



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: S [REDACTED]-A [REDACTED], J [REDACTED]**

**A [REDACTED]-601**

**Date of this notice: 6/19/2020**

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:  
Pepper, S. Kathleen

mm2020/1  
User team: Docket

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Falls Church, Virginia 22041

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File: A-601 – Imperial, CA

Date: JUN 19 2020

In re: J-S-A-

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Rudy Cardenas, Jr., Esquire

APPLICATION: Withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, has appealed from the Immigration Judge's decision dated April 15, 2018, denying his applications withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), and for protection under the Convention Against Torture.<sup>1</sup> The appeal will be dismissed in part. In addition, the record will be remanded.

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

The respondent testified that in 2003, gang members beat and robbed him, and he did not report the incident to the Salvadoran authorities (IJ at 2; Tr. at 22-28). The respondent left El Salvador soon after, and he fears persecution if he returns.

We agree with the Immigration Judge that the respondent has not established that he experienced past persecution in El Salvador and faces a clear probability of persecution on account of his membership in a particular social group composed of individuals attacked by gang members who fear that the authorities are not going to protect them (IJ at 4; Tr. at 26-28). *See* section 241(b)(3) of the Act, *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (protected ground must be a reason for claimed persecution for withholding of removal). In his brief, the respondent states that he fears persecution in El Salvador. However, he has not identified sufficient grounds for reversing the Immigration Judge's determination that he did not establish that he faces a clear probability of persecution in El Salvador. Consequently, the respondent is ineligible for withholding of removal.

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<sup>1</sup> The Immigration Judge found the respondent ineligible for asylum on late filing grounds and that is not contested on appeal (IJ at 3). *See, e.g., Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) (expressly declining to address an issue not raised by party on appeal); *Matter of Gutierrez*, 19 I&N Dec. 562, 565 n.3 (BIA 1988) (same). We therefore deem the issue to be waived.

Turning to the respondent's application for protection under the Convention Against Torture, we agree with the Immigration Judge that he has not established that it is more likely than not that anyone in El Salvador will torture him (IJ at 5). He has therefore not established that it is more likely than not that he will be tortured by or at the instigation of or with the consent or acquiescence (including willful blindness) of a public official or other person acting in an official capacity in El Salvador for purposes of protection under the Convention Against Torture. 8 C.F.R. §§ 1208.16(c), 1208.18(a).

We will next address the respondent's voluntary departure application. In *Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010), the Board held that pursuant to 8 C.F.R. § 1240.26(c)(3), an Immigration Judge who grants an alien voluntary departure must advise the alien that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal and that the Board will not reinstate a period of voluntary departure in its final order unless the alien has timely submitted sufficient proof that the required bond has been posted. Where the Immigration Judge did not provide all the advisals that are required upon granting voluntary departure and the respondent failed to submit timely proof to the Board that a voluntary departure bond had been posted, the record was remanded for the Immigration Judge to grant a new period of voluntary departure and to provide the required advisals.

In the instant case, the respondent did not submit proof to the Board that he posted the required voluntary departure bond. The record also does not establish that the Immigration Judge advised him to do so. We will therefore these proceedings solely on the voluntary departure issue to allow the Immigration Judge to provide the respondent with the required advisals.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed in part.

FURTHER ORDER: The record is remanded for the Immigration Judge to address the respondent's application for voluntary departure and to provide the required warnings.

  
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FOR THE BOARD