



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk



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Name: V [REDACTED]-E [REDACTED], M [REDACTED] S [REDACTED] A [REDACTED]-957
Riders: [REDACTED]

Date of this notice: 8/7/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Cynthia L. Crosby
Deputy Chief Clerk

Enclosure

Panel Members:

Liebowitz, Ellen C
Kendall Clark, Molly
Greer, Anne J.

SmithKI
Userteam: Docket

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Falls Church, Virginia 22041

Files: [REDACTED] 957 – Houston, TX [REDACTED]

Date: AUG 07 2017

In re: M [REDACTED] S [REDACTED] V [REDACTED]-E [REDACTED]
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Sheridan G. Green, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture [REDACTED]

The respondents, a mother and her minor daughter,¹ are natives and citizens of Honduras. They appeal from the Immigration Judge's decision dated November 2, 2016, denying asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under the Convention Against Torture. [REDACTED] The Department of Homeland Security (DHS) has not filed a response to the appeal. The record will be remanded.

The lead respondent fears persecution by her husband [REDACTED] on account of her membership in a particular social group consistent with *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) (IJ at 4; Respondent's Br. at 3; Tr. at 60). She asserts that her husband, with whom she lived for 20 years and had three children, began beating and raping her on a regular basis beginning in 2010, trapped her in the house, and beat her in retaliation after her single visit to her mother's house, and that she finally fled after he chased her with a machete. The Immigration Judge found that the lead respondent was a credible witness (IJ at 2-3) and that the harm she suffered rose to the level of persecution (IJ at 4). The Immigration Judge denied asylum and withholding of removal under the Act, however, reasoning that the lead respondent did not make efforts to leave her abusive husband or to report her abuse to the police, and that the lead respondent did not show that she could not have relocated (IJ at 4-7). The Immigration Judge also denied protection under the Convention Against Torture (IJ at 7-8).

On review, we disagree with the Immigration Judge that *Matter of A-R-C-G-* is factually distinguishable because the lead respondent in this case did not physically attempt to leave her relationship. The lead respondent credibly testified that her husband regularly beat and raped her, that he did not allow her to leave the house and beat her when she would do so, that he beat her severely upon her return from a single trip to her mother's house, that he threatened to find her and harm her if she were to leave, and that she did not leave him because she was afraid (IJ at 4-6). On this record, we disagree with the Immigration Judge's conclusion that the lead respondent did not show she was unable to leave her relationship with the father of her three children.

¹ The lead respondent's minor daughter ([REDACTED]) is a derivative applicant on the lead respondent's application for asylum, and did not file a separate application on her own behalf.

Accordingly, we conclude that the lead respondent has shown that she suffered harm rising to the level of persecution on account of a protected ground.

We will, however, remand the record for further fact-finding to determine whether the lead respondent has shown the government was unable or unwilling to protect her. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). First, the Immigration Judge does not appear to have considered the totality of the country conditions evidence presented. The Immigration Judge cited information in the U.S. Department of State's 2014 Human Rights Report for Honduras indicating that the government of that country was taking steps to provide assistance to victims of domestic violence and had opened a shelter in Copan, where the respondent was living (IJ at 6-7). However, notwithstanding that she cited the existence of the shelter in considering whether the government was unable or unwilling to protect the lead respondent, the Immigration Judge does not appear to have considered that the same paragraph of the report stated the "government provided insufficient financial and other resources to enable these facilities to operate effectively" (Exh. 2, Tab D, at 41). Further, the Immigration Judge does not appear to have made factual findings regarding the effect, if any, of the lead respondent's testimony that she lived "in the mountains" and that the police were "very far away" (Tr. at 39, 35) on whether the police in fact were unwilling or were unable to protect her (Respondent's Br. at 7-8). In addition, we note that the Immigration Judge did not make findings regarding the respondent's testimony that she did not report her abuse to the police because the police did nothing after her father was murdered (Tr. at 56-57). Accordingly, we will remand the record for the Immigration Judge to further consider whether the government was unable or was unwilling to protect the lead respondent based on the totality of the country condition evidence and the lead respondent's testimony.

On remand, should the Immigration Judge find that the lead respondent has established past persecution, including that the government was unable or is unwilling to protect her, she should determine in the first instance whether the DHS has rebutted the presumption that the lead respondent has a well-founded fear of future persecution on the basis of the original claim by establishing by a preponderance of the evidence either that there has been "a fundamental change in circumstances such that the [lead respondent] no longer has a well-founded fear of persecution" in Honduras, 8 C.F.R. § 1208.13(b)(1)(i)(A), or that she "could avoid future persecution by relocating to another part of [Honduras] . . . and under all the circumstances, it would be reasonable to expect [her] to do so," 8 C.F.R. § 1208.13(b)(1)(i)(B). *See Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). In determining whether it would be reasonable to expect the lead respondent to relocate, the Immigration Judge should consider each of the factors set forth at 8 C.F.R. § 1208.13(b)(3), in light of the applicable burden of proof.

If the Immigration Judge finds that the DHS has rebutted the presumption that the lead respondent has a well-founded fear of future persecution on the basis of the original claim, she should determine whether the lead respondent has compelling reasons arising out of the severity of the past persecution for being unwilling or unable to return to Honduras or whether there is a reasonable possibility that she may suffer other serious harm upon her removal. *See Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012); 8 C.F.R. § 1208.13(b)(1)(iii).

We are not persuaded that the Immigration Judge erred in denying protection under the Convention Against Torture. We see no clear error in the Immigration Judge's findings that the

lead respondent did not present evidence that she suffered past torture in Honduras, and has not shown a likelihood of future torture, by or at the instigation of or with the consent or acquiescence (to include the concept of “willful blindness”) of a public official or other person acting in an official capacity, if removed to Honduras. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a). *See also Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015).

Accordingly, the record will be remanded. The following order will be entered.

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

Molly J. Dudas Clark
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
HOUSTON, TEXAS

Files: [REDACTED] 957

November 2, 2016

In the Matters of

M [REDACTED] S [REDACTED] V [REDACTED] -E [REDACTED])
[REDACTED]) IN REMOVAL PROCEEDINGS
RESPONDENTS)

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act.

APPLICATIONS: Asylum; withholding of removal; and relief under the United Nations Convention against Torture.

ON BEHALF OF RESPONDENTS: ANDERSON LEAL

ON BEHALF OF DHS: CHRISTINIA TOWNSEND

ORAL DECISION OF THE IMMIGRATION JUDGE

PROCEDURAL HISTORY

The respondents are a mother and her minor daughter.¹ The respondent is a native and citizen of Honduras who entered the United States without valid entry documents on or about November 22, 2015. The Department of Homeland Security

¹ The cases are consolidated. Unless otherwise noted, any reference to "the respondent" singularly applies also to the rider applicant.

served respondent with a Notice to Appear charging her as removable from the United States under Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act.

The respondent admitted to the factual allegations and conceded the charge of removability. The Court sustained the charge.

Respondent seeks relief in the form of asylum, withholding of removal and protection under the United Nations Convention against Torture. Today was the hearing on her applications for relief.

EVIDENCE

The Notice to Appear is Exhibit 1. Exhibit 2 is the I-589 with attachments comprising of tabs A through E. Exhibit 3 is for identification only. It was not admitted into evidence. Exhibit 4 is the credible fear notes. Exhibit 5 is the child's, Keily Janeth, I-213. And Exhibit 6 is the Record of Sworn Statement of the respondent. Respondent Maura Suyapa Varela-Erazo was the only witness who testified on her behalf. The Court has considered all the evidence regardless of whether specifically mentioned in the text of this decision.

TIMELINESS AND CREDIBILITY

The Department stipulated and the Court finds that the application is timely.

In all asylum cases, the Court must determine whether the testimony of the respondent and any witness is credible. See Matter of O-D-, 21 I&N Dec. 1079, 1081 (BIA 1998).

The Court observed the respondent as she testified. She was candid and forthright in her demeanor and the experiences that she described in her testimony were inherently plausible and believable.

The Department pointed out inconsistencies in her testimony and the answers that she provided in her credible fear interview and the interview she had immediately

upon entering this country. The Court questioned respondent in great detail about these issues that are brought up by the Department. Specifically that was of concern to the Court was a statement or a response that she had in her credible fear interview in which she stated that in response to a question if her husband did anything else to her, she testified that she did not let him rape her and her daughter came and said that not to fight and he beat the child and then the respondent started running to a neighbor. The Government argued that in today's testimony the respondent testified that she was raped and also in her application the respondent states that she was raped by her husband. In response to the Court's question, the respondent clarified that she was testifying or she was answering about a specific incident in which the rape was stopped because of the daughter coming in and the husband did not rape her, but she was raped on numerous occasions. The Court accepts her explanation.

The Government also pointed out some inconsistency as to the name of the father. On Exhibit 5, which is the I-213 for the child, ~~it is really not clear to the Court. When the Court examines the document it states father name and address and it is blank and the next sentence says nationality and that is where it says Honduras and next to Honduras, it says Jose. So the Court does not accept this as something that the respondent stated to the officer that Jose was the name of the father. She has consistently maintained that she has been with this person for the last 20 plus years and he is the father of her three children.~~

Considering the entire record and specifically the respondent's demeanor, the Court is going to find her to be a credible witness.

LAW AND ANALYSIS

To be eligible for asylum, the respondent must show that she is unable or unwilling to return to her country because of persecution or a well-founded fear of future

persecution on account of race, religion, nationality, membership in a particular social group or a political opinion. She must also show that the persecution she fears will be inflicted by the government or that the government is unable or unwilling to control the persecutor.

PAST PERSECUTION

Persecution is an extreme concept and it does not include every sort of treatment that our society regards as offensive, unfair or unjust.

In this case, the respondent testified that since starting some time in 2010, her husband became very abusive towards her. She testified that he would beat her on a regular basis and also sexually abuse her and make her do things that she did not want to do. She testified that he would beat her with his fists and would leave bruises on her body. She testified that he did not like for her to go out of the house and if she did, he would beat her and threaten her that she should not tell anybody about the abuse or he was going to kill her. This abuse went on for at least four to five years.

Respondent testified that on one occasion, the last occasion before she left the country, he beat her and then followed her outside the house with a machete and threatened her that if he ever saw her, he was going to kill her. Respondent was very afraid for her life and she believed that he would kill her or at least cut her feet off, as she had seen some incidents on the news in which a partner had cut his wife's, partner's feet. Respondent also testified that when her youngest child tried to intervene and ask her father not to beat her mother, he would threaten her as well.

Based on this record, the Court finds that the harm that the respondent suffered in her home country does rise to the level of persecution.

The Court's analysis for eligibility for asylum does not end with the finding that the harm suffered rises to the level of persecution. The respondent still must show that

it was on account of one of the protected grounds. Respondent argues that she was persecuted and she fears future persecution because she is a member of a particular social group.

In Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014), the Board found that married women in Guatemala who were unable to leave their relationship is a cognizable social group under the Act. The Board found that marital status can be an immutable characteristic where the individual is unable to leave the relationship. The Board found that "married," "women" and "unable to leave a relationship" were terms commonly understood within the Guatemalan society. What was very important to the Board's analysis in Matter of A-R-C-G- was the fact that the respondent in that case was unable to leave the relationship, making it an immutable characteristic. The evidence in that case was that the respondent was in a long, abusive relationship and had suffered severe abuses at the hands of her partner. She had made numerous efforts to leave the relationship, but had been unsuccessful. Each time she tried to leave, her husband would find her and threaten and bring her back to him.

The evidence in this case is significantly different. Respondent testified that she was in a relationship with Mr. Gavino Pineda for more than 20 years and they were living together for more than 20 years. They did get married legally in September of 2010 and that is when the husband became abusive towards her. Respondent testified that she really did not make any efforts to leave him because she was afraid. She, however, testified that during this period where she was being abused by her husband, she was able to go visit her mother who lived about two hours away. Respondent has presented no evidence why she could not have remained with her mother or leave her husband and go to some other location. The only testimony she presented was that he had threatened her that he was going to find her and harm her if she were to leave.

However, no evidence was presented as to how the husband would have the ability (1) to find her and (2) harm her if she were to leave him. Respondent, therefore, has failed to present any evidence that she belongs to a particular social group comprising of women who are unable to leave their relationship because she has failed to show any evidence that she made any efforts to leave.

Secondly, the Board in A-R-C-G- placed great significance to the fact that the respondent in that case made numerous efforts to seek the protection from the police and unfortunately for her each time she did try that, the police was unwilling to help her and stated that they would not interfere in domestic matters.

The respondent in this case never reported her abuse to the police. She testified that she never reported it to the police. She never told any of her family members. The reason she stated she did not report to the police was because the husband had threatened her and plus the police does not do anything. However, she presented no evidence as to how she knows that the police does not do anything and why she did not make an effort to file a police report when she got a chance to move away from her husband and visit her mother two hours away. No evidence has been presented that the police would have been unable or unwilling to protect her.

Respondent has also failed to show that she could not have relocated to another part of the country. As stated earlier, she had family, parents and sisters, who lived in different cities, but respondent made no effort to seek their assistance or go and live with them.

Respondent has presented the Country Report that does talk about violence against women and domestic violence being a serious problem in her home country. However, that same document has information about the steps that the government is taking to provide assistance to victims of domestic abuse and has opened shelters and

one shelter is in Copan, which appears to be the place the respondent was living. She has presented no evidence why she did not seek assistance from these organizations or she did not seek shelter in these domestic abuse victim shelters that is mentioned in the Country Reports.

Based on the above, the Court will find that respondent has failed to show past persecution on account of one of the protected grounds and she has also failed to show that the government in her country is unable or unwilling to protect her or that she could have not relocated to another part of her country.

Similarly, respondent has also failed to show a well-founded fear of future persecution on account of one of the protected grounds. To be eligible for asylum, the respondent has to show a well-founded fear of future persecution on account of one of the protected grounds, as well as show that the government in her country would be unable and unwilling to protect her and that she could not have relocated to another part of the country. As discussed above, respondent has failed to meet her burden to show any of these elements. Therefore, she is not eligible for asylum under Section 208 of the Act.

WITHHOLDING OF REMOVAL

The standard for obtaining withholding of removal is higher than asylum. Because respondent has failed to meet the lower burden for asylum, she cannot meet the more demanding standard for withholding of removal. See Chen v. Gonzales, 470 F.3d 1131, 1138 (5th Cir. 2006).

CONVENTION AGAINST TORTURE RELIEF

To be eligible for protection under the United Nations Convention against Torture, the respondent must establish that she would more likely than not be subject to torture by or at the instigation of or with the consent or acquiescence of a public official

or person acting in an official capacity. The Fifth Circuit has adopted the willful blindness standard for government acquiescence.

Respondent here has presented no evidence that she has suffered torture in her home country and has failed to present any particularized evidence that she will be tortured if she were to return back to her country. Any fear of torture that she has is speculative and is not supported by the evidence in the record.

Accordingly, the Court will enter the following orders.

ORDERS

IT IS HEREBY ORDERED that respondents' application for asylum pursuant to INA Section 208 is denied.

IT IS FURTHER ORDERED that respondents' application for withholding of removal pursuant to INA Section 241(b)(3) is denied.

IT IS FURTHER ORDERED that respondents' application for protection under Article 3 of the Convention against Torture pursuant to 8 C.F.R. Section 1208.16 is denied.

IT IS FURTHER ORDERED that respondents be removed to Honduras.

Please see the next page for electronic
signature

NIMMO BHAGAT
Immigration Judge
November 2, 2016

//s//

Immigration Judge Nimmo Bhagat

bhagatn on January 3, 2017 at 1:47 PM GMT