U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: E G , I M A 997
Riders: 998 923

Date of this notice: 8/23/2016

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
O'Herron, Margaret M
Greer, Anne J.

Userteam: Docket

Files: A 997 – Cleveland, OH
A 923
A 998

Date: AUG 2 3 2016

In re: I M E G

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Brian J. Hoffman, Esquire

ON BEHALF OF DHS: Jeremy Santoro
Assistant Chief Counsel

APPLICATIONS: Asylum; withholding of removal; Convention Against Torture

The respondents, natives and citizens of Honduras, appeal from the decision of the Immigration Judge, dated November 19, 2015, which denied the lead respondent's[1] applications for asylum, withholding of removal, and protection under the Convention Against Torture (CAT). Sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act (Act), 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16(c)-1208.18. The appeal will be sustained in part, and remanded for further proceedings and the entry of new decision.

We review for clear error the findings of fact, including the determination 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).

On appeal, the respondent argues that the Immigration Judge erred in finding that she was not a member of a particular social group of women who are unable to leave a relationship (Resp. Br. at 7-10). The respondent also argues that she established past persecution on account of her membership in a particular social group, that she is entitled to a presumption that she has a well-founded fear of future persecution, and that the Department of Homeland Security (DHS) did not rebut the presumption of a well-founded fear of persecution (Resp. Br. at 10-11). The respondent asserts that the Immigration Judge should have considered her eligibility for humanitarian asylum and did not sufficiently consider her claim for protection under the CAT (Resp. Br. at 12-13).

[1] The lead respondent (A 997) is the mother of the two children and co-respondents (A 923) and (A 998). The co-respondents are derivative beneficiaries of their mother's asylum claim. Hereinafter, any reference to "the respondent" is to the lead respondent.

We uphold the Immigration Judge's determination that the past harm the respondent suffered from her former abuser over an extended period of time rises to the level of past persecution (I.J. at 16). The Immigration Judge found that the respondent testified credibly about the past harm she suffered at the hands of her former abuser between 1991 and 2001 (I.J. at 4). The respondent testified that her relationship with (Mr. O) began when he raped her and she became pregnant in 1991. She told Mr. O of her pregnancy and moved to his residence where, over the next 10 years, he abused her, threatened to kill her if she tried to leave him or called the police, and raped her multiple times (I.J. at 4; Tr. at 23-27). Under these circumstances, we agree with the Immigration Judge that the respondent met her burden of proof to demonstrate that she suffered past persecution. *See Haider v. Holder*, 595 F.3d 276, 287 (6th Cir. 2010); *Matter of O-Z- & I-Z-*, 22 I & N Dec. 23, 25-26 (BIA 1998).

Furthermore, we find that the respondent has demonstrated that she suffered past persecution on account of her membership in a particular social group (I.J. at 15; Tr. at 23-32, 40-49). In order to qualify for asylum, "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 persecuting the applicant." Section 208(b)(1)(B)(i) of the Act; *Matter of C-T-L-*, 25 I&N Dec. 341, 343 (BIA 2010). We agree with the respondent's appellate argument that her proposed group of "Honduran women unable to leave a domestic relationship" is a cognizable particular social group under the Act (Resp. Br. at 7-10; I.J. at 15). *See Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) (holding that depending on the facts and evidence in an individual case, victims of domestic violence can establish membership in a particular social group that forms the basis of a claim for asylum).

The evidence establishes that the respondent was "unable to leave" the relationship with Mr. O for 10 years. The respondent testified that she tried to leave Mr. O many times during the 10 years that she resided with him, but he would force her to return by threatening to kill her or taking their child away and at one point, he did take their child (I.J. at 4, Tr. at 26-31). On one occasion, Mr. O threatened to kill the respondent at gun point and he threatened to have his cousin, a known murderer, target her if she tried to leave or report her abuse to the police (I.J. at 4; Tr. at 31).

Under the circumstances of this case, we find it appropriate to remand the record to the Immigration Judge to more fully consider the question of whether the respondent established that the government of Honduras was unable or unwilling to assist her during the period of abuse. *See Pilica v. Ashcroft*, 388 F.3d 941, 950 (6th Cir. 2004) ("persecution [i]s the infliction of harm or suffering by the government, or persons the government is unwilling or unable to control"). The respondent argues that the police in Honduras were unable or unwilling to control her former abuser between 1991 and 2001 (Resp. Br. at 7-10). The respondent testified that she was able to regain custody of her son by an order of a local judge, but she was forced to return to her abuser as a result of his continued threats and her fear that he would kill her if she reported the abuse to the police (I.J. at 4; Tr. at 26-32, 48-49). On remand, the parties may provide additional evidence and arguments supporting their contentions regarding whether the police were unable or unwilling to protect her from her abuser during the relevant period.

If the respondent establishes that the Honduran government was unable or unwilling to control her abuser during the 10-year period of abuse, she is entitled to a rebuttable presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1); *Bi Xia Qu v. Holder*, 618 F.3d 602, 606 (6th Cir. 2010). However, we agree with the Immigration Judge's alternate finding that, assuming past persecution, the resulting presumption of a well-founded fear of persecution is rebutted by the evidence demonstrating that the respondent was able to live apart from her former abuser for 13 years in Honduras (I.J. at 16; Tr. at 48). Specifically, the respondent left her abusive relationship with Mr. O in 2001, she began a relationship with J V in 2002, she and Mr. V had two children together before they separated in 2012, and she moved to an apartment in Copan (I.J. at 16; Tr. at 52-53). In 2008, Mr. O threatened her during a single phone call, but that was only contact with him since she left him in 2001 (I.J. at 4; Tr. at 27-28, 44-46). The respondent resided in Honduras until 2014 without any problems with her former abuser (I.J. at 17; Tr. at 52-53).

However, where the government rebuts the presumption of a well-founded fear, the respondent should still have an opportunity to present a claim for humanitarian asylum. *See* 8 C.F.R. §§ 1208.13(b)(1)(iii)(A), (B); *Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012). Therefore, we will remand the record for further evaluation of the issue of unable or unwilling in the context of past persecution; if this element is established, the respondent should have the opportunity to establish that she is eligible for a humanitarian grant of asylum.

Regarding the respondent's independent claim of a well-founded fear of persecution, we agree with the Immigration Judge that the respondent did not demonstrate that she has a well-founded fear of future persecution from her former abuser with whom she had no direct contact between 2001 and 2014 (I.J. at 17; Tr. at 44-46). We accordingly uphold the Immigration Judge's finding that on this matter.[2]

We therefore will remand the record for the issues discussed above. On remand, the parties should be given the opportunity to update the evidentiary record. Accordingly, the following order will be entered.

ORDER: The record is remanded for further proceedings consistent with the foregoing opinion.

Ellen Reibowitz
FOR THE BOARD

[2] The respondent did not challenge the Immigration Judge's finding that the proposed particular social group of women lacking effective male protection is not a cognizable particular social group (I.J. at 16). Therefore, the issue is waived on appeal. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n. 2 (BIA 2012) (when respondent fails to substantively appeal issue addressed in Immigration Judge decision that issue is waived before Board).