

Falls Church, Virginia 22041

File: - Ft. Snelling, MN

Date: APR 13 2018

In re: M M T

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Eren Sutherland, Esquire

ON BEHALF OF DHS: Courtney Campbell
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a native and citizen of Senegal, appeals from the Immigration Judge's October 19, 2017, 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), as well as his request for protection under the Convention Against Torture, 8 C.F.R. §§ 1208.16(c), 1208.17-.18. The appeal will be sustained, and the record will be remanded.¹

This Board must defer to the Immigration Judge's factual findings, including findings as to the credibility of testimony, unless they are clearly erroneous. 8 C.F.R. § 1003.1(d)(3)(i); *see Matter of Z-Z-O-*, 26 I&N Dec. 586 (BIA 2015). We review questions of law, discretion, and judgment de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent claims that he is eligible for asylum and related protection from removal because he has a well-founded fear and a clear probability of future persecution in Senegal based on his membership in particular social groups comprised of "individuals possessed by spirits or demons" and "schizophrenic individuals who exhibit erratic behavior." He also asserts that he will more likely than not be tortured if he is removed to Senegal.

We disagree with the Immigration Judge that the respondent did not establish a cognizable particular social group (IJ at 4). Rather, the record establishes that "schizophrenic individuals who exhibit erratic behavior" satisfies the particularity, immutability, and social distinction requirements (Respondent's Br. at 13-20).² *See, e.g., Temu v. Holder*, 740 F.3d 887, 892-97 (4th Cir. 2014) (finding that "individuals with bipolar disorder who exhibit erratic behavior" was a cognizable particular social group); *Matter of M E V G-*, 26 I&N Dec. 227 (BIA 2014);

¹ The respondent has not appealed from the Immigration Judge's determination that he was competent for purposes of these removal proceedings (IJ at 2-3; Tr. at 58). *See Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).

² A group comprised of "individuals possessed by spirits or demons" is not a cognizable particular social group because it is derived from superstition rather than actual events or circumstances.

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), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018). The record reflects that the respondent has a mental health diagnosis of schizophrenia, which is an immutable characteristic despite the fact that medication may control his symptoms (Exhs. 6, 17-A; Respondent's Br. at 14). The record also contains evidence that Senegalese society perceives mentally ill individuals as possessed and subjects them to social stigmas, thus satisfying the social distinction requirement (Respondent's Br. at 15-18). Additionally, while the Immigration Judge found that the group was "too large and diverse," we view the group as having definable boundaries based on the common set of schizophrenia symptoms, which narrows the group from a broad one comprised of "individuals with mental illness" (IJ at 5; Respondent's Br. at 18-20).

Further, the Immigration Judge's determination that the respondent was not a member of the group "schizophrenic individuals who exhibit erratic behavior" is clearly erroneous (IJ at 4-5). *See Matter of A-R-C-G-*, 26 I&N Dec. 388, 391 (BIA 2014) (the question whether a person is a member of a particular social group is a finding of fact we review for clear error). The fact that the respondent's behavior was controlled by medication at the merits hearing does not mean that he would not exhibit erratic behavior in Senegal if, as he claims, he will not have access to his medication (Respondent's Br. at 20-21). In light of the foregoing, the respondent has established that he is a member of a cognizable particular social group comprised of "schizophrenic individuals who exhibit erratic behavior."

The Immigration Judge denied the respondent's application for asylum under section 208 of the Act as a matter of discretion (IJ at 3-4). However, in doing so, it is unclear whether the Immigration Judge adequately balanced the various factors relevant to a discretionary determination as required by *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987) (Respondent's Br. at 43-48). Those factors include, as relevant here, general humanitarian considerations, such as the alien's tender age or poor health, as well as the respondent's risk of persecution. *See Matter of Pula*, 19 I&N Dec. at 473-74. Although the Immigration Judge properly considered the respondent's lengthy criminal history in denying asylum as a matter of discretion, the Immigration Judge was also required to consider these other factors relevant to the discretionary determination.

In this regard, the respondent's eligibility for asylum is unclear on this record, and the issue of eligibility for asylum is important, as *Matter of Pula*, 19 I&N Dec. at 473-74, requires that in assessing the issue of discretion, the Immigration Judge must consider the respondent's risk of persecution. We acknowledge that the Immigration Judge addressed the merits of the respondent's application for withholding of removal under section 241(b)(3) of the Act, and determined that he did not establish a clear probability of future persecution in Senegal on account of a statutorily enumerated ground (IJ at 4-7). However, the standard for withholding of removal is higher than for asylum. *See Matter of Pula*, 19 I&N at 474 ("a situation of particular concern involves an alien who has established statutory eligibility for asylum but cannot meet the higher burden required for withholding of deportation").

In sum, we cannot affirm the denial of asylum in this matter because respondent has established that he is a member of a cognizable particular social group, and the Immigration Judge did not

adequately address discretion under *Matter of Pula*. We will therefore remand the record for reconsideration of the respondent's eligibility for asylum.


On remand, the Immigration Judge should address whether the respondent has a well-founded fear of future persecution by the government of Senegal, or individuals that the government is unable or unwilling to control, on account of his membership in a particular social group comprised of "schizophrenic individuals who exhibit erratic behavior." In doing so, the Immigration Judge should address whether the harm that the respondent fears rises to the level of persecution, including his fear of solitary confinement, forced medical treatment, and severe economic deprivation (Respondent's Br. at 24-30). We agree with the Immigration Judge that the respondent's witness is not an expert in mental health in Senegal; however, her testimony and declaration may still be afforded appropriate weight based on her general knowledge about Senegal (IJ at 7; Exh. 17-B). In this regard, the Immigration Judge should consider the witness's statements that mentally ill individuals are often isolated in the family home and forced to undergo harmful medical procedures, a practice that occurred in the respondent's own family when his mentally ill aunt was locked in her home for many years (Tr. at 110-11; Exh. 17-B at 72-73). The Immigration Judge should also assess the respondent's claim that "State-supported mental health institutions are extremely limited in Senegal and use traditional healers who implement harmful treatment practices," especially insofar as it may relate to whether the government of Senegal is unable or unwilling to control any future persecution to the respondent (Exh. 14, country conditions evidence; Respondent's Br. at 29). Additionally, the Immigration Judge should reconsider the respondent's pattern and practice claim (Respondent's Br. at 34-37). We emphasize that the burden of proof with regard to asylum is whether the respondent has a well-founded fear of future persecution, which is a lesser burden of proof than the clear probability standard for withholding of removal.

The Immigration Judge should also, if necessary, reconsider whether the respondent is deserving of asylum as a matter of discretion. On this record, we cannot assess whether, if the respondent is statutorily eligible for asylum, the adverse factors cited by the Immigration Judge were egregious enough to outweigh the danger of persecution. *See Matter of Pula*, 19 I&N at 474.

We will hold in abeyance the respondent's appeal of the Immigration Judge's determination that he did not establish a clear probability of future persecution in Senegal or that he will not more likely than not be tortured by or with the acquiescence of an official of the government of Senegal. We express no opinion regarding the ultimate disposition of these proceedings. Accordingly, the following orders are entered.

ORDER: The respondent's appeal is sustained.

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


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