Files: (b)(6) – (b)(6)

Date: JAN - 6 2022

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Amanda I. Moore, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents,[1] a mother (lead respondent) and her two minor children (rider respondents) who are natives and citizens of Guatemala, appeal the Immigration Judge's October 25, 2017, decision, denying the respondent's application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), 8 C.F.R. § 1208.18. The appeal will be dismissed.

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 questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent alleged past and future harm at the hands of (b)(6) a former security officer who raped her when she was 9 years old (IJ at 3; Tr. at 53). She testified that (b)(6) subsequently joined the gang and in 2014, he and the gang members harassed the respondent, threatened to rape her, and threw rocks at the window of her home (IJ at 3-4; Tr. at 55-57). The responded claimed that her feared harm was on account of her membership in her proposed particular social group comprised of "unprotected women living alone in Guatemala without a head of household" (IJ at 2; Tr. at 64). The Immigration Judge denied the respondent asylum and withholding of removal under the Act.

[1] Hereinafter, "the respondent" refers to the lead respondent (A (b)(6)). Her minor children (A (b)(6) and A (b)(6)) are included as derivative beneficiaries of her asylum application (IJ at 2). The rider respondents are ineligible to derive withholding of removal under the Act or CAT protection.

Upon de novo review, we conclude that the respondent's proposed particular social group, "unprotected women living alone in Guatemala without a head of household," is not cognizable. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (stating that the Board reviews the cognizability of proposed particular social groups de novo); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (holding that for a proposed particular social group to be legally cognizable, and thus constitute a protected ground, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question).

The proposed social group is not sufficiently particular, as it is overbroad and lacks definable boundaries (IJ at 13). As described, the group could include individuals of varying ages, backgrounds, and other identifying factors. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239-40; *Matter of W-G-R-*, 26 I&N Dec. 208, 213-15 (BIA 2014). Furthermore, the respondent has not established that the term "unprotected women" has a commonly recognized definition, such that the group is defined with sufficient particularity. *See, e.g. Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008) (finding the group "male children who lack stable families and meaningful adult protection, who are from middle and low income classes, who live in the territories controlled by the MS-13 gang, and who refuse recruitment" too amorphous). This term does not provide an adequate benchmark for determining who is a member of the group. *See Matter of W-G-R-*, 26 I&N Dec. 208 at 213-15 (defining particularity). Moreover, pursuant to our de novo review, we conclude that the proposed particular social group is impermissibly defined by the harm suffered. *See id.* at 215 (emphasizing that a particular social group must exist independently of the persecution). The respondent ostensibly argues that, because she was targeted and harmed by the gang members, it gives rise to her membership in a group of "unprotected women." Thus, she has not established that the group exists independently of the harm.

Furthermore, we discern no clear error in the Immigration Judge's factual findings pertaining to the gang members' underlying motives in targeting the respondent, which related criminal motives, rather than a nexus to a protected ground (IJ at 13). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (holding that the motivation of a persecutor is a question of fact reviewed by the Board for clear error); *Zaldana Menijar v. Lynch*, 812 F.3d 491, 500-01 (6th Cir. 2015) (holding that the petitioner "had presented insufficient evidence that a statutorily protected ground, instead of sheer criminal opportunism and depravity, would be the gang's motive in targeting him with violence").

As the lack of a nexus to any cognizable particular social group is dispositive for both asylum and withholding of removal under the Act, we will not reach the respondent's other appellate arguments. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues which are not dispositive to the outcome of the case)).

Finally, we affirm the Immigration Judge's denial of the respondent's request for CAT protection (IJ at 14). On appeal, the respondent argues that the Immigration Judge failed to consider evidence relevant to her claim (Respondent's Br. at 21). In particular, she argues that the Immigration Judge did not consider her testimony that the community police did not assist her when she sought aid, but told her to give the gangs something (Respondent's Br. at 21). The

respondent also argues that the Immigration Judge did not consider the country conditions reports which demonstrate the Guatemalan government's inability and unwillingness to protect its citizens (Respondent's Br. at 21).

However, the Immigration Judge properly observed that the respondent did not make any claim that the government was involved in her past harm or that the government would engage or acquiesce in any future harm (IJ at 14). Specifically, the respondent did not meet her burden of proof for CAT protection as she did not establish that the community police had prior awareness of the respondent's claimed harm and thereafter breached a legal responsibility to intervene to prevent such activity. *See* 8 C.F.R. § 1208.18(a)(7). The respondent has also not otherwise proffered any evidence that the community group in question was acting under the color or law. *See* 8 C.F.R. § 1208.18(a)(1); *Matter of O-F-A-S-*, 28 I&N Dec. 35, 39-42 (A.G. 2020) ("The relevant question is whether they acted under color of law--whether they misused power possessed by virtue of law, made possible only because clothed with the authority of law."). Thus, we agree with the Immigration Judge that the respondent has not demonstrated that she will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or someone acting in an official capacity in Guatemala.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

Files (b)(6) – (b)(6)

Date: JAN - 6 2022

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Amanda I. Moore, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents,[1] a mother (lead respondent) and her two minor children (rider respondents) who are natives and citizens of Guatemala, appeal the Immigration Judge's October 25, 2017, decision, denying the respondent's application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), 8 C.F.R. § 1208.18. The appeal will be dismissed.

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 questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent alleged past and future harm at the hands of (b)(6), a former security officer who raped her when she was 9 years old (IJ at 3; Tr. at 53). She testified that (b)(6) subsequently joined the gang and in 2014, he and the gang members harassed the respondent, threatened to rape her, and threw rocks at the window of her home (IJ at 3-4; Tr. at 55-57). The responded claimed that her feared harm was on account of her membership in her proposed particular social group comprised of "unprotected women living alone in Guatemala without a head of household" (IJ at 2; Tr. at 64). The Immigration Judge denied the respondent asylum and withholding of removal under the Act.

---

[1] Hereinafter, "the respondent" refers to the lead respondent (A (b)(6)). Her minor children (A (b)(6) and A (b)(6)) are included as derivative beneficiaries of her asylum application (IJ at 2). The rider respondents are ineligible to derive withholding of removal under the Act or CAT protection.

Upon de novo review, we conclude that the respondent's proposed particular social group, "unprotected women living alone in Guatemala without a head of household," is not cognizable. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (stating that the Board reviews the cognizability of proposed particular social groups de novo); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (holding that for a proposed particular social group to be legally cognizable, and thus constitute a protected ground, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question).

The proposed social group is not sufficiently particular, as it is overbroad and lacks definable boundaries (IJ at 13). As described, the group could include individuals of varying ages, backgrounds, and other identifying factors. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239-40; *Matter of W-G-R-*, 26 I&N Dec. 208, 213-15 (BIA 2014). Furthermore, the respondent has not established that the term "unprotected women" has a commonly recognized definition, such that the group is defined with sufficient particularity. *See, e.g. Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008) (finding the group "male children who lack stable families and meaningful adult protection, who are from middle and low income classes, who live in the territories controlled by the MS-13 gang, and who refuse recruitment" too amorphous). This term does not provide an adequate benchmark for determining who is a member of the group. *See Matter of W-G-R-*, 26 I&N Dec. 208 at 213-15 (defining particularity). Moreover, pursuant to our de novo review, we conclude that the proposed particular social group is impermissibly defined by the harm suffered. *See id.* at 215 (emphasizing that a particular social group must exist independently of the persecution). The respondent ostensibly argues that, because she was targeted and harmed by the gang members, it gives rise to her membership in a group of "unprotected women." Thus, she has not established that the group exists independently of the harm.

Furthermore, we discern no clear error in the Immigration Judge's factual findings pertaining to the gang members' underlying motives in targeting the respondent, which related criminal motives, rather than a nexus to a protected ground (IJ at 13). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (holding that the motivation of a persecutor is a question of fact reviewed by the Board for clear error); *Zaldana Menijar v. Lynch*, 812 F.3d 491, 500-01 (6th Cir. 2015) (holding that the petitioner "had presented insufficient evidence that a statutorily protected ground, instead of sheer criminal opportunism and depravity, would be the gang's motive in targeting him with violence").

As the lack of a nexus to any cognizable particular social group is dispositive for both asylum and withholding of removal under the Act, we will not reach the respondent's other appellate arguments. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues which are not dispositive to the outcome of the case)).

Finally, we affirm the Immigration Judge's denial of the respondent's request for CAT protection (IJ at 14). On appeal, the respondent argues that the Immigration Judge failed to consider evidence relevant to her claim (Respondent's Br. at 21). In particular, she argues that the Immigration Judge did not consider her testimony that the community police did not assist her when she sought aid, but told her to give the gangs something (Respondent's Br. at 21). The

respondent also argues that the Immigration Judge did not consider the country conditions reports which demonstrate the Guatemalan government's inability and unwillingness to protect its citizens (Respondent's Br. at 21).

However, the Immigration Judge properly observed that the respondent did not make any claim that the government was involved in her past harm or that the government would engage or acquiesce in any future harm (IJ at 14). Specifically, the respondent did not meet her burden of proof for CAT protection as she did not establish that the community police had prior awareness of the respondent's claimed harm and thereafter breached a legal responsibility to intervene to prevent such activity. *See* 8 C.F.R. § 1208.18(a)(7). The respondent has also not otherwise proffered any evidence that the community group in question was acting under the color or law. *See* 8 C.F.R. § 1208.18(a)(1); *Matter of O-F-A-S-*, 28 I&N Dec. 35, 39-42 (A.G. 2020) ("The relevant question is whether they acted under color of law--whether they misused power possessed by virtue of law, made possible only because clothed with the authority of law."). Thus, we agree with the Immigration Judge that the respondent has not demonstrated that she will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or someone acting in an official capacity in Guatemala.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

Files: (b)(6) – (b)(6)

Date: JAN - 6 2022

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Amanda I. Moore, Esquire

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondents,[1] a mother (lead respondent) and her two minor children (rider respondents) who are natives and citizens of Guatemala, appeal the Immigration Judge's October 25, 2017, decision, denying the respondent's application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), 8 C.F.R. § 1208.18. The appeal will be dismissed.

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 questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent alleged past and future harm at the hands of (b)(6), a former security officer who raped her when she was 9 years old (IJ at 3; Tr. at 53). She testified that (b)(6) subsequently joined the gang and in 2014, he and the gang members harassed the respondent, threatened to rape her, and threw rocks at the window of her home (IJ at 3-4; Tr. at 55-57). The responded claimed that her feared harm was on account of her membership in her proposed particular social group comprised of "unprotected women living alone in Guatemala without a head of household" (IJ at 2; Tr. at 64). The Immigration Judge denied the respondent asylum and withholding of removal under the Act.

[1] Hereinafter, "the respondent" refers to the lead respondent (A (b)(6)). Her minor children (A (b)(6) and A (b)(6)) are included as derivative beneficiaries of her asylum application (IJ at 2). The rider respondents are ineligible to derive withholding of removal under the Act or CAT protection.

Upon de novo review, we conclude that the respondent's proposed particular social group, "unprotected women living alone in Guatemala without a head of household," is not cognizable. *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (stating that the Board reviews the cognizability of proposed particular social groups de novo); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) (holding that for a proposed particular social group to be legally cognizable, and thus constitute a protected ground, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question).

The proposed social group is not sufficiently particular, as it is overbroad and lacks definable boundaries (IJ at 13). As described, the group could include individuals of varying ages, backgrounds, and other identifying factors. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239-40; *Matter of W-G-R-*, 26 I&N Dec. 208, 213-15 (BIA 2014). Furthermore, the respondent has not established that the term "unprotected women" has a commonly recognized definition, such that the group is defined with sufficient particularity. *See, e.g. Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008) (finding the group "male children who lack stable families and meaningful adult protection, who are from middle and low income classes, who live in the territories controlled by the MS-13 gang, and who refuse recruitment" too amorphous). This term does not provide an adequate benchmark for determining who is a member of the group. *See Matter of W-G-R-*, 26 I&N Dec. 208 at 213-15 (defining particularity). Moreover, pursuant to our de novo review, we conclude that the proposed particular social group is impermissibly defined by the harm suffered. *See id.* at 215 (emphasizing that a particular social group must exist independently of the persecution). The respondent ostensibly argues that, because she was targeted and harmed by the gang members, it gives rise to her membership in a group of "unprotected women." Thus, she has not established that the group exists independently of the harm.

Furthermore, we discern no clear error in the Immigration Judge's factual findings pertaining to the gang members' underlying motives in targeting the respondent, which related criminal motives, rather than a nexus to a protected ground (IJ at 13). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (holding that the motivation of a persecutor is a question of fact reviewed by the Board for clear error); *Zaldana Menijar v. Lynch*, 812 F.3d 491, 500-01 (6th Cir. 2015) (holding that the petitioner "had presented insufficient evidence that a statutorily protected ground, instead of sheer criminal opportunism and depravity, would be the gang's motive in targeting him with violence").

As the lack of a nexus to any cognizable particular social group is dispositive for both asylum and withholding of removal under the Act, we will not reach the respondent's other appellate arguments. *See Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (citing *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, as a general rule, courts and agencies are not required to make findings on issues which are not dispositive to the outcome of the case)).

Finally, we affirm the Immigration Judge's denial of the respondent's request for CAT protection (IJ at 14). On appeal, the respondent argues that the Immigration Judge failed to consider evidence relevant to her claim (Respondent's Br. at 21). In particular, she argues that the Immigration Judge did not consider her testimony that the community police did not assist her when she sought aid, but told her to give the gangs something (Respondent's Br. at 21). The

respondent also argues that the Immigration Judge did not consider the country conditions reports which demonstrate the Guatemalan government's inability and unwillingness to protect its citizens (Respondent's Br. at 21).

However, the Immigration Judge properly observed that the respondent did not make any claim that the government was involved in her past harm or that the government would engage or acquiesce in any future harm (IJ at 14). Specifically, the respondent did not meet her burden of proof for CAT protection as she did not establish that the community police had prior awareness of the respondent's claimed harm and thereafter breached a legal responsibility to intervene to prevent such activity. *See* 8 C.F.R. § 1208.18(a)(7). The respondent has also not otherwise proffered any evidence that the community group in question was acting under the color or law. *See* 8 C.F.R. § 1208.18(a)(1); *Matter of O-F-A-S-*, 28 I&N Dec. 35, 39-42 (A.G. 2020) ("The relevant question is whether they acted under color of law--whether they misused power possessed by virtue of law, made possible only because clothed with the authority of law."). Thus, we agree with the Immigration Judge that the respondent has not demonstrated that she will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or someone acting in an official capacity in Guatemala.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENTS: Paula J. Ferreira, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New Orleans, LA

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The respondents, a mother and child who are natives and citizens of Honduras, have appealed from the Immigration Judge's decision dated February 1, 2018, denying the mother's (hereinafter the respondent) applications for withholding of removal and protection under the Convention Against Torture. On appeal, the respondents have filed a motion to remand for consideration of asylum. The motion will be denied, and the appeal will be dismissed.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent presented claims for relief from persecution motivated by her membership in two particular social groups: 1) "single wom[e]n in Honduras viewed as not having the protection of a male figure," and 2) "single wom[e]n in Honduras viewed as property by gang members" (IJ at 5-6; Tr. at 22-53; Exh. 2). The respondent related two incidents in which gang members threatened the respondent, then robbed and attempted to rape her (IJ at 5; Tr. at 22-25). She filed a police report but was unable to identify the assailants (IJ at 5; Tr. at 27-28). In a third encounter in which the respondent was returning from the market with her son, gang members robbed the respondent and commented that her son was old enough to join the gang (IJ at 5; Tr. at 29-30).

On appeal, the respondent moves for a remand arguing that she is now eligible to apply for asylum as a member of a class action lawsuit involving individuals who did not receive proper notice of the filing time limit for asylum applications (Respondent's Motion at 2). The respondent also argues that Immigration Judge erred in ruling that her proposed social groups are not cognizable for withholding of removal purposes, and that she did not establish past persecution or a well-founded fear of future persecution on account of her membership in those groups

(Respondent's Br. at 10-17). She asserts that Honduran authorities are unable or unwilling to protect her from persecution because they have failed to control criminal gangs (Respondent's Br. at 18). Finally, the respondent argues that she showed that it is more likely than not that she would be tortured in Honduras, and that the government of that country acquiesces in such harm because it cannot control or is complicit in violence against women (Respondent's Br. at 19-20).

We will uphold the Immigration Judge's decision to deny withholding of removal because the respondent did not establish that it is more likely than not that she will be persecuted in Honduras on account of one of the protected grounds enumerated in section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) (IJ at 6-7). *See Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010).

We agree that the respondent's proposed social groups consisting of 1) single women in Honduras viewed as not having the protection of a male figure, and 2) single women in Honduras viewed as property by gang members, are not cognizable for the reasons outlined in the Immigration Judge's decision (IJ at 6). The groups are not defined with sufficient particularity inasmuch as their membership might include women with a very broad range of ages, backgrounds, and circumstances. *See Matter of M-E-V-G-*, 26 I&N Dec.226, 239 (BIA 2014) ("A particular social group must not be amorphous, overbroad, diffuse, or subjective, and not every 'immutable characteristic' is sufficiently precise to define a particular social group."). It also is not clear from the evidence that the groups are perceived as distinct segments or classes within Honduran society. *Id.* at 242. On appeal, the respondent only references the mistreatment of Honduran women in general, but does not point to specific evidence to contradict the Immigration Judge's conclusion that the record is insufficient to demonstrate that the described collections of individuals are actually perceived as distinct social groups.

We also agree with the Immigration Judge that even assuming cognizability, the respondent did not establish that she was or will be persecuted because of her membership in her proposed social groups (IJ at 6-7). Although the respondent asserted that gang members knew she was alone, the Immigration Judge found that there is no evidence that gang members were actually aware of her status as a single woman and motivated to harm her on the basis of that characteristic (IJ at 6; Tr. at 28). Absent a demonstrated nexus between the robbery and other harm suffered by the respondent and her status as a single woman, the Immigration Judge could reasonably conclude that the respondent was simply a victim of ordinary criminal predation, which insufficient to demonstrate persecution for withholding of removal purposes. *See Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009) (holding that criminal violence based on financial motives is not connected to a protected ground); *Eduard v. Ashcroft*, 379 F.3d 182, 190 (5th Cir. 2004) (an applicant's fear of persecution cannot be based solely on general violence and civil disorder).

We note that the respondent has not contested the denial of relief with respect to her son, who appears to have been threatened with gang recruitment (IJ at 7). Therefore, the opportunity to appeal the denial of relief is deemed waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when an alien fails to substantively appeal an issue addressed in an Immigration Judge decision, that issue is waived).

We will also affirm the denial of withholding of removal on the alternative ground that the respondent did not establish that government of Honduras would be unable or unwilling to protect the respondent when she returns that country (IJ at 7). *See Matter of W-G-R-*, 26 I&N Dec. 208, 224 n.8 (BIA 2014). The respondent's sweeping generalizations about the ineffectiveness of Honduran authorities in controlling crime and violence are insufficient to show that they would necessarily be unwilling or incapable of providing assistance in her own personal circumstances (Respondent's Br. at 18). We agree with the Immigration Judge that the lack of arrests following the respondent's complaint to police does not support such a conclusion where the respondent was unable to identify her assailants so as to provide the police with some basis to act on her complaint.

We will also uphold the Immigration Judge's decision to deny protection under the Convention Against Torture because the respondent did not establish that it is more likely than not that she will be subjected to torture in Honduras that would be inflicted by or with the acquiescence of a public official or other persons acting in an official capacity (IJ at 8). *See* 8 C.F.R. §§ 1208.16(c)(2) and 1208.18(a)(1); *Ontunez-Tursios v. Ashcroft*, 303 F.3d 331, 354 (5th Cir. 2002). We agree that the robberies and threats of rape and other harm, which were not carried out, do not amount to past torture. *See* 1208.18(a) (defining torture as an extreme form of harm). Considering the absence of past torture and the country conditions evidence showing that Honduran authorities are attempting to combat violence against women, we conclude that the Immigration Judge's factual determination regarding the likelihood of the respondent's future torture is not clearly erroneous. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (holding that an Immigration Judge's determination concerning the likelihood of future harm is reviewed for clear error).

The motion for a remand will be denied. Inasmuch as the respondent failed to establish the required nexus between past or feared future harm with respect to withholding of removal, an application for asylum would be denied on the same basis. *See* section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A); *Tamara–Gomez v. Gonzales*, 447 F.3d 343, 348 (5th Cir. 2006); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007). Therefore, a remand to apply for that relief is not warranted, as it would not change the outcome in the case, *See Matter of Coehlo*, 20 I&N Dec. 464 (BIA 1992) (explaining, with respect to new evidence, that it must be shown that a remand would be likely to change the result in the case).

Accordingly, the following order will be entered.

ORDER: The motion is denied, and the appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

(b)(6) A (b)(6)

Respondents

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENTS: Paula J. Ferreira, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New Orleans, LA

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The respondents, a mother and child who are natives and citizens of Honduras, have appealed from the Immigration Judge's decision dated February 1, 2018, denying the mother's (hereinafter the respondent) applications for withholding of removal and protection under the Convention Against Torture. On appeal, the respondents have filed a motion to remand for consideration of asylum. The motion will be denied, and the appeal will be dismissed.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under a clearly erroneous standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, and judgment, and all other issues raised in an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent presented claims for relief from persecution motivated by her membership in two particular social groups: 1) "single wom[e]n in Honduras viewed as not having the protection of a male figure," and 2) "single wom[e]n in Honduras viewed as property by gang members" (IJ at 5-6; Tr. at 22-53; Exh. 2). The respondent related two incidents in which gang members threatened the respondent, then robbed and attempted to rape her (IJ at 5; Tr. at 22-25). She filed a police report but was unable to identify the assailants (IJ at 5; Tr. at 27-28). In a third encounter in which the respondent was returning from the market with her son, gang members robbed the respondent and commented that her son was old enough to join the gang (IJ at 5; Tr. at 29-30).

On appeal, the respondent moves for a remand arguing that she is now eligible to apply for asylum as a member of a class action lawsuit involving individuals who did not receive proper notice of the filing time limit for asylum applications (Respondent's Motion at 2). The respondent also argues that Immigration Judge erred in ruling that her proposed social groups are not cognizable for withholding of removal purposes, and that she did not establish past persecution or a well-founded fear of future persecution on account of her membership in those groups

(Respondent's Br. at 10-17). She asserts that Honduran authorities are unable or unwilling to protect her from persecution because they have failed to control criminal gangs (Respondent's Br. at 18). Finally, the respondent argues that she showed that it is more likely than not that she would be tortured in Honduras, and that the government of that country acquiesces in such harm because it cannot control or is complicit in violence against women (Respondent's Br. at 19-20).

We will uphold the Immigration Judge's decision to deny withholding of removal because the respondent did not establish that it is more likely than not that she will be persecuted in Honduras on account of one of the protected grounds enumerated in section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3) (IJ at 6-7). *See Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010).

We agree that the respondent's proposed social groups consisting of 1) single women in Honduras viewed as not having the protection of a male figure, and 2) single women in Honduras viewed as property by gang members, are not cognizable for the reasons outlined in the Immigration Judge's decision (IJ at 6). The groups are not defined with sufficient particularity inasmuch as their membership might include women with a very broad range of ages, backgrounds, and circumstances. *See Matter of M-E-V-G-*, 26 I&N Dec.226, 239 (BIA 2014) ("A particular social group must not be amorphous, overbroad, diffuse, or subjective, and not every 'immutable characteristic' is sufficiently precise to define a particular social group."). It also is not clear from the evidence that the groups are perceived as distinct segments or classes within Honduran society. *Id.* at 242. On appeal, the respondent only references the mistreatment of Honduran women in general, but does not point to specific evidence to contradict the Immigration Judge's conclusion that the record is insufficient to demonstrate that the described collections of individuals are actually perceived as distinct social groups.

We also agree with the Immigration Judge that even assuming cognizability, the respondent did not establish that she was or will be persecuted because of her membership in her proposed social groups (IJ at 6-7). Although the respondent asserted that gang members knew she was alone, the Immigration Judge found that there is no evidence that gang members were actually aware of her status as a single woman and motivated to harm her on the basis of that characteristic (IJ at 6; Tr. at 28). Absent a demonstrated nexus between the robbery and other harm suffered by the respondent and her status as a single woman, the Immigration Judge could reasonably conclude that the respondent was simply a victim of ordinary criminal predation, which insufficient to demonstrate persecution for withholding of removal purposes. *See Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009) (holding that criminal violence based on financial motives is not connected to a protected ground); *Eduard v. Ashcroft*, 379 F.3d 182, 190 (5th Cir. 2004) (an applicant's fear of persecution cannot be based solely on general violence and civil disorder).

We note that the respondent has not contested the denial of relief with respect to her son, who appears to have been threatened with gang recruitment (IJ at 7). Therefore, the opportunity to appeal the denial of relief is deemed waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when an alien fails to substantively appeal an issue addressed in an Immigration Judge decision, that issue is waived).

We will also affirm the denial of withholding of removal on the alternative ground that the respondent did not establish that government of Honduras would be unable or unwilling to protect the respondent when she returns that country (IJ at 7). *See Matter of W-G-R-*, 26 I&N Dec. 208, 224 n.8 (BIA 2014). The respondent's sweeping generalizations about the ineffectiveness of Honduran authorities in controlling crime and violence are insufficient to show that they would necessarily be unwilling or incapable of providing assistance in her own personal circumstances (Respondent's Br. at 18). We agree with the Immigration Judge that the lack of arrests following the respondent's complaint to police does not support such a conclusion where the respondent was unable to identify her assailants so as to provide the police with some basis to act on her complaint.

We will also uphold the Immigration Judge's decision to deny protection under the Convention Against Torture because the respondent did not establish that it is more likely than not that she will be subjected to torture in Honduras that would be inflicted by or with the acquiescence of a public official or other persons acting in an official capacity (IJ at 8). *See* 8 C.F.R. §§ 1208.16(c)(2) and 1208.18(a)(1); *Ontunez-Tursios v. Ashcroft*, 303 F.3d 331, 354 (5th Cir. 2002). We agree that the robberies and threats of rape and other harm, which were not carried out, do not amount to past torture. *See* 1208.18(a) (defining torture as an extreme form of harm). Considering the absence of past torture and the country conditions evidence showing that Honduran authorities are attempting to combat violence against women, we conclude that the Immigration Judge's factual determination regarding the likelihood of the respondent's future torture is not clearly erroneous. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (holding that an Immigration Judge's determination concerning the likelihood of future harm is reviewed for clear error).

The motion for a remand will be denied. Inasmuch as the respondent failed to establish the required nexus between past or feared future harm with respect to withholding of removal, an application for asylum would be denied on the same basis. *See* section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A); *Tamara–Gomez v. Gonzales*, 447 F.3d 343, 348 (5th Cir. 2006); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007). Therefore, a remand to apply for that relief is not warranted, as it would not change the outcome in the case, *See Matter of Coehlo*, 20 I&N Dec. 464 (BIA 1992) (explaining, with respect to new evidence, that it must be shown that a remand would be likely to change the result in the case).

Accordingly, the following order will be entered.

ORDER: The motion is denied, and the appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Enid J. Rivera, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Owen, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Owen

OWEN, Appellate Immigration Judge

The respondent is a native and citizen of Honduras, and she is a derivative beneficiary of her mother's application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3).[1] We will sever the respondent's appeal from her mother's case and address her mother's appeal in a separate decision. Further, the respondent has submitted a motion to remand. The appeal will be dismissed, and the motion to remand will be granted.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent's appeal from the denial of her mother's Form I-589 will be dismissed based on the reasons set forth in her mother's case. Turning to the motion to remand, the respondent submitted evidence establishing that she is the beneficiary of an approved Form I-360 as a special

[1] The respondent's mother did not meaningfully challenge the Immigration Judge's denial of her application for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (IJ at 7). *See, e.g., Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) (expressly declining to address an issue not raised by party on appeal); *Matter of Gutierrez*, 19 I&N Dec. 562, 565 n.3 (BIA 1988) (same). We therefore deem this issue waived as it pertains to the respondent.

immigrant juvenile. The respondent further states that a visa is currently available, and she requests that the Board remand her case so as to allow her to apply for adjustment of status.

In addition, the Department of Homeland Security has not filed an opposition to the motion. In light thereof, the respondent's motion to remand will be granted, and the record will be remanded so as to allow the respondent to apply for adjustment of status.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The motion to remand is granted.

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

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Shawn Beam, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, appeals from an Immigration Judge's November 2, 2018, decision denying her applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A), and her request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994). The Department of Homeland Security has not responded to the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent reiterates her argument that the harm she suffered and fears in El Salvador qualifies her for relief and protection. However, while we are sympathetic to the respondent's circumstances, she does not qualify for relief or protection under the applicable law. We agree with the Immigration Judge's conclusion that the respondent did not meet her burden to establish eligibility for asylum and withholding of removal (IJ at 9-14). Sections 208(b)(1)(B)(i) and 241(b)(3)(C) of the Act.

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

We agree with the Immigration Judge that the respondent did not demonstrate that the harm she experienced rose to the level of persecution (IJ at 9-10). The Immigration Judge properly considered the evidence before him, including the attempted kidnapping when she suffered minor injuries during her escape. The Immigration Judge consider that this incident was isolated, that it lasted approximately 10 minutes, and that the respondent was not severely injured (IJ at 10). Although serious, this incident does not rise to the level required for persecution. *See Duran-Rodriguez v. Barr,* 918 F.3d 1025, 1030 (9th Cir. 2019); *Wakkary v. Holder*, 558 F.3d 1049, 1059 (9th Cir. 2009) (persecution is an extreme concept that does not include every sort of treatment our society regards as offensive).

We also affirm the Immigration Judge's determination that the respondent did not establish that the proffered particular social group "women in El Salvador who have children with gang members" is cognizable under the Act (IJ at 10-11). The respondent has not shown that "women in El Salvador who have children with gang members" is recognized as being a socially distinct group in El Salvador (IJ at 10-11). *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014).

We also affirm the Immigration Judge's conclusion that the respondent did not demonstrate that authorities in El Salvador would be unable or unwilling to protect her (IJ at 13-14). *See Barrios v. Holder*, 581 F.3d 849, 854 (9th Cir. 2009) (to qualify as persecution for purposes of refugee relief, an act must be inflicted either by the government or persons or organizations the government is unable or unwilling to control); *Matter of V-T-S-*, 21 I&N Dec. 792, 799 (BIA 1997) (holding that the record did not support the respondent's contentions that the government was unwilling or unable to protect his family). The respondent's testimony and documentary evidence do not demonstrate that the authorities in El Salvador are unable or unwilling to protect her. As noted by the Immigration Judge, the respondent did not report the incident to the authorities. Moreover, the Immigration Judge considered that the record indicates that the authorities investigated Elmer's death (IJ at 13). *See also Castro-Perez v. Gonzales*, 409 F.3d 1069, 1072 (9th Cir. 2005) (burden is on the respondent to show that government is unable or unwilling to control a non-governmental persecutor). Based on the record before us, we conclude that the respondent did not meet her burden of proof to show that she could not obtain protection from authorities.

We also uphold the Immigration Judge's determination that the respondent did not meet her burden to establish her eligibility for protection under the Convention Against Torture (IJ at 14-15). 8 C.F.R. §§ 1208.16(c), 1208.18; *see also Ridore v. Holder*, 696 F.3d 907, 919, 921-22 (9th Cir. 2012) (holding that an Immigration Judge's determination of whether a noncitizen will more likely than not be subject to torture is a predictive finding of fact subject to clear error review). Based on the entirety of the record, the respondent did not establish that it is more likely than not that she would be tortured at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity, or that the government would be "willfully blind" to any torture committed against her by private individuals. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *see also Arteaga v. Mukasey*, 511 F.3d 940, 948-49 (9th Cir. 2007).

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Jorge L. Virguez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Atlanta, GA

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, has appealed from the Immigration Judge's decision dated November 5, 2018. The Immigration Judge found the respondent removable, denied his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1229b(b), and ordered him removed. The respondent has also requested remand. The Department of Homeland Security (DHS) has not filed any opposition to the appeal or the remand request. The record will be remanded.

This Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). This Board reviews questions of law, discretion, and judgment, and all other issues raised in an appeal of an Immigration Judge's decision, de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent challenges the denial of cancellation of removal. The hearing on that application occurred on August 15, 2017.

On appeal, the respondent requests remand. The respondent indicates his oldest child is now serving in the United States military. As a result, the respondent is now eligible to request parole-in-place and apply for adjustment of status. In addition, the respondent notes that, under new guidance concerning immigration enforcement policies and priorities, he is eligible for prosecutorial discretion.

In light of the time that has elapsed since the hearing in this matter, as well as the unopposed remand request, the record will be remanded to the Immigration Judge, to allow the parties to

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

update the record, to reconsider the respondent's request for cancellation of removal, and to consider him for any other relief for which he may be eligible. *See also Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021) (restoring the authority of Immigration Judges to administratively close cases); EOIR Director's Memorandum 22-03 (providing guidance on administrative closure of cases).[2]

Accordingly, the following order will be entered.

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.

[2] On remand, pursuant to the then-Acting Director's Policy Memorandum 21-25, the DHS should also indicate whether the respondent is an enforcement priority and whether the DHS would exercise some form of prosecutorial discretion, such as stipulating to eligibility for relief, agreeing to administrative closure, or requesting termination or dismissal of the proceedings.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Samuel Ouya Maina, Esquire

ON BEHALF OF DHS: Mark Hardy, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Seattle, WA

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of India, appeals the November 29, 2018, decision of an Immigration Judge denying him asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158,1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The Department of Homeland Security ("DHS") has opposed the appeal. The appeal will be dismissed.

We review an Immigration Judge's findings of fact for clear error. 8 C.F.R § 1003.l(d)(3)(i). We review all other issues de novo, including issues of law, discretion, and judgment. 8 C.F.R § 1003.1(d)(3)(ii).

Throughout these proceedings, the respondent has expressed a fear of persecution in India by the Badal Party, based on his membership in the rival political group, the Shiromani Akali Dal Mann Party. He also fears torture upon his repatriation.

The respondent testified that he was assaulted by supporters of the Badal Party on two occasions (Tr. at 29, 40). In September of 2014, supporters of the opposing party accosted and assaulted the respondent and his friend while they were hanging posters reflecting opposition to the ruling party (IJ at 4; Tr. at 28-29). As a result, the respondent was scratched, his hand was swollen, and he experienced soreness for which he sought medical treatment and was given pain medication (IJ at 5; Tr. at 30-31; Exh. 5, p. 23). The respondent was again accosted and assaulted in January of 2015, this time as he was riding a motorcycle that was cut off by a van (IJ at 5; Tr. at 37-40). Again, the respondent suffered injuries, including a bleeding and swollen hand and scratches, and he was also threatened with death (IJ at 5-6; Tr. at 37, 40). The respondent received treatment for

his injuries in the form of ointment, bandages, and pain medication (IJ at 6; Tr. at 41; Exh. 5, p. 23).

We affirm the Immigration Judge's denial of asylum and withholding of removal. We agree with the Immigration Judge that the respondent's experiences in India, viewed cumulatively, did not amount to past persecution (IJ at 8-11). As determined by the Immigration Judge, the record does not show that the respondent was subject to significant physical violence or suffer any serious injury. *See Sharma v. Garland*, 9 F.4th 1052, 1061 (9th Cir. 2021) (stating that one significant consideration for a finding of persecution is whether an applicant was subject to "significant physical violence" and, relatedly, that he suffered serious injuries requiring medical treatment) (internal citations omitted). There is also no indication that the threats the respondent received on those occasions were so menacing as to cause significant actual suffering or harm. *See Lim* v. *INS,* 224 F.3d 929, 936 (9th Cir. 2000) (discussing the "small category of cases" where threats could constitute past persecution).

We further note that the respondent's past mistreatment and resulting harm, while inexcusable, closely mirrors the level and type of harm in other binding precedent that upheld findings of no past persecution. *See, e.g., Gu v. Gonzales,* 454 F.3d at 1017-21, 1029 (9th Cir. 2006) (no past persecution after the applicant was detained for 10 days, struck on the back ten times with a rod, and interrogated in a room filled with instruments of torture); *Prasad v. INS*, 47 F.3d 336, 339-40 (9th Cir. 1995) (holding that a reasonable factfinder could have determined that 4 to 6 hours of detention, combined with a police officer punching and kicking the applicant, could have constituted past persecution but did not compel the conclusion of past persecution); *see also Hoxha v. Ashcroft*, 319 F.3d 1179, 1181-82 (9th Cir. 2003) (holding that prolonged harassment, death threats, and one serious physical beating did not compel the conclusion that the applicant suffered past persecution). For all of these reasons, we affirm the finding of no past persecution, and, therefore, the respondent is not entitled to the presumption of a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1).

Insofar as the respondent has not demonstrated past harm rising to the level of persecution, we need not reach the Immigration Judge's alternative finding and the respondent's related arguments on whether the harm was on account of a protected ground (IJ at 8-11; Respondent's Br. at 10-11). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that "[a]s a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"). Considering that we affirm the denial of asylum for reasons unrelated to nexus, *see Barajas-Romero v. Lynch*, 846 F.3d 351,356-60 (9th Cir. 2017) (holding that "'a reason' is a less demanding standard than 'one central reason'"), we agree with the Immigration Judge that the respondent did not meet the higher burden of proof for withholding of removal (IJ at 11). *See Zehatye v. Gonzales,* 453 F.3d 1182, 1190 (9th Cir. 2006).

Finally, we affirm the Immigration Judge's denial of protection under the CAT (IJ at 11-12). Based upon our review, there is no clear error in the Immigration Judge's finding that the respondent has not demonstrated a likelihood of future torture with the consent or acquiescence or willful blindness of the Indian government or an individual acting in an official capacity in India. *See* 8 C.F.R. § 120816(c)(3); *Ridore v. Holder*, 696 F.3d 907, 918-19 (9th Cir. 2012) (ruling that

an Immigration Judge's determination regarding the likelihood of future events is subject to review by the Board under a "clearly erroneous" standard).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Devon R. Senges, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Charlotte, NC

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, appeals from the Immigration Judge's February 1, 2019, decision denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 & 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The record will be remanded for the entry of a new decision as set forth below.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent testified that he was forcibly recruited by gang members on 3 occasions in the small, mountainous town where he lived in El Salvador. The respondent argued that he has experienced past persecution and has a well-founded fear of persecution on account of his membership in a particular social group composed of "male teenagers from (b)(6)" (Tr. at 47; *see also* Exh. 3, Memorandum of Law at 6).

We will remand the record for the entry of a new decision by the Immigration Judge as we conclude that further fact-finding and analysis is warranted. *See Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002); 8 C.F.R. §§ 1003.1(d)(3)(iv), (d)(7)(ii). The Immigration Judge concluded that the respondent's proposed particular social group is not cognizable, stating that "young men who avoid recruitment from the gangs" cannot form a cognizable particular social group (IJ at 8-9). However, the respondent did not define the proposed particular social group in relation to gang recruitment. The Immigration Judge's decision otherwise mixes the analyses as to whether the respondent's proposed particular social group is cognizable and whether the respondent was

mistreated on account of membership in the proposed particular social group. As we do not conduct fact-finding on appeal, we conclude that remand of the record is necessary to further address the respondent's assertion that he has demonstrated past persecution and has a well-founded fear of future persecution on account of a cognizable particular social group.[1]

We also conclude that further fact-finding and analysis is warranted concerning the issue of whether the Salvadoran government is unable or unwilling to offer its protection against the persons that the respondent fears. *See Portillo Flores v. Garland*, 3 F.4th 615, 635 (4th Cir. 2021) (stating that the availability of government protection must be evaluated under the specific circumstances presented by the applicant). The Immigration Judge found that the respondent had reported one incident of mistreatment to police, but the Immigration Judge did not provide a factual or analytical basis for then stating that the respondent "never gave the police an opportunity to really protect him" (IJ at 11). The Immigration Judge also stated that the continued safety of the respondent's family in El Salvador supports the conclusion that the government is willing or able to offer its protection (IJ at 11). However, the respondent testified that other family members had not been targeted by the gang members and they are thus not similarly-situated to the respondent.

On remand, the Immigration Judge should also provide further analysis concerning the respondent's request for protection under the regulations implementing the CAT. The regulations implementing the CAT define "torture" as dependent on both the severity of harm and official involvement in, or acquiescence to, such harm. *See Matter of O-F-A-S-*, 28 I&N Dec. 35, 36 (A.G. 2020); 8 C.F.R. §§ 1208.18(a)(1)-(2). Accordingly, when evaluating whether it is more likely than not that the respondent will experience torture if removed to El Salvador, the Immigration Judge should distinguish between findings as to the likelihood of such harm and whether the government of El Salvador or a person acting in an official capacity can be charged with participation in, or acquiescence to, such harm.

Further proceedings may be conducted if deemed necessary by the Immigration Judge on remand. We express no opinion as to the outcome of proceedings.

ORDER: The Immigration Judge's February 1, 2019, decision is vacated.

FURTHER ORDER: The record is remanded for any further proceedings deemed necessary by the Immigration Judge and for the entry of a new decision.

[1] We do not reach the issue of internal relocation as the burden of proof on this issue is dependent on whether past persecution has been established.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Clarel Cyriaque, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Petty, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Petty

PETTY, Appellate Immigration Judge

The respondent, a native and citizen of Haiti, appeals from the Immigration Judge's February 25, 2019, decision denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The Department of Homeland Security ("DHS") does not oppose the appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of law, discretion, and judgment, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the respondent's argument that the record before us is inadequate for appellate review of the respondent's arguments and the Immigration Judge's decision (Respondent's Br. at 4). A review of the record reveals that it does not include a complete transcript of these proceedings (Tr. at 79-80). We have held that the Immigration Judge is responsible for the physical aspects of the record in matters under his or her jurisdiction, including all material pertaining to the organization and completeness of the record. *See Matter of Holani*, 17 I&N Dec. 426, 427 (BIA 1980); *see also Matter of Cruz*, 16 I&N Dec. 463 (BIA 1977) (stating that the regulations require the submission of a written transcript of any hearing held before an immigration judge).

As there is an incomplete transcript for the February 25, 2019, hearing, we are unable to adduce what actually transpired at that hearing, and whether there is support for the respondent's appellate arguments. Consequently, we find it appropriate to remand the record to the Immigration Judge

for further proceedings, including a new hearing, if necessary, to recreate and develop the record as to the issues raised relating to the respondent's eligibility for relief from removal.

Accordingly, the following order will be entered.

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

NOT FOR PUBLICATION
00000029728

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN - 4 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Mitsie Smith, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Potomac Service Center

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

ORDER:

The petitioner has appealed from the Service Center Director's denial of the visa petition. Counsel for the Department of Homeland Security has filed a separate motion to remand the record to the Service Center Director to allow the petitioner a further opportunity to submit evidence. The petitioner has not opposed the motion. Accordingly, this matter is remanded to the Director for further consideration and the entry of a new decision.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Michele M. Renteria, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Chaparral, NM

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

ORDER:

This Board has been advised that the Department of Homeland Security's ("DHS") appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Kristin Fearnow, Esquire

ON BEHALF OF DHS: Alex S. McCauley, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

ORDER:

The respondent has filed a motion to reopen and terminate these proceedings so that she can pursue an adjustment of status application before the United States Citizenship and Immigration Services (USCIS). The Department of Homeland Security has indicated that it is not opposed to the respondent's motion. Accordingly, the motion to reopen is granted, and these proceedings are terminated without prejudice.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Dorany Rodriguez-Baltazar, Esquire

ON BEHALF OF DHS: Adam N. Greenway, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appealed the Immigration Judge's decision, issued January 14, 2015, denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). On June 4, 2015, the Board administratively closed proceedings, and on October 29, 2020, the Board granted the Department of Homeland Security's motion to reinstate the appeal and set a briefing schedule.

On appeal, the respondent advised that he would be filing a motion to remand in light of additional evidence of hardship accrued during the intervening 7 years (Respondent's Br. at 13-14). The Department of Homeland Security objects to a remand because the respondent did not actually file a separate motion. However, the respondent attached additional evidence to his brief on appeal, which we construe as a motion to remand. Due to the passage of time, as well as evidence of additional hardship, including documentation of serious mental health situations as to his existing qualifying relatives, the record will be remanded for further factual findings and the issuance of a new decision.

The following order will be entered.

ORDER: The record is remanded for further proceedings in accordance with this decision.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Beneficiary

(b)(6) Petitioner

FILED
JAN 13 2022

ON BEHALF OF PETITIONER: Carmen T. Di Amore-Siah, Esquire

ON BEHALF OF DHS: Heith M. Kaneshige, Assocaite Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Honolulu, HI

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The petitioner has appealed from the Field Office Director's decision, dated May 7, 2020, denying the Petition for Alien Relative (Form I-130) submitted on behalf of the beneficiary, as the spouse of a United States citizen. We review all questions arising in appeals from decisions of United States Citizenship and Immigration Services officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii). The appeal will be dismissed.

In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefits sought. *See Matter of Kodwo*, 24 I&N Dec. 479, 482 (BIA 2008). The petitioner must prove the required elements by a preponderance of the evidence. *See Matter of Pazandeh*, 19 I&N Dec. 884, 887 (BIA 1989).

We have reviewed the record of proceedings, including the decision of the Director, the evidence filed in support of the visa petition, and the petitioner's statements on appeal. Upon review of the record, we conclude that, under the preponderance of evidence standard, the petitioner did not meet her burden of establishing eligibility for the benefit sought. Thus, we affirm the denial of the visa petition on that ground, for the reasons stated in the Director's decision.

The petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is eligible for the status sought under the immigration laws.[1] Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

[1] On appeal, the petitioner has proffered new evidence. We will not consider this evidence. This Board generally will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Michael J. Smith, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Petty, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Petty

PETTY, Appellate Immigration Judge

This case was last before the Board on November 16, 2020, when we dismissed the respondent's appeal from an Immigration Judge's decision denying his applications for relief from removal and ordering him removed from the United States to India. On March 11, 2021, the respondent filed a motion to reconsider that decision. 8 C.F.R. § 1003.2(b). In order to resolve any jurisdictional issues, we will accept as timely the respondent's motion to reconsider that decision. The Department of Homeland Security (DHS) opposes the motion. The motion will be denied.

The respondent states that he is not satisfied with the Board's decision, and he will be killed by Bharatiya Janata Party (BJP) supporters if he is removed to India. The respondent's motion does not identify any factual or legal error on the part of the Board in rendering our prior decision, as required by the regulations. *Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006); 8 C.F.R. § 1003.2(b). Because we are not persuaded of any error of fact or law in our decision, the motion will be denied.

ORDER: The motion is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Jesus E. Saucedo, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

The Board administratively closed these proceedings on August 25, 2014. We indicated in that order that either party could seek reinstatement. The respondent has filed a motion to reinstate the proceedings in connection with the United States Citizenship and Immigration Services's approval of a marriage-based visa petition (Form I-130) filed on her behalf by her United States citizen husband, as well as a provisional unlawful presence inadmissibility waiver (Form I-601A). (Respondent's Mot. tabs B-C). The Department of Homeland Security has not responded to the motion. 8 C.F.R. § 1003.2(g)(3).

The respondent requests that we grant her voluntary departure; however, as the Immigration Judge ruled, she is statutorily ineligible for voluntary departure, given that she was served with her notice to appear long before the requisite 1-year threshold for physical presence in the United States (IJ at 5).[1] Section 240B(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b)(1)(A). Notwithstanding the respondent's ineligibility for voluntary departure, we will reinstate her appeal, and remand the record to the Immigration Judge to enable the respondent to apply for adjustment of status. *See* 8 C.F.R. § 1003.2(c)(4); *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).

Accordingly, the following orders are entered.

ORDER: The motion to reinstate is granted.

[1] She seeks voluntary departure to attend a July 14, 2021, consular hearing in Honduras. We note that the respondent did not file her motion to reinstate, including her request for voluntary departure, until June 17, 2021.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A(b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Karen Venice Bryan, Esquire

ON BEHALF OF DHS: Anastasia S. Norcross, Assistant Chief Counsel

IN DEPORTATION PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The respondent and the Department of Homeland Security in a joint motion move to reopen and terminate these deportation proceedings to allow the respondent to pursue an application for adjustment of status before the United States Citizenship and Immigration Services. Accordingly, the proceedings are reopened and terminated without prejudice, and the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: David Colin Bennion, Esquire

ON BEHALF OF DHS: Georgette Pinillos, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

A decision was last rendered by the Board in these proceedings on March 18, 2003, in which it affirmed, without opinion, the Immigration Judge's final administrative decision. The respondent and the Department of Homeland Security (DHS) have now jointly filed a motion to reopen and dismiss proceedings without prejudice as the DHS has determined that the respondent is not a priority for enforcement at this time.[1] Accordingly, these proceedings are reopened and dismissed without prejudice. The record is returned to the Immigration Court without further action.

[1] The parties have advised the Board that two alien registration numbers were assigned to the respondent (i.e., A (b)(6) and A (b)(6)). As of the date of this order, there is nothing pending for the respondent under the second alien registration number (A (b)(6)).

00000029368

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Pro se

ON BEHALF OF DHS: Elizabeth A. Gross, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's July 30, 2019 decision terminating these proceedings. The appeal will be sustained, the proceedings will be reinstated, and the records will be remanded for further proceedings consistent with this decision.

The Immigration Judge concluded that because the notice to appear did not comply with the requirements of 8 C.F.R. §§ 1003.14(a) and 1003.15(b)(6), the Immigration Judge was deprived of jurisdiction over these proceedings, relying on *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019). Subsequent to the Immigration Judge's decision, we issued *Matter of Rosales Vargas and Rosales Rosales*, 27 I&N Dec. 745 (BIA 2020), distinguishing *Karingithi* and holding that a notice to appear that does not include the address of the Immigration Court where the DHS will file the charging document under 8 C.F.R. § 1003.15(b)(6), or include a certificate of service indicating the Immigration Court in which the charging document is filed under 8 C.F.R. § 1003.14(a), does not deprive the Immigration Court of subject matter jurisdiction. *See Aguilar Fermin v. Barr*, 958 F.3d 887, 889 (9th Cir. 2020) (agreeing with the Board's holding in *Matter of Rosales Vargas and Rosales Rosales* "that an initial NTA need not contain time, date, and place information to vest an immigration court with jurisdiction if such information is provided before the hearing."). Given this intervening precedent, we will sustain the appeal, reinstate the proceedings, and remand the record to the Immigration Court for further proceedings consistent with this decision.

A (b)(6) et al.

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is sustained, removal proceedings are reinstated, and the records are remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and the entry of a new decision.

00000029371

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Pro se

ON BEHALF OF DHS: Elizabeth A. Gross, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

The Department of Homeland Security ("DHS") appeals from the Immigration Judge's July 30, 2019 decision terminating these proceedings. The appeal will be sustained, the proceedings will be reinstated, and the records will be remanded for further proceedings consistent with this decision.

The Immigration Judge concluded that because the notice to appear did not comply with the requirements of 8 C.F.R. §§ 1003.14(a) and 1003.15(b)(6), the Immigration Judge was deprived of jurisdiction over these proceedings, relying on *Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019). Subsequent to the Immigration Judge's decision, we issued *Matter of Rosales Vargas and Rosales Rosales*, 27 I&N Dec. 745 (BIA 2020), distinguishing *Karingithi* and holding that a notice to appear that does not include the address of the Immigration Court where the DHS will file the charging document under 8 C.F.R. § 1003.15(b)(6), or include a certificate of service indicating the Immigration Court in which the charging document is filed under 8 C.F.R. § 1003.14(a), does not deprive the Immigration Court of subject matter jurisdiction. *See Aguilar Fermin v. Barr*, 958 F.3d 887, 889 (9th Cir. 2020) (agreeing with the Board's holding in *Matter of Rosales Vargas and Rosales Rosales* "that an initial NTA need not contain time, date, and place information to vest an immigration court with jurisdiction if such information is provided before the hearing."). Given this intervening precedent, we will sustain the appeal, reinstate the proceedings, and remand the record to the Immigration Court for further proceedings consistent with this decision.

Accordingly, the following order will be entered.

ORDER: The DHS's appeal is sustained, removal proceedings are reinstated, and the records are remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and the entry of a new decision.

00000029374

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

FILED
Jan 13, 2022

Respondents

ON BEHALF OF RESPONDENTS: Juan Gonzalez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On March 2, 2020, the Immigration Judge issued a decision ordering the respondents removed after the respondents failed to appear at a scheduled hearing. The respondents seek to challenge the Immigration Judge's decision, but have done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION
00000029377

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Erica T. Yitzhak, Esquire

ON BEHALF OF DHS: Edvin Markisich, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: O'Connor, Appellate Immigration Judge

Opinion by Appellate Immigration Judge O'Connor

O'CONNOR, Appellate Immigration Judge

This case was last before us on January 26, 2021, when we dismissed the respondents' appeal of the Immigration Judge's November 13, 2018, decision denying their applications for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1).[1] On March 31, 2021, the respondents filed the instant motion to reconsider. The Department of Homeland Security has filed a brief in opposition to the motion. The motion will be denied.

The respondents' motion was not filed within the thirty-day filing period set forth at section 240(c)(6)(B) of the Act, 8 U.S.C. § 1229a(c)(6)(B) and 8 C.F.R. § 1003.2(b)(2), as the motion was due on or before February 25, 2021, and it was received by the Board on March 31, 2021. We will thus deny the respondents' motion to reconsider as untimely.

Even assuming the motion was timely filed, the respondents generally argue that we did not consider the appropriate hardship factors in the aggregate and that they would be deported to different countries (Respondent's Mot.) (unpaginated).[2] However, we did consider the totality of

[1] The respondents are a husband (the lead), who is a native and citizen of El Salvador, and a wife (the rider), who is a native and citizen of Ecuador (Exhs. 1, 1A).

[2] As the respondents' motion is not paginated, we are unable to provide citations to specific pages of the motion in this decision. *See* BIA Prac. Man. Ch. 3.3(c)(iii) ("Briefs and other submissions should *always* be paginated.") (January 8, 2021).

the circumstances in this case in our prior decision. As part of our review we took into consideration the respondents' children's medical and educational needs, the diminished economic, educational, and medical opportunities both in El Salvador and Ecuador, adverse country conditions in El Salvador and Ecuador, the children's psychological symptoms, and the lead respondent's mother's medical condition (BIA at 2-4). *See Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006) ("A motion to reconsider is a request that the Board reexamine its [previous] decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked." (internal quotation marks and citations omitted)); *see also* 8 C.F.R. § 1003.2(b)(1). We are therefore not persuaded that there is any basis to reconsider our prior decision in this case.

Accordingly, the following order will be entered.

ORDER: The respondents' motion to reconsider is denied.

00000029380

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENT: Shaoming Cheng, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

ORDER:

This Board has been advised that the respondent's appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

00000029383
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Lara Isabel Autrey, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. 8 C.F.R. § 1003.38(b), (c). The Immigration Judge's decision was rendered orally on October 12, 2021. The appeal was accordingly due on or before November 12, 2021. The Notice of Appeal was filed with the Board of Immigration Appeals on November 15, 2021. The appeal is untimely and will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further Board action. *See* 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

In light of the foregoing, the following orders will be entered.

ORDER: The appeal is summarily dismissed.

FURTHER ORDER: The record is returned to the Immigration Court without further Board action.

00000029386
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Lara Isabel Autrey, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. 8 C.F.R. § 1003.38(b), (c). The Immigration Judge's decision was rendered orally on October 12, 2021. The appeal was accordingly due on or before November 12, 2021. The Notice of Appeal was filed with the Board of Immigration Appeals on November 15, 2021. The appeal is untimely and will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further Board action. *See* 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

In light of the foregoing, the following orders will be entered.

ORDER: The appeal is summarily dismissed.

FURTHER ORDER: The record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 14, 2022

ON BEHALF OF RESPONDENT: Anthony D. Collins, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Hartford, CT

Before: Brown, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Brown

BROWN, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Brazil, appeals from the Immigration Judge's decision dated March 21, 2019, denying her applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The Department of Homeland Security (DHS) has not responded to the appeal. The appeal will be dismissed.[2]

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We affirm the Immigration Judge's determination that the respondent did not establish past persecution (IJ at 6-7). The harm about which the respondent testified, being threatened and harassed by a woman whose child was bullying the respondent's son at school in Brazil and who warned the respondent to stop reporting her son's bullying behavior to the school, does not rise to

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The respondent has not meaningfully challenged the Immigration Judge's denial of her request for protection under the CAT. Therefore, we deem this issue waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (explaining that issues not raised on appeal may be deemed waived).

the level of persecution (IJ at 3-5; Tr. at 29, 39-40, 43; Exh. 5). *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (defining persecution as harm akin to confinement, torture or deprivation so severe it threatens one's life or freedom); *see also Wong v. Holder*, 633 F.3d 64, 72 (2d Cir. 2011) ("[P]ersecution is an extreme concept that does not include every sort of treatment our society regards as offensive."); *Ci Pan v. U.S. Att'y Gen.*, 449 F.3d 408 (2d Cir. 2006) (holding that unfulfilled threats do not rise to the level of persecution); *Ivanishvili v. U.S. Dep't of Justice*, 433 F.3d 332 (2d Cir. 2006) (holding that for harm to be considered persecution it must be sufficiently severe, rising above "mere harassment").

The Immigration Judge also did not clearly err in finding that the respondent was not threatened on account of her race as she contends, but rather due to a personal dispute because she reported the woman's son to school officials for bullying her own son (IJ at 7). *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (motive is a factual finding reviewed for clear error); *see also Matter of C-T-L-*, 25 I&N Dec. 341, 343 (BIA 2010) (indicating that the term "refugee" is defined to include one who has been persecuted or who has a well-founded fear of persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion") (citing section 101(a)(42)(A) of the Act). The Immigration Judge's finding is based on the respondent's testimony that she was threatened by the other mother for reporting her son's bullying of the respondent's son to school officials (IJ at 4, 7; Tr. at 29-30; Exh. 5). We are unpersuaded by the respondent's argument on appeal that she was threatened because she is Afro-Brazilian (Respondent's Br. at 4-5). Although the respondent may have been subjected to racist comments, she was threatened on account of the woman's anger that her son was reported to the school and faced possible expulsion for further bullying (IJ at 4, 7). *See Matter of Pierre*, 15 I&N Dec. 461 (BIA 1975) (finding no nexus to a protected ground where the motivation behind the alleged persecutor's actions is strictly personal). The Immigration Judge's finding that the respondent was subjected to threats because of a personal dispute and not on account of any protected characteristic is not clearly erroneous (IJ at 7). *See Cooper v. Harris*, 137 S. Ct. 1455, 1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record–even if another is equally or more so–must govern). For these reasons, the respondent has not established past persecution on account of a protected ground.

The respondent has not challenged on appeal the Immigration Judge's determination that she has not established a well-founded fear of persecution in Brazil. This issue is therefore waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (explaining that issues not meaningfully raised on appeal may be deemed waived).

Since the respondent has not established that she was or will be persecuted on account of a protected ground, we therefore affirm the Immigration Judge's determination that the respondent is ineligible for asylum or withholding of removal (IJ at 6-8). *See* 8 C.F.R. §§ 1208.13(a), 1208.16(b).

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOT FOR PUBLICATION
00000029392

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 13, 2022

ON BEHALF OF RESPONDENTS: Pro se[1]

ON BEHALF OF DHS: Judson Davis, Senior Attorney

IN DEPORTATION PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

ORDER:

The respondents and the Department of Homeland Security (DHS) in a joint motion move to reopen and terminate these deportation proceedings to allow the respondents to pursue an application for adjustment of status before the United States Citizenship and Immigration Services (USCIS). The proceedings are reopened and dismissed without prejudice and the record is returned to the Immigration Court without further Board action.

[1] An attorney filed an appellate brief on behalf of the respondent. However, the attorney did not file a Notice of Appearance (Form EOIR-27). We will nevertheless provide the attorney with a courtesy copy of the decision.

NOT FOR PUBLICATION

00000029395

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 14 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Peter N. Schmalz, Deputy Chief

IN VISA PETITION PROCEEDINGS
On APPEAL from a Decision of the Department of Homeland Security, Potomac Service Center

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The petitioner appeals from the decision of the Potomac Service Center Director ("Director") dated May 23, 2019, denying the Petition for Alien Relative, Form I-130 ("visa petition"), filed on behalf of the beneficiary as the unmarried daughter of a United States citizen. *See* section 201(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2); 8 C.F.R. § 204.2(d). The United States Citizenship and Immigration Services ("USCIS") filed a response in opposition to the appeal. The appeal will be dismissed.

We review all questions arising in appeals from decisions of USCIS officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii).

In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefits sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). The petitioner must prove the required elements by a preponderance of the evidence. *See Matter of Pazandeh*, 19 I&N Dec. 884, 887 (BIA 1989). A petition must be accompanied by all the required documents. *See* 8 C.F.R. § 103.2(b). The evidence required to support a petition for a child is set forth at 8 C.F.R. § 204.2(d)(2)(i), (ii), and (iii). This includes evidence that the beneficiary meets the definition of a "child" as set forth in section 101(b)(1)(B) of the Act.

The petitioner filed a visa petition on behalf of the beneficiary without adequate evidence to establish the parent-stepchild relationship required to obtain benefits under the Immigration and Nationality Act. On March 29, 2019, the Director issued a Notice of Intent to Deny ("NOID") that

requested specific evidence to prove the petitioner's United States citizenship, the beneficiary's birth certificate, the petitioner's marriage certificate with the beneficiary's mother, and proof of the legal termination of the petitioner's marriage to his prior spouse. In response, the petitioner submitted a bank receipt, the beneficiary's passport, and the beneficiary's birth certificate. The petitioner did not submit his marriage certificate for his current marriage and evidence of the legal termination of his prior marriage. Because the petitioner did not submit all of the relevant evidence requested by the NOID, the Director denied the visa petition for lack of evidence to establish the parent-stepchild relationship.

On appeal, the petitioner argues that he provided all the requested documentation and resubmitted the evidence he provided in response to the NOID. However, the petitioner did not submit evidence that demonstrates that he is a United States citizen, his marriage certificate showing he married the beneficiary's mother, and did not submit proof that his marriage to his prior spouse was legally terminated. Additionally, the petitioner did not submit evidence to show that he has a bona fide parent-child relationship with the beneficiary. Thus, the petitioner did not demonstrate that he has a bona fide parent-child relationship with the beneficiary. Section 101(b)(1)(B) of the Act.

The petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is eligible for the status sought under immigration laws. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION 00000029398

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 14 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Peter N. Schmalz, Deputy Chief

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Potomac Service Center

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The petitioner appeals from the decision of the Potomac Service Center Director ("Director") dated May 23, 2019, denying the Petition for Alien Relative, Form I-130 ("visa petition"), filed on behalf of the beneficiary as the unmarried son of a United States citizen. *See* section 201(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2); 8 C.F.R. § 204.2(d). The United States Citizenship and Immigration Services ("USCIS") filed a response in opposition to the appeal. The appeal will be dismissed.

We review all questions arising in appeals from decisions of USCIS officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii).

In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefits sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). The petitioner must prove the required elements by a preponderance of the evidence. *See Matter of Pazandeh*, 19 I&N Dec. 884, 887 (BIA 1989). A petition must be accompanied by all the required documents. *See* 8 C.F.R. § 103.2(b). The evidence required to support a petition for a child is set forth at 8 C.F.R. § 204.2(d)(2)(i), (ii), and (iii). This includes evidence that the beneficiary meets the definition of a "child" as set forth in section 101(b)(1)(B) of the Act.

The petitioner filed a visa petition on behalf of the beneficiary without adequate evidence to establish the parent-stepchild relationship required to obtain benefits under the Immigration and Nationality Act. On March 29, 2019, the Director issued a Notice of Intent to Deny that requested

specific evidence to prove the petitioner's United States citizenship, the beneficiary's birth certificate, the petitioner's marriage certificate with the beneficiary's mother, and proof of the legal termination of the petitioner's marriage to his prior spouse. In response, the petitioner submitted a bank receipt, the beneficiary's passport, and the beneficiary's birth certificate. The petitioner did not submit his marriage certificate for his current marriage and evidence of the legal termination of his prior marriage. Because the petitioner did not submit all of the relevant evidence requested by the NOID, the Director denied the visa petition for lack of evidence to establish the parent-stepchild relationship.

On appeal, the petitioner argues that he provided all the requested documentation and resubmitted the evidence he provided in response to the NOID. However, the petitioner did not submit evidence that demonstrates that he is a United States citizen, his marriage certificate showing he married the beneficiary's mother, and did not submit proof that his marriage to his prior spouse was legally terminated. Additionally, the petitioner did not submit evidence to show that he has a bona fide parent-child relationship with the beneficiary. Thus, the petitioner did not demonstrate that he has a bona fide parent-child relationship with the beneficiary. Section 101(b)(1)(B) of the Act.

The petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is eligible for the status sought under immigration laws. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED

JAN 14 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Peter N. Schmalz, Deputy Chief

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Potomac Service Center

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The petitioner appeals from the decision of the Potomac Service Center Director ("Director") dated May 23, 2019, denying the Petition for Alien Relative, Form I-130 ("visa petition"), filed on behalf of the beneficiary as the unmarried daughter of a United States citizen. *See* section 201(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2); 8 C.F.R. § 204.2(d). The United States Citizenship and Immigration Services ("USCIS") filed a response in opposition to the appeal. The appeal will be dismissed.

We review all questions arising in appeals from decisions of USCIS officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii).

In visa petition proceedings, the petitioner has the burden of establishing eligibility for the benefits sought. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966). The petitioner must prove the required elements by a preponderance of the evidence. *See Matter of Pazandeh*, 19 I&N Dec. 884, 887 (BIA 1989). A petition must be accompanied by all the required documents. *See* 8 C.F.R. § 103.2(b). The evidence required to support a petition for a child is set forth at 8 C.F.R. § 204.2(d)(2)(i), (ii), and (iii). This includes evidence that the beneficiary meets the definition of a "child" as set forth in section 101(b)(1)(B) of the Act.

The petitioner filed a visa petition on behalf of the beneficiary without adequate evidence to establish the parent-stepchild relationship required to obtain benefits under the Immigration and Nationality Act. On March 29, 2019, the Director issued a Notice of Intent to Deny that requested

specific evidence to prove the petitioner's United States citizenship, the beneficiary's birth certificate, the petitioner's marriage certificate with the beneficiary's mother, and proof of the legal termination of the petitioner's marriage to his prior spouse. In response, the petitioner submitted a bank receipt, the beneficiary's passport, and the beneficiary's birth certificate. The petitioner did not submit his marriage certificate for his current marriage, evidence of the legal termination of his prior marriage, and evidence to show that he has a bona fide parent-child relationship with the beneficiary. Because the petitioner did not submit all of the relevant evidence requested by the NOID, the Director denied the visa petition for lack of evidence to establish the parent-stepchild relationship.

On appeal, the petitioner argues that he provided all the requested documentation, resubmitted the evidence he provided in response to the NOID, and submitted additional evidence. The new evidence submitted on appeal includes the petitioner's United States passport, his birth certificate (in Spanish), an English translation of his marriage certificate to the beneficiary's mother, her lawful permanent resident card, and proof of termination of his marriage to his prior spouse (death certificate). However, the petitioner did not submit evidence showing that he has a bona fide parent-child relationship with the beneficiary. Moreover, the beneficiary's birth certificate was registered 2 years after her birth and is not sufficiently reliable to establish that the beneficiary is the natural daughter of the petitioner's current spouse without additional reliable evidence to establish the relationship. Thus, the petitioner did not demonstrate that he has a bona fide parent-child relationship with the beneficiary. Section 101(b)(1)(B) of the Act.

The petitioner may file a new visa petition on the beneficiary's behalf that is supported by competent evidence that the beneficiary is eligible for the status sought under immigration laws. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED

JAN 14 2022

ON BEHALF OF PETITIONER: James S. Hong, Esquire

ON BEHALF OF DHS: Elizabeth M. Gunter, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Santa Ana, CA

Before: Wetmore, Chief Appellate Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

ORDER:

The petitioner appeals from the Director's denial of the visa petition filed on behalf of the beneficiary. In response to the appeal, counsel for the Department of Homeland Security has requested that the matter be remanded to the Director for further consideration. The petitioner has not filed an opposition to that request. Accordingly, this matter is remanded to the Director for further consideration and for the entry of a new decision.

00000029407
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 19, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Baltimore, MD

Before: Grant, Appellate Immigration Judge; Mahtabfar, Appellate Immigration Judge; Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

The respondent, a native and citizen of the Dominican Republic, appeals from an Immigration Judge's decision dated June 29, 2021, denying the applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent does not meaningfully challenge the Immigration Judge's determination that he is not eligible for asylum, withholding of removal under section 241(b)(3)(A) of the Act, and withholding of removal pursuant to the regulations implementing the CAT, because he has been convicted of a particularly serious crime (IJ at 5). The respondent's appellate brief mentions the term asylum three times (Respondent's Br.) (unpaginated). However, in reviewing the brief and Notice of Appeal, we do not discern any argument regarding the Immigration Judge's determination the respondent is ineligible for asylum because he has been convicted of a particularly serious crime. Thus, any issues in this regard are deemed waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

We affirm the Immigration Judge's denial of the respondent's claim for deferral of removal under the CAT because the respondent did not establish it is "more likely than not" that he will be subject to torture by, or at the instigation of, or with the consent or acquiescence of a public official.

8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(l)-(2); *Silva-Rengifo v. Att'y Gen.*, 473 F.3d 58 (3d Cir. 2007).

In assessing whether an applicant has established that public officials would acquiesce to the feared tortuous acts of a non-state actor, the Immigration Judge must conduct a two-part analysis. *Myrie v. Att'y Gen.*, 855 F.3d 509 (3d Cir. 2017). First, the Immigration Judge must make a factual finding or findings as to how public officials will likely act in response to the harm the applicant fears. *Id.* at 516. Next, the Immigration Judge must assesses whether the likely response from public officials qualifies as acquiescence under the governing regulations. *Id.* On this second point, the Immigration Judge must determine whether the public official has "awareness of [the torturous] activity" and subsequently breaches his or her "legal responsibility to intervene to prevent such activity." *See id.* at 516-17 (citing 8 C.F.R. § 1208.18(a)(7)). With respect to determinations of torture, the first question is factual, while the second is legal. *Id.* at 517.

The Immigration Judge must consider all evidence relevant to the possibility of future torture, including evidence that the applicant has suffered torture in the past; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant information on country conditions. 8 C.F.R. § 1208.16(c)(3); *see also Pieschacon-Villegas v. Att'y Gen.*, 671 F.3d 303, 313 (3d Cir. 2011). A generalized fear of torture is not sufficient to meet one's burden of proof. Rather, specific grounds must exist to indicate that the applicant will be personally at risk of torture. *Valdiviezo-Galdamez v. Att'y Gen.*, 663 F.3d 582, 592 (3d Cir. 2011); *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (holding that a CAT claim cannot be granted by stringing together a series of suppositions).

The respondent claims that he will be tortured in the Dominican Republic based on his cooperation with government authorities in the United States against Mexican members of the Sinaloa drug cartel (IJ at 5; Tr. 38-40). The Immigration Judge found that the respondent did not meet his burden to show that (1) the harm he is likely to suffer in the Dominican Republic meets the legal definition of torture, and (2) that a public official would consent, acquiesce, or otherwise be willfully blind to the harm of the respondent (IJ at 8).

The Immigration Judge found that the respondent may be harmed by persons connected to his criminal conviction (IJ at 5). The respondent did not establish that any of his co-conspirators were public officials (IJ at 6). The respondent did not show that a public official would be aware of torture by his co-conspirators prior to it occurring or remain willfully blind to the torture, and breach a duty owed to protect the respondent (IJ at 6). The respondent argues that based on rampant corruption, a public official will consent, acquiesce, or remain willfully blind in his torture (IJ at 7-8; Respondent's Br.; Tr. at 40-41). However, such generalized statements of corruption, with no particularized risk of torture, is not sufficient to meet his burden of proof (IJ at 8). The Immigration Judge found that the respondent was never personally threatened, harmed, persecuted, or tortured in the past in the Dominican Republic by a private individual or a government official (IJ at 4-5).

The respondent does not know who allegedly tried to kidnap his mother in the Dominican Republic, and he has not shown that they were public officials (IJ at 7). Further, police refusal to take a report from the respondent's mother or sister, instead of the respondent himself, is not sufficient to show a public official would consent or acquiesce in torture of the respondent (IJ at 7). *See, e.g.*, *Galeas Figueroa v. U.S. Att'y Gen.*, 998 F.3d 77, 92-93 (3d Cir. 2021) (explaining that the ineffectiveness of the police in solving an applicant's family's prior reports of crime does not mean that investigations of future crime reports would be so unsuccessful as to constitute acquiescence).

We conclude that the Immigration Judge properly analyzed whether the respondent met his burden of proof under the two-part test outlined in *Myrie v. Att'y Gen.*, 855 F.3d at 516-17. The respondent's appellate arguments do not persuade us of any error in the Immigration Judge's decision. We, therefore, agree with the Immigration Judge that the respondent did not meet his burden to establish eligibility for protection under the CAT. *See* 8 C.F.R. § 1208.18(a)(1).

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 18, 2022

ON BEHALF OF RESPONDENT: Susan Beaty, Esquire

ON BEHALF OF DHS: Erin D. Lopez, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Petty, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Petty

PETTY, Appellate Immigration Judge

This case was last before us on June 25, 2020, when we dismissed the respondent's appeal from the Immigration Judge's January 7, 2020, decision.[1] The respondent, a native and citizen of El Salvador, has now filed a motion to reopen.[2] The Department of Homeland Security ("DHS") opposes the motion. The motion will be denied.

The DHS argues in its opposition to the respondent's motion that the motion was not properly filed due to defective service (DHS's Opp. at 2).[3] The DHS asserts that the certificate of service attached to the motion contains the incorrect address for the DHS (DHS's Opp. at 2). The DHS contends that, because the respondent mailed a copy of the motion to the DHS at "11th floor," when its correct address was "Room 1155," it did not receive the motion (DHS's Opp. at 2). The DHS claims it became aware of the motion 10 months thereafter when the respondent referred to the motion in collateral federal proceedings (DHS's Opp. at 2). Thus, the DHS argues that the motion should have been rejected by the Board for failure to comply with the Board of Immigration Appeals Practice Manual ("BIA Practice Manual") (DHS's Opp. at 2). The BIA Practice Manual

[1] The respondent has a pending petition for review before the United States Court of Appeals for the Ninth Circuit (No. 20-71884). The parties should advise the Ninth Circuit of this decision.

[2] The respondent's motion to increase the page limit for her brief in support of her motion to reopen is granted.

[3] Although the DHS has not timely filed its opposition to the respondent's motion, under these circumstances we will accept the DHS's opposition to the respondent's motion. *See* 8 C.F.R. § 1003.2(g)(3).

states that a proof of service must contain "the precise and complete address of the party served." BIA Practice Manual, § 3.2(d) (Dec. 22, 2020). Additionally, the BIA Practice Manual states that "[i]f an appeal, motion or brief is not properly filed, it is rejected by the Clerk's Office and returned to the party with an explanation for the rejection." BIA Practice Manual, § 3.1(c)(iii) (Dec. 22, 2020). The respondent filed the motion with the required proof of service and contends that she[4] served the DHS at the precise mailing address listed on its own website, that the mailing was not returned to sender, and that her counsel has previously served the DHS with mail at this address without issue or objection (Respondent's Reply to DHS Opp. to Mot. at 3). The respondent has submitted evidence that the DHS's website lists its address as being located on the "11th Floor" (Respondent's Reply to DHS Opp. to Mot. at Tabs A-B).[5] Thus, under these circumstances, we are unpersuaded that the respondent's service was insufficient, as it was served on the DHS at the precise address listed on its own website.

The respondent's motion is untimely. *See* section 240(c)(7)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2) (stating that a motion to reopen any case previously the subject of a final administrative order must be filed no later than 90 days after the date of that decision). The Board entered the final administrative order in this case on June 25, 2020. The respondent filed her motion to reopen on January 28, 2021, beyond the 90-day filing deadline.

The respondent argues that the time limits for her motion to reopen should be equitably tolled (Respondent's Mot. at 28; Respondent's Reply to DHS's Opp. to Mot. at 4). The respondent maintains that, despite due diligence, she was prevented from filing her motion at an earlier date due to extraordinary circumstances. Specifically, she maintains that she could not have filed earlier due to mental illness and the cognitive impact of sexual trauma (Respondent's Mot. at 29; Respondent's Reply to DHS's Opp. to Mot. at 4). The respondent contends that these conditions impeded her inability to discuss her sexual orientation with others earlier (Respondent's Mot. at 30-31).[6]

Equitable tolling is warranted only if the movant "has been pursuing his rights diligently." *Holland v. Florida*, 560 U.S. 631, 649 (2010). The Ninth Circuit, in whose jurisdiction this case arises, has recognized that the deadline for filing a motion to reopen may be equitably tolled where, "'despite all due diligence' the party invoking the doctrine 'is unable to obtain vital information

[4] We will refer to the respondent using "she" and "her" pronouns, as she requests (Respondent's Reply to DHS's Opp. to Mot. at 1, Tab B).

[5] The respondent's motion to accept her reply to the DHS's opposition to her motion to reopen is granted.

[6] Although the respondent has submitted a few prior unpublished Board decisions in support of her argument for equitable tolling, we note that such decisions are not binding precedent (Respondent's Reply to DHS's Opp. to Mot. at 6, Tab C). *See Matter of Echeverria*, 25 I&N Dec. 512, 519 (BIA 2011).

bearing on the existence of the claim'" within the time set for filing. *See Lona v. Barr*, 958 F.3d 1225, 1230 (9th Cir. 2020) (quoting *Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001)).

The respondent asserts that she did not disclose her transgender and bisexual identities, prior LGBTQ relationships, and experiences of sexual assault until October 2020 because of her mental illness[7] (Respondent's Mot. at 30-31, Tab C). *See Socop-Gonzalez*, 272 F.3d at 1193 (citing *Stoll v. Runyon*, 165 F.3d 1238, 1242 (9th Cir. 1999) (plaintiff's mental incapacity warranted equitable tolling)). The respondent has submitted a (b)(6) psychological evaluation in which a licensed clinical social worker concluded that the respondent's mental illness and past sexual trauma prevented her from sharing details of her identities and her past trauma earlier than her October 2020 disclosures (Respondent's Mot. at Tab C). The respondent asserts that it then took 90 days for her counsel to gather the supporting evidence for her motion, which was filed on January 28, 2021 (Respondent's Mot. at 33). The respondent states that it took time to obtain the psychological evaluation and a report from a proposed country conditions expert, a declaration from the respondent's sister, and a self-portrait and statement from the respondent (which her counsel received on January 4, 2021) (Respondent's Mot. at 33, Tab D). Based on the foregoing, we conclude that equitable tolling of the time limitation on the respondent's motion is warranted.

The respondent is statutorily ineligible for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Act and withholding of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), due to her conviction for attempted murder in violation of section 664-187(a) of the California Penal Code, for which she was sentenced to an aggregate term of 11 years' imprisonment. The Immigration Judge concluded that the respondent's conviction was for an aggravated felony under sections 101(a)(43)(A) and (U) of the Act, 8 U.S.C. § 1101(a)(43)(A), (U), for which she was sentenced to more than 1 year of imprisonment. Thus, the respondent has been convicted of a particularly serious crime. *See* sections 208(b)(2)(B)(i) and 241(b)(3)(A) of the Act; 8 C.F.R. § 1208.16. The respondent's motion and reply to the DHS's opposition do not present any argument that these statutory bars to relief and protection are inapplicable. Thus, the respondent may only seek reopening with respect to her application for deferral of removal under the CAT. *See* 8 C.F.R. § 1208.17(a).

A motion to reopen shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material. *See* 8 C.F.R. § 1003.2(c)(1). The movant must also establish prima facie eligibility for the relief sought. *See INS v. Doherty*, 502 U.S. 314, 323 (1992); *INS v. Abudu*, 485 U.S. 94, 104-05 (1988). The movant must satisfy the "heavy burden" of establishing that if the proceedings were reopened, with all the attendant delays, the new evidence would likely change the result in the case. *See Matter of Coelho*, 20 I&N Dec. 464, 472-73 (BIA 1992).

---

[7] As the respondent states in her motion, the Immigration Judge found the respondent incompetent and appointed her a qualified representative pursuant to *Franco-Gonzalez v. Holder*, No. CV10-02211, 2013 WL 3674492 (C.D. Cal. 2013) (Respondent's Mot. at 4).

The respondent's original claim for deferral of removal under the CAT was based on her fear of future torture due to being a suspected gang member, her mental illness, and her status as an indigent deportee. With her motion, the respondent has submitted evidence regarding the assertion of her transgender and bisexual identities. The respondent's motion is supported by the aforementioned psychological evaluation of the respondent and other evidence, including a (b)(6), declaration by a proposed country conditions expert, (b)(6) regarding the treatment of LGBTQ people and other vulnerable groups in El Salvador; a (b)(6), declaration from the respondent's counsel; the respondent's self-portrait and statement; a November 18, 2020, declaration from the respondent's sister attesting to the respondent's feminine appearance; and previously unavailable country conditions evidence (Respondent's Mot. at Tabs B-F).[8] Such evidence was not presented by the respondent before the Immigration Judge. The respondent's motion is also supported by an updated Form I-589, which asserts that she was sexually assaulted multiple times in El Salvador and that she fears torture based on, inter alia, her identities as a transgender and bisexual person (Respondent's Mot. at Tab. A). The respondent contends that she has established prima facie eligibility for deferral of removal under the CAT based on her new evidence, combined with the existing record (Respondent's Mot. at 22-28).

Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture. 8 C.F.R. § 1208.18(a)(2). Torture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the CAT to prohibit torture. 8 C.F.R. § 1208.18(a)(3).

Torture is defined as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). In order to constitute torture, an act must be specifically intended to inflict severe physical or mental pain or suffering. 8 C.F.R. § 1208.18(a)(5). Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 C.F.R. § 1208.18(a)(7).

Additionally, in order to constitute torture, an act must be directed against a person in the offender's custody or physical control. 8 C.F.R. 1208.18(a)(6). Further, a noncitizen's eligibility

[8] The respondent also submitted evidence that was not previously unavailable, including the respondent's mother's declaration, some documentation on LGBTQ identities, a 2017 Georgetown Law Human Rights Institute report on violence against LGBT people in El Salvador, and documentation on severe mental illness, trauma, and memory (Respondent's Mot. at Tabs G-J). However, as this evidence was not material to the respondent's claims until the claims subject to equitable tolling accrued, we will consider this evidence as well.

for deferral of removal under the CAT cannot be established by stringing together a series of suppositions to show that it is more likely than not that torture will result where the evidence does not establish that each step in the hypothetical chain of events is more likely than not to happen. *See Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006).

The respondent has not established prima facie eligibility for deferral of removal under the CAT. *See Abudu*, 485 U.S. at 104-05; *Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996); *Matter of Coelho*, 20 I&N Dec. at 472-73. The respondent has not shown a reasonable likelihood that on remand she could establish a probability that she would be tortured by, or at the instigation of, or with the consent or acquiescence (including willful blindness) of a public official or other person acting in an official capacity upon removal to El Salvador having prior knowledge of the act constituting torture, and thereafter breaching a legal obligation to intervene to prevent it. 8 C.F.R. §§ 1208.17, 1208.18(a)(1), (7). The Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, 2020 and 2019 Country Reports on Human Rights Practices: El Salvador, show that significant human rights issues exist in El Salvador and that public officials, including police, engaged in violence and discrimination against sexual minorities (Respondent's Mot. at Tab G; DHS's Opp. at Exh. C). The evidence indicates that the Salvadoran government has acknowledged the violence and discrimination faced by the LGBT community (Respondent's Mot. at Tab G). The respondent contends that the evidence also shows that gangs in El Salvador have targeted LGBT people for violence or threats of violence because of their sexual orientation or gender identity (Respondent's Mot. at 23, Tab G). While we acknowledge the respondent's arguments regarding the Salvadoran government's past harm of the LGBT community, and while it is relevant to the possibility that the respondent would suffer future torture, there is no presumption of future torture and it is insufficient to demonstrate a likelihood of future torture. *See Dawson v. Garland*, 998 F.3d 876, 882 (9th Cir. 2021). Although the evidence reflects that members of the LGBT community face harassment, discrimination, and instances of violence in El Salvador, the respondent has not made a prima facie showing that it is more likely than not that she will be tortured in El Salvador by, or at the instigation of, or with the consent or acquiescence of a public official or person acting in an official capacity upon her return. *See* 8 C.F.R. §§ 1208.17, 1208.18(a)(1), (7).

Although the respondent has submitted evidence showing that the Salvadoran government has ordered lockdowns in prisons holding gang members and subjecting them to inhumane conditions, the respondent has not demonstrated a reasonable likelihood that once the Salvadoran police learn of her criminal history they would be more likely than not to label her as a suspected gang member and then torture her (Respondent's Mot. at Tab G). *See Matter of J-F-F-*, 23 I&N Dec. at 917-18. To the extent that the respondent fears that she would be arrested and exposed to prison conditions that constitute torture, deplorable prison conditions alone are insufficient to constitute torture, and the record does not reflect that any Salvadoran official or anyone the respondent fears would specifically intend to inflict severe pain or suffering on her. *See Matter of J-R-G-P-*, 27 I&N Dec. 482, 485-86 (BIA 2018) (holding that abusive or squalid prison conditions in prison or mental health institutions in the country of removal that are not specifically intended to cause severe pain and suffering do not establish a sufficient likelihood of torture); *see also Matter of R-A-F-*, 27 I&N Dec. 778, 780 (A.G. 2020).

The respondent has made an insufficient showing of an individualized risk of future torture. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1152 (9th Cir. 2010) (determining that the generalized evidence of violence and crime in the country of removal is not particular to the petitioners and is insufficient to meet the CAT standard). The generalized country conditions evidence regarding the treatment of LGBT individuals in El Salvador is insufficient to meet the respondent's "heavy burden" to demonstrate that if the proceedings are reopened, the new evidence offered would likely change the result in the case. *See id.*; *Matter of J-G-*, 26 I&N Dec. 161, 169 (BIA 2013). Although the evidence reflects that the Salvadoran government and gangs generally commit gross human rights violations and that the LGBT community in El Salvador remains at high risk of discrimination and violence, the evidence does not reflect a reasonable likelihood that the respondent can show that any persecutor or Salvadoran official would specifically intend to inflict severe pain or suffering on her (Respondent's Mot. at Tabs F-G). *Matter of L-O-G-*, 21 I&N Dec. at 419; *Matter of J-E-*, 23 I&N Dec. 291, 303 (BIA 2002), *overruled on other grounds by Azanor v. Ashcroft*, 364 F.3d 1013, 1019-20 (9th Cir. 2004) (explaining that "[s]pecific grounds must exist that indicate that the individual would be personally at risk" of torture upon his return to the country of removal); *see also Matter of J-R-G-P-*, 27 I&N Dec. at 485-86. Additionally, while the psychological evaluation reflects that the respondent attested to being sexually assaulted as a teenager in El Salvador, the respondent was not living openly as a transgender or non-binary person at the time, and the record does not indicate that she was harmed due to her sexual orientation (Respondent's Mot. at 21, 23, Tab C).

The respondent has submitted an affidavit from proposed country conditions expert, (b)(6), who asserts that the respondent faces an "extremely high risk of torture or death" by government officials, gangs, and private actors due to her transgender and bisexual identities (Respondent's Mot. at 23, Tab F). However, while (b)(6) findings and opinions are relevant to the possibility of future torture in El Salvador, we need not accept those opinions as conclusive evidence of future torture (Respondent's Mot. at Tab F). *See Matter of M-A-M-Z-*, 28 I&N Dec. 173, 177 (BIA 2020). While (b)(6) affidavit attests that LGBT individuals face severe discrimination and abuse, that gangs target such individuals, and that the Salvadoran police engages in violence against the LGBT community, those attestations are primarily supported by evidence that is dated prior to the respondent's last hearing (Respondent's Mot. at Tab F). The respondent fears that she will face medical discrimination and that public and private healthcare providers will intentionally deny her medical care because she is transgender and bisexual, compounding the violence and marginalization she would face as a mentally ill person (Respondent's Mot. at 24). While (b)(6) affidavit asserts that there are barriers to healthcare, increased vulnerability due to mental illness, and that LGBT people suffer high levels of medical discrimination, we note that discrimination and deplorable conditions in hospitals and mental institutions alone are insufficient to constitute torture, and the record does not reflect that any Salvadoran official or anyone the respondent fears would specifically intend to inflict severe pain or suffering on her (Respondent's Mot. at Tab F). *See Matter of J-R-G-P-*, 27 I&N Dec. at 485-86. We are unpersuaded that (b)(6) affidavit demonstrates that the respondent has shown a reasonable likelihood that she can establish her burden for deferral of removal under the CAT. *See Matter of J-G-T-*, 28 I&N Dec. 97, 103 (BIA 2020); *Matter of L-O-G-*, 21 I&N Dec. 419. Finally, we note that while we have discussed the respondent's arguments in turn, we have considered the aggregate likelihood of harm from all sources and conclude that the evidence

cumulatively fails to show it is more likely than not that the respondent would be tortured by or with the consent or acquiescence of a public official or other person acting in an official capacity.

The respondent also seeks reopening based on changed country conditions in El Salvador, such that her motion falls within the exception to the limitations for motions to reopen to apply or reapply for CAT protection (Respondent's Mot. at 37; Respondent's Reply to DHS's Opp. to Mot. at 11). *See* section 240(c)(7)(C)(ii) of the Act (providing that the 90-day time limit is inapplicable to a motion that seeks reopening to apply for asylum and related protection if it is premised on changed country conditions evidence that is "material and was not available and would not have been discovered or presented at the previous proceeding"); 8 C.F.R. § 1003.2(c)(3)(ii). To show changed country conditions, a comparison is made between the country conditions at the time of the motion and those at the time of the prior hearing. *Salim v. Lynch*, 831 F.3d 1133, 1138 (9th Cir. 2016); *Matter of S-Y-G-*, 24 I&N Dec. 247, 252 (BIA 2007) (stating that, in determining whether evidence accompanying a motion to reopen demonstrates a material change in country conditions that would justify reopening, we compare the evidence of country conditions submitted with the motion to those that existed at the time of the merits hearing below). Change that is incremental or incidental does not meet the regulatory requirements for an untimely motion to reopen. *Matter of S-Y-G-*, 24 I&N Dec. at 257. As such, a continuation of the conditions that existed at the time of the respondent's last hearing does not constitute a material change such as to warrant reopening of her proceedings. *Matter of S-Y-G-*, 24 I&N Dec. at 257; *see Matter of F-S-N-*, 28 I&N Dec. 1, 6 (BIA 2020) (evidence that unrest had continued since date of merits hearing did not establish a material change in country conditions sufficient to excuse untimely motion to reopen); *see generally Matter of D-G-C-*, 28 I&N Dec. 297 (BIA 2021) (holding that the mere continuation of an activity in the United States that is substantially similar to the activity from which an initial claim of past persecution that is alleged and that does not significantly increase the risk of future harm is insufficient to establish "changed circumstances" to excuse an untimely asylum application).

Although a change in personal circumstances is insufficient to meet the burden alone, a respondent's "untimely motion to reopen may qualify under the changed circumstances exception . . . if the changed country conditions are made relevant by a change in the [respondent's] personal circumstances." *Chandra v. Holder*, 751 F.3d 1034, 1038 (9th Cir. 2014). The issue is "whether the motion to reopen demonstrates a change in country conditions with respect to the [respondent's] current basis for relief." *Salim*, 831 F.3d at 1138.

The evidence submitted in support of the respondent's motion does not establish that conditions have materially worsened for the LGBT community in El Salvador since the respondent's last removal hearing in November 2019 and when she filed her motion to reopen in January 2021. *See* 8 C.F.R. § 1003.2(c)(3)(ii); *Matter of S-Y-G-*, 24 I&N Dec. at 252. Although the evidence submitted by the respondent with her motion reflects many troubling acts of discrimination and violence against LGBTQ persons in El Salvador, including the occurrence of such acts during the COVID-19 pandemic, the evidence generally shows a continuation of adverse conditions (Respondent's Mot. at Tabs F-G, I). *See Matter of S-Y-G-*, 24 I&N Dec. at 257. The number of deaths in recent years within the LGBT community are similar to those reported by country conditions evidence at the time of the respondent's last hearing (Respondent's Mot. at Tab

A (b)(6)

G). While the number of violent crimes as well as other acts of harm may be higher in recent years, we are unpersuaded that the respondent has demonstrated evidence of material changed conditions in El Salvador with respect to the LGBT community (Respondent's Mot. at Tab G). As such, the respondent has presented insufficient material evidence of recent changes in personal circumstances, coupled with changes in country conditions in El Salvador pertaining to the treatment of transgender and bisexual persons, to warrant reopening and further development of the record. *See Matter of S-Y-G-*, 24 I&N Dec. at 252; *Matter of L-O-G-*, 21 I&N Dec. at 419. Thus, the respondent has not established that the motion falls within any exception to the time and numerical limitations enumerated in section 240(c)(7) of the Act and 8 C.F.R. § 1003.2(c)(3).

The respondent also contends that her motion should be treated as timely as a reasonable accommodation for her intellectual disability under section 504 of the Rehabilitation Act (Respondent's Mot. at 34). However, the respondent has not cited to any provision of the Act or case law indicating that the Rehabilitation Act applies to deadlines for motions to reopen in removal proceedings. Additionally, reasonable accommodations and modifications have been repeatedly made for mentally incompetent respondents and were implemented for the respondent pursuant to *Franco-Gonzalez v. Holder*, No. CV 10-02211, 2013 WL 3674492 (C.D. Cal. 2013) (Respondent's Mot. at 36; DHS's Opp. at 3).

To the extent that the respondent requests sua sponte reopening of her proceedings, while the Board has the discretionary authority to reopen proceedings sua sponte, that authority is reserved for rare "exceptional" situations not established here (Respondent's Mot. at 43). *See* 8 C.F.R. § 1003.2(a); *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Although, in support of her argument, the respondent has submitted a few prior unpublished Board decisions granting sua sponte reopening, we are not bound by such unpublished decisions (Respondent's Reply to DHS's Opp. to Mot. at 14, Tab C). *See Matter of Echeverria*, 25 I&N Dec. at 519.

Accordingly, the following order is entered.

ORDER: The motion is denied.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 11, 2022

ON BEHALF OF RESPONDENTS: Sean Dean, Esquire

ON BEHALF OF DHS: Mark A. Sauter, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

ORDER:

The Department of Homeland Security (DHS) and the respondents have filed a joint motion to reopen and dismiss without prejudice these proceedings so that the respondents can apply for adjustment of status before the United States Citizenship and Immigration Services.

Accordingly, the motion is granted, and the proceedings are reopened and dismissed without prejudice.[2]

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] We interpret dismissal and termination to have the same legal consequence in this instance.

00000029416

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Enrique Martinez, Esquire

ON BEHALF OF DHS: Bernard Trujillo, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Dallas, TX

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's decision dated November 5, 2018, denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security has opposed the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge determined that the respondent did not meet his burden of establishing the requisite hardship to his qualifying relative for purposes of cancellation of removal. We agree, for the reasons stated by the Immigration Judge, that the respondent did not meet his burden of establishing that his removal will result in exceptional and extremely unusual hardship to his lawful permanent resident stepfather (IJ at 12-14). Contrary to the respondent's arguments on appeal, the Immigration Judge properly considered the evidence in the record regarding hardship to his qualifying relative (IJ at 2-14). In determining that the respondent had not established exceptional and extremely unusual hardship, the Immigration Judge considered that the stepfather had a stroke in February of 2017, and that his mental health is declining (IJ at 12). As noted by the Immigration Judge, the stepfather sees two doctors, one in the United States and the other in Mexico (IJ at 12). The Immigration Judge also noted that the stepfather has an extensive family network who live in the area and assist him when needed (IJ at 13). The Immigration Judge properly considered that the stepfather receives $ (b)(6) monthly in Social Security disability payments, he receives food stamps, that his medication is paid for by the government, and that he will be filing for Medicaid benefits (IJ at 12).

A lower standard of living and emotional hardship are not unusual consequences of removal. Rather, they are often a natural consequence of the removal of a family member, and the evidence submitted does not establish that the impact on the qualifying relative would be particularly acute. While the respondent's stepfather will naturally suffer some hardship, we conclude that the respondent did not meet the heightened standard of exceptional and extremely unusual hardship to support a grant of cancellation of removal. *See Matter of J-J-G-,* 27 I&N Dec. 808 (BIA 2020) (noting that, to extend a cancellation of removal claim is based on the health of a qualifying relative who would be accompanying the applicant to the country of removal, the applicant must show that adequate medical care for the claimed condition is not reasonably available in that country); *Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56, 62 (BIA 2001).

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Dana Roxana Bucin, Esquire

ON BEHALF OF DHS: Joel R. Gonzalez, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Antonio, TX

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Honduras, appealed the Immigration Judge's decision, dated November 14, 2018, which denied her motion to reopen proceedings.[1] The Department of Homeland Security (DHS) moved for summary affirmance. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent first argued the Notice to Appear (NTA) was defective, because she did not receive proper notice and advisals of the hearing date, time, and location; therefore, the Immigration Judge lacked jurisdiction and erred by not terminating proceedings, pursuant to *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) (Respondent's Br. at 3-5). *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1485-86 (2021) (holding that a Notice to Appear sufficient to trigger the stop-time rule, for cancellation of removal relief, is a single document containing all the information concerning an individual's removal hearing, including the date and time). The respondent attempted to enter the United States on or about June 3, 1999 (Exh. 1). The respondent was issued a NTA, which did not list the date and time of the initial hearing (Exh. 1). The NTA was presented to the respondent in person and oral notice was given to her in Spanish (Exh. 1). The respondent

[1] The Immigration Judge referred to the respondent as "he" rather than "she" in the decision (IJ Dec. at 2). We consider this a scrivener's error.

appeared with counsel at a hearing on February 22, 2000, requested and accepted voluntary departure.

The United States Court of Appeals for the Fifth Circuit addressed this precise issue in *Maniar v. Garland*, 998 F.3d 235, 242 & n.2 (5th Cir. 2021), and found the Immigration Judge was not deprived of jurisdiction over the removal proceedings, because "a notice to appear for removal proceedings is sufficient to commence proceedings even if [] [the NTA] does not include the time, date, or place of the initial hearing." *Id.* at 242. Accordingly, the respondent's claim that the Immigration Judge lacked jurisdiction over her removal proceedings, because the NTA failed to specify the date and time of her removal hearing is foreclosed by the Fifth Circuit's decision in *Maniar*.

The respondent next argues the "stop-time" rule was never triggered in her case, because the NTA was defective (Respondent's Br. at 2, 5-6). As such, she argues she now qualifies for cancellation of removal and moved to reopen removal proceedings (Respondent's Br. at 5-6).[2]

The record reflects that, on February 22, 2000, the respondent requested and was granted the special opportunity to voluntary depart the United States on or before June 21, 2000. The respondent did not voluntarily depart on or before that day, and has apparently remained illegally in this country. As the respondent accepted a grant of voluntary departure, her removal proceedings were completed. Thus we do not find reopening appropriate under these circumstances.

The respondent has not establish an exception to the time limit for a motion to reopen exists in this matter. The respondent's motion to reopen was untimely, as it was filed nearly 18 years after the final administrative order of removal (IJ Dec. dtd. February 22, 2000). *See Kucana v. Holder*, 558 U.S. 233, 243-44, 247-50 (2010) (stating the Attorney General has discretion to deny a motion to reopen); section 240(c)(7)(C)(i) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). A motion to reopen in any case previously the subject of a final administrative decision, must be filed no later than 90 days after the date of that decision, unless certain exceptions apply, which are not pertinent in this case. *See* sections 240(c)(7)(C)(i) of the Immigration and Nationality Act; 8 C.F.R. § 1003.2(c)(2). There is no dispute the present motion was filed well beyond the 90-day filing deadline. *See, e.g.*, *Matter of Yauri*, 25 I&N Dec. 103, 105 (BIA 2009) (explaining an untimely motion to reopen to apply for adjustment of status generally does not fall within any of the statutory regulatory exceptions for motions to reopen and are generally denied); 8 C.F.R. § 1003.2(c)(3). The respondent did not show due diligence in reopening her removal proceedings, because she could have filed a motion to reopen within the designated time frame to assert the NTA was not in compliance with the Act; however, she waited approximately 18 years to present this argument. *See Matter of M-S-*, 22 I&N Dec. 349, 352-56 (BIA 1998). The respondent did not argue the filing deadline for the motion to reopen should be equitably tolled. Finally, we agree with the Immigration Judge that reopening removal proceedings for the

[2] The Immigration Judge indicated this removal case was previously an in absentia decision. We consider this harmless error (IJ at 2).

A (b)(6)

respondent to seek new relief, in the form of cancellation of removal, is not warranted as the motion was untimely filed. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The request for a stay of removal is denied as moot.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Tony E. Parada, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New Orleans, LA

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's March 1, 2019, decision denying the respondent's application for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3).[1] The Department of Homeland Security has not submitted a brief. The appeal will be dismissed.

We review the findings of fact, including the credibility finding, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). It is the respondent's burden to establish eligibility for relief from removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

We affirm the Immigration Judge's decision. The respondent asserts that his cousin was murdered by gang members for an unknown reason in 2012 and that he fears he will be similarly murdered by the gang (IJ at 5; Tr. at 29-31; Respondent's Br. at 3). The Immigration Judge found that the respondent did not meet his burden of establishing that he will more likely than not be persecuted in Honduras on account of his membership in a particular social group (IJ at 6). In reaching that finding, the Immigration Judge considered that the murderers and motive are unknown and that the respondent's fear is speculative, because neither the respondent nor his family have been threatened or suffered harm.

The respondent has not contested those findings. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (issues not raised in a brief are deemed waived). Rather, the respondent argues that he has a well-founded fear of persecution (Respondent's Br. at 14). A well-founded fear of

[1] The respondent has not contested the Immigration Judge's denial of his request for protection under the Convention Against Torture.

persecution is applicable to asylum claims, not withholding of removal. 8 C.F.R. § 1208.13(a). The respondent did not apply for asylum (Tr. at 19). Consequently, we find no reason to disturb the Immigration Judge's findings. Inasmuch as the respondent has not met his burden of proving eligibility for withholding of removal, we will dismiss the appeal. 8 C.F.R. § 1208.16(b).

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

This case was last before us on March 12, 2019, when we dismissed the respondent's appeal as untimely. On March 28, 2019, the respondent filed a timely motion to reconsider. The record does not contain a response from the Department of Homeland Security. The respondent's motion to reconsider will be denied.

The respondent has not identified an error of fact or law in our prior decision. *See* section 240(c)(6)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(6)(C) (stating that a motion to reconsider must specify the errors of fact or law in a prior Board decision, and it must be supported by pertinent authority). The respondent instead reiterates essentially the same facts that he recounted in the motion he filed with his appeal asking us to accept the appeal on certification.

The respondent also states that the lack of evidence showing that the Immigration Judge's order was returned to the Immigration Court as undeliverable does not necessarily establish that he received the Immigration Judge's order. We agree. The respondent, however, still has not provided an adequate explanation for filing his appeal more than 30 days after he became aware of the Immigration Judge's decision (Respondent's Mot. at 5). In particular, the respondent has not adequately explained why any inquiry with his attorney's former employer and any discussions regarding whether to file an appeal could not have been accomplished in 30 days, the time he would have been given to file an appeal if he had received the Immigration Judge's decision. We therefore deny the respondent's motion to reconsider our March 12, 2019, decision dismissing his appeal as untimely.

Accordingly, the following order will be entered.

ORDER: The respondent's motion to reconsider is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Yoav Sicker, Esquire

ON BEHALF OF DHS: Elizabeth Puskar, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Denver, CO

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's April 2, 2019, decision determining that he had jurisdiction over the respondent's removal proceedings, denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), but granting voluntary departure under section 240B(b)(l) of the Act, 8 U.S.C. § 1229c(b)(l). The Department of Homeland Security (DHS) opposes the respondent's appeal. The record will be remanded.

We acknowledge and appreciate the Immigration Judge's decision. Initially, we agree that the Immigration Judge had jurisdiction over the respondent's case. *See Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021); *Matter of Bermudez-Cota*, 27 I&N Dec. 441, 445-47 (BIA 2018); *see also Lopez-Munoz v. Barr*, 941 F.3d 1013 (10th Cir. 2019).

With regard to voluntary departure, we note that it is not clear that the respondent received all necessary advisals. At the same time, it is not clear whether the respondent would, at present, want voluntary departure after being given all necessary advisals. Thus, in an abundance of caution, we will remand the record. On remand, the parties should also address the applicability of *Martinez-Perez v. Barr*, 947 F.3d 1273 (10th Cir. 2020), to the "aging out" issue for cancellation of removal. Moreover, on remand, the parties should address the appropriateness of prosecutorial discretion, such as administrative closure. *See* EOIR Director's Memorandum 22-03 (Administrative Closure); then-Acting EOIR Director's Policy Memorandum 21-25; *see also Matter of Cruz-*

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

Valdez, 28 I&N Dec. 326 (A.G. 2021). It is unclear whether the respondent's wife has since become a lawful permanent resident, thus enabling him to seek a I-601A Provisional Waiver.

Accordingly, the following order will be entered.

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

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Thomas D. Barra, Esquire

ON BEHALF OF DHS: James F. Polivka, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

On February 12, 2003, the Board dismissed the respondent's appeal from the Immigration Judge's March 9, 1998, decision denying his applications for relief and ordering him removed. On March 15, 2004, the Board denied a motion to reopen filed by the respondent on June 5, 2003. On July 11, 2019, the respondent filed the instant motion, which again seeks reopening of his proceedings. *See* section 240(c)(7) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c). The motion will be denied.

The respondent's motion seeks reopening to allow him to apply for asylum and withholding of removal under sections 208 and 241(b)(3) of the Act, 8 U.S.C. §§ 1158, 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The attached application for relief (Form I-589) and supporting statement assert a fear of harm in China, specifically organ harvesting, due to the respondent's conversion to Christianity.

As an initial matter, the motion is untimely, for it was submitted more than 90 days after our February 12, 2003, final order in the respondent's removal proceedings. *See* 8 C.F.R. § 1003.2(c)(2). It also exceeds the numerical limitations on motions to reopen, for a respondent is limited to one. *See id.*

The time and numerical limits on motions to reopen do not apply if the basis of the motion is to apply or reapply for asylum or withholding of removal based on changed country conditions arising in the country of nationality, if such evidence is material and was not available and could

not have been discovered or presented at the former hearing. Section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). However, the respondent's motion has not established a change in country conditions since the issuance of our February 12, 2003, decision.

The motion includes evidence that human rights advocates claim that China is subjecting people to organ harvesting. However, the evidence is insufficient to support a claim that China has begun subjecting Christians generally to organ harvesting. As an initial matter, the 2016 Congressional House Resolution that the respondent seeks to rely upon makes no reference to Christians as victims of organ harvesting in China. The articles submitted by the respondent include a June 2016 "The Diplomat" article, which states that "house church Christians" "may be" victims (Motion, Tab E, "Organ Harvesting in China"); and a January 2017 www.ntd.tv article, which states that a 2016 human rights report concluded that "mainly imprisoned religious and ethnic minorities, including Uyghurs, Tibetans, underground Christians, and practitioners of the banned Falun Gong spiritual movement" are the victims of Chinese organ harvesting (Motion, Tab E, "International Condemnation for China's Forced Organ Harvesting from Prisoners of Conscience"). These two brief references are accompanied by a December 2016 World Watch Monitor article, which states that, contrary to other claims that Christians are being targeted, a charity spokesperson had stated on the subject: "From our experiences over the past decades, we never heard Christians were targeted for organ harvesting" (Motion, Tab E, "'Expendable' Christians 'victims of organ harvesting' in China"). Given the sparse and conflicting evidence, we conclude that the respondent's motion has not established "changed country conditions" in China, that is, that Christians in China are generally being targeted for organ harvesting.

In any event, we would decline to reopen the record based on the new evidence, for the respondent has not demonstrated prima facie eligibility for the relief requested. *See Matter of L-O-G-*, 21 I&N Dec. 413, 419 (BIA 1996); *Matter of Coelho*, 20 I&N Dec. 464, 472 (BIA 1992). With regard to the respondent's prospective applications for asylum, withholding of removal under the Act, and CAT protection, the respondent has not shown that Christians are generally being subjected to organ harvesting in China or that he would become an "underground" Christian in China who may be arrested and subjected to organ harvesting. In fact, the evidence of the respondent's own Christian conversion is meager, consisting only of two photos of the respondent's family at unidentified locations and one photo of the family in front of a backdrop that reads "A People for Jehovah's Name." The respondent's claim of an August 2017 conversion to Christianity is also undermined by the inconsistency in the record, given the claim in his December 12, 1997, sworn statement that he had been attending church regularly and feared that he "would not be able to continue to practice [his] religion if [he] returned to China" (Exh. 2 Attachment).

Finally, given the record before us and the unconvincing evidence submitted with the motion, the respondent has not shown that his case warrants an intervention of our sua sponte authority to reopen his removal proceedings. *See* 8 C.F.R. § 1003.2(a); *Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999); *Matter of J-J-*, 21 I&N Dec. at 984.

ORDER: The motion is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Margaret Blot, Esquire

ON BEHALF OF DHS: Matthew Davenport, Assistant Chief Counsel

IN DEPORTATION PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The Board issued the final administrative decision in this case on December 28, 2001, when we dismissed the respondent's appeal of the Immigration Judge's August 19, 1997, denial of his applications for asylum and related relief and protection. Over eighteen years later, on August 5, 2020, the respondent filed the instant motion to reopen these proceedings to allow him to pursue adjustment of status under section 245(a) of the Immigration and Nationality Act, 8 U.S.C. § 1255(a), as the beneficiary of an approved immediate-relative visa petition filed by his United States citizen spouse, whom he married in 2012. The Department of Homeland Security has filed an opposition to the motion. The respondent's motion to reopen will be denied.

The respondent's motion to reopen was filed more than eighteen years after the Board's December 28, 2001, final administrative decision, and as such it is untimely. Section 240(c)(7) of the Act, 8 U.S.C. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(2). The respondent has not shown that a statutory or regulatory exception to the general 90-day time limit on motions to reopen applies in this case. 8 C.F.R. § 1003.2(c)(2). Rather, the respondent requests that we exercise our discretionary authority to reopen these proceedings under our sua sponte reopening authority. *See* 8 C.F.R § 1003.2(a)

The record before us also does not present an exceptional situation warranting the exercise of our discretionary authority to reopen these proceedings sua sponte. 8 C.F.R § 1003.2(a); *see Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (holding that sua sponte reconsideration or reopening is limited to exceptional circumstances and is not meant to cure filing defects or circumvent the regulations). Becoming eligible or potentially eligible for relief from removal years after the entry of a final order is not uncommon. Moreover, even viewing such eligibility in conjunction with the respondent's favorable equities, the difficult country conditions in Haiti, and any resultant hardship from his removal, the respondent has not demonstrated circumstances that

warrant the extraordinary remedy of sua sponte reopening. *See Matter of G-D-*, 22 I&N Dec. 1132, 1133-34 (BIA 1999) ("As a general matter, we invoke our sua sponte authority sparingly, treating it not as a general remedy for any hardships created by enforcement of the time and number limits in the motions regulations, but as an extraordinary remedy reserved for truly exceptional situations."). We will thus deny the respondent's untimely motion to reopen.

Accordingly, the following order will be entered.

ORDER: The respondent's motion to reopen is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Claire H. Kim, Esquire

IN DEPORTATION PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

ORDER: The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: James A. Welcome, Esquire

ON BEHALF OF DHS: Iris G. Bravo, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Harlingen, TX

Before: Goodwin, Appellate Immigration Judge; Gorman, Appellate Immigration Judge; Greer, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Gorman
Appellate Immigration Judge Greer, see dissenting opinion

GORMAN, Appellate Immigration Judge

The respondent, a native and citizen of Guatemala, appeals the decision of the Immigration Judge, dated October 22, 2020, denying his motion to reopen removal proceedings that were conducted in absentia on March 11, 2003.[1] The Department of Homeland Security (DHS) moves for summary affirmance. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

An order of removal entered in absentia may be rescinded (1) if filed within 180 days after the date of entry of the final order of removal, if failure to appear was based on exceptional circumstances, or (2) if filed at any time if the respondent did not receive notice. Sections 240(b)(5)(C)(i), (ii) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(b)(5)(C)(i), (ii); 8 C.F.R. § 1003.23(b)(4)(ii).

On March 11, 2003, the Immigration Judge ordered the respondent removed following a hearing held in absentia. On October 4, 2018, the respondent filed a motion to reopen the proceedings claiming he lacked notice of his hearing because the Notice to Appear (NTA) contained an incorrect name, and that any notices sent after his release from detention never

[1] The respondent's motion to accept his late-filed brief is granted. Further, the Board granted DHS's motion to accept its late-filed brief on April 7, 2021.

reached him on account of the incorrect name (Motion to Reopen at 6-8). The Immigration Judge denied the motion finding that the respondent had been personally served with a Notice to Appear, which contained the date, time, and place of the respondent's hearing (IJ at 2; Exh. 1). The respondent now appeals the Immigration Judge's decision.

We affirm the Immigration Judge's decision that reopening is not warranted on account of a lack of notice (IJ at 2-3). *See* section 240(b)(5)(C)(ii) of the Act, 8 U.S.C. § 1229a(b)(5)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(ii). The Immigration Judge found the respondent to have been personally served, on November 20, 2002, with a Notice to Appear that contains his signature, and which informed the respondent of the date, time, and location of his removal hearing (IJ at 2; Exh. 1). These findings are not clearly erroneous. *See* 8 C.F.R. § 1003.l(d)(3)(i). While the DHS is not required to read the NTA in a respondent's native language, the NTA also reflects that it was read to the respondent in Spanish (Exh. 1). *See Gomez-Palacios v. Holder*, 560 F.3d 354, 359-60 (5th Cir. 2009).

We are not persuaded by the respondent's argument on appeal that the Notice to Appear failed to comply with statutory and due process notice requirements (Respondent's Br. at 13-16). While "due process requires that an alien be provided with notice of proceedings and an opportunity to be heard...as a general matter, actual notice will always suffice." *Matter of G-Y-R-*, 23 I&N Dec. 181, 186 (BIA 2001); *see also* Section 239 of the Act, 8 USC § 1229. The respondent here received actual notice of his hearing when he was personally served with an NTA that contained the date, time, and place of his initial hearing (Exh. 1).[2]

Furthermore, contrary to the respondent's argument on appeal, the error in his name on the NTA did not render service ineffective, because, as stated above, the respondent was personally served with notice of the hearing. *See, e.g., Granados-Guevaras v. Sessions,* 741 F.App'x 982, 986 (5th Cir. 2018) (unpublished decision holding that the NTA was sufficient, despite a minor mistake in the respondent's name, where the respondent was personally served with NTA; contrasting the 5th Circuit decision in *Barrios-Cantarero v. Holder*, 772 F.3d 1019, 1022 (5th Cir. 2014)). The respondent also claims that he did not receive any hearing notices sent after he was released from detention because the notices contained an incorrect name. However, the Immigration Judge ordered the respondent removed at the initial hearing that took place on March 11, 2003, (the date listed on the NTA), and there were no subsequent hearing notices issued (Exh. 1).

We are also unpersuaded by the respondent's arguments that the Immigration Judge impermissibly compared the signature that appears on the NTA to the signature on the respondent's affidavit (Respondent's Br. at 7; IJ at 2). Notably, the respondent has not argued that the signature on the NTA is not in fact his signature; he states only that the Immigration Judge erred in comparing the signatures (Respondent's Br. at 7). The Immigration Judge was entitled to doubt the veracity of the respondent's affidavit in light of the contradictory evidence in the record.

[2] While not argued by the respondent on appeal, we note that *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), are not applicable to this case because the respondent's NTA contained the date, time, and place of his initial hearing.

Moreover, the Form I-213 and the NTA relied on by the Immigration Judge are official government documents entitled to a presumption of regularity, and are inherently trustworthy absent evidence that the information is false or obtained by coercion or duress (IJ at 2; Exhs. 1, 2). *See Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988) (a Form 1-213 is admissible to prove alienage and removability, absent an indication that the form "contains information that is incorrect or was obtained by coercion or duress"). The respondent has not overcome the presumption that the DHS properly obtained the respondent's information and personally served him with the NTA. *See, e.g., United States v. Armstrong,* 517 U.S. 456, 464 (1996) (finding a presumption that government officials properly perform their duties). In this case, the I-213 includes the respondent's correct date of birth, and the certificate of service on the NTA contains a signature and fingerprint, and is signed by a Border Patrol Officer, who indicated that he personally served the individual with the NTA on November 20, 2002 (IJ at 2; Exhs. 1, 2).

Further, irrespective of the signatures, the respondent has not established that he was not personally served with the NTA. The respondent affirmed that he was "given paperwork and told that [he was] being released" (Motion to Reopen at tab. A). While the respondent has not identified the paperwork he received, he has not indicated that the paperwork did not include the NTA (Motion to Reopen at tab. A; IJ at 2). The respondent has argued only that he was not aware of his court date, that he did not know he was required to return to Texas for court, and that the NTA was legally deficient due to the listed name (*See* Respondent's Br. at 13-16; Motion to Reopen at 6-8, tab A). He has not argued that he did not receive the NTA. Therefore, the Immigration Judge did not err in determining that the respondent was personally served with the NTA.

The respondent also seeks reopening to pursue new relief in the form of cancellation of removal (Respondent's Br. at 17-18; Motion to Reopen at tab C). In *Matter of M-S-,* 22 I&N Dec. 349 (BIA 1998), the Board held that a respondent may reopen proceedings for purposes of pursuing previously unavailable relief in circumstances where he or she was not given oral warnings in his or her native language of the consequences of failing to appear at a deportation hearing and where the motion complies with the general time limits governing motions to reopen. However, the instant motion is untimely as it was filed nearly 15 years after the entry of the in absentia removal order, therefore, the motion was also filed long past the 90-day deadline for the filing of a motion to reopen seeking new relief. *See* 8 C.F.R. § 1003.23(b). Moreover, the respondent was provided oral warnings in the Spanish language of the consequences of failing to appear (Exh. 1). Consequently, reopening on this basis is not warranted.

Finally, we affirm the Immigration Judge's determination to deny respondent's motion to reopen proceedings sua sponte (IJ at 4). Sua sponte reopening is reserved for truly exceptional cases and is not meant to be used to circumvent the regulations where enforcing them might result in hardship. *Matter of G-D-,* 22 I&N Dec. 1132 (BIA 1999); *Matter of J-J-,* 21 I&N Dec. 976, 984 (BIA 1997). Upon our review of the record, we conclude that the respondent's case does not present any exceptional situation that warrants sua sponte action. Many respondents who have been present in the United States for a period of years have accumulated favorable equities

subsequent to being ordered removed. *See Matter of Beckford*, 22 I&N Dec. 1216, 1218 (BIA 2000) (burden is on the movant to show exceptional circumstances).[3]

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

Appellate Immigration Judge Anne J. Greer respectfully dissents without opinion.

[3] To the extent the respondent argues that the DHS will not be able to remove him because the order of removal contains the wrong name (Respondent's Br. at 14), DHS's ability to execute an order of removal is outside of the Board's purview.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Aneliese Ochoa, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Otay Mesa, CA

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

This matter was last before us on September 9, 2020, when we remanded the record to the Immigration Judge for further factual findings following a September 25, 2019, order of the United States Court of Appeals for the Ninth Circuit. Upon remand, the Department of Homeland Security (DHS) filed a motion with the Immigration Court requesting a new decision be issued without a hearing. On October 1, 2020, the Immigration Judge issued a form order reflecting that the respondent was not present at the hearing, his request for deferral of removal under the Convention Against Torture was denied, and he was ordered removed to Jamaica.

The Immigration Judge did not prepare a separate oral or written decision in this matter addressing the issue specified in the prior decisions issued by the Ninth Circuit and this Board.[1] Therefore, the record will be remanded to the Immigration Judge for preparation of a full decision. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994); *Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). The Immigration Judge's form order dated October 1, 2020, does not provide any rationale for the denial of the respondent's request for deferral of removal under the Convention Against Torture. We find that the Immigration Judge's decision provides an insufficient basis upon which the Board can adequately conduct a meaningful review. Upon preparation of the full decision, the Immigration Judge shall issue an order administratively returning the record to the Board. The Immigration Judge shall serve the administrative return order on the respondent and the Department of Homeland Security. The Board will thereafter give the parties an opportunity to submit briefs in accordance with the regulations.

[1] We note that insofar as the respondent was not present at the hearing, the record reflects that he was removed from the United States in August 2019.

A (b)(6)

Accordingly, the following order will be entered.

ORDER: The record is returned to the Immigration Court for further action as required above.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN - 5 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Allen D. Kenny, Deputy Chief Counsel

IN VISA PETITION REVOCATION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Nebraska Service Center

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The petitioner has appealed the decision of the Director, dated November 12, 2019, granting the petitioner's motion to reconsider, and affirming the prior decision, dated June 25, 2019, revoking his visa petition filed on behalf of the beneficiary as the spouse of a United States citizen pursuant to section 201(b) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b). The Department of Homeland Security, United States Citizenship and Immigration Services opposes the appeal. The appeal will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(A), (E), and (G).

The petitioner's Notice of Appeal (Form EOIR-29) alleges he will experience hardship if he is unable to have his wife by his side, but he does not identify any findings of fact or law that are being challenged or specify the reasons for the appeal. *See* 8 C.F.R. §§ 1003.1(d)(2)(i)(A), 1003.3(b). Additionally, while the petitioner indicated on his EOIR-29 that he would file a separate written brief or statement in support of his appeal, he has not done so, despite the fact that the EOIR-29 warns that if he "fail[s] to do so the appeal may be summarily dismissed." *See* 8 C.F.R. § 1003.1(d)(2)(i)(E). Furthermore, the appeal is untimely, as it was due by Thursday, December 12, 2019, but was not received until December 16, 2019. *See* 8 C.F.R. § 1003.1(d)(2)(i)(G). For these reasons, the petitioner's appeal will be summarily dismissed.

Accordingly, the following order will be entered.

ORDER: The appeal is summarily dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Edith Nazarian, Esquire

IN DEPORTATION PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

This matter was last before the Board on April 1, 2021, when we dismissed the respondent's motion to reopen. The respondent has filed a motion to reconsider our decision. The Department of Homeland Security has not responded to the motion. The motion will be denied.

A motion to reconsider is "a request that the Board reexamine its previous decision in light of additional arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked." *See Matter of O-S-G-*, 24 I&N Dec. 56 (BIA 2006) (recognizing that a motion to reconsider must allege a material factual or legal error, assert that the Board erred in affirming the Immigration Judge's decision without opinion, or argue a change in law). A motion to reconsider challenges the Board's original decision and alleges that it is defective in some regard. *Id.* The motion must specify the errors of fact or law in a prior Board decision, and it must be supported by pertinent authority. *See* section 240(c)(6)(C) of the Act; 8 C.F.R. § 1003.2(b)(1).

We have reviewed the contentions raised in the respondent's motion, and we conclude that the respondent has not established that we made a legal or factual error in our April 1, 2021, decision. 8 C.F.R. § 1003.2(b). The respondent's motion to reconsider does not identify any prior argument presented that was overlooked by the Board, nor does her motion identify any error of law of fact in the Board's April 1, 2021, decision. Therefore, we will deny the respondent's motion to reconsider.

Moreover, the respondent's motion does not demonstrate an exceptional situation that would merit the exercise of our discretion to reopen these proceedings under our sua sponte authority. *See Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). Based on the above, the respondent's motion will be denied.

Accordingly, the following order will be entered.

A (b)(6)

ORDER: The respondent's motion to reconsider is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se[1]

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Haiti, has filed a motion with the Board to reopen his removal proceedings. Sections 240(c)(7)(A), (C)(i), (ii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(c)(7)(A), (C)(i), (ii) (2021). We will deny the motion to reopen as untimely under the 90-day deadline applicable to such motions, and for failure to satisfy the materially changed country conditions exception to the 90-day deadline. Sections 240(c)(7)(A), (C)(i),(ii) of the Act; 8 C.F.R. § 1003.2(c)(2), (3)(ii).

This case was last before us on March 12, 2020, when we issued a decision dismissing the respondent's appeal from the Immigration Judge's October 8, 2019, decision, which denied his applications for withholding of removal and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). Section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. §§ 1208.16-1208.18.[2]

[1] A Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals (Form EOIR-27) has not been submitted. Therefore, we consider the respondent pro se. However, we will provide a courtesy copy of this decision to the attorney who filed the motion to reopen on behalf of the respondent.

[2] The respondent conceded before the Immigration Judge that his application for asylum was time-barred, and he did not contest the issue on appeal (IJ at 3; BIA at 1 n.1). Section 208(a)(2)(B) of the Act, 8 U.S.C. § 1158(a)(2)(B).

A (b)(6)

A respondent requesting reopening of removal proceedings must file a motion to reopen within 90 days of the date of a final administrative order of removal. Section 240(c)(7)(C)(i) of the Act; C.F.R. §§ 1003.2(c)(2), 1003.23(b)(1) (2020). The respondent filed his motion to reopen on June 22, 2021, more than 90 days after the Board's March 12, 2020, decision, and thus the motion to reopen is untimely. Section 240(c)(7)(A) of the Act; 8 C.F.R. 1003.2(c)(2). The respondent has also not argued or demonstrated that the 90-day deadline should be equitably tolled. *See Zhang v. Holder*, 617 F.3d 650, 658 (2d Cir. 2010) ("We have also held that the ninety-day deadline for filing a motion to reopen is subject to equitable tolling under appropriate circumstances," such as to accommodate claims of ineffective assistance of counsel) (citation omitted).

Thus, the respondent's arguments that his proceedings should be reopened to allow him an opportunity to file for Temporary Protected Status ("TPS"), and also to address a recent federal district court opinion that the respondent contends undermines the Immigration Judge's findings of removability and his ineligibility for asylum and withholding of removal, are untimely, as they were not filed within the 90-day deadline, and the respondent has not argued or demonstrated that the 90-day deadline should be equitably tolled to allow him to pursue either argument (Respondent's Motion at 2, 5, 7-8).[3]

Further, the respondent's claim that he is entitled to an exception to the 90-day deadline because he has established materially changed country conditions in Haiti is without support (Respondent's Motion at 4-6). Under the Act and the implementing regulations, the 90-day deadline does not apply to a motion to reopen seeking to pursue asylum or withholding of removal based on changed circumstances arising in the country of nationality, if such evidence is material and was not available and could not have been discovered or presented at the previous hearing. Section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. §§ 1003.2(c)(3)(ii), 1003.23(b)(4)(i).

"In determining whether evidence accompanying a motion to reopen demonstrates a material change in country conditions that would justify reopening, the [Board] compares the evidence of country conditions submitted with the motion to those that existed at the time of the merits hearing below." *See Matter of S-Y-G-*, 24 I&N Dec. 247, 253 (BIA 2007); *see also Tanusantoso v. Barr*, 962 F.3d 694, 696 and n.1 (2d Cir. 2020) (*citing Matter of S-Y-G-*, approvingly).

Further, "[a]s with all motions to reopen, a motion based on changed country conditions must 'state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material.'" *Matter of S-Y-G-*, 24 I&N Dec. at 252. In the Second Circuit, which is the controlling circuit here, the "movant must also establish prima facie eligibility for asylum, i.e., 'a realistic chance' that [he or she] will be able to establish eligibility." *Id.* (*citing Poradisova v. Gonzales*, 420 F.3d 70, 78 (2d Cir. 2005) (citations omitted)).

The respondent has not established a material change in the country conditions in Haiti since his October 8, 2019, individual hearing which would support his late-filed motion. The respondent contends that conditions have changed in Haiti since his October 8, 2019, individual hearing in

[3] The respondent must pursue any application for TPS before the United States Citizenship and Immigration Services, and he can do so even while subject to a final order of removal.

two respects – an increase in gang-related violence and the outbreak of the COVID-19 pandemic – such that the DHS recently issued a decision to grant TPS to certain eligible Haitians, and therefore he has established materially changed country conditions (Respondent's Motion at 4-6). However, a comparison of the country conditions as they existed on October 8, 2019, and as they existed when the respondent moved to reopen does not reflect a significant worsening of conditions in Haiti (IJ at 5-12; Exh. 16; Tr. at 73-78, 80-81; Respondent's Motion, Exhs. B-H). On the contrary, the conditions in Haiti have remained dangerous, violent, and unstable for the population at large (Respondent's Motion, Exhs. B-H).

Further, the respondent's motion to reopen based on changed country conditions does not establish prima facie eligibility for relief or protection. *See Matter of S-Y-G-*, 24 I&N Dec. at 252. The respondent has not argued, much less demonstrated, how the increase in generalized violence in Haiti, as well as the effects there of the COVID-19 pandemic, establishes that he has a well-founded fear of future persecution on account of a protected ground under the Act. 8 C.F.R. § 1208.13(b)(2); *see Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 210-16 (BIA 2007) (an asylum applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution). Generalized violence affecting the population at large does not amount to persecution under the Act. *See Matter of Sanchez and Escobar*, 19 I&N Dec. 276, 282-86 (BIA 1985); *see also Melgar de Torres v. Reno*, 191 F.3d 307, 314 n.3 (2d Cir. 1999) ("General violence ... does not constitute persecution, nor can it form a basis for petitioner's ... fear of persecution.").

The Immigration Judge denied the respondent's application for withholding of removal in the alternative because he did not establish a likelihood of future persecution on account of a protected ground under the Act (IJ at 5-7). 8 C.F.R. § 1208.16(b)(2). The respondent's motion to reopen does not explain how the increase in gang violence and the COVID-19 pandemic have resulted in a likelihood of future persecution (or a well-founded fear of future persecution, for purposes of asylum) on account of a protected ground.

The respondent's motion to reopen also does not establish that the increase in violence and the COVID-19 pandemic in Haiti results in him being more likely than not to be tortured "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" to render him prima facie eligible for CAT protection. *See* 8 C.F.R. § 1208.18(a)(1). The respondent's motion makes the vague and speculative assertion that "the tremendous instability in the country today" may make his connection to the Tonton Macoutes "a death sentence" (Respondent's Motion at 6).

The respondent's connection to the Tonton Macoutes, a paramilitary organization that was active in Haiti in the 1950's through early 1980's, is through his father, who was a member (IJ at 8-10; Tr. at 76, 80-81). The Immigration Judge held that the father's mistreatment of the respondent was on account of his role as a parent, and not because he was a member of the Tonton Macoutes (IJ at 10; Tr. at 78). The respondent's motion to reopen does not provide any evidence or detail as to how the increase in generalized violence in Haiti since his October 8, 2019, hearing is related to his father's prior membership in the Tonton Macoutes, or how it affects his eligibility for asylum and related relief and protection in light of his father's past membership in the organization.

A (b)(6)

As the respondent's motion to reopen was filed more than 90 days after the Board's March 12, 2020, decision, and he has not satisfied any exception to the 90-day deadline, including a showing of materially changed country conditions, we will deny the motion to reopen.

Accordingly, the following order will be issued.

ORDER: The motion to reopen is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Applicant

FILED
Jan 05, 2022

ON BEHALF OF APPLICANT: Richard "Trey" C. Sucher, Esquire

IN WITHHOLDING ONLY PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Omaha, NE

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The applicant, a native and citizen of Guatemala, appeals the decision of the Immigration Judge, dated July 23, 2021, denying his request for deferral of removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).[2] We will dismiss the applicant's appeal.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3). 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. *See Matter of R-S-H-*, 23 I&N Dec. 629, 637 (BIA 2003).

These proceedings were first completed when, on November 10, 2015, a prior Immigration Judge granted the applicant's request for withholding of removal under the CAT. Thereafter, the Department of Homeland Security (DHS) moved to reopen these proceedings based upon an argument that the applicant had been convicted of a disqualifying particularly serious crime. *See* 8 C.F.R. § 1208.24(b)(3), (f). The Immigration Judge thereafter reopened these proceedings and terminated the prior grant of withholding of removal under the CAT (IJ at 10). It is undisputed

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] An immigration officer has ordered the applicant removed from the United States under the reinstatement provisions of section 241(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(5). These "withholding only" proceedings were commenced after an asylum officer determined that the applicant had a reasonable fear of persecution or torture. *See* 8 C.F.R. § 208.31(e).

that his conviction for Prohibited Person in Possession of a Firearm, which resulted in the imposition of a 66-month term of imprisonment, constitutes a per se conviction for a disqualifying particular serious crime (IJ at 10). *See* sections 101(a)(43)(E)(ii) and 241(b)(3)(B) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(43)(E)(ii), 1231(b)(3)(B); 8 C.F.R. § 1208.16(d)(2).

Turning to the merits of the applicant's request for deferral of removal under the CAT, we affirm the Immigration Judge's decision to deny said request. The Immigration Judge's adverse credibility finding is not clearly erroneous (IJ at 10-18). An Immigration Judge may base a credibility determination on, among other things, the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of his account; and the consistency between his statements and the internal consistency of such statement, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of his claim. *Garcia v. Barr*, 954 F.3d 1095, 1098 (8th Cir. 2020). An Immigration Judge who sees the witness while testifying is in the best position to make credibility findings. *R.K.N. v. Holder*, 701 F.3d 535, 538 (8th Cir. 2012). On appeal, the applicant reiterates his claim that, following his removal to Guatemala in 2012, (1) he witnessed a brother of a Guatemalan police captain murder an acquaintance, (2) he thereafter was kidnapped and tortured by the police captain and his officers, and, (3) he subsequently was told to kill a woman and threatened (Applicant's Br. at 5-7).

First, the applicant previously omitted his claim that he witnessed a brother of a Guatemalan police captain murder an acquaintance (IJ at 12). During the course of his interview with an asylum officer on August 28, 2015, the applicant, as opposed to claiming that he witnessed a murder, explained that "everyone knows" that the brother was working for drug smugglers and that he had witnessed the brother's involvement in drug trafficking (IJ at 12; Exh. 1 at 5).

Second, the circumstances of the applicant's alleged kidnapping are inconsistent (IJ at 12). He explained to the asylum officer that he was kidnapped as "I was on my way to the bank" and that the police officers "said that my ID documents belonged to someone else" (Exh. 1 at 4; IJ at 12). Before the Immigration Judge, on October 28, 2015, he testified that he had gone to "pick up the money" in Mazatenango and "We were driving back and we got pulled over by the police force" (Tr. at 41; IJ at 13). Most recently, at the hearing on April 7, 2021, he further modified his claim by stating that he was kidnapped as "I was going to Nueva Concepcion to get some money" and "I didn't have no identification or nothing" (Tr. at 223-24; IJ at 13).

Furthermore, the applicant told the asylum officer that he was held by his kidnappers for "like a week or five days" (Exh. 1 at 4; IJ at 13). He later testified that he was held by the "captain of the police force in Mazatenango" (Tr. at 46; IJ at 13). Most recently, he testified that "I was held ransom for three days" by the police captain in Nueva Concepcion (Tr. at 219, 254; IJ at 13). He initially claimed that, during his alleged kidnapping, he was handcuffed and later was tied with rope (Tr. at 46, 52; IJ at 13). Before the Immigration Judge, in 2021, he disavowed his claim that he was handcuffed (Tr. at 231; IJ at 13). The ransom amount has also changed from $(b)(6) to $(b)(6) (Tr. at 66, 240; IJ at 14). He also provided inconsistent statements as to whether or not, following his release, he required hospitalization (Exh. 1 at 5; Tr. at 245; IJ at 14).

Third, the applicant has also presented inconsistent claims regarding the allegation that he was told to kill a woman. He initially testified that a man known as "(b)(6)" approached him and his cousin and told them that they were supposed to kill a woman (Tr. at 70; IJ at 14). However, he later claimed that the aforementioned police captain and his brother approached him and his cousin (Tr. at 262; IJ at 14).

The applicant's arguments on appeal concerning the thorough and well-reasoned grounds upon which the Immigration Judge rejected his testimony as lacking in credibility are not persuasive. On appeal, he makes numerous attempts to overcome the issues in his credibility by attributing such issues to the passage of time, minimizing the cumulative effect of the inconsistencies, and arguing that he was "trying to recollect traumatic lived experiences" (Applicant's Br. at 10). However, such arguments impermissibly presuppose his underlying credibility. *See Toby v. Holder*, 618 F.3d 963, 966 (8th Cir. 2010) (recognizing that "[t]here is no presumption of credibility."). As explained by the Immigration Judge, "[t]here is nothing in the record to corroborate [his] self-serving explanation of suffering from any kind of mental health condition" (IJ at 12). *See Kegeh v. Sessions*, 865 F.3d 990, 996 (8th Cir. 2017) (recognizing that we are not required to accept an alternate explanation for inconsistencies if another explanation is reasonable). Overall, considering the totality of the circumstances, the Immigration Judge's adverse credibility finding is not clearly erroneous in light of the numerous inconsistencies and omissions which have developed during the course of these proceedings. *See Matter of C-C-I-*, 26 I&N Dec. 375, 382 (BIA 2014) (holding that an adverse credibility finding was not clearly erroneous where significant, material inconsistencies between the applicant's 1999 and 2012 testimony were apparent on the record). We are not "left with the definite and firm conviction" that the Immigration Judge mistakenly rejected the applicant's testimony as lacking in credibility.

We reject the applicant's argument that the Immigration Judge was not permitted to re-assess his credibility. First, while certain applicants are afforded a presumption of credibility on appeal, the Act does not afford applicants any presumption of credibility before an Immigration Judge. *See* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C). Second, as was done here, the Immigration Judge reopened these proceedings for the purpose of terminating the prior grant of withholding of removal due to the applicant's conviction for a disqualifying offense. *See* 8 C.F.R. § 1208.24(f). Federal regulations do not require that, under these circumstances, reopening be accomplished for the "limited" purpose of entering an order of deferral of removal. *See Matter of Patel*, 16 I&N Dec. 600, 601 (BIA 1978) (holding that, unless qualified or limited for a specific purpose, a "remand is effective for the stated purpose and for consideration of any and all matters" that the Immigration Judge deems appropriate). Third, the prior Immigration Judge found that the applicant was "generally credible" despite the presence of some inconsistencies before him in 2015 (Exh. 3 at 7). It was well within the instant Immigration Judge's discretion to reconsider such credibility finding upon the motion of the DHS (Tr. at 329) and enter an adverse credibility finding in these proceedings. *See N'Diaye v. Barr*, 931 F.3d 656, 664 (8th Cir. 2019) (recognizing that, even if an issue is resolved "at an earlier stage of the same action," it can be reconsidered pursuant to the reopening of the action); *see also Arizona v. California*, 460 U.S. 605, 619 (1983) ("It is clear that res judicata and collateral estoppel do not apply if a party moves the rendering court in the same proceeding to correct or modify its judgment.").

Based upon the adverse credibility finding, the Immigration Judge properly denied the applicant's request for deferral of removal under the CAT. *See* 8 C.F.R. § 1208.17. His incredible testimony was not corroborated by persuasive testimony or evidence attesting to a risk of torture in Guatemala with the requisite degree of state action. *See Nadeem v. Holder*, 599 F.3d 869, 873 (8th Cir. 2010) ("Although an adverse credibility determination is not necessarily determinative of the [CAT] claim, an [I]mmigration [J]udge may consider an applicant's discounted credibility when determining whether he or she will be subject to torture."). For example, as opposed to testifying that he was kidnapped by a Guatemalan police officer, his mother and his cousin conceded that they do not know who allegedly kidnapped him (IJ at 17; Tr. at 138, 163). Similarly, the affidavit from his relative, which claims that he was abducted on (b)(6), and held for a week, is inconsistent with the medical report that claims that he was treated, the same day, on (b)(6) (IJ at 18; Exh. 2 at 25, 34). Overall, upon consideration of the totality of the record, he has also not established a clear probability that, upon his removal to Guatemala, it is more likely than not that he will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or someone acting in an official capacity. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a); *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (holding that a claim to protection under the Convention Against Torture cannot be granted by stringing together a series of suppositions). At most, the corroborating evidence demonstrated that the incredible applicant was previously the victim of crime in Guatemala and fears overall poor conditions in that country. However, evidence of general conditions is insufficient to establish that one is more likely than not to suffer torture. *Esaka v. Ashcroft*, 397 F.3d 1105, 1111-12 (8th Cir. 2005).

Alternatively, even if the applicant's testimony was not rejected as incredible, he has not otherwise met his burden of proof. *See* 8 C.F.R. § 1208.16(c). The claimed past torture occurred more than a decade ago. He has not presented any evidence, such as news articles, government websites, or social media accounts, that the feared individual is still a captain of the Guatemalan police in Mazatenango or Nueva Concepcion (IJ at 17). While, on appeal, the applicant reiterates that human rights abuses occur in Guatemala, his own individualized fear of being subjected to harm is based upon speculation and is not sufficient to meet his burden of establishing that his removal should be deferred under the CAT. We express no opinion as to whether, in 2015, the applicant merited a temporary deferral of removal to Guatemala. *See Matter of C-C-I-*, 26 I&N Dec. at 385 (recognizing that deferral of removal is a "temporary form of protection"). However, given the passage of time and the lack of evidence attesting to a current individualized risk of harm, the applicant has not demonstrated that he warrants a deferral of removal to Guatemala at the present time.

For the reasons set forth above, we affirm the Immigration Judge's decision to deny the applicant's request for deferral of removal under the CAT. The following order is entered.

ORDER: The applicant's appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Ross Miller, Esquire

ON BEHALF OF DHS: Daniela K. Hogue, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

ORDER:

The Department of Homeland Security (DHS) and the respondent have filed a joint motion to reopen and dismiss without prejudice these proceedings so that the respondent can apply for adjustment of status before the United States Citizenship and Immigration Services.

Accordingly, the motion is granted, and the proceedings are reopened and dismissed without prejudice.[2]

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] We interpret dismissal and termination to have the same legal consequence in this instance.

00000029464

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Robert S. Sheldon, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent,[2] a native and citizen of Honduras, appeals the January 26, 2018, decision of the Immigration Judge denying his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). *See* 8 C.F.R. § 1208.18.[3] The appeal will be dismissed.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, under a de novo standard. 8 C.F.R § 1003.1(d)(3)(ii).

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The respondents are a father and his minor child. The father is identified as the lead respondent and will be referenced as the respondent.

[3] As the respondent did not meaningfully challenge the Immigration Judge's denial of his request for protection under the CAT, we deem this issue waived. *See Matter of Y-I-M-*, 27 I&N Dec. 724, 725, 729 n.2 (BIA 2019) (recognizing that the failure to substantively address on appeal an issue addressed in the Immigration Judge's decision results in a waiver of the issue); *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

On appeal, the respondent argues, inter alia, the Immigration Judge erred in finding he did not establish past persecution or a nexus between the incidents described and a protected ground (Respondent's Br. at 6-8). The respondent maintains that the harm he and his family experienced by his sister's former gang member boyfriend is directly related to his familial relationship to her and the gang member's desire to locate the respondent's sister (Respondent's Br. at 7).

There is no clear error in the Immigration Judge's factual findings regarding the respondent's experiences in Honduras (IJ at 4-6). The Immigration Judge also correctly concluded that the single incident in which the respondent and his son were threatened but not physically harmed – while frightening – did not rise to the level of persecution (IJ at 6). *See, e.g., Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1235-36 (11th Cir. 2013) (noting that persecution requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty). In addition, we affirm the Immigration Judge's finding that the respondent did not establish a nexus between the harm he experienced and fears and a protected ground (IJ at 4-6).

Based on the foregoing, we affirm the Immigration Judge's denial of the respondent's applications for asylum and withholding of removal under the Act due to his failure to establish past persecution or a nexus between the harm he experienced and fears and a protected ground (IJ at 4-6). In addition, as the lack of past persecution and lack of nexus are dispositive issues regarding the respondent's eligibility for asylum and withholding of removal under sections 208 and 241(b)(3) of the Act, we need not address the respondent's remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

The following order will be entered.

ORDER: The appeal is dismissed.

00000029467

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Robert S. Sheldon, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent,[2] a native and citizen of Honduras, appeals the January 26, 2018, decision of the Immigration Judge denying his applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). *See* 8 C.F.R. § 1208.18.[3] The appeal will be dismissed.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, under a de novo standard. 8 C.F.R § 1003.1(d)(3)(ii).

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The respondents are a father and his minor child. The father is identified as the lead respondent and will be referenced as the respondent.

[3] As the respondent did not meaningfully challenge the Immigration Judge's denial of his request for protection under the CAT, we deem this issue waived. *See Matter of Y-I-M-,* 27 I&N Dec. 724, 725, 729 n.2 (BIA 2019) (recognizing that the failure to substantively address on appeal an issue addressed in the Immigration Judge's decision results in a waiver of the issue); *Matter of R-A-M-,* 25 I&N Dec. 657, 658 n.2 (BIA 2012).

On appeal, the respondent argues, inter alia, the Immigration Judge erred in finding he did not establish past persecution or a nexus between the incidents described and a protected ground (Respondent's Br. at 6-8). The respondent maintains that the harm he and his family experienced by his sister's former gang member boyfriend is directly related to his familial relationship to her and the gang member's desire to locate the respondent's sister (Respondent's Br. at 7).

There is no clear error in the Immigration Judge's factual findings regarding the respondent's experiences in Honduras (IJ at 4-6). The Immigration Judge also correctly concluded that the single incident in which the respondent and his son were threatened but not physically harmed – while frightening – did not rise to the level of persecution (IJ at 6). *See, e.g., Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1235-36 (11th Cir. 2013) (noting that persecution requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty). In addition, we affirm the Immigration Judge's finding that the respondent did not establish a nexus between the harm he experienced and fears and a protected ground (IJ at 4-6).

Based on the foregoing, we affirm the Immigration Judge's denial of the respondent's applications for asylum and withholding of removal under the Act due to his failure to establish past persecution or a nexus between the harm he experienced and fears and a protected ground (IJ at 4-6). In addition, as the lack of past persecution and lack of nexus are dispositive issues regarding the respondent's eligibility for asylum and withholding of removal under sections 208 and 241(b)(3) of the Act, we need not address the respondent's remaining appellate arguments. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam) ("As a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

The following order will be entered.

ORDER: The appeal is dismissed.

00000029470

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Margaret W. Wong, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Atlanta, GA

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of South Korea, appeals from the decision of the Immigration Judge, dated October 1, 2018, denying her application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1), but granting voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). During the pendency of the appeal, the respondent has also filed a motion to remand. The Department of Homeland Security (DHS) has not opposed the respondent's appeal or motion. The record will be remanded.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We will grant the respondent's motion to remand. *See Matter of Coehlo*, 20 I&N Dec. 464, 471 (BIA 1992) (stating that a motion to remand is treated similarly to a motion to reopen, and therefore, requires both a showing of prima facie eligibility for relief and the proffer of material evidence that was "unavailable and could not have been discovered or presented at the former hearing."). The respondent requests that this matter be remanded based on a claim that, subsequent to the Immigration Judge's decision, she became eligible to adjust her status based on an approved immigrant visa petition filed on her behalf by her United States citizen spouse. The respondent has submitted sufficient evidence to establish that she is the beneficiary of an approved immediate relative visa petition. The record also includes an Application to Register Permanent Residence

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

or Adjust Status (Form I-485) and supporting evidence. The respondent was admitted to the United States.

Based on the foregoing, we conclude that the unopposed motion should be granted, and we will remand the record to provide the respondent with an opportunity to seek adjustment of status.[2]

Accordingly, the following orders will be entered.[3]

ORDER: The respondent's motion to remand is granted.

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

[2] On remand, pursuant to the then-Acting Director's Policy Memorandum 21-25, the DHS should indicate whether the respondent is an enforcement priority and whether the DHS would exercise some form of prosecutorial discretion, such as stipulating to eligibility for relief, agreeing to administrative closure, or requesting termination or dismissal of the proceedings.

[3] Because we have granted the respondent's motion to remand, we decline, at this point, to consider arguments regarding the Immigration Judge's denial of the application for cancellation of removal.

00000029473

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Charly Paz, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

ORDER:

The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENT: Flavia R. Moody, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New Orleans, LA

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent has appealed the Immigration Judge's February 9, 2018, decision that denied the respondent's application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The respondent has not identified any clear error of fact in the Immigration Judge's decision. The respondent also has not raised any argument on appeal that would cause us to disturb the Immigration Judge's decision denying cancellation of removal.

Effective January 20, 2009, an Immigration Judge who grants a noncitizen voluntary departure must advise the noncitizen that proof of posting of a bond with the Department of Homeland Security must be submitted to the Board of Immigration Appeals within 30 days of filing an appeal, and that the Board will not reinstate a period of voluntary departure in its final order unless the noncitizen has timely submitted sufficient proof that the required bond has been posted. 8 C.F.R. § 1240.26(c)(3). *See Matter of Gamero*, 25 I&N Dec. 164 (BIA 2010). The Immigration Judge provided the respondent with the required advisals and granted the respondent a 60-day voluntary departure period, conditioned upon the posting of a $(b)(6) bond. The record before the Board,

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

however, does not reflect that the respondent submitted timely proof of having paid that bond. Therefore, the voluntary departure period will not be reinstated, and the respondent will be ordered removed from the United States to Mexico pursuant to the Immigration Judge's alternate order.

Accordingly, the following orders shall be entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: The respondent is ordered removed from the United States to Mexico pursuant to the Immigration Judge's alternate order.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Dominic A. Gabene, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the Third Circuit

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The United States Court of Appeals for the Third Circuit has remanded this matter to the Board for further proceedings. *See Brown v. Att'y Gen. of U.S.*, No. 20-2328 (3d Cir. April 29, 2021). In turn, the Department of Homeland Security ("DHS") has moved to dismiss these proceedings without prejudice. The respondent, a native and citizen of Jamaica who was previously admitted to the United States as a lawful permanent resident, has filed a motion in opposition to the DHS's motion. The DHS's motion will be granted. These proceedings will be terminated.

We have considered the respondent's opposition. Nonetheless, it is well within the discretion of the DHS to move to dismiss these removal proceedings under 8 C.F.R. § 1239.2(c). *See Matter of J-A-B- & I-J-V-A-*, 27 I&N Dec. 168, 171 (BIA 2017) (reversing an Immigration Judge's termination order that impinged "upon the [DHS's] exclusive authority to control the prosecution of [removable noncitizens"). Termination of these proceedings will not result in a final order of removal being entered against the respondent at the present time. As such, the respondent, who is not prejudiced by this decision, will maintain his status as a lawful permanent resident of the United States. Section 101(a)(20) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(20) ("The term 'lawfully admitted for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed."); 8 C.F.R. § 1.2 (defining the term "lawfully admitted for permanent residence"). Accordingly, the following order is entered.

ORDER: The Department of Homeland Security's motion to dismiss these removal proceedings without prejudice is granted and these proceedings are terminated.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Alfonso E. Oviedo-Reyes, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated January 29, 2019, which denied her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The Department of Homeland Security has not filed a brief on appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent described abuse she experienced in Honduras at the hands of her former boyfriend, who was a gang member (IJ at 3-5). She asserted membership in two proposed social groups: (1) women who are abused and mistreated with violence, and flee from their oppressors, and people who have had that kind of violence; and (2) people who fear gang and domestic violence, and who cannot get government protection against the violence (IJ at 5; Respondent's Br. at 4). The Immigration Judge found that the respondent, though credible, did not establish a nexus to a cognizable particular social group for purposes of asylum or withholding of removal and did not meet her burden of proof for CAT protection (IJ at 5-8).

We adopt and affirm the decision of the Immigration Judge. *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). On appeal, the respondent argues that she established past persecution on account of membership in the group of women in a marital relationship in Honduras who are

unable to leave their relationship (Respondent's Br. at 7-8). However, this proposed group was not advanced before the Immigration Judge, and the Board will not address a newly-articulated social group. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191-92 (BIA 2018). The respondent does not meaningfully address the Immigration Judge's determination that the groups proposed below are not legally cognizable particular social groups (IJ at 5-6). *See Alvarado v. U.S. Att'y Gen.*, 984 F.3d 982, 991 (11th Cir. 2020) (proposed group impermissibly circular to the extent it is defined by the underlying harm asserted as persecution in asylum application); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 236 n.11 (BIA 2014) (a proposed social group must exist independently of the harm asserted). Similarly, she does not meaningfully challenge the Immigration Judge's denial of CAT protection (IJ at 7-8).

In light of the above discussion, we will adopt and affirm the Immigration Judge's decision, and we will dismiss the appeal. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

00000029479

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Catalina E. Restrepo, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondents, a mother and her minor child, natives and citizen of El Salvador, have appealed from the Immigration Judge's February 4, 2019, decision denying their applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231(b)(3), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The appeal will be dismissed.

We review findings of fact, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i) (2018). We review questions of law, discretion, or judgment, and other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The adult respondent (hereinafter "respondent") testified that gang members tried to extort money from her and threatened to harm her child if she refused to abide by their demands for money (IJ at 3-4; Tr. at 29). The respondent testified that gang member also tried to recruit her to become a sex worker or sell drugs (IJ at 3-4; Tr. at 33-36). The respondent testified that one of the gang members also wanted her to become his girlfriend. The respondent claims that she met her burden of proof for asylum based on her membership in the particular social groups comprised of "single Salvadoran mothers who lack male protection" and "El Salvadoran female head of household" (Tr. at 24-25).

We adopt and affirm the Immigration Judge's finding that the respondent did not meet her burden of proof for asylum (IJ at 11-13). *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).

The Immigration Judge correctly determined that the threats, recruitment, and extortion attempts experienced by the respondent in El Salvador do not amount to persecution under the Act (IJ at 11). *Ali v. United States Attorney Gen.*, 931 F.3d 1327, 1334 (11th Cir. 2019); *Kazemzadeh v. United States Attorney Gen.*, 577 F.3d 1341, 1353 (11th Cir. 2009); *Djonda v. United States Attorney Gen.*, 514 F.3d 1168, 1174 (11th Cir. 2008) (finding that a brief detention, a minor beating, and verbal threats did not amount to persecution). Notably, the respondent was never physically harmed by any of the criminals she encountered (IJ at 11; Tr. at 31, 33).

Further, we agree with the Immigration Judge that the respondent did not establish a nexus between the harm that she experienced in El Salvador and a protected ground under the Act (IJ at 12). *See INS v. Elias-Zacarias,* 502 U.S. 478, 483 (1992) ("recognizing that "since the statute makes motive critical, [the petitioner] must provide *some* evidence of [his persecutor's motives], direct or circumstantial"); *Perez-Zenteno v. U.S. Att'y Gen.*, 913 F.3d 1301, 1312 (11th Cir. 2019) (asylum applicant must establish nexus between persecution suffered or feared and membership in proposed social group); *see also Matter of N-M-*, 25 I&N. Dec. 526, 532 (BIA 2011) ("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 respondent acknowledged that she was targeted because the criminals believed that she had family in the United States who were sending her money (IJ at 12; Tr. at 58-59). Generally, private acts of violence, general criminal activity, and purely personal retribution do not qualify as persecution based on a statutorily protected ground. *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) ("asylum and refugee laws do not protect people from general conditions of strife, such as crime and other societal afflictions"). There is no clear error in the Immigration Judge's findings of fact with regard to motive.

Further, there is no clear error in the Immigration Judge's finding that the respondent did not establish that she cannot relocate in El Salvador or that it would unreasonable for her to do so (IJ at 12; Tr. at 65). *See Matter of M-Z-M-R-,* 26 I&N Dec. 28, 32-35 (BIA 2012). Also, the respondent did not show that the government of El Salvador condoned the actions of the criminals who threatened her or that the authorities in El Salvador are unable or unwilling to protect her from the people that she fears (IJ at 12). The respondent testified that she never attempted to report the incidents to the authorities (Tr. at 34). The respondent's speculations about the police's complicity or disinterest in assisting victims of crime are not sufficient to meet her burden of proof for asylum. For these reasons, we uphold the denial of the respondent's application for asylum.

Inasmuch as the respondent was properly found to have failed to establish eligibility for asylum, it follows that she cannot establish eligibility for withholding of removal under the Act, which has a higher burden of proof. *See INS v. Stevic*, 467 U.S. 407 (1984). Additionally, the Immigration Judge did not err in denying the respondent's application for CAT protection (IJ at 13-14). The respondent was never tortured in El Salvador. Moreover, the evidence in the record does not show that the respondent will likely be tortured with the consent or acquiescence (to include the concept of willful blindness) of a public official or other person acting in an official capacity in El Salvador. 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *Matter of Y-L-, A-G- & R-S-R-*, 23 I&N Dec. 270, 279-85 (A.G. 2002). On the whole, the record supports the Immigration Judge's resolution in this matter. *Farah v. U.S. Att'y Gen.*, 12 F.4th 1312, 1330 (11th Cir. 2021).

A (b)(6) et al.

Accordingly the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Richard Camarena, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Diego, CA

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

The respondents, an adult female respondent ("lead respondent") and her minor son, are natives and citizens of Guatemala. They appeal from an Immigration Judge's February 11, 2019, decision denying their applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3).[1] For the following reasons, the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1 (d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

At a February 11, 2019, merits hearing, the respondent chose to rest on her written asylum application and other pleadings (Tr. at 53-54),[2] wherein she raised claims to asylum and withholding of removal based on being a victim of domestic violence from her partner in

[1] The respondents do not raise a meaningful appellate challenge to the Immigration Judge's denial of the lead respondent's application for protection under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), and we therefore will consider their claim under the CAT waived.

[2] Accordingly, we will not address arguments raised in the respondent's brief contending that the Immigration Judge gave insufficient weight to the respondent's testimony.

Guatemala,[3] and also due to her membership in the particular social group of indigenous women who are single mothers who have lived in the United States and who are then deported to Guatemala. *See* Exh. 2B, D, AA. The Immigration Judge found that the respondent's applications for asylum and withholding of removal resting on her status as a victim of domestic violence were not viable in light of the Attorney General's decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), which overruled *Matter of A-R-C-G-* (IJ at 3). The Immigration Judge also concluded that the group defined by the respondent's membership in the particular social group comprised of indigenous single mothers to lack particularity (IJ at 3-4).[4]

As to the respondent's contention that her severe domestic violence was due to her membership in this group and to the government's unwillingness and inability to protect her, we are persuaded that a remand of this record is necessary in light of intervening case law. The Immigration Judge relied on the decision *Matter of A-B-*, which was thereafter vacated by the Attorney General in a June 16, 2021, decision. *See Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) (withdrawing from *Matter of A-B-*, 27 I&N Dec. 316 ("*Matter of A-B- I*") and *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021) ("*Matter of A-B- II*")). Accordingly, further fact-finding and analysis is required to reach a new decision regarding the respondent's claims to asylum and withholding of removal based on her membership in a particular social group.[5]

On remand, the parties should be afforded the opportunity to supplement the record with additional evidence and argument.

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.

---

[3] The respondent, through counsel, argued that her claim in this regard was supported by the Board's decision in *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014), in which we held, inter alia, that "married women in Guatemala who are unable to leave their relationship" can constitute a cognizable particular social group (Tr. at 52-53).

[4] The respondent raises no appellate argument challenging the Immigration Judge's finding that her proposed particular social group comprised of indigenous single mothers is not cognizable, and therefore we will not address this group further in this decision.

[5] On appeal, the respondent describes this group as consisting of "Guatemalan women" (Respondent's Br. at 7-9). The Board does not consider particular social groups raised on appeal. *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018). On remand the respondent may request that the Immigration Judge allow consideration of this additional particular social group.

00000029485
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Applicant

FILED
Jan 05, 2022

ON BEHALF OF APPLICANT: Alfonso Morales, Esquire

IN WITHHOLDING ONLY PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Wilson, Appellate Immigration Judge; Brown, Temporary Appellate Immigration Judge; De Cardona, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge De Cardona

DE CARDONA, Temporary Appellate Immigration Judge

The applicant, a native and citizen of Mexico, appeals from the Immigration Judge's February 19, 2019, decision denying his application for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), as well as his request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100 -20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), 8 C.F.R. §§ 1208.16(c)-1208.18.[2] The appeal will be sustained, the Immigration Judge's decision will be vacated, and the record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of law, discretion, and judgment, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The applicant seeks withholding of removal under the Act on account of particular social groups defined as "wealthy landowners in Mexico" and "wealthy landowner due to his arrival from the United States," as well as on account of a family-based particular social

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] To the extent the applicant raises arguments related to asylum under section 208(b)(1)(A) of the Act, 8 U.S.C. § 1158(b)(1)(A), we note that the applicant is in withholding-only proceedings and therefore cannot seek asylum (Applicant's Br. at 3-11)

group (IJ at 6; Tr. at 96-97, Applicant's Br. at 6; June 22, 2018, Applicant's Pre-Trial Br. at 3). The applicant was previously ordered removed from the United States and returned to Mexico in 2009, and thereafter began to build on land he owned (IJ at 2; Exh. 13 at 1). Shortly thereafter, gang members kidnapped the applicant for about 5 hours and demanded $3,500 for his release (IJ at 2). The gang members released the applicant despite not receiving the payment (IJ at 2, 4). The applicant returned to the United States within a month of arriving to Mexico, and in 2014, these proceedings were initiated after the applicant was apprehended by the Department of Homeland Security ("DHS") (Exh. 1).

The Immigration Judge found that the applicant was credible, but she determined that he did not meet his burden of establishing eligibility for withholding of removal under the Act or protection under the CAT (IJ at 7-10). On appeal, the applicant contends, inter alia, that the record should be remanded because the Immigration Judge did not consider the totality of the evidence in reaching her conclusions (Applicant's Br. at 14).

We find that remand is warranted for further consideration of the applicant's eligibility for withholding of removal under the Act, and a clear delineation of the Immigration Judge's findings. *See* 8 C.F.R. § 1208.16(b). First, the Immigration Judge should specifically find whether the applicant suffered harm rising to the level of persecution. *See* IJ at 7 (reasoning that the harm the applicant suffered "probably" rose to the level of persecution within the meaning of the Act); *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) (holding that Immigration Judges must make a specific finding regarding whether the respondent suffered harm rising to the level of persecution and whether the persecution was on account of an enumerated ground); *see also Kaur v. Wilkinson*, 986 F.3d 1216 (9th Cir. 2021) ("Persecution is an extreme concept and has been defined as the infliction of suffering or harm . . . in a way regarded as offensive." (internal quotation marks and citation omitted)). Next, the Immigration Judge should determine the cognizability of the applicant's proffered particular social groups under the framework set forth in *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014) and related jurisprudence regarding the immutability, particularly, and social distinction requirements. We note that the Immigration Judge conclusively stated that the applicant's family-based particular social group was cognizable, without the requisite analysis. *See Garcia v. Wilkinson*, 988 F.3d 1136, 1144 (9th Cir. 2021) (showing that courts must analyze the cognizability of a family-based social group).[3] Moreover, whether the Immigration Judge assessed the cognizability of the applicant's proposed particular social group, "wealthy landowners in Mexico," is unclear, as she addressed a group more closely

[3] In *Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017) (*Matter of L-E-A- I*), the Board held that the members of an immediate family may constitute a particular social group and family ties may meet the requirements of a particular social group depending on the facts and circumstances in the case. In *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) (*Matter of L-E-A- II*), the former Attorney General vacated this aspect of *Matter of L-E-A I.* On June 16, 2021, the current Attorney General vacated *Matter of L-E-A- II. Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021). Although the applicant cites to *Matter of L-E-A- I* in his brief, we note that we do not rely on this case in deciding this appeal (Applicant's Br. at 9).

defined as "returning deportees" (IJ at 6; Tr. at 97). Therefore, on remand, the Immigration Judge should assess the cognizability of "wealthy landowners in Mexico."[4]

If the Immigration Judge determines that the applicant suffered harm rising to the level of persecution and that he is a member of a cognizable particular social group or groups, she should make a specific finding as to whether the suffered persecution was on account of one of these groups (IJ at 7). *See* 8 C.F.R. § 1208.16(b); *Matter of D-I-M-*, 24 I&N Dec. at 451 (holding that Immigration Judges must make a specific finding regarding whether the persecution was on account of an enumerated ground). The fact that the applicant's cousin was harmed but did not share the applicant's last name does not disprove the applicant's claim that *the applicant* was persecuted on account of his family membership (IJ at 7). Similarly, the fact that the applicant's kidnappers sought money does not disprove his claim that his membership in one of his proffered particular social groups was "a reason" he was persecuted (IJ at 7). *See Barajas-Romero v. Lynch*, 846 F.3d 351, 358 (9th Cir. 2017) (explaining that the withholding statute uses only "a reason" in contrast to the asylum statute which states "one central reason" for the persecution).

If the Immigration Judge determines that the applicant has established past persecution, he is entitled to a rebuttable presumption that his life or freedom would be threatened in the future, and the burden shifts to the DHS to rebut the presumption of future persecution with evidence of changed circumstances or that internal relocation would be reasonable. 8 C.F.R. §§ 1208.16(b)(1)(i)-(ii). If the Immigration Judge determines the applicant has not established past persecution, she must determine whether the applicant has established a "clear probability" of future persecution on account of one of his proffered particular social groups. *See* 8 C.F.R. § 1208.16(b)(2); *see also Davila v. Barr*, 968 F.3d 1136, 1142 (9th Cir. 2020) (explaining withholding of removal standard requires showing a "clear probability" that the petitioner's life or freedom would be threatened in the proposed country of removal). Here, the Immigration Judge employed the incorrect legal standard in analyzing the applicant's claim of future persecution by examining the objective reasonableness of the applicant's fear (IJ at 8). *See Parada v. Sessions*, 902 F.3d 901, 909 (9th Cir. 2018) (explaining that in the absence of past persecution, an applicant may be eligible for *asylum* based on a well-founded fear of future persecution, which requires the fear to be subjectively genuine and objectively reasonable); *cf. Davila*, 968 F.3d at 1142. The Immigration Judge should also consider whether the applicant's persecutor is the government or government-sponsored. *See* 8 C.F.R § 1208.16(b)(3)(i) (providing that "[i]n cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.").

Lastly, with regard to protection under the CAT, remand is necessary for the Immigration Judge to make additional factual findings reflecting her consideration of the totality of the evidence pertaining to the applicant's eligibility. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (providing that we may

[4] We also note that the Immigration Judge did not consider the applicant's third proposed particular social group, "wealthy landowner due to his arrival from the United States," and should thus consider this claim on remand (Applicant's Br. at 6; Applicant's Pre-Trial Br. at 3). *See Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189 (BIA 2018).

remand proceedings if additional fact-finding is needed) (IJ at 8-10; Applicant's Br. at 14). To the extent the Immigration Judge denied protection under the CAT because she believed the applicant's kidnappers harmed him for pecuniary gain, we clarify that eligibility for protection under the CAT does not require a specific motive for harm, but rather, requires it be "more likely than not" the applicant will be tortured in the country of removal (IJ at 9). 8 C.F.R § 1208.16(c)(2).

In light of the foregoing, we will remand the record to the Immigration Judge for her to reconsider the applicant's application for withholding of removal under section 241(b)(3) of the Act and request for protection under the CAT.[5]

Accordingly, the following orders are entered:

ORDER: The applicant's appeal is sustained and the Immigration Judge's decision is vacated.

FURTHER ORDER: The record is remanded to the Immigration Judge for entry of a new decision on the applicant's application for withholding of removal under the Act and request for protection under the CAT consistent with this decision.

[5] As these are withholding only proceedings, an order of removal was previously entered and reinstated by DHS under section 241(a)(5) of the Act, 8 U.S.C. § 1231(a)(5). Exh. 1.

00000029488

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Esmeralda Alfaro, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's March 22, 2019, decision denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), and cancellation of removal for certain non-permanent residents under section 240A(b) of the Act, 8 U.S.C. § 1229b(b), as well as his request for post-conclusion voluntary departure under section 240B(b) of the Act, 8 U.S.C. § 1229c(b). The respondent's appeal will be dismissed.

We review the findings of fact made by the Immigration Judge, including the determination of credibility, for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgment, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We will affirm the Immigration Judge's denial of the respondent's application for asylum (IJ at 11-18). The respondent's application is based on his claimed fear of harm in Guatemala by gang members who attempted to recruit him and beat him in 2002, shortly before his initial journey to the United States, and later in 2012 when he returned to Guatemala (IJ at 3-4; Tr. at 38-41, 56). There is no error in the Immigration Judge's determination that the respondent did not sustain the burden of proof applicable to asylum, nor is there clear error in the factual findings leading up to that determination (IJ at 12-18). The Immigration Judge properly determined that the beating, threats, and recruitment efforts experienced by the respondent in Guatemala did not amount to past persecution under the Act (IJ at 13-14). *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1046 (9th Cir. 2007); *see also Nagoulko v. INS*, 333 F.3d 1012, 1016 (9th Cir. 2003) (noting that it is significant that the applicant never suffered any significant violence).

The Immigration Judge also correctly determined that the respondent did not establish membership in a cognizable particular social group under the Act (IJ at 15-16, 18). The respondent's proposed particular social group, which he defined as "a male from Guatemala who has taken concrete steps to avoid gang recruitment," is circularly defined, and it lacks particularity and social distinction (IJ at 15-16, 18). *See Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), *vacated in part and remanded on other grounds by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016); *see also Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014).[1] We agree with the Immigration Judge that the record does not indicate that individuals from the respondent's proposed group are considered or recognized by Guatemalan society to be a distinct social group (IJ at 15-16, 18). For these reasons, we concur with the Immigration Judge's conclusion that the respondent has not demonstrated membership in a cognizable particular social group (IJ at 15-16, 18).

Additionally, we concur with the Immigration Judge's finding that the respondent did not establish a nexus between his past mistreatment, or future fear, and his proposed particular social group or any protected ground under the Act (IJ at 18). *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (recognizing that "since the statute makes motive critical, [the petitioner] must provide *some* evidence of [his persecutor's motives], direct or circumstantial"); *see also Barajas-Romero v. Lynch*, 846 F.3d 351, 359-60 (9th Cir. 2017) (recognizing the "one central reason" standard for asylum and the "a reason" standard for withholding of removal under the Act). Generally, private acts of violence, general criminal activity, and purely personal retribution do not qualify as persecution based on a statutorily protected ground. *See Macedo Templos* v. *Wilkinson*, 987 F.3d 877, 883 (9th Cir. 2021) (citing *Zetino v. Holder,* 622 F.3d 1007, 1016 (9th Cir. 2010) (holding that an applicant's "desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground")); *see also Matter of M-E-V-G-*, 26 I&N Dec. at 250-51 (recognizing that "evidence of indiscriminate gang violence and civil strife" does not establish a nexus to a protected characteristic for purposes of establishing eligibility for asylum and withholding of removal). There is no clear error in the Immigration Judge's findings of fact with regard to motive (IJ at 15, 17-18). We thus affirm the Immigration Judge's conclusion that the respondent has not met his burden of proof for asylum.

We will also affirm the Immigration Judge's denial of the respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 19). As the Immigration Judge recognized, becuase the respondent is not able to establish eligibility the lower burden of proof for asylum, he is necessarily unable to satisfy more stringent burden of proof for withholding of removal under the Act (IJ at 19). *See Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006); *see also Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003). We further concur with the Immigration Judge's finding that neither the respondent's proposed particular social group, nor any other protected ground under the Act, was "a reason" for the respondent's past harm or fear of future harm in Guatemala (IJ at 15, 17-18). *See Barajas-Romero*, 846 F.3d at 359-60.

---

[1] We note that on June 16, 2021, during the pendency of this appeal, the current Attorney General vacated *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) (*A-B- I*), and *Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021) (*A-B- II*), in *Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021) (*A-B- III*). While the Immigration Judge cited Matter of *A-B- I* in his March 22, 2019, decision, we have applied current law in reviewing the Immigration Judge's legal conclusions.

Next, we will affirm the Immigration Judge's denial of the respondent's application for protection under the CAT (IJ at 19-21). As the Immigration Judge found, the respondent has never been tortured in Guatemala (IJ at 20). Further, the Immigration Judge did not clearly err in determining that the respondent did not demonstrate that it is more likely than not that he would be tortured by or with the consent or acquiescence (to include the concept of willful blindness) of a public official or other person acting in an official capacity in Guatemala (IJ at 19-21). 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1); *see Matter of M-B-A-*, 23 I&N Dec. 474 (BIA 2002); *see also Matter of Y-L-, A-G- & R-S-R-*, 23 I&N Dec. 270, 279-85 (A.G. 2002). We thus affirm the Immigration Judge's denial of the respondent's application for CAT protection for the reasons articulated by the Immigration Judge (IJ at 19-21).

Turning to the respondent's cancellation of removal claim, we concur with the Immigration Judge's dispositive determination that the respondent did not establish that his qualifying relatives, his three United States citizen children, will suffer the requisite exceptional and extremely unusual hardship upon his removal to Guatemala (IJ at 8-11). The respondent, who is single, but has been in a long term relationship with the mother of his qualifying relatives, claims that his three children, who are currently twelve, six, and four years old, respectively, would experience exceptional and extremely unusual hardship upon his removal to Guatemala (IJ at 4-5; Tr. at 27-29). The respondent resides with his partner and their children (IJ at 10; Tr. at 29). His partner does not have legal status in the United States (IJ at 10; Tr. at 27). The respondent does not claim that his qualifying relatives suffer from any educational or physical challenges (IJ at 10; Tr. at 30). He testified that his partner and his qualifying relatives would not accompany him to Guatemala (IJ at 5; Tr. at 35).

We agree with the Immigration Judge's determination that the respondent did not establish that his removal to Guatemala would result in exceptional and extremely unusual hardship to his children (IJ at 10-11). The Immigration Judge properly considered the aggregate effect of the relevant factors, including the age, health, language skills, family ties, and the financial impact of the respondent's removal (IJ at 10-11). *See Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001). The Immigration Judge's factual findings are not clearly erroneous. Further, the Immigration Judge recognized the hardships the respondent's qualifying relatives would experience upon the respondent's removal from the United States, and while we are sympathetic to the respondent's children's circumstances, we concur with the Immigration Judge's conclusion that those hardships do not amount to the type of exceptional and extremely unusual hardship required for cancellation of removal (IJ at 10-11). *See Matter of Monreal*, 23 I&N Dec. at 65 (recognizing that, in keeping with congressional intent, an applicant for cancellation of removal must demonstrate that his or her removal would cause hardship to his or her qualifying relative that is "substantially different from, or beyond, that which would normally be expected from the deportation of an alien with close family members here"). We thus affirm the Immigration Judge's denial of the respondent's application for cancellation of removal for the reasons articulated by the Immigration Judge (IJ at 8-11).

Finally, we address the Immigration Judge's denial of the respondent's request for post conclusion voluntary departure as a matter of discretion (IJ at 22-25). We concur with the Immigration Judge's determination that the respondent's criminal history and lack of acceptance of responsibility for his actions outweigh his positive equities (IJ at 22-25). The respondent's arguments on appeal do not convince us otherwise (*see* Respondent's Br. at 15-16). We thus affirm the denial of post-conclusion voluntary departure as a matter of discretion for the reasons articulated by the Immigration Judge (IJ at 22-25).

Accordingly, the following order will be entered.

ORDER: The respondent's appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Jaime Humberto Castiblanco, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Honduras, appeals the Immigration Judge's decision dated April 4, 2019, denying her applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The appeal will be dismissed

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's applications for relief in part due to an adverse credibility finding. The Immigration Judge also made an alternative determination that, even if credible, the respondent did not meet her burden of establishing eligibility for asylum, withholding of removal, or protection under the CAT (IJ at 3-6). We affirm the alternative determination, having assumed the respondent's credibility.

The respondent testified that she fears the gangs in Honduras who subjected her to extortion demands. The respondent claims that she was threatened by the gangs and that her house was burnt down when she did not comply with their demands (Tr. at 38-41, 45-46, 48, 62, 66). The respondent states that she fears persecution on account of her membership in a particular social

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

group of single mothers who are owners of a small business and targeted by gangs for the purpose of extorting money (IJ at 4).

The Immigration Judge properly found that the respondent's proffered particular social group was not legally cognizable and that there is no evidence that the gangs knew of or pursued the respondent because of her membership in the proffered particular social group (IJ at 4-5). *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006). Threats of harm or actual harm for refusing to comply with the criminal demands of the gangs does not constitute persecution on account of a protected ground where the alleged persecutors are not motivated by one of the protected grounds. *See Matter of T-M-B-*, 21 I&N Dec. 775, 779 (BIA 1997). There is no clear error in the Immigration Judge's findings of fact, and we affirm the Immigration Judge's alternative determination. *Matter of N-M-*, 25 I&N 526, 529 (BIA 2011) (holding that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error); *Cooper v. Harris* 137 S. Ct. 1455, 1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern."). We agree with the Immigration Judge that the respondent has not met her burden of proof to show she was or will be harmed on account of a protected ground. *Melgar de Torres v. Reno,* 191 F.3d 307 (2d Cir. 1999).

Thus, as eligibility for asylum on account of a protected ground was not established, it follows that the respondent also did not satisfy the higher burden of proof for withholding of removal. *Ramsameachire v. Ashcroft*, 357 F.3d 169, 183 (2d Cir. 2004) (IJ at 5-6). The Immigration Judge properly denied the respondent's claim for asylum and withholding of removal under the Act.

The respondent also did not show that she more likely than not will face torture by, or with the consent or acquiescence of, a public official to qualify for protection under the CAT (IJ at 6). *See* 8 C.F.R. § 1208.16(c)(2). The respondent was never tortured or threatened with torture by the police, the military, or any other government official. The respondent did not show that any public official in Honduras seeks to torture her or would consent or acquiesce in her torture. *See* 8 C.F.R. § 1208.18(a)(1). We find no clear error in the Immigration Judge's predictive fact-finding regarding the likelihood that the respondent will face torture by or with the consent or acquiescence (including willful blindness) of any public official or person acting in an official capacity. *See* 8 C.F.R. § 1208.18(a)(7); *see also Huang v. Holder*, 677 F.3d 130 (2d Cir. 2012); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (Immigration Judge's finding that a future event will occur is fact-finding subject to review for clear error).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

00000029494
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Joseph Park, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The respondents, natives and citizens of Honduras, appeal the Immigration Judge's decision dated April 12, 2019, denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).[1] The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1 (d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the Immigration Judge's April 12, 2019, decision, for the reasons set forth by the Immigration Judge. *See Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994).

The respondent claims on appeal that the Immigration Judge erred in making an adverse credibility determination. The Immigration Judge denied the respondent's applications for asylum

[1] The respondents are a father (lead respondent, hereinafter referred to as respondent) and his son.

and withholding of removal in part due to an adverse credibility finding.[2] The Immigration Judge found the respondent's testimony to be implausible, material omissions in the respondent's declaration, and discrepancies and inconsistencies between the respondent's testimony and declaration. (IJ at 7-11). *See Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998). The Immigration Judge found it to be implausible that the respondent, who worked for the National party for 5-6 years, did not know what the party stood for (Tr. at 72-74, 100). The respondent testified that he was threatened and beaten by gang members in 2012, and that he sustained injuries (IJ at 5; Tr. at 72, 77-78, 80-81). However, as correctly noted by the Immigration Judge, there was no mention of the attack in the respondent's declaration (IJ at 9-10; Tr. at 79-80). The Immigration Judge also found inconsistencies in the respondent's testimony of whether or not the attacks were reported to the police (IJ at 10; Tr. at 85-88, 95-96, 99). The respondent acknowledges these inconsistencies in the appeal brief, but asserts that he was under stress (Respondent's Br. at 3). However, an Immigration Judge is not obligated to accept such an explanation where there are other permissible views of the evidence. *Matter of Y-I-M-*, 27 I&N Dec. 724, 727-732 (BIA 2019). We are not persuaded that the Immigration Judge's adverse credibility finding is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). In the absence of credible testimony, the respondent's asylum and withholding of removal applications fail. *See Huang v. Holder*, 744 F.3d 1149, 1156 (9th Cir. 2014); *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Accordingly, the following order shall be entered.

ORDER: The appeal is dismissed.

---

[2] The respondent also sought protection under CAT, but failed to raise any meaningful challenge to the Immigration Judge's denial. Accordingly, we deem that issue abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (holding that when a party fails to meaningfully challenge an issue addressed in an Immigration Judge's decision, that issue is waived on appeal).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Joseph Park, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

The respondents, natives and citizens of Honduras, appeal the Immigration Judge's decision dated April 12, 2019, denying their applications for asylum, withholding of removal, and protection under the Convention Against Torture. *See* sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3); regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).[1] The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1 (d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the Immigration Judge's April 12, 2019, decision, for the reasons set forth by the Immigration Judge. *See Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994).

The respondent claims on appeal that the Immigration Judge erred in making an adverse credibility determination. The Immigration Judge denied the respondent's applications for asylum

[1] The respondents are a father (lead respondent, hereinafter referred to as respondent) and his son.

and withholding of removal in part due to an adverse credibility finding.[2] The Immigration Judge found the respondent's testimony to be implausible, material omissions in the respondent's declaration, and discrepancies and inconsistencies between the respondent's testimony and declaration. (IJ at 7-11). *See Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998). The Immigration Judge found it to be implausible that the respondent, who worked for the National party for 5-6 years, did not know what the party stood for (Tr. at 72-74, 100). The respondent testified that he was threatened and beaten by gang members in 2012, and that he sustained injuries (IJ at 5; Tr. at 72, 77-78, 80-81). However, as correctly noted by the Immigration Judge, there was no mention of the attack in the respondent's declaration (IJ at 9-10; Tr. at 79-80). The Immigration Judge also found inconsistencies in the respondent's testimony of whether or not the attacks were reported to the police (IJ at 10; Tr. at 85-88, 95-96, 99). The respondent acknowledges these inconsistencies in the appeal brief, but asserts that he was under stress (Respondent's Br. at 3). However, an Immigration Judge is not obligated to accept such an explanation where there are other permissible views of the evidence. *Matter of Y-I-M-*, 27 I&N Dec. 724, 727-732 (BIA 2019). We are not persuaded that the Immigration Judge's adverse credibility finding is clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Shrestha v. Holder*, 590 F.3d 1034, 1039-40 (9th Cir. 2010). In the absence of credible testimony, the respondent's asylum and withholding of removal applications fail. *See Huang v. Holder*, 744 F.3d 1149, 1156 (9th Cir. 2014); *Farah v. Ashcroft*, 348 F.3d 1153, 1156 (9th Cir. 2003).

Accordingly, the following order shall be entered.

ORDER: The appeal is dismissed.

---

[2] The respondent also sought protection under CAT, but failed to raise any meaningful challenge to the Immigration Judge's denial. Accordingly, we deem that issue abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (holding that when a party fails to meaningfully challenge an issue addressed in an Immigration Judge's decision, that issue is waived on appeal).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Daska P. Babcock, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondents, natives and citizens of El Salvador, appeal the Immigration Judge's decision, dated April 3, 2019, denying the lead respondent's requests for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), and ordering their removal from the United States.[1] We will dismiss the respondents' appeal.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). It is the respondents' burden to establish eligibility for relief from removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

As an initial matter, we squarely reject any claim that these removal proceedings should be terminated as the Notices to Appear ("NTAs") did not contain the date, time, or location of the respondents' initial removal hearing. Such claims are foreclosed by binding precedent. *See Aguilar Fermin v. Barr*, 958 F.3d 887, 895 (9th Cir. 2020) ("[T]he lack of time, date, and place in the NTA sent to [the respondent] did not deprive the immigration court of jurisdiction over her case"); *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021). While we recognize that the NTAs advised the respondents that their initial hearing would take place at the Immigration Court

[1] It is undisputed that the respondents are subject to removal from the United States as charged (IJ at 1). *See* section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i). The rider respondent, who is the lead respondent's child, has not filed his own independent application for relief.

in Miami, Florida, jurisdiction vested with the San Francisco Immigration Court as the Department of Homeland Security elected, as matter of unreviewable prosecutorial discretion, to file the NTAs with that court. *See* 8 C.F.R. § 1003.14(a). In turn, the San Francisco Immigration Court, on December 8, 2015, the issued a Notice of Hearing in Removal Proceedings in order to place them on notice that their initial, albeit rescheduled, removal hearing would take place at 1:00 p.m. on February 25, 2016. They appeared at the hearing without incident (Tr. at 1-4). Subsequently, at the hearing on June 8, 2016, the respondents, through counsel, conceded proper service of the NTA (Tr. at 6). This concession is binding. *See* 8 C.F.R. § 1240.10(c); *Matter of Velasquez*, 19 I&N Dec. 377, 382-83 (BIA 1986).

We affirm the Immigration Judge's decision to deny the lead respondent's claims to relief. She has not established eligibility for asylum. To the extent that the lead respondent's claim is based upon claims of domestic abuse, she has not established that she was previously harmed in El Salvador in a manner rising to the level of persecution (IJ at 1-2).[2] *See* 8 C.F.R. § 1208.13(b)(1). The lead respondent, who reports being born on (b)(6), testified that, in 2009, she entered into a relationship with an individual, her present ex-husband, who would "humiliate" her (Tr. at 21). While we recognize that age can be a critical factor in the adjudication of asylum claims, she did not offer specific and detailed testimony describing the incidents of claimed harm and when such harm was inflicted. *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045-46 (9th Cir. 2007). Moreover, she testified that she did not cohabitate with him until after she was married, at the age of approximately 20, in (b)(6) (Tr. at 23-24; Exh. 5 at 1). Likewise, even though he apparently told her "that if I ever left him and if I got together with somebody else... he would kill me and the person that I'm with," she acknowledged that he did not begin making such serious threats until "about the year 2013" (Tr. at 26-27). "He didn't go through with any threats" (Tr. at 26). She also testified to only a single physical incident (IJ at 2).[3] Overall, upon consideration of the totality of the record,, the lead respondent's testimony was insufficiently persuasive to show that she was previously harmed in El Salvador in a manner rising to the level of persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) ("Threats themselves are sometimes hollow and, while uniformly unpleasant, often do not effect significant actual suffering or harm."); *cf. Babi v. Sessions*, 707 F.App'x 467, 471 (9th Cir. 2017) (discussing a case where the applicant, at the age of 5, lived through the two church bombings).

The lead respondent has also not established a well-founded fear of future persecution in El Salvador (IJ at 2). *See* 8 C.F.R. § 1208.13(b)(2). After separating from ex-husband in late 2013 (Respondents' Br. at 3), she remained in El Salvador for more than 2 years without harm (IJ at 2). On appeal, she concedes that he failed to appear for divorce proceedings in 2015 and has found a

[2] This claim is premised on proposed particular social groups consisting of "Salvadoran women unable to leave their relationship" and "Salvadoran women viewed as property, and "an "imputed political opinion that women are not property" (Respondents' Br. at 2). We do not affirmatively endorse or reject these proposed grounds.

[3] According to the lead respondent, during the single incident of physical abuse: "He took me by the arms. He threw me on the bed. I thought he was going to beat me. But his mother arrived. She spoke with him. And he left very angry. And he didn't come back." (Tr. at 31).

new partner (Respondents' Br. at 4). While she has claimed that her former husband and his new partner have made efforts to obtain custody of her child, she has not identified specific testimony or evidence which demonstrates that, since separating from him, he threatened her with actual harm (IJ at 2). Moreover, even though the lead respondent has re-married, she presented little persuasive reason to believe that now, many years later, her ex-husband remains inclined to harm her. Overall, her fear of her ex-husband is too speculative to amount to a objectively reasonable fear of future persecution. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (concluding that speculative fear of future harm cannot form the basis of an asylum claim).

To the extent that the lead respondent has presented a separate claim based upon her membership in a particular social group consisting of "banking professionals," the Immigration Judge properly rejected this claim as she has not shown that her membership in such proposed group is a "central reason" for the claimed persecution (IJ at 4). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007). She did not offer any specific testimony or evidence that gangs in El Salvador sought or seek to persecute her on account of her employment as a bank teller. Instead, as she argues, the gang member "told her she was going to help them take the money of the vault" (Respondents' Br. at 6). Dangers arising from the nature of one's employment are not "on account of" a protected ground. *See Matter of Fuentes*, 19 I&N Dec. 658, 661 (BIA 1988). She has also not shown that one's employment as a "banking professional" is an immutable characteristic which, in turn, can support a holding that such particular social group is cognizable. *See Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985) (holding that one's employment is not an immutable characteristic); *cf. Plancarte v. Garland*, 9 F.4th 1146, 1154 (9th Cir. 2021) (discussing the case of a nurse from Mexico who, even if she changed her profession, she would still remain valuable to the feared cartel because she would retain her medical knowledge and nursing skills"). She raises no meaningful claim that one's employment at a bank is a characteristic that either is beyond the power of the individual to change or is so fundamental to her identity or conscience that it ought not be required to be changed.

For the reasons set forth above, we conclude that the Immigration Judge properly denied the lead respondent's request for asylum. To the extent that her claim is premised upon domestic abuse at the hands of her ex-husband, she has not established that she was previously harmed in a manner rising to the level of persecution, nor that she holds a well-founded fear of future persecution. To the extent that she fears crime in El Salvador on account of her membership in a particular social group consisting of "banking professionals," she has not established that such group is cognizable, nor is a "central reason" for the claimed persecution. As is demonstrated here, her desire to be free from harassment by criminals motivated by theft bears no nexus to a protected ground. *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010). As the lead respondent has not established that she was previously persecuted in El Salvador on account of a protected ground, she is not eligible for "humanitarian asylum." *See* 8 C.F.R. § 1208.13(b)(1)(iii).

The Immigration Judge also properly rejected the lead respondent's request for withholding of removal under the Act (IJ at 5). *See* 8 C.F.R. § 1208.16(b). For the reasons set forth above, with respect to her claim which is premised upon domestic abuse, she has not established that she was previously persecuted in El Salvador, nor established a clear probability of future persecution. Likewise, her proposed particular social group consisting of "banking professionals" has not been

shown to be cognizable, nor "a reason" for claimed past and feared future persecution. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017).

The lead respondent has also not established eligibility for protection under the CAT (IJ at 6). The lead respondent, who was not previously tortured, has presented a speculative fear of future harm. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (rejecting a CAT claim based upon generalized evidence of violence and crime in the applicant's country of origin). There is little reason to be believe that now, several years after leaving El Salvador, her ex-husband or the gang members seek to torture her. As discussed above, her ex-husband has a new partner. She now longer works at a bank. Moreover, although the El Salvadoran government may, at times, struggle to effectively eradicate crime in some areas of the country, she has not shown that any future torture would more likely than not be inflicted with the requisite degree of state action. *See Barajas-Romero v. Lynch*, 846 F.3d at 363 ("CAT relief is unavailable, despite a likelihood of torture, without evidence that the police are unwilling or unable to oppose the crime, not just that they are unable to solve it, as when the torturers cannot be identified."). Overall, considering the entirety of the record, she has not established, upon her removal to El Salvador, it is more likely than not she will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or other person acting in an official capacity. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a); *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (holding that a claim to protection under the CAT cannot be granted by stringing together a series of suppositions).

For the reasons set forth above, we affirm the Immigration Judge's decision to deny the lead respondent's claims to asylum, withholding of removal, and protection under the CAT, and conclude these proceedings by ordering the removal of both respondents from the United States to El Salvador. Accordingly, the following order is entered.

ORDER: The respondents' appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: (b)(6) – San Diego, CA

Date: JAN 4 2022

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gary J. Yerman, Esquire

APPLICATION: Reopening

The respondent, a native and citizen of China, appeals from the Immigration Judge's decision, dated November 2, 2018, denying her motion for reopening to rescind her in absentia removal order entered on September 26, 2018. The Department of Homeland Security (DHS) did not file a response to the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was detained by the DHS and personally served a Notice to Appear (NTA), which it filed with the Otay Mesa Immigration Court on August 27, 2018 (IJ at 1;[1] Exh. 1).[2] The Immigration Judge continued proceedings twice to provide the respondent opportunities to retain counsel and scheduled a third hearing for September 26, 2018 (IJ at 1–2; Notices of Hearing, Aug. 27, Aug. 30, and Sept. 19, 2018). On September 25, 2018, the day before the respondent's next scheduled hearing, the DHS released the respondent from detention (IJ at 2; Respondent's Mot., Tab G). The respondent did not attend her hearing scheduled for the following day, so the Immigration Judge ordered her removal in absentia (IJ, Sept. 26, 2018). *See* section 240(b)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(A).

The respondent filed a timely motion to reopen proceedings and rescind the in absentia removal order alleging that her "failure to appear was because of exceptional circumstances." *See*

[1] In this decision, citations to the Immigration Judge decision shall refer to the Immigration Judge's November 2, 2018, decision, unless otherwise indicated.

[2] The respondent argues the filing of the NTA was insufficient to initiate proceedings because the NTA does not include the time, date, and location of her initial hearing (Respondent's Br. at 5–7), but her argument is foreclosed by binding precedent. *See United States v. Bastide-Hernandez*, No. 19-30006, 2021 WL 2909019, at *3 (9th Cir. July 12, 2021) (holding that "jurisdiction of the immigration court vests upon the filing of an NTA, even one that does not at that time inform the alien of the time, date, and location of the hearing").

section 240(b)(5)(C)(i) of the Act.[3] The Immigration Judge denied the statutory motion and declined to reopen proceedings sua sponte. This appeal followed.

The respondent maintains that the DHS's instructions and ineffective assistance of a prior counsel comprise exceptional circumstances that caused her failure to appear for her final hearing (Respondent's Br. at 8–10). Specifically, the respondent posits that upon her September 25, 2018, release from detention, the DHS issued a document instructing her to report to their New York City office and that prior counsel advised her that she need not attend the September 26, 2018, hearing. We address each claim in turn.

We agree that the respondent has not shown the DHS's actions comprised exceptional circumstances that caused her failure to appear for her final hearing (IJ at 2–3). The respondent argues that upon her release, she was issued a document in the Chinese language directing her to appear at a DHS office in New York City on October 2, 2018 (Respondent's Br. at 10). Even assuming the document says what the respondent says it does,[4] the respondent has not explained how the document prevented her from attending both the September 26, 2018, hearing in San Diego and the October 2, 2018, DHS appointment in New York City (IJ at 3). Moreover, upon her release, the DHS issued to the respondent a document specifying that she must comply with any existing order to appear at a hearing (IJ at 3; Respondent's Mot., Tab G).[5] We therefore agree that the untranslated document regarding an October 2, 2018, appointment does not comprise exceptional circumstances that caused the respondent's failure to appear for her September 26, 2018, hearing. *See Matter of S-L-H- & L-B-L-*, 28 I&N Dec. 318, 325 (BIA 2021) (stating that assertions uncorroborated by evidence documenting the cause of the failure to timely appear "are insufficient to establish exceptional circumstances that would warrant reopening removal proceedings").

We also agree that the respondent did not substantiate her claim that a prior counsel provided ineffective assistance in the form of advice not to attend the September 26, 2018, hearing (IJ at 4–5). The respondent does not challenge the Immigration Judge's determination that she did not show ineffective assistance was plain on this record or substantial compliance with *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (IJ at 4–5). *Cf. Guan v. Barr*, 925 F.3d 1022, 1033 (9th Cir. 2019) (explaining that Guan was required to either "comply with the procedural requirements" of *Matter of Lozada* or show "'the ineffectiveness of counsel was plain on its face'" (quoting *Tamang v. Holder*, 598 F.3d 1083, 1090 (9th Cir. 2010))). The respondent's noncompliance with *Lozada*, coupled with the lack of record evidence to demonstrate the respondent retained prior counsel

---

[3] The respondent did not contest notice of the final hearing, so that issue is waived. *See* section 240(b)(5)(C)(ii) of the Act; *Matter of H-L-S-A-*, 28 I&N Dec. 228, 240 n. 10 (BIA 2021) (declining to address an issue not articulated or advanced before the Immigration Judge (citing *Matter of J-Y-C-*, 24 I&N Dec. 260, 260 n.1 (BIA 2007))).

[4] The foreign language document is unaccompanied by an English language translation (Respondent's Mot., Tab H). *See* 8 C.F.R. § 1003.33.

[5] The document further notified the respondent that the hearing may be held in her absence if she did not appear for it (Respondent's Mot., Tab G).

(IJ at 2–3), renders unpersuasive her argument that she was unable to attend her September 26, 2018, hearing because of the purported prior counsel's alleged advice (Respondent's Br. at 10–11). *See, e.g.*, *Matter of Melgar*, 28 I&N Dec. 169, 170 (BIA 2020) (explaining that noncompliance with *Matter of Lozada* procedures undermines the reliability of an ineffective assistance claim).

We acknowledge the respondent's assertion that her prior counsel purchased her airline ticket to New York City, which departed on September 26, 2018, the day of her final hearing (Respondent's Br. at 11; Respondent's Mot., Tab I). However, even assuming that fact is established, the respondent's attorney's purchase of an airline ticket for her does not substantiate her claims that the attorney represented her in removal proceedings and advised her not to attend a scheduled hearing. We therefore agree that the respondent has not shown an attorney failed to enter an appearance in her case but advised her not to attend a scheduled removal hearing, thereby causing her failure to appear for her September 26, 2018, hearing. *See Matter of S-L-H- & L-B-L-*, 28 I&N Dec. at 321–22 (stating that whether a respondent has established exceptional circumstances should be considered in consideration of the totality of the circumstances and supported by adequate documentary evidence corroborating the claim).

For the foregoing reasons, we will affirm the Immigration Judge's denial of the respondent's motion to reopen proceedings and rescind the in absentia removal order. *See* section 240(b)(5)(C)(i) of the Act. *Cf. Singh-Bhathal v. INS*, 170 F.3d 943, 947 (9th Cir. 1999) ("Although Singh may have received poor advice, this does not alter the fact that he failed to appear at his hearing, not because of . . . some [] severe impediment, but because he took the word of the consultant over that of the INS."). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

File: A (b)(6) – San Diego, CA Date: JAN - 4 2022

In re: (b)(6)

DISSENTING OPINION: Denise G. Brown, Temporary Appellate Immigration Judge

I respectfully dissent. I would sustain the respondent's appeal of the Immigration Judge's denial of her timely motion to reopen. In my view, the particular circumstances of this case considered as a whole reflect an exceptional situation that warrants the exercise of sua sponte reopening authority and rescission of the removal order entered in absentia. *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). These circumstances include the timing of the respondent's release from immigration detention in San Diego the day before her scheduled hearing and her reliance on an immigration official's written direction provided in the Chinese language for her to appear at a DHS office in New York six days later. Such circumstances also include the respondent's age, her diligence in filing the motion to reopen, the reason she came to the United States, an asylum officer's determination that the respondent had established a credible fear of persecution in China on account of her religion, and the respondent's reliance on an attorney's poor advice, even if she has not established that it amounted to ineffective assistance of counsel. I conclude that the circumstances presented by the respondent together constitute the type of exceptional situation that warrants reopening under the sua sponte authority of the Board and the Immigration Judge. 8 C.F.R. §§ 1003.2(a), 1003.23(b)(1). Accordingly, I would sustain the respondent's appeal.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Hale Wilson Hawbecker, Esquire

ON BEHALF OF DHS: Brian J. Sandberg, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Baltimore, MD

Before: Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Wilson

WILSON, Appellate Immigration Judge

The respondents[1] appeal from an Immigration Judge's July 10, 2018, decision ordering them removed from the United States to their native El Salvador. The Department of Homeland Security ("DHS") opposes the appeal. The record will be remanded.

The respondents concede removability as charged (IJ at 2; Tr. at 44-45, 64), but argue on appeal that the Immigration Judge improperly denied the respondent's application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and withholding of removal under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2]

In support of his asylum application, the respondent claimed below that he suffered and fears persecution in El Salvador at the hands of the MS-13 criminal gang on account of his membership

[1] The respondents are an adult male, his spouse (an adult female), and their minor child. In this order, all singular references to "the respondent" pertain to the adult male respondent.

[2] The adult female respondent and the minor respondent are derivative beneficiaries of the respondent's asylum application; we note, however, that withholding of removal—whether under section 241(b)(3) of the Act or the CAT—cannot be granted on a derivative basis.

in "particular social groups" comprised of the immediate family members of two of his brothers (IJ at 8-9). The Immigration Judge found the respondent credible (IJ at 8) but denied the claim, finding that the respondent did not establish that the Salvadoran government was (or will be) unable or unwilling to control the MS-13 (IJ at 9-11), or that he could not reasonably avoid persecution by means of internal relocation within El Salvador (IJ at 11-12).[3]

The record will be remanded for further review because the Immigration Judge's assessment of the "unable or unwilling to control" issue was expressly premised on the standard elucidated in *Matter of A-B- I*, 27 I&N Dec. 316 (A.G. 2018), which has since been vacated in its entirety. *Matter of A-B- III*, 28 I&N Dec. 307, 309 (A.G. 2021) (IJ at 9-10). Pending rulemaking, the Immigration Judge should determine on remand whether the respondent's evidence satisfies the unable or unwilling to control standard adopted by the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this matter arises. *See, e.g., Diaz de Gomez v. Wilkinson*, 987 F.3d 359, 365-67 (4th Cir. 2021).[4]

Though the Immigration Judge also found that the respondent did not carry his burden of proof with respect to internal relocation, that determination will not be ripe for review until the Immigration Judge resolves the antecedent "unable or unwilling to control" issue. This is so because resolution of the "unable or unwilling to control" issue will (absent some other dispositive finding by the Immigration Judge) determine whether or not the respondent suffered past persecution in El Salvador, which in turn will determine whether the respondent or the DHS has the burden of proof as to internal relocation. *See* 8 C.F.R. § 1208.13(b)(3)(i)-(ii).

In light of the foregoing, the record will be remanded for further proceedings. On remand, the Immigration Judge should also reevaluate the respondent's claim for CAT protection in light of intervening Fourth Circuit precedent, including *Portillo Flores v. Garland*, 3 F.4th 615, 637 (4th Cir. 2021) (en banc).

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

---

[3] The Immigration Judge did not decide whether the respondent's past harm was severe enough to count as persecution, nor did he specifically address whether the respondent's particular social groups were cognizable or whether his membership in those groups was (or will be) at least one central reason why the gang targeted (or will target) him.

[4] On appeal, the respondent also argues that he suffered and fears persecution in El Salvador on account of his membership in a particular social group comprised of "family members of witnesses of criminal activity" (R's Br. at 7-8). We express no opinion on that issue, which has not yet been presented to the Immigration Judge for review.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A(b)(6)
(b)(6), A(b)(6)
(b)(6), A(b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Hale Wilson Hawbecker, Esquire

ON BEHALF OF DHS: Brian J. Sandberg, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Baltimore, MD

Before: Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Wilson

WILSON, Appellate Immigration Judge

The respondents[1] appeal from an Immigration Judge's July 10, 2018, decision ordering them removed from the United States to their native El Salvador. The Department of Homeland Security ("DHS") opposes the appeal. The record will be remanded.

The respondents concede removability as charged (IJ at 2; Tr. at 44-45, 64), but argue on appeal that the Immigration Judge improperly denied the respondent's application for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and withholding of removal under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2]

In support of his asylum application, the respondent claimed below that he suffered and fears persecution in El Salvador at the hands of the MS-13 criminal gang on account of his membership

[1] The respondents are an adult male, his spouse (an adult female), and their minor child. In this order, all singular references to "the respondent" pertain to the adult male respondent.

[2] The adult female respondent and the minor respondent are derivative beneficiaries of the respondent's asylum application; we note, however, that withholding of removal—whether under section 241(b)(3) of the Act or the CAT—cannot be granted on a derivative basis.

in "particular social groups" comprised of the immediate family members of two of his brothers (IJ at 8-9). The Immigration Judge found the respondent credible (IJ at 8) but denied the claim, finding that the respondent did not establish that the Salvadoran government was (or will be) unable or unwilling to control the MS-13 (IJ at 9-11), or that he could not reasonably avoid persecution by means of internal relocation within El Salvador (IJ at 11-12).[3]

The record will be remanded for further review because the Immigration Judge's assessment of the "unable or unwilling to control" issue was expressly premised on the standard elucidated in *Matter of A-B- I*, 27 I&N Dec. 316 (A.G. 2018), which has since been vacated in its entirety. *Matter of A-B- III*, 28 I&N Dec. 307, 309 (A.G. 2021) (IJ at 9-10). Pending rulemaking, the Immigration Judge should determine on remand whether the respondent's evidence satisfies the unable or unwilling to control standard adopted by the United States Court of Appeals for the Fourth Circuit, in whose jurisdiction this matter arises. *See, e.g., Diaz de Gomez v. Wilkinson*, 987 F.3d 359, 365-67 (4th Cir. 2021).[4]

Though the Immigration Judge also found that the respondent did not carry his burden of proof with respect to internal relocation, that determination will not be ripe for review until the Immigration Judge resolves the antecedent "unable or unwilling to control" issue. This is so because resolution of the "unable or unwilling to control" issue will (absent some other dispositive finding by the Immigration Judge) determine whether or not the respondent suffered past persecution in El Salvador, which in turn will determine whether the respondent or the DHS has the burden of proof as to internal relocation. *See* 8 C.F.R. § 1208.13(b)(3)(i)-(ii).

In light of the foregoing, the record will be remanded for further proceedings. On remand, the Immigration Judge should also reevaluate the respondent's claim for CAT protection in light of intervening Fourth Circuit precedent, including *Portillo Flores v. Garland*, 3 F.4th 615, 637 (4th Cir. 2021) (en banc).

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

---

[3] The Immigration Judge did not decide whether the respondent's past harm was severe enough to count as persecution, nor did he specifically address whether the respondent's particular social groups were cognizable or whether his membership in those groups was (or will be) at least one central reason why the gang targeted (or will target) him.

[4] On appeal, the respondent also argues that he suffered and fears persecution in El Salvador on account of his membership in a particular social group comprised of "family members of witnesses of criminal activity" (R's Br. at 7-8). We express no opinion on that issue, which has not yet been presented to the Immigration Judge for review.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Raed Gonzalez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Baird, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Baird

BAIRD, Appellate Immigration Judge

We affirm the Immigration Judge's July 18, 2018, decision ordering the respondents[1] removed from the United States to their native El Salvador.

The respondents conceded removability below (IJ at 1-2; Tr. at 7-8), but argue on appeal that the Immigration Judge improperly denied the respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2] In addressing these arguments, we review the Immigration Judge's decision de novo except for factual findings, which we review for clear error. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

[1] The respondents are an adult female and her three children. In this order, all singular references to "the respondent" pertain to the adult female respondent.

[2] The respondent's children are derivative beneficiaries of her asylum application. The children have also filed applications for asylum, withholding of removal, and CAT protection in their own right, but their claims are entirely dependent upon their mother's; the children did not testify or proffer evidence of their own, nor have they requested relief or protection on any legal theory different from that advanced by the respondent.

The respondent credibly[3] claims that in March and April 2016, while living in El Salvador, she was subjected to telephonic extortion by members of the Mara 18 criminal gang but could not afford to pay. Fearing that the gang would hurt her or her children because of her non-payment and that police would not protect them, the respondent departed El Salvador with her children and entered the United States in May 2016 (IJ at 3; Tr. at 18-27). Based on these facts, the respondent argues that she qualifies for asylum because she has a well-founded fear of persecution in El Salvador on account of an imputed anti-gang "political opinion" and/or membership in any of three "particular social groups"—i.e., Salvadoran women who live alone; Salvadoran women living without a partner; and Salvadoran single mothers. Sections 101(a)(42) and 208(b)(1)(B)(i) of the Act, 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i).

The Immigration Judge permissibly denied the respondent's asylum claim. Extortion of the kind experienced (and feared) by the respondent does not qualify as "persecution" in this jurisdiction (IJ at 6). *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015). Further, we discern no clear error in the Immigration Judge's determination that the harm the respondent suffered and fears was (and will be) ordinary crime, motivated by greed rather than a desire to overcome her imputed anti-gang "political opinion" or her membership in a gender-based "particular social group" (IJ at 4, 6). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed ... for clear error."). On appeal, the respondent asserts that "it is clear" that her extortion was motivated by her imputed political opinion and/or her membership in a particular social group (R's Br. at 8), but she points to no evidence corroborating this conclusory assertion. As the Immigration Judge's adverse nexus finding is plausible in light of the full record, we are obliged to defer to it. *Cooper v. Harris*, 137 S. Ct. 1455,1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.").[4]

Because the respondent did not demonstrate, in the asylum context, that her fear of persecution in El Salvador bears a motivational nexus to her membership in a particular social group or her actual or imputed political opinion, it follows that she is also ineligible for withholding of removal under section 241(b)(3) of the Act, which contains a functionally identical nexus requirement. *Matter of C-T-L-*, 25 I&N Dec. 341, 344-48 (BIA 2010); *Vazquez-Guerra v. Garland*, 7 F.4th 265, 271 (5th Cir. 2021). The respondent, citing the opinion of the United States Court of Appeals for the Ninth Circuit in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), argues that the nexus standard for withholding of removal claims is more lenient than that applicable to asylum claims (R's Br. at 10-11). But *Barajas-Romero* is not controlling in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which holds that the "at least one central reason" nexus standard applies to both asylum and withholding of removal claims. *Vazquez-Guerra v. Garland*, 7 F.4th at 271; *Revencu v. Sessions*, 895 F.3d 396, 402 (5th Cir. 2018).

---

[3] The Immigration Judge found the respondent credible (IJ at 2).

[4] As the respondent has not established error in the Immigration Judge's nexus findings, we find it unnecessary to assess the validity of the respondent's claimed particular social groups.

Finally, the Immigration Judge permissibly determined that the respondent does not qualify for protection under the CAT because she did not prove that any harm she might experience in El Salvador would be inflicted with the complicity, consent, or acquiescence (including "willful blindness") of any Salvadoran public official, as required for it to qualify as "torture" under 8 C.F.R. § 1208.18(a)(1) (IJ at 7-8).

On appeal, the respondent points to evidence of police ineffectiveness and corruption in El Salvador, and argues that Salvadoran police will be "unable or unwilling" to protect her from the gangs (R's Br. at 13, 14). But the respondent's evidence does not reflect that police corruption in El Salvador so often takes the form of complicity or acquiescence in torture of innocent people that we may reasonably assume this will "more likely than not" occur in her particular case. 8 C.F.R. § 1208.16(c)(2) (requiring proof that an applicant for CAT protection will "more likely than not" suffer torture if removed). And in any case, "a government's inability to protect its citizens does not amount to acquiescence [under the CAT]." *Tabora Gutierrez v. Garland*, 12 F.4th 496, 504 (5th Cir. 2021) (quoting *Martinez Manzanares v. Barr*, 925 F.3d 222, 229 (5th Cir. 2019) (citing *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019))); *see also Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) (explaining that "[a] government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it.").

In light of the foregoing, the respondents have not established error in the Immigration Judge's denial of their applications for asylum, withholding of removal, and protection under the CAT. Accordingly, the following order will be issued.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Raed Gonzalez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Baird, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Baird

BAIRD, Appellate Immigration Judge

We affirm the Immigration Judge's July 18, 2018, decision ordering the respondents[1] removed from the United States to their native El Salvador.

The respondents conceded removability below (IJ at 1-2; Tr. at 7-8), but argue on appeal that the Immigration Judge improperly denied the respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2] In addressing these arguments, we review the Immigration Judge's decision de novo except for factual findings, which we review for clear error. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

[1] The respondents are an adult female and her three children. In this order, all singular references to "the respondent" pertain to the adult female respondent.

[2] The respondent's children are derivative beneficiaries of her asylum application. The children have also filed applications for asylum, withholding of removal, and CAT protection in their own right, but their claims are entirely dependent upon their mother's; the children did not testify or proffer evidence of their own, nor have they requested relief or protection on any legal theory different from that advanced by the respondent.

The respondent credibly[3] claims that in March and April 2016, while living in El Salvador, she was subjected to telephonic extortion by members of the Mara 18 criminal gang but could not afford to pay. Fearing that the gang would hurt her or her children because of her non-payment and that police would not protect them, the respondent departed El Salvador with her children and entered the United States in May 2016 (IJ at 3; Tr. at 18-27). Based on these facts, the respondent argues that she qualifies for asylum because she has a well-founded fear of persecution in El Salvador on account of an imputed anti-gang "political opinion" and/or membership in any of three "particular social groups"—i.e., Salvadoran women who live alone; Salvadoran women living without a partner; and Salvadoran single mothers. Sections 101(a)(42) and 208(b)(1)(B)(i) of the Act, 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i).

The Immigration Judge permissibly denied the respondent's asylum claim. Extortion of the kind experienced (and feared) by the respondent does not qualify as "persecution" in this jurisdiction (IJ at 6). *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015). Further, we discern no clear error in the Immigration Judge's determination that the harm the respondent suffered and fears was (and will be) ordinary crime, motivated by greed rather than a desire to overcome her imputed anti-gang "political opinion" or her membership in a gender-based "particular social group" (IJ at 4, 6). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed ... for clear error."). On appeal, the respondent asserts that "it is clear" that her extortion was motivated by her imputed political opinion and/or her membership in a particular social group (R's Br. at 8), but she points to no evidence corroborating this conclusory assertion. As the Immigration Judge's adverse nexus finding is plausible in light of the full record, we are obliged to defer to it. *Cooper v. Harris*, 137 S. Ct. 1455,1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.").[4]

Because the respondent did not demonstrate, in the asylum context, that her fear of persecution in El Salvador bears a motivational nexus to her membership in a particular social group or her actual or imputed political opinion, it follows that she is also ineligible for withholding of removal under section 241(b)(3) of the Act, which contains a functionally identical nexus requirement. *Matter of C-T-L-*, 25 I&N Dec. 341, 344-48 (BIA 2010); *Vazquez-Guerra v. Garland*, 7 F.4th 265, 271 (5th Cir. 2021). The respondent, citing the opinion of the United States Court of Appeals for the Ninth Circuit in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), argues that the nexus standard for withholding of removal claims is more lenient than that applicable to asylum claims (R's Br. at 10-11). But *Barajas-Romero* is not controlling in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which holds that the "at least one central reason" nexus standard applies to both asylum and withholding of removal claims. *Vazquez-Guerra v. Garland*, 7 F.4th at 271; *Revencu v. Sessions*, 895 F.3d 396, 402 (5th Cir. 2018).

---

[3] The Immigration Judge found the respondent credible (IJ at 2).

[4] As the respondent has not established error in the Immigration Judge's nexus findings, we find it unnecessary to assess the validity of the respondent's claimed particular social groups.

Finally, the Immigration Judge permissibly determined that the respondent does not qualify for protection under the CAT because she did not prove that any harm she might experience in El Salvador would be inflicted with the complicity, consent, or acquiescence (including "willful blindness") of any Salvadoran public official, as required for it to qualify as "torture" under 8 C.F.R. § 1208.18(a)(1) (IJ at 7-8).

On appeal, the respondent points to evidence of police ineffectiveness and corruption in El Salvador, and argues that Salvadoran police will be "unable or unwilling" to protect her from the gangs (R's Br. at 13, 14). But the respondent's evidence does not reflect that police corruption in El Salvador so often takes the form of complicity or acquiescence in torture of innocent people that we may reasonably assume this will "more likely than not" occur in her particular case. 8 C.F.R. § 1208.16(c)(2) (requiring proof that an applicant for CAT protection will "more likely than not" suffer torture if removed). And in any case, "a government's inability to protect its citizens does not amount to acquiescence [under the CAT]." *Tabora Gutierrez v. Garland*, 12 F.4th 496, 504 (5th Cir. 2021) (quoting *Martinez Manzanares v. Barr*, 925 F.3d 222, 229 (5th Cir. 2019) (citing *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019))); *see also Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) (explaining that "[a] government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it.").

In light of the foregoing, the respondents have not established error in the Immigration Judge's denial of their applications for asylum, withholding of removal, and protection under the CAT. Accordingly, the following order will be issued.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

FILED
Jan 04, 2022

Respondents

ON BEHALF OF RESPONDENTS: Raed Gonzalez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Baird, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Baird

BAIRD, Appellate Immigration Judge

We affirm the Immigration Judge's July 18, 2018, decision ordering the respondents[1] removed from the United States to their native El Salvador.

The respondents conceded removability below (IJ at 1-2; Tr. at 7-8), but argue on appeal that the Immigration Judge improperly denied the respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2] In addressing these arguments, we review the Immigration Judge's decision de novo except for factual findings, which we review for clear error. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

[1] The respondents are an adult female and her three children. In this order, all singular references to "the respondent" pertain to the adult female respondent.

[2] The respondent's children are derivative beneficiaries of her asylum application. The children have also filed applications for asylum, withholding of removal, and CAT protection in their own right, but their claims are entirely dependent upon their mother's; the children did not testify or proffer evidence of their own, nor have they requested relief or protection on any legal theory different from that advanced by the respondent.

The respondent credibly[3] claims that in March and April 2016, while living in El Salvador, she was subjected to telephonic extortion by members of the Mara 18 criminal gang but could not afford to pay. Fearing that the gang would hurt her or her children because of her non-payment and that police would not protect them, the respondent departed El Salvador with her children and entered the United States in May 2016 (IJ at 3; Tr. at 18-27). Based on these facts, the respondent argues that she qualifies for asylum because she has a well-founded fear of persecution in El Salvador on account of an imputed anti-gang "political opinion" and/or membership in any of three "particular social groups"—i.e., Salvadoran women who live alone; Salvadoran women living without a partner; and Salvadoran single mothers. Sections 101(a)(42) and 208(b)(1)(B)(i) of the Act, 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i).

The Immigration Judge permissibly denied the respondent's asylum claim. Extortion of the kind experienced (and feared) by the respondent does not qualify as "persecution" in this jurisdiction (IJ at 6). *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015). Further, we discern no clear error in the Immigration Judge's determination that the harm the respondent suffered and fears was (and will be) ordinary crime, motivated by greed rather than a desire to overcome her imputed anti-gang "political opinion" or her membership in a gender-based "particular social group" (IJ at 4, 6). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed ... for clear error."). On appeal, the respondent asserts that "it is clear" that her extortion was motivated by her imputed political opinion and/or her membership in a particular social group (R's Br. at 8), but she points to no evidence corroborating this conclusory assertion. As the Immigration Judge's adverse nexus finding is plausible in light of the full record, we are obliged to defer to it. *Cooper v. Harris*, 137 S. Ct. 1455,1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.").[4]

Because the respondent did not demonstrate, in the asylum context, that her fear of persecution in El Salvador bears a motivational nexus to her membership in a particular social group or her actual or imputed political opinion, it follows that she is also ineligible for withholding of removal under section 241(b)(3) of the Act, which contains a functionally identical nexus requirement. *Matter of C-T-L-*, 25 I&N Dec. 341, 344-48 (BIA 2010); *Vazquez-Guerra v. Garland*, 7 F.4th 265, 271 (5th Cir. 2021). The respondent, citing the opinion of the United States Court of Appeals for the Ninth Circuit in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), argues that the nexus standard for withholding of removal claims is more lenient than that applicable to asylum claims (R's Br. at 10-11). But *Barajas-Romero* is not controlling in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which holds that the "at least one central reason" nexus standard applies to both asylum and withholding of removal claims. *Vazquez-Guerra v. Garland*, 7 F.4th at 271; *Revencu v. Sessions*, 895 F.3d 396, 402 (5th Cir. 2018).

---

[3] The Immigration Judge found the respondent credible (IJ at 2).

[4] As the respondent has not established error in the Immigration Judge's nexus findings, we find it unnecessary to assess the validity of the respondent's claimed particular social groups.

Finally, the Immigration Judge permissibly determined that the respondent does not qualify for protection under the CAT because she did not prove that any harm she might experience in El Salvador would be inflicted with the complicity, consent, or acquiescence (including "willful blindness") of any Salvadoran public official, as required for it to qualify as "torture" under 8 C.F.R. § 1208.18(a)(1) (IJ at 7-8).

On appeal, the respondent points to evidence of police ineffectiveness and corruption in El Salvador, and argues that Salvadoran police will be "unable or unwilling" to protect her from the gangs (R's Br. at 13, 14). But the respondent's evidence does not reflect that police corruption in El Salvador so often takes the form of complicity or acquiescence in torture of innocent people that we may reasonably assume this will "more likely than not" occur in her particular case. 8 C.F.R. § 1208.16(c)(2) (requiring proof that an applicant for CAT protection will "more likely than not" suffer torture if removed). And in any case, "a government's inability to protect its citizens does not amount to acquiescence [under the CAT]." *Tabora Gutierrez v. Garland*, 12 F.4th 496, 504 (5th Cir. 2021) (quoting *Martinez Manzanares v. Barr*, 925 F.3d 222, 229 (5th Cir. 2019) (citing *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019))); *see also Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) (explaining that "[a] government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it.").

In light of the foregoing, the respondents have not established error in the Immigration Judge's denial of their applications for asylum, withholding of removal, and protection under the CAT. Accordingly, the following order will be issued.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6) A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Raed Gonzalez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Baird, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Baird

BAIRD, Appellate Immigration Judge

We affirm the Immigration Judge's July 18, 2018, decision ordering the respondents[1] removed from the United States to their native El Salvador.

The respondents conceded removability below (IJ at 1-2; Tr. at 7-8), but argue on appeal that the Immigration Judge improperly denied the respondent's applications for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158; withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under 8 C.F.R. §§ 1208.16(c)-1208.18, the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT").[2] In addressing these arguments, we review the Immigration Judge's decision de novo except for factual findings, which we review for clear error. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

[1] The respondents are an adult female and her three children. In this order, all singular references to "the respondent" pertain to the adult female respondent.

[2] The respondent's children are derivative beneficiaries of her asylum application. The children have also filed applications for asylum, withholding of removal, and CAT protection in their own right, but their claims are entirely dependent upon their mother's; the children did not testify or proffer evidence of their own, nor have they requested relief or protection on any legal theory different from that advanced by the respondent.

The respondent credibly[3] claims that in March and April 2016, while living in El Salvador, she was subjected to telephonic extortion by members of the Mara 18 criminal gang but could not afford to pay. Fearing that the gang would hurt her or her children because of her non-payment and that police would not protect them, the respondent departed El Salvador with her children and entered the United States in May 2016 (IJ at 3; Tr. at 18-27). Based on these facts, the respondent argues that she qualifies for asylum because she has a well-founded fear of persecution in El Salvador on account of an imputed anti-gang "political opinion" and/or membership in any of three "particular social groups"—i.e., Salvadoran women who live alone; Salvadoran women living without a partner; and Salvadoran single mothers. Sections 101(a)(42) and 208(b)(1)(B)(i) of the Act, 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i).

The Immigration Judge permissibly denied the respondent's asylum claim. Extortion of the kind experienced (and feared) by the respondent does not qualify as "persecution" in this jurisdiction (IJ at 6). *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015). Further, we discern no clear error in the Immigration Judge's determination that the harm the respondent suffered and fears was (and will be) ordinary crime, motivated by greed rather than a desire to overcome her imputed anti-gang "political opinion" or her membership in a gender-based "particular social group" (IJ at 4, 6). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a matter of fact to be determined by the Immigration Judge and reviewed ... for clear error."). On appeal, the respondent asserts that "it is clear" that her extortion was motivated by her imputed political opinion and/or her membership in a particular social group (R's Br. at 8), but she points to no evidence corroborating this conclusory assertion. As the Immigration Judge's adverse nexus finding is plausible in light of the full record, we are obliged to defer to it. *Cooper v. Harris*, 137 S. Ct. 1455,1465 (2017) (holding that on clear error review, "[a] finding that is 'plausible' in light of the full record—even if another is equally or more so—must govern.").[4]

Because the respondent did not demonstrate, in the asylum context, that her fear of persecution in El Salvador bears a motivational nexus to her membership in a particular social group or her actual or imputed political opinion, it follows that she is also ineligible for withholding of removal under section 241(b)(3) of the Act, which contains a functionally identical nexus requirement. *Matter of C-T-L-*, 25 I&N Dec. 341, 344-48 (BIA 2010); *Vazquez-Guerra v. Garland*, 7 F.4th 265, 271 (5th Cir. 2021). The respondent, citing the opinion of the United States Court of Appeals for the Ninth Circuit in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), argues that the nexus standard for withholding of removal claims is more lenient than that applicable to asylum claims (R's Br. at 10-11). But *Barajas-Romero* is not controlling in the jurisdiction of the United States Court of Appeals for the Fifth Circuit, which holds that the "at least one central reason" nexus standard applies to both asylum and withholding of removal claims. *Vazquez-Guerra v. Garland*, 7 F.4th at 271; *Revencu v. Sessions*, 895 F.3d 396, 402 (5th Cir. 2018).

---

[3] The Immigration Judge found the respondent credible (IJ at 2).

[4] As the respondent has not established error in the Immigration Judge's nexus findings, we find it unnecessary to assess the validity of the respondent's claimed particular social groups.

Finally, the Immigration Judge permissibly determined that the respondent does not qualify for protection under the CAT because she did not prove that any harm she might experience in El Salvador would be inflicted with the complicity, consent, or acquiescence (including "willful blindness") of any Salvadoran public official, as required for it to qualify as "torture" under 8 C.F.R. § 1208.18(a)(1) (IJ at 7-8).

On appeal, the respondent points to evidence of police ineffectiveness and corruption in El Salvador, and argues that Salvadoran police will be "unable or unwilling" to protect her from the gangs (R's Br. at 13, 14). But the respondent's evidence does not reflect that police corruption in El Salvador so often takes the form of complicity or acquiescence in torture of innocent people that we may reasonably assume this will "more likely than not" occur in her particular case. 8 C.F.R. § 1208.16(c)(2) (requiring proof that an applicant for CAT protection will "more likely than not" suffer torture if removed). And in any case, "a government's inability to protect its citizens does not amount to acquiescence [under the CAT]." *Tabora Gutierrez v. Garland*, 12 F.4th 496, 504 (5th Cir. 2021) (quoting *Martinez Manzanares v. Barr*, 925 F.3d 222, 229 (5th Cir. 2019) (citing *Qorane v. Barr*, 919 F.3d 904, 911 (5th Cir. 2019))); *see also Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014) (explaining that "[a] government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it.").

In light of the foregoing, the respondents have not established error in the Immigration Judge's denial of their applications for asylum, withholding of removal, and protection under the CAT. Accordingly, the following order will be issued.

ORDER: The appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENT: Kyle J. Howard, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Saenz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Saenz

SAENZ, Appellate Immigration Judge

The respondent, a native and citizen of India, appeals from the decision of the Immigration Judge dated May 10, 2018, denying his application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The respondent has also filed a motion to remand. The record will be remanded to the Immigration Court for further proceedings.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims past and future harm by supporters of the Congress Party on account of his imputed political opinion in support of the Mann Party because his father is a devoted member of the Mann Party (Tr. at 10, 18, 24). He testified that in February 2013 supporters of the Congress Party attacked and beat the respondent and his father, and at gunpoint threatened to kill the respondent if his father did not cease his support of the Mann Party (Tr. at 18-20). He described that thereafter Congress Party supporters continued threatening his father over the phone, demanding that he quit the Mann Party or they would kill the respondent (Tr. at 19-21). Neither the attack nor the threats were reported to the police (Tr. at 20).

On appeal, the respondent asserts that the Immigration Judge determined he had established past persecution, but the Immigration Judge erred in not acknowledging that the respondent thereby had a presumption of future persecution and the Department of Homeland Security had the burden to rebut this presumption (Respondent's Br. at 16, 26). The Immigration Judge's oral

decision stated that the respondent's "credible testimony demonstrates there was past persecution based on political opinion" and subsequently, the Immigration Judge added that the respondent failed to meet his burden of proof "with respect to government inability or unwillingness to provide protection" (IJ at 7).[1] However, whether "the government was unable or unwilling to control" the feared persecutors is a required element to establish persecution. *See* 8 C.F.R. § 1208.1(e). While the respondent may establish "the severity of the level of harm" which is also an element of persecution, the respondent could not have established "past persecution" without demonstrating that the government was unable or unwilling to control his feared persecutors. *See* 8 C.F.R. § 1208.13(b)(1). On remand, the Immigration Judge should clarify these factual and legal findings.

Additionally, we will remand the proceedings for the Immigration Judge to further clarify his finding that the respondent did not meet his burden to establish eligibility for CAT protection (IJ at 6). *See Poradisova v. Gonzales*, 420 F.3d 70, 77 (2d Cir. 2005) (discussing that an Immigration Judge's decision must contain "a certain minimum level of analysis" to allow for meaningful judicial review). The Immigration Judge concluded that the respondent's testimony lacked the detail necessary to establish the government was unable or unwilling to control his feared persecutors, and summarily concluded that similarly he did not meet his burden to establish the requisite element of acquiescence for CAT protection (IJ at 6). Subsequent to the issuance of the Immigration Judge's decision, the United States Court of Appeals for the Second Circuit held that failure to establish the government was unable or unwilling to control the feared persecutors does not necessarily preclude a finding of acquiescence. *Scarlett v. Barr*, 957 F.3d 316, 335 (2d Cir. 2020). On remand, the Immigration Judge should provide further fact-finding and analysis to clarify his determination regarding whether the respondent established acquiescence and eligibility for CAT protection.

For these reasons, the proceedings will be remanded for the Immigration Judge to clarify his findings regarding past and future persecution and the respondent's eligibility for CAT protection. Given the passage of time, the parties should have the opportunity to file additional arguments and evidence. Accordingly, we do not reach the respondent's ineffective assistance of counsel claim or the other issues raised in his appeal and motion to remand. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam).[2] In remanding, we express no opinion on the outcome of these proceedings. Accordingly, the following order will be entered.

---

[1] This language was added during the editing process, which is normally intended only for minor corrections. BIA Practice Manual, § 4.2(f)(iv) (Dec. 22, 2020) ("When an Immigration Judge issues an oral decision, the Immigration Judge reviews the transcription of the oral decision and may make minor, clerical corrections to the decision").

[2] Pursuant to the Acting Director's Policy Memorandum 21-25 and the Director's Policy Memorandum 22-03, the DHS, on remand, may indicate whether the respondent is an enforcement priority and whether the DHS would exercise some form of prosecutorial discretion, such as stipulating to eligibility for relief, agreeing to administrative closure, or requesting termination or dismissal of the proceedings.

A (b)(6)

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

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENT: Jeremy Jong, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

This case was last before the Board on July 22, 2021, when we dismissed the respondent's appeal. On November 22, 2021, the respondent filed the instant motion to reissue our order to enable him to timely petition for judicial review of the Board's prior order. The Department of Homeland Security has not opposed this motion. The respondent asserts that he was prejudiced by the actions of his former counsel, who filed an untimely petition for review; he has substantially complied with the procedural requirements for a claim of ineffective assistance of counsel as outlined in *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). Upon consideration of the circumstances presented, the respondent's unopposed motion to reissue will be granted pursuant to our sua sponte authority. *See* 8 C.F.R. § 1003.2(a). Accordingly, the following orders will be entered.

ORDER: The respondent's motion to reissue is granted.

FURTHER ORDER: The Board's decision dated July 22, 2021, herewith attached, is hereby reissued and shall be treated as entered as of today's date.

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENT: Barry C. Schneps, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent has filed a motion to reopen and terminate these proceedings inasmuch as the respondent has become a lawful permanent resident of the United States. Documentation has been provided. The Department of Homeland Security has not opposed the motion. We will grant the motion.

ORDER: The motion to reopen is granted, and these proceedings are terminated.

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Applicant

FILED
Jan 04, 2022

ON BEHALF OF APPLICANT: Alexis Lucero, Esquire

ON BEHALF OF DHS: Ann M. Meyer, Assistant Chief Counsel

IN WITHHOLDING ONLY PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gorman, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Gorman

GORMAN, Appellate Immigration Judge

The applicant, a native and citizen of Haiti, was previously removed from the United States pursuant to a final order of removal. After subsequently reentering the United States illegally, the Department of Homeland Security ("DHS") reinstated the applicant's prior removal order. He was placed in withholding-only proceedings before an Immigration Judge after expressing a fear of persecution or torture (Exh. 1). The applicant appeals the Immigration Judge's decision dated January 4, 2021,[1] denying his request for withholding of removal under section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §1231(b)(3), and his request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The applicant's appeal will be dismissed.

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 questions of law, discretion, and judgment, and all other issues in appeals from an Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the applicant ineligible for withholding of removal under the Act and the CAT based on his determination that the applicant has a conviction for a particularly serious crime (IJ at 2-3). The applicant also conceded this before the Immigration Judge; and, we,

[1] On October 28, 2021, the applicant's motion to reconsider the dismissal of his appeal was granted and this appeal was reinstated.

therefore, deem these forms of relief and protection waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when an applicant fails to substantively appeal an issue addressed in an Immigration Judge decision, that issue is waived before the Board).

With respect to the applicant's claim for deferral of removal under the CAT, we affirm the Immigration Judge's decision, for the reasons set forth therein, finding that the applicant did not meet his burden for deferral of removal under the CAT (IJ at 6-13). *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (recognizing that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision).

Specifically, there is no clear error in the Immigration Judge's factual findings that the applicant has not demonstrated it is more likely than not he would be tortured upon return to Haiti (IJ at 6-13). *See Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (stating that predictive findings of what may or may not occur in the future are findings of fact, and they are reviewed for clear error). Consequently, we will affirm the Immigration Judge's conclusion that the applicant has not established eligibility for deferral of removal under the CAT (IJ at 13). *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a)(1) (laying out the requirements to establish eligibility for protection under the CAT); *see also Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020) (holding that for an act to constitute "torture," it must be inflicted or approved by a public official or other person acting in an official capacity, and the "official capacity" requirement limits the scope of the CAT to actions performed under the color of law); *Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020).

We disagree with the applicant's claim that the Immigration Judge made contradictory factual findings and neglected portions of his evidence (Applicant's Br. at 5-7). *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) (stating that the adjudicator is not required to interpret evidence in the manner advocated by the applicant), *rev'd on other grounds, Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015); *see also Matter of Vides-Casanova*, 26 I&N Dec. 494 (BIA 2015) (finding that a record may support differing conclusions, which does not necessarily constitute clear error).

We also disagree with the applicant's contention that the Immigration Judge erred by not adequately considering portions of the expert witness statement and by overly relying on it in other respects (IJ at 3-6; Applicant's Br. at 7-8). Here, the Immigration Judge acknowledged the expert opinion in certain supported areas, but gave appropriate weight to areas where she lacked the requisite knowledge and foundation. The Immigration Judge considered the expert credible and to be an expert on criminal deportees and prison conditions in Haiti. However, the Immigration Judge did not find the applicant's proposed expert to be persuasive in certain areas because she did not have the requisite information, education, employment, and experience to be qualified in every area in which she testified (IJ at 3-6). Therefore, in light of these circumstances, the Immigration Judge properly considered (b)(6) opinion, afforded it appropriate weight, and articulated reasons in support of those findings (IJ at 3-6). The Immigration Judge adequately explained the reasons behind his factual findings. *See Matter of M-A-M-Z-*, 28 I&N Dec. 173, 177-78 (BIA 2020); *see also Matter of D-R-*, 25 I&N Dec. at 460 n.13 (an Immigration Judge may

give different weight to expert witness testimony depending on the relevance of the testimony as to the specific facts in the case).

The applicant also contends that because the Immigration Judge did not place the same equal weight on certain evidence and neglected such evidence, he thereby, in doing so, failed to consider the aggregate risk of torture from all sources when denying the applicant's CAT claim (Applicant's Br. at 7-8). Contrary to this assertion, the Immigration Judge determined that in considering the entirety of the record and the various risks of torture in the aggregate to the applicant, he did not establish eligibility for CAT protection (IJ at 6-13). 8 C.F.R. § 1208.16(c)(3).

Here, the Immigration Judge thoroughly discussed evidence regarding the Haitian police, corruption, and collaboration with gangs, including extortion and the lack of resources for police officers to address gang violence (IJ at 6-11; Exh. 8). However, after considering the aggregate risk of torture from all sources, the Immigration Judge found that the applicant has not established that upon removal to Haiti, he is more likely than not to be tortured by private actors, because of the assistance he provided authorities in prosecuting crimes against (b)(6), or by the Haitian government, because of his criminal deportee status, either individually, in the aggregate, or in conjunction with each other. We also disagree that the Immigration Judge neglected the applicant's evidence and did not consider acquiescence or the relevant country conditions in Haiti when analyzing his CAT claim (IJ at 6, 8-12; Applicant's Br. at 4-9). *See Birhanu v. Wilkinson*, 990 F.3d 1242, 1265 (10th Cir. 2021).

We discern no clear error in the factual findings of the Immigration Judge with regard to the probability of torture (IJ at 6-13). *See Matter of J-E-*, 23 I&N Dec. 291, 298, 300-01 (BIA 2002). Therefore, we find no reason to disturb the Immigration Judge's determination that the applicant did not demonstrate it is more likely than not that he would suffer harm amounting to torture, within the meaning of 8 C.F.R. § 1208.18, by or with the consent or acquiescence of public officials acting in their official capacity, if he were removed to Haiti (IJ at 6-13). 8 C.F.R. §§ 1208.16(c)(2) and (3); *see Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006).

In sum, the applicant's appellate arguments do not persuade us to disturb the Immigration Judge's decision.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

00000029602

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENT: Kelvin Rosado, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals, Los Angeles, CA

Before: Gorman, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Gorman

GORMAN, Appellate Immigration Judge

The Board administratively closed proceedings on June 24, 2013, pursuant to an order from the United States Court of Appeals for the Ninth Circuit, which remanded the record to the Board to administratively close proceedings based on the Department of Homeland Security's ("DHS") exercise of prosecutorial discretion. The Board also notified the parties that if either wanted to reinstate the proceedings, a written request to reinstate the proceedings could be made to the Board. The respondent now moves to recalendar and remand proceedings so that he can pursue an application for adjustment of status. The respondent now has an approved Form I-130 Petition for Alien Relative ("visa petition") filed on his behalf by his United States citizen daughter. DHS has not filed a response to the motion. We will grant the motion.

The respondent submits with his motion, among other things, a copy of the USCIS's approval notice of his visa petition, a labor certification with a priority date of April 30, 2001, and a Form I-485 Adjustment of Status application with supporting documentation. Given that the respondent now has an approved visa petition, has provided an adjustment of status application and documentation of his prima facie eligibility, and DHS has filed no opposition to his motion, we conclude that a remand for further proceedings is appropriate. In granting this motion, the Board expresses no opinion regarding the ultimate outcome of these proceedings.

Accordingly, the following order will be entered.

ORDER: The motion to recalendar and remand is granted.

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

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Alexandra L. Schneider, Esquire

ON BEHALF OF DHS: Rachel Aitchison, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the 9th Circuit, Portland, OR

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

This case was last before the Board on April 7, 2017, when we dismissed the appeal from the Immigration Judge's August 1, 2016, decision, denying the respondents' applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).

On November 9, 2020, the United States Court of Appeals for the Ninth Circuit issued an unpublished decision, upholding the Board's conclusion that the respondents had not exhausted their claim that any harm was or would be on account of their family membership, and that they were not members of the particular social group "Mexicans who reported the cartels to the police." *Solorio Mejia v. Barr*, 833 F. App'x 455 (9th Cir. 2020). However, the Ninth Circuit remanded because the respondents had raised an imputed political opinion claim that was not assessed by the Immigration Judge, and was not cured by the Board's decision to adopt and affirm.

On remand from the Ninth Circuit, the parties agree that a remand to the Immigration Judge is necessary. The Department of Homeland Security (DHS) requests that the remand be limited in scope to the issue of the imputed political opinion, and that the Board retain jurisdiction. The respondents are silent on this limitation, but their remand request focuses only on the imputed political opinion claim.

The DHS's motion for a limited remand will be granted and the record remanded to the Immigration Judge for the limited purpose of addressing the respondents' imputed political opinion claim. The parties shall be afforded an opportunity to present additional relevant evidence. The Board will retain jurisdiction over the case and the Immigration Judge shall certify the case and return the record to the Board after issuing a new decision. *Bermudez-Ariza v. Sessions*, 893 F.3d 685, 686 (9th Cir. 2018) (holding that for a remand to an Immigration Judge to be considered a limited remand the Board must remand for a specific purpose and explicitly retain jurisdiction); *Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010) (same).

Accordingly, the following orders will be entered.

ORDER: The DHS's motion for a limited remand regarding the respondents' imputed political opinion claim is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings, if necessary, and the entry of a new decision consistent with the Ninth Circuit's order.

FURTHER ORDER: The Board retains jurisdiction over the case for purposes of a limited remand and the Immigration Judge shall certify the case and forward the record to the Board after the issuance of a new decision.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Alexandra L. Schneider, Esquire

ON BEHALF OF DHS: Rachel Aitchison, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the 9th Circuit, Portland, OR

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

This case was last before the Board on April 7, 2017, when we dismissed the appeal from the Immigration Judge's August 1, 2016, decision, denying the respondents' applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).

On November 9, 2020, the United States Court of Appeals for the Ninth Circuit issued an unpublished decision, upholding the Board's conclusion that the respondents had not exhausted their claim that any harm was or would be on account of their family membership, and that they were not members of the particular social group "Mexicans who reported the cartels to the police." *Solorio Mejia v. Barr*, 833 F. App'x 455 (9th Cir. 2020). However, the Ninth Circuit remanded because the respondents had raised an imputed political opinion claim that was not assessed by the Immigration Judge, and was not cured by the Board's decision to adopt and affirm.

On remand from the Ninth Circuit, the parties agree that a remand to the Immigration Judge is necessary. The Department of Homeland Security (DHS) requests that the remand be limited in scope to the issue of the imputed political opinion, and that the Board retain jurisdiction. The respondents are silent on this limitation, but their remand request focuses only on the imputed political opinion claim.

The DHS's motion for a limited remand will be granted and the record remanded to the Immigration Judge for the limited purpose of addressing the respondents' imputed political opinion claim. The parties shall be afforded an opportunity to present additional relevant evidence. The Board will retain jurisdiction over the case and the Immigration Judge shall certify the case and return the record to the Board after issuing a new decision. *Bermudez-Ariza v. Sessions*, 893 F.3d 685, 686 (9th Cir. 2018) (holding that for a remand to an Immigration Judge to be considered a limited remand the Board must remand for a specific purpose and explicitly retain jurisdiction); *Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010) (same).

Accordingly, the following orders will be entered.

ORDER: The DHS's motion for a limited remand regarding the respondents' imputed political opinion claim is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings, if necessary, and the entry of a new decision consistent with the Ninth Circuit's order.

FURTHER ORDER: The Board retains jurisdiction over the case for purposes of a limited remand and the Immigration Judge shall certify the case and forward the record to the Board after the issuance of a new decision.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Alexandra L. Schneider, Esquire

ON BEHALF OF DHS: Rachel Aitchison, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the 9th Circuit, Portland, OR

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

This case was last before the Board on April 7, 2017, when we dismissed the appeal from the Immigration Judge's August 1, 2016, decision, denying the respondents' applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).

On November 9, 2020, the United States Court of Appeals for the Ninth Circuit issued an unpublished decision, upholding the Board's conclusion that the respondents had not exhausted their claim that any harm was or would be on account of their family membership, and that they were not members of the particular social group "Mexicans who reported the cartels to the police." *Solorio Mejia v. Barr*, 833 F. App'x 455 (9th Cir. 2020). However, the Ninth Circuit remanded because the respondents had raised an imputed political opinion claim that was not assessed by the Immigration Judge, and was not cured by the Board's decision to adopt and affirm.

On remand from the Ninth Circuit, the parties agree that a remand to the Immigration Judge is necessary. The Department of Homeland Security (DHS) requests that the remand be limited in scope to the issue of the imputed political opinion, and that the Board retain jurisdiction. The respondents are silent on this limitation, but their remand request focuses only on the imputed political opinion claim.

The DHS's motion for a limited remand will be granted and the record remanded to the Immigration Judge for the limited purpose of addressing the respondents' imputed political opinion claim. The parties shall be afforded an opportunity to present additional relevant evidence. The Board will retain jurisdiction over the case and the Immigration Judge shall certify the case and return the record to the Board after issuing a new decision. *Bermudez-Ariza v. Sessions*, 893 F.3d 685, 686 (9th Cir. 2018) (holding that for a remand to an Immigration Judge to be considered a limited remand the Board must remand for a specific purpose and explicitly retain jurisdiction); *Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010) (same).

Accordingly, the following orders will be entered.

ORDER: The DHS's motion for a limited remand regarding the respondents' imputed political opinion claim is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings, if necessary, and the entry of a new decision consistent with the Ninth Circuit's order.

FURTHER ORDER: The Board retains jurisdiction over the case for purposes of a limited remand and the Immigration Judge shall certify the case and forward the record to the Board after the issuance of a new decision.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 04, 2022

ON BEHALF OF RESPONDENTS: Alexandra L. Schneider, Esquire

ON BEHALF OF DHS: Rachel Aitchison, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the 9th Circuit, Portland, OR

Before: Goodwin, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Goodwin

GOODWIN, Appellate Immigration Judge

This case was last before the Board on April 7, 2017, when we dismissed the appeal from the Immigration Judge's August 1, 2016, decision, denying the respondents' applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a), 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).

On November 9, 2020, the United States Court of Appeals for the Ninth Circuit issued an unpublished decision, upholding the Board's conclusion that the respondents had not exhausted their claim that any harm was or would be on account of their family membership, and that they were not members of the particular social group "Mexicans who reported the cartels to the police." *Solorio Mejia v. Barr*, 833 F. App'x 455 (9th Cir. 2020). However, the Ninth Circuit remanded because the respondents had raised an imputed political opinion claim that was not assessed by the Immigration Judge, and was not cured by the Board's decision to adopt and affirm.

On remand from the Ninth Circuit, the parties agree that a remand to the Immigration Judge is necessary. The Department of Homeland Security (DHS) requests that the remand be limited in scope to the issue of the imputed political opinion, and that the Board retain jurisdiction. The respondents are silent on this limitation, but their remand request focuses only on the imputed political opinion claim.

The DHS's motion for a limited remand will be granted and the record remanded to the Immigration Judge for the limited purpose of addressing the respondents' imputed political opinion claim. The parties shall be afforded an opportunity to present additional relevant evidence. The Board will retain jurisdiction over the case and the Immigration Judge shall certify the case and return the record to the Board after issuing a new decision. *Bermudez-Ariza v. Sessions*, 893 F.3d 685, 686 (9th Cir. 2018) (holding that for a remand to an Immigration Judge to be considered a limited remand the Board must remand for a specific purpose and explicitly retain jurisdiction); *Fernandes v. Holder*, 619 F.3d 1069, 1074 (9th Cir. 2010) (same).

Accordingly, the following orders will be entered.

ORDER: The DHS's motion for a limited remand regarding the respondents' imputed political opinion claim is granted.

FURTHER ORDER: The record is remanded to the Immigration Judge for further proceedings, if necessary, and the entry of a new decision consistent with the Ninth Circuit's order.

FURTHER ORDER: The Board retains jurisdiction over the case for purposes of a limited remand and the Immigration Judge shall certify the case and forward the record to the Board after the issuance of a new decision.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 04 2022

ON BEHALF OF PETITIONER: Olesia Gorinshteyn, Esquire

ON BEHALF OF DHS: Jill Tavlin Swartz, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Charleston, SC

Before: Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Wilson

WILSON, Appellate Immigration Judge

The United States citizen petitioner appeals from the November 7, 2018, decision of the Field Office Director ("Director") denying a Petition for Alien Relative, Form I-130 ("visa petition"), she filed on behalf of the beneficiary as her husband under section 201(b)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2)(A)(i). The appeal will be sustained and the record will be remanded.

We review all questions arising in appeals from decisions of U.S. Citizenship and Immigration Services officers de novo. 8 C.F.R. § 1003.1(d)(3)(iii).

The Director concluded that approval of the visa petition is barred under section 204(c) of the Act, 8 U.S.C. § 1154(c), because the beneficiary previously entered into a fraudulent marriage with his United States citizen ex-wife, who withdrew an earlier visa petition she had filed on his behalf. Evidence of a fraudulent marriage "must be documented in the alien's file and must be substantial and probative." *Matter of Tawfik*, 20 I&N Dec. 166, 167 (BIA 1990). "[T]he degree of proof required for a finding of marriage fraud sufficient to support the denial of a visa petition under section 204(c) of the Act should be higher than a preponderance of the evidence and closer to clear and convincing evidence." *Matter of P. Singh*, 27 I&N Dec. 598, 607 (BIA 2019). Thus, "to be 'substantial and probative,' the evidence must establish that it is more than probably true that the marriage is fraudulent." *Id.* "The application of the 'substantial and probative evidence' standard requires the examination of all of the relevant evidence and a determination as to whether

such evidence, when viewed in its totality, establishes, with sufficient probability, that the marriage is fraudulent." *Id.* We agree with the petitioner that the record does not contain substantial and probative evidence that the marriage of the beneficiary and his ex-wife was fraudulent (Petitioner's Br. at 11-13).

At the outset, we conclude that direct evidence of marriage fraud is lacking. *See id.* We acknowledge that, on May 10, 2005, the mother of the beneficiary's ex-wife sent him a letter stating, among other things, that she did not know the beneficiary, she did not know about the couple's "arrangement" and "purpose in this marriage," and the beneficiary should send his ex-wife $(b)(6) per month. However, it is speculative to conclude that the mother was requesting $(b)(6) monthly payments as compensation for her daughter's filing of a visa petition on the beneficiary's behalf. It is also possible, as the petitioner claims, that the money was requested as spousal support for the beneficiary's ex-wife, who did not work, was sometimes incarcerated, and was otherwise in a "commuter marriage" while married to the beneficiary (Petitioner's Br. at 7, 11-12). Furthermore, although the beneficiary's ex-wife sometimes refers to his immigration status in letters she wrote to the beneficiary while she was incarcerated, she does not state that the couple married for immigration purposes or request payment for that purpose. The beneficiary's ex-wife also makes other statements suggesting the existence of a genuine marital relationship, such as referring to the beneficiary as "husband."

We further conclude that the petitioner sufficiently rebutted circumstantial evidence indicating a fraudulent marriage, which was outlined in a Notice of Intent to Deny, dated August 23, 2018. *See id.* at 608-09. The petitioner presented an affidavit from the beneficiary to explain concerns arising during an October 2009 interview of the beneficiary and his ex-wife, as well as a January 2018 interview of the petitioner and the beneficiary when the subject of the beneficiary's prior marriage was raised. Notably, the beneficiary claims that his ex-wife's criminal history made it difficult to obtain certain documents indicative of a shared life and the nature of his work required him to live away from her, but he supported her monetarily and visited her. The petitioner also observes that the beneficiary's marriage to his ex-wife lasted almost 8 years, and his ex-wife did not file a visa petition on his behalf until the marriage had lasted for over 4 years (Petitioner's Br. at 5-6).

We acknowledge the Director's concerns about the bona fides of the beneficiary's first marriage. However, we conclude that the evidence of record, in its totality, does not establish with sufficient probability that the beneficiary's prior marriage was fraudulent. *See id.* at 607. In the absence of substantial and probative evidence that the marriage of the beneficiary and his ex-wife was fraudulent, we will sustain the petitioner's appeal and remand the record for further processing of her visa petition.

Accordingly, the following order is entered.

ORDER: The appeal is sustained, and the record is remanded for further processing of the visa petition in accordance with this opinion.

00000029584

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Amanda Irene Schuft, Esquire

ON BEHALF OF DHS: Ingrid H. Abrash, Senior Attorney

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Liebowitz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Liebowitz

LIEBOWITZ, Appellate Immigration Judge

This matter was last before the Board on August 10, 1999, when we dismissed the appeal filed by the respondent. The Department of Homeland Security and the respondent, through counsel, have filed a joint motion to reopen this case. The parties jointly seek a remand to an Immigration Judge to determine whether the respondent's criminal conviction continues to have immigration consequences, in light of the recent vacatur of that conviction pursuant to California Penal Code § 1473.7. The joint motion to reopen will be granted, and these removal proceedings will be remanded to the Immigration Judge.[1] Accordingly, the following orders will be entered.

ORDER: The joint motion to reopen is granted.

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

[1] We recognize that DHS has not waived any argument regarding the respondent's removability based on the respondent's criminal conviction or any other criminal or immigration violations. The respondent also may, on remand, pursue relief from removal in which he is eligible, if necessary.

00000029581

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 06, 2022

ON BEHALF OF RESPONDENT: Maria L. Schnebly, Esquire

ON BEHALF OF DHS: Lydia Murphy, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's decision dated March 13, 2019, denying his applications for asylum pursuant to section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A); withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3); and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). *See* 8 C.F.R §§ 1208.16-1208.18.[1] The respondent's appeal will be dismissed.

We review the findings of facts, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R § 1003.1(d)(3)(ii).

We affirm the Immigration Judge's adverse credibility finding, including her determination that the respondent did not provide sufficiently persuasive explanations for the credibility concerns identified (IJ at 5-8). *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge's adverse credibility determination is not clearly erroneous under the totality of the

[1] The respondent has not meaningfully challenged the Immigration Judge's denial of his application for protection under CAT. Accordingly, we deem that claim waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a respondent fails to appeal an issue addressed in an Immigration Judge's decision, that issue is waived before the Board).

circumstances. *See Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007); section 208(b)(l)(B)(iii) of the Act; 8 C.F.R. § 1003.1(d)(3)(f). The Immigration Judge's adverse credibility findings are based on specific and cogent reasons that are supported by the record (IJ at 5-8; Exhs. 2, 5; Tr. at 22-24; 42-43). *See Wang v. Holder,* 569 F.3d 531, 538 (5th Cir. 2009) (noting that any inconsistency may be relied upon under the REAL ID Act to support an adverse credibility finding so long as the lack of credibility is established by the totality of the circumstances).

Specifically, the respondent's testimony and evidence does not consistently identify his persecutor. The respondent consistently indicated that his persecutor was named "(b)(6)" but he identified (b)(6) as a police officer in his testimony, while his submitted police report identified him as a gang member (IJ at 6; Tr. at 21-22, 42; Exh. 5). We agree with the Immigration Judge that the respondent's explanation that the police changed (b)(6) identity in the police report is implausible inasmuch as his identity remained in the document (IJ at 6; Exh. 5; Tr. at 42).

Additionally, the documentary evidence did not rehabilitate the respondent's testimony or independently establish his burden of proof for the reasons stated by the Immigration Judge (IJ at 7-8). Section 208(b)(l)(B)(ii) of the Act. In particular, the respondent was unable to explain when or if he signed his police report (Tr. at 44-45; Exh. 5). Because the respondent's testimony was not credible, and because no other evidence independently established his claim, he did not meet his burden of proof for asylum. *See Matter of M-S-,* 21 I&N Dec. 125, 129 (BIA 1995) (stating that a persecution claim that lacks veracity cannot satisfy the burden of proof necessary to establish eligibility for asylum); *see* 8 C.F.R. § 1208.13(a). Accordingly, we find that the respondent did not carry his burden of demonstrating eligibility for asylum or the higher burden of proof for withholding of removal, and the following order will, thus, be entered.

ORDER: The appeal is dismissed.

00000029578

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A(b)(6)

Respondent

FILED
Jan 18, 2022

ON BEHALF OF RESPONDENT: Stephanie Jean-Philippe, Esquire

ON BEHALF OF DHS: Peter J. Marche, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Batavia, NY[1]

Before: Gorman, Appellate Immigration Judge; O'Connor, Appellate Immigration Judge; Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge O'Connor

O'CONNOR, Appellate Immigration Judge

The respondent, a native and citizen of Haiti and a lawful permanent resident of the United States since 2015, has filed a timely appeal of an Immigration Judge's October 19, 2020, decision, ordering his removal from the United States. The record will be remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.

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

Subsequent to the Immigration Judge's decision, and while the respondent's appeal was pending before the Board, the respondent filed a motion to terminate/remand supported by evidence that he had been granted permission to file a late notice of appeal from the 2019

[1] The Immigration Judge in this case conducted the hearing remotely via video conference from the Immigration Court in Batavia, New York, where the case is docketed pursuant to section 240(b)(2)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(2)(A)(iii). The docketed hearing location in this case is within the geographic area of the United States Court of Appeals for the Second Circuit. Therefore, we will apply the law of that circuit. *See Matter of R-C-R-*, 28 I&N Dec. 74 n.1 (BIA 2020) (explaining that the circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location).

New Jersey criminal conviction that serves as the ground for the charges of removability in this case.[2] We observe the respondent's motion was properly served on the Department of Homeland Security ("DHS"), and the DHS has expressed its opposition to this motion. In opposition to the motion, the DHS relies on the Board's decision in *Matter of J.M. Acosta*, 27 I&N Dec. 420, 432 (BIA 2018), which held that, once the time for filing a direct appeal of a criminal conviction has passed, a presumption arises that the conviction is final for immigration purposes, which may be rebutted by a respondent upon certain evidentiary showings.

While this appeal was pending, the Second Circuit decided *Brathwaite v. Garland*, 3 F.4th 542 (2d Cir. 2021), in which it deferred, in part, to our decision in *Matter of J.M. Acosta*. Specifically, the court deferred to our interpretation that a "conviction" under section 101(a)(48)(A) of the Act "may not trigger deportation until it is final; that is, until appellate review is waived or exhausted." *Brathwaite*, 3 F.4th at 553. However, the court did not defer to our creation of a presumption of finality in cases where the time for filing a direct appeal has passed, which can be rebutted "'with evidence that an appeal has been filed within the prescribed deadline, including any extensions or permissive filings granted by the appellate court', *and* ... 'evidence that the appeal relates to the issue of guilt or innocence or concerns a substantive defect in the criminal proceedings.'" *Brathwaite*, 3 F.4th at 553-55 (quoting *Matter of J.M. Acosta*, 27 I&N Dec. at 432). In so holding, however, the court noted that "[i]t may be permissible ... to establish some limits on the finality requirement," and observed that "appeals challenging the length of a sentence or seeking other relief that would alter but not overturn a defendant's conviction – even if successful – might reasonably be understood in the immigration context not to render a conviction non-final." *Brathwaite*, 3 F.4th at 553.

We find that more fact-finding is required in order to determine the impact that the respondent's late-filed appeal has on the finality of his conviction in light of the Second Circuit's decision in *Brathwaite*. The record will therefore be remanded to the Immigration Court for further proceedings consistent with this opinion and the entry of a new decision.[3]

Accordingly, the following order will be entered.

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

---

[2] Specifically, the respondent presented evidence that, on (b)(6), the Appellate Division of the Superior Court of New Jersey granted the respondent's motion, but in doing so the court stated that "[t]he appeal is limited to review of the (b)(6) amended judgment of conviction, which affected a change of sentence."

[3] In view of our disposition, we do not reach the other issues raised by the respondent on appeal.

00000029575

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Chicago, IL

Before: Owen, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Owen

OWEN, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, has appealed from the decision of the Immigration Judge dated August 2, 2021, denying his applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and his request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The appeal will be dismissed.

We review Immigration Judges' findings of fact for clear error, but questions of law, discretion, and judgment, and all other issues in appeals, de novo. 8 C.F.R. §§ 1003.1(d)(3)(i), (ii).

The respondent does not dispute the Immigration Judge's finding that he is removable as charged under sections 212(a)(6)(A)(i) and 212(a)(2)(A)(i) of the Act, 8 U.S.C. §§ 1182(a)(6)(A)(i), 1182(a)(2)(A)(i) (IJ at 1; Exh. 1). We therefore decline to address this issue. *See Matter of Cervantes*, 22 I&N Dec. 560, 561 n.1 (BIA 1999) (expressly declining to address an issue not raised by party on appeal). Furthermore, the respondent does not meaningfully challenge the Immigration Judge's determination that his conviction for residential arson, for which he was sentenced to (b)(6) years incarceration, constitutes a particularly serious crime, thereby rendering him ineligible for asylum and withholding of removal (IJ at 1-2; Exh. 2). *See* sections 208(b)(2)(A)(ii) and 241(b)(3)(B) of the Act, 8 U.S.C. §§ 1158(b)(2)(A)(ii), 1231(b)(3)(B); 8 C.F.R. §§ 1208.16(c)(4), 1208.16(d)(2), (3); *see also Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007). As a result, we decline to address this issue. *See Matter of Cervantes*, 22 I&N Dec. at 560.

Finally, the respondent has not challenged the Immigration Judge's denial of his request for protection under the Convention Against Torture. Therefore, we likewise decline to address this issue. *See Matter of Cervantes*, 22 I&N Dec. at 560. Insofar as the respondent contends on appeal

that he would qualify for cancellation of removal, his aggravated felony conviction renders him statutorily ineligible for such relief. *See* section 240A(b)(l)(C) of the Act, 8 U.S.C. § 1229b(b)(1)(C).

The respondent's remaining arguments regarding his desire to remain in the United States to care for his family members do not establish error in the Immigration Judge's decision regarding the respondent's removability and ineligibility for relief. While we recognize the respondent's desire to remain in the United States, this Board has no discretionary authority to grant relief from removal solely on equitable or humanitarian grounds or as a matter of public policy. *See Matter of Silva-Rodriguez*, 20 I&N Dec. 448 (BIA 1992); *Matter of Medina*, 19 I&N Dec. 734, 742 (BIA 1988). For the reasons set forth above, we affirm the Immigration Judge's decision to order the respondent removed from the United States to Mexico.

ORDER: The respondent's appeal is dismissed.

00000029572

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Donita Krasniqi, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Elizabeth, NJ

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent timely appeals the Immigration Judge's July 28, 2021, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The respondent argues on appeal that the Immigration Judge erred in finding that he failed to meet his burden of proof. The appeal will be dismissed.

The respondent, a native and citizen of Mexico, is removable as charged and seeks cancellation of removal. The Immigration Judge denied the respondent's application because the respondent did not meet his burden of establishing (1) good moral character during the requisite time period, (2) that a qualifying relative would suffer exceptional and extremely unusual hardship, and (3) that he warrants relief as a matter of discretion (IJ at 7-10). Sections 240A(b)(1)(B), (D) of the Act. The respondent contests all three findings.

We agree with the Immigration Judge that the respondent does not merit a grant of cancellation of removal in the exercise of discretion.[1] Matters of discretion are reviewed by this Board de novo. 8 C.F.R. § 1003.1(d)(3)(ii). We conclude that the Immigration Judge appropriately considered the favorable factors presented by the respondent and weighed them against the negative factors under the legal standards set forth in *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998).

In regard to the respondent's favorable factors, we have considered the respondent's lengthy residence in the United States, his remorse for his criminal behavior, his family and community ties to the United States, his employment history, tax payment, child support payment, and the potential hardship to his family members resulting from his absence upon removal (IJ at 3-5, 8; Respondent's Br. at 22-24; Tr. at 31, 33, 35-36, 41-44, 50-54, 91-92).

[1] We decline to address the additional issues raised on appeal, because the issue of discretion is outcome determinative.

The respondent's criminal record constitutes a serious negative factor (IJ at 7-8; Exh. 5; Exh. 6 at 80-89; Exh. 8). The respondent has been arrested five times and has been convicted of trespassing, domestic violence, simple assault, and cruelty and neglect of a child (IJ at 4; Exh. 5; Exh. 6; Exh. 8; Tr. at 38-40, 62-64, 66, 69, 93-94). The respondent also admits to recurring acts of domestic violence, including pushing, punching, and slamming the head of a significant other onto the floor (IJ at 7-8; Tr. at 63-66). *See Matter of Pinzon,* 26 I&N Dec. 189, 196 (BIA 2013) (unfavorable conduct by an alien, even in the absence of a criminal conviction, may be considered in the exercise of discretion). We further note that the respondent's most recent conviction (cruelty and neglect of a child) occurred this year, (b)(6), and that the original arrest and charge was for aggravated sexual assault of a child (Exh. 5 at 20-26; Exh 8). The respondent was ordered to enroll in a sex offender program and is not allowed contact with the victim (IJ at 4; Exh. 8). The respondent's numerous acts of domestic violence and his crime against a child are egregious and weigh heavily against a favorable exercise of discretion.

After our de novo weighing of the respondent's equities against his criminal record, we find no basis to reach a different result. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

00000029569

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Tacoma, WA

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

ORDER:

The respondent has appealed the Immigration Judge's bond order. However, agency records indicate that an order has been issued on the merits of the respondent's case in removal proceedings, and no appeal was taken from that order. As there is an administratively final order, the instant bond appeal is dismissed as moot. *See* 8 C.F.R. §§ 1003.39, 1236.l(d)(l).

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Joseph A. Brophy, Esquire

ON BEHALF OF DHS: Alexis N. Dunlap, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Liebowitz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Liebowitz

LIEBOWITZ, Appellate Immigration Judge

The respondent, a native and citizen of Jamaica, appeals from the Immigration Judge's June 16, 2021, decision denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(I)(A), 1231(b)(3)(A), and the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT); 8 C.F.R. §§ 1208.16(c), 1208.18. The Department of Homeland Security (DHS) has submitted a brief in opposition to the appeal. The appeal will be dismissed.[1]

The Board reviews the findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). The Board reviews questions of law, discretion, judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

I. PROCEDURAL AND FACTUAL HISTORY

The Immigration Judge's decision summarizes the respondent's testimony in this case (IJ at 2-7). The respondent testified that he fears persecution and torture in Jamaica due to his sexual orientation and in relation to the circumstances underlying outstanding arrest warrants (IJ at 2; Tr. at 62). The respondent, who served as a pastor in Jamaica, was accused of sexually assaulting a minor and testified that he received related death threats before and after arriving in the United

[1] The respondent has filed a Motion to Increase Page Limit for his brief. The motion is granted.

States (IJ at 2; Tr. at 63, 112). The respondent testified that the accusations were published in articles by Jamaican news outlets, and the articles did not mention his name or contain his picture, but referred to his position and church (IJ at 3, 6; Tr. at 70, 111-12, 114-17; Exh. 6 at 65-68).

The Immigration Judge found that while the respondent's testimony was internally consistent and the respondent's demeanor did not indicate dishonesty, the respondent's version of the events relating to the accusations that he sexually assaulted a minor was not credible (IJ at 7-9). The respondent contended, among other things, that he was being extorted by the child's family, and that the alleged minor victim, once the alleged victim reached 18 years old, had in fact made advances towards the respondent, which the respondent had rejected (IJ at 8; Tr. at 71-72, 75-77, 82-88, 90-91 96, 114, 126-27, 141-43). The Immigration Judge found the contents of the documentary evidence, such as an Interpol Red Notice, Jamaican arrest warrants and related documentation, and the media articles, to be more convincing than the respondent's testimony (IJ at 8; Exhs. 3, 6-9). The Immigration Judge found the respondent was barred from asylum, and withholding of removal under the Act and the CAT, because the respondent had committed a serious nonpolitical crime, namely the sexual assault of a minor (IJ at 11). *See* sections 208(b)(2)(A)(iii), 241(b)(3)(B)(iii) of the Act; 8 C.F.R. §§ 1208.16(c)(4), (d)(2). The Immigration Judge further found that the respondent did not meet his burden of proof for deferral of removal under the CAT (IJ at 11-15). The respondent filed this appeal.

II. REMOVABILITY

As an initial matter, the respondent contests the ground of removability as charged in the Notice to Appear (NTA) (Tr. at 22-24; Exhs. 1, 3, 5; Respondent's Br. at 22-25). On March 25, 2021, the DHS served the respondent with an NTA, charging him with removability under section 237(a)(1)(B) of the Act, 8 U.S.C. § 1227(a)(1)(B), for being present in violation of the law, in that, after admission as a nonimmigrant, he remained in the United States for a time longer than permitted in violation of the Act or any other law of the United States (Exh. 1). The NTA provided that the respondent was admitted to the United States on January 11, 2020, with authorization to remain for a period not to exceed July 10, 2021, and that he remained in the United States beyond July 10, 2021, without authorization (Exh. 1). The DHS subsequently filed a Form I-261, amending the NTA to correct a typo and state that the respondent's visa expired on July 10, 2020, and he remained in the United States beyond that date without authorization (Exh. 4; Tr. at 14-21).

On May 5, 2021, the respondent, through counsel, denied the removal charge and factual allegations in the amended NTA (Tr. at 21-25). The Immigration Judge found that the evidence supported the allegations and sustained the charge of removability.

We affirm the Immigration Judge's determination of removability. The DHS met its burden of proof to establish the respondent's removability by clear and convincing evidence by submitting evidence to support the allegations in the NTA, including a "Record of Deportable/Inadmissible Alien," Form I-213, and a copy of pages of the respondent's passport with his visa (Tr. at 21; Exhs. 1, 3, 4). Thus, the respondent, after admission as a nonimmigrant, remained in the United States for a time longer than permitted in violation of the Act, and he is removable as charged (Exhs. 1, 3, 4).

The respondent maintains on appeal that it is improper to charge him as being present in violation of the law as he filed his asylum application with the U.S. Citizenship and Immigration Services (USCIS) before his non-immigrant status had expired, upon which USCIS indicated that he may remain pending a decision on his asylum application, and provided him with work authorization (Tr. at 22-24; Respondent's Br. at 22-24; Exh. 5). We are unpersuaded by the respondent's arguments. In *Matter of Rotimi*, 24 I&N Dec. 567 (BIA 2008), we addressed a respondent, like the respondent in this case, whose nonimmigrant visa had expired but had submitted a pending asylum application (Exh. 3). We rejected the argument that "any period of physical presence in which an alien is not subject to being removed as a matter of law should be deemed 'lawful,' even if the alien has no specific permission to be here beyond that which is afforded during the adjudication of a claim or a removal case." *Matter of Rotimi*, 24 I&N Dec. at 573. We stated, "[b]eing an applicant for asylum or for adjustment of status is not a defense to removal. It is only after the application is approved that the alien has authorization to remain in this country beyond the conclusion of the proceedings." *Id.* We further stated, "any lawfulness associated with his presence or residence ended when his nonimmigrant visa expired. The respondent's submission of asylum and adjustment applications did not change the fact that his status as a nonimmigrant visitor had ended." *Id.* at 577. We noted that the respondent had been placed into deportation proceedings while his applications were pending. *Id.* at 578. We further stated that "work authorization is not equivalent to a lawful status." *Id.* ("An alien who is merely provided employment authorization, and who is allowed to remain here while awaiting a ruling on his applications for relief, is not in the same position as an alien who has been granted a valid immigration status…").

The respondent cites 3 sources of law to further support his arguments that he is not removable for being present in violation of the law (Respondent's Br. at 24; Exh. 5). We are unpersuaded by the respondent's citations. First, the respondent points to section 212(a)(9)(B) of the Act, which exempts a bona fide asylum applicant from the consequences of accruing "unlawful presence" (Respondent's Br. at 24; Exh. 5 at 32). *See* section 212(a)(9)(B)(i), (ii), (iii)(II), (iv). However, in *Matter of Rotimi*, we stated that while Congress had carved out a "special exception" under section 212(a)(9)(B) of the Act, "simply tolling or exempting an alien from added sanctions for staying in this country without lawful authority does not transform the alien's presence while an applicant for benefits into lawful residence itself." *Matter of Rotimi*, 24 I&N Dec. at 574. Second, the respondent points to section 202(c)(2)(B) of the REAL ID Act, which provides that a pending application for asylum is valid documentary evidence of lawful status for the purposes of a state-issued driver's license or identification card (Respondent's Br. at 24; Exh. 5 at 55-56). *See* REAL ID Act of 2005, P.L. 109-13, 119 Stat. 231, 302, § 202(c)(2)(B)(vi) (2005); 49 U.S.C.A. § 30301 note. However, these provisions regarding issuance standards for state-issued driver's licenses or identification cards do not require us to change our analysis regarding the respondent's removability.[2] Third, the respondent points to the regulations that provide eligibility for certain

[2] For example, section 202(c)(2)(B)(viii) of the REAL ID Act also provides that "deferred action" status may be evidence supporting issuance of a state-issued driver's license or identification card. However, we have long held that "deferred action" is "bestowed as a matter of prosecutorial grace

Social Security benefits to asylum applicants with approved work authorization (Respondent's Br. at 24). *See* 8 C.F.R. § 1.3(a)(5). However, those regulations explicitly define "lawfully present in the United States" for the "purposes of 8 U.S.C. § 1611(b)(2) *only*." 8 C.F.R. § 1.3(a) (emphasis added); *see also* 8 U.S.C. § 1611 (providing that noncitizens who are not "qualified aliens" are not eligible for federal public benefits, with certain exceptions and limitations). Again, these provisions do not require us to change our analysis regarding the respondent's removability.

III. SERIOUS NONPOLITICAL CRIME

We affirm the Immigration Judge's determination that there were serious reasons for believing the respondent committed a serious nonpolitical crime, and thus, the respondent is barred from obtaining asylum or withholding of removal under the Act and the Convention Against Torture (IJ at 9-11). Sections 208(b)(2)(A)(iii), 241(b)(3)(B)(iii) of the Act, 8 C.F.R. §§ 1208.16(c)(4), (d)(2). We have interpreted the "serious reasons for believing" standard to be equivalent to probable cause. *See Matter of W-E-R-B-*, 27 I&N Dec. 795, 796-97 (BIA 2020) (citing *Matter of E-A-*, 26 I&N 1, 3 (BIA 2012)). We affirm the Immigration Judge's determination that probable cause existed here.[3]

If the DHS establishes that the evidence indicates that one or more grounds for mandatory denial of the application for relief may apply, the noncitizen then bears the burden to show by a preponderance of the evidence that such grounds do not apply. *See Matter of W-E-R-B-*, 27 I&N Dec. at 797 (citing 8 C.F.R. §§ 1240.8(d), 1208.16(d)(2)). Here, the Immigration Judge determined that the DHS met its burden based on a Red Notice from Interpol, Jamaican arrest warrants and related documentation, the Form I-213 submitted by the DHS, and Jamaican media articles (IJ at 7-9, 10-11; Exhs. 3, 6-9). We affirm this determination. We have held that an Interpol Red Notice constitutes reliable evidence for a serious nonpolitical crime determination. *Matter of W-E-R-B-*, 27 I&N Dec. at 799. The Red Notice in the record contains the respondent's picture, date of birth, occupation, references to the Jamaican arrest warrants, and a summary of the allegations against respondent, including the age of the minor alleged victim (IJ at 10; Exh. 7 at 37-38). The DHS also submitted documentation from the INTERPOL website explaining the basis for when Red Notices are issued and the standards that must be met before they are issued (Exh. 7 at 32-36).

---

and accords no rights to permanent residence." *Matter of Quintero*, 18 I&N Dec. 348, 349 (BIA 1982).

[3] The respondent argues that we should not rely on *Matter of W-E-R-B-* because the United States Court of Appeals for the Eighth Circuit reversed it (Respondent's Br. at 31-32). *See Barahona v. Garland*, 993 F.3d 1024 (8th Cir. 2021). However, this matter arises in the jurisdiction of the Fourth Circuit, and thus, the Board is not "bound to follow the published decision of a court outside the circuit in whose jurisdiction the matter arises." *Matter of Rivens*, 25 I&N Dec. 623, 629 (BIA 2011). Additionally, we note that the Eighth Circuit reversed *Matter of W-E-R-B-* in part because in that case we did not explicitly make a probable cause finding. *See Barahona v. Garland*, 993 F.3d at 1028. Here, we make an explicit probable cause finding, for the reasons discussed above.

The respondent argues that a Red Notice alone is insufficient to meet the DHS' burden, as U.S. Government agencies have stated that a Red Notice alone is not a sufficient basis to arrest an individual (Respondent's Br. at 25-28, 31-32; Exh. 8 at 105-22). *See Matter of W-E-R-B-*, 27 I&N Dec. at 798-99 (acknowledging similar U.S. Government agency statements). However, it is unnecessary to decide whether a Red Notice alone suffices here to meet the DHS' burden, as the DHS submitted additional evidence below, which the Immigration Judge properly relied on in making his determination (IJ at 10-11).[4] *Cf. Villalobos Sura v. Garland*, 8 F.4th 1161, 1167-68 (9th Cir. 2021) (Court found it unnecessary to decide whether a Red Notice alone suffices to establish probable cause, as an arrest warrant and Red Notice, combined with the incredibility of the respondent's testimony, established probable cause). Here, the DHS additionally submitted a Form I-213, which referenced the Red Notice and Jamaican arrest warrants (Exh. 9 at 2-6). *See Matter of W-E-R-B-*, 27 I&N Dec. at 797-99 (Red Notice in conjunction with Form I-213 sufficed to meet the DHS' burden). Additionally, the DHS submitted the Jamaican arrest warrants and a related letter by a Jamaican detective, referencing the age of the minor alleged victim and requesting that the respondent be put on a watch list (Exh. 9 at 18-20; Tr. at 48-56). *Compare Matter of W-E-R-B-*, 27 I&N Dec. at 798 n. 2 (noting that current arrest warrant was not in the record in that case). Additionally, the respondent submitted Jamaican media articles describing the allegations against the respondent, which the Immigration Judge found were consistent with and corroborated the allegations in the Red Notice (IJ at 8-9, 11; Exh. 6 at 62-68; Tr. at 70-71, 112, 114-16). We agree with the Immigration Judge that this evidence collectively meets the DHS's burden to establish that the evidence indicates that one or more grounds for mandatory denial of the application for relief may apply. *Matter of W-E-R-B-*, 27 I&N Dec. at 797-99; *cf. Villalobos Sura v. Garland*, 8 F.4th at 1167-68.

The respondent argues that the additional evidence in the record beyond the Red Notice is conclusory, unreliable, self-contradictory, and generally insufficient to meet the DHS's burden (Respondent's Br. at 2, 28-31, 35-36). For example, the respondent notes that while the Red Notice references a sexual assault on (b)(6) the arrest warrants may allege two assaults on (b)(6) and (b)(6) (Respondent's Br. at 28-29, 35; Exh. 7 at 37-38; Exh. 9 at 18-20).[5] Additionally, the respondent notes that the age of the alleged victim is not referenced in the arrest warrants (Respondent's Br. at 29, 35; Exh. 9 at 18-20). More generally, the respondent argues that the available evidence is insufficient—for example, because neither the alleged victim nor his family provided a statement to the Immigration Court (Respondent's Br. at 29-30). However, the Immigration Judge correctly stated that the Court needed only to determine whether there were serious reasons for believing that the respondent committed the crime, not whether the

[4] The respondent argues that *Barahona v. Garland* stands for the proposition that a Red Notice alone is not sufficient to establish probable cause (Respondent's Br. at 27, 31-32). *See Barahona v. Garland*, 993 F.3d at 1028 ("The parties did not cite, and we could not find, a case in which a court has found a Red Notice, alone, is sufficient to meet this [probable cause] standard."). As noted above, *Barahona v. Garland* is not controlling in this case, which arises in the Fourth Circuit.

[5] The respondent's counsel did not elicit testimony from the respondent as to what happened on those dates (Tr. at 59-178).

respondent actually committed the crime (IJ at 10). *See Matter of W-E-R-B-*, 27 I&N Dec. at 798 n. 3 ("the serious nonpolitical crimes bar requires only commission of, not conviction for, a crime"). The Immigration Judge properly applied this standard and properly determined that the available evidence met the DHS's burden (IJ at 10).

The Immigration Judge then properly shifted the burden to the respondent to show by a preponderance of the evidence that the serious nonpolitical crime bar does not apply (IJ at 11). *Matter of W-E-R-B-*, 27 I&N Dec. at 799 (citing 8 C.F.R. §§1208.16(d)(2), 1240.8(d); *Matter of M-B-C-*, 27 I&N Dec. 31, 36-37 (BIA 2017)).

First, we uphold the Immigration Judge's adverse credibility finding, as we do not discern clear error in it.[6] 8 C.F.R. § 1003.1(d)(3)(i). Generally, the respondent testified among other things that while the alleged victim stayed over his house on multiple occasions, he did not sexually assault the alleged victim; that rather, the alleged victim attempted to initiate sexual contact with him, which he rejected; that he was instead attracted to the alleged victim's older brother; and that the alleged victim's family tried to extort money from him, because he would not marry the alleged victim's sister, who was pregnant (*see, e.g.*, Tr. at 71-72, 75-77, 83-88, 90-91 96, 114, 126-27, 141-43; Exh. 6 at 1-11). The Immigration Judge found the record evidence more convincing than the respondent's contradictory testimonial assertions, and ultimately declined to credit the respondent's testimony (IJ at 7-9, 11).

The Immigration Judge was entitled to disbelieve the respondent's testimonial assertions and credit the record evidence instead. *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) ("An Immigration Judge is not required to accept a respondent's assertions, even if plausible, where there are other permissible views of the evidence based on the record.") (citing, e.g., *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985)), *reversed on other grounds*, *Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015); *see also Camara v. Ashcroft*, 378 F.3d 361, 369 (4th Cir. 2004) (inconsistencies in the applicant's testimony and corroborative documents may support an adverse credibility determination even where a plausible explanation for the discrepancies is offered); *Niang v. Gonzales*, 492 F.3d 505, 511 (4th Cir. 2007) ("[W]here the record [] plausibly could support two results: the one the IJ chose and the one [the petitioner] advances, reversal is only appropriate where the court find[s] that the evidence not only supports [the opposite] conclusion, but *compels* it.") (emphasis intact, internal quotation marks omitted) (citing *Balogun v. Ashcroft*, 374 F.3d 492 (7th Cir. 2004) and *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 n. 1 (1992)). As the DHS argues on appeal, the documentary evidence does not support the respondent's version of events (DHS Br. at 9). *Cf. Villalobos Sura v. Garland*, 8 F.4th at 1168-69 (sufficient record evidence supported Immigration Judge's decision to discredit the respondent's testimony, which was "self-serving" and "unpersuasive"). The respondent argues that the Immigration Judge's statements that the respondent's testimony was internally consistent, and that the respondent's demeanor did not indicate dishonesty, require reversal of the adverse credibility finding (Respondent's Br. at 33-40). We disagree. *See Dankam v. Gonzales*, 495 F.3d 113, 121-

[6] While we affirm the adverse credibility finding entered below, we note that "even credible testimony may be outweighed by other more persuasive evidence or be insufficient to satisfy the burden of proof." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021).

22 (4th Cir. 2007) (affirming adverse credibility determination based in part on inconsistencies between testimony and documentary evidence) (citing, e.g., *Camara v. Ashcroft*, 378 F.3d at 369).

Without credible testimony from the respondent, the Immigration Judge properly determined that the respondent failed to meet his burden to show by a preponderance of the evidence that the serious nonpolitical crime bar does not apply. *Cf. Villalobos Sura v. Garland*, 8 F.4th at 1167-69; *see also Munyakazi v. Lynch*, 829 F.3d 291, 299-301 (4th Cir. 2016) (where Immigration Judge found respondent's testimony not credible because of inconsistencies with the documentary evidence, respondent failed to satisfy his burden to show that the persecutor bar should not apply). For example, the respondent testified that the alleged victim was 17 years old at the time of the allegation in the Red Notice (Respondent's Br. at 35 & n. 1; Tr. at 68-69, 86), rather than 12 years old as the Red Notice alleged or 13 years old as the media articles reported (Exh. 6 at 62-68; Exh. 7 at 37-38). In turn on appeal, the respondent notes that the age of consent in Jamaica is 16 years old, and argues that probable cause of a serious nonpolitical crime does not exist (Respondent's Br. at 35 n. 12, 38-39; Exh. 2 at 94).[7] However, as noted above, the Immigration Judge was entitled to disbelieve the respondent's testimonial assertions and credit the record evidence instead. *See Matter of D-R-*, 25 I&N Dec. at 455; *see also Niang v. Gonzales*, 492 F.3d at 511.

On appeal, the respondent argues that documents supporting the Immigration Judge's determination were admitted in violation of due process because (1) the evidence contained the hallmarks of unreliability, and (2) they were filed late by the DHS and the Immigration Judge did not require the DHS to show good cause for their late admission (Respondent's Br. at 41). In support of the respondent's claim that these documents were unreliable, the respondent cites to *Anim v. Mukasey*, 535 F.3d 243 (4th Cir. 2008), arguing that the document that violated due process in that case was analogous to the documents the DHS submitted in the respondent's case (Respondent's Br. at 36-38). *See Anim v. Mukasey*, 535 F.3d at 256-62.

We are not persuaded by this argument. In *Anim*, the Fourth Circuit held that a letter from the U.S. State Department, reflecting a U.S. Government fraud investigation that concluded that the respondent's documents were fraudulent, violated due process in a way that prejudiced the outcome of the respondent's case. *Id.* at 250, 256-62. In the instant case, the primary documents relied on by the Immigration Judge were arrest warrants issued by a justice of the peace in Jamaica and an Interpol Red Notice (Exh. 9 at 17-20). These documents do not contend that other documentary evidence introduced by the respondent is fraudulent. Rather, the Immigration Judge found the documents to be what they purport to be—indicia that the respondent was wanted on charges in Jamaica—and to be consistent with the media articles submitted by the respondent, which also supported his determinations (IJ at 7-9, 9-11). Additionally, the arrest warrants do not lack the same "indicia of reliability" as the documents in *Amin*, as they were official documents

[7] The respondent additionally argues on appeal that probable cause does not exist that he committed a "serious" or "nonpolitical" crime, to the extent that he is accused of "buggery" under Jamaican law, i.e. homosexual activity (Respondent's Br. at 38-39). However, the Immigration Judge found that serious reasons existed to believe that the respondent had committed sexual assault of a minor, not that he had merely engaged in homosexual activity (IJ at 11).

issued by a court in Jamaica, rather than an investigatory letter based on multiple levels of hearsay. *Id.* at 256-57.

Additionally, while the respondent argues that none of the documents have been authenticated, he does not explain his reasons—either before the Immigration Judge or on appeal—as to why he believes the documents are not authentic (Tr. at 49-50; Respondent's Br. at 30). The arrest warrants and related letter bore a stamp of authentication by a Jamaican police official (Exh. 9, at 18-20; Tr. at 52). Furthermore, the Immigration Judge noted that the Red Notice contained the Interpol seal, photograph of the respondent, other biographic data, and a reference to charges for which he was wanted in Jamaica (IJ at 10). Therefore, the respondent has not shown that any of these documents are not reliable or probative evidence, and should be rejected or suppressed. *See Matter of Velasquez*, 25 I&N Dec. 680, 683 (BIA 2012); *Matter of D-R-*, 25 I&N Dec. at 458-459; *Matter of Velasquez*, 19 I&N Dec. 377, 380 (BIA 1986) ("[D]ocumentary evidence in deportation proceedings need not comport with the strict judicial rules of evidence; rather, in order to be admissible, such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law."). The respondent has thus not shown on appeal that the Immigration Judge erred in relying on the aforementioned documents in determining that the respondent is barred from relief for having committed a serious nonpolitical crime.

Furthermore, while we acknowledge that the DHS did not timely file the Jamaican arrest warrants, the Immigration Judge acted within his discretion in admitting the warrants (Tr. at 48-56). *See Matter of D-R-*, 25 I&N Dec. at 458 (Immigration Judges have broad discretion to admit and consider relevant and probative evidence). The Immigration Judge stated that the warrants were largely consistent with the evidence already admitted into the record (Tr. at 56). Moreover, the respondent was or should have been aware of the outstanding charges against him in Jamaica given the timely filing of the Red Notice by the DHS on (b)(6), and its reference to the charges (Exh. 7 at 37-38). Also, the respondent's counsel indicated at the (b)(6) hearing that the arrest warrants had been filed previously at the bond hearing (Tr. at 54-55). Thus, we conclude that the evidence was properly admitted and considered by the Immigration Judge, and will uphold his denial of the respondent's applications for asylum and withholding of removal under the Act (IJ at 11).

For the reasons discussed above, we affirm the Immigration Judge's determination that the respondent has not met his burden to establish by a preponderance of the evidence that the serious nonpolitical crime bar does not apply. *See Matter of W-E-R-B-*, 27 I&N Dec. at 800; *cf. Villalobos Sura v. Garland*, 8 F.4th at 1168-69. In turn, we affirm the denial of the respondent's applications for asylum and withholding of removal under the Act and the CAT (IJ at 11). *See* 8 C.F.R. §§ 1240.8(d), 1208.16(d)(2).

IV. CONVENTION AGAINST TORTURE

Finally, we affirm the Immigration Judge's denial of deferral of removal under the CAT for the reasons provided by the Immigration Judge (IJ at 11-15). Considering the totality of the circumstances, the Immigration Judge determined that it was not more likely than not that the respondent would face torture upon returning to Jamaica with the consent or acquiescence (to

include the concept of willful blindness) of a public official or an individual acting in an official capacity, even when considering country condition evidence (IJ at 11-15). 8 C.F.R. § 1208.18(a)(1). On appeal, the respondent claims that he presented overwhelming evidence that he would be tortured in Jamaica due to the molestation accusations, the warrant, and his sexual orientation (Respondent's Br. at 45). The respondent also argues that the Immigration Judge focused too much on whether public officials themselves would actually torture him, rather than the likelihood that those officials would acquiesce to the torture (Respondent's Br. at 46). However, the Immigration Judge examined the recent U.S. State Department country report for Jamaica and found that, while there are still anti-LGBTQ laws on the books in Jamaica, they are not enforced against sexual conduct between adults, but rather in cases of sexual assault or child molestation (IJ at 12-13). Furthermore, the Immigration Judge found that, while the respondent would likely be tried for the accusation against him, the laws of Jamaica would provide for a fair trial by an independent judiciary, complete with procedural protections (IJ at 13).[8] Thus, we are satisfied that the Immigration Judge did not clearly err in his predictive findings (IJ at 13). *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015); *Matter of R-A-F-*, 27 I&N Dec. 778, 779 (A.G. 2020).

The Immigration Judge also properly determined that there was insufficient evidence of acquiescence by Jamaican officials to this respondent's potential torture (IJ at 14). 8 C.F.R. § 1208.18(a)(1). The Immigration Judge also properly determined that the respondent could not establish that each step in the hypothetical chain of events that would lead to his torture was more likely than not to occur (IJ at 14-15). *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006). The Immigration Judge also properly determined that assessing the respondent's fear of harm of the police directly, as well as fear of other individuals who would harm him collectively with the acquiescence of the police, did not add up to a greater than 50 percent chance of being tortured (IJ at 15). *See Rodriguez Arias v. Whitaker*, 915 F.3d 968, 973 (4th Cir. 2019). Therefore, the Immigration Judge properly denied the respondent's request for deferral of removal under the CAT (IJ at 15). 8 C.F.R. § 1208.17.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

[8] We note that "[t]orture does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions." 8 C.F.R. § 1208.18(a)(3).

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 0 5 2022

ON BEHALF OF PETITIONER: David Anderson, Esquire

ON BEHALF OF DHS: Mollie E. Hennessee, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Saint Louis, MO

Before: de Cardona, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge de Cardona

DE CARDONA, Temporary Appellate Immigration Judge

The petitioner has appealed from the Saint Louis' Field Office Director's ("Director") July 29, 2020, decision denying the Petition for Alien Relative, Form I-130, that the petitioner filed on behalf of the beneficiary as the spouse of a United States citizen. *See* section 201(b)(2)(A)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b)(2)(A)(i). The United States Citizenship and Immigration Services ("USCIS") has filed a response in opposition to the petitioner's appeal. The appeal will be dismissed.

We review all questions arising in appeals from decisions of USCIS officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii).

On (b)(6), the beneficiary married the petitioner, (b)(6), a United States citizen. The petitioner filed the instant visa petition on September 27, 2019. On May 21, 2020, the USCIS issued a Notice of Intent to Deny ("NOID") because the petitioner provided insufficient evidence to establish that the beneficiary was legally free to marry him and that the petitioner's marriage to the beneficiary was bona fide by a preponderance of the evidence. On June 18, 2020, the petitioner responded to the NOID by submitting, inter alia, an unsigned written response to the NOID, an affidavit on the petitioner's behalf, banking statements, tax

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

returns, additional photos, a letter from a Nigerian government agency, and affidavits from the Nigerian High Court of Enugu State purportedly indicating that the beneficiary has never been married (Director's Dec. at 4). The Director denied the petition on the bases that the petitioner did not submit sufficient evidence to overcome the concerns in the NOID and therefore did not demonstrate that the beneficiary was legally free to marry the petitioner when she previously claimed to be married. Further, even if the marriage was legal, the Director concluded that the petitioner did not submit sufficient evidence of a bona fide marriage (Director's Dec. at 1-4).

Upon our de novo review of the record of proceedings, including the Director's decision and NOID, the petitioner's response to the NOID, and the petitioner's statements on appeal, we affirm the Director's denial of the petition because the petitioner did not establish, through the presentation of authentic evidence in the record, that the beneficiary was legally free to marry the petitioner. *See* 8 C.F.R. § 204.2(a)(2) (requiring proof of the legal termination of all previous marriages).

Notably, the beneficiary submitted non-immigrant visa applications on (b)(6) and (b)(6), seeking a visitor visa to travel to the United States. In both of these applications, she indicated that she was single. However, the March 27, 2017, Department of State case memo indicates that the beneficiary reported being married with one son, which the petitioner and beneficiary dispute on appeal (Petitioner's Br. at 3). In the Form I-130 signed by the beneficiary, there were no reported marriages for the beneficiary. According to the June 18, 2020, NOID, the petitioner was given an opportunity to submit evidence to resolve the apparent discrepancy about the beneficiary's prior marital status (Director's NOID at 2). In response, the petitioner submitted a Letter of No Marriage from the councillor representing Agbani ward at the Nkanu West Local Government Legislative Arm of Enugu State in Nigeria, Affidavit of Facts as to Spinsterhood from the High Court of Enugu State in the Enugu Judicial Division, and the Affidavit of No Marriage from the High Court of Enugu State of Nigeria in the High Court of Agbani Judicial Division (Director's Dec. at 4).

However, the Foreign Affairs Manual ("FAM") requires all documents from Nigeria relating to marriages or divorces to be obtained from the Marriage Registrar or Minister of Religion or for marriages under Native Law and Custom by the Local Marriage Registrar.[2] The Director correctly concluded that the evidence submitted by the petitioner was insufficient because it does not establish that the beneficiary was not married in another part of Nigeria outside of the Enugu State (Director's Dec. at 4). Thus, the petitioner has not resolved the contradictions contained in the record, rendering the assertion that the beneficiary was legally free to marry the petitioner made in this petition suspect. It is well-established that where, as here, the trier of fact either does not believe the applicant or does not know what to believe, an applicant's failure to corroborate his or [her] testimony can be fatal to his [or her] claim. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (holding that it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such

[2] We take administrative notice of the U.S. Department of State Foreign Affairs Manual Reciprocity Schedule, U.S. Visa: Reciprocity and Civil Documents Schedule by Country, Nigeria, https://travel.state.gov/content/travel/en/us-visas/Visa-Reciprocity-and-Civil-Documents-by-Country/Nigeria.html (follow the hyperlink to "Marriage, Divorce Certificates").

inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice). We agree that, for the reasons provided by the Director, the evidence is insufficiently persuasive to establish that the beneficiary was never married or was legally divorced at the time of their marriage.

Accordingly, we affirm the Director's determination that the petitioner's response to the NOID failed to adequately rebut and resolve whether the beneficiary was legally free to marry the petitioner at the time of their (b)(6) marriage, such that their marriage is legally valid. Thus, the petitioner has not carried his burden of proving, by a preponderance of evidence, eligibility for the benefit sought and the petition was properly denied. *See Matter of Nwangwu*, 16 I&N Dec. 61 (BIA 1976) (observing that "(a]ny pre-existing valid marriage is a bar to our recognition of the marriage on which the visa petition is based"). Because this basis to deny the visa petition is dispositive, we need not reach the additional factor whether the petitioner met his burden to demonstrate that his marriage to the beneficiary is bona fide. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (recognizing that courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach).

We also note that the petitioner has submitted additional evidence on appeal. However, where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, this Board will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

The petitioner may, however, file a new visa petition on the beneficiary's behalf that is supported by sufficient evidence to show that the beneficiary is eligible for the status sought under the immigration laws. *See Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966).

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

00000029560

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next working day. 8 C.F.R. §§ 1003.38(b), (c). In the instant case, the Immigration Judge's decision was rendered on December 2, 2019. The appeal was accordingly due on or before January 2, 2020. The record reflects that the Notice of Appeal was submitted to the Board of Immigration Appeals on February 12, 2020, but was rejected due to filing defects. Such defects were remedied, and the appeal was again filed with the Board on November 2, 2020. The appeal is untimely. The appeal will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further Board action. *See* 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

Accordingly, the following orders will be entered.

ORDER: The appeal is summarily dismissed.

FURTHER ORDER: The record is returned to the Immigration Court without further Board action.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Barbara Dominique, Esquire

ON BEHALF OF DHS: Piper F. McKeithen, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Baltimore, MD

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondents' appeal will be summarily dismissed under the provision of 8 C.F.R. § 1003.1(d)(2)(i)(E). The respondents checked the box on the Notice of Appeal indicating that a separate written brief or statement would be filed in support of the appeal. The Notice of Appeal contains a clear warning that the appeal may be subject to summary dismissal if the appellant indicates that such a brief or statement will be filed and, within the time set for filing, fails to file the brief or statement and does not reasonably explain such failure. The respondents indicated they would file a brief and were granted the opportunity to submit a brief or statement in support of the appeal. The Board also granted the respondents an extension of time to file their brief. However, the record indicates that they did not file such brief or statement, or reasonably explain the failure to do so, within the time set for filing. Accordingly, the appeal will be summarily dismissed under the provision noted above.

ORDER: The respondents' appeal is summarily dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: James Jean-Francois, Esquire

ON BEHALF OF DHS: April M. Haile, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of Haiti, appeals from an Immigration Judge's December 20, 2018, decision denying his applications for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Act, 8 U.S.C. §§ 1158(b)(1)(A) and 1231(b)(3)(A).[1] The Department of Homeland Security has opposed the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent reiterates his argument that the harm he suffered and fears in Haiti qualifies him for relief. However, while we are sympathetic to the respondent's circumstances, he does not qualify for relief under the applicable law. We agree with the Immigration Judge's conclusion that the respondent did not meet his burden to establish eligibility for asylum and withholding of removal (IJ at 3-11). Sections 208(b)(1)(B)(i) and 241(b)(3)(C) of the Act. We agree with the Immigration Judge's determination that the respondent did not meet his burden of

[1] The respondent has not meaningfully challenged the Immigration Judge's denial of his applications for withholding of removal from Brazil or his request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec, 10, 1984, S. Treaty Doc. No. 100-20. 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994), 8 C.F.R. §§ 1208.16(c)-1208.18, so those issues are waived. *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012).

establishing that he suffered past persecution, or that he faces a well-founded fear of future persecution in Haiti, on account of one of the protected grounds enumerated in the definition of "refugee" (IJ at 3-11). Section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A).

We uphold the Immigration Judge's adverse credibility finding as it is not clearly erroneous. *See* sections 208(b)(1)(B)(iii) and 241(b)(3)(C) of the Act; *see also* section 240(c)(4)(C) of the Act, 8 U.S.C. § 1229a(c)(4)(C); *see Wu v. U.S. Att'y Gen.*, 712 F.3d 486, 493 (11th Cir. 2013). The Immigration Judge based her adverse credibility finding on specific and cogent reasons, including inconsistencies within the respondent's testimony and the evidence in the record (IJ at 3-9). The respondent has not meaningfully challenged the adverse credibility finding on appeal, and thus, we deem it waived. *See Matter of R-A-M-*, 25 I&N Dec. at 658 n.2 (when an applicant fails to substantively appeal an issue addressed in an Immigration Judge's decision, that issue is waived on appeal). In the absence of credible testimony, the respondent cannot establish his eligibility for asylum and withholding of removal. *See* 8 C.F.R. §§ 1208.13(b), 1208.16(b); *Matter of M-S-*, 21 I&N Dec. 125, 129 (BIA 1995).

The Immigration Judge also found the respondent ineligible for asylum based on his firm resettlement in Brazil (IJ at 9-11). We agree with the Immigration Judge's determination that the respondent is statutorily ineligible for asylum, because he was firmly resettled in Brazil before entering the United States (IJ at 9-11). *See generally* section 208(b)(2)(A)(vi) of the Act. The respondent testified that he lived in Brazil for five years and had permanent resident status (Tr. at 47, 57-58, 68). In addition, a review of the record indicates the respondent was able to live, work and travel freely in Brazil (IJ at 10). Furthermore, as noted by DHS on appeal, the DHS filed a registry copy, published by the Brazilian government, which lists Haitian nationals, including the respondent, who were offered permanent residence in Brazil (DHS Br. at 1-2; IJ at 2; Exh. 7). *See Matter of K-S-E-*, 27 I&N Dec. 818, 819 (BIA 2020); *Matter of A-G-G-*, 25 I&N Dec. 486, 501 (BIA 2011). Notwithstanding the respondent's allegations on appeal, the DHS met its burden of establishing prima facie evidence that the respondent received a firm resettlement offer in Brazil, so as to preclude his eligibility for asylum. *See* 8 C.F.R. § 1208.13(c)(1).

In light of the foregoing, the respondent's appeal will be dismissed. The following order will be entered.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Lisa Ellen Seifert, Esquire

ON BEHALF OF DHS: Margaret LaDow, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the Ninth Circuit

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The United States Court of Appeals for the Ninth Circuit has granted the Government's motion to remand these proceedings to the Board "for the limited purpose of addressing [the respondent's] eligibility for cancellation of removal."[1] *See* section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1); *see also Perez-Rodriguez v. Garland*, No. 20-71897 (9th May 18, 2021). In turn, the Department of Homeland Security has moved for a remand to the Immigration Judge for further proceedings. The respondent, a native and citizen of Mexico, further contends that remanded proceedings are warranted "for a hearing on her application for cancellation of removal" (Respondent's Br. at 3).

Based upon the position of the parties, we will remand the record to the Immigration Judge for the limited purpose of addressing the respondent's application for cancellation of removal. We express no opinion, at the present time, regarding the ultimate outcome of these proceedings. The following order is entered.

ORDER: These removal proceedings are reopened and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.

[1] This Board, on April 26, 2012, dismissed the respondent's appeal of the Immigration Judge's decision, dated July 29, 2010, denying her motion for the suppression of evidence and sustaining the charge of removability under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i). On June 29, 2018, this Board denied her motion to reopen to seek adjustment of status, asylum, and other forms of relief. On June 3, 2020, this Board denied her motion to reconsider based upon a challenge to the Notice to Appear.

00000029542

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Carmen DiAmore-Siah, Esquire

ON BEHALF OF DHS: Togtokhbayar Ganzorig, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the Ninth Circuit

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The case is before us on a January 25, 2021, order from the United States Court of Appeals for the Ninth Circuit granting the Government's unopposed motion to remand the matter to the Board. *See Sandoval v. Wilkinson*, No. 20-72139 (9th Cir. 2021). The Board issued a briefing schedule on remand. Both parties filed briefs on remand. We will remand the record for further proceedings and the issuance of a new decision.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges, de novo. 8 C.F.R. § 1003.1(d)(3).

On December 19, 2019, the Immigration Judge issued a decision denying the respondent's applications for cancellation of removal for lawful permanent residents, a section 212(h) waiver, and for asylum, withholding of removal, and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). Sections 208(a)(1), 212(h), 240A(a), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a)(1), 1182(h), 1229b(a), 1231(b)(3)(A); 8 C.F.R. §§ 1208.16-1208.18.

On June 22, 2020, the Board dismissed the respondent's appeal from the Immigration Judge's decision. The respondent petitioned the Ninth Circuit for review, and on January 22, 2021, the Government filed an unopposed motion to remand the record to the Board to "further consider and explicitly address whether [the respondent's] country conditions evidence and news articles

sufficed to meet her burden of proof of establishing a likelihood of future torture by, or with the acquiescence or willful blindness of, the Honduran government." (Government Unopposed Motion to Remand at 2). The Government's motion also noted that "the Board may wish to reassess whether its conclusion that [the respondent] would not face a heightened risk of torture in Honduras as a female [ ] is premised on facts found by the IJ." (*Id.*).

The Department of Homeland Security ("DHS") has filed a brief on remand requesting that we remand the record to the Immigration Judge for further factual findings regarding the respondent's eligibility for CAT protection (DHS Motion to Remand at 1). The respondent has filed a brief on remand arguing that she is more likely than not to be tortured upon return by gangs and drug cartels, and that the torture will be conducted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" (Respondent's Br. on Remand at 5-12). 8 C.F.R. §§ 1208.16(c)-1208.18. The respondent's brief also makes a number of factual assertions, and cites to additional country conditions evidence that she did not file previously before the Immigration Judge (Respondent's Br. on Remand at 7-11 and Tab C). The respondent requests either that the Board grant her application for CAT protection, or remand the record to the Immigration Judge for further proceedings and the issuance of a new decision on her application for CAT protection (Respondent's Br. on Remand at 12).

In light of the parties' briefs on remand, and the fact that the Board is generally precluded from finding facts on appeal, we will remand the record to the Immigration Judge for further proceedings and the issuance of a new decision regarding the respondent's application for CAT protection. *See* 8 C.F.R. § 1003.1(d)(3)(iv). Both parties may file additional arguments and evidence on remand.

Accordingly, the following order will be issued.

ORDER: The record is remanded for further proceedings in accordance with the foregoing opinion, and issuance of a new decision.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: George P. Mann, Esquire

ON BEHALF OF DHS: Theresa Bross, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondent, a native and citizen of El Salvador, has filed a document entitled "Motion to Reconsider; Motion to Remand Based on the Changed Country Conditions; Motion for Refund of the Filing Fee and Delivery Fee for Motion to Reconsider Due to the Board's Error; Respondent's Brief in Support of Appeal; Request for Panel; Opposition to Summary Dismissal; Opposition to Summary Affirmance; Motion for Oral Argument." The respondent's motions will be denied.

On January 5, 2021, this Board dismissed the respondent's appeal from the Immigration Judge's November 19, 2018, decision denying his application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158 and 1231 (b)(3), and for protection against removal under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20,1465 U.N.T.S. 85 (entered into force for United States Nov. 20,1994).

Reconsideration is not warranted. Ultimately, we conclude that the respondent has not established reversible error in our decision that he did not establish eligibility for relief. In his motion, the respondent argues that the Board erred in not serving him with a complete copy of the Immigration Judge's decision with the briefing schedule. In particular, the respondent alleges that he could not file a brief in support of his appeal as he did not receive a copy of the "addendum of law" that was incorporated into the Immigration Judge's decision. However, the respondent filed a Freedom of Information Act request (FOIA) request for "the entire BIA record," and administrative records available to this Board confirm that such FOIA request was completed on September 9, 2020, four months prior to the issuance of our January 5, 2021, decision. Therefore, we conclude that any error in not serving the addendum of law was harmless. Upon receipt of the requested documents, the respondent did not file an appeal brief with the Board, along with a

motion to accept his late-filing; nor did he provide a reasonable explanation for his failure to do so.

We reaffirm our conclusion that the respondent, who fears harm in El Salvador by gang members, did not establish his membership in a cognizable particular social group or groups; nor did he establish that he manifested a political opinion by his refusal to join the gangs in that country (IJ at 5; Exh. 4). The respondent claimed membership in proposed particular social groups defined as: (1) Salvadoran soccer player/athlete who resists joining quasi-governmental gangs such as the MS gang; (2) member of soccer team Aguilas Negras whose members resisted joining the MS gang, and who were threatened and/or killed; (3) Salvadoran youth who resists joining a quasi-governmental gang such as the MS gang; (4) Salvadoran youth who resists joining the MS gang because he politically/morally opposes killing and breaking the law; and (5) Salvadoran teenage males who were singled out and persecuted because of their gender and age, who are recognizable in their local community and who oppose gang culture and violence and do not want to joining gang groups, where they would be forced to participate in illegal activities (Exh. 4). He also identified his political opinion as "resisting a quasi-governmental gang." (Respondent's Supplemental Brief filed on September 20, 2018).

As we explained in our previous decision, a group composed of individuals who resist gangs' recruitment efforts is not deemed to constitute a particular social group and an alien's refusal to join a gang is not deemed to amount to apolitical opinion. *See Matter of E-A-G-,* 24 I&N Dec. 591 (BIA 2008) and *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008), clarified by *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), and *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *see also Umana-Ramos v. Holder*, 724 F.3d 667, 673-74 (6th Cir. 2013) (holding that an applicant's proposed particular social group of young Salvadorans who have been threatened because they refused to join a particular gang was not cognizable under the Act). In his motion, the respondent now alleges membership in a family-based particular social group. However, such group was not identified in the proceedings below (IJ at 3; Exh. 4). Therefore, it is impermissible to raise such claim in his motion. *See Matter of A-T-,* 25 I&N Dec. 4 (BIA 2008) (holding that an applicant for asylum or withholding should clearly indicate what enumerated ground(s) he or she is relying upon in making a claim, including the exact delineation of any particular social group to which the applicant claims to belong). A motion to reconsider is not a vehicle to reargue issues, or present new issues that could, or should, have been presented previously. *Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006); *see also Matter of W-Y-C- & H-O-B-,* 27 I&N Dec. 189, 191-92 (BIA 2018) (holding that the Board generally will not address a newly articulated particular social group that was not advanced before the Immigration Judge). Disagreement with the result is not sufficient.

We further reaffirm our conclusion that the respondent did not present particularized evidence that it is more likely than not he would be tortured upon returning to El Salvador by or with the acquiescence or willful blindness of a public official (IJ at 6). *See* 8 C.F.R. §§ 1208.16(c)(2) and .18(a)(1); *Matter of M-B-A-*, 23 I&N Dec. 474,479-80 (BIA 2002); *Matter of J-F-F-,* 23 I&N Dec. 912, 917-18 (A.G. 2006) (to establish eligibility for protection under the Convention Against Torture, evidence must show that any step in the hypothetical chain of events is more likely than not to happen, and that the entire chain will come together to result in the probability of torture of applicant). As the respondent has not established his eligibility for relief, he has not established

any prejudice resulting from the initial non-receipt of the addendum of law. *See Garza-Moreno v. Gonzales,* 489 F.3d 239, 241-242 (6th Cir. 2007) (finding that the applicant has the burden to prove prejudice to demonstrate a due process violation in an immigration hearing).

With his motion, the respondent includes several articles regarding current events in El Salvador, including the ongoing COVID-19 pandemic, as well as articles regarding crime and violence in that country, and seeks remand to again present a claim for asylum and related relief. In his motion, the respondent does not specifically explain how the events described in the articles affect his eligibility for relief, and we decline to speculate. As the respondent has not established that the newly submitted evidence is likely to change the result in his case, reopening and remand is not warranted. *See Matter of Coelho,* 20 I&N Dec. 464, 471 (BIA 1992).

Finally, we reject the respondent's request for a refund of the filing fee for the motion and the delivery fees incurred. The respondent has not identified any statutory or regulatory authority to indicate that this Board has the authority to confer financial compensation upon him. We further reject the respondent's request for oral argument.

Accordingly, the following order will be entered.

ORDER: The respondent's motions are denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Jaspreet Singh, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

On November 13, 2017, the Board upheld an Immigration Judge's decision denying the respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The United States Court of Appeals for the Ninth Circuit dismissed the respondent's petition for review of our decision. *Singh v. Whitaker,* 747 Fed. App'x 540 (9th Cir. 2018).

On September 21, 2020, the respondent filed the instant motion to reopen proceedings to further pursue his applications for relief. He also seeks a stay of removal. The Department of Homeland Security (DHS) has not responded to the motion, which will be denied.

In his motion, the respondent continues to challenge the agency's previous adverse credibility finding (Motion to Reopen at 9-10). He also urges us to reopen proceedings due to changed country conditions in his native country of India (*Id.* at 5-16).

The respondent fears that he will be persecuted and tortured by members of the Shiromani Akali Dal Badal Party ("SADB Party") and police in India based on his defection from and political opposition to the SADB Party (Motion to Reopen at 5-16). According to the respondent, since his departure from the country, SADB Party members and police have been looking for the respondent at his family home, and have also been questioning the neighbors of his whereabouts (*Id.* at 5-7). He further claims that during their inquiries, SADB Party members and police have threatened to kill him, have killed one of his brothers, and have beaten his mother and his sister (*Id.*).

The respondent also newly fears persecution by the Bharatiya Janata Party ("BJP"), which supports the SADB Party and now rules India (Motion to Reopen at 7, 9, 15). He avers that since the BJP's ascension to power in 2019, they have physically harassed and beaten political opponents like himself with impunity (*Id.*).

In support of his motion, the respondent has submitted a personal statement, an updated asylum application, and news articles and country reports depicting current conditions in India.

The motion is untimely filed. *See* section 240(c)(7)(C)(i) of the Act, 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2). Moreover, the respondent has failed to establish that he qualifies for the "changed country conditions" exception to the general 90-day time limitation for motions to reopen. *See* section 240(c)(7)(C)(ii) of the Act; 8 C.F.R. § 1003.2(c)(3)(ii); *Toufighi v. Mukasey,* 538 F.3d 988, 996 (9th Cir. 2008) (stating that in order to prevail on a motion to reopen based on changed country conditions (a) a movant must present evidence of changed country conditions in the country in question, (b) the evidence must be material and previously unavailable, and (c) the evidence, in conjunction with the evidence of record, must establish that the movant is prima facie eligible for the requested relief).

Initially, we decline to revisit our determination that the respondent's claims of persecution and torture by the SDBP and police in India were not credible (Bd. at 1-3, Nov. 13, 2017; IJ at 7-12, Feb. 2, 2017). To the extent the respondent seeks reconsideration, such a motion is untimely filed. Section 240(c)(6)(B) of the Act; 8 C.F.R. § 1003.2(b)(2). Further, the Ninth Circuit has already considered and upheld our prior adverse credibility finding, and we discern no basis to disturb it. *See Singh,* 747 Fed. App'x at 541-42; *cf. Etemadi v. Garland,* 12 F.4th 1013, 1020-26 (9th Cir. 2021) (holding that even if the law-of-the-case doctrine applied to the court's prior affirmance of the denial of a noncitizen's motion to reopen removal decision for lack of credibility, the clear-error exception to the doctrine applied to an appeal from the denial of a subsequent motion to reopen; the court's prior decision, among other things, accepted the Immigration Judge's incorrect denial of the first motion to reopen based on the maxim of falsus in uno, falsus in omnibus).

The evidence proffered with the motion is insufficient to warrant reopening. We afford limited weight to the respondent's personal statement regarding his family members' and neighbors' experiences in India. The respondent's statements about recent developments in India are based on hearsay. There are no statements from his family members, neighbors, or anyone else who would have firsthand knowledge of these events. There is also no other evidence that the respondent has been personally threatened with harm in India.

We further note that any alleged continuation of the threat presented by the SADB to the respondent is not a change in country conditions. The remaining evidence of political strife and abuses against political opposition groups and other minority groups in India is otherwise insufficient to warrant reopening. Even under a disfavored-group analysis, the respondent has not made a prima facie showing that he faces an individualized risk of persecution upon his repatriation. *See Wakkary v. Holder,* 558 F.3d 1049, 1062-66 (9th Cir. 2009). Likewise, considering all relevant factors, the proffered evidence, in conjunction with the other evidence of

record, is insufficient to make a prima facie showing that the respondent has a likelihood of future torture with the appropriate state action upon his repatriation. *See* 8 C.F.R. §§ 1208.16-1208.18.

Based on the foregoing, the following orders will be entered.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The request for a stay of removal is denied as moot.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Zaida Kovacsik, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

On July 10, 2020, this Board summarily dismissed the respondent's appeal, concluding that he had waived his right to appeal. The respondent has now filed a motion to rescind his waiver of appeal and reopen proceedings. The Department of Homeland Security (DHS) has not filed any opposition to the motion.

The respondent asserts that, due to his deteriorating mental health and suicidal ideation, he did not make a knowing and intelligent waiver of his appeal rights. *See Matter of Rodriguez-Diaz*, 22 I&N Dec. 1320, 1323 (BIA 2000) (requiring that waiver of appeal be knowing and intelligent and explaining that a determination as to whether a waiver was valid depends on the facts of the individual case). Here, the respondent was unrepresented and detained, and contends that he was confused and in shock at the time he stated he would waive his right to appeal. The respondent also submits evidence to corroborate his assertions regarding his physical and mental health conditions. Under the foregoing circumstances, we will grant the respondent's unopposed motion, reopen proceedings, and consider his appeal.

In considering the appeal, we find it necessary to remand the record because the Immigration Judge, under the prior circumstances, understandably did not issue a separate decision explaining her reasoning. *See Matter of A-P-*, 22 I&N Dec. 468 (BIA 1999). On remand, in an abundance of caution, the parties may update the record with evidence relevant to relief, as well as to any mental competency concerns.

Accordingly, the following order will be entered.

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

A (b)(6)

ORDER: The motion is granted, proceedings are reopened, and the record is remanded to the Immigration Judge for further proceedings.

00000029530

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Godwill C. Tachi, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Conroe, TX

Before: Creppy, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge; Petty, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Hunsucker

HUNSUCKER, Appellate Immigration Judge

The respondent, a native and citizen of the Democratic Republic of the Congo, timely appeals the Immigration Judge's July 31, 2020, decision that denied his application for asylum and withholding of removal pursuant to sections 208(b)(1)(A) and 241(b)(3) of the Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3) (2012), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The Department of Homeland Security ("DHS") has not responded to the appeal. The appeal will be dismissed.

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) (2020). We review de novo all other issues, including issues of law, judgment, or discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent does not dispute his removability but bases his claim for relief from removal on allegations of past persecution and a fear of future harm on account of his membership in the particular social groups delineated as "family" and/or "his father's nuclear family" (IJ at 1-2; Tr. at 79; Exhs. 1, 3, 6). Although the Immigration Judge found the respondent's testimony to be credible, he denied relief on the merits, concluding that the respondent had not proven that the harm he experienced or fears in the Democratic Republic of the Congo will be inflicted "on account of" or "because of" his possession of any protected characteristic as required for asylum (IJ at 3-5).

We will affirm the Immigration Judge's determination that the respondent did not meet his burden to establish the required nexus between any past or feared harm in the Democratic Republic of the Congo, and one of the protected grounds enumerated in the definition of "refugee" (IJ at 3-5;). *See* sections 101(a)(42)(A), 208(a)(1) of the Act; 8 C.F.R. §§ 1003.1(d)(3)(ii),

1208.13(b); *see also Matter of N-M-*, 25 I&N Dec. 526, 529 (BIA 2011) (stating that an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be "at least one central reason" of the claimed persecution). The respondent testified his father, a high-ranking police official, was presumably killed in a fire at an election facility that he was assigned to secure prior to an upcoming election (IJ at 2; Tr. at 84-85). The respondent and his mother began to look for him after the fire but were unable to get any answers (IJ at 2; Tr. at 85-88). Subsequently, he was approached by persons claiming to be policemen on several occasions who threatened to harm him and his family if he did not stop asking questions about his father's whereabouts (IJ at 2-3; Tr. at 88-93). The respondent believed that (b)(6) (b)(6) was responsible for the fire and his father's death (IJ at 5; Tr. at 87-88).

We agree with the Immigration Judge that the respondent's particular social groups delineated as his "family" or "his father's nuclear family" are not legally cognizable under the facts presented here (IJ at 3-5; Respondent's Br. at 15-18). *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014). The Immigration Judge properly determined that the respondent did not present persuasive evidence that Congolese society at large perceives his family to be socially distinct (IJ at 4; Respondent's Br. at 16). The respondent argues on appeal that his father was the (b)(6) (b)(6) (b)(6) (b)(6) was well-known as a result of his position, and therefore, his family had social distinction (Respondent's Br. at 16). However, the respondent and his family members referred to his father as a policeman, and there is insufficient evidence in the file to reflect that his position in the electoral commission corresponded to social distinction within Congolese society (Exhs. 4, 5C, 5D).

Further, although family may be deemed a particular social group in some instances, we discern no clear factual or legal error in the Immigration Judge's finding that the threats the respondent and his family members experienced and that he fears upon his return were criminal in nature and stemmed from the individuals' desire to conceal criminal actions (IJ at 4-5). *See Matter of N-M-*, 25 I&N Dec. at 532 (stating that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed for clear error). There is no clear error in the Immigration Judge's finding that the assailants did not target the respondent due to his relationship to his father; rather, they threatened him in an effort to prevent him from investigating a crime (IJ at 4-5).

Based on the foregoing, we affirm the Immigration Judge's denial of the respondent's application for asylum. Inasmuch as the respondent has not met the burden necessary to establish eligibility for asylum, it follows that he has also not satisfied the higher standard required for withholding of removal – and the Immigration Judge did not err in declining to address that claim separately (IJ at 4-5; Respondent's Br. at 18-20). *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

We will also affirm the Immigration Judge's determination that the respondent has not met his burden of establishing that it is more likely than not he will be subjected to torture that is "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" if returned to the Democratic Republic of the Congo (IJ at 5-6). *See* 8 C.F.R. §§ 1208.16(c), 1208.18(a)(1)-(5); *Matter of M-B-A-*, 23 I&N Dec. 474 (BIA 2002);

Matter of J-E-, 23 I&N Dec. 291 (BIA 2002). The threats the respondent experienced in the past did not rise to the level of torture (IJ at 5). We discern no clear error in the Immigration Judge's finding that the respondent did not establish that it is more likely than not that, if returned to his home country, he will experience treatment that would rise to the level of torture that is "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity" because the record reflected that General Numbi was no longer in power (IJ at 5-6). *See* 8 C.F.R. §§ 1208.16(c), 1208.18(a)(1)-(5); *Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015) (holding that an Immigration Judge's predictive findings of what may or may not occur in the future are findings of fact, which are subject to a clearly erroneous standard of review). Because the respondent did not submit sufficient evidence to establish that it is more likely than not he faces an individualized risk of torture if returned to the Democratic Republic of the Congo, we also affirm the Immigration Judge's denial of the respondent's request for protection under the CAT.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

Appellate Immigration Judge Michael J. Creppy respectfully dissents without opinion.

File: (b)(6) – Nebraska Service Center Date: JAN – 5 2022

In re: (b)(6) Beneficiary of a visa petition filed by
(b)(6) Petitioner

IN VISA PETITION PROCEEDINGS

APPEAL

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Elizabeth S. Bowman
Associate Counsel

APPLICATION: Petition to classify status of alien relative for issuance of immigrant visa

The petitioner has appealed the Director's August 23, 2019, decision denying the visa petition filed on behalf of the beneficiary as the spouse of a United States citizen under section 201(b) of the Immigration and Nationality Act, 8 U.S.C. § 1151(b). The record of proceedings will be remanded.

We review all questions arising in appeals from decisions of U.S. Citizenship and Immigration Services ("USCIS") officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii).

The Director denied the visa petition stating that the evidence provided by the petitioner did not overcome the evidence that was referenced in the March 15, 2019, Notice of Intent to Deny ("NOID"), reflecting that the marriage was entered into solely for immigration benefits (Dec. at 1-2). The evidence of fraud was purportedly described in a prior Petition for Alien Fiancé(e) (Form I-129F), that was denied after fraud was found. The Director also described a document, dated January 5, 2018, that "terminated" the fiancé visa petition after concluding that the subsequent marriage between the beneficiary and the petitioner was entered into solely for immigration benefits.[1]

The Director found that the fiancé visa filed by the petitioner on behalf of the beneficiary was based upon a fraudulent relationship, thus barring the beneficiary under section 204(c) of the Act from receiving the benefits of a visa petition. However, the section 204(c) bar applies only to prior fraudulent marriages, not to prior visa petitions filed by the same petitioner on behalf of the same beneficiary. *See Matter of Isber*, 20 I&N Dec. 676, 678-79 (BIA 1993) (observing that section 204(c) of the Act does not bar the approval of a successive visa petition filed by the same petitioner on behalf of a beneficiary spouse).

[1] We note that the record does not contain the I-129F documentation or the January 5, 2018, document.

We find insufficient facts to determine, on de novo review, whether the petitioner has met his burden of establishing the marriage is bona fide. Here, in denying the visa, the Director appears to have given conclusive effect to a prior finding of fraud.

The Notice of Intent to Deny (NOID) is flawed because it did not provide the petitioner with the derogatory information on which the previous fraud finding was made such that the petitioner had adequate notice and an opportunity to respond to the specific allegations or to provide evidence of bona fides. *See* 8 C.F.R. § 103.2(b)(8)(iv); *see also Matter of Cuello*, 20 I&N Dec. 94 (BIA 1989); *see, e.g., Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

In light of the foregoing, on remand, the Director should determine whether the petitioner has established that the marriage was valid from inception. *Matter of Phillis*, 15 I&N Dec. 385, 387 (BIA 1975). The Director should also issue a new NOID that contains specific details outlining why the Director believes that the marriage is not bona fide, such that the petitioner will be put on notice of the deficiencies in the evidence and will be given an opportunity to respond to those deficiencies. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The Director should also be careful not to rely solely on previous findings and ensure the completeness of the record.

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Director for further consideration of the visa petition consistent with the foregoing opinion and the entry of a new decision.

FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN - 5 2022

ON BEHALF OF PETITIONER: Kate O. Rahel, Esquire

ON BEHALF OF DHS: Mollie E. Hennessee, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Omaha, NE

Before: Wilson, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Wilson

WILSON, Appellate Immigration Judge

The petitioner appeals from the decision of the Field Office Director ("Director"), dated December 7, 2018, denying the approval of the Petition for Alien Relative (Form I-130) that she had filed on behalf of the beneficiary as the spouse of a United States citizen. We review all questions arising in appeals from decisions of United States Citizenship and Immigration Services (USCIS) officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii). The appeal will be dismissed.

The Director denied the visa petition based on a finding that the beneficiary had entered into a marriage with his former spouse solely to obtain an immigration benefit. *See* section 204(c) of the Immigration and Nationality Act, 8 U.S.C. § 1154(c) (barring benefits to an alien who "has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws"). The petitioner was placed on notice of the derogatory evidence and had a full and fair opportunity to respond. The Director issued a thorough decision in which he analyzed the record, considered the petitioner's evidence and arguments, and made reasonable inferences.

We affirm this section 204(c) determination. The petitioner's contrary view of the evidence and her inferences drawn from the record do not cause us to disturb this decision. *See Matter of D-R-*, 25 I&N Dec. 445, 455 (BIA 2011) (setting forth that immigration adjudicators are not required to accept a party's plausible version of events when the record reflects other reasonable interpretations), *petition granted and remanded on other grounds sub nom. Radojkovic v. Holder*, 599 F. App'x 646 (9th Cir. 2015) (mem.).

In order for section 204(c) of the Act to bar approval of the visa petition submitted on the beneficiary's behalf, the evidence must show that the beneficiary's prior marriage was "entered into for the purpose of evading the immigration laws." Section 204(c) of the Act. Hence, we require an affirmative finding, based upon substantial and probative evidence, that the beneficiary's prior marriage was actually fraudulent. *Matter of Tawfik*, 20 I&N Dec. 166, 168-69 (BIA 1990).

> In making that adjudication, the district director may rely on any relevant evidence, including evidence having its origin in prior . . . proceedings involving the beneficiary, or in court proceedings involving the prior marriage. Ordinarily, the district director should not give conclusive effect to determinations made in a prior proceeding, but, rather, should reach his own independent conclusion based on the evidence before him.

Id. at 168. We have held "that to be 'substantial and probative,' the evidence must establish that it is more than probably true that the marriage is fraudulent." *Matter of P. Singh*, 27 I&N Dec. 598, 607 (BIA 2019) (footnote omitted).

We conclude that the derogatory evidence contained in the Notice of Intent to Deny was sufficient to shift the burden onto the petitioner. *See Matter of Kahy*, 19 I&N Dec. 803, 806-07 (BIA 1988); *see also Matter of P. Singh*, 27 I&N Dec. at 605. The petitioner did not sufficiently rebut this evidence of fraud.

The petitioner's arguments on appeal are unavailing. She argues that the Director applied the wrong legal standard by focusing on the parties' conduct after the marriage, instead of focusing on their intent to form a life together at the inception of the marriage (Petitioner's Br. at 10-11). It is well-established that "[t]he conduct of the parties after marriage is relevant to their intent at the time of marriage." *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983) (citations omitted). The Director properly considered the parties' conduct after their marriage.

The petitioner also argues that the Director misconstrued the evidence of record (Petitioner's Br. at 6-10). The petitioner points to observations made during a site visit, including evidence that a woman was living at the apartment and that the beneficiary's former spouse was receiving mail there (Petitioner's Br. at 7, 9). She argues that this evidence cuts against making a 204(c) finding. Each example given by the petitioner taken in isolation might support an inference in favor of her. However, the evidence of record taken cumulatively establishes substantial and probative evidence that the beneficiary's prior marriage was entered into for the purpose of evading the immigration laws.

For example, the Director did not merely rely on evidence derived from a site investigation. Rather, among other evidence, she relied on inconsistent answers about the relationship given during an interview with USCIS and evidence that the couple identified as single on government documents while married. The petitioner on appeal does not deny that inconsistent answers were given (Petitioner's Br. at 7-8). Rather, she attempts to explain why these inconsistencies occurred. However, inconsistent material answers about the circumstances of how a couple met and whether

the beneficiary's wife met a person as important as a co-sponsor reasonably weigh in favor of applying the section 204(c) bar.

Lastly, the petitioner argues that the Director made factual mistakes (Petitioner's Br. at 11-13). The petitioner argues that USCIS incorrectly found that the beneficiary misspelled his former spouse's middle name in his phone. The beneficiary denied this misspelling in his affidavit. However, both the Director and this Board have to resolve conflicting evidence. The Director did not err by giving greater weight to the statement of findings than to the beneficiary's uncorroborated claim in his affidavit.[1]

Other alleged discrepancies, such as whether the beneficiary's spouse kept toiletries in the bedroom or bathroom, the size of the clothes of beneficiary's spouse, whether the couple had a picture of each other in their apartment, and whether the beneficiary was the owner or merely an authorized driver of the petitioner's car, are ultimately minor. Even if we accept the petitioner's explanations (Petitioner's Br. at 11-13), the evidence of record taken in its totality establishes substantial and probative evidence sufficient to invoke the section 204(c) bar.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

[1] We acknowledge that the statement of findings itself contains another incorrect spelling of the middle name. This err does not fatally undercut the Director's reasoning.

00000029521

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Chicago, IL

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

The Department of Homeland Security (DHS) has filed an appeal from the Immigration Judge's decision dated October 29, 2019, terminating proceedings without prejudice. The appeal will be dismissed.

We review the Immigration Judge's findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). Questions of law, discretion, and judgment, and all other issues are reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent was placed into removal proceedings via a Notice to Appear (NTA) that was served on April 7, 2019, which did not include the date and time of removal proceedings. The respondent appeared at a master calendar hearing on August 5, 2019, and appeared through counsel at a second hearing on September 17, 2019. At a third hearing on October 29, 2019, the Immigration Judge granted the respondent's motion to terminate proceedings without prejudice based on the service of a defective NTA, finding the motion timely, and citing *Ortiz-Santiago v. Barr*, 924 F.3d 956 (7th Cir. 2019) (IJ at 1; Tr. at 18).

In *Ortiz-Santiago v. Barr*, 924 F.3d at 962-64, the Seventh Circuit held that the statutory requirement that a Notice to Appear for a removal hearing include the time, date, and place of the hearing was not jurisdictional in nature. *See* section 239(a) of the Immigration and Nationality Act, 8 U.S.C. § 1229(a). The Seventh Circuit held that section 239(a) of the Act is a claims-processing rule, as opposed to a jurisdictional one. *Ortiz-Santiago v. Barr*, 924 F.3d at 962-63, 966. The court further determined that omitting the specific information in the Notice to Appear was not unimportant or could be ignored but that an objection could be forfeited if not timely raised. *Id.* at 963, 966. The court determined, however, that the Immigration Judge could and should quash a defective Notice to Appear where there is a prompt objection and that a new Notice to Appear may be issued. *Id.* at 965.

Subsequently, based on Seventh Circuit authority, receipt of a defective Notice to Appear followed by a timely objection entitles a respondent to have the removal proceedings terminated, and in such instances, the respondent need not show prejudice. *See De La Rosa v. Garland*, 2 F.4th 685, 686-88 (7th Cir. 2021) (reversing and remanding Board's affirmance of Immigration Judge's denial of motion to terminate).

The Seventh Circuit has indicated that an objection made after the respondent conceded removability would be untimely. *See Qureshi v. Gonzales*, 442 F.3d 985, 990 (7th Cir. 2006) (concession by counsel of removability as charged "waives any objection to the IJ's finding of removability, including the argument that the IJ lacked jurisdiction to find him removable."). We acknowledge the DHS's arguments in support of appeal. However, the respondent here moved to terminate prior to pleadings being taken. As such, the Immigration Judge reasonably found the objection to be timely.[1] *Cf. Meraz-Saucedo v. Rosen*, 986 F.3d 676, 683 (7th Cir. 2021) ("the relevant inquiry is whether [the respondent] raised his objection during the proceedings before the IJ after receiving the defective NTA"). Because the respondent received a defective Notice to Appear and raised a timely objection, termination of proceedings was appropriate.[2] For that reason, we will dismiss the appeal of the DHS.

ORDER: The appeal is dismissed.

---

[1] The DHS has not challenged the timeliness of the objection on appeal.

[2] The DHS also argues that we should remand for the DHS to "cure" the NTA by amending it (DHS Notice of Appeal, attachment). That position is not consistent with Seventh Circuit precedent regarding a timely objection to a defective Notice to Appear. *See De La Rosa v. Garland*, 2 F.4th at 686-88; *Ortiz-Santiago v. Barr*, 924 F.3d at 965. However, because the Immigration Judge terminated proceedings without prejudice, the DHS may issue a new NTA at any time. *See Ortiz-Santiago v. Barr*, 924 F.3d at 965 ("A new, compliant Notice could have issued…"); *see also, e.g., Matter of W-Y-U-*, 27 I&N Dec. 17, 19 (BIA 2017) (the DHS's decision to institute proceedings is a matter of prosecutorial discretion within the DHS's jurisdiction).

00000029518
NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Jose L. Chaidez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Phoenix, AZ

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

ORDER: The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent(s) is (are) permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. § 1240.26(c), (f). In the event a respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If a respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If a respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, a respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate

order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Juan M. Saborio, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Miami, FL

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Guatemala, appeals from the Immigration Judge's decision dated July 15, 2019, which denied her applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), as well as voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c. The Department of Homeland Security (DHS) has not filed any opposition to the appeal. The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, and judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent – who testified to suffering, inter alia, two attempted rapes – is the mother of a United States citizen child and the beneficiary of a pending visa petition filed on her behalf by her lawful permanent resident husband. Under the unique circumstances of this case, we find it appropriate to remand the record for further proceedings in light of the Attorney General's recent decision in *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021). *See also* EOIR Director's Memorandum 22-03 (Administrative Closure). In addition, pursuant to the then-Acting Director's Policy Memorandum 21-25, the DHS, on remand, should indicate whether the respondent is an enforcement priority and whether the DHS would exercise some form of prosecutorial discretion,

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

such as stipulating to eligibility for relief, agreeing to administrative closure, or requesting termination or dismissal of the proceedings.

Accordingly, the following order will be entered.

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.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The appeal is summarily dismissed under the provisions of 8 C.F.R. §§ 1003.1(d)(2)(i)(A), (E). The Notice of Appeal (Form EOIR 26) does not contain statements that meaningfully apprise the Board of specific reasons underlying the challenge to the Immigration Judge's decision. *See Matter of Lodge*, 19 I&N Dec. 500 (BIA 1987); *Matter of Valencia*, 19 I&N Dec. 354 (BIA 1986). Moreover, the respondent checked the box on the Notice of Appeal indicating that a separate written brief or statement would be filed in support of the appeal. This box is immediately followed by a clear warning that the appeal may be subject to summary dismissal if the appealing party indicates that such a brief or statement will be filed and, within the time set for filing, fails to file the brief or statement and does not reasonably explain such failure. However, the record indicates that the respondent did not file such a brief or statement, or reasonably explain the failure to do so, within the time set for filing.

Accordingly, the following order will be entered.

ORDER: The appeal is summarily dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Yul-mi Cho, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Boston, MA

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

ORDER:

The Department of Homeland Security has filed a motion to withdraw the appeal from the Immigration Judge's June 26, 2019, order. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

00000029506

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Michael P. Kenny, Esquire

ON BEHALF OF DHS: Elanie Cintron, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Denver, CO

Before: Manuel, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Manuel

MANUEL, Temporary Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's April 29, 2019, decision denying her application for cancellation of removal for certain nonpermanent residents under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). The Department of Homeland Security (DHS) has not filed an opposition to the appeal.[2] The record will be remanded.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge pretermitted the respondent's application for cancellation of removal because she did not meet the 10-year physical presence requirement. *See* section 240A(b)(l)(A) of the Act. Although the respondent's Notice to Appear (NTA) lacked the date and time of her initial removal hearing, the Immigration Judge determined that the subsequent notice of hearing (NOH) was properly served on the respondent on October 19, 2011, and triggered the "stop-time" rule for the purposes of cancellation of removal (IJ at 2-3; Exh. 1). *See* section 240A(d)(1)(A) of

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The DHS filed a motion for suspension of the briefing schedule in this matter pending the United States Supreme Court's decision in *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), which was ultimately issued on April 29, 2021.

the Act. The Immigration Judge further determined that the respondent was unable to demonstrate 10 years of continuous physical presence during the relevant period of time because she temporarily departed from the United States from June 1, 2004, until October 1, 2004 (IJ at 4; Exh. 2). *See* section 240A(d)(2) of the Act (stating that a noncitizen shall be considered to have failed to maintain continuous physical presence in the United States if they have departed from the United States for any period in excess of 90 days). The respondent challenges the determination that she is ineligible for cancellation of removal on appeal (Respondent's Br. at 3).

Subsequent to the Immigration Judge's decision, the United States Supreme Court issued *Niz-Chavez*, holding that all of the information specified under section 239(a) of the Act, 8 U.S.C. § 1229(a), must be included in one single document in order to trigger the "stop-time" rule in section 240A(d)(l)(A) of the Act, for applications for cancellation of removal. *Niz-Chavez*, 141 S. Ct. at 1485-86; *see also Pereira v. Sessions*, 138 S. Ct. 2105, 2115-16 (2018) (holding that an NTA that does not include the time and place of a respondent's hearing is not an NTA under section 239(a) of the Act).

As previously discussed, the respondent's NTA did not include the time and place of her initial hearing before the Immigration Judge (Exh. 1; Respondent's Br. at 3). Therefore, it did not trigger the "stop-time" rule for purposes of determining her continuous physical presence in the United States, and pursuant to *Niz-Chavez*, the subsequent notice of hearing did not cure the defect. *See Niz-Chavez*, 141 S. Ct. at 1485-56; *see also Pereira*, 138 S. Ct. at 2115-16. Consequently, the respondent's continuous physical presence did not end upon service of the NOH, and her 2004 departure from the United States no longer precludes her from establishing the requisite continuous physical presence because it is outside of the 10-year statutory period. We will thus remand the record to the Immigration Judge for further consideration of the respondent's application for cancellation of removal under section 240A(b)(l) of the Act. We express no opinion regarding the ultimate outcome of these proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996).

Accordingly, the following order will be entered.

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

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENTS: Daska P. Babcock, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The respondents, natives and citizens of El Salvador, appeal the Immigration Judge's decision, dated April 3, 2019, denying the lead respondent's requests for asylum under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"), and ordering their removal from the United States.[1] We will dismiss the respondents' appeal.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii). It is the respondents' burden to establish eligibility for relief from removal. Section 240(c)(4)(A) of the Act, 8 U.S.C. § 1229a(c)(4)(A); 8 C.F.R. § 1240.8(d).

As an initial matter, we squarely reject any claim that these removal proceedings should be terminated as the Notices to Appear ("NTAs") did not contain the date, time, or location of the respondents' initial removal hearing. Such claims are foreclosed by binding precedent. *See Aguilar Fermin v. Barr*, 958 F.3d 887, 895 (9th Cir. 2020) ("[T]he lack of time, date, and place in the NTA sent to [the respondent] did not deprive the immigration court of jurisdiction over her case"); *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021). While we recognize that the NTAs advised the respondents that their initial hearing would take place at the Immigration Court

[1] It is undisputed that the respondents are subject to removal from the United States as charged (IJ at 1). *See* section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i). The rider respondent, who is the lead respondent's child, has not filed his own independent application for relief.

in Miami, Florida, jurisdiction vested with the San Francisco Immigration Court as the Department of Homeland Security elected, as matter of unreviewable prosecutorial discretion, to file the NTAs with that court. *See* 8 C.F.R. § 1003.14(a). In turn, the San Francisco Immigration Court, on December 8, 2015, the issued a Notice of Hearing in Removal Proceedings in order to place them on notice that their initial, albeit rescheduled, removal hearing would take place at 1:00 p.m. on February 25, 2016. They appeared at the hearing without incident (Tr. at 1-4). Subsequently, at the hearing on June 8, 2016, the respondents, through counsel, conceded proper service of the NTA (Tr. at 6). This concession is binding. *See* 8 C.F.R. § 1240.10(c); *Matter of Velasquez*, 19 I&N Dec. 377, 382-83 (BIA 1986).

We affirm the Immigration Judge's decision to deny the lead respondent's claims to relief. She has not established eligibility for asylum. To the extent that the lead respondent's claim is based upon claims of domestic abuse, she has not established that she was previously harmed in El Salvador in a manner rising to the level of persecution (IJ at 1-2).[2] *See* 8 C.F.R. § 1208.13(b)(1). The lead respondent, who reports being born on (b)(6) testified that, in 2009, she entered into a relationship with an individual, her present ex-husband, who would "humiliate" her (Tr. at 21). While we recognize that age can be a critical factor in the adjudication of asylum claims, she did not offer specific and detailed testimony describing the incidents of claimed harm and when such harm was inflicted. *See Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045-46 (9th Cir. 2007). Moreover, she testified that she did not cohabitate with him until after she was married, at the age of approximately 20, in December 2012 (Tr. at 23-24; Exh. 5 at 1). Likewise, even though he apparently told her "that if I ever left him and if I got together with somebody else... he would kill me and the person that I'm with," she acknowledged that he did not begin making such serious threats until "about the year 2013" (Tr. at 26-27). "He didn't go through with any threats" (Tr. at 26). She also testified to only a single physical incident (IJ at 2).[3] Overall, upon consideration of the totality of the record,, the lead respondent's testimony was insufficiently persuasive to show that she was previously harmed in El Salvador in a manner rising to the level of persecution. *See Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) ("Threats themselves are sometimes hollow and, while uniformly unpleasant, often do not effect significant actual suffering or harm."); *cf. Babi v. Sessions*, 707 F.App'x 467, 471 (9th Cir. 2017) (discussing a case where the applicant, at the age of 5, lived through the two church bombings).

The lead respondent has also not established a well-founded fear of future persecution in El Salvador (IJ at 2). *See* 8 C.F.R. § 1208.13(b)(2). After separating from ex-husband in late 2013 (Respondents' Br. at 3), she remained in El Salvador for more than 2 years without harm (IJ at 2). On appeal, she concedes that he failed to appear for divorce proceedings in 2015 and has found a

[2] This claim is premised on proposed particular social groups consisting of "Salvadoran women unable to leave their relationship" and "Salvadoran women viewed as property, and "an "imputed political opinion that women are not property" (Respondents' Br. at 2). We do not affirmatively endorse or reject these proposed grounds.

[3] According to the lead respondent, during the single incident of physical abuse: "He took me by the arms. He threw me on the bed. I thought he was going to beat me. But his mother arrived. She spoke with him. And he left very angry. And he didn't come back." (Tr. at 31).

new partner (Respondents' Br. at 4). While she has claimed that her former husband and his new partner have made efforts to obtain custody of her child, she has not identified specific testimony or evidence which demonstrates that, since separating from him, he threatened her with actual harm (IJ at 2). Moreover, even though the lead respondent has re-married, she presented little persuasive reason to believe that now, many years later, her ex-husband remains inclined to harm her. Overall, her fear of her ex-husband is too speculative to amount to a objectively reasonable fear of future persecution. *See Nagoulko v. INS*, 333 F.3d 1012, 1018 (9th Cir. 2003) (concluding that speculative fear of future harm cannot form the basis of an asylum claim).

To the extent that the lead respondent has presented a separate claim based upon her membership in a particular social group consisting of "banking professionals," the Immigration Judge properly rejected this claim as she has not shown that her membership in such proposed group is a "central reason" for the claimed persecution (IJ at 4). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007). She did not offer any specific testimony or evidence that gangs in El Salvador sought or seek to persecute her on account of her employment as a bank teller. Instead, as she argues, the gang member "told her she was going to help them take the money of the vault" (Respondents' Br. at 6). Dangers arising from the nature of one's employment are not "on account of" a protected ground. *See Matter of Fuentes*, 19 I&N Dec. 658, 661 (BIA 1988). She has also not shown that one's employment as a "banking professional" is an immutable characteristic which, in turn, can support a holding that such particular social group is cognizable. *See Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985) (holding that one's employment is not an immutable characteristic); *cf. Plancarte v. Garland*, 9 F.4th 1146, 1154 (9th Cir. 2021) (discussing the case of a nurse from Mexico who, even if she changed her profession, she would still remain valuable to the feared cartel because she would retain her medical knowledge and nursing skills"). She raises no meaningful claim that one's employment at a bank is a characteristic that either is beyond the power of the individual to change or is so fundamental to her identity or conscience that it ought not be required to be changed.

For the reasons set forth above, we conclude that the Immigration Judge properly denied the lead respondent's request for asylum. To the extent that her claim is premised upon domestic abuse at the hands of her ex-husband, she has not established that she was previously harmed in a manner rising to the level of persecution, nor that she holds a well-founded fear of future persecution. To the extent that she fears crime in El Salvador on account of her membership in a particular social group consisting of "banking professionals," she has not established that such group is cognizable, nor is a "central reason" for the claimed persecution. As is demonstrated here, her desire to be free from harassment by criminals motivated by theft bears no nexus to a protected ground. *Zetino v. Holder*, 622 F.3d 1007, 1016 (9th Cir. 2010). As the lead respondent has not established that she was previously persecuted in El Salvador on account of a protected ground, she is not eligible for "humanitarian asylum." *See* 8 C.F.R. § 1208.13(b)(1)(iii).

The Immigration Judge also properly rejected the lead respondent's request for withholding of removal under the Act (IJ at 5). *See* 8 C.F.R. § 1208.16(b). For the reasons set forth above, with respect to her claim which is premised upon domestic abuse, she has not established that she was previously persecuted in El Salvador, nor established a clear probability of future persecution. Likewise, her proposed particular social group consisting of "banking professionals" has not been

shown to be cognizable, nor "a reason" for claimed past and feared future persecution. *See Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017).

The lead respondent has also not established eligibility for protection under the CAT (IJ at 6). The lead respondent, who was not previously tortured, has presented a speculative fear of future harm. *See Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) (rejecting a CAT claim based upon generalized evidence of violence and crime in the applicant's country of origin). There is little reason to be believe that now, several years after leaving El Salvador, her ex-husband or the gang members seek to torture her. As discussed above, her ex-husband has a new partner. She now longer works at a bank. Moreover, although the El Salvadoran government may, at times, struggle to effectively eradicate crime in some areas of the country, she has not shown that any future torture would more likely than not be inflicted with the requisite degree of state action. *See Barajas-Romero v. Lynch*, 846 F.3d at 363 ("CAT relief is unavailable, despite a likelihood of torture, without evidence that the police are unwilling or unable to oppose the crime, not just that they are unable to solve it, as when the torturers cannot be identified."). Overall, considering the entirety of the record, she has not established, upon her removal to El Salvador, it is more likely than not she will be tortured by or at the instigation of or with the consent or acquiescence (including "willful blindness") of a public official or other person acting in an official capacity. *See* 8 C.F.R. §§ 1208.16(c)(2), 1208.18(a); *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (holding that a claim to protection under the CAT cannot be granted by stringing together a series of suppositions).

For the reasons set forth above, we affirm the Immigration Judge's decision to deny the lead respondent's claims to asylum, withholding of removal, and protection under the CAT, and conclude these proceedings by ordering the removal of both respondents from the United States to El Salvador. Accordingly, the following order is entered.

ORDER: The respondents' appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 05, 2022

ON BEHALF OF RESPONDENT: Danielle M. Claffey, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Liebowitz, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Liebowitz

LIEBOWITZ, Appellate Immigration Judge

This matter was last before the Board on July 19, 2021, when we dismissed the respondent's appeal from the Immigration Judge's decision dated October 30, 2020, denying his applications for withholding of removal under section 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A), as well as protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), 8 C.F.R. §§ 1208.16(c), 1208.18.[1] On August 18, 2021, the respondent filed a timely motion for reconsideration of the Board's July 19, 2021, decision. The Department of Homeland Security (DHS) did not respond to the motion. The motion will be denied.

The respondent generally restates arguments he made in his appeal as to why he believes the Immigration Judge erred in her factual findings related to his 2016 criminal conviction in Russia, and why he believes his subpoena request, and his applications for withholding of removal under the Act and CAT protection should have been approved (*Compare* Respondent's Mot. at 7-18 *with* Respondent's Br. at 8-18). Upon consideration of the respondent's arguments, we conclude that he has not established an error or fact or law in our prior decision. *See Matter of O-S-G-*, 24 I&N

[1] The removal proceedings commenced on November 18, 2016. The Board dismissed the respondent's appeal from the March 18, 2017, decision of the Immigration Judge. The respondent subsequently filed multiple motions to reopen the proceedings. The Board reopened the proceedings on November 12, 2019. The Immigration Judge conducted further proceedings from December 3, 2019, through September 21, 2020, after which the Immigration Judge issued a decision from which the respondent appealed. The Board's dismissal of that appeal is the subject of the respondent's motion for reconsideration.

Dec. 56 (BIA 2006) (finding that a motion to reconsider must allege a material factual or legal error or argue a change in the law.

With respect to the respondent's criminal conviction in Russia, there is no dispute that the respondent was charged and convicted for drug offenses in Russia (Tr. at 157, 185). The respondent argues that the Immigration Judge erred by failing to discuss, in her written decision, evidence he presented to support his theory that his drug conviction in Russia was the result of fabricated charges (Respondent's Mot. at 8-9). He also contends that the Board ignored evidence relevant to his theory (Respondent's Mot. at 9).

In particular, the respondent argues that two photographs contained in the record support his theory that the drug charges were fabricated (Respondent's Mot. at 8-9). The two photographs are a photograph contained in the Russian criminal record and a mug shot on a website for wanted individuals, both of which purport to be the respondent (Exh. 8 at Tab F; Exh. 8 at Tab H, p. 170; Respondent's Mot. at 8-9). The respondent argues that the mug shot pre-dates the criminal charges by almost a decade, and that it would be reasonable to expect Russian authorities to have a current photograph (Respondent's Mot. at 8). Further, the respondent argues that the photograph contained in the criminal record is not the respondent, as evidenced by a comparison of that photograph with other photographs of the respondent (*compare* Exh. 8 at Tab F *with* Exh. 8 at Tab G; Respondent's Mot. at 8). The Immigration Judge acknowledged the photographs and the respondent's theory of a fabricated criminal case (IJ at 9; *see also* Tr. at 77-78). However, the Immigration Judge weighed the evidence and determined that the evidence as a whole did not support the respondent's theory that the criminal charges were fabricated (IJ at 11-12).

We considered the entire evidence in making our determination that the Immigration Judge did not clearly err in finding that the respondent's conviction in Russia was the result of legitimate criminal proceedings. *Matter of J-Y-C-,* 24 I&N Dec. 260, 263 (BIA 2007) (a factual finding is not "clearly erroneous" merely because there are two permissible views of the evidence) (citation omitted). The Immigration Judge appropriately considered that the level of detail provided in the Russian criminal record, particularly with respect to the criminal investigation, indicate a legitimate proceeding, as opposed to a fabricated one (IJ at 11-12; Exh. 7, Exh. 8 at Tab J).

The respondent appears to argue that the Immigration Judge should have discussed the photographs in greater detail in her written decision, given her acknowledgment at the hearing that the photograph contained in the criminal record, although it purports to be the respondent, appears to be someone else (Tr. at 77-78; Respondent's Mot. at 8). However, the Immigration Judge acknowledged the evidence and theory in her decision (IJ at 9). Moreover, the Immigration Judge need not discuss, in detail, each piece of evidence in her written decision. "Although it is true that the [Immigration Judge and the Board] must consider all the evidence submitted, 'it is well established that [they] need not address specifically each claim … made or each piece of evidence … presented'" "Although it is true that the [Immigration Judge and the Board] must consider all the evidence submitted, 'it is well established that [they] need not address specifically each claim … made or each piece of evidence … presented'" *Indrawati v. U.S. Att'y Gen.*, 779 F.3d 1284, 1302 (11th Cir. 2015) (quoting *Cole v. U.S. Att'y Gen.*, 712 F.3d 517, 534 (11th Cir. 2013), abrogated on other grounds by *Nasrallah v. Barr*, 140 S.Ct. 1683, 1689-92 (2020)). Also,

the Board does not reweigh evidence considered by the Immigration Judge unless we are "left with the definite and firm conviction that a mistake has been committed." *Zhou Hua Zhu v. U.S. Att'y Gen.*, 703 F.3d 1303, 1315 (11th Cir. 2013) (quoting Board of Immigration Appeals: Procedural Reforms to Improve Case Management, 67 Fed.Reg. 54878-01, 54889 (Aug. 26, 2002)). Here, the Immigration Judge's decision contains a substantive discussion of the record evidence, including evidence that is favorable and unfavorable to the respondent's theory (IJ at 9, 11-12). The decision demonstrates her reasoned consideration of the record evidence prior to reaching her conclusion that the respondent did not demonstrate that the criminal charges against him in Russia were fabricated. Thus, the Immigration Judge's factual findings based on the evidence of record are without clear error. 8 C.F.R. § 1003.1(d)(3)(i).

We do not revisit the remainder of our prior discussion regarding the denial of the respondent's applications for withholding of removal under the Act and CAT protection, and the respondent's request for a subpoena. With respect to the remaining issues, the respondent reiterates arguments made in his brief that we already considered, he does not address the Board's reasoning or analysis, and he does not identify alleged legal or factual errors in the Board's decision. Finally, the respondent's request for an "en banc" consideration of his motion is denied.

Accordingly, the following order will be issued.

ORDER: The respondent's motion is denied.

NOT FOR PUBLICATION
00000029009

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A2 (b)(6)

Beneficiary

(b)(6), Petitioner

FILED

JAN 24 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Micaela Okamura, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, Potomac Service Center

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The petitioner appeals from the Director's denial of the visa petition filed on behalf of the beneficiary. In response to the appeal, counsel for the Department of Homeland Security has requested that the matter be remanded to the Director for further consideration. The petitioner has not filed an opposition to that request. Accordingly, this matter is remanded to the Director for further consideration and for the entry of a new decision.

File: A (b)(6) – Phoenix, AZ

Date: JAN 24 2022

In re: (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Jessica A. Lewis, Esquire

APPLICATION: Cancellation of removal under section 240A(b)(1) of the Act; remand

The respondent, a native and citizen of Mexico, appeals from the Immigration Judge's October 22, 2018, decision denying his application for cancellation of removal under section 240A(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b)(1). On appeal, the respondent filed a motion to remand based on new, previously unavailable evidence. The record will be remanded.

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 questions of law, discretion, and judgment, and all other issues in appeals from the Immigration Judge's decision. 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge denied the respondent's application for cancellation of removal on the grounds that he had not shown the requisite continuous physical presence through credible testimony; exceptional and extremely unusual hardship to a qualifying relative; and that he is deserving of relief as a matter of discretion. We are persuaded that a remand is necessary for the following reasons.

Subsequent to the Immigration Judge's decision, the Supreme Court clarified that for a notice to appear to trigger the "stop-time rule" under section 240A(d)(1) of the Act, 8 U.S.C. § 1229b(d)(1), it must be a single document containing all the information about an individual's removal hearing specified in section 239(a)(1) of the Act, 8 U.S.C. § 1229(a)(1). *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). In the present case, the respondent's Notice to Appear was filed with the Immigration Court on March 25, 2009 (Exh. 1). The respondent contends on appeal that his Notice to Appear does not list a date and time for his initial removal hearing, and, therefore, does not stop the accrual of his continuous physical presence in the United States (Respondent's Br. at 4-6). In light of the Supreme Court's decision, remand is appropriate for the Immigration Judge to reevaluate whether the respondent has satisfied the physical presence requirement through credible testimony and persuasive evidence.

The respondent further argues that the Immigration Judge did not consider the totality of the hardship factors raised in his claim (Respondent's Br. at 11-14). Specifically, the respondent asserts that the Immigration Judge too narrowly focused on the availability of medical care for his children's various ailments and his children's ability to speak Spanish with some degree of fluency to deny relief for lack of exceptional and extremely unusual hardship. The respondent further

contends that the Immigration Judge did not address evidence that the respondent will be primarily responsible for caring for his five children, who ranged from ages 3 to 13 at the time of his hearing, if his wife is unable to obtain lawful status to reside in Mexico given that she is a native and citizen of El Salvador; that even if the children's medication is available, the respondent may be unable to ensure that his children attend their medical appointments or afford to pay for the medication; that the respondent's employment possibilities will likely result in a diminished earning capacity; and the evidence of general insecurity and criminal activity in Mexico. On remand, the Immigration Judge should consider the hardship factors individually and in the aggregate. *See Matter of J-J-G-*, 27 I&N Dec. 808, 811 (BIA 2020) ("The exceptional and extremely unusual hardship for cancellation of removal is based on a cumulative consideration of all hardship factors[.]").

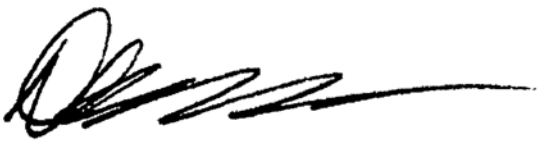
Lastly, the respondent argues the Immigration Judge did not consider the totality of the evidence in denying the respondent's application for cancellation of removal as a matter of discretion (Respondent's Br. at 14-17). The Immigration Judge found the respondent's application should be denied for two reasons, the respondent's conviction for solicitation to commit misconduct involving weapons, in addition to the lack of candor regarding his conviction (IJ at 4).

When deciding whether to grant discretionary relief, an Immigration Judge must consider the positive and negative factors presented in each individual case. *See Matter of Marin*, 16 I&N Dec. 581, 584 (BIA 1978); *Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998). Favorable considerations in the exercise of discretion include such factors as family ties within the United States, residence of long duration in this country, evidence of hardship to the respondent and his family if deportation or removal occurs, a history of employment, the existence of property or business ties, evidence of value and service to the community, proof of genuine rehabilitation if a criminal record exists, and other evidence attesting to a respondent's good character. *Matter of C-V-T-*, 22 I&N Dec. at 11. "Among the factors deemed adverse to an alien are the nature and underlying circumstances of the grounds of ... [removal] that are at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency, and seriousness, and the presence of other evidence indicative of a respondent's bad character or undesirability as a permanent resident of this country." *Id.* Upon review of the Immigration Judge's decision, additional fact-finding regarding both the positive and negative factors presented in this case is appropriate (Respondent's Br. at 16).

For the aforementioned reasons, we conclude remand is warranted to allow the Immigration Judge to further address the respondent's credibility and eligibility for cancellation of removal. Should the Immigration Judge ultimately render an adverse credibility determination in the respondent's case, such a finding should be supported with specific, cogent reasons tethered to the record. As we determine that remand is warranted on other grounds, we decline to address the respondent's motion to remand based on material and previously unavailable evidence. In remanding, we express no opinion on the ultimate outcome of the proceedings. *See Matter of L-O-G-*, 21 I&N Dec. 413, 422 (BIA 1996).

Accordingly, the following order will be entered.

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



FOR THE BOARD

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 24, 2022

ON BEHALF OF RESPONDENT: Laura Marie Ortiz, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. 8 C.F.R. § 1003.38(b), (c). The Immigration Judge's decision was rendered orally on October 29, 2018. The appeal was accordingly due on or before November 28, 2018. The Notice of Appeal was filed with the Board of Immigration Appeals on November 29, 2018. The appeal is untimely and will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further Board action. See 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

ORDER: The appeal is summarily dismissed.

00000029018

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 24, 2022

ON BEHALF OF RESPONDENT: Michael A. Borja, Esquire

ON BEHALF OF DHS: Bradley A. Sherman, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Hartford, CT

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

ORDER: The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

00000029021

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 24, 2022

ON BEHALF OF RESPONDENT: Joshua Effron, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On November 19, 2019, the Immigration Judge issued a decision ordering the respondent removed in absentia because the respondent failed to appear at a scheduled hearing. The respondent filed an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Nothing in this order prevents the respondent from filing a motion to reopen with the Immigration Judge regarding his claim of lack of proper notice.

ORDER: The appeal is summarily dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 24, 2022

ON BEHALF OF RESPONDENT: Ann Elise McCaffrey, Esquire

ON BEHALF OF DHS: Kayla Winters Strozier, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Atlanta, GA

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

00000029027

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 24, 2022

ON BEHALF OF RESPONDENT: Sarah T. Gillman, Esquire

ON BEHALF OF DHS: Kelly Garner, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondent filed a motion to reopen and terminate in light of *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). The Department of Homeland Security has opposed the motion. The motion will be denied.

In the motion, the respondent argues that the proceedings should be reopened and terminated under the United States Supreme Court's decisions in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474. The respondent argues that, because the Notice to Appear (NTA) issued in the case did not contain the location, date, and time of the initial removal hearing, the Immigration Court and the Board lacked jurisdiction over the removal proceedings, warranting a termination of proceedings. The respondent argues that *Matter of Bermudez-Cota,* 27 I&N Dec. 441 (BIA 2018), holding to the contrary, has been overruled by *Niz-Chavez.*

As we noted in our relevant precedent decisions, the Supreme Court's decision in *Pereira* concerns the application of the stop-time rule set forth in section 240A(d)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(d)(1), not the Immigration Court's jurisdiction. *Matter of Bermudez-Cota*, 27 I&N Dec. at 442-44; *Matter of Rosales Vargas*, 27 I&N Dec. 745 (BIA 2020); *see also Banegas Gomez v. Barr*, 922 F.3d 101 (2d Cir. 2019). Subsequent to *Niz-Chavez*, in *Matter of Arambula-Bravo*, 28 I&N Dec. 388 (BIA 2021), we confirmed that an NTA that does not specify the time and place of a respondent's initial removal hearing does not deprive the Immigration Judge of jurisdiction over the respondent's removal proceedings, and explained that *Niz-Chavez* does not change this analysis. *Matter of Arambula-Bravo*, 28 I&N Dec. at 389-92; *see also Chery v. Garland*, 16 F.4th 980, 986-87 (2d Cir. 2021). For the reasons set forth in the

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

above decisions, we reject the jurisdictional argument for a termination of the proceedings. Based on the above, the motion will be denied.

Accordingly, the following order will be entered.

ORDER: The respondent's motion is denied.

00000029030

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, El Paso, TX

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On September 4, 2018, the Immigration Judge issued a decision ordering the respondent removed because the respondent failed to appear at a scheduled hearing. The respondent seeks to challenge the Immigration Judge's decision, but has done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15.

ORDER: The appeal is summarily dismissed.

00000029033

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Lazaro Salazar, Esquire

ON BEHALF OF DHS: Daryl T. Eremin, Deputy Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

This Board has been advised that the Department of Homeland Security's ("DHS") appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

00000029036

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Eric Y Zheng, Esquire

ON BEHALF OF DHS: Michael J. Smith, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

ORDER:

The respondent and the Department of Homeland Security's joint motion to reopen proceedings and remand for consideration of an application for adjustment of status is granted.

NOT FOR PUBLICATION
00000029039

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Adedayo Olumide Idowu, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The respondent has filed a motion to reopen these deportation proceedings based on the respondent's acquisition of asylee status under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The Department of Homeland Security has not filed an opposition to the respondent's motion. 8 C.F.R. § 1003.2(g)(3). Considering the respondent's present status as an asylee in this country and the circumstances presented, the motion is granted, and the proceedings are reopened and dismissed.

00000029042

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Gerald Karikari, Esquire

ON BEHALF OF DHS: Katrina Jackson-Brown, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The respondent has filed a motion to reopen these removal proceedings based on the respondent's acquisition of asylee status under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The Department of Homeland Security (DHS) has indicated that it does not oppose the motion to reopen and dismiss proceeding. Considering the respondent's present status as an asylee in this country and the circumstances presented, the motion is granted, and the proceedings are reopened and dismissed.

00000029045

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Kevin Patrick MacMurray, Esquire

ON BEHALF OF DHS: Matthew E. Burns, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Boston, MA

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

This Board has been advised that the Department of Homeland Security's ("DHS") appeal has been withdrawn. *See* 8 C.F.R. § 1003.4. Since there is nothing now pending before the Board, the record is returned to the Immigration Court without further action.

NOT FOR PUBLICATION
00000029048

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Shaun Francis Downey, Esquire

ON BEHALF OF DHS: Tannaz Kouhpainezhad, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Omaha, NE

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondents,[1] who are natives and citizens of Guatemala, have appealed from the Immigration Judge's April 12, 2019, decision denying the lead respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3).[2] The Department of Homeland Security has moved for summary affirmance. The respondents' appeal will be dismissed.

We review an Immigration Judge's findings of fact, including credibility determinations, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues,

[1] The respondents are an adult female (A (b)(6)), who is the lead respondent, and her two children (A (b)(6) and A (b)(6)), who are derivative beneficiaries of the lead respondent's application for asylum (Tr. at 10-11).

[2] The Immigration Judge also denied the lead respondent's application for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20,1465U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (IJ at 12). On appeal, the respondents have not meaningfully challenged that aspect of the Immigration Judge's decision, and we thus deem that issue waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (recognizing that aspects of the Immigration Judge's decision that are not meaningfully challenged on appeal are deemed waived before the Board).

including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

As summarized in the Immigration Judge's decision, the lead respondent's applications for asylum and withholding of removal under section 241(b)(3) of the Act are based on her claimed past harm and fear of future persecution on account of her membership in a proposed particular social group, which she defined as persons of K'iche' nationality who are dependent on remittances of money from abroad to survive or meet their basic human needs (IJ at 2-7; Tr. at 15, 130; Respondent's Br. at 2). The lead respondent's son testified that the lead respondent would travel to a bank in order to retrieve remittances sent by her husband in the United States (IJ at 3; Tr. at 101-102). She wore traditional K'iche' clothes and would queue outside the bank with other K'iche' waiting to receive remittances (IJ at 3-4; Tr. at 103-106). The respondents were contacted by telephone by a man who claimed to be an employee of another bank, and who promised them a "good price" and the chance to win a home and vehicle if they deposited money in the man's name at the other bank (IJ at 4; Tr. at 107-110). The respondents agreed and made deposits until they became suspicious and discovered that the man was not a bank employee (IJ at 4; Tr. at 113). After the respondents stopped making deposits, the man began threatening them over the telephone (IJ at 4; Tr. 114-116). The respondents relocated to the United States to avoid harm to anyone in the family (IJ at 6; Tr. at 119). The lead respondent's son changed the SIM card in their telephone, and they received no further contact or threats from the man (IJ at 6; Tr. at 121). The respondents made no attempt to contact authorities to report the fraud, asserting that the authorities did not respond when the respondent's sister had once reported a robbery at her house (IJ at 6; Tr. at 118-119).

On appeal, the respondents argue that the Immigration Judge erred in finding that the lead respondent did not establish past harm rising to the level of persecution, because the death threats made by the man claiming to be a bank employee were specific, credible, and immediate (Respondent's Br. at 4-5). The respondents further argue that the Immigration Judge erred in determining that the lead respondent's proposed particular social group is not cognizable for purposes of asylum and withholding of removal under section 241(b)(3) of the Act, as the group is defined by immutable characteristics and is socially distinct (Respondent's Br. at 5-6). The respondents also assert that, inasmuch as the lead respondent established past persecution on account of a protected ground, she is entitled to a presumption of a well-founded fear of future persecution (Respondent's Br. at 6).

We will uphold the Immigration Judge's denial of the lead respondent's application for asylum because she did not establish past persecution or a well-founded fear of future persecution on account of one of a protected ground enumerated in section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A) (IJ at 7-11). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007).

First, we affirm the Immigration Judge's determination that the lead respondent did not demonstrate past harm rising to the level of persecution (IJ at 7-8). The lead respondent did not claim any prior physical harm in Guatemala (IJ at 7). We agree with the Immigration Judge that the lead respondent did not show that the threats the respondents received were sufficiently menacing and imminent as to rise to the level of persecution, as the respondents were able to sever

contact with the man claiming to be a bank employee, and there is no indication of any inclination or attempts to carry out the threatened harm (IJ at 7-8). *See Lopez v. Sessions*, 886 F.3d 721, 724 (8th Cir. 2018) (collecting cases holding that persecution is an extreme concept, and that unfulfilled threats of physical harm or low level intimidation and harassment are insufficient to establish past persecution); *see also Tegegn v. Holder*, 702 F.3d 1142, 1144 (8th Cir. 2013) (holding that death threats that are exaggerated, non-specific, lacking in immediacy, or not based on a protected ground do not rise to the level of persecution). Inasmuch as the lead respondent did not establish past persecution, she is not entitled to a presumption of a well-founded fear of future persecution (IJ at 10). *See* 8 C.F.R. § 1208.13(b)(1).

Next, we agree with the Immigration Judge's determination that the lead respondent did not establish that her proposed particular social group is cognizable for purposes of asylum or withholding of removal under section 241(b)(3) of the Act (IJ at 8-9). As the Immigration Judge explained, while the lead respondent's proposed group may be defined by certain immutable characteristics, such as the respondents' K'iche' ethnicity, there is insufficient evidence to determine that the proposed group is recognized in Guatemalan society as a distinct subclass or segment of the K'iche' population (IJ at 8-9). *See Matter of M-E-V-G-*, 26 I&N Dec.226, 239 (BIA 2014) ("A particular social group must not be amorphous, overbroad, diffuse, or subjective, and not every 'immutable characteristic' is sufficiently precise to define a particular social group."). Further, even if the lead respondent's proposed particular social group were cognizable, we agree with the Immigration Judge that the lead respondent did not show that her membership in that group was a central reason for the respondents' past harm, rather than merely incidental to some other primary objective, such as pecuniary gain through the fraud perpetrated upon them (IJ at 9). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214.

On appeal, the respondents have not articulated any meaningful challenge to the Immigration Judge's dispositive determinations that the lead respondent did not demonstrate that the government of Guatemala would be unable or unwilling to protect the respondents from future persecution, or that they could not reasonably avoid future harm by relocating to another area of Guatemala (IJ at 9-11). *See Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005); *see also Quinonez-Perez v. Holder*, 635 F.3d 342, 345 (8th Cir. 2011); 8 C.F.R. § 1208.13(b)(2)(ii). We thus deem those issues waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. at 658 n.2. Based on the foregoing, we affirm the Immigration Judge's denial of the lead respondent's application for asylum (IJ at 7-11).

Finally, we turn to the Immigration Judge's denial of the lead respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 11-12). As the Immigration Judge correctly found, because the lead respondent failed to meet the lower burden of proof for asylum, she necessarily cannot meet the higher burden of establishing a clear probability of persecution on account of a protected ground required for withholding of removal under the Act (IJ at 11-12). *See* section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); *Habtemicael v. Ashcroft*, 370 F.3d 774, 780 (8th Cir. 2004). We thus affirm the Immigration Judge's denial of withholding of removal under section 241(b)(3) of the Act (IJ at 11-12).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Shaun Francis Downey, Esquire

ON BEHALF OF DHS: Tannaz Kouhpainezhad, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Omaha, NE

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondents,[1] who are natives and citizens of Guatemala, have appealed from the Immigration Judge's April 12, 2019, decision denying the lead respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3).[2] The Department of Homeland Security has moved for summary affirmance. The respondents' appeal will be dismissed.

We review an Immigration Judge's findings of fact, including credibility determinations, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues,

[1] The respondents are an adult female (A (b)(6)), who is the lead respondent, and her two children (A (b)(6) and A (b)(6)), who are derivative beneficiaries of the lead respondent's application for asylum (Tr. at 10-11).

[2] The Immigration Judge also denied the lead respondent's application for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20,1465U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (IJ at 12). On appeal, the respondents have not meaningfully challenged that aspect of the Immigration Judge's decision, and we thus deem that issue waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (recognizing that aspects of the Immigration Judge's decision that are not meaningfully challenged on appeal are deemed waived before the Board).

including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

As summarized in the Immigration Judge's decision, the lead respondent's applications for asylum and withholding of removal under section 241(b)(3) of the Act are based on her claimed past harm and fear of future persecution on account of her membership in a proposed particular social group, which she defined as persons of K'iche' nationality who are dependent on remittances of money from abroad to survive or meet their basic human needs (IJ at 2-7; Tr. at 15, 130; Respondent's Br. at 2). The lead respondent's son testified that the lead respondent would travel to a bank in order to retrieve remittances sent by her husband in the United States (IJ at 3; Tr. at 101-102). She wore traditional K'iche' clothes and would queue outside the bank with other K'iche' waiting to receive remittances (IJ at 3-4; Tr. at 103-106). The respondents were contacted by telephone by a man who claimed to be an employee of another bank, and who promised them a "good price" and the chance to win a home and vehicle if they deposited money in the man's name at the other bank (IJ at 4; Tr. at 107-110). The respondents agreed and made deposits until they became suspicious and discovered that the man was not a bank employee (IJ at 4; Tr. at 113). After the respondents stopped making deposits, the man began threatening them over the telephone (IJ at 4; Tr. 114-116). The respondents relocated to the United States to avoid harm to anyone in the family (IJ at 6; Tr. at 119). The lead respondent's son changed the SIM card in their telephone, and they received no further contact or threats from the man (IJ at 6; Tr. at 121). The respondents made no attempt to contact authorities to report the fraud, asserting that the authorities did not respond when the respondent's sister had once reported a robbery at her house (IJ at 6; Tr. at 118-119).

On appeal, the respondents argue that the Immigration Judge erred in finding that the lead respondent did not establish past harm rising to the level of persecution, because the death threats made by the man claiming to be a bank employee were specific, credible, and immediate (Respondent's Br. at 4-5). The respondents further argue that the Immigration Judge erred in determining that the lead respondent's proposed particular social group is not cognizable for purposes of asylum and withholding of removal under section 241(b)(3) of the Act, as the group is defined by immutable characteristics and is socially distinct (Respondent's Br. at 5-6). The respondents also assert that, inasmuch as the lead respondent established past persecution on account of a protected ground, she is entitled to a presumption of a well-founded fear of future persecution (Respondent's Br. at 6).

We will uphold the Immigration Judge's denial of the lead respondent's application for asylum because she did not establish past persecution or a well-founded fear of future persecution on account of one of a protected ground enumerated in section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A) (IJ at 7-11). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007).

First, we affirm the Immigration Judge's determination that the lead respondent did not demonstrate past harm rising to the level of persecution (IJ at 7-8). The lead respondent did not claim any prior physical harm in Guatemala (IJ at 7). We agree with the Immigration Judge that the lead respondent did not show that the threats the respondents received were sufficiently menacing and imminent as to rise to the level of persecution, as the respondents were able to sever

contact with the man claiming to be a bank employee, and there is no indication of any inclination or attempts to carry out the threatened harm (IJ at 7-8). *See Lopez v. Sessions*, 886 F.3d 721, 724 (8th Cir. 2018) (collecting cases holding that persecution is an extreme concept, and that unfulfilled threats of physical harm or low level intimidation and harassment are insufficient to establish past persecution); *see also Tegegn v. Holder*, 702 F.3d 1142, 1144 (8th Cir. 2013) (holding that death threats that are exaggerated, non-specific, lacking in immediacy, or not based on a protected ground do not rise to the level of persecution). Inasmuch as the lead respondent did not establish past persecution, she is not entitled to a presumption of a well-founded fear of future persecution (IJ at 10). *See* 8 C.F.R. § 1208.13(b)(1).

Next, we agree with the Immigration Judge's determination that the lead respondent did not establish that her proposed particular social group is cognizable for purposes of asylum or withholding of removal under section 241(b)(3) of the Act (IJ at 8-9). As the Immigration Judge explained, while the lead respondent's proposed group may be defined by certain immutable characteristics, such as the respondents' K'iche' ethnicity, there is insufficient evidence to determine that the proposed group is recognized in Guatemalan society as a distinct subclass or segment of the K'iche' population (IJ at 8-9). *See Matter of M-E-V-G-*, 26 I&N Dec.226, 239 (BIA 2014) ("A particular social group must not be amorphous, overbroad, diffuse, or subjective, and not every 'immutable characteristic' is sufficiently precise to define a particular social group."). Further, even if the lead respondent's proposed particular social group were cognizable, we agree with the Immigration Judge that the lead respondent did not show that her membership in that group was a central reason for the respondents' past harm, rather than merely incidental to some other primary objective, such as pecuniary gain through the fraud perpetrated upon them (IJ at 9). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214.

On appeal, the respondents have not articulated any meaningful challenge to the Immigration Judge's dispositive determinations that the lead respondent did not demonstrate that the government of Guatemala would be unable or unwilling to protect the respondents from future persecution, or that they could not reasonably avoid future harm by relocating to another area of Guatemala (IJ at 9-11). *See Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005); *see also Quinonez-Perez v. Holder*, 635 F.3d 342, 345 (8th Cir. 2011); 8 C.F.R. § 1208.13(b)(2)(ii). We thus deem those issues waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. at 658 n.2. Based on the foregoing, we affirm the Immigration Judge's denial of the lead respondent's application for asylum (IJ at 7-11).

Finally, we turn to the Immigration Judge's denial of the lead respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 11-12). As the Immigration Judge correctly found, because the lead respondent failed to meet the lower burden of proof for asylum, she necessarily cannot meet the higher burden of establishing a clear probability of persecution on account of a protected ground required for withholding of removal under the Act (IJ at 11-12). *See* section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); *Habtemicael v. Ashcroft*, 370 F.3d 774, 780 (8th Cir. 2004). We thus affirm the Immigration Judge's denial of withholding of removal under section 241(b)(3) of the Act (IJ at 11-12).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Shaun Francis Downey, Esquire

ON BEHALF OF DHS: Tannaz Kouhpainezhad, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Omaha, NE

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondents,[1] who are natives and citizens of Guatemala, have appealed from the Immigration Judge's April 12, 2019, decision denying the lead respondent's applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3).[2] The Department of Homeland Security has moved for summary affirmance. The respondents' appeal will be dismissed.

We review an Immigration Judge's findings of fact, including credibility determinations, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues,

[1] The respondents are an adult female (A (b)(6)), who is the lead respondent, and her two children (A (b)(6) and A (b)(6)), who are derivative beneficiaries of the lead respondent's application for asylum (Tr. at 10-11).

[2] The Immigration Judge also denied the lead respondent's application for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20,1465U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (IJ at 12). On appeal, the respondents have not meaningfully challenged that aspect of the Immigration Judge's decision, and we thus deem that issue waived. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (recognizing that aspects of the Immigration Judge's decision that are not meaningfully challenged on appeal are deemed waived before the Board).

including issues of law, discretion, and judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

As summarized in the Immigration Judge's decision, the lead respondent's applications for asylum and withholding of removal under section 241(b)(3) of the Act are based on her claimed past harm and fear of future persecution on account of her membership in a proposed particular social group, which she defined as persons of K'iche' nationality who are dependent on remittances of money from abroad to survive or meet their basic human needs (IJ at 2-7; Tr. at 15, 130; Respondent's Br. at 2). The lead respondent's son testified that the lead respondent would travel to a bank in order to retrieve remittances sent by her husband in the United States (IJ at 3; Tr. at 101-102). She wore traditional K'iche' clothes and would queue outside the bank with other K'iche' waiting to receive remittances (IJ at 3-4; Tr. at 103-106). The respondents were contacted by telephone by a man who claimed to be an employee of another bank, and who promised them a "good price" and the chance to win a home and vehicle if they deposited money in the man's name at the other bank (IJ at 4; Tr. at 107-110). The respondents agreed and made deposits until they became suspicious and discovered that the man was not a bank employee (IJ at 4; Tr. at 113). After the respondents stopped making deposits, the man began threatening them over the telephone (IJ at 4; Tr. 114-116). The respondents relocated to the United States to avoid harm to anyone in the family (IJ at 6; Tr. at 119). The lead respondent's son changed the SIM card in their telephone, and they received no further contact or threats from the man (IJ at 6; Tr. at 121). The respondents made no attempt to contact authorities to report the fraud, asserting that the authorities did not respond when the respondent's sister had once reported a robbery at her house (IJ at 6; Tr. at 118-119).

On appeal, the respondents argue that the Immigration Judge erred in finding that the lead respondent did not establish past harm rising to the level of persecution, because the death threats made by the man claiming to be a bank employee were specific, credible, and immediate (Respondent's Br. at 4-5). The respondents further argue that the Immigration Judge erred in determining that the lead respondent's proposed particular social group is not cognizable for purposes of asylum and withholding of removal under section 241(b)(3) of the Act, as the group is defined by immutable characteristics and is socially distinct (Respondent's Br. at 5-6). The respondents also assert that, inasmuch as the lead respondent established past persecution on account of a protected ground, she is entitled to a presumption of a well-founded fear of future persecution (Respondent's Br. at 6).

We will uphold the Immigration Judge's denial of the lead respondent's application for asylum because she did not establish past persecution or a well-founded fear of future persecution on account of one of a protected ground enumerated in section 101(a)(42)(A) of the Act, 8 U.S.C. § 1101(a)(42)(A) (IJ at 7-11). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007).

First, we affirm the Immigration Judge's determination that the lead respondent did not demonstrate past harm rising to the level of persecution (IJ at 7-8). The lead respondent did not claim any prior physical harm in Guatemala (IJ at 7). We agree with the Immigration Judge that the lead respondent did not show that the threats the respondents received were sufficiently menacing and imminent as to rise to the level of persecution, as the respondents were able to sever

contact with the man claiming to be a bank employee, and there is no indication of any inclination or attempts to carry out the threatened harm (IJ at 7-8). *See Lopez v. Sessions*, 886 F.3d 721, 724 (8th Cir. 2018) (collecting cases holding that persecution is an extreme concept, and that unfulfilled threats of physical harm or low level intimidation and harassment are insufficient to establish past persecution); *see also Tegegn v. Holder*, 702 F.3d 1142, 1144 (8th Cir. 2013) (holding that death threats that are exaggerated, non-specific, lacking in immediacy, or not based on a protected ground do not rise to the level of persecution). Inasmuch as the lead respondent did not establish past persecution, she is not entitled to a presumption of a well-founded fear of future persecution (IJ at 10). *See* 8 C.F.R. § 1208.13(b)(1).

Next, we agree with the Immigration Judge's determination that the lead respondent did not establish that her proposed particular social group is cognizable for purposes of asylum or withholding of removal under section 241(b)(3) of the Act (IJ at 8-9). As the Immigration Judge explained, while the lead respondent's proposed group may be defined by certain immutable characteristics, such as the respondents' K'iche' ethnicity, there is insufficient evidence to determine that the proposed group is recognized in Guatemalan society as a distinct subclass or segment of the K'iche' population (IJ at 8-9). *See Matter of M-E-V-G-*, 26 I&N Dec.226, 239 (BIA 2014) ("A particular social group must not be amorphous, overbroad, diffuse, or subjective, and not every 'immutable characteristic' is sufficiently precise to define a particular social group."). Further, even if the lead respondent's proposed particular social group were cognizable, we agree with the Immigration Judge that the lead respondent did not show that her membership in that group was a central reason for the respondents' past harm, rather than merely incidental to some other primary objective, such as pecuniary gain through the fraud perpetrated upon them (IJ at 9). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214.

On appeal, the respondents have not articulated any meaningful challenge to the Immigration Judge's dispositive determinations that the lead respondent did not demonstrate that the government of Guatemala would be unable or unwilling to protect the respondents from future persecution, or that they could not reasonably avoid future harm by relocating to another area of Guatemala (IJ at 9-11). *See Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005); *see also Quinonez-Perez v. Holder*, 635 F.3d 342, 345 (8th Cir. 2011); 8 C.F.R. § 1208.13(b)(2)(ii). We thus deem those issues waived on appeal. *See Matter of R-A-M-*, 25 I&N Dec. at 658 n.2. Based on the foregoing, we affirm the Immigration Judge's denial of the lead respondent's application for asylum (IJ at 7-11).

Finally, we turn to the Immigration Judge's denial of the lead respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 11-12). As the Immigration Judge correctly found, because the lead respondent failed to meet the lower burden of proof for asylum, she necessarily cannot meet the higher burden of establishing a clear probability of persecution on account of a protected ground required for withholding of removal under the Act (IJ at 11-12). *See* section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); *Habtemicael v. Ashcroft*, 370 F.3d 774, 780 (8th Cir. 2004). We thus affirm the Immigration Judge's denial of withholding of removal under section 241(b)(3) of the Act (IJ at 11-12).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Rafael Tirado, Esquire

ON BEHALF OF DHS: Jeffery D. Lindsay, Assistant Chief Counsel

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Florence, AZ

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

ORDER:

The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

00000029060

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Gregory D. Gorman, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Cassidy, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Cassidy

CASSIDY, Appellate Immigration Judge

This case was last before us on October 20, 2021, when we dismissed the appeal by the respondent, from the Immigration Judge's March 21, 2019, decision denying her applications for asylum and withholding of removal under sections 208 and 241 (b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158,1231(b)(3), and for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The respondent filed a timely motion to reconsider on November 19, 2021. The motion to reconsider will be denied.

A motion to reconsider is "a request that the Board reexamine its previous decision in light of additional arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked." *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006). A motion to reconsider challenges the original decision and alleges that it is defective in some regard. *Id.* The motion must specify the errors of fact or law in the prior decision, and it must be supported by pertinent authority. *See* section 240(c)(6)(C) of the Act, 8 U.S.C. § 1229a(c)(6)(C); 8 C.F.R. § 1003.2(b)(1).

In our decision dated October 20, 2021, we upheld the Immigration Judge's adverse credibility determination as not clearly erroneous, and determined that the respondent had not identified any errors underlying the factual bases for the inconsistencies or otherwise challenged the Immigration Judge's adverse credibility, and therefore she waived her right to contest the issue of credibility.

We conclude that we did not make a legal or factual error in our October 20, 2021, decision to support reconsideration. Although the respondent raises a challenge to the Immigration Judge's adverse credibility determination in her motion to reconsider, as we noted in our prior decision, the respondent did not meaningfully challenge the Immigration Judge's ruling on credibility in her Notice of Appeal or in her appeal brief. Moreover, we do not find any legal or factual error in our determination that the Immigration Judge's adverse credibility finding was based on specific and

cogent reasons and was not clearly erroneous. *See* 8 C.F.R. § 1003.1(d)(3); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). Accordingly, the following order will be entered.

ORDER: The motion is denied.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Juan Reyes, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Houston, TX

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondents[2] have appealed the Immigration Judge's April 18, 2019, decision that denied their application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), as well as protection pursuant to the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The Department of Homeland Security (DHS) has not submitted any opposition to the appeal. The record will be remanded.

The lead respondent, who was deemed credible, testified to physical and psychological abuse by her husband in Honduras. We acknowledge and appreciate the Immigration Judge's decision and reasoning. In denying the respondent's application for relief, the Immigration Judge relied extensively on the former Attorney General's decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). However, subsequent to the Immigration Judge's decision, the current Attorney General vacated the prior *A-B-* decisions in their entirety. *See Matter of A-B-*, 28 I&N Dec. 199 (A.G. 2021). Under these circumstances, and in an abundance of caution, we will remand the record for the Immigration Judge to reevaluate the respondent's current eligibility for relief. *See also Matter*

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The respondents consist of the lead respondent (A (b)(6)) and her minor child (A (b)(6) (b)(6)).

A (b)(6) et al.

of Cruz-Valdez, 28 I&N Dec. 326 (A.G. 2021); *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989). On remand, both parties may submit additional evidence and arguments.[3]

Accordingly, the following order will be entered.

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

[3] On remand, pursuant to the then-Acting EOIR Director's Policy Memorandum 21-25, the DHS should indicate whether the respondent is an enforcement priority and whether the DHS would exercise some form of prosecutorial discretion, such as stipulating to eligibility for relief, agreeing to administrative closure, or requesting termination or dismissal of the proceedings. *See also* EOIR Director's Memorandum 22-03 (Administrative Closure).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

FILED
Jan 25, 2022

Respondents

ON BEHALF OF RESPONDENTS: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Los Angeles, CA

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The respondents, who are natives and citizens of Guatemala, appeal an Immigration Judge's April 19, 2019, decision denying their applications for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT). The Department of Homeland Security (DHS) has not filed a response brief. The appeal will be dismissed.

We review the Immigration Judge's factual findings for clear error. 8 C.F.R. § 1003.1 (d)(3)(i). We review de novo all other issues, including issues of law, discretion, or judgment. 8 C.F.R. § 1003.1 (d)(3)(ii).

Throughout these proceedings, the respondents have claimed past harm and a fear of future harm at the hands of MS-13 gang members who extorted their business and threatened them, and corrupt police officers in collusion with the gang (IJ at 4; Exhs. 3A, 3B, 2C). We adopt and affirm the Immigration Judge's decision denying relief. *See Matter of Burbano,* 20 I&N Dec. 872, 874 (BIA 1994). The Immigration Judge's findings of fact are not clearly erroneous. Moreover, her decision is thorough, well-reasoned, and supported by the legal precedent cited in the decision.

The respondents' single incident of abuse by a police officer where they reported the extortion and threats, without more, is insufficient to establish a likelihood of future torture with the requisite state action (Exh. 3A). *See, e.g., Bellout v. Ashcroft,* 363 F.3d 975, 979 (9th Cir. 2004) (substantial evidence supported the agency's denial of CAT relief where the applicant testified about a single incident of police abuse which occurred ten years prior), superseded by statute on other grounds

as stated in *Khan v. Holder,* 584 F.3d 773, 777 (9th Cir. 2009). The Immigration Judge's determination that the record does not indicate that it is more likely than not that the respondents will face future torture in Guatemala by or with the acquiescence (including willful blindness) of a public official or other person acting in an official capacity is not clearly erroneous. *See Ridore v. Holder,* 696 F.3d 907 (9th Cir. 2012) (ruling that an Immigration Judge's determination regarding the likelihood of future events is subject to review by the Board under a "clearly erroneous" standard); *Matter of Z-Z-O-,* 26 I&N Dec. 586, 589-91 (BIA 2015) (same).

Based on the foregoing, the following order will be entered.

ORDER: The appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 25 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Charlotte Wilder, Associate Counsel

IN VISA PETITION PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, California Service Center

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The petitioner appeals the November 21, 2019, decision of the Director denying the Petition for Alien Relative (Form I-130) submitted on behalf of the beneficiary as the child of a lawful permanent resident. We review all questions arising in appeals from decisions of United States Citizenship and Immigration Services (USCIS) officers de novo. *See* 8 C.F.R. § 1003.1(d)(3). The record will be remanded.

In a Request for Evidence dated June 20, 2019, USCIS instructed the petitioner to submit additional evidence in support of the visa petition, detailing the forms of evidence which might be acceptable. The Director determined that the petitioner did not adequately respond to the request for additional evidence and consequently did not establish the claimed relationship between himself and the beneficiary. The Director accepted that the beneficiary is the petitioner's biological child, but found that the petitioner did not demonstrate that the beneficiary was born in wedlock or legitimated. The Director further concluded that to the extent the beneficiary was a child born out of wedlock, the evidence did not establish that a bona fide parent-child relationship existed prior to the beneficiary's 21st birthday.[2] *See Matter of Vizcaino*, 19 I&N Dec. 644

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See* 8 C.F.R. § 1003.1(a)(4).

[2] "Emotional and/or financial ties or a genuine concern and interest by the father for the child's support, instruction, and general welfare must be shown." 8 C.F.R. § 204.2(d)(2)(iii). The petitioner should provide evidence that before the child reached 21 years of age, father and child

(BIA 1988) (providing that for a father to file a visa petition on behalf of his illegitimate child, the father must establish that he is the biological father *and* that there is a bona fide parent-child relationship).

However, the Director's decision does not address the petitioner's evidence regarding his relationship with the beneficiary, who is still a minor. Such evidence includes the beneficiary's baptism certificate, an affidavit from her guardian, who attests to the petitioner and beneficiary's prior cohabitation, a family photograph, and evidence that the petitioner has sent a significant amount of financial support to the beneficiary's guardian. Under the circumstances of this particular case, we find it appropriate to remand the record to allow the Director to further evaluate the evidence, and to provide the petitioner a final opportunity to submit additional evidence, if necessary. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Director for further consideration of the visa petition consistent with the foregoing opinion.

---

actually lived together, or that the father openly acknowledged the child as his own, or that the father provided for some of the child's needs, or that the father's own behavior demonstrated a genuine concern for the child. *Id.* The types of evidence that may be persuasive, including financial records, medical records, school records, correspondence between father and child, and notarized affidavits of friends, neighbors, school officials, or other persons who are knowledgeable about the relationship, are further described in the regulation. *See id.*

00000029084

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENT: Lindsay Arroyo, Esquire

IN BOND PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Oakdale, LA

Before: Mullane, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mullane

MULLANE, Appellate Immigration Judge

The appeal is summarily dismissed as untimely pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. *See* 8 C.F.R. § 1003.38(b), (c). The Immigration Judge's decision was mailed on September 20, 2021. The appeal was accordingly due on or before October 20, 2021. The Notice of Appeal was filed with the Board of Immigration Appeals on October 30, 2021. The appeal is untimely. The respondent alleges that he was told that he had until October 30, 2021, to file his appeal. However, the Immigration Judge's order clearly states that the appeal is due by October 20, 2021. Accordingly, we decline to grant the respondent's request to accept his untimely appeal. The Immigration Judge's decision is accordingly now final, and the record is returned to the Immigration Court without further Board action. *See* 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

ORDER: The appeal is summarily dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 25, 2022

ON BEHALF OF RESPONDENTS: Joshua Elliot Bardavid, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Gonzalez, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Gonzalez

GONZALEZ, Temporary Appellate Immigration Judge

The respondents[2], natives and citizens of Honduras, appeal an Immigration Judge's decision dated April 29, 2019, which denied their applications for asylum under section 208(b)(1)(A) of the Act, 8 U.S.C. § 1158(b)(1)(A), and the lead respondent's application for withholding of removal under section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3)(A).[3] The Department of Homeland Security (DHS) has not filed a response. The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law,

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The lead respondent is the mother (A (b)(6)). The other respondent and derivative beneficiary is the respondent's son (A (b)(6)). The application for asylum filed by the lead respondent applies to her daughter. *See* section 208(b)(3) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1158(b)(3); 8 C.F.R. § 1208.13(a). All references to the respondent in the singular refer to the lead respondent unless otherwise indicated.

[3] The respondent did not appeal the Immigration Judge's denial of her request for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (IJ at 7-8). Accordingly, we deem this issue waived. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, n. 1 (BIA 2015).

discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the Immigration Judge that the respondent did not meet her burden of proving her eligibility for asylum and withholding of removal (IJ at 4-7). *See* sections 208(b)(1)(B)(i) and 241(b)(3) of the Act; 8 C.F.R. §§ 1208.13, 1208.16.

We agree with the Immigration Judge that the harm the respondent experienced in Honduras, in the form of threats, was not sufficiently severe to rise to the level of persecution (IJ at 6-7; Tr. at 31-32, 36-37). *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (defining persecution as harm akin to confinement, torture, or deprivation so severe it threatens one's life or freedom); *see also Kambolli v. Gonzales*, 449 F.3d 454, 457 (2d Cir. 2006) (indicating that persecution does not encompass all treatment that our society regards as unfair, unjust, or even unlawful or unconstitutional); *Yuan v. U.S. Dep't of Justice*, 416 F.3d 192, 198 (2d Cir. 2005) (persecution is an extreme concept that does not include every sort of treatment our society regards as offensive), *overruled in part on other grounds, Lin v. U.S. Dep't of Justice*, 494 F.3d 296 (2d Cir. 2007). The unfulfilled threats that the respondent received which did not result in harm do not constitute persecution (IJ at 6-7; Tr. at 31-32, 36-37). *See Ci Pan v. U.S. Att'y Gen.*, 449 F.3d 408, 412-13 (2d Cir. 2006) (unfulfilled threats do not constitute past persecution unless the threats are so menacing as to cause actual suffering or harm).

In addition, we agree with the Immigration Judge that the respondent did not establish that her membership in her claimed social groups was or would be "at least one central reason" for the threats and the harm she fears upon her return (IJ at 5-6). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). There is no clear error in the Immigration Judge's nexus finding, and the respondent's general arguments to the contrary are not convincing (IJ at 5-6; Respondent's Br. at 14-19). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011); *Matter of D-R-*, 25 I&N Dec. 445, 453 (BIA 2011) (observing that motive for persecution involves questions of fact). Criminal extortion efforts do not constitute persecution on account of a protected ground when those who threatened or harmed the noncitizen were not motivated by the protected ground. *Cf. Matter of T-M-B-*, 21 I&N Dec. 775 (BIA 1997); *see also Ucelo-Gomez v. Mukasey*, 509 F.3d 70, 74 (2d Cir. 2007). The Immigration Judge's finding that the respondent was threatened not because of her membership in a particular social group, but rather because of criminality, is not clearly erroneous (IJ at 5-6; Tr. at 48). *See Matter of N-M-*, 25 I&N Dec. at 532. The respondent testified that the callers wanted her employer's business for financial gain (IJ at 5; Tr. at 26-27, 33, 48). There is no indication that the callers threatened because of her membership in her particular social groups (IJ at 5-6).

Based on the aforementioned discussion, we agree with the Immigration Judge's conclusion that the respondent did not satisfy the burden of proof required for asylum (IJ at 6-7). 8 C.F.R. § 1208.13(a). Inasmuch as the respondent has not satisfied the lower burden of proof required for asylum, it follows that she not satisfied the clear probability standard of eligibility required for withholding of removal (IJ at 7). *See Ramsameachire v. Ashcroft*, 357 F.3d 169, 183 (2d Cir. 2004).

A (b)(6) et al.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On August 9, 2018, the Immigration Judge issued a decision ordering the respondent removed after the respondent failed to appear at a scheduled hearing. The respondent seeks to challenge the Immigration Judge's decision, but has done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)
(b)(6), A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Rachel E. Carmona, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Louisville, KY

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondents,[1] who are natives and citizens of Guatemala, appeal the Immigration Judge's April 16, 2019, decision denying the lead respondent's applications for asylum and withholding of removal under sections 208(b)(1) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1), 1231(b)(3), as well as for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The respondents' appeal will be dismissed.

We review the factual findings, including the Immigration Judge's credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We will affirm the denial of the lead respondent's application for asylum for the reasons set forth by the Immigration Judge (IJ at 6-11). *Luna-Romero v. Barr*, 949 F.3d 292, 294 (6th Cir. 2020) (discussing noncitizen's burden of demonstrating past persecution or a well-founded fear of future persecution to be eligible for asylum). The Immigration Judge's factual findings are not clearly erroneous, particularly considering his observation that the lead respondent's "testimony [was] completely at odds with her [relief] application and personal statement" (IJ at 7; Tr. at 73-88; Exh. 3).

[1] The respondents are an adult female (A (b)(6)), who is the lead respondent, and her children (A (b)(6) and A (b)(6)), who are derivative beneficiaries of the lead respondent's application for asylum.

We agree with the Immigration Judge's conclusion that the lead respondent did not establish past persecution on account of a protected ground for the reasons stated in his decision (IJ at 7-8; Tr. at 77-80, 94). *See generally Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) ("Only threats of a most immediate and menacing nature can possibly qualify as past persecution."); *Cazares-Hernandez v. Barr*, 757 F. App'x 511, 512-13 (6th Cir. 2019) (noting that a single threat to kidnap and murder an noncitizen as occurred to her brother did not establish the exceptional circumstance qualifying as persecution).

Further, we agree with the Immigration Judge that the lead respondent did not establish that she has a well-founded fear of future harm on account of a protected ground under the Act (IJ at 8-11). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (recognizing that a persecutor's motive is a factual finding subject to clear error). Given the lead respondent's vague and generalized testimony and the absence of corroborating evidence, the Immigration Judge did not clearly err in concluding that the lead respondent's purported fear of gangs, mining companies, or government officials affiliated with mining operations is purely speculative (IJ at 8-11; Tr. at 73-80, 93-94). *Guerrero-Ramirez v. Wilkinson*, 843 F. App'x 681, 683 (6th Cir. 2021) (observing the statutory emphasis on corroborating as asylum claim with reasonably available evidence). Notably, the lead respondent's gang-related fear is not on account of a protected ground, as it concerns the same violence that faces the public at large in Guatemala (IJ at 8-11; Tr. at 93). *See Zaldana Menijar v. Lynch*, 812 F.3d 491, 500 (6th Cir. 2015) (recognizing that the petitioner's "fear of gang violence is certainly justified, but it lacks a nexus to his purported group membership."); *see also Cruz-Guzman v. Barr*, 920 F.3d 1033, 1037-38 (6th Cir. 2019) (recognizing that fear of general gang violence is insufficient for asylum); *Umana-Ramos v. Holder*, 724 F.3d 667, 670 (6th Cir. 2013) (recognizing that general conditions of widespread gang violence is not on account of a protected ground). Nor did the lead respondent establish that she engaged in any highly visible anti-mining political activities to support her alleged fear of mining companies or their supporters (IJ at 8-11; Tr. at 74-75). We thus affirm the denial of asylum for the reasons articulated by the Immigration Judge (IJ at 6-11).

We next turn to the lead respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 11). As the Immigration Judge found, because the lead respondent could not satisfy the lower burden of proof for asylum, she necessarily could not meet the higher burden of demonstrating a clear probability of future persecution for withholding of removal under the Act (IJ at 11-12). *See Guzman-Vazquez v. Barr*, 959 F.3d 253, 273-74 (6th Cir. 2020); *see also Kamar v. Sessions*, 875 F.3d 811, 817 (6th Cir. 2017) (discussing withholding of removal under the Act's clear probability of persecution standard). We thus affirm the Immigration Judge's denial of withholding of removal under section 241(b)(3) of the Act (IJ at 11-12).

Finally, we will affirm the Immigration Judge's denial of the lead respondent's application for protection under the CAT (IJ at 12). We agree with the Immigration Judge's determination that the lead respondent did not demonstrate that it is more likely than not that she will be tortured by or with the acquiescence of Guatemalan authorities, including the concept of willful blindness, given her unsupported, speculative allegations and the absence of evidence that she was ever harmed in Guatemala (IJ at 12). 8 C.F.R. § 1208.18(a)(1); *see Alhaj v. Holder*, 576 F.3d 533, 539

(6th Cir. 2009). We thus affirm the denial of CAT protection for the reasons set forth by the Immigration Judge (IJ at 12).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Rachel E. Carmona, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Louisville, KY

Before: Wetmore, Chief Appellate Immigration Judge

Opinion by Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondents,[1] who are natives and citizens of Guatemala, appeal the Immigration Judge's April 16, 2019, decision denying the lead respondent's applications for asylum and withholding of removal under sections 208(b)(1) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1), 1231(b)(3), as well as for protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) ("CAT"). The respondents' appeal will be dismissed.

We review the factual findings, including the Immigration Judge's credibility determination, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We will affirm the denial of the lead respondent's application for asylum for the reasons set forth by the Immigration Judge (IJ at 6-11). *Luna-Romero v. Barr*, 949 F.3d 292, 294 (6th Cir. 2020) (discussing noncitizen's burden of demonstrating past persecution or a well-founded fear of future persecution to be eligible for asylum). The Immigration Judge's factual findings are not clearly erroneous, particularly considering his observation that the lead respondent's "testimony [was] completely at odds with her [relief] application and personal statement" (IJ at 7; Tr. at 73-88; Exh. 3).

[1] The respondents are an adult female (A (b)(6)), who is the lead respondent, and her children (A (b)(6) and A (b)(6)), who are derivative beneficiaries of the lead respondent's application for asylum.

We agree with the Immigration Judge's conclusion that the lead respondent did not establish past persecution on account of a protected ground for the reasons stated in his decision (IJ at 7-8; Tr. at 77-80, 94). *See generally Japarkulova v. Holder*, 615 F.3d 696, 701 (6th Cir. 2010) ("Only threats of a most immediate and menacing nature can possibly qualify as past persecution."); *Cazares-Hernandez v. Barr*, 757 F. App'x 511, 512-13 (6th Cir. 2019) (noting that a single threat to kidnap and murder an noncitizen as occurred to her brother did not establish the exceptional circumstance qualifying as persecution).

Further, we agree with the Immigration Judge that the lead respondent did not establish that she has a well-founded fear of future harm on account of a protected ground under the Act (IJ at 8-11). *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (recognizing that a persecutor's motive is a factual finding subject to clear error). Given the lead respondent's vague and generalized testimony and the absence of corroborating evidence, the Immigration Judge did not clearly err in concluding that the lead respondent's purported fear of gangs, mining companies, or government officials affiliated with mining operations is purely speculative (IJ at 8-11; Tr. at 73-80, 93-94). *Guerrero-Ramirez v. Wilkinson*, 843 F. App'x 681, 683 (6th Cir. 2021) (observing the statutory emphasis on corroborating as asylum claim with reasonably available evidence). Notably, the lead respondent's gang-related fear is not on account of a protected ground, as it concerns the same violence that faces the public at large in Guatemala (IJ at 8-11; Tr. at 93). *See Zaldana Menijar v. Lynch*, 812 F.3d 491, 500 (6th Cir. 2015) (recognizing that the petitioner's "fear of gang violence is certainly justified, but it lacks a nexus to his purported group membership."); *see also Cruz-Guzman v. Barr*, 920 F.3d 1033, 1037-38 (6th Cir. 2019) (recognizing that fear of general gang violence is insufficient for asylum); *Umana-Ramos v. Holder*, 724 F.3d 667, 670 (6th Cir. 2013) (recognizing that general conditions of widespread gang violence is not on account of a protected ground). Nor did the lead respondent establish that she engaged in any highly visible anti-mining political activities to support her alleged fear of mining companies or their supporters (IJ at 8-11; Tr. at 74-75). We thus affirm the denial of asylum for the reasons articulated by the Immigration Judge (IJ at 6-11).

We next turn to the lead respondent's application for withholding of removal under section 241(b)(3) of the Act (IJ at 11). As the Immigration Judge found, because the lead respondent could not satisfy the lower burden of proof for asylum, she necessarily could not meet the higher burden of demonstrating a clear probability of future persecution for withholding of removal under the Act (IJ at 11-12). *See Guzman-Vazquez v. Barr*, 959 F.3d 253, 273-74 (6th Cir. 2020); *see also Kamar v. Sessions*, 875 F.3d 811, 817 (6th Cir. 2017) (discussing withholding of removal under the Act's clear probability of persecution standard). We thus affirm the Immigration Judge's denial of withholding of removal under section 241(b)(3) of the Act (IJ at 11-12).

Finally, we will affirm the Immigration Judge's denial of the lead respondent's application for protection under the CAT (IJ at 12). We agree with the Immigration Judge's determination that the lead respondent did not demonstrate that it is more likely than not that she will be tortured by or with the acquiescence of Guatemalan authorities, including the concept of willful blindness, given her unsupported, speculative allegations and the absence of evidence that she was ever harmed in Guatemala (IJ at 12). 8 C.F.R. § 1208.18(a)(1); *see Alhaj v. Holder*, 576 F.3d 533, 539

(6th Cir. 2009). We thus affirm the denial of CAT protection for the reasons set forth by the Immigration Judge (IJ at 12).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

00000029102

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Donny M. Young, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On July 16, 2019, the Immigration Judge issued a decision ordering the respondent removed after the respondent failed to appear at a scheduled hearing. The respondent seeks to challenge the Immigration Judge's decision, but has done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

00000029105

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, San Francisco, CA

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On March 21, 2018, the Immigration Judge issued a decision ordering the respondent removed after the respondent failed to appear at a scheduled hearing. The respondent seeks to challenge the Immigration Judge's decision, but has done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

00000029108

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Wael M. Ahmad, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Louisville, KY

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER: The respondent has advised this Board that he no longer desires to pursue his appeal on the merits. Accordingly, the appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent(s) is (are) permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. § 1240.26(c), (f). In the event a respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If a respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If a respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, a respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act,

8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Laura Marie Ortiz, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

A Notice of Appeal (Form EOIR-26) must be filed within 30 calendar days of an Immigration Judge's oral decision or the mailing of a written decision unless the last day falls on a weekend or legal holiday, in which case the appeal must be received no later than the next business day. 8 C.F.R. § 1003.38(b), (c). In the instant case, the Immigration Judge's decision was rendered orally on September 25, 2019. The appeal was accordingly due on or before October 25, 2019. The record reflects that the Notice of Appeal was filed with the Board on October 28, 2019, two days late the due date. The appeal is untimely as the record demonstrates that the appeal was not perfected within the requisite 30-day period. The appeal will be summarily dismissed pursuant to 8 C.F.R. § 1003.1(d)(2)(i)(G). The Immigration Judge's decision is accordingly now final, and the record will be returned to the Immigration Court without further Board action. *See* 8 C.F.R. §§ 1003.3(a), 1003.38, 1003.39, 1240.14 and 1240.15.

Because we are summarily dismissing the appeal as untimely, either party wishing to file a motion in this case should follow the following guidelines: If you wish to file a motion to reconsider challenging the finding that the appeal was untimely, you must file your motion with the Board. However, if you are challenging any other finding or seek to reopen your case, you must file your motion with the Immigration Court. *See Matter of Mladineo*, 14 I&N Dec. 591 (BIA 1974); *Matter of Lopez*, 22 I&N Dec. 16 (BIA 1998). You should also keep in mind that there are strict time and number limits on motions to reconsider and motions to reopen. *See* sections 240(c)(6)(A) & (B) and 240(c)(7)(A) & (C) of the Immigration and Nationality Act, 8 U.S.C. §§ 1229a(c)(6)(A) & (B) and (c)(7)(A) & (C); 8 C.F.R. §§ 1003.2(c)(2), 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997).

In light of the foregoing, the following orders will be entered.

ORDER: The appeal is summarily dismissed.

A (b)(6)

FURTHER ORDER: The record is returned to the Immigration Court without further Board action.

00000029114

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6) A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Pro se

IN REMOVAL PROCEEDINGS
On Remand from a Decision of the United States Court of Appeals for the Ninth Circuit

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

This case is presently before us pursuant to the order of the United States Court of Appeals for the Ninth Circuit dated June 3, 2021. The Ninth Circuit granted the respondent's petition for review of the Board's July 31, 2019, decision in which we dismissed the respondent's appeal. Following remand, neither the respondent nor the Department of Homeland Security has submitted a brief.

The Ninth Circuit found that the Immigration Judge and Board misconstrued the respondent's proposed particular social group, and concluded that a remand to the Immigration Judge is necessary for consideration of the proposed group "Salvadoran men who are not gang members, witnessed a gang crime in El Salvador, and reported that crime to the police." Additionally, the Ninth Circuit held that the respondent established eligibility for withholding of removal under the Convention Against Torture. In light of the foregoing, the record will be remanded to the Immigration Judge to further consider the respondent's eligibility for asylum and withholding of removal, as well as to enter an order granting withholding under the Convention Against Torture. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this order and the order of the Ninth Circuit, and for the entry of a new decision.

00000029117

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Theodore Cox, Esquire

IN REMOVAL PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Grant, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Grant

GRANT, Appellate Immigration Judge

ORDER:

The respondent has filed a motion to reopen these deportation proceedings based on the respondent's acquisition of asylee status under section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158. The Department of Homeland Security has not filed an opposition to the respondent's motion. 8 C.F.R. § 1003.2(g)(3). Considering the respondent's present status as an asylee in this country and the circumstances presented, the motion is granted, and the proceedings are reopened and dismissed.

00000029119

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Ryan Anthony Millett, Esquire

ON BEHALF OF DHS: Daniel Watson, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Brown, Temporary Appellate Immigration Judge[1]

Opinion by Temporary Appellate Immigration Judge Brown

BROWN, Temporary Appellate Immigration Judge

The respondents, natives and citizens of El Salvador, appeal from the decision of the Immigration Judge dated March 12, 2019, denying their application for asylum and withholding of removal under sections 208(b)(1)(A) and 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A), and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT).[2] The Department of Homeland Security opposes the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review

[1] Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. *See generally* 8 C.F.R. § 1003.1(a)(1), (4).

[2] The respondents are an adult woman (A (b)(6)) and her three children. The minor respondents are included as derivative applicants on the lead respondent's asylum application. As they have not filed their own Forms I-589, they are not applicants for withholding of removal. For the remainder of the decision, "respondent" will refer to the lead respondent. Following her divorce, the lead respondent now uses her maiden name, (b)(6) (Tr. at 17; Respondent's Br. at 1, n.1).

all other issues, including issues of law, discretion, or judgment, under the de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims past persecution based on two incidents. First, she claims that she was persecuted on account of her membership in the particular social group of her immediate family as a result of interaction between her son, who is one of the minor respondents, and one of his classmates. Specifically, in March 2015, when the respondent's son was in fifth grade, his classmate attempted to recruit the respondent's son into a gang and to sell drugs (IJ at3). The classmate told the respondent's son a few times that if the respondent's son did not join the gang, he or the gang would hurt someone in the respondent's son family (IJ at 3; Exh. 3-B).

The respondent also claims that she was persecuted on account of her membership in the particular social group of single Salvadoran females. Specifically, in September 2015, two armed gang members who were fleeing from police, demanded that the respondent allow them to hide in her home (IJ at 4). They threatened that if she did not let them in, they would kill her and her family (IJ at 4; Tr. at 22). The gang members hid inside the respondent's home for up to an hour (IJ at 3; Tr. at 22; Exh. 3 at 31). She did not see these gang members again, and she does not know what happened to them (IJ at 4). A few weeks later, she filed a police report, and the respondents left El Salvador the next day (IJ at 4; Tr. at 23; Exh. 3 at 31).

We affirm the Immigration Judge's determination that the respondent has not established past persecution on account of a protected ground. She has not demonstrated that the harm about which she testified rises to the level of persecution or that it occurred on account of a protected ground.

Regarding the threats from the respondent's son's classmate, we agree with the Immigration Judge that these threats do not rise to the level of persecution (IJ at 6-7; Respondent's Br. at 16-17). The respondent has not shown that the threats communicated to her son by his classmate, who was or wanted to be a gang member, were of sufficient severity to constitute a threat to life or freedom (IJ at 7). *See Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n.*(4th Cir. 2019) (determining that verbal threats and a death threat did not constitute past persecution considering that the threats were unspecific "distant verbal threats and intimidation"). The respondent has not shown that the threats were credible or realistic (IJ at 7). They lacked specificity and immediacy. Moreover, after the threats which occurred in March, there was no further contact between the respondent's son and his classmate (IJ at 7; Exh. 3-G). While we acknowledge that threats need not be communicated directly to an individual to constitute persecution of that individual, the respondent acknowledges that she remained unaware of the threats for the remaining several months the family remained in El Salvador and learned of them only after their arrival in the United States (Tr. at 23; Respondent's Br. at 3, 16). *Cf. Portillo Flores v. Garland*, 3 F.4th 615, 628 (4th Cir. 2021).

With respect to the September 2015 incident in which the gang members hid in her home, even if the threat rises to the level of persecution, the respondent has not demonstrated that this harm was on account of a protected ground. We agree with the Immigration Judge that the respondent has not established that her proposed particular social group of single Salvadoran females is cognizable (IJ at 5, 8). *Matter of H-L-S-A-*, 28 I&N Dec. 228, 231 (BIA 2021) ("[whether [a]

proposed group is cognizable under the Act is a question of law that we review de novo"). She has not shown that it has sufficient particularity or social distinction (IJ at 5, 8). The proposed group, comprised of all single females in El Salvador, is a broad and demographically diverse group. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 239 (BIA 2014) (discussing that a proposed social group must not be overbroad or diffuse, and that major segments of the population will rarely constitute a distinct social group). While the size of the group is not dispositive, it is relevant to whether the group is too amorphous to create a benchmark for determining membership. *See Alvarez Lagos v. Barr*, 927 F.3d 236, 253 (4th Cir. 2019). The term "single" is also vague, as it is unclear whether this refers to marital status, relationship status, or joint domicile. *See Matter of W-G-R-*, 26 I&N Dec. 208, 213 (BIA 2014) (noting that characteristics such as poverty and youth are too vague and all-encompassing to set perimeters for a protected group within the scope for the Act).

While we acknowledge the respondent's contention on appeal that particular social groups based on nationality and gender have been found to be cognizable, such a determination is made within the context of their specific societies. For example, the social group of "Somali women" was found to not be "overbroad" because "a factfinder could reasonably conclude that all Somali females have a well-founded fear of persecution based solely on gender" given that female genital mutilation is performed on 98 percent of Somali women (Respondent's Br. at 12). *Hassan v. Gonzales*, 484 F.3d 513, 515, 518 (8th Cir. 2007) (persuasive authority). This social group was particular because being female in Somalia carries other implicit defining characteristics.

On appeal, the respondent also asserts that the "machista culture," the prevalence of violence against women, and the existence of special laws and programs to protect and assist specifically women, demonstrate that her proposed social group is socially distinct (Respondent's Br. at 10-12). However, this evidence pertains to women generally, rather than "single" women, and does not establish that "single" Salvadoran females are perceived as a distinct group by Salvadoran society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 240-41; *see generally Nolasco v. Garland*, 7 F.4th 180, 187-91 (4th Cir. 2021) (discussing social distinction requirements). It is the respondent's burden to establish the necessary social distinction and particularity, and we conclude that she has not done so here. *Matter of W-G-R-*, 26 I&N Dec. at 223.

However, even if this proposed group were a cognizable particular social group, we would nonetheless conclude that the respondent had not demonstrated that it was at least one central reason for the harm about which she testified. Rather, we discern no clear error in the Immigration Judge's finding that the gang members during the September 2015 incident were motivated by their desire to hide from the police and that they selected the respondent's home for ease of access and not on account of a protected ground (IJ at 8). For these reasons, we affirm the Immigration Judge's determination that the respondent has not established past persecution on account of a protected ground.

In the absence of past persecution, the respondent has not established a well-founded fear of persecution on account of a protected ground. She has not shown that her fear of future harm is objectively reasonable.

The respondent highlights on appeal that when her son's friend refused gang recruitment his mother's store was robbed, and that similarly her friend's cousin received death threats after her son refused gang recruitment (Exh. 3 at 25, 28; Respondent's Br. at 18-19). While we acknowledge record evidence that gangs recruit young people and may threaten family members if they refuse, this is insufficient to establish a reasonable possibility that the respondent's son will be recruited, and that when he refuses the gang will harm the respondent, and that the harm will rise to the level of persecution (Exh. 3 at 238-39, 292; Respondent's Br at 19). *See* 8 C.F.R. § 1208.13(b)(2)(i)(B). Moreover, during the approximately 7-month period between when the respondent's son was threatened in March 2015 and when the respondents left El Salvador in October 2015, there were no further threats or communication from his classmate or the gang (IJ at 7; Exh. 3 at 24). The respondent has not presented evidence that anyone is currently interested in harming her.

The respondent has also not established that any harm she fears would be on account of a protected ground. Even assuming that her proposed particular social groups are cognizable and that she is a member of them, she has not established a reasonable possibility that she will be harmed on account of her membership in either of them. For these reasons, we conclude that the respondent has not established a well-founded fear of persecution on account of a protected ground. She has therefore not established that she is eligible for asylum. *See* section 208(b)(1)(B) of the Act. Additionally, because the respondent has not established a well-founded fear of persecution on account of a protected ground, she necessarily has not established a clear probability of persecution on account of a protected ground. She therefore has not established eligibility for withholding of removal. *See Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353 (4th Cir. 2006). Accordingly, we will dismiss the appeal.

ORDER: The appeal is dismissed.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6) A (b)(6)
(b)(6) A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Douglas Uri Rosenthal, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, New York, NY

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The lead respondent (hereafter referred to as "the respondent") and her children, natives and citizens of Guatemala, have appealed from the Immigration Judge's decision dated March 25, 2019, denying the respective applications for asylum and withholding of removal under sections 208(b)(1)(B) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(B) and 1231(b)(3) and protection under the regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100–20, 1465 U.N.T.S. 85 (entered into force for United States Nov. 20, 1994) (CAT), filed by each of the respondents (Exhibits 2A-2C). The appeal will be dismissed.

On appeal, the respondents argue that they presented a credible claim and established a well-founded fear of persecution based on the particular social groups delineated by the lead respondent (Respondents' Brief at 4-7; IJ at 5-6). We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge for the reasons stated therein (IJ at 4-7).[1] *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). On appeal, the

[1] While this Board affirms the outcome of the Immigration Judge's decision in this case, we do not rely on the now-vacated decision of the Attorney General in *Matter of A-B-*, 27 I&N Dec. 316

respondents renew their claims of eligibility for asylum or withholding of removal based on two of the particular social groups they raised below. Specifically, the respondents argue they are entitled to relief as members of the groups of "Guatemala mothers who cannot properly care for their epileptic children due to the inferior healthcare system in Guatemala," and "victims of gang violence in Guatemala" (Respondents' Brief at 4-6).[2] However, we agree with the Immigration Judge's conclusion that these two social groups are circularly defined and thus impermissible as a basis for asylum or withholding of removal (IJ at 5-6). *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 236 n.11 (BIA 2014).

As these conclusions are dispositive of the respondents' asylum and withholding of removal claims, we need not reach related arguments on appeal regarding those forms of relief (Respondents' Brief at 7-9). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach). On appeal, the respondents have not meaningfully challenged the Immigration Judge's decision to deny their CAT claims (IJ at 7; Respondents' Brief).

Accordingly, the following order will be entered.

ORDER: The respondents' appeal is dismissed.

(A.G. 2018), which was cited in the Immigration Judge's decision (IJ at 5). *See Matter of A-B-*, 28 I&N Dec. 307 (A.G. 2021).

[2] We do not reach other groups or bases for relief discussed by the Immigration Judge, as they have not been challenged on appeal. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (when an alien fails to substantively appeal an issue addressed in an Immigration Judge decision, that issue is waived).

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Leonel U. Vasquez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On April 22, 2019, the Immigration Judge issued a decision ordering the respondents removed after the respondents failed to appear at a scheduled hearing. The respondents seek to challenge the Immigration Judge's decision, but have done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)
(b)(6), A (b)(6)

Respondents

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENTS: Leonel U. Vasquez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Arlington, VA

Before: Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mahtabfar

MAHTABFAR, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On April 22, 2019, the Immigration Judge issued a decision ordering the respondents removed after the respondents failed to appear at a scheduled hearing. The respondents seek to challenge the Immigration Judge's decision, but have done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). Under these circumstances, the Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Mayra Lorenzana-Miles, Esquire

ON BEHALF OF DHS: Theresa Bross, Assistant Chief Counsel

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Detroit, MI

Before: Greer, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Greer

GREER, Appellate Immigration Judge

The respondent, a native and citizen of Mexico, appeals the Immigration Judge's June 10, 2019, decision denying his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b). The Department of Homeland Security opposes the appeal. The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the clearly erroneous standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including questions of judgement, discretion, and law, de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Pursuant to our de novo standard of review, we agree with the Immigration Judge's decision that the respondent is ineligible for cancellation of removal under section 240A(b) of the Act, as the respondent did not establish that his qualifying relative children will suffer "exceptional and extremely unusual hardship" if he is removed to Mexico. Section 240A(b)(1)(D) of the Act; section 240(c)(4)(A)(i) of the Act, 8 U.S.C. § 1229a(c)(4)(A)(i); *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001); *cf. Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

The respondent testified that his wife, who is a DACA recipient, and his United States citizen children will stay here if he is removed to Mexico (IJ at 2, 5; Tr. at 28, 71). The respondent is the primary breadwinner, and his wife only worked part-time, seasonally (IJ at 5-6; Tr. at 23-25, 29-31, 42-44). The Immigration Judge acknowledged that the loss of respondent's income would have a negative financial impact, likely requiring his wife and children to change their lifestyles, including moving to a smaller home (IJ at 5-6; Tr. at 24-25, 28-30, 34-35, 73-74). However, the Immigration Judge found that the respondent's wife was taking steps to increase her income in

anticipation of the respondent's removal, including plans to begin a nail technician apprenticeship soon after the respondent's individual hearing (IJ at 6; Tr. at 37-41, 43-46).

The Immigration Judge also found that the respondent's youngest child has a moderate expressive language delay (IJ at 6; Tr. at 25-26, 48-51, 77-78; Exh. 4). However, the documentation submitted reflects a favorable prognosis in that the youngest child's speech delay is not anticipated to be a structural long-term problem and was being addressed through speech therapy prescribed for a 12 week period (IJ at 6-7; Tr. at 26, 48-52, 77-78).

The Immigration Judge's factual findings are not clearly erroneous (IJ at 1-7). 8 C.F.R. §§ 1003.1(d)(3)(i), (iv). Thus, given the foregoing, we affirm the Immigration Judge's holding that the respondent did not establish his removal would result in exceptional and extremely unusual hardship to his qualifying relatives (IJ at 5-7). Section 240A(b)(1)(D) of the Act; section 240(c)(4)(A)(i) of the Act. While the respondent's family will certainly face emotional hardship due to being separated from the respondent and financial hardship, these hardships in the aggregate are not "substantially beyond the ordinary hardship that would be expected when a close family member leaves this country" (IJ at 5-7).[1] *Matter of Monreal*, 23 I&N Dec. at 62.

Because the respondent did not establish that his removal will cause exceptional and extremely unusual hardship to a qualifying relative, we need not consider whether the respondent established the necessary continuous physical presence of not less than 10 years (IJ at 4; Respondent's Br. at 11-14). Section 240A(b)(1)(A), 8 U.S.C. § 1229b(b)(1)(A); section 240A(d)(1), 8 U.S.C. § 1229b(d)(1); *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021); *Pereira v. Sessions*, 138 S. Ct. 2105 (2018).

The Immigration Judge granted the respondent's application for voluntary departure, and the record reflects that the respondent paid the voluntary departure bond. We will therefore reinstate the grant of voluntary departure.

Accordingly, the following orders will be entered.

ORDER: The appeal is dismissed.

---

[1] We disagree with the respondent that his lack of alternative means for legal immigration "weighs heavily" in favor of determining that he has established the requisite level of hardship (Respondent's Br. at 6-10). The respondent claims to have last entered the United States in 2007. He does not dispute that he entered unlawfully and is subject to removal under section 212(a)(6)(A)(i) of the Act, 8 U.S.C. § 1182(a)(6)(A)(i), as charged (IJ at 1). As a consequence, he is subject to inadmissibility under section 212(a)(9)(C)(i)(I) of the Act, which does not in itself, or in combination with the emotional and financial hardships described, reach the level of exceptional or unusual hardship under the circumstances in this case. *Cf. Matter of Recinas*, 23 I&N Dec. at 470-73 (stating that the hardship analysis is "cumulative" and weighing numerous hardship factors, including the fact that the respondent was a single parent, who had no alternative means of immigrating in the foreseeable future and no immediate family in her native country).

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent(s) is (are) permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. § 1240.26(c), (f). In the event a respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If a respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If a respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, a respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the noncitizen provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to a noncitizen who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).

00000029135

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Respondent

FILED
Jan 26, 2022

ON BEHALF OF RESPONDENT: Ricardo Ramirez, Esquire

IN REMOVAL PROCEEDINGS
On Appeal from a Decision of the Immigration Court, Charlotte, NC

Before: Mann, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Mann

MANN, Appellate Immigration Judge

ORDER:

The appeal is summarily dismissed under the provisions of 8 C.F.R. § 1003.1(d)(2)(i)(F), (H). On September 12, 2019, the Immigration Judge issued a decision ordering the respondent removed after the respondent failed to appear at a scheduled hearing. The respondent seeks to challenge the Immigration Judge's decision, but has done so by filing an appeal with the Board, rather than by filing a motion to reopen with the Immigration Judge in accordance with section 240(b)(5)(C) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(b)(5)(C). The Board lacks jurisdiction over this appeal. *See Matter of Guzman*, 22 I&N Dec. 722 (BIA 1999); 8 C.F.R. § 1240.15. Accordingly, the record is returned to the Immigration Court without further Board action.

NOT FOR PUBLICATION

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

MATTER OF:

(b)(6), A (b)(6)

Beneficiary

(b)(6), Petitioner

FILED
JAN 26 2022

ON BEHALF OF PETITIONER: Pro se

ON BEHALF OF DHS: Michael Ammerman, Associate Counsel

IN VISA PROCEEDINGS
On Appeal from a Decision of the Department of Homeland Security, California Service Center

Before: Couch, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Couch

COUCH, Appellate Immigration Judge

The petitioner has appealed from the November 22, 2019, decision of the U.S. Citizenship and Immigration Services (CIS) Director, denying the visa petition which was submitted on behalf of the beneficiary, as the child of a lawful permanent resident. We review all questions arising in appeals from decisions of CIS officers de novo. *See* 8 C.F.R. § 1003.1(d)(3)(iii). The appeal will be dismissed.

The Director instructed the petitioner to submit additional evidence in support of the visa petition, detailing the forms of evidence that might be acceptable. Specifically, the Director's April 30, 2019, Request for Evidence (RFE) requested secondary evidence to support the beneficiary's birth certificate, which reflected a delayed registration date. The Director indicated the types of secondary evidence that might be acceptable. The Director also informed the petitioner of the option of pursuing DNA testing to prove the claimed relationship. We agree with the Director for the reasons stated in the decision that the evidence submitted in response to the RFE did not establish the claimed relationship between the petitioner and the beneficiary.

The petitioner has proffered additional evidence on appeal; however, we note that where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, this Board will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Moreover, no DNA test results have been submitted to date, which may have warranted a remand. The petitioner may file a new visa petition on the beneficiary's

behalf that is supported by competent evidence, including DNA evidence, that the beneficiary is entitled to the status sought under the immigration laws. Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.