

Falls Church, Virginia 22041

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Date: 4-25-16

In re:

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Christina Brown, Esquire

ON BEHALF OF DHS: Tyler R. Wood
Assistant Chief Counsel

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

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents, natives and citizens of Honduras, appeal from the Immigration Judge's July 1, 2015, decision denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture.¹ See sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. § 1208.16(c). The appeal will be sustained and the record will be remanded.

We review an Immigration Judge's findings of fact, including findings regarding witness credibility and what is likely to happen to the respondent, 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, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). The respondents' applications were filed after May 11, 2005, and therefore are governed by the provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

¹ Due to the circumstances presented in this case, and to resolve any issue regarding jurisdiction in this case, we will adjudicate the instant appeal in the exercise of our certification authority. See 8 C.F.R. § 1003.1(c).

The lead respondent is the mother of the two minor respondents.² The respondent claims her former boyfriend, the father of her daughter, abused her and will abuse her again if she returns to Honduras because of her membership in a particular social group which she defined as “women who are victims of domestic violence in a relationship she cannot leave” (I.J. at 8; Tr. at 16). She also defined her particular social group as “women who cannot leave a relationship” (Tr. at 52).

The Immigration Judge found that the respondent did not establish her eligibility for asylum under section 208 of the Act. She found that the respondent suffered harm that rose to the level of persecution, but concluded that the respondent’s proposed group defined as “women who are victims of domestic violence in a relationship she cannot leave,” was not a cognizable particular social group (I.J. at 8-11). Alternatively, the Immigration Judge found that even if the respondent defined a cognizable particular social group, she did not establish that the Honduran government was unwilling or unable to control the persecutor in this case (I.J. at 11). The Immigration Judge also found that the respondent did not present available corroborative evidence such as medical records to document her past persecution (I.J. at 11).

We agree with the Immigration Judge’s finding that the respondent suffered harm that rises to the level of persecution (I.J. at 8). We also agree with the Immigration Judge that the group defined as “women who are victims of domestic violence in a relationship she cannot leave,” is not a cognizable particular social group insofar as it is defined solely by the risk of persecution (I.J. at 10-11). *See Matter of A-R-C-G-*, 26 I&N Dec. 388, 393 n.14 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 215 (BIA 2014) (“Persecutory conduct aimed at a social group cannot alone define the group, which must exist independently of the persecution.”).

However, we agree with the respondent’s appellate argument that the Immigration Judge did not consider another group she proposed, namely, “women who cannot leave a relationship” (Tr. at 52). *See* Respondent’s Brief at 6-8. We agree with the respondent that this proposed group is a cognizable particular social group and that she is a member of that group.

The Board recently clarified the elements required to establish a cognizable particular social group. *See Matter of W-G-R-*, *supra*; *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). An applicant for asylum or withholding of removal based on membership in a particular social group must establish that the group 1) is composed of members who share a common immutable characteristic, 2) is defined with particularity, and 3) is socially distinct within the society in question. *See Matter of W-G-R-*, *supra*, at 212-18; *Matter of M-E-V-G-*, *supra*, at 237. We also recently held 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. *Matter of A-R-C-G-*, *supra*. In that case, we held that under the facts and evidence, “married women in Guatemala who are unable to leave their relationship” was a cognizable particular social group.

² We will refer to the lead respondent as “the respondent.” The minor respondents are derivatives of their mother’s asylum application. *See* section 208(b)(3)(A) of the Act.

The respondent's proposed group defined as "women who cannot leave a relationship" is composed of members who share the common immutable characteristic of gender. *Matter of A-R-C-G-*, *supra*, at 392. To satisfy the particularity requirement, a group must be discrete and have definable boundaries. See *Matter of W-G-R-*, *supra*, at 214. The respondent's proposed group is defined by terms that make it sufficiently particular in the society, i.e., "women," "relationship," and "cannot leave." Social distinction (formerly known as social visibility) means that the group must be perceived as a group by society, regardless of whether society can identify the members of the group by sight. *Id.* at 216-17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217 ("Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group."). In this case, the evidence of record, including the country conditions documentation, establishes that the group is socially distinct in the society (Exh. 4, Tab J; Exh. 6, Tab E; Exh. 7 at 21).

Additionally, we do not agree with other aspects of the Immigration Judge's particular social group analysis including her assertion that the respondent's group was not cognizable because she was not married to the abuser and because her relationship was of a short duration (I.J. at 10). See Respondent's Brief at 10-12. In *Matter of A-R-C-G-*, *supra*, we reasoned that marital status could be an immutable characteristic depending on the facts and circumstances of the case, but we did not require that a victim of domestic violence be married to the abuser. Nor did we require that the victim of domestic violence be in a lengthy relationship with the abuser. In this case, the respondent's relationship to the perpetrator is shown by the fact that they have a child together. Also, the Immigration Judge's finding that the respondent was able to leave the perpetrator is clearly erroneous (I.J. at 10-11). See Respondent's Brief at 8-10. The respondent testified that although she lived apart from her boyfriend, he regularly came to her residence to threaten and terrorize her (Tr. at 47-49).

We also disagree with the Immigration Judge's determination that the Honduran government is unable or unwilling to protect the respondent from the abuser (I.J. at 11). The Immigration Judge found that the respondent did not seek the help that was available to her (I.J. at 11). Yet, the record contains copies of police reports showing that the respondent sought the protection of law enforcement (Exh. 4, Tab D). The respondent credibly testified that the police told her to file another report when the abuser was released from prison. She did not file such a report because she left the country before he was released (Tr. at 23, 36-28; Exh. 4, Tab D). The respondent, who attempted unsuccessfully to relocate to northern Honduras, showed that internal relocation was not reasonable (Tr. at 38-39). See *Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012).

Finally, in reaching her decision, the Immigration Judge did not fully consider the background documentation. While the Immigration Judge correctly found that Honduras has enacted laws and established programs to assist victims of domestic violence, the country condition documentation shows that domestic violence remains a widespread problem and women are reluctant to lodge a complaint (Exh. 4, Tab J; Exh. 6, Tab E; Exh. 7 at 21). Based on the totality of evidence of record, we conclude that the respondent is eligible for asylum.

ORDER: The appeal of the denial of asylum under section 208 of the Act 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).

A handwritten signature in cursive script, appearing to read "M. O'Hara", is written above a horizontal line.

FOR THE BOARD