U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: G[redacted] G[redacted], D[redacted]... **A [redacted]-299**
Riders: [redacted]

Date of this notice: 9/24/2020

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:
Creppy, Michael J.
MONSKY, MEGAN FOOTE
Hunsucker, Keith

Userteam: Docket

Files: [redacted]-299 – Los Angeles, CA

Date: SEP 24 2020

In re: D[redacted] G[redacted]-G[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Ramiro J. Lluis, Esquire

APPLICATION: Asylum; withholding of removal

The respondents,[1] natives and citizens of El Salvador, appeal from the Immigration Judge's decision dated June 21, 2018, denying their applications for asylum pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A), withholding of removal pursuant to section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A), and protection under the Convention Against Torture pursuant to 8 C.F.R. §§ 1208.16(c), 1208.18.[2] The Department of Homeland Security (DHS) has not responded to the appeal. The record will be remanded for further proceedings consistent with this opinion.

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).

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[1] The respondents in this case are the lead respondent, who is the mother (A206-720-299), her minor son (A206-720-300), and her adult daughter (A206-720-301). All three respondents submitted individual applications for asylum, and the applications filed by the lead respondent includes the other two respondents as derivative beneficiaries. *See* section 208(b)(3)(A) of the Act; 8 C.F.R. § 1208.3(a); *see also Matter of A-K-*, 24 I&N Dec. 275, 279 (BIA 2007) (stating that although section 208(b)(3)(A) of the Act provides for derivative asylum, it does not provide for derivative withholding of removal). At the final hearing and with the assistance of counsel, only the lead respondent chose to testify, and the other respondents did not set forth any separate basis for their claims. Unless otherwise indicated, the term "respondent" shall refer to the lead respondent, the term "male respondent" shall refer to her minor son, and the term "female respondent" shall refer to her adult daughter.

[2] Because the respondents do not meaningfully challenge the Immigration Judge's denial of their applications for protection under the Convention Against Torture, we deem these applications waived on appeal. *See, e.g.*, *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

The respondent seeks relief and protection from removal based on a fear of gang members in El Salvador (IJ at 7; Tr. at 25). The Immigration Judge found the respondent to be a credible witness but concluded that she did not meet her burden of proof to establish eligibility for asylum or withholding of removal (IJ at 7-9). Specifically, the Immigration Judge determined that she did not demonstrate a nexus exists between her past or future harm and a statutorily protected ground (IJ at 7-8). The Immigration Judge also concluded that she did not establish the Salvadoran government is unable or unwilling to protect her from the private actors she fears (IJ at 9). The respondents challenge these determinations on appeal (Respondents' Br. at 9-13).

We conclude that a remand of the record is appropriate because the Immigration Judge's decision does not contain sufficient factual findings or conclusions of law to allow for meaningful appellate review. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002) (holding that the Board has limited fact-finding ability on appeal, which heightens the need for Immigration Judges to include in their decisions clear and complete findings of fact that are supported by the record and are in compliance with controlling law); *Matter of A-P-*, 22 I&N Dec. 468, 477 (BIA 1999) (stating that an Immigration Judge's decision should accurately summarize relevant facts, reflect analysis of applicable legal precedents, and clearly set forth legal conclusions); *see also* 8 C.F.R. § 1003.1(d)(3)(iv) (stating that the Board may not engage in fact-finding in the course of deciding appeals except for taking administrative notice of commonly known facts).

In this case, the Immigration Judge did not make clear factual findings regarding the gang members' motivations for targeting the respondent. *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (stating that motive is a finding of fact). The Immigration Judge concluded that the gang members harmed the respondent neither on account of her religion nor her membership in a particular social group, but he did not identify their actual motivations (IJ at 8). In determining whether a respondent has established a nexus to a protected characteristic, an adjudicator must consider "direct or circumstantial" evidence of a persecutor's motive. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992); *see also Madrigal v. Holder*, 716 F.3d 499, 504-05 (9th Cir. 2013). Moreover, although eligibility for asylum requires that a protected ground serve at least "one central reason" for the persecution, the United States Court of Appeals for the Ninth Circuit, the jurisdiction in which this case arises, has held that the less demanding "a reason" standard applies for withholding of removal. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 359-60 (9th Cir. 2017).

In addition, the Immigration Judge should further fact-find and re-examine his analysis regarding whether the respondent has established that the Salvadoran government is unable or unwilling to protect her from the gang members (IJ at 9). Although the respondent never reported the harm she witnessed or experienced to the police, a failure to report alone is not dispositive of the issue (IJ at 9). *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069-70 (9th Cir. 2017); *see also Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006) (stating that a respondent need not have reported past persecution to the authorities "if he can convincingly establish that doing so would have been futile or have subjected him to further abuse").

Therefore, we will remand the record for additional factual findings and analysis regarding whether the respondent has established a nexus to a protected ground and if the Salvadoran government is unable or unwilling to protect her from her feared persecutors. The Immigration Judge should specifically identify any evidence he relies on and explain the reasons

for his conclusions to permit meaningful appellate review. Because we are remanding the record, we decline to address the respondent's remaining arguments on appeal. The Immigration Judge may take any other action he deems necessary and appropriate for resolution of the respondent's case. In remanding, we express no opinion regarding the ultimate outcome of these proceedings.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

Appellate Immigration Judge Keith E. Hunsucker respectfully dissents without opinion.