



U.S. Department of Justice

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Name: C [REDACTED] - J [REDACTED], J [REDACTED]

A [REDACTED]-315

Date of this notice: 5/29/2019

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:
Donovan, Teresa L.
Wendtland, Linda S.
Noferi, Mark

Userteam: Docket

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Donna Carr

Falls Church, Virginia 22041

File: A [REDACTED]-315 – Tacoma, WA¹

Date: **MAY 29 2019**

In re: J [REDACTED] C [REDACTED] - J [REDACTED] a.k.a. [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

APPEAL

ON BEHALF OF APPLICANT: Amanda Ellen Gray, Esquire

ON BEHALF OF DHS: Jonathan Stowers
Assistant Chief Counsel

APPLICATION: Withholding of removal; Convention Against Torture

In a decision dated October 1, 2018, an Immigration Judge denied the applicant's application for withholding of removal and protection under the Convention Against Torture. Section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 1208.16(c), 1208.18 (2018). The applicant, a native and citizen of Mexico, has appealed from this decision. The record will be remanded for further proceedings.

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 the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant claims that he is eligible for protection from removal because his relatives in Mexico abused him as a child and local police detained, beat, kicked, pepper-sprayed, and threatened him based on the fact that he was a "Chicano" from the United States (IJ at 4-8; Tr. at 36-84; Exh. 4). He fears that the police and members of a drug cartel will kill him if he is removed to Mexico because the police have already threatened him and, since his family is affiliated with a drug cartel, he will be perceived as either being a member of the same cartel, or opposed to that cartel (IJ at 4-8; Tr. at 67-68; Exh. 4). On appeal, the applicant challenges the Immigration Judge's conclusion that he has not established his eligibility for protection from removal (Applicant's Br. at 3-15).

¹ In accordance with Operating Policies and Procedures Memorandum No. 04-06, proceedings before the Immigration Judge in this matter were completed at the Northwest Detention Center in Tacoma, WA. The case was docketed for hearing in Tacoma, WA, the applicant was located in Tacoma, and the Immigration Judge, sitting in the Immigration Court in West Valley City, UT, heard the case through video conference pursuant to section 240(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A) (2012). Accordingly, we will consider the applicant's claim under the precedent decisions of the United States Court of Appeals for the Ninth Circuit.

To establish eligibility for withholding of removal, the applicant must show that it is “more likely than not” that he will be subject to persecution in Mexico on account of a ground protected by section 241(b)(3) of the Act, including his nationality, political opinion, or membership in a particular social group, and that such harm will be inflicted either by the government or by forces the government is unable or unwilling to control. *See Lin v. Holder*, 610 F.3d 1093, 1097 (9th Cir. 2010) (per curiam). We agree with the Immigration Judge – and the Department of Homeland Security has not challenged his ruling -- that the incident in 1999, when the applicant was detained, beaten, kicked, pepper-sprayed, and threatened by the police in Mexico, involves harm rising to the level of past persecution (IJ at 11).² We further agree with the Immigration Judge that this harm was not inflicted on account of either an actual or imputed political opinion, or a viable particular social group (IJ at 11-12). *See Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228-29 (9th Cir. 2016); *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (per curiam).

However, we will not affirm the Immigration Judge’s conclusion that this harm was not inflicted on account of the applicant’s actual or an *imputed* nationality (IJ at 11-12). The Immigration Judge correctly notes that the applicant is a Mexican national (IJ at 4, 11). However, his analysis does not recognize the possibility that the police may have persecuted the applicant on account of an “imputed nationality”—that is, the police may have mistakenly taken him to be a United States citizen. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 209-17 & n.2 (BIA 2007) (analyzing whether aliens had shown that they were persecuted based on their “imputed Burundian nationality”); *see also Nunez-Avina v. Lynch*, 628 F. App’x 418, 419 (6th Cir. 2015).

The applicant testified that the police, while they were interrogating him at a police station, asked him where he was from (IJ at 7; Tr. at 55). When the applicant stated that he was from Mexico, they accused him of lying and said, “Just tell us where you [are] from, what part of the United States are you from, . . . Chicano, go back to your country” (IJ at 7; Tr. at 55). The applicant replied that he was born in Mexico, but the police continued to accuse him of lying and dragged him into a cell, where they kicked him in the head, pepper-sprayed him, and beat him all over his body (IJ at 7; Tr. at 56-57). After the police released the applicant to his cousin, they told him to “go back . . . go to [his] . . . country” or they would kill him (IJ at 7; Tr. at 60).

In light of this record, the Immigration Judge clearly erred when he found that the nationality imputed to the applicant by the police—that is, their mistaken belief that he was a United States citizen—was not “a reason” for the police’s persecutory actions. *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017).³ Because the applicant testified credibly and established that

² At the hearing, a doctor testified that she had diagnosed the applicant with post-traumatic stress disorder (PTSD). Nevertheless, the applicant, who is represented by counsel, has not argued that he lacked competency to participate in his proceedings. Therefore, we will not remand proceedings for a competency evaluation under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

³ Because our conclusions regarding the police’s persecutory actions are dispositive of whether the applicant experienced past persecution in Mexico, we need not address his arguments that the

he suffered past persecution at the hands of Mexican officials on account of an imputed nationality, he is entitled to a presumption of future persecution pursuant to 8 C.F.R. § 1208.16(b)(1)(i). We will therefore remand the record to allow the Department of Homeland Security to show either that circumstances have fundamentally changed in Mexico such that the applicant's life or freedom would not be threatened on account of this protected ground, or that he can avoid future persecution by relocating to another part of Mexico.⁴ See 8 C.F.R. §§ 1208.16(b)(1)(i)(A)-(B).⁵ Accordingly, the following orders will be entered.

ORDER: The applicant's appeal is sustained.

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



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abuse he experienced as a child at the hands of his family qualifies as past persecution on account of a protected ground at this time (Applicant's Br. at 14-16).

⁴ Because we are remanding the record for further consideration of the applicant's eligibility for withholding of removal, we need not address his eligibility for Convention Against Torture protection at this time (Applicant's Br. at 7-13). In particular, we need not address the applicant's claim that he will be tortured because of his family's connection with a drug cartel.

⁵ Because the applicant's persecutor "is a government or government-sponsored," it is "presumed that internal relocation would not be reasonable, unless the [DHS] establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for [him] to relocate." 8 C.F.R. § 1208.16(b)(3)(ii). See also *Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012).