

Falls Church, Virginia 22041

File: (b) (6) – Charlotte, NC

Date:

In re: (b) (6)

APR 28 2017

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jeremy L. McKinney, Esquire

CHARGE:

Notice: Sec. 212(a)(6)(C)(ii), I&N Act [8 U.S.C. § 1182(a)(6)(C)(ii)] -
False claim to citizenship

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

This matter was previously before the Board on April 3, 2015, at which time we reversed the Immigration Judge's October 31, 2012, adverse credibility finding and remanded for the Immigration Judge to reevaluate the respondent's applications for asylum and withholding of removal pursuant to sections 208 and 241(b)(3) of the Immigration and Nationality Act (the "Act"), 8 U.S.C. §§ 1158 and 1231(b)(3), respectively, and protection under the Convention Against Torture pursuant to 8 C.F.R. § 1208.16(c)(2), in light of the intervening case of *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014). On remand, the Immigration Judge issued a decision on October 28, 2015, again denying the respondent's applications for relief and protection and ordering the respondent removed. The respondent, a native and citizen of Mexico, has timely appealed this decision. The Department of Homeland Security ("DHS") has not filed a response. The respondent's appeal will be granted, and the record will be remanded to the Immigration Judge for further proceedings and for the entry of a new decision.

The Board reviews an Immigration Judge's findings of fact, including credibility determinations and the likelihood of future events, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review all other issues, including questions of law, judgment, or discretion, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims past persecution and a fear of future persecution from her stepfather, who she claims verbally, physically, and sexually abused her for years when she was a girl. She also asserts that her stepfather, who is also her uncle, ordered her cousins to kill her brothers because they reported his abuse of the respondent and her sisters to authorities, and supported her in her claims against her stepfather. As to the respondent's domestic abuse claim, the Immigration Judge acknowledged the Board's reversal of his adverse credibility finding, and thus found the respondent to be credible (I.J. at 3). However, he found that the respondent had

not sufficiently corroborated her family relationship to her stepfather, or even his existence (I.J. at 4). *See, e.g. Singh v. Holder*, 699 F.3d 321 (4th Cir. 2012) (finding that the Immigration Judge's expectation of some form of corroboration from the respondent's family, or some explanation why such evidence could not reasonably be obtained, "falls well within his discretion as the trier of fact under the REAL ID Act's corroboration provision").

The Immigration Judge found that corroboration was required solely because of an inconsistency regarding the identity of the respondent's abuser. Specifically, he found that "[g]iven the inconsistencies regarding whether [her abuser] is the respondent's uncle or stepfather the Court finds corroborating evidence establishing their familial relationship especially important" (I.J. at 4). We find that the respondent has convincingly explained on appeal that there is no inconsistency. Following her father's death, her uncle (her father's brother) moved in to her family home and began a relationship with her mother (Respondent's Br. at 10; Tr. at 50-51). It is this man who abused her and her sisters. He was, therefore, correctly described both as her uncle and her stepfather.

In any case, even if corroboration were required, we find no reason why the affidavits of the respondent's two sisters would be insufficient to corroborate his relationship to the respondent (Exh. 3, Tab B; Exh. 4, Tab F at 211-13). While the Immigration Judge found that these affidavits were entitled to little probative weight as to the events claimed by the respondent, as they were made by non-percipient witnesses who were not subject to cross-examination, it does not necessarily follow that they are insufficient to establish that the respondent's uncle is the respondent's stepfather – a fact that the affiants are able to verify. We find that the respondent has sufficiently corroborated her claim regarding her domestic abuse by her stepfather.

There appears to be no dispute that the verbal, physical and sexual abuse suffered by the respondent at the hands of her stepfather, which occurred several times per week over a period of years, rises to the level of past persecution. *See, e.g., Barahon v. Holder*, 588 F.3d 228, 232, (4th Cir. 2009) (observing that "[a] key difference between persecution and less-severe mistreatment is that the former is 'systematic' while the latter consists of isolated incidents"). However, the Immigration Judge rejected as invalid the respondent's proposed particular social group of "Mexican children who are perceived as property and lack effective familial protection," finding that it lacked the requisite immutability, particularity, and social distinction (I.J. at 7-9). 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. *Matter of A-R-C-G-*, *supra*, at 390. On review, we find that the particular social group posited by the respondent, under the circumstances of this case, is valid under the reasoning of our recent decisions clarifying the approach to particular social groups. *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

While the Immigration Judge also found that the respondent had not established a nexus between the harm she suffered and her membership in this particular social group, finding that her stepfather abused her and her siblings "because they lived in the same house as a matter of convenience where he could engage in private violence against them," we find clear error in this finding, and will reverse it. *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (stating that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error). Based on her credible testimony, it established that the respondent's

stepfather preyed on her and her other minor siblings because they were vulnerable, as their father was deceased and her mother refused to believe their accounts when they tried to tell her of the abuse. Moreover, as the respondent detailed in her declaration, after her father died, her uncle, who had always coveted her father's possessions, immediately took control of his brother's home and immediate family members (Exh. 3, Tab B at 80).

In addition, the respondent's credible testimony establishes that under the particular circumstances of this case, the government of Mexico was unable or unwilling to control her persecutor. *See generally Lopez-Soto v. Ashcroft*, 383 F.3d 228, 234 (4th Cir. 2004) (vacated pending reh'g en banc on other grounds) (observing that the Act requires that an alien seeking asylum and alleging past persecution show that the harm was inflicted by the government or by others whom the government is unable or unwilling to control). Notably, after the respondent filed a report with her municipality regarding the sexual abuse by her stepfather, the authorities took little action, and the abuse by her stepfather continued (Exh. 3, Tab B at 73-74; Tr. at 54-55). Further, as recognized by the Immigration Judge, the record contains evidence that police reports are not always effective in protecting Mexican children (I.J. at 11).

In cases where, as here, the respondent has demonstrated past persecution, the DHS bears the burden of establishing by a preponderance of the evidence that the conditions in his or her home country have changed such that he or she no longer has a well-founded fear of persecution or that he or she could avoid persecution by relocating to another part of the country. 8 C.F.R. § 1208.13(b)(1)(i); *Kourouma v. Holder*, 588 F.3d 234, 240 (4th Cir. 2009). Therefore, we will remand this matter to the Immigration Judge to allow the DHS an opportunity to rebut the presumption. If, on remand, the Immigration Judge finds that the DHS has rebutted the presumption of a well-founded fear of persecution, he should consider whether the respondent warrants a discretionary grant of "humanitarian asylum" under 8 C.F.R. § 1208.13(b)(1)(iii), either because of the severity of the past persecution she suffered, or because there is a reasonable possibility that she may suffer other serious harm upon removal to Mexico.

On remand, the parties should be afforded an opportunity to update the record, and to make any additional legal and factual arguments desired regarding the respondent's eligibility for relief from removal. The Board expresses no opinion regarding the ultimate outcome of these proceedings. In light of the foregoing, we do not reach the alternative basis upon which the respondent seeks asylum, i.e., the events surrounding her brothers' deaths, or the respondent's applications for withholding of removal or protection under the Convention Against Torture. Accordingly, the following orders will be entered.

ORDER: The appeal is sustained in part.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.



FOR THE BOARD