



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**Name: Z [REDACTED] B [REDACTED], V [REDACTED] M [REDACTED]... A [REDACTED]-488**

**Date of this notice: 12/19/2018**

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:  
Guendelsberger, John  
Grant, Edward R.  
Kendall Clark, Molly

User team: Docket

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*SC*

Falls Church, Virginia 22041

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File: A-488 – Omaha, NE

Date: DEC 19 2018

In re: V M Z B

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Rachel Yamamoto, Esquire

ON BEHALF OF DHS: Joshua P. Sleper  
Assistant Chief Counsel

APPLICATION: Reopening

This case was last before us on August 7, 2018, at which time we dismissed the respondent's appeal from the Immigration Judge's March 1, 2018, denial of his requests for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), his application for protection under the Convention Against Torture, and his request for Temporary Protected Status (TPS). Sections 244(c)(1), (2) of the Act; 8 C.F.R. §§ 244.2, 1244.2 (2011); *see also* Designation of El Salvador Under Temporary Protected Status Program, 66 Fed. Reg. 14,214 (Mar. 9, 2001). The respondent has now filed a timely motion to reopen proceedings on August 14, 2018. The Department of Homeland Security opposes the motion, which will be granted.

A motion to reopen shall not be granted unless it appears that the evidence sought to be offered "was not available and could not have been discovered or presented at the former hearing." *See* 8 C.F.R. § 1003.2(c)(1). Further, this Board has held that a party who seeks to reopen proceedings to pursue a discretionary grant of relief from removal bears a "heavy burden" of demonstrating that if his motion to reopen were granted, the new evidence presented would likely change the result in the case. *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992).

The Immigration Judge found the respondent ineligible for asylum and TPS based on "serious reasons to believe that the respondent committed a serious nonpolitical crime outside of the United States" and the respondent's failure to satisfy his burden of proving by a preponderance of the evidence that the serious nonpolitical crime bar does not apply (IJ at 11-13). The Immigration Judge's finding was based, *inter alia*, on an INTERPOL Red Notice, indicating that the respondent had been charged in El Salvador with Illicit Groupings under article 345 of the Salvadoran Penal Code (Exh. 3, at 8; Exh. 8 at 2; Exh. 11).

An individual is ineligible for asylum and withholding of removal where "there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United States." *See* section 208(b)(2)(A)(iii) (asylum), 241(b)(3)(B)(iii) (withholding of removal); 244(c)(2)(B)(ii) (TPS). The Board has interpreted "serious reasons for believing" as tantamount to probable cause. *See Matter of E-A-*, 26 I&N Dec. 1, 3 (BIA 2012).

In support of his motion, the respondent has submitted new, previously unavailable evidence, including a notice from the San Salvador Integrated Criminal Justice Center, indicating that charges against the respondent have been definitively dismissed. In response, the DHS argues that, notwithstanding the respondent's evidence, serious reasons still exist to believe that the respondent has committed the crime, because the evidence of record indicates that the respondent's criminal proceedings were dismissed primarily because the prosecution's witness died (Tr. at 125-127; Exh. 8).

We note that the record before the Immigration Judge contained a letter from the respondent's Salvadoran attorney, indicating that the respondent's criminal case was subject to provisional dismissal, and describing the circumstances surrounding the Salvadoran government's decision not to continue the prosecution of the respondent (Exh. 8). The letter from the respondent's Salvadoran attorney also explained that the court was unable to definitively dismiss the respondent's case until he appears in court. Given this evidence, the Immigration Judge ultimately found that "as long as this charge is still pending ... and the United States remains a signatory to INTERPOL, because it is a red notice, "the respondent [could not] establish by the preponderance of the evidence that he is not subject to [the bar]."

Under the circumstances, we find that the respondent's newly proffered evidence materially counters the Immigration Judge's reliance on the INTERPOL Red Notice to demonstrate that there are "serious reasons to believe" the respondent has committed a serious nonpolitical crime, especially given the respondent's Salvadoran attorney's previous indication that the criminal proceedings had been provisionally dismissed. Therefore, we find that the respondent has carried the "heavy burden" for reopening, and we will remand the record to the Immigration Court for further proceedings regarding the respondent's eligibility for relief from removal. *Matter of Coelho*, 20 I&N Dec. at 473. As such, the following order will be entered.

ORDER: The motion is granted, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing decision.

  
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FOR THE BOARD