U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: R[redacted], D[redacted] M[redacted]

A [redacted]

Date of this notice: 6/9/2015

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:
Adkins-Blanch, Charles K.
Greer, Anne J.
Miller, Neil P.

faylort
Userteam: Docket

File: [redacted] – Eloy, AZ Date: JUN - 9 2015

In re: D[redacted] M[redacted] R[redacted] a.k.a. Maria Merida Espinosa a.k.a. Susana Lopez

IN REMOVAL PROCEEDINGS

CERTIFICATION

ON BEHALF OF RESPONDENT: Charles Vernon, Accredited Representative

ON BEHALF OF DHS: Julie Nelson
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] - Present without being admitted or paroled

Lodged: 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 52-year-old native and citizen of El Salvador, appeals from the Immigration Judge's March 3, 2015, decision denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). The appeal will be dismissed in part and sustained in part.

This case has a lengthy procedural history culminating in the Immigration Judge's certification of her March 3, 2015, decision to the Board following the Board's remand directing the Immigration Judge to apply recent jurisprudence on the evolving issue of particular social group. [1] *See Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), and *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014).

The factual basis of the respondent's claim was set forth in the Immigration Judge's initial decision on September 15, 2011, and is not meaningfully disputed by the parties (9/15/11 I.J. Dec. at 4-6). The respondent was subjected to repeated and severe abuse by the man she lived with for more than 15 years. The couple eventually had 5 children together, who were also abused. The respondent did not own any property or have money, and was afraid to call the police. The respondent testified that she knew of other women who were trapped in similar relationships.

[1] There are three separate decisions from the Immigration Judge, which are identified by date when cited.

[redacted]

In 1996, the respondent first left El Salvador for Mexico. For 3 years, she returned to El Salvador each month because her children were still there and she was trying to bring them to Mexico. She described recurring problems with her partner when she made her return trips. In March 2001, the respondent first entered the United States without inspection. In 2005, she returned to Mexico because one of her daughters was sick. Sometime later in 2005, she returned to the United States without inspection after several unsuccessful attempts. In 2009, the respondent was returned to Mexico by immigration officials. The respondent last entered the United States on November 15, 2009. In May 2011, one of the respondent's sons told her that her former partner still intends to harm her.

An asylum application must be filed within 1 year of the applicant's last arrival in the United States. *See* section 208(a)(2)(B) of the Act; 8 C.F.R. § 1208.4(a)(2); *Matter of F-P-R-*, 24 I&N Dec. 681 (BIA 2008). In her September 15, 2011, decision, the Immigration Judge found that the respondent's May 5, 2011, asylum application was not timely filed within 1 year of her November 15, 2009, arrival date (9/15/11 I.J. Dec. at 9). Although the respondent concedes that the record does not currently establish that she qualifies for an exception to the 1-year filing deadline, she seeks an opportunity to further address this issue before the Immigration Judge.

We conclude pursuant to our de novo review over questions of law that the respondent is ineligible for asylum under section 208 of the Act because she did not file a timely asylum application or establish that an exception applies.[2] *See* 8 C.F.R. § 1003.1(d)(3)(ii). The respondent has been in removal proceedings since 2011. She did not challenge the 1-year bar finding in her initial appeal in 2011, and she has not advanced any arguments in the subsequent years that her failure to timely file was the result of changed or extraordinary circumstances. Under these facts, we decline to remand for further consideration of the issue. We therefore dismiss the respondent's appeal of the denial of her application for asylum.[3]

With respect to withholding of removal under section 241(b)(3) of the Act, the Immigration Judge found that the respondent met her burden of establishing that the harm she suffered rose to the level of persecution within the meaning of the Act, and that the Salvadoran government was unwilling or unable to control the persecutor in this case (9/15/11 I.J. Dec. at 11, 14). We agree with the Immigration Judge's findings in these respects. The critical issue here is whether the respondent defined a cognizable particular social group and if so, whether she was persecuted on account of her membership in that particular social group. 8 C.F.R. § 1208.16(b)(1). The respondent has advanced numerous social groups during the course of these proceedings (3/3/15

[2] Because the respondent is ineligible for asylum under section 208 of the Act, she is necessarily ineligible for humanitarian asylum. *See* 8 C.F.R. § 1208.13(b)(1)(iii).

[3] The Immigration Judge found that the respondent had not been convicted of a particularly serious crime barring her application for withholding of removal (9/15/11 I.J. Dec. at 14). The DHS has not challenged this determination.

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I.J. Dec. at 2). We will focus on the proffered social group defined as "El Salvadoran women in domestic relationships who are unable to leave."

We recently held that depending on the facts and evidence in an individual case, victims of domestic violence can establish membership in a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal. *Matter of A-R-C-G-*, *supra*. In that case, we held that under the facts and evidence, "married women in Guatemala who are unable to leave their relationship" was a cognizable particular social group. We also recently clarified our particular social group jurisprudence. In doing so, we stated that an applicant seeking asylum or withholding of removal based on his or her membership in a particular social group must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question (renaming the former concept of "social visibility"). *Matter of M-E-V-G-*, *supra*; *Matter of W-G-R-*, *supra*.

Here, the Immigration Judge found that the proposed social group "El Salvadoran women in domestic relationships who are unable to leave" was distinguishable from "married women in Guatemala who are unable to leave their relationship" because the respondent was not married to Jose (3/3/15 I.J. Dec. at 3). The Immigration Judge also found that the group was not defined with particularity and did not meet the social distinction test (3/3/15 I.J. Dec. at 4).

We disagree. First, we note that our decision in *Matter of A-R-C-G-*, *supra*, does not necessarily require that an applicant seeking asylum or withholding of removal based on domestic violence have been married to his or her abuser. Rather, we look to the characteristics of the relationship to determine its nature. Here, the respondent was in a lengthy relationship with her abuser, the couple had 5 children together, and the respondent tried to leave him on several occasions. These facts are similar to those in *Matter of A-R-C-G-*, *supra*, even though the respondent in that case was formally married to her abuser. We are thus satisfied that the respondent has established that members of her proffered social group share a common immutable characteristic of being women in domestic relationships that they are unable to leave.

We also disagree with the Immigration Judge's conclusory finding that the group is not defined with particularity (9/15/11 I.J. Dec. at 10; 3/3/15 I.J. Dec. at 3). The terms used to describe the group – "women," "domestic relationship," and "unable to leave" can be sufficiently particular in society, and we find them to be so here. *See Matter of A-R-C-G-*, supra at 393.

We also disagree that "El Salvadoran women in domestic relationships who are unable to leave" is not socially distinct. In her September 15, 2011, decision, the Immigration Judge found that there "is nothing from a social perspective that would distinguish the member from the rest of the population or cause others in the proposed social group to recognize herself as a member of the group" (9/15/11 I.J. Dec. at 10). Notably, the group analyzed in that decision was "poor women in violent relationships in El Salvador," not "El Salvadoran women in domestic relationships who are unable to leave." The Immigration Judge does not further discuss the issue of social distinction (formally "social visibility") in her November 29, 2013, decision. In her most recent decision, she held that "while the record suggests that victims of domestic violence are viewed as a distinct group within society, as evidenced by laws and programs enacted for the

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benefit of such group, the respondent's group does not appear to be as socially distinct" (3/3/15 I.J. Dec. at 4). However, in our view, these facts found by the Immigration Judge support the proposition that the group is socially distinct. Moreover, the respondent testified that she knew other women in similar relationships and that it was normal in Salvadoran society to be trapped in bad relationships with no recourse from the police. Finally, the country conditions evidence cited by the respondent on appeal supports our conclusion that the group is socially distinct (Respondent's Br. at 20-21).

In light of the foregoing, we conclude that "El Salvadoran women in domestic relationships who are unable to leave" is a cognizable particular social group in this case. We further find the Immigration Judge's alternative determination that the group was not "one central reason" for the persecution to be clearly erroneous (9/15/11 I.J. Dec. at 11, 14; 11/29/13 I.J. Dec. at 3; 3/3/15 I.J. Dec. at 4-5). *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (a persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by this Board for clear error). The respondent's inability to leave the relationship in the broader context of Salvadoran society supports a nexus determination in this matter. *See Matter of A-R-C-G-*, supra at 394. We therefore conclude that the respondent suffered past persecution on account of a particular social group. Accordingly, the burden shifts to the DHS to establish that there has been a fundamental change in circumstances such that the respondent no longer has a clear probability of future persecution. 8 C.F.R. § 1208.16(b)(1)(ii). Alternatively, the DHS bears the burden of showing that internal relocation is possible and is not unreasonable (*Id.*).

The Immigration Judge made an alternative finding that even assuming that the respondent had established past persecution on account of a statutorily enumerated ground, the DHS met its burden of proof on both the changed country conditions and internal relocation issues (9/15/11 I.J. Dec. at 14-15; 11/29/13 I.J. Dec. at 3; 3/3/15 I.J. Dec. at 5). The Immigration Judge reasoned that the respondent had not been back to El Salvador for many years, and "there has been some change in country conditions pertaining to the treatment of domestic violence matters." (9/15/11 I.J. Dec. at 14-15) She further noted that the respondent's former domestic partner is now 59 years old, and the respondent has family members in El Salvador that could assist her.

We disagree with the Immigration Judge. In our view, these limited observations by the Immigration Judge are not sufficiently developed or linked to evidence in the record to support the conclusions she reached. Rather, based on the record, we conclude that the DHS has not met its burden of rebutting the presumption of future persecution or showing that internal relocation is possible and is not unreasonable. We therefore conclude that the respondent is eligible for the withholding of removal under section 241(b)(3) of the Act.

Accordingly, the following orders will be entered.

ORDER: The respondent's appeal of the denial of asylum under section 208 of the Act is dismissed.

FURTHER ORDER: The respondent's appeal of the denial of withholding of removal under section 241(b)(3) of the Act is sustained.

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FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD