

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
31 HOPKINS PLAZA, SUITE 440
BALTIMORE, MARYLAND 21202

IN THE MATTER OF)
)
 [REDACTED])
)
 ("Respondent"))
_____)

File No: [REDACTED]

IN REMOVAL PROCEEDINGS

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE
June 11, 2009 1:00 PM EST

CHARGES(S): Immigration and Nationality Act § 212(a)(6)(A)(i), as one who is present in the United States without being admitted or paroled, but who arrived in this country at any time or place other than as designated by the Attorney General.

APPLICATION(S): In relief pursuant to the Immigration and Nationality Act § 208, Asylum; Immigration and Nationality Act § 241(b)(3), Withholding of Removal; Convention Against Torture, 8 CFR § 1208.16.

ON BEHALF OF THE RESPONDENTS

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ON BEHALF OF THE GOVERNMENT

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Oral Decision of the Immigration Judge

This is a removal case involving a thirteen year old male alien, native and citizen of El Salvador. He was served with a Notice to Appear, dated November , 2007, is a part of this record as Exhibit 1. The Notice to Appear indicates that the respondent is not a citizen or national of the United States, but a native and citizen of El Salvador. Indication the respondent arrived in the United States at or near Brownsville, Texas on or about November 1, 2007, and at that time he was not admitted or paroled after inspection by an immigration officer. Based thereon, it is alleged that the respondent is removable from the United States under § 212(a)(6)(A)(i) as one who is present in the United States without being admitted or paroled who arrived in this country at any time or place other than as designated by the Attorney General.

The respondent appeared before the Court and admitted the allegations contained in the charging document and conceded removability as charged based on the respondent's admission to the allegations contained in the charging document and his concession of removability. The Court finds that the respondent's removability has been established by evidence that is clear and convincing as is required under § 240(c) of the Immigration and Nationality Act. See also *Woodby v. INS*, 385 U.S. 276 (1966) [decided in the context of deportation proceedings].

Turning to the respondent's applications for relief, I will note that respondent has submitted an application for asylum on Form I-589, which is a part of this record as Exhibit 2. The respondent's request for asylum is deemed simultaneous an application for withholding a removal under § 241(b)(3) and relief pursuant to the convention against torture where specifically requested. I will note that the respondent seeks 241(b)(3) cat relief as well as relief under § 208 of the Immigration and Nationality Act.

The standards of the law regarding eligibility for asylum is clearly set forth in the INA. At § 208, the asylum applicant must demonstrate he's a refugee within the meaning of § 101(a)(42)(A) of the Act. That section of the Act provides in pertinent part that a refugee is one who is unwilling or unable to return to his country of citizenship or last official residence because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." A request for asylum may be based on past persecution or a well-founded fear of persecution. See for example *Matter of Chen*, ___ INA December 16 (1989). An asylum applicant may meet his burden of showing a well-founded fear of persecution by showing merely a 10% possibility of harm on account of either race, religion, nationality, membership in a particular social group or political opinion. See for example, *INS v. Cardoza*, ____, 480 U.S. 421 (1987).

Eligibility for withholding of removal under 241(b)(3) requires a respondent to show that it is more likely than not that he would be persecuted on account of his race, religion, nationality, membership in a particular social group or political opinion. As to relief pursuant to the convention against torture, the applicant would have to demonstrate that it is more likely than not that he would be subjected to severe pain or suffering, whether physical or mental, and that such severe pain or suffering is inflicted for such purposes of obtaining from that individual or third person information or confession or punishing that individual for an act he or she or third person has committed or is suspected of having committed. The severe pain or suffering may be inflicted for purposes of intimidating or coercing an individual or third person or imposed for

any reason based on discrimination of any kind. Most significantly, the severe pain and suffering has to be inflicted by or at the instigation of or with the consent or acquiescence of a public official or the person acting in an official capacity. See 8 CFR § 1208.18(a)(1).

I have heard the respondent's testimony throughout these proceedings. He has testified in detail as to his circumstances. Principally, that he suffered from harm from a gang in El Salvador referred to as MS 13. He recalls having been beaten up as early as age 10 years old. He recalls that his brother was killed when his brother was 16 and he, the respondent, was only 10. He recalls having been attacked frequently and repeatedly by members of MS 13 who were motivated to harm him and his family because his brother, [REDACTED], refused to join the MS 13 gang in the area that they lived in in El Salvador. I will adopt the testimony given by the respondent as fact in this record. This testimony was detailed and credible, internally consistent, as well as consistent with the lengthy written statement that he has offered in these proceedings. His testimony is also supported by detailed and credible statements by his mother, his father and a brother who were present in court to testify on his behalf. Additionally, the respondent's claim of the pervasive influence of the gangs in El Salvador is supported by an expert affidavit from Dr. Harry Vanden, as well as a lengthy statement from Dr. Gorin who has been called in to support the respondent in his claim.

The case is well documented as well by substantial country condition information showing the prevalence of gang activity in El Salvador including the International Human Rights Clinic Report, called No Place to Hide – Gang State and Clandestine Violence in El Salvador. That report clearly documents the prevalence and significant threat of the gangs in El Salvador. That report makes it clear in no uncertain terms that individuals who have become targets of the wrath of the gangs in El Salvador have “no place to hide.” That report is supported as well by the State Department Country Report offered in these proceedings which makes it clear as well that throughout recent years “protection of human rights (in El Salvador) was undermined by widespread violent crime including gang related violence, impunity and corruption.” See State Department Country Report. The reports combined with the report of Dr. Vanden make it clear that the authorities in El Salvador have been unable to address the issue of pervasive gang violence and that, as a result, numerous individuals have been murdered just under the circumstances that the young [REDACTED] has described before the Court today.

My charge today is to reach a determination as to whether or not this young man, currently age 13, demonstrates that he has been persecuted in the past for one of the reasons set forth at INA § 101(a)(42)(A) and whether or not he has a well-founded fear of further harm if he were to return. The parties before the Court stipulate that the respondent has suffered past persecution at the hands of MS 13 in El Salvador. The sole issue before the Court is whether or not the respondent can establish that the persecution he experienced in the past - and that which he has a well-founded fear of - is on account of one of the bases set forth at INA § 101(a)(42)(A). Respondent prevails upon the Court to find that, while they acknowledge the decision of the Board of Immigration Appeals in S-E-G- and [E-A-G-], in those cases the respondents were unable to establish anything other than a “amorphous” group. The respondent states that he is able to establish that he is a member of a particular social group, mainly “subset of nuclear [REDACTED] family at which MS 13 directed its persecution because of [REDACTED] (the respondent's brother) refusal to join MS 13.” Respondent indicates that he meets his burden of establishing particularity and visibility unlike the respondents in [E-

A-G-] and S-E-G-. He prevails upon the Court to find that he is a member of a family which is a well-defined group and that it's the most visible social group, and that the respondent was clearly attacked on the basis of his membership in the family.

I specifically find that the case of [REDACTED] is distinguished from the case S-E-G- and [E-A-G-] in that the respondent has indeed established that he is a member of a recognized social group, mainly the [REDACTED] family. The evidence of record shows that the [REDACTED] has been specifically targeted by MS 13 in El Salvador and were mistreated in the worst way resulting in the death of young [REDACTED], the respondent's brother. The respondent was only 10 years old at that time and he appears before the Immigration Court a young man of 13 years old, having experienced absolutely harrowing circumstances in El Salvador. I will employ the reasonable person standard to reach a determination as to whether or not an individual in those circumstances would experience fear. Indeed, the facts of the instant case demand that I use the reasonable child standard to reach a determination. Any child who has experienced what this respondent has gone through has a reasonable fear of further harm. Indeed, the particular susceptibility of the child was demonstrated in the respondent's testimony that he was forced to leave his homeland and come to the United States, and has indicated to this Court that he has nowhere else to go. This respondent has made it clear that he has nowhere else to relocate to in El Salvador. He has established as well that MS 13's influence is so pervasive that it has resulted in the death of his brother and the unwillingness of the authorities to assist the family to such an extent that this young man was scared out of his wits, left El Salvador, came to the United States and clearly has nowhere else to go in El Salvador where he would be free from the wrath of MS 13. In sum, I will find that the respondent meets his burden under § 208 of the Immigration and Nationality Act. As to the exercise of discretion, I will note that the sole adverse factor present in his case is the respondent's illegal entry into the United States and his remaining in this country since his arrival. That adverse factor is counter-balanced by the fact that the respondent is recognized as a genuine refugee within the meaning of § 101(a)(42)(A) and I will find therefore that he merits asylum and by favorable exercise of discretion shall so order.

ORDER

IT IS ORDERED that respondent's application for asylum under § 208 of the Immigration and Nationality Act be and the same is hereby **APPROVED**.

Immigration Judge Phillip T. Williams, Baltimore, MD, June 11, 2009.