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]-C[redacted], S[redacted]

A[redacted]-431

Date of this notice: 11/1/2016

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:
Greer, Anne J.
Adkins-Blanch, Charles K.
O'Herron, Margaret M

YungD
Userteam: Docket

File: A[redacted]431 – Baltimore, MD

Date: NOV - 1 2016

In re: S[redacted] V[redacted]-C[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lindsay M. Harris, Esquire

AMICUS CURIAE FOR RESPONDENT: Blaine Bookey, Esquire

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] - Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's April 24, 2015, decision denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture.[1] *See* sections 208, 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. §§ 1208.16(c)-.18. The record will be remanded.

We review an Immigration Judge's findings of fact, including credibility determinations, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii). The Immigration Judge found the respondent credible (I.J. at 7).

The respondent lived in El Salvador with her former partner, who is also the father of her child, from 2003 until 2010 (I.J. at 4; Tr. at 12, 14-15, 18). During that time, she was sexually, physically, and verbally abused by him (I.J. at 4; Tr. at 15-16). After a beating in 2010, she moved to her mother's house, which was 15 minutes away from her former partner's house (I.J. at 5; Tr. at 16, 18-19, 82-83). Over the next 2 years, the respondent's former partner followed her, called her names, made death threats, and tried to hug and kiss her against her will (I.J. at 5; Tr. at 19, 23, 32-33, 83, 85-89, 103-04). Thinking that the respondent was romantically involved with a male co-worker, her former partner grabbed the co-worker by the neck (I.J. at 5; Tr. at 32-33, 93, 97). The respondent received a phone call from a gang member, who told her to reunite

[1] We acknowledge and appreciate the brief submitted by amici curiae representing the Center for Gender & Refugee Studies, National Immigrant Women's Advocacy Project, and Tahirih Justice Center, and the brief submitted by amicus curiae representing Human Rights First.

with her former partner or she would be killed (I.J. at 6; Tr. at 33-35, 87-88). The respondent entered the United States in October 2012 (Tr. at 1, 14; Exh. 1).

As an initial matter, we disagree with the Immigration Judge that the respondent is barred from seeking asylum because she did not file within the 1-year deadline and did not demonstrate changed circumstances materially affecting her eligibility for asylum or extraordinary circumstances relating to the delay in filing her application (I.J. at 7-8). *See* sections 208(a)(2)(B), (D) of the Act; 8 C.F.R. §§ 1208.4(a)(4), (5). Under the particular circumstances presented in this case, where the respondent filed her asylum application at the earliest opportunity at her initial master calendar hearing, the scheduling of which was outside of her control, we conclude that the "extraordinary circumstances" test of section 208(a)(2)(D) of the Act has been satisfied and that the respondent filed her asylum application within a reasonable period given those circumstances (I.J. at 1-2, 7-8; Tr. at 2; Exhs. 1-2). *See* 8 C.F.R. § 1208.4(a)(5) (providing that "[t]he burden of proof is on the applicant to establish . . . that the circumstances were not intentionally created by the alien through his or her own action or inaction, that those circumstances were directly related to the alien's failure to file the application within the 1-year period, and that the delay was reasonable under the circumstances.").

Next, we address the Immigration Judge's alternative finding that the respondent has not demonstrated that she suffered past persecution or has a well-founded fear of persecution on account of a protected ground (I.J. at 8-10). Under the REAL ID Act, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the applicant's persecution. *See* section 208(b)(1)(B)(i) of the Act; *see also Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010); *see also Crespin-Valladares v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011).

The respondent claims that she suffered past persecution and has a well-founded fear of persecution on account of her membership in a particular social group defined as "Salvadoran women unable to leave a domestic relationship" (Resp. Br. at 18; NOA at 3).[2] The Immigration

[2] As the respondent points out on appeal, she proposed a particular social group of "Salvadoran women unable to leave a domestic relationship" before the Immigration Judge, but the Immigration Judge described the particular social group as "Salvadoran women who cannot leave an abusive relationship" (Resp. Br. at 18 n.20; NOA at 4; I.J. at 8; Exh. 6, Pre-Hearing Brief in Support of [redacted] Application for Asylum and Alternative Forms of Relief, filed March 23, 2015, at 13 [hereinafter "Pre-Hearing Brief"]). The question whether a group is a "particular social group" within the meaning of the Act is a question of law that we review de novo, and we conclude that "Salvadoran women unable to leave a domestic relationship" is a cognizable particular social group. *See Matter of A-R-C-G-*, 26 I&N Dec. 388, 390, 392, 395 (BIA 2014) (explaining that "[t]he question whether a group is a 'particular social group' within the meaning of the Act is a question of law that we review de novo" and holding that depending on the facts and evidence in an individual case, "married women in Guatemala who are unable to leave their relationship" can constitute a cognizable particular social group).

Judge determined that this particular social group was cognizable, but found that the respondent did not establish that she was a member of the group (I.J. at 8-9). Specifically, the Immigration Judge found that the respondent was able to leave the relationship because she "physically left" her former partner's house and was not physically harmed by him for the 2 years she remained in El Salvador (I.J. at 9-10).

On appeal, the respondent argues that the Immigration Judge erred, because even after she physically left the home she and her former partner once shared, her former partner followed her, engaged in unwanted touching of a sexual nature by grabbing her on the street, called her multiple times a day, physically assaulted someone he suspected her of being in a relationship with, and had a gang member friend call and threaten her with death if she did not return to him (Resp. Br. at 1-2, 18-26; NOA at 3-4). These incidents, she argues, show that her former partner "did not see [her] leaving the household as an end to his right to abuse and control her" (Resp. Br. at 23). The respondent further argues that her testimony that she could not have a normal social life in El Salvador, including having a relationship with another partner, demonstrates that she was unable to leave the relationship and that the Immigration Judge made certain factual errors in this regard (Resp. Br. at 2-3, 20-23, 25-31; NOA at 4, 6; Tr. at 93-95). We find these arguments persuasive. We conclude that the respondent established that she is a member of a particular social group of "Salvadoran women unable to leave a domestic relationship" and that the Immigration Judge's finding otherwise is clearly erroneous. *See Matter of A-R-C-G-*, *supra*, at 391 ("The question whether a person is a member of a particular social group is a finding of fact we review for clear error.").

Accordingly, we find that a remand is necessary for the Immigration Judge to further consider the respondent's eligibility for asylum. To reiterate, we have concluded that the respondent established exceptional circumstances excusing her untimely asylum filing and is not barred from seeking asylum. We have also concluded that the proposed particular social group of "Salvadoran women unable to leave a domestic relationship" is cognizable, and that the respondent established her membership in that group. On remand, the Immigration Judge should consider whether the respondent has demonstrated that she suffered mistreatment rising to the level of past persecution, that the mistreatment was, for at least one central reason, on account of her membership in a particular social group of "Salvadoran women unable to leave a domestic relationship," and that the Salvadoran government is unwilling or unable to control her former partner, a private actor. *See Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948-49 (4th Cir. 2015) (explaining that, to establish asylum eligibility, an applicant must prove that she (1) has a well-founded fear of persecution; (2) on account of a protected ground; (3) by the government or by an organization or actor that the government is unable or unwilling to control).

If the respondent establishes that the Salvadoran government was unwilling or unable to control her former partner, the burden shifts to the Department of Homeland Security ("DHS") to demonstrate that there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A), (ii). Alternatively, the DHS would bear the burden of showing that internal relocation is possible and is not unreasonable. 8 C.F.R. § 1208.13(b)(1)(i)(B), (ii); *see also Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012). The Immigration Judge may also consider, if appropriate, whether the

respondent is eligible for humanitarian asylum (Resp. Br. at 26; NOA at 4). *See* 8 C.F.R. § 1208.13(b)(1)(iii).

Also on remand, should the Immigration Judge conclude that the respondent has not established past persecution or a well-founded fear of persecution on account of her membership in the particular social group consisting of "Salvadoran women unable to leave a domestic relationship," the Immigration Judge should consider the two alternative particular social groups proposed by the respondent in her Pre-Hearing Brief, "Salvadoran women viewed as property by virtue of their status in a domestic relationship" and "Salvadoran women unable to leave a domestic relationship with a close gang affiliate," neither of which is addressed in the Immigration Judge's decision (Resp. Br. at 18 n.20, 33; NOA at 4; Exh. 6, Pre-Hearing Brief at 13, 18 n.134, 28). To the extent relevant, the Immigration Judge should make additional fact-findings regarding the respondent's claim that her former partner is a "close affiliate" of the M-18 gang in El Salvador (Resp. Br. at 5-8, 18-19 n.20, 28-32; NOA at 1, 4-7).

Additionally, upon consideration of the record and the respondent's arguments, we conclude that a remand to a different Immigration Judge is appropriate (Resp. Br. at 4 n.2, 6 n.3, 9 n.4, 11 n.9, 14 n.14, 19 n.22, 20 n.24, 22, 27 n.35, 28 n.38, 34; NOA at 6). On remand, the Immigration Judge should afford the parties the opportunity to provide additional evidence and arguments regarding the respondent's eligibility for asylum and for any other relief from removal for which she may be eligible. We decline to address the respondent's remaining appellate arguments at this time.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Court for assignment to a new Immigration Judge and for further proceedings consistent with the foregoing opinion.

FOR THE BOARD