U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
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Name: C[redacted] T[redacted], [redacted] **A [redacted]**

Date of this notice: 6/15/2017

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

Userteam: Docket

File: A[redacted] – San Antonio, TX Date: JUN 15 2017

In re: [redacted] O[redacted]-T[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Manoj Govindaiah, Esquire

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 (conceded)

APPLICATION: Asylum; withholding of removal; Convention Against Torture

This case was last before us on November 9, 2015, when we granted the respondent's motion to reconsider our prior decision and remanded the record for further consideration of the respondent's eligibility for relief in light of our decision in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). On remand, the Immigration Judge, in a decision dated February 9, 2016, denied the respondent's applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Sections 208(b), 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b), 1231(b)(3); 8 C.F.R. §§ 1208.16(c), 1208.18. The respondent, a native and citizen of Honduras, has appealed from that decision. The Department of Homeland Security ("DHS") has not filed its opposition to the appeal. The appeal will be sustained and the record will be remanded to the Immigration Court.

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 issues of law, judgment, and discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The procedural history of this matter is set forth in the Immigration Judge's most recent decision (I.J. 02-09-2016 at 1-3).[1] The only issue on appeal is the respondent's eligibility for relief from removal because she conceded removability. The respondent claims that she is eligible for asylum and related relief because her ex-domestic partner beat, abused, and threatened her in Honduras for approximately 9 years—between about 2000 and 2009 (I.J. 03-04-2015 at 3; I.J. 02-09-2016 at 3-9; Exh. 2; Exh. 3 at Tabs B1-B2; Exh. 4; Exh. 6 at Tabs B5, B6; Tr. 03-04-2015

[1] Because this matter involves multiple decisions from the Immigration Judge as well as similarly paginated transcripts of proceedings before and after remand, we will refer to each decision and transcript based on the relevant date.

at 47-68; Tr. at 02-09-2016 at 48-57).[2] More recently, this partner abducted one of the respondent's sons, who had been residing with the respondent's mother in Honduras (I.J. 02-09-2016 at 3-9; Exh. 6 at Tabs B5, B6; Tr. at 02-09-2016 at 23-25). In the event she is removed to Honduras, the respondent believes that, in order to reassert custody over her son, she will be forced to return to her ex-partner, who will subject her and her children to further abuse (I.J. 02-09-2016 at 3-9; Exh. 6 at Tabs B5, B6; Tr. at 02-09-2016 at 48-57).

The Immigration Judge deemed credible the respondent's testimony that she suffered abuse at the hands of her ex-partner in Honduras and separated from her partner and lived elsewhere in that country for approximately 5 years before coming to the United States in 2014 (I.J. 02-09-2016 at 5-6). However, he deemed incredible her testimony that she: (1) would not seek assistance from the Honduran legal system to reassert custody over the child her ex-partner abducted; (2) would return to this abuser if removed; and (3) would return to Honduras with her daughter, who currently resides with the respondent in the United States and is eligible for special immigrant juvenile status (I.J. 02-09-2016 at 5-6). The Immigration Judge's partial adverse credibility finding is clearly erroneous. *See Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003) ("[A] finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.").

The Immigration Judge's finding that the respondent would not make an effort to reassert custody over her child in Honduras upon her return to that country misstates the respondent's testimony, which reflects that she actually stated that she did not know whether she would be able to reassert her right to such custody using the Honduran legal system (I.J. 02-09-2016 at 5; Tr. at 52-53). In addition, the Immigration Judge's findings that it is less than credible that the respondent would take her daughter back to Honduras and that she would return to her abuser in Honduras are speculative and disregard: (1) the respondent's testimony that she could not leave her minor daughter in the United States; (2) her testimony that she would have to establish contact with her abuser in order to reacquire her son from him; and (3) evidence and expert testimony[3] establishing the tendency of domestic violence victims to return (involuntarily, or otherwise) to their abusers (I.J. 02-09-2016 at 5; Exh. 2; Exh. 6 at Tabs B5, B6; Tr. 02-09-2016 at 23-32, 49-53). *See Wang v. Holder*, 569 F.3d 531, 537 (5th Cir. 2009) (stating that "credibility determinations that are unsupported by the record and are based on pure speculation or conjecture will not be upheld"). We will therefore reverse the Immigration Judge's partial adverse credibility determination because it is clearly erroneous. *See Matter of R-S-H-, supra.*

Upon de novo review, we further conclude that the respondent has shown that the abuse she suffered at the hands of her ex-partner over the course of nearly a decade, when considered in the aggregate, rises to the level of past persecution under the Act (I.J. 03-04-2015 at 3; I.J. 02-09-2016

[2] Although the respondent testified that she also suffered abuse at the hands of a prior partner, who is now dead, that relationship is not relevant to our analysis (I.J. 03-04-2015 at 5; I.J. 02-09-2016 at 3).

[3] Because the Immigration Judge did not render an adverse credibility determination regarding the testimony of the respondent's expert witness, we shall presume this witness to be credible for purposes of this appeal. *See* section 208(b)(1)(B)(iii) of the Act.

at 3-9; Exh. 2; Exh. 3 at Tabs B1-B2; Exh. 4; Exh. 6 at Tabs B5, B6; Tr. 03-04-2015 at 47-68; Tr. 02-09-2016 at 48-57). *See Eduard v. Ashcroft*, 379 F.3d 182, 188 (5th Cir. 2004) (holding that an alien may establish past persecution on the basis of the cumulative effects of multiple incidents even if each incident, considered in isolation, would not rise to the level of persecution).

The respondent claims that her ex-partner inflicted this persecution upon her on account of her membership in a particular social group composed of either Honduran women in a domestic relationship unable to leave or Honduran women regarded as property and who are unable to leave a domestic relationship (I.J. 02-09-2016 at 7). Upon de novo review, we conclude that these groups, under the facts of this case, are cognizable under the Act. *See Matter of A-R-C-G-*, *supra*, at 390 ("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."). In *A-R-C-G-*, we concluded that a group composed of "married women in Guatemala who are unable to leave their relationship" was cognizable under the Act because "marital status can be an immutable characteristic where the individual is unable to leave the relationship" and the defining terms of the group: "women," "marriage," and "unable to leave the relationship . . . . can combine to create a group with discrete and definable boundaries." *Id.* at 392-93.

The record here reflects that the respondent lived with her ex-partner for a number of years and bore his children (I.J. 03-04-2015 at 3; I.J. 02-09-2016 at 3-9; Exh. 2; Exh. 3 at Tabs B1-B2; Exh. 4; Exh. 6 at Tabs B5, B6; Tr. 03-04-2015 at 47-68; Tr. at 02-09-2016 at 48-57). Thus, the "domestic relationship" that defines the respondent's proposed social group is substantively similar to the "marital relationship" we discussed in *Matter of A-R-C-G-*, *supra*. And, akin to the group in *A-R-C-G-*, the fact that such Honduran women are unable to leave their domestic relationships establishes that the group is defined by an immutable characteristic and is sufficiently particular. *See id.* at 392-93. We therefore conclude that the respondent's proposed group is cognizable under the Act. *See id.* at 392-94.

The Immigration Judge's determination that the respondent was not a member of this particular social group when she experienced her ex-partner's abuse is clearly erroneous (I.J. 02-09-2016 at 7-9). *See id.* at 391 (reviewing the Immigration Judge's factual findings regarding whether a person is a member of a particular social group for clear error). The Immigration Judge's determination in this regard does not recognize that the respondent's abuser has continued to threaten her, both in Honduras and here in the United States, and he has taken the respondent's son from his grandparents and mistreated this child (I.J. 02-09-2016 at 3-9; Exh. 6 at Tabs B5, B6; Tr. 02-09-2016 at 19-25, 39-42, 46, 51-55).

We also find clear error in the Immigration Judge's determination that the harm inflicted by the respondent's ex-partner was a result of his drug abuse—rather than on account of her membership in a particular social group (I.J. 02-09-2016 at 7). *See Orellana-Monson v. Holder*, 685 F.3d 511, 518 (5th Cir. 2012) (holding that an applicant for asylum must demonstrate that his or her membership in a particular social group "was or will be at least one central reason" for the persecution); *see also Matter of E-R-M-F- & A-S-M-*, 25 I&N Dec. 580, 587 (BIA 2011) (emphasizing that a "persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by us for clear error"). The Immigration Judge based his

conclusion on the respondent's testimony that her ex-partner's abuse started after he began abusing drugs (I.J. 02-09-2016 at 7).

However, this finding disregards evidence reflecting that substance abuse does not cause domestic violence (*see* Exh. 3 at Tab C2). Thus, the fact that the ex-partner's drug abuse coincided with his physical abuse of the respondent, does not mean that the respondent's membership in a particular social group was not one central reason for his abusive conduct. *See Orellana-Monson v. Holder*, *supra*. Rather, the record reflects that the ex-partner repeatedly told the respondent that she was unable to leave their relationship, he continues to call and threaten her, and he has abducted one of her children (I.J. 03-04-2015 at 3; I.J. 02-09-2016 at 3-9; Exh. 2; Exh. 3 at Tabs B1-B2; Exh. 4; Exh. 6 at Tabs B5, B6; Tr. 03-04-2015 at 47-68; Tr. at 02-09-2016 at 48-57). We will therefore reverse the Immigration Judge's determinations that the respondent has not shown that she was a member of a cognizable particular social group when she experienced past persecution at the hands of her ex-partner and that her partner did not inflict this abuse on account of her membership in this group (I.J. 02-09-2016 at 7-9).

Finally, in light of the fact that the Honduran authorities did not intervene after the respondent's ex-partner abducted her son, we conclude that the respondent has established that the Honduran government was unable or unwilling to control the respondent's ex-partner and protect her from his abuse. *See Adebisi v. INS*, 952 F.2d 910, 914 (5th Cir. 1992) (holding that past persecution must be inflicted under government sanction, including persecution by groups "the government is unable or unwilling to control").[4] Thus, the respondent has established that she experienced past persecution, and we conclude that the DHS has not rebutted the presumption of future persecution pursuant to 8 C.F.R. § 1208.13(b)(1).

We will therefore reverse the Immigration Judge's decision to deny the respondent's application for asylum under section 208(b) of the Act and we will grant her application for this form of relief. In view of this disposition, we need not address the respondent's arguments

[4] While the Immigration Judge found that the respondent had not shown that a Honduran public official or other person acting in an official capacity would acquiesce in future torture in assessing her CAT claim, he did not, for purposes of the asylum and withholding claims, find whether such individuals were unwilling and unable to protect her from the harm she experienced from approximately 2000 to 2009 (*see* I.J. 02-09-2016 at 10 (noting that the police did in one instance arrest the respondent's ex-partner, but released him the next day, and the respondent did not report any further abuse to the authorities, but not finding whether this was demonstrative of the government's ability and willingness to control the respondent's ex-partner). *See Montes v. Holder*, 394 F. App'x 95, 99 (5th Cir. 2010) (suggesting that an alien's failure to report past persecution will not preclude an alien from demonstrating that the government was unwilling or unable to protect her if her decision not to report the harm was reasonable); *see also Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (concluding that, in spite of the alien's failure to seek assistance from authorities, the evidence reflected that the Moroccan authorities would have been unable or unwilling to control her abuser's conduct because the alien "would have been compelled to return to her domestic situation and her circumstances may well have worsened").

regarding her eligibility for withholding of removal or protection under the CAT. Accordingly, the following orders will be entered.

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 DHS to complete or update the appropriate identity, law enforcement, or security investigations or examinations, for further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

FOR THE BOARD

Board Member Ellen Liebowitz respectfully dissents without opinion.