U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: B[redacted], A[redacted]

A[redacted]

Date of this notice: 12/8/2016

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:
Liebowitz, Ellen C
Greer, Anne J.
O'Herron, Margaret M

Userteam: Docket

File: [redacted] – Charlotte, NC Date: DEC – 8 2016

In re: A[redacted] B[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andres Lopez, Esquire

ON BEHALF OF DHS: Cori White
Assistant Chief Counsel

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 appeals from the Immigration Judge's December 1, 2015, decision denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13, 1208.16-1208.18. The Department of Homeland Security ("DHS") has filed a brief on appeal. We will sustain the appeal, and remand the record for completion of background checks.

We review for clear error the findings of fact, including determinations of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We find the Immigration Judge's adverse credibility finding to be clearly erroneous "[c]onsidering the totality of the circumstances" (I.J. at 4-5). Section 208(b)(1)(B)(iii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(iii). We agree that the inconsistencies identified by the Immigration Judge exist, but we find that the respondent's testimony and the corroborative evidence, particularly the 2001 and 2008 protective orders and the affidavits of the respondent's former neighbors, reconcile the discrepancies and rehabilitate her credibility. Section 208(b)(1)(B)(ii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(ii). While the respondent's written asylum statement was inconsistent with her credible fear interview in regard to when her ex-husband started abusing her (1999 vs. 2009), the May 2001 protective order and the affidavits

of the neighbors support a finding that the abuse occurred as early as the late 1990's or early 2000's (I.J. at 5; Exh. 3, Tabs H, J).[1]

Further, although the respondent's written statement, unlike her testimony, fails to allege that her ex-husband raped her in 2014, the respondent's explanation that she forgot to mention it because she was focused on escaping sufficiently reconciles this discrepancy under the circumstances in this case (I.J. at 5; Tr. at 52, 62). We also do not find the discrepancy between the respondent's testimony and her written statement regarding whether her ex-husband called her after she changed her phone number to be clear enough to support an adverse credibility finding (I.J. at 5; Tr. at 55-56).

There is no genuine dispute that the respondent's ex-husband physically and emotionally abused her for several years, and the Immigration Judge found that the respondent "may have experienced significant abuse" by her ex-husband and that she "has suffered emotionally and psychologically" (I.J. at 14). Thus, the identified discrepancies regarding the dates and specific incidents of abuse do not undermine the respondent's credibility with respect to her overall claim that she suffered years of significant physical and emotional abuse by her ex-husband. Section 208(b)(1)(B)(iii) of the Act.[2]

We also disagree with the Immigration Judge's alternative finding that the respondent did not meet her burden of proof (I.J. at 7-15). We agree with the respondent that she set forth a cognizable particular social group and that she is a member of that group (Respondent's Brief at 10-14). The respondent's proposed group, "El Salvadoran women who are unable to leave their domestic relationships where they have children in common," is substantially similar to that which we addressed in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) (holding that under the facts and evidence in that case, "married women in Guatemala who are unable to leave their relationship" was a cognizable particular social group). In this regard, we find that the totality of the evidence, including the 2014 El Salvador Human Rights Report, establishes that the group is sufficiently particular and socially distinct in El Salvadoran society (I.J. at 2, 10).[3]

We additionally conclude that the Immigration Judge's finding that the respondent was able to leave her ex-husband is clearly erroneous (I.J. at 10-11). The Immigration Judge's finding is

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[1] The Immigration Judge gave the affidavits limited weight because they were not prepared contemporaneously with the incidents of abuse described therein, and the affiants were not made available for cross-examination (I.J. at 5-6). We point out that the affiants had no reason to document the abuse until requested to do so by the respondent, and the affidavits are worthy of some evidentiary weight.

[2] Although the Immigration Judge did not make a separate finding as to whether the abuse, including rape and other physical abuse, rose to the level of past persecution, on this record, we find that it did (I.J. at 14; Tr. at 41-47, 50-51; Exh. 2, Tab C). 8 C.F.R. § 1208.13(b)(1).

[3] The Immigration Judge took administrative notice of the 2014 Human Rights Report for El Salvador issued by the United States Department of State (I.J. at 2).

based on the fact that the respondent separated and moved away from her ex-husband in 2008, and divorced him in 2013 (*Id.* at 11). However, the record reflects that the respondent's ex-husband continued to threaten and physically abuse the respondent after their separation, despite her move to a town over 2 hours away from him, and that he raped her in January of 2014, after their divorce (I.J. at 3; Tr. at 43-47, 50-51). Further, the ex-husband's brother, a local police officer, threatened the respondent in December of 2013, referred to her as his sister-in-law, despite the fact that she had already divorced his brother, commented that she would always be in a relationship with her ex-husband because they have children in common, and warned her to be careful as she would never know where the bullets would land (I.J. at 2; Tr. at 41-42). Moreover, in June of 2014, a friend of the ex-husband told the respondent that her ex-husband would kill her, and that he would help him dispose of her body (I.J. at 3; Tr. at 47). Thus, under the circumstances presented in this case, the Immigration Judge's finding that the respondent could leave the relationship with her ex-husband is not supported by the record (I.J. at 10-11).

The Immigration Judge also found that even if the respondent's proposed group is cognizable under the Act, she did not establish a nexus between the harm and her group membership (I.J. at 13-15). However, the record indicates that the ex-husband abused her from his position of perceived authority, as her ex-husband and the father of her children, and the threatening comments from her brother-in-law confirmed as much (I.J. at 2-3; Tr. at 41-47, 51). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a finding of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error"). The record as a whole supports a finding that the respondent's membership in the particular social group of "El Salvadoran women who are unable to leave their domestic relationships where they have children in common" is at least one central reason that her ex-husband abused her.

Finally, we disagree with the Immigration Judge's finding that the respondent has not demonstrated that the government of El Salvador is unable or unwilling to protect her from her ex-husband (I.J. at 14-15). *Mulyani v. Holder*, 771 F.3d 190, 197-98 (4th Cir. 2014) (harm must be inflicted by the government or a private person that the government is unable or unwilling to control). We recognize that the respondent was able to obtain 2 protective orders against her ex-husband (in 2001 and 2008), that the police arrested and detained the ex-husband for several days after 1 incident, and that the respondent did not always report her ex-husband's abuse to the police because she did not want her children to grow up without a father (I.J. at 14; Tr. at 56-59).

However, the neighbors' affidavits allege that they called the police during various episodes of abuse, and that the police often would not intervene, and the respondent's written statement asserts that her neighbors called the police at least 10 times over the course of several years, and that the police advised that they would not intervene unless they caught the ex-husband in the act or saw blood (I.J. at 14-15; Exh. 2, Tab C; Exh. 3, Tab J). Further, the respondent's brother-in-law, who warned her she would always be in a relationship with her ex-husband and that she would not know where the bullets came from, is a local police officer in El Salvador (I.J. at 2).

The 2014 El Salvador Human Rights Report does indicate some efforts have been made in the area of domestic violence. However, it also reflects that violence against women, including domestic violence, is a "widespread and serious problem," and that the government's efforts to

combat it were "minimally effective" (2014 El Salvador Human Rights Report at 16). *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950-53 (4th Cir. 2015) (the respondent established that Salvadoran authorities were unwilling or unable to control gangs when her credible testimony and other record evidence reflected that the neighborhood police were subject to gang influence, and the country conditions evidence noted the existence of "widespread gang influence and corruption within the Salvadoran prisons and judicial system"). This information, when combined with the respondent's experiences, supports the conclusion that the respondent established that the police were unable and unwilling to protect her.

On this record, the respondent has demonstrated past persecution on account of her membership in a cognizable particular social group. 8 C.F.R. § 1208.13(b)(1). As the DHS has not demonstrated a fundamental change in circumstances or the reasonableness of internal relocation, the lead respondent is also entitled to a presumption of a well-founded fear of future persecution on the same ground (Tr. at 52-53). 8 C.F.R. §§ 1208.13(b)(1)(i), (ii). Thus, the respondent has met her burden of proving her eligibility for asylum. 8 C.F.R. § 1208.13(a).

Accordingly, we will sustain the respondents' appeal as to the denial of her asylum application, and we will remand the record for completion of background checks. As we are sustaining the respondent's appeal as to her asylum claim, we will not address the Immigration Judge's denial of the applications for withholding of removal or CAT protection (I.J. at 15-16).

ORDER: The appeal is sustained.

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).

Ellen Rubowitz

FOR THE BOARD