



U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

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Name: E [REDACTED] -M [REDACTED] A [REDACTED]

Date of this notice: 2/18/2015

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:

Miller, Neil P.

Adkins-Blanch, Charles K.

Greer, Anne J.

YungD

Userteam: Docket

Falls Church, Virginia 20530

File: A [REDACTED] - Los Fresnos, TX

Date:

FEB 18 2015

In re: [REDACTED] E [REDACTED] - M [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Roy Lozano, Esquire

ON BEHALF OF DHS: Jose R. Solis
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's September 11, 2014, decision. In that decision, the Immigration Judge denied the respondent's applications for asylum and withholding of removal (Form I-589) and protection under the Convention Against Torture ("CAT"). The appeal will be sustained. The record will be remanded.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii). The respondent's applications were filed after May 11, 2005, and are governed by the amendments to the Act brought about by the REAL ID Act of 2005. See *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

The Immigration Judge determined that the particular social group articulated by the facts of the respondent's claim – women unable to leave a relationship – lacks the requisite particularity and social distinction to be a legally cognizable particular social group (I.J. at 11-12). See *Orellana-Monson v. Holder*, 685 F.3d 511, 520-22 (5th Cir. 2012); *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). In this regard, the Immigration Judge found the respondent's claim distinguishable from our recent decision recognizing that, in some circumstances, married women in Guatemala who are unable to leave their relationship can constitute a particular social group. See *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014).

Although the legal restraints of divorce and separation may not apply to someone in a long-term, but not necessarily legally formalized relationship, such as that of the respondent and her former partner, the absence of a legal marriage is not *ipso facto* a distinguishing factor that precludes otherwise analogous claims under the particular social group rationale set forth in *Matter of A-R-C-G-*, *supra*. (I.J. at 11). As discussed by the Immigration Judge, the respondent was with her partner for 19 years and they have three children together. When the police were called, the police advised them to resolve their problems themselves (I.J. at 4, 11). See *Matter of A-R-C-G-*, *supra*, at 393 (noting the significance of the refusal of police to interfere in a marital

A [REDACTED]

relationship). In sum, the particular social group articulated in the instant case is not significantly distinct from the particular social group defined in *Matter of A-R-C-G-*, *supra*.

The record will be remanded for further proceedings and analysis as to whether the respondent's membership in this cognizable particular social group is a central reason for any persecution she fears if returned to El Salvador.¹ See section 208(b)(1)(B)(i) of the Act (asylum applicants must demonstrate that a protected ground was or will be at least one central reason for any persecution); *Shaikh v. Holder*, 588 F.3d 861 (5th Cir. 2009); *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010) (holding that the one central reason test also applies to withholding claims); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). And, if so, the Immigration Judge shall also provide the Department of Homeland Security the opportunity to establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the respondent to relocate. See 8 C.F.R. § 1208.13(b)(3)(ii). The Immigration Judge may also consider, if appropriate, whether the respondent is eligible for humanitarian asylum. See 8 C.F.R. § 1208.13(b)(1)(iii).

Accordingly, the following orders shall be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings and the issuance of a new decision.


FOR THE BOARD

¹ The Immigration Judge's determination that the mistreatment the respondent endured rises to the level of persecution is not disputed (I.J. at 10). See *Matter of D-I-M-*, 24 I&N Dec. 448 (BIA 2008).