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

Kracoff, Cheryl
Law Office of Cheryl Kracoff
1 Abington Plaza, Suite 404
Jenkintown, PA 19046

DHS LIT./York Co. Prison/YOR
3400 Concord Road
York, PA 17402

Name: C[redacted] C[redacted], V[redacted] H[redacted]

A [redacted]-507

Date of this notice: 11/12/2019

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:
Cole, Patricia A.

Userteam: West

File: A[redacted]-507 – Falls Church, VA Date: NOV 12 2019

In re: V[redacted] H[redacted] C[redacted] C[redacted]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Cheryl Kracoff, Esquire

ON BEHALF OF DHS: Keith Hoppes
Assistant Chief Counsel

APPLICATION: Withholding of removal

The Department of Homeland Security ("DHS") timely appeals the Immigration Judge's June 3, 2019, decision granting the applicant's application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1231(b)(3). The applicant argues that the Immigration Judge's decision is correct and should be affirmed. The appeal will be dismissed.

The Immigration Judge found that the applicant met his burden of proof for withholding of removal with credible testimony, corroborating documents, and background evidence. On appeal DHS raised several concerns with the applicant's claim. We have considered those arguments, but find that DHS's concerns are insufficient to conclude that the Immigration Judge's findings of fact are clearly erroneous or that the legal conclusions warrant reversal under de novo review. 8 C.F.R. § 1003.1(d)(3) (standard of review). *See Kaplun v. Att'y Gen. of the U.S.*, 602 F.3d 260 (3d Cir. 2010) (determining that an Immigration Judge's "likelihood of torture" finding is factual and subject to review for clear error).

We agree de novo with the Immigration Judge's conclusion that the applicant suffered harm rising to the level of past persecution and the DHS does not meaningfully contest that the applicant is a member of a cognizable particular social group (IJ at 7-8). Additionally, the Immigration Judge's finding that one central reason the gang targeted the applicant was his membership in a particular social group comprised of former military members of the Kaibil is not clearly erroneous (IJ at 10). 8 C.F.R. § 1003.1(d)(3)(i). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (a persecutor's motive is a question of fact); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007) (motive findings are factual and subject to clear error review). That finding is supported by the applicant's testimony that the gangs identified him as a former military member and targeted him because of his military training (IJ at 10; Tr. at 36, 43, 64). Finally, inasmuch as the Immigration Judge's finding that the government of Guatemala is unable and unwilling to protect the applicant from gangs is supported by background evidence, we find no clear error (IJ at 11). Accordingly, we will not disturb the Immigration Judge's thorough and well-reasoned decision granting withholding of removal.

ORDER: The appeal is dismissed.

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 DHS 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