



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

**Stevens, Mark
Murray Osorio PLLC
4103 Chain Bridge Road
Suite 300
Fairfax, VA 22030**

**DHS/ICE Office of Chief Counsel - BAL
31 Hopkins Plaza, Room 1600
Baltimore, MD 21201**

Name: B [REDACTED]-G [REDACTED], V [REDACTED] ... A [REDACTED]-925

Date of this notice: 9/11/2020

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:
O'Connor, Blair
Wilson, Earle B.
Donovan, Teresa L.

Userteam: Docket

**For more unpublished decisions, visit
www.irac.net/unpublished/index**

RC

Falls Church, Virginia 22041

File: A [REDACTED]-925 – Baltimore, MD

Date: SEP 11 2020

In re: V [REDACTED] M [REDACTED] B [REDACTED]-G [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Mark A. Stevens, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, has appealed from the Immigration Judge's April 2, 2018, decision denying his application for asylum and withholding of removal pursuant to sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), and protection pursuant to the Convention Against Torture. The appeal will be sustained in part and the record will be remanded for further proceedings.

We review the findings of fact, including determinations as to credibility and the likelihood of future events, made by the Immigration Judge under a "clearly erroneous" standard. *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002); 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, judgment or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent testified that he became a member of the Farabundo Marti National Liberation Front (FMLN) in El Salvador in February 2011 and served as an "activist" for the party (IJ at 5; Tr. at 18). The respondent testified that on February 14, 2014, gang members from the MS-13 gang tried to recruit him and coerce him into joining their gang (Tr. at 30-31, 36). The respondent further testified that on February 15, 2014, while he and some friends were walking through a soccer field after campaigning for the FMLN, supporters of the ARENA party, an opposing political party, brandished guns at his group, issued a threat against one of his friends, and stated that "they wanted their party to reign" and that the respondent's group "didn't have nothing to do" in the area where they had been campaigning (Tr. at 19-22, 25). The respondent indicated on his asylum application that he was seeking asylum based on his political opinion and membership in a particular social group (Exh 2).¹

We do not find legal error or clear factual error in the Immigration Judge's determination that the respondent did not establish past persecution in El Salvador. The Immigration Judge properly determined that the incidents of mistreatment described by the respondent did not rise to the level

¹ The Immigration Judge determined that the respondent did not establish membership in a cognizable particular social group under the Act (IJ at 6-7). The respondent indicated in his appeal brief that he is not challenging this aspect of the Immigration Judge's decision (Respondent's Br. at 4).

of persecution (IJ at 7; Tr. at 19-27, 31, 36). Notably, the respondent was not physically hurt during the 2 encounters (Tr. at 20-22, 25, 30-31). On appeal, the respondent challenges the Immigration Judge's finding that the encounter with the ARENA party supporters did not amount to persecution. While a death threat may qualify as persecution, "[t]o constitute persecution, actions must rise above the level of mere harassment, and must be of sufficient severity that they constitute a threat to life or freedom itself." See *Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n.* (4th Cir. 2019) (internal quotation marks and citations omitted). We concur with the Immigration Judge that a "mere threat" to the respondent "that he should get out of the neighborhood" is not a threat that constitutes past persecution (IJ at 7). The record supports the conclusion that the respondent did not experience harm rising to the level of past persecution (IJ at 7).

Notwithstanding, we find it necessary to remand the record for further proceedings and the entry of a new decision relating to the respondent's claim of a well-founded fear of future persecution in El Salvador. The Immigration Judge determined that "there [was] no evidence in [the] record to show that" the respondent "was encountered by ARENA party members because of his status as an FLMN party member" (IJ at 7-8). However, the respondent testified that during his encounter with the ARENA party supporters, they told him and his friends that "they wanted their party to reign," and that they did not want the respondent and his friends in their neighborhood (Tr. at 25). The respondent also testified that he believed that he and his friends were threatened by the ARENA party supporters because they wanted his group to cease their activities supporting the FLMN (Tr. at 25-26). The Immigration Judge did not find the respondent to lack credibility relating to the February 15, 2014, incident (IJ at 6). However, when considering nexus the Immigration Judge did not consider the respondent's testimony relating to his interaction with the ARENA party supporters. See *Alvarez Lagos v. Barr*, 927 F.3d 236, 249 (4th Cir. 2019) (the Board failed to consider all relevant record evidence when determining whether the alien failed to establish the required nexus between her persecution and her proposed status as member of particular social group).

In light of this, we find that a remand is appropriate in order for the Immigration Judge to reevaluate the evidence of nexus presented in the respondent's testimony regarding his interaction with the ARENA party supporters and its bearing, if any, on the respondent's claim of a well-founded fear of future persecution in El Salvador on account of his political opinion. Further, on remand the Immigration Judge should provide additional analysis and fact finding relating to the respondent's claim pursuant to the Convention Against Torture. The Immigration Judge's single sentence relating to the respondent's failure to establish eligibility for protection under the Torture Convention is not sufficient to allow us to meaningfully address the issues raised by the respondent on appeal (IJ at 8). Since the Torture Convention does not require a nexus, the respondent's fear of both ARENA party member and gangs need to be taken into account with respect to the likelihood of future torture or the issue of government acquiescence. On remand, the parties may submit additional evidence and argument concerning any relevant issue.

Accordingly, the following order is entered.

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



FOR THE BOARD