c)-1208.18. The record will be remanded.

This Board reviews the Immigration Judge's factual findings, including credibility findings, only for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's removability is undisputed, and thus the only issue before us is whether the Immigration Judge properly denied his applications for asylum, withholding of removal, and protection under the Convention Against Torture. In support of those applications, the respondent claimed below that he suffered past persecution in El Salvador at the hands of the Mara 18 gang on account of his membership in a particular social group comprised of his grandmother's family members. Alternatively, he claimed that on several recent occasions he has cooperated with police and prosecutors in the United States in their efforts to arrest and convict Mara 18 gang members, and he fears this cooperation with law enforcement will cause him to be persecuted and/or tortured by Mara 18 gang members in El Salvador on account of his membership in a particular social group consisting of "prosecution witnesses."

The Immigration Judge found that the respondent had experienced past persecution below (IJ at 12-13),¹ but that he had not demonstrated a nexus between that persecution and his familial relationship to his grandmother (IJ at 13). The respondent does not challenge that aspect of the

¹ In connection with that past persecution finding, the Immigration Judge determined that the respondent had established that the Salvadoran government is unable or unwilling to control the Mara 18 from committing extortion-related crimes (IJ at 12-13).

Immigration Judge's decision on appeal; on the contrary, he no longer contends that his familial relationship to his grandmother was "one central reason" for the persecution he experienced in El Salvador, as required by section 208(b)(1)(B)(i) of the Act (Respondent's Br. at 12 n.4). Accordingly, the Immigration Judge properly determined that the respondent is not entitled to a regulatory presumption that he has a well-founded fear of future persecution.

Although the respondent acknowledges that, for asylum purposes, his family relationship to his grandmother was not "one central reason" for the past persecution he suffered in El Salvador, he claims that his family identity was nevertheless "a reason" for that past persecution, and thus he argues that it should entitle him to a presumption of a "clear probability" of future persecution for withholding of removal purposes (Respondent's Br. at 12 n.4). The respondent concedes that this argument is foreclosed by *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010), but he urges us to overrule that decision (Respondent's Br. at 23-30). We decline to do so. We continue to believe that *Matter of C-T-L-* was correctly decided, and the United States Court of Appeals for the Fourth Circuit—in whose jurisdiction this matter arises—has not held to the contrary. See, e.g., *Villatoro v. Sessions*, 685 F. App'x 242 (4th Cir. 2017) (unpublished); *Gitata v. Holder*, 486 F. App'x 369 (4th Cir. 2012) (unpublished).

We will, however, remand the record for the Immigration Judge to consider whether the respondent has a well-founded fear of future persecution in El Salvador on account of his membership in a particular social group comprised of "prosecution witnesses."² Although the Immigration Judge properly found that the respondent's various encounters with Mara 18 gang members in the United States do not entitle him to a presumption that he has a well-founded fear of future persecution in El Salvador (IJ at 12), she did not address the distinct question of whether the respondent's cooperation with police and prosecutorial efforts against Mara 18 gang members in the United States gives him a well-founded fear of future persecution at the hands of Mara 18 members in El Salvador on account of his membership in a cognizable particular social group. Resolution of these questions will require fact-finding, which is not our function, and therefore we conclude that we must remand the record for the necessary findings. 8 C.F.R. § 1003.1(d)(3)(iv).³

In light of this disposition, we deem it premature to address the respondent's potential eligibility for protection under the Convention Against Torture at this time. On remand, however, the Immigration Judge may (if necessary) reassess that question in light of the issues the respondent raises in his appellate brief (IJ at 13-14; Respondent's Br. at 30-31). As we are remanding the record for further consideration of the respondent's eligibility for asylum and withholding of removal, moreover, we find it unnecessary to address his "technical" appellate

² The respondent did not apply for asylum within 1 year after his arrival in the United States, as required by section 208(a)(2)(B) of the Act (IJ at 3). However, he claimed below (as he does on appeal) that he remains eligible to apply for asylum under the "changed circumstances" exception to the 1-year filing deadline, see section 208(a)(2)(D) of the Act. The Immigration Judge found it unnecessary to resolve that issue below (IJ at 3-4), but she may revisit it on remand, if necessary.

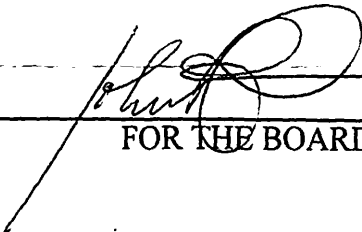
³ Apart from determining whether "prosecution witnesses" is a cognizable particular social group in El Salvador, the Immigration Judge will need to assess whether (or to what extent) the U.S. and Salvadoran branches of Mara 18 communicate with each other and coordinate their activities.

arguments pertaining to the Immigration Judge's compliance with 8 C.F.R. § 1240.1(b) and her receipt of eleventh-hour evidentiary submissions (Respondent's Br. at 9-11). To the extent those matters remain relevant on remand, they can be clarified by the Immigration Judge.

We express no opinion regarding the ultimate outcome of these proceedings.

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 entry of a new decision.



FOR THE BOARD