November 1, 2024

Sent via Public Access Link

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2150
Falls Church, VA 22041

Re: Freedom of Information Act Request for EOIR Guidance on the Family Unity Provision; Expedited Processing Requested

Dear Freedom of Information Officer:

The Center for Gender & Refugee Studies ("CGRS") submits this request pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to obtain information regarding the Executive Office for Immigration Review's ("EOIR") interpretation of the family unity provisions of the Circumvention of Lawful Pathways ("CLP") Rule, 88 Fed. Reg. 31,314 (May 16, 2023), and the Securing the Border ("STB") Rule, 89 Fed. Reg. 48,710 (June 7, 2024). *See* 8 C.F.R. §§ 1208.33(c), 1208.35(c) (establishing the family unity provisions).

Both the CLP and STB Rules render certain asylum seekers ineligible for asylum, based largely on the date and manner of their entry to the United States. *See* 8 C.F.R. §§ 1208.33(a)(1); 1208.35(a)(1). Both rules also contain an identically worded provision stating that, in certain circumstances, an asylum seeker who would otherwise be subject to the CLP or STB Rule can regain eligibility for asylum if they have derivatives who are either outside the United States or who are present in the United States but unable to independently qualify for protection from removal. 8 C.F.R. §§ 1208.33(c), 1208.35(c). This "family unity" provision is only assessed in removal proceedings conducted by EOIR.

CGRS seeks a fee waiver of any fee imposed by the agency because the records sought will contribute to the public's understanding of EOIR's operations and release of the information is not in CGRS's commercial interest.

I. Request for Information

CGRS seeks records[1] prepared, received, transmitted, collected, or maintained by EOIR as described below:

[1] For purposes of this request, unless otherwise specified, the term "records" includes but is not limited to all communications, correspondence, directives, documents, data, videotapes, audiotapes, e-mails, faxes, files, guidance, guidelines, standards, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, spreadsheets, charts, rules, manuals, technical specifications, training materials, and studies, including records kept in written form, or electronic format on computers and/or other electronic storage devices, electronic communications, including text messages, and/or videotapes, as well as any reproductions thereof that differ in any way from any other reproduction, such as copies containing marginal notations.

1. Any and all guidance or other records, formal or informal, issued to immigration judges regarding the scope, interpretation, or application of the family unity provision established by the CLP Rule at 8 C.F.R. § 1208.33(c). This shall include guidance on the procedures to be utilized by immigration judges when assessing whether the family unity provision may be relevant or should be applied in a case.

2. Any and all guidance or other records, formal or informal, issued to immigration judges regarding the scope, interpretation, or application of the family unity provision established by the STB Rule at 8 C.F.R. § 1208.35(c). This shall include guidance on the procedures to be utilized by immigration judges when assessing whether the family unity provision may be relevant or should be applied in a case.

3. Any records regarding the implementation of the guidance described in (1) and (2).

CGRS requests that EOIR proactively disclose the records requested above pursuant to 5 U.S.C. § 552(a)(2) and publish these records to its electronic reading room. Section 552(a)(2)(B) requires the agency to proactively make available to the public "statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register." Section 552(a)(2)(C) requires the agency to proactively make available to the public "administrative staff manuals and instructions to staff that affect a member of the public." Both provisions apply here. The guidance is also of significant interest to the public at large. *See infra* Section IV(1).

II. Format of Production

CGRS seeks responsive electronic records in a machine-readable format with all metadata and load files. We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. CGRS asks that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

III. Expedited Processing

CGRS seeks expedited treatment for this FOIA request because there is an "urgency to inform the public concerning actual or alleged Federal Government activity." 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 6 C.F.R. § 5.5(e)(1)(ii).

The family unity provision presents a significant shift in asylum processing and there is an urgent need to inform the public, asylum seekers, and legal service providers about the manner in which the family unity provision is being implemented. Asylum seekers, many of whom proceed pro se, must already navigate a complex set of eligibility requirements; the family unity provision is an unprecedented mechanism that in many cases will serve as the only avenue for restoring eligibility for asylum. Understanding how the family unity provision is interpreted will allow asylum seekers and, if applicable, their legal representatives to better assess their eligibility for asylum and prepare their cases with improved awareness of the governing standards.

The family unity provision also presents significant ethical questions for attorneys representing multiple family members in a removal proceeding. This request will shed light on EOIR's understanding of the family unity provision, helping attorneys provide better counsel to their clients and meet their ethical obligations. It is essential that asylum seekers and other interested stakeholders have a clear understanding of how the family unity provision is being interpreted by EOIR.

Additionally, the CLP, STB, and the overall asylum system is currently a subject of ongoing intense media and public interest.[2] Recent polling has shown immigration and asylum to be among the top issues of concern to Americans.[3] Expedited processing is thus warranted.

The undersigned hereby certifies that the foregoing is true and correct to the best of my knowledge and belief.

IV. Fee Waiver Request

CGRS seeks a fee waiver on the grounds that disclosure of the requested records is in the public interest and is "likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor." 5 U.S.C. § 552(a)(4)(A)(iii).

1. *Disclosure of the Information is in the Public Interest*

The public interest criterion is satisfied when (1) the request concerns operations or activities of the government; (2) disclosure is likely to contribute to an understanding of government operations or activities; (3) disclosure contributes to an understanding of the subject by the public at large; and (4) disclosure is likely to contribute significantly to such understanding. 6 C.F.R. § 5.11(k)(2) (2017); *see also Judicial Watch, Inc., v. U.S. Dep't of* Justice, 365 F.3d 1108, 1126 (D.C. Cir. 2004). This request meets all four criteria.

First, CGRS seeks information that concerns the operations of EOIR, a government agency. In particular, CGRS seeks information about how the agency interprets and applies the family unity provision. The requested information will shed light on how immigration judges determine

[2] Jazmine Ulloa & Hamed Aleaziz, *Whether Harris or Trump Wins, Seeking Asylum in the U.S. May Never Be the Same*, N.Y. TIMES (Oct. 28, 2024), https://www.nytimes.com/2024/10/28/us/politics/harris-trump-asylum-immigration.html; Maureen Groppe, *Supreme Court Rejects GOP States' Efforts to Intervene in Border Policy Dispute*, USA TODAY (Oct. 21, 2024), https://www.usatoday.com/story/news/politics/2024/10/21/supreme-court-border-asylum/75733591007/; Andrea R. Flores, *Why Washington Has Failed to Solve the Border Crisis: Fixing Asylum Matters—But Not as Much As Creating New Pathways for Legal Immigration*, FOREIGN AFFAIRS (Oct. 17, 2024), https://www.foreignaffairs.com/united-states/immigration-mexico-border-crisis-andrea-flores; Didi Martinez, *Biden Administration Doubles Down on Tough Asylum Restrictions at Border*, NBC NEWS (Sept. 30, 2024), https://www.nbcnews.com/politics/2024-election/biden-administration-doubles-tough-asylum-restrictions-border-rcna173331.

[3] Tara Suter, *Most Voters in New Poll Say Economy, Immigration Most Important Issues in 2024*, THE HILL (August 14, 2024), https://thehill.com/business/4828253-most-voters-in-new-poll-say-economy-immigration-most-important-issues-in-2024/; Jeffrey M. Jones, *Immigration Surges to Top of Most Important Problem List*, GALLUP (Feb. 27, 2024), https://news.gallup.com/poll/611135/immigration-surges-top-important-problem-list.aspx.

whether asylum seekers may be eligible for the family unity provision or have established that they qualify for the family unity provision.

Second, disclosure of the requested information will contribute to the public's and CGRS's understanding of how EOIR is interpreting and applying the family unity provision. An understanding of the standards applied during removal proceedings, where applicants are often unrepresented, is critical to safeguarding their rights. EOIR's disclosure of the requested records will also contribute to public understanding of how asylum seekers' claims are evaluated during removal proceedings.

Finally, disclosure of the requested information will significantly advance understanding of EOIR operations. The family unity provision is an unprecedent feature of asylum law and the regulatory language is broad enough to permit multiple interpretations of its key terms. Release of records pursuant to this request would significantly improve public understanding of how the provision is understood by immigration judges. Further, as discussed below, CGRS's commitment to share this information widely and free of charge among its networks ensures that disclosure is likely to significantly contribute to the public's understanding of the issue.

Thus, the request for information meets the public interest element for the fee waiver request.

2. *Disclosure of the Information is not in Requestor's Commercial Interest*

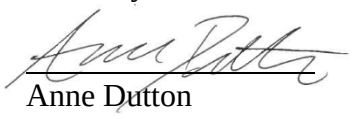
Based at the University of California College of the Law, San Francisco, CGRS is a non-profit, non-partisan organization that provides technical assistance to attorneys and publishes reports, policy analyses, and other educational materials that are widely disseminated, including through its website. CGRS has experience in disseminating information related to the rights of asylum seekers in the United States. Some of CGRS's materials are fully available to the public, and some are made available free of charge to registered users—including members of tax-exempt organizations, non-profit groups, lawyers, academics, law students, refugees, and asylum seekers. CGRS also publishes an electronic newsletter distributed to subscribers via email, regularly conducts nationwide trainings and webinars, and releases information via social media platforms such as Twitter and Facebook.

CGRS has no commercial interest in the records requested, and this request aims to further public understanding of government conduct—specifically, as described above, the urgent need for the public to understand how EOIR is interpreting and applying the family unity provision in removal proceedings.

CGRS plans to make disclosures obtained through this request available to its audience, which includes members of other tax-exempt organizations, non-profit groups, refugees, asylum seekers and other migrants, lawyers, academics, and law students, free of charge. As an educational institution and not-for-profit organization, CGRS has no commercial interest in the present request. CGRS's demonstrated ability to effectively disseminate the information requested will contribute to the public's understanding of the family unity provision, an issue of considerable public interest.

As FOIA's fee-waiver requirements must be liberally construed in favor of waivers for noncommercial requestors, a waiver of all fees is justified and warranted in this case.

Sincerely,



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EOIR FOIA Production

Produced December 20, 2024

From: Taylor, Khalilah (EOIR)
Sent: Wed, 10 Jul 2024 15:15:48 +0000
To: Bartleson, Thomas (EOIR); Bratton, Scott (EOIR); Brennan, Noel (EOIR); Burns, John (EOIR); Calvelli, Andrew (EOIR); Cassin, Olivia L. (EOIR); Christensen, Jesse B. (EOIR); Chung, Jennifer (EOIR); Diao, Anna (EOIR); Dodd, Diane (EOIR); Grogan, Edward (EOIR); Gundlach, Robert (EOIR); Habib, Fayaz (EOIR); Krasinski, Carolyn (EOIR); Laforest, Brigitte (EOIR); Lazare-Raphael, Shirley (EOIR); Lebreton, Tanawa (EOIR); Lee, Kalenna (EOIR); Martinez Soler, Dianna M. (EOIR); McCarthy, James (EOIR); McKee, James (EOIR); Moore, Carol (EOIR); Navarro, Maria E. (EOIR); Perl, Adam (EOIR); Poczter, Aviva L (EOIR); Taylor, Khalilah (EOIR); Xu, ShaSha (EOIR)
Subject: Circumvention of Lawful Pathways - Advisal for Pro Se Respondents
Attachments: CLP - IJ Advisal for Respondents.docx

Judges,

Good Morning: We hope all is well with all of you. The Attorney Advisors created an advisal on the Circumvention of Lawful Pathways (CLP) rule for *pro se* respondents for your use as needed. Thanks for Judge Lee for reviewing and providing comments. We hope that this is helpful to you as you adjudicate cases where CLP (b)(5)

Additionally, we have received our first case under the Securing the Border – Interim Final Rule (IFR). The Attorney Advisors are currently working on something similar for that. Once received and reviewed, I will forward to all of you. Thank you.

Ms. Khalilah Taylor
Assistant Chief Immigration Judge
290 Broadway
New York, NY
(Pronouns: she/her/hers)

Last Updated: July 10, 2024

Circumvention of Lawful Pathways Rule ("Lawful Pathways Rule")
Advisal for Respondents

I. Background

On May 11, 2023, the Biden administration issued the "Circumvention of Lawful Pathways" rule.

II. Rule

The rule applies to you if you entered the United States ("U.S.") between May 11, 2023, and May 11, 2025. The rule also applies to children traveling with their parents.

During that time, if you entered the U.S. at the U.S.-Mexico border without the U.S. government's permission, you may be ineligible for asylum.

The rule does not apply to you if:

- You are a Mexican citizen;
- You entered the U.S. through the U.S.-Canada border;
- You entered the U.S. through a sea border after departing a country other than Mexico; **or**
- You entered the U.S. at an airport.

This rule may not apply to you *if* you:

- Are an unaccompanied minor;
- Were paroled into the U.S. (a process in which the government can give certain people permission to enter the U.S.);
- Came to the U.S. with a pre-scheduled appointment through the CBP One App;
- Came to the U.S. *without* a prescheduled appointment but showed it was not possible to access or use the CBP One App because of language barriers, illiteracy, significant technical failure, or other ongoing and serious obstacle; **OR**
- Applied for asylum in another country and have received a final decision denying your application.

If this rule does apply to you, there are certain extraordinary circumstances that may allow you to overcome the rule. For example, if you or a family member with whom you traveled:

- Experienced an "acute medical emergency;"[1]

[1] This includes situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that they cannot adequately address outside of the U.S. Acute medical emergencies are most often related to physical medical illnesses but may include mental health emergencies.

- Experienced an "imminent and extreme threat to life or safety," such as an imminent threat of rape, kidnapping, torture, or murder; **OR**
- Are a "victim of a severe form of trafficking in persons."

This means that if you prove that you experienced any of the factors I listed or any other circumstances that are exceptionally compelling, your eligibility for asylum may be restored.

III. Family Unity Exception

There is also a family unity exception that may apply to you if you are subject to this rule.

In this situation, you may obtain asylum and petition for your spouse and children. You may qualify for the family unity exception, if the following conditions are met:

1) The Court granted you withholding of removal;
2) You would have been eligible for asylum but for this rule; **AND**
3) You have a spouse or child accompanying you who is not independently eligible for asylum or another protection from removal **OR** have a spouse or child abroad who you could petition to bring to the U.S.

From: Salovaara, Kaarina (EOIR)
Sent: Fri, 9 Aug 2024 16:55:08 +0000
To: All of Chicago Judges (EOIR)
Cc: Peyton, Jennifer I. (EOIR)
Subject: FW: Parole in place
Attachments: Reminders on the Process to Promote the Unity and Stability of Families _ USCIS.pdf

Good morning Chicago judges, and here is, FYI, USCIS information relating to the new parole in place procedures that Biden announced in June. (b)(5)

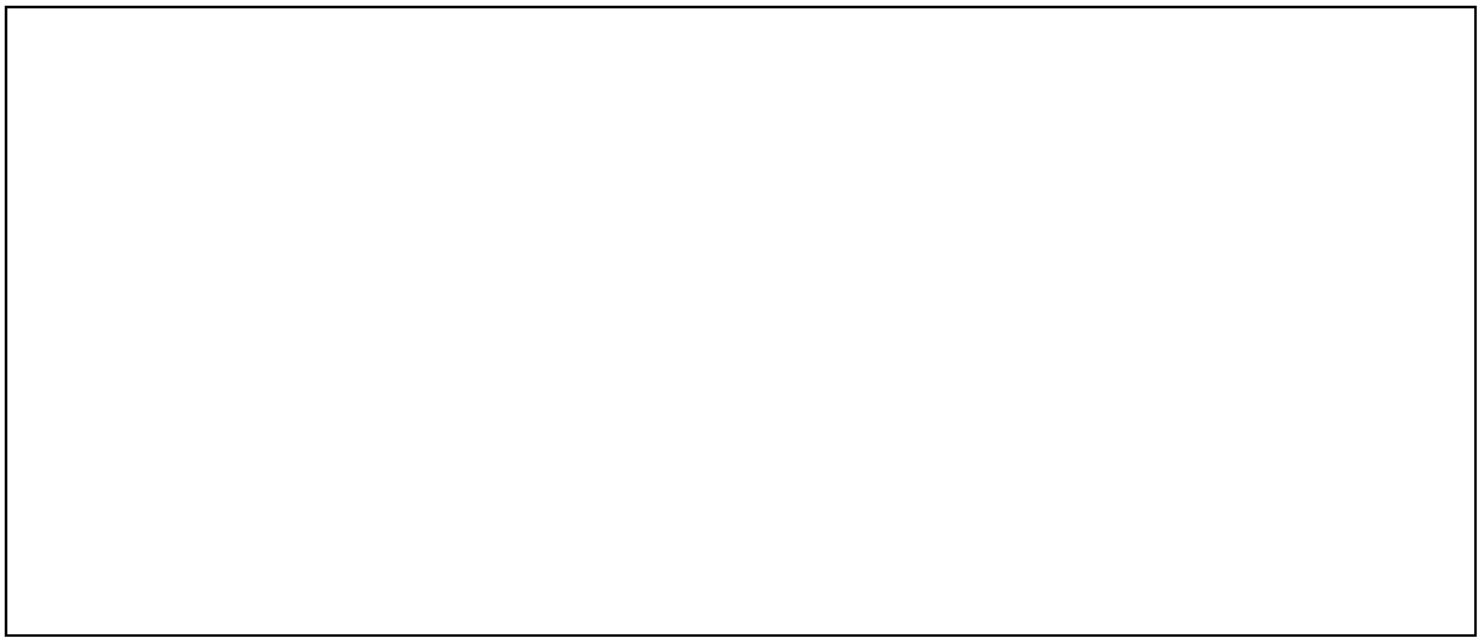
(b)(5)

(b)(5)

sent me the information attached and below.
Happy reading –
KSA

Referral ICE/DHS

ICE/ DHS referral



From: Peyton, Jennifer I. (EOIR)
Sent: Wed, 12 Jun 2024 13:32:28 +0000
To: All of Chicago Judges (EOIR)
Cc: All of Chicago JLCs (EOIR); Juarez, Jose (EOIR)
Subject: FW: Presidential Proclamation Training Slides
Attachments: PP CFR Training.pdf

Attached are the slides from the PP training. Thanks, Quinn!

From: Crowley, Quinn W. (EOIR) (b)(6)
Sent: Tuesday, June 11, 2024 4:19 PM
To: Peyton, Jennifer I. (EOIR) (b)(6)
Subject: Presidential Proclamation Training Slides

Hi ACIJ Peyton,

In case any CHI judges/AAs are interested, the slides from the presidential proclamation/IFR training have been made available in PDF format (attached).

Best,
Quinn

United States Department of Justice • Executive Office for Immigration Review

Presentation not for dissemination beyond EOIR.

Credible Fear Review Process Under the Interim Final Rule and Presidential Proclamation of June 4, 2024, "Securing the Border"

June 4, 2024

Background

The Interim Final Rule (IFR)

- Joint DHS/DOJ regulation
- Issued in response to the Presidential Proclamation of June 4, Securing the Border.
- Publication date: June 4, 2024.
- Effective date: The IFR will take effect at 12:01 am eastern daylight time on June 5, 2024.

The Proclamation

- The Proclamation:
  - Imposes a suspension and limitation on entry of any noncitizen into the United States across the southern border, other than those described in section 3(b) of the Proclamation.
  - Applies beginning at 12:01 a.m. eastern time on June 5, 2024.
- The suspension and limitation on entry will be discontinued 14 calendar days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters, as described in the Proclamation.
  - If at any time after such a factual determination the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of 2,500 encounters or more, the suspension and limitation on entry will apply at 12:01 a.m. eastern time on the next calendar day (or will continue to apply, if the 14-calendar-day period has yet to elapse) until 14 days after the Secretary makes another factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters or the President revokes the Proclamation, at which time its application will be discontinued once again.

To Whom Does the Proclamation Apply?

- A noncitizen who is described in section 3(a) of the Proclamation, and who is not described in section 3(b) of the Proclamation, is covered by the Proclamation.
- The noncitizen must have entered the United States across the southern border (as that term is described in section 4(d) of the Proclamation) between the dates described in section 1 of such Proclamation and section 2(a) of such Proclamation (or the date of revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) of such Proclamation and section 2(a) of such Proclamation.

Exceptions: As set forth under section 3(b) of the Proclamation, the Proclamation does not apply to

(i) any noncitizen national of the United States;

(ii) any lawful permanent resident of the United States;

(iii) any unaccompanied child as defined in 6 U.S.C. § 279(g)(2);

(iv) any noncitizen who is determined to be a victim of a severe form of trafficking in persons, as defined in 22 U.S.C. § 7102(16);

The Proclamation does not apply to (continued)

(v) any noncitizen who has a valid visa or other lawful permission to seek entry or admission into the United States, or presents at a port of entry pursuant to a pre-scheduled time and place, including:

A. members of the United States Armed Forces and associated personnel, United States Government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household;

B. noncitizens who hold a valid visa or who have all necessary documents required for admission consistent with the requirements of section 1182(a)(7) of title 8 upon arrival at a port of entry;

C. noncitizens traveling on the visa waiver program as described in section 217 of the INA; and

D. noncitizens who arrive in the United States at a southwest land border port of entry pursuant to a process the Secretary of Homeland Security determines is appropriate to allow for the safe and orderly entry of noncitizens into the United States;

The Proclamation does not apply to (continued)

(vi) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a U.S. Customs and Border Protection immigration officer, based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, urgent humanitarian, and public health interests at the time of the entry or encounter that warranted permitting the noncitizen to enter; or

(vii) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a U.S. CBP immigration officer, due to operational considerations at the time of the entry or encounter that warranted permitting the noncitizen to enter.

The IFR

The IFR:

(1) Alters the process for identifying which noncitizens to refer to an AO for credible fear screening during emergency border circumstances;

(2) Adds a bar on asylum eligibility; and

(3) Alters the standard for screening for statutory withholding of removal and CAT protection for those individuals who are subject to the bar on asylum eligibility and who do not establish exceptionally compelling circumstances.

Southern Border

- Section 4(b) of the Proclamation defines "**southern coastal borders**" as all maritime borders in Texas, Louisiana, Mississippi, Alabama, and Florida, and all maritime borders proximate to the southwest land border, the Gulf of Mexico, the southern Pacific coast in California, and all maritime borders of the United States Virgin Islands and Puerto Rico.
- Section 4(c) of the Proclamation defines "**southwest land border**" as the entirety of the United States land border with Mexico.
- Section 4(d) of the Proclamation defines "**southern border**" as the southwest land border and the southern coastal borders.

Emergency Border Circumstances

As stated in the preamble of the IFR, the term "emergency border circumstances" refers to the period of time after the date that the Proclamation's suspension and limitation on entry would commence (as described in section 1 of the Proclamation) until the discontinuation date referenced in section 2(a) of the Proclamation or the date the President revokes the Proclamation (whichever comes first), as well as any subsequent period during which the Proclamation's suspension and limitation on entry would apply as described in section 2(b) of the Proclamation.

(1) Identifying Whether to Refer Noncitizens Subject to the Limitation on Asylum Eligibility to an Asylum Office for Credible Fear Screening

- The IFR changes the procedures for referring noncitizens to credible fear interviews. *See* 8 CFR § 235.15(b).
- These procedures apply only when the Proclamation's suspension and limitation on entry is in effect. *See* 8 CFR § 235.15(a).

(2) Bar on Asylum Eligibility for Noncitizens Subject to the IFR Limitation on Asylum Eligibility

- Noncitizens who enter across the southern border during emergency border circumstances, and who are not described in section 3(b) of the Proclamation, will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that **exceptionally compelling circumstances exist.** *See* 8 CFR § 1208.35(a)(1)-(2).
- Exceptionally compelling circumstances exist, include if the noncitizen demonstrates by a preponderance of the evidence that, at the time of entry, they or a member of their family as described in 8 CFR § 208.30(c) with whom they are traveling:

  (1) faced an acute medical emergency;
  (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
  (3) satisfied the definition of "victim of a severe form of trafficking in persons" provided in 8 CFR § 214.11(a). 8 CFR § 1208.35(a)(2)(i).

Acute Medical Emergency

In the IFR's preamble, the Departments interpret "acute medical emergencies" to include, but not be limited to, situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that cannot be adequately addressed outside of the United States.

Imminent and Extreme Threat

- As stated in the IFR preamble, examples of "imminent and extreme threats" would include:
  - Imminent threats of rape, kidnapping, torture, or murder that the noncitizen faced at the time the noncitizen crossed the southern border, such that they cannot wait until this IFR's limitation on asylum eligibility is not in effect for an opportunity to present at a POE without putting their life or well-being at extreme risk.
  - It would not include generalized threats of violence.

(2) Bar on Asylum Eligibility for Noncitizens Subject to the IFR Limitation on Asylum Eligibility (continued)

The limitation on asylum eligibility in 8 CFR § 1208.35(a) shall apply to any asylum application filed by a noncitizen who entered the United States during the time and in the manner described in § 1208.13(g) and who is not covered by an exception in § 1208.35(d)(2), regardless of when the application is filed and adjudicated.

(3) New "Reasonable Probability" Standard for Screening for Statutory Withholding of Removal and CAT for Noncitizens Subject to the Proclamation

- Noncitizens who enter across the southern border during emergency border circumstances, and who are not described in section 3(b) of the Proclamation, and who are unable to establish exceptionally compelling circumstances, will receive a negative credible fear determination with respect to asylum and will thereafter be screened for eligibility for statutory withholding of removal and CAT protection under a heightened "reasonable probability of persecution or torture" standard.
- The "reasonable probability" standard is defined to mean substantially more than a reasonable possibility, but somewhat less than more likely than not, that the noncitizen would be persecuted because of their race, religion, nationality, membership in a particular social group or political opinion, or tortured, with respect to the designated country or countries of removal. 8 CFR § 1208.35(b)(2)(iii).

New "Reasonable Probability" Standard (continued)

- As stated in the preamble, the reasonable probability standard requires greater specificity of the claim in the noncitizen's testimony before the AO or the IJ.
- Claims based on vague, general fears of return where country conditions indicate instances of persecution or torture within the country, are less likely to be sufficient under the "reasonable probability" standard when the noncitizen cannot provide greater detail in their statements and information as to the basis for their individual claim.
- Credible testimony alone can satisfy the noncitizen's burden.

New "Reasonable Probability" Standard (continued)

- For example, as stated in the preamble, a noncitizen may meet the lower "reasonable possibility" standard where they fear being killed by their country's government, U.S. government reports indicate the country may engage in human rights abuses, and they have been involved in anti-government political activism for years, even absent specific information as to an individualized threat against them.
- But to meet the "**reasonable probability**" standard, the noncitizen would either need to explain with some specificity why they in particular are likely to be harmed, or the record would have to reflect specific information regarding the treatment of similarly situated anti-government political activists. For example, if the noncitizen credibly states they knew people similarly situated who have been killed, harmed, or credibly threatened, that statement may be sufficient to meet the "reasonable probability" standard because it provides more specificity as to why they believe they would be harmed.

Conducting a Credible Fear Review under the Interim Final Rule: Immigration Judge Review

There are three possible procedural scenarios depending on the IJ's determinations:

Scenario 1:

First, where the IJ determines that the noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish that they are not described in 8 CFR § 1208.13(g) (i.e. the noncitizen did not enter across the southern border during emergency border circumstances), the IJ will follow the procedures for credible fear interviews relating to the Lawful Pathways condition in 8 CFR § 1208.33(b). 8 CFR § 1208.35(b)(2)(i).

Conducting a Credible Fear Review under the Interim Final Rule: Immigration Judge Review

Scenario 2:

Second, where the IJ determines that the noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish either that they are described in section 3(b) of the Proclamation or exceptionally compelling circumstances exist under 8 CFR § 1208.35(a)(2), the IJ will follow the procedures in 8 CFR 1208.30. *See* 8 CFR § 1208.35(b)(2)(ii).

Conducting a Credible Fear Review under the Interim Final Rule: Immigration Judge Review

Scenario 3:

Third, where the IJ determines that the IFR's limitation on asylum eligibility applies—including that there is not a significant possibility that the noncitizen could establish an exception under section 3(b) of the Proclamation—and that there is not a significant possibility that the noncitizen could establish an exception under 8 CFR § 1208.35(a)(2), the IJ will apply the Circumvention of Lawful Pathways rule's procedures set forth in § 1208.33(b)(2)(ii), except that the IJ will apply a "reasonable probability" standard. *See* 8 CFR § 1208.35(b)(2)(iii).

Conducting a Credible Fear Review under the Interim Final Rule

- First Inquiry: Does the IFR's limitation on asylum eligibility apply?
  - Did the noncitizen enter the United States across the southern border, as that term is described in section 4(d) of the Proclamation?
- If the noncitizen entered across the southern border during emergency border circumstances.
  - The IFR's limitation on asylum eligibility applies – meaning the noncitizen is *ineligible* for asylum – *unless*
    - They are described in section 3(b) of the Proclamation (noncitizen nationals, LPRs, unaccompanied children, etc.), *or*
    - They establish by a preponderance of the evidence that exceptionally compelling circumstances exist.
  - The *lawful pathways* condition on asylum eligibility at 8 CFR 1208.33(a) *does not apply.*
- In all other situations –
  - The *IFR's limitation* on asylum eligibility *does not apply*.
  - The IJ must determine *whether* the *lawful pathways* condition on asylum eligibility at 8 CFR 1208.33(a) *applies*.

Conducting a Credible Fear Review under the Interim Final Rule

- ***IJ authority in credible fear proceedings –***
  - Under the IFR, the IJ has the authority in credible fear proceedings to make de novo determinations as to the below. See 8 CFR 1208.35(b)(1).
    - When the noncitizen entered the US.
    - The likelihood a noncitizen is described in section 3(b) of the Proclamation (and therefore is exempt from the IFR's asylum limitation). This includes determinations regarding whether a noncitizen –
      - Is a noncitizen national,
      - Is an LPR,
      - Is an unaccompanied child,
      - Has a valid visa or other lawful permission to seek entry or admission into the US, or presented at a port of entry pursuant to a pre-scheduled time and place,
      - Has been permitted to enter by the DHS Secretary, acting through a CBP officer, based on the totality of the circumstances (but see below), and
      - Has been permitted to enter by the DHS Secretary, acting through a CBP officer, based on operational considerations at the time of the entry or encounter (but see below).
    - The likelihood a noncitizen could establish "exceptionally compelling circumstances" under 8 CFR 1208.35(a)(2) (and is therefore exempt from the IFR's asylum limitation).
    - The likelihood a noncitizen will face harm or qualify for relief or protection, whether under the "reasonable probability," "reasonable possibility," or "significant possibility" standards.
  - The IJ does not have the authority to make determinations – under a "de novo" standard or any other standard – as to whether a CBP officer should have permitted a noncitizen to enter the US, whether based on the totality of the circumstances or operational considerations. The IJ may examine, as a factual matter, whether a CBP officer permitted a noncitizen to enter the US. But an IJ is not permitted to rule on the correctness of a CBP officer's decision to do or not to do so.

Conducting a Credible Fear Review under the Interim Final Rule

- ***IJ authority in credible fear proceedings –***
    - The IJ **does not** have the authority to make determinations – under a "de novo" standard or any other standard – as to whether a CBP officer should have permitted a noncitizen to enter the US, whether based on the totality of the circumstances or operational considerations. The IJ may examine, as a factual matter, whether a CBP officer permitted a noncitizen to enter the US. But an IJ is not permitted to rule on the correctness of a CBP officer's decision to do or not to do so.

Family Unity Provision of the IFR

- Similar to the EOIR family unity provision in the Circumvention of Lawful Pathways rule, where a principal asylum applicant is eligible for statutory withholding of removal or CAT protection and would be granted asylum but for the limitation on asylum eligibility established in this rule, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant, the noncitizen shall be excepted from the limitation on asylum eligibility by the IJ if placed in section 240 removal proceedings. *See* 8 CFR § 1208.35(c).

CFR Packet for Noncitizens Subject to the Presidential Proclamation and IFR

The record of determination, including the:

- Notice of Referral to Immigration Judge
- Asylum Officer's notes
- Summary of the material facts, and
- Other materials upon which the AO based their determination regarding the applicability of the condition on asylum eligibility (which, in cases where the limitation on asylum eligibility in this IFR applies, includes materials showing known entry date).

See 8 CFR § 208.35(b)(2)(v).

- *Forms I–867A and I–867B **will not** be included.

If the Limitation on Asylum Eligibility is Rendered Inoperative by Court Order

As stated in the Preamble, in such circumstance, those who enter during emergency border circumstances and who are found not to have a significant possibility of eligibility for asylum because of the Lawful Pathways condition will be screened for eligibility for statutory withholding of removal and CAT protection under the **"reasonable probability"** screening standard.

See 8 CFR § 1235(b)(4) ("If the limitation on asylum eligibility in 8 CFR § 1235(a) is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, then during the period(s) described in 8 CFR § 1208.13(g), the immigration judge shall, as applicable, apply a reasonable probability screening standard for any protection screening under § 1208.33(b)(2)(ii).").

Thank You

Disclaimer

The IFR referred in this presentation relates to the Presidential Proclamation - “Securing the Border.”

This Proclamation was signed June 3, 2024 and issued June 4, 2024.

Disclaimer

This information is intended solely as an educational resource to convey information on the Presidential Proclamation of June 4, 2024, Securing the Border, and the Interim Final Rule as it relates to adjudications performed by immigration judges with the Executive Office for Immigration Review (EOIR).

This training contains no legal advice and should not be construed to create or limit any rights enforceable by law. EOIR will not answer questions regarding the development of this information or how its content may pertain to any individual case. Guidance concerning proceedings before EOIR may be found on the agency's website.

From: Barry, Robert (EOIR)
Sent: Wed, 5 Jun 2024 14:53:08 +0000
To: All of Court Administrators (EOIR); All of ACIJs (EOIR)
Cc: Manna, Karen (EOIR); Williams, Linda F. (EOIR); EOIR-OCIJ Chief Clerks Unit
Subject: FW: Securing the Border IFR
Attachments: Presidential Proclamation and Interim Final Rule, Marking Presidential Proclamation QRG.pdf

Good morning ACIJs and Court Administrators,

In support of the requirements for the *Securing the Border* Presidential Proclamation, all Federal and contractor employees must complete the LearnDOJ training, **"Securing the Border" (Presidential Proclamation and IFR) – June 2024 due on 6/7/2024 11:59 PM EST.** Everyone should complete this requirement as soon as possible and no later than the deadline.

In addition, all staff must be aware that the top document of all initiation documents that are filed in accordance with the Presidential Proclamation will be marked as "**Subject to the Proclamation (SB IFR)**." Staff will need to ensure that they manually update the CASE identifier with the Presidential Proclamation CaseID, PP. Attached is a Quick Reference Guide (QRG), *Marking Presidential Proclamation QRG.pdf*, which provides specific instructions to the staff. In the future, DHS will be inputting the case identifier when they enter the case.

Please reach out to your supervisor if you have any questions,

Thank you,

Rob

Robert N. Barry, Court Standards Supervisor
Executive Office for Immigration Review
Office of the Chief Judge – (b)(6)

From: Cheng, Mary (EOIR) (b)(6)
Sent: Tuesday, June 4, 2024 3:43 PM
To: All of EOIR <All_of_EOIR@EOIR.USDOJ.GOV>
Subject: Securing the Border IFR

Colleagues,

As President Biden just announced, the Department of Homeland Security and the Department of Justice are issuing a new interim final rule, *Securing the Border*, which is being published alongside the *Securing the Border* Presidential Proclamation, which the President issued to respond to substantial levels of irregular migration on the southern border. Later today, you will be able to read the rule on the Federal Register's website.

At EOIR, this brings another opportunity to work as a team to accomplish our directives. OCIJ and LERS have developed a training for all staff members focusing on the IFR, including the new standard and workflow. EOIR's immigration judges will be seeing the effect of the rule in the context of credible fear reviews. To that end, we have developed a new order which is being uploaded by our OIT Team. Together, we will continue meeting our mission to fairly and uniformly apply our nation's immigration laws and regulations. While the news may focus on things like the backlog or pending case times, my focus every day is also on your flexibility, resilience, and commitment to our shared mission. Thank you for the work you are doing and for being a part of this incredible team.

Best,

Mary Cheng
Director (Acting)

From: Chief Immigration Judge, OCIJ (EOIR)
Sent: Tue, 4 Jun 2024 21:21:30 +0000
To: All of OCIJ Judges (EOIR); All of OCIJ HDQ and Courts (EOIR)
Cc: Cheng, Mary (EOIR); Alder Reid, Lauren (EOIR); Weiss, Daniel H (EOIR); Young, Elizabeth L. (EOIR); Luis, Lisa (EOIR); Ochoa, Andrea (EOIR); Crowley, Quinn W. (EOIR); Montenegro, Gail (EOIR)
Subject: Presidential Proclamation and Interim Final Rule
Importance: High

Colleagues,

Today, the White House announced a Presidential Proclamation, *Securing the Border*, that addresses the high level of border encounters at the southern border. The Proclamation is implemented pursuant to the President's authority to suspend the entry of certain classes of noncitizens under section 212(f) of the Immigration and Nationality Act (INA), and to prescribe rules, regulations, and orders and subject to limitations and exceptions to the entry of noncitizens into the United States under INA § 215(a). Under that authority, the Proclamation suspends and limits the entry of certain individuals into the United States. Specifically, it excepts from its suspension and limitations: U.S. noncitizen nationals; lawful permanent residents; unaccompanied children; noncitizens who are determined to be victims of severe forms of trafficking; noncitizens who have sufficient documents to seek entry or admission into the United States; individuals arriving at a port of entry with a CBP One appointment; noncitizens whom a CBP officer permits to enter, based on the totality of the circumstances; and noncitizens whom a CBP officer permits to enter due to operational considerations. A noncitizen is "described in the Proclamation" if they enter the United States across the southern border (including the southern coastal border) during a period where the suspension and limitation on entry is in effect, and if no exception applies.

The Proclamation will take effect at 12:01 am on June 5, 2024. The suspension and limitation on entry will discontinue if border encounters at locations other than a port of entry drop below a 7-calendar-day average of 1,500 encounters, and will resume if those encounters increase again above a 7-day average of 2,500 encounters.

The Department of Justice and the Department of Homeland Security (DHS) have also issued a joint interim final rule (IFR), also titled *Securing the Border*, which will also take effect at 12:01 am on June 5, 2024. As relevant to immigration judges, this IFR imposes a limitation on asylum eligibility for individuals described in the Proclamation and it changes the screening standard during the credible fear process with respect to eligibility for withholding of removal and protection under the Convention Against Torture (CAT).

As the IFR explains, immigration judges shall follow the IFR limitation on asylum eligibility and corresponding exceptions, as will be explained in guidance. To start, noncitizens who are described in the Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist. The IFR further provides that such exceptionally compelling circumstances include where the noncitizen, or a family member with whom they are traveling, faced an acute medical emergency; faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or was a victim of a severe form of trafficking in persons. Those who have established exceptionally compelling circumstances for purposes of the IFR's asylum limitation or who are excepted from the Proclamation under its subsection 3(b) are also deemed as having established exceptionally compelling circumstances for purposes of the Circumvention of the Lawful Pathways rule (CLP). This is intended to simplify administration of this asylum limitation while the IFR and the CLP are both operative.

Most notably, EOIR adjudicators should apply the IFR's limitation on asylum eligibility to all covered noncitizens who enter the United States across the southern border during a period when the Proclamation's suspension and limitation on entry is in effect, including those who enter without inspection at the southern border and are later placed in section 240 removal proceedings. Additionally, among several exceptions, the IFR includes a family unity provision. This provision applies where a principal asylum applicant is eligible for withholding of removal under the Act or the CAT, would be granted asylum but for the IFR's limitation on asylum, and either (1) is accompanied by a spouse or child who does not independently qualify for asylum or other protection from removal or (2) has a spouse or child who would be eligible to follow to join the applicant were the applicant granted asylum. Where such a situation arises in removal proceedings, the applicant is deemed to have established exceptionally compelling circumstances and is eligible for asylum. The IFR also includes an exception to the ongoing limitation on asylum eligibility for certain noncitizens who are described in the Proclamation and enter the United States during a suspension and limitation while under the age of 18 and who later seek asylum as principal applicants so long as the asylum application is filed after the suspension and limitation on entry during which they entered is discontinued.

Moreover, the IFR amends the standard adjudicators must apply when assessing a noncitizen's claim in a credible fear review. First, where the noncitizen requests such immigration judge review, the immigration judge evaluates the case *de novo*, applying the same standards as the asylum officer. Second, if a noncitizen is ineligible for asylum under the IFR, immigration judges must evaluate whether the noncitizen can establish a "reasonable probability" they will either be: (1) persecuted in the country or countries of removal because of their race, religion, nationality, membership in a particular social group, or political opinion; or (2) tortured in that country or those countries. This "reasonable probability" standard is new; under the CLP, the screening standard for withholding of removal under the Act and protection

under the CAT has been a "reasonable possibility" standard. The IFR defines a "reasonable probability" as substantially more than a reasonable possibility but somewhat less than more likely than not. This will require the applicant to provide greater specificity in describing or presenting their claim. Third, where the noncitizen receives a positive credible fear determination from the immigration judge, regardless of the screening standard, USCIS may either place the noncitizen in removal proceedings or retain the case for an asylum officer to issue a decision. Where the noncitizen receives a negative credible fear determination from an immigration judge, the noncitizen is removed by DHS.

In order to provide all immigration judges with a complete overview of this IFR, OCIJ and LERS will provide a training that will go over the nuances of the rule. Additionally, OCIJ will provide an updated order for judges to use.

If you have any questions, please reach out to your supervisor. We understand this news was released today and you likely have many questions. We appreciate your dedication to fairly applying our immigration laws and regulations and we will continue to work with you on legal and operational aspects of the Proclamation and IFR.

Respectfully,

Sheila McNulty
Chief Immigration Judge
Executive Office for Immigration Review • Department of Justice

QRG for Manually Marking PP in CASE

This is the current process for marking Presidential Proclamation cases in the system.

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    a. If the top document of an initiation package is marked as "Subject to the Proclamation (SB IFR)" please ensure you manually mark the case in CASE with the Presidential Proclamation CaseID, PP.

Examples below:

CFR Cover Sheet.

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Record of Negative Credible Fear and Reasonable Possibility Finding and Request for Review by Immigration Judge for Noncitizens Subject to the Condition on Asylum Eligibility Pursuant to 8 CFR 208.33(a)

Subject to the Proclamation (SB IFR)

I-863 format 1.

Subject to the Proclamation (SB IFR)

U.S. Department of Homeland Security
Notice of Referral to Immigration Judge

I-863 format 2.

FORM I-863 (Rev 08/01/2007)

Subject to the Proclamation (SB IFR)

U.S. Department of Homeland Security
Notice of Referral to Immigration Judge

2. Mark the case as Presidential Proclamation in CASE.
    a. In CASE click the CASE INFO tab

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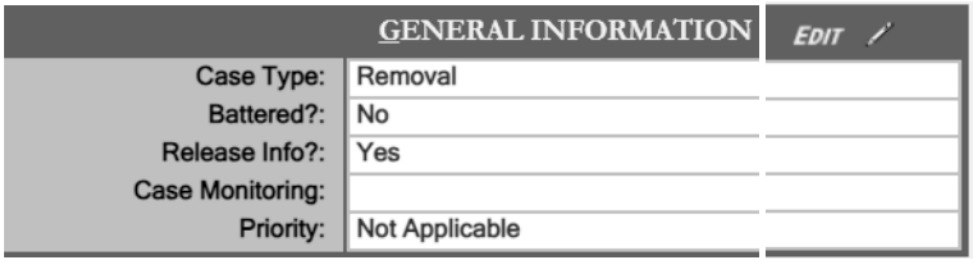
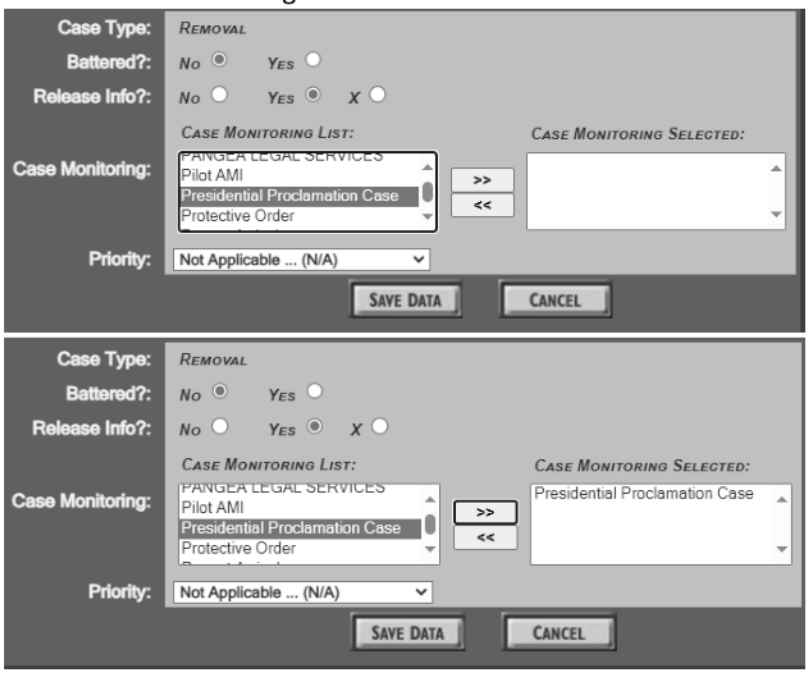


c. Add the case monitoring ID of Presidential Proclamtion Case



d. The Case is now marked as a Presidential Proclamation Case

From: Taylor, Khalilah (EOIR)
Sent: Wed, 5 Jun 2024 15:27:08 +0000
To: All of Broadway Support Staff (EOIR); Bartleson, Thomas (EOIR); Bratton, Scott (EOIR); Brennan, Noel (EOIR); Burns, John (EOIR); Calvelli, Andrew (EOIR); Cassin, Olivia L. (EOIR); Christensen, Jesse B. (EOIR); Chung, Jennifer (EOIR); Diao, Anna (EOIR); Dodd, Diane (EOIR); Grogan, Edward (EOIR); Gundlach, Robert (EOIR); Habib, Fayaz (EOIR); Krasinski, Carolyn (EOIR); Laforest, Brigitte (EOIR); Lazare-Raphael, Shirley (EOIR); Lebreton, Tanawa (EOIR); Lee, Kalenna (EOIR); Martinez Soler, Dianna M. (EOIR); McCarthy, James (EOIR); McKee, James (EOIR); Moore, Carol (EOIR); Navarro, Maria E. (EOIR); Perl, Adam (EOIR); Poczter, Aviva L (EOIR); Taylor, Khalilah (EOIR); Xu, ShaSha (EOIR)
Subject: FW: Securing the Border IFR
Attachments: Presidential Proclamation and Interim Final Rule, Marking Presidential Proclamation QRG.pdf

Colleagues,

Good Morning: In addition to the below email and the one by CIJ McNulty (attached), I am providing the below additional information regarding required training. All Federal and contractor employees must complete the LearnDOJ training, **"Securing the Border" (Presidential Proclamation and IFR) – June 2024 due on 6/7/2024 11:59 PM EST.** Everyone should complete this requirement as soon as possible and no later than the deadline. There is an issue will LearnDOJ not automatically marking completion of this training. Thus, once you have completed this training, please report the completion, via email, to your first-line supervisor by the deadline above.

In addition, the top document of all initiation documents that are filed in accordance with the Presidential Proclamation will be marked as "**Subject to the Proclamation (SB IFR)**." Our administrative professional staff will ensure that they manually update the CASE identifier with the Presidential Proclamation CaseID, PP. Attached is a Quick Reference Guide (QRG), *Marking Presidential Proclamation QRG.pdf*, which provides specific instructions. In the future, DHS will be inputting the case identifier when they enter the case.

Thank you,

Ms. Khalilah Taylor
Assistant Chief Immigration Judge
Office of the Chief Immigration Judge
290 Broadway
New York, NY
(Pronouns: she/her/hers)

From: Cheng, Mary (EOIR) <(b)(6)
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Mary Cheng
Director (Acting)

This communication, along with any attachments, is covered by Federal and State law governing electronic communications, and may contain sensitive or legally privileged information. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

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Executive Office for Immigration Review • Department of Justice

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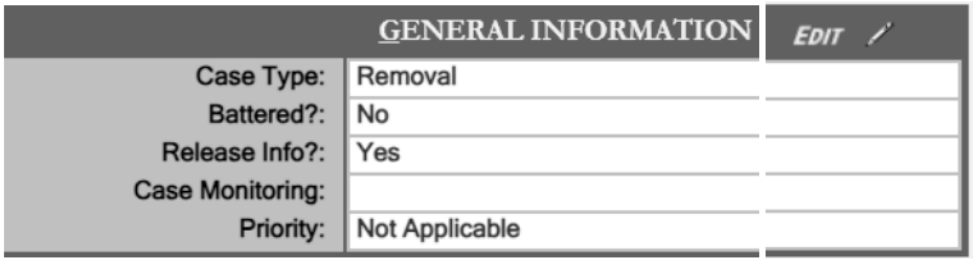

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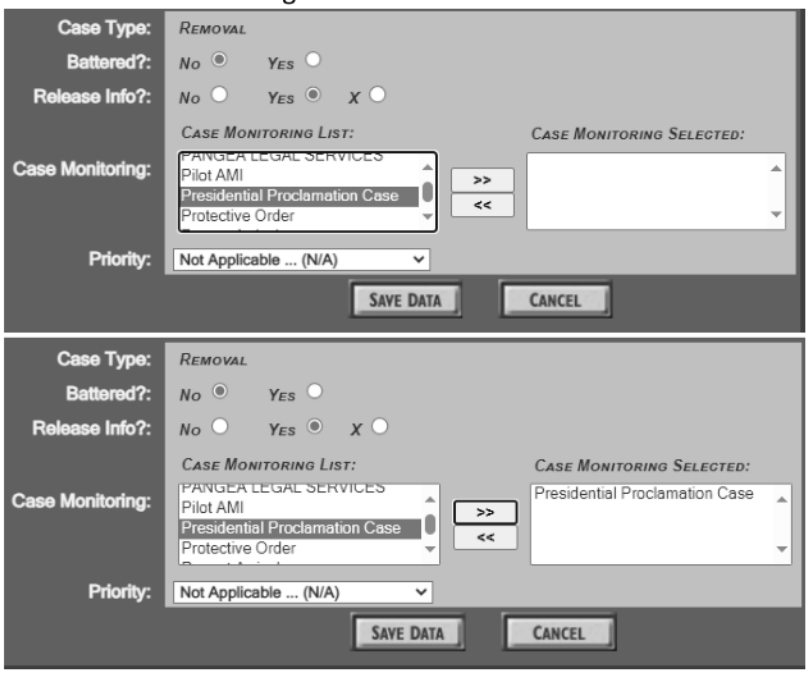

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Importance: High

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The Proclamation will take effect at 12:01 am on June 5, 2024. The suspension and limitation on entry will discontinue if border encounters at locations other than a port of entry drop below a 7-calendar-day average of 1,500 encounters, and will resume if those encounters increase again above a 7-day average of 2,500 encounters.

The Department of Justice and the Department of Homeland Security (DHS) have also issued a joint interim final rule (IFR), also titled *Securing the Border*, which will also take effect at 12:01 am on June 5, 2024. As relevant to immigration judges, this IFR imposes a limitation on asylum eligibility for individuals described in the Proclamation and it changes the screening standard during the credible fear process with respect to eligibility for withholding of removal and protection under the Convention Against Torture (CAT).

As the IFR explains, immigration judges shall follow the IFR limitation on asylum eligibility and corresponding exceptions, as will be explained in guidance. To start, noncitizens who are described in the Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist. The IFR further provides that such exceptionally compelling circumstances include where the noncitizen, or a family member with whom they are traveling, faced an acute medical emergency; faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or was a victim of a severe form of trafficking in persons. Those who have established exceptionally compelling circumstances for purposes of the IFR's asylum limitation or who are excepted from the Proclamation under its subsection 3(b) are also deemed as having established exceptionally compelling circumstances for purposes of the Circumvention of the Lawful Pathways rule (CLP). This is intended to simplify administration of this asylum limitation while the IFR and the CLP are both operative.

Most notably, EOIR adjudicators should apply the IFR's limitation on asylum eligibility to all covered noncitizens who enter the United States across the southern border during a period when the Proclamation's suspension and limitation on entry is in effect, including those who enter without inspection at the southern border and are later placed in section 240 removal proceedings. Additionally, among several exceptions, the IFR includes a family unity provision. This provision applies where a principal asylum applicant is eligible for withholding of removal under the Act or the CAT, would be granted asylum but for the IFR's limitation on asylum, and either (1) is accompanied by a spouse or child who does not independently qualify for asylum or other protection from removal or (2) has a spouse or child who would be eligible to follow to join the applicant were the applicant granted asylum. Where such a situation arises in removal proceedings, the applicant is deemed to have established exceptionally compelling circumstances and is eligible for asylum. The IFR also includes an exception to the ongoing limitation on asylum eligibility for certain noncitizens who are described in the Proclamation and enter the United States during a suspension and limitation while under the age of 18 and who later seek asylum as principal applicants so long as the asylum application is filed after the suspension and limitation on entry during which they entered is discontinued.

Moreover, the IFR amends the standard adjudicators must apply when assessing a noncitizen's claim in a credible fear review. First, where the noncitizen requests such immigration judge review, the immigration judge evaluates the case *de novo*, applying the same standards as the asylum officer. Second, if a noncitizen is ineligible for asylum under the IFR, immigration judges must evaluate whether the noncitizen can establish a "reasonable probability" they will either be: (1) persecuted in the country or countries of removal because of their race, religion, nationality, membership in a particular social group, or political opinion; or (2) tortured in that country or those countries. This "reasonable probability" standard is new; under the CLP, the screening standard for withholding of removal under the Act and protection

under the CAT has been a "reasonable possibility" standard. The IFR defines a "reasonable probability" as substantially more than a reasonable possibility but somewhat less than more likely than not. This will require the applicant to provide greater specificity in describing or presenting their claim. Third, where the noncitizen receives a positive credible fear determination from the immigration judge, regardless of the screening standard, USCIS may either place the noncitizen in removal proceedings or retain the case for an asylum officer to issue a decision. Where the noncitizen receives a negative credible fear determination from an immigration judge, the noncitizen is removed by DHS.

In order to provide all immigration judges with a complete overview of this IFR, OCIJ and LERS will provide a training that will go over the nuances of the rule. Additionally, OCIJ will provide an updated order for judges to use.

If you have any questions, please reach out to your supervisor. We understand this news was released today and you likely have many questions. We appreciate your dedication to fairly applying our immigration laws and regulations and we will continue to work with you on legal and operational aspects of the Proclamation and IFR.

Respectfully,

Sheila McNulty
Chief Immigration Judge
Executive Office for Immigration Review • Department of Justice

From: Chiles, Alexandra (EOIR)
Sent: Wed, 1 May 2024 19:51:55 +0000
To: Mosman, Jocelyn (EOIR); All of Varick Judges (EOIR); All of New York Federal Plaza Judges (EOIR); All of Broadway Judges (EOIR); Auh, Kyung (EOIR); Sagerman, Roger (EOIR); Ouslander, Charles (EOIR); All of Varick JLC (EOIR); NYC Fed Plaza JLCs & AAs (EOIR); New York – Broadway JLCs & AAs (EOIR); Llerena, Maria (EOIR); Fernandez, Rafael (EOIR); Hanley, Victoria (EOIR)
Subject: RE: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1
Attachments: Circumvention of Lawful Pathways_Revised.pdf, Unpublished BIA CLP 3.pdf, Unpublished BIA CLP 1.pdf, Unpublished BIA CLP 2.pdf, CBP One Tips for Users - English_1.pdf

Good afternoon everyone,

Thanks for attending the Circumvention of Lawful Pathways brown bag training today. Attached is the revised PowerPoint. The pdfs for the unpublished BIA decisions that are cited in the PowerPoint are attached.

The CBP One app is available in English, Spanish, or Haitian Creole. The attached pdf guide is published on the CBP website (CBP One Tips for Users). IJs may wish to take admin notice of this.

Finally, a respondent with advance parole would not be subject to the Circumvention of Lawful Pathways rule, as the rule only applies to noncitizens entering the country without documents for lawful admission, or in this case, lawful re-entry.

I hope this training was helpful. Please reach out if we missed any questions.

Best,
Alexandra Chiles
Attorney Advisor
Executive Office for Immigration Review
Department of Justice
26 Federal Plaza, Room 1237
New York, NY 10278
(b)(6)

From: Mosman, Jocelyn (EOIR) <(b)(6)@usdoj.gov>
Sent: Monday, April 29, 2024 3:03 PM
To: All of Varick Judges (EOIR) <All.of.Varick.Judges@doj365.onmicrosoft.com>; All of New York Federal Plaza Judges (EOIR) <AllofNewYorkFederalPlazaJudges@EOIR.USDOJ.GOV>; All of Broadway Judges (EOIR) <AllofBroadwayJudges@EOIR.USDOJ.GOV>; Auh, Kyung (EOIR) <(b)(6)@usdoj.gov>; Sagerman, Roger (EOIR) <(b)(6)@usdoj.gov>; Ouslander, Charles (EOIR) <(b)(6)@usdoj.gov>; All of Varick JLC (EOIR) <AllofVarickJLCs@EOIR.USDOJ.GOV>; NYC Fed Plaza JLCs & AAs (EOIR) <NYCFedPlazaJLCsAAs@EOIR.USDOJ.GOV>; New York – Broadway JLCs & AAs (EOIR) <NewYorkBroadwayJLCs&AAs@EOIR.USDOJ.GOV>; Llerena, Maria (EOIR) <(b)(6)@usdoj.gov>; Fernandez, Rafael (EOIR) <(b)(6)@usdoj.gov>; Hanley, Victoria (EOIR) <(b)(6)@usdoj.gov>
Cc: Chiles, Alexandra (EOIR) <(b)(6)@usdoj.gov>
Subject: RE: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1

Happy Monday all!

Attached please find the PDF PowerPoint slides for our upcoming brown bag training on the Circumvention of Lawful Pathways Rule. This training series is being conducted by the New York Brown Bag Training Committee, which consists of Attorney Advisors from all three New York City Immigration Courts. You should have received a Teams invite from Alexandra Chiles just a few minutes ago.

Please let us know if you have any further questions in advance of the Wednesday training and we will do our best to answer them, if not on Wednesday, then via email.

Look forward to seeing you all Wednesday, May 1, 2024 at 12 pm in Courtroom 5 at Varick Immigration Court or via Teams.

Best,
Jocelyn Mosman
Alexandra Chiles

From: Mosman, Jocelyn (EOIR) (b)(6)@usdoj.gov>
Sent: Monday, April 22, 2024 11:09 AM
To: All of Varick Judges (EOIR) <All.of.Varick.Judges@doj365.onmicrosoft.com>; All of New York Federal Plaza Judges (EOIR) <AllofNewYorkFederalPlazaJudges@EOIR.USDOJ.GOV>; All of Broadway Judges (EOIR) <AllofBroadwayJudges@EOIR.USDOJ.GOV>; Auh, Kyung (EOIR) <(b)(6)@usdoj.gov>; Sagerman, Roger (EOIR) <(b)(6)@usdoj.gov>; Ouslander, Charles (EOIR) <(b)(6)@usdoj.gov>; All of Varick JLC (EOIR) <AllofVarickJLCs@EOIR.USDOJ.GOV>; NYC Fed Plaza JLCs & AAs (EOIR) <NYCFedPlazaJLCsAAs@EOIR.USDOJ.GOV>; New York – Broadway JLCs & AAs (EOIR) <NewYorkBroadwayJLCs&AAs@EOIR.USDOJ.GOV>
Cc: Chiles, Alexandra (EOIR) <(b)(6)@usdoj.gov>
Subject: RE: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1

Good morning,

This is your friendly reminder that Alexandra Chiles (NY-Fed Plaza) and myself (NY-Varick) will be hosting a Circumvention of Lawful Pathways Training for you all on May 1, 2024 at 12 pm at Varick (Courtroom 5) and on Teams. The materials and Teams link will be sent out next week leading up to the training. This is **not** CLE eligible.

This is the first in a series of brown bag trainings being offered by the New York AA / JLC Brown Bag Training Committee. Mark your calendars for the following trainings, which will all be held both in person at one of the three NYC courts and available to access via Teams or WebEx:

(b)(5)

If you have any questions regarding the upcoming training next week, you can reach us at (b)(6)@usdoj.gov and (b)(6)@usdoj.gov. We look forward to seeing you May 1st at noon!

Best,
Jocelyn

From: Mosman, Jocelyn (EOIR)
Sent: Monday, April 1, 2024 9:12 AM
To: All of Varick Judges (EOIR) <All.of.Varick.Judges@doj365.onmicrosoft.com>; All of New York Federal Plaza Judges (EOIR) <AllofNewYorkFederalPlazaJudges@EOIR.USDOJ.GOV>; All of Broadway Judges (EOIR) <AllofBroadwayJudges@EOIR.USDOJ.GOV>; Auh, Kyung (EOIR) <(b)(6)@usdoj.gov>; Sagerman, Roger (EOIR) <(b)(6)@usdoj.gov>; Ouslander, Charles (EOIR) (b)(6)@usdoj.gov>
Cc: Chiles, Alexandra (EOIR)(b)(6)@usdoj.gov>
Subject: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1

Good morning,

As part of the Training Committee, we are looking forward to presenting our first Brown Bag Lunch training on the Circumvention of Lawful Pathways on May 1, 2024 at 12 pm at Varick (Courtroom 5) and via Teams. You will be receiving an official invitation and materials in the coming weeks. For now, we recognize that Lawful Pathways has been appearing more often in the courtrooms and we are compiling a list of questions from you all that we will strive to answer as part of our training. If you've seen this pop up in your hearings lately and have questions, please let us know. You can email me at (b)(6)@usdoj.gov and Alexandra Chiles at (b)(6)@usdoj.gov.

We look forward to seeing you May 1st and answering all your questions!

Best,

Jocelyn Mosman
Attorney Advisor
Executive Office of Immigration Review
U.S. Department of Justice
201 Varick Street, 5th Floor
New York, New York 10014
Phone: (b)(6) Telework: (b)(6)

Presented by Alexandra Chiles and Jocelyn Mosman

Circumvention of Lawful Pathways Rule

Background

- The Rule establishes a rebuttable presumption of ineligibility for asylum.
- The presumption applies to certain noncitizens who enter the US during a particular period.
- A noncitizen can rebut the presumption in certain instances.
- IJs apply the rule in both credible fear and removal proceedings.
- The Rule sets up a new, **2-step inquiry** in credible fear proceedings.

Who is Subject to the Rule?

- The presumption of asylum ineligibility applies to a noncitizen who enters the U.S. from Mexico at the southwest land border or adjacent coastal borders, who does not have documents sufficient for lawful admission, and whose entry is --
  - Between May 11, 2023 and May 11, 2025;
  - Subsequent to the end of Title 42 public health Order (May 11, 2023); and
  - After they traveled through a country that was both
    - Not their country of citizenship, nationality, or, if stateless, last habitual residence, and
    - A party to the 1951 UN Convention, or the 1967 Protocol, relating to the Status of Refugees, E.g., Mexico
- *See* 8 C.F.R. 1208.33(a)(1)

Who is *NOT* Subject to the Rule?

- The presumption does *not* apply if the noncitizen does not meet all the above requirements. For example, the presumption does not apply to a noncitizen who --
  - Is a citizen of Mexico (because they would not have passed through a qualifying third country);
  - Enters over the U.S.-Canada border;
  - Enters over a maritime border after departing from a country other than Mexico; or
  - Enters at an interior port of entry (i.e., an airport).

Exceptions to the Rule

- The noncitizen meets the above requirements but the noncitizen, or a member of their family with whom they are traveling --
  - Received authorization to travel to the U.S. to seek parole;
  - Presented at a port of entry pursuant to a prescheduled time and place (CBP One app);
  - Presented at a port of entry without a prescheduled time and place but shows it was not possible to access or use the DHS scheduling system (CBP One app) due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or
  - Sought asylum or protection in a country through which they traveled and received a final decision denying that application.
- *See* 8 C.F.R. 1208.33(a)(2)(ii).

Unaccompanied Minors

- Another exception to the Rule includes:
  - The noncitizen meets the above requirements but was an unaccompanied child at the time of entry.
- *See* 8 C.F.R. 1208.33(a)(2)(I).

IJ Question: If respondent's counsel concedes to no exceptions, is that enough? Or is it the court's duty to make sure/ask questions regarding exceptions?

- Although IJs have a duty to develop the record, an IJ may accept the concessions of a noncitizen's freely retained counsel that are not contradicted by the record. *See Hoodho v. Holder*, 558 F.3d 184, 192 (2d Cir. 2009) (noncitizens "- like all other parties to litigation – are bound by the concessions of freely retained counsel. *Ali v. Reno*, 22 F.3d 442, 446 (2d Cir. 1994)"). *See also Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986).

Terms & Definitions

- For a discussion of the CBP One app, see final rule preamble at 278-94
- Re: "language barrier, illiteracy, significant technical failure, or other ongoing serious obstacle," see final rule preamble at 299-303
- "Final Decision" = Any denial by a foreign government of the applicant's claim for asylum or other protection through one or more of that government's pathways for that claim. Does not include a determination by a foreign government that the noncitizen abandoned the claim. *See* 8 C.F.R. 1208.33(a)(2)(ii).

IJ Question: Does the respondent's testimony alone satisfy the preponderance of the evidence?

- Yes, provided that the respondent testifies credibly. A noncitizen can satisfy their burden of proof through credible testimony alone; the rule does not require any particular evidence to rebut or establish an exception to the presumption. Where appropriate, an adjudicator may request evidence to corroborate the noncitizen's credible testimony. However, the applicant is not required to provide the evidence if they do not have the evidence and cannot reasonably obtain it. 88 FR 31314. *See* INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii), INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v).

How is the presumption rebutted?

- The presumption can be rebutted if the noncitizen shows by a preponderance of the evidence that exceptionally compelling circumstances exist, including if, at the time of entry, the noncitizen or a member of their family with whom they are traveling --
  - Faced an acute medical emergency;
  - Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
  - Satisfied the regulatory definition of "victim of a severe form of trafficking in persons."
- *See* 8 C.F.R. 1208.33(a)(3).

Acute Medical Emergency

- Acute medical emergencies include situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that they cannot adequately address outside of the United States. https://www.federalregister.gov/d/2023-10146/p-724.
- If the noncitizen rebuts the presumption based on the acute medical emergency of a family member with whom they were traveling, the noncitizen's eligibility for asylum will not change if the family member who faced the medical emergency subsequently passes away; this is because the language of the rebuttal circumstances focuses on whether the family member faced an acute medical emergency "at the time of entry." 8 C.F.R. 1208.33(a)(3)(i).
- The acute medical emergency ground for rebutting the presumption of asylum ineligibility is not limited to physical medical ailments but could include mental health emergencies. Federal Register: Circumvention of Lawful Pathways at 31348. 8 C.F.R. 1208.33(a)(3)(i)(A).

Imminent and Extreme Threat to Life and Safety

- Threats cannot be speculative, based on generalized concerns about safety, or based on a prior threat that no longer posed an immediate threat at the time of entry. 88 C.F.R. at 11707 n.27. https://www.federalregister.gov/d/2023-10146/p-737
- The threat must be sufficiently grave, such as a threat of rape, kidnapping, torture, or murder. *Id*.
- Where the noncitizen is a member of a particularly vulnerable group (e.g., LGBT or HIV-positive people), their membership in such a group may be a relevant factor in assessing the extremity and immediacy of the threats faced at the time of entry.
- For threats that are less imminent or extreme, noncitizens may attempt to demonstrate on a case-by-case basis that they otherwise present "exceptionally compelling circumstances" that overcome the presumption of ineligibility.

Severe Form of Trafficking in Persons

- Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. 214.11

Other Exceptionally Compelling Circumstances

- Depending on the noncitizen's or accompanying family member's particular circumstances, any serious mental impairments or associated competency issues may qualify as an "exceptionally compelling circumstance" sufficient to rebut the presumption of ineligibility for asylum. 8 CFR 1208.33(a)(3)(i). *See also* https://www.federalregister.gov/d/2023-10146/p-338
- While an acute medical emergency is a *per se* example of an exceptionally compelling circumstance to rebut the presumption of ineligibility, IJs may determine, on a case-by-case basis, whether less severe health-related situations also qualify as "exceptionally compelling circumstances." 8 C.F.R. 1208.33(a)(3).

IJ Question: Who is included in the Family Unity Provision?

- In removal proceedings, where a principal applicant is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the presumption, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal, the presumption shall be deemed rebutted as an exceptionally compelling circumstance. *See* 88 FR at 11752 (proposed 8 CFR 1208.33(d)).
- The Departments have expanded the provision to also cover principal asylum applicants who have a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A). *See* 8 CFR 1208.33(c).

IJ Question: Does being robbed at gunpoint in Mexico rise to the level of imminent and extreme threat to life or safety?

- Likely constitutes a sufficiently grave threat of murder if it occurred near the time of entry. If the respondent lost her phone in the robbery, which prevented her from being able to make a CBP One App appointment, it may independently constitute an exception. However, these determinations should be fact-specific and made on a case-by-case basis.
- See the final rule preamble for DHS's / DOJ's interpretations of the following terms.
  - Imminent and extreme threat to life and safety – preamble at 256-258
  - Other Exceptionally Compelling Circumstances

Application of the Rule

- Initial determination in Credible Fear Interview by the Asylum Officer
- Non-citizens may seek *de novo* review by an Immigration Judge if the Credible Fear Interview comes back negative.
  - **First Inquiry:** Is the noncitizen subject to the presumption of asylum ineligibility?
  - **Second Inquiry:** The standard of proof the noncitizen must meet is determined by the outcome of the first inquiry.
- Where the IJ vacates DHS's credible fear determination, DHS initiates removal proceedings. See 8 C.F.R. 208.33(b)(2)(v)(B).
- Where the IJ affirms DHS's credible fear determination, the case is returned to DHS for removal of the noncitizen. 8 C.F.R. 208.33(b)(2)(v)(C).

IJ Question: If a noncitizen did not have a credible fear interview, are they subject to the Rule?

- The Rule is applicable even without a CFI.
- For noncitizens, the rebuttable presumption will apply in expedited removal proceedings, as well as to asylum applications affirmatively filed with the Asylum Office or filed in immigration court proceedings as a defense to removal.
- *See* DHS Fact Sheet, Fact Sheet: Circumvention of Lawful Pathways Final Rule | Homeland Security (dhs.gov).

CFI and *de novo* Review: First Inquiry

- Is the noncitizen subject to the presumption of asylum ineligibility?
  - Does an exception apply?
  - Has the noncitizen rebutted the presumption?

CFI and *de novo* Review: Second Inquiry

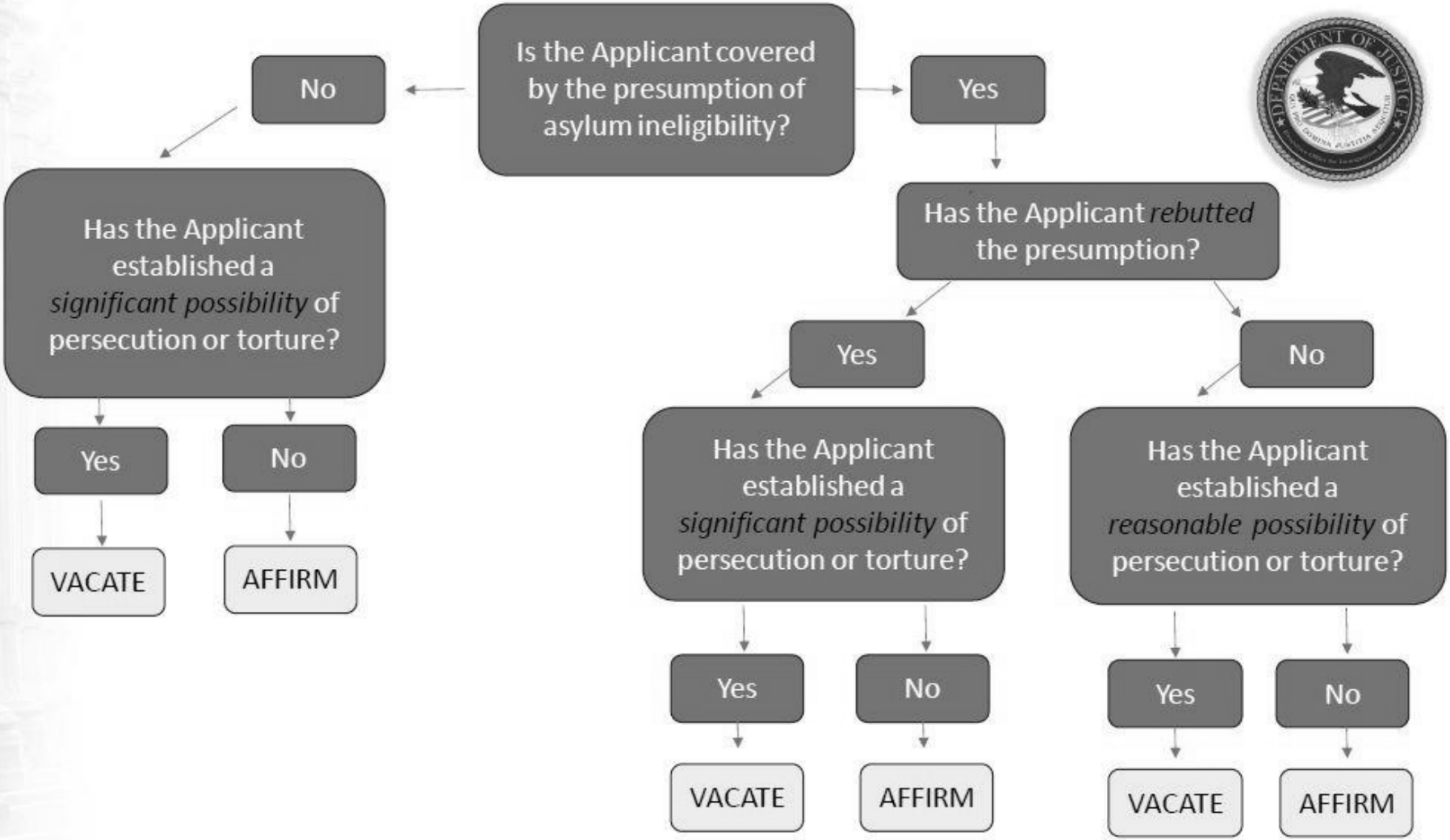
- **IF**: R is not covered by presumption (i.e., an exception applies), OR presumption is rebutted, **THEN** the IJ determines whether the R has established a **significant possibility** of eligibility for asylum, withholding of removal, or CAT protection.
- **IF**: R is covered by the presumption AND the presumption has not been rebutted, **THEN** the IJ determines whether the R has established a **reasonable possibility** of persecution or torture.
- *See* 8 C.F.R. 1208.33(b)(2)(ii).

R not covered by/rebutted presumption = significant possibility of asylum eligibility

- The "significant possibility" standard asks a predictive question: whether there is "significant possibility" that the noncitizen "could establish" asylum eligibility at a merits hearing. INA 235(b)(1)(B)(v), 8 USC 1225(b)(1)(B)(v). *Id.*

R is covered by presumption = reasonable possibility that he will be persecuted or tortured

- "While the 'reasonable possibility' standard is lower than the 'clear probability' standard required to demonstrate eligibility for statutory withholding or CAT protection, it is a more demanding standard than the 'significant possibility' standard used in credible fear proceedings to screen for asylum." Federal Register :: Circumvention of Lawful Pathways at 31380 (citing Regulations Concerning the Convention Against Torture, 64 FR 8474, 8485 (Feb. 19, 1999)).
- The reasonable possibility standard used when the reasonable fear proceedings were created required a showing of a probability of persecution or torture. *Id.*


Is the Applicant covered by the presumption of asylum ineligibility?
No
Yes
Has the Applicant established a *significant possibility* of persecution or torture?
Yes
No
VACATE
AFFIRM
Has the Applicant *rebutted* the presumption?
Yes
No
Has the Applicant established a *significant possibility* of persecution or torture?
Has the Applicant established a *reasonable possibility* of persecution or torture?
Yes
No
VACATE
AFFIRM
Yes
No
VACATE
AFFIRM

Application in Removal Proceedings

- The rebuttable presumption applies in immigration court proceedings where asylum applications are filed as a defense to removal.
- In removal proceedings, determine whether the presumption of asylum ineligibility applies to the respondent.
- If the respondent is subject to the presumption, and he or she has not demonstrated an exception or rebuttal to the presumption applies, then he or she is ineligible for asylum and the IJ should proceed with the remaining fear-based claims for relief (i.e., withholding of removal under the Act, and/or withholding or deferral of removal under the CAT).

IJ Question: Any update on settlement talks?

- The Ninth Circuit granted a Joint Motion to Place Appeal in Abeyance pending settlement negotiations in *East Bay Sanctuary Covenant v. Biden*, 23-16032 (9th Cir.), and the related case, *M.A. v. Mayorkas*, No. 1:23-cv-1843 (D.D.C.).
- The parties were ordered to file a joint status report after 60 days, and every 60 days thereafter.
- On March 7, 2024, the States of Alabama, Kansas, Georgia, Louisiana, and West Virginia filed a Motion to Intervene. Both parties opposed the States' motion. No further orders or updates have been posted by the Ninth Circuit Court of Appeals.

References

- BIA Unpublished Decisions for samples of the CLP analysis:
  - (b)(6)
  - (b)(6)
  - (b)(6)
- Regulations:
  - 8 C.F.R. §§ 1208.33, 208.33
- DHS Fact Sheet:
  - Fact Sheet: Circumvention of Lawful Pathways Final Rule | Homeland Security (dhs.gov)
- EOIR Resources:
  - LERS Training Materials File Location: (b)(6)
    - (b)(6)

Contact

- **Alexandra Chiles:** (b)(6) @usdoj.gov

(NYC – Fed Plaza Immigration Court)

- **Jocelyn Mosman:** (b)(6) @usdoj.gov

(NYC – Varick Immigration Court)

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

DHS/ICE Office of Chief Counsel - JNA
PO Box 410
Trout LA 71371

Name: (b)(6) **A** (b)(6)

Date of this Notice: 1/26/2024

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

DHS/ICE Office of Chief Counsel - JNA
PO Box 410
Trout LA 71371

Name: (b)(6) **A** (b)(6)

Date of this Notice: 1/26/2024

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

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, 2024

ON BEHALF OF RESPONDENT: Evan Matthew Gelobter, Esquire

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

Before: Baird, Appellate Immigration Judge

BAIRD, Appellate Immigration Judge

ORDER:

This 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).

The represented respondent also checked the block on the Notice of Appeal indicating that a separate written brief or statement would be filed in support of the appeal. This block is immediately followed by 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 respondent was granted the opportunity to submit a brief or statement in support of the appeal. However, the record indicates that he did not file such brief or statement, or reasonably explain the failure to do so, within the time set for filing. *See Rioja v. Ashcroft*, 317 F.3d 514, 515-16 (5th Cir. 2003) ("The BIA was within its statutorily designated discretion to summarily dismiss [the petitioner's] appeal after he indicated on the notice of appeal form that a separate brief or statement would be filed and then failed to submit such brief or statement before the filing deadline.").

Accordingly, the appeal is summarily dismissed under the provisions noted above.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
JENA, LOUISIANA

File: A (b)(6) September 22, 2023

In the Matter of

(b)(6)	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGE: 212(a)(6)(A)(i) of the Immigration and Nationality Act - an alien present in the United States without being admitted or paroled, or arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: I-589 application for asylum/withholding of removal, INA 241(b)(3)/CAT.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: MONTRELL TARVIN, Assistant Chief Counsel

ORAL DECISION OF THE IMMIGRATION JUDGE

INTRODUCTION

Respondent is a 26-year-old male native and citizen of Egypt. He entered the United States on August 1, 2023. He did not possess at the time proper admission documents, and he was not admitted or paroled into the United States after inspection

by an Immigration officer. Proceedings in this case began with the filing of a Notice to Appear filed on August 7, 2023.

At a hearing on August 16, 2023, the respondent admitted the allegations in the Notice to Appear. The respondent conceded to the charge of removability, and the Court sustained the charge by clear and convincing evidence. Respondent declined to designate a country for removal. The Court directed Egypt as a country for removal. The Court then gave the respondent an opportunity to file for relief. The respondent filed an application for asylum/withholding of removal on August 29, 2023. A hearing on the merits was held today, September 22, 2023.

ADDENDUM OF LAW

An addendum stating the standards of law and burdens of proof relevant to these issues will be placed in the Record of Proceedings as next in line as Exhibit No. 4. The addendum will be served on the parties. That addendum is incorporated into this decision by reference because the addendum contains legal provisions and caselaw. The Court may not necessarily quote all the cases or provisions of law that apply in this case. The Court will take judicial notice of the International Religious Freedom Report for Egypt for the year 2022.

EXHIBITS

The Record of Proceedings contains Exhibits 1 through 4.

Exhibit 1 is the Notice to Appear dated August 7, 2023;

Exhibit 2 is the I-589 application filed August 29, 2023;

Exhibit 3 is the Country Conditions Reports compiled by the State Department filed by the Court on September 21, 2023;

Exhibit 4 is the addendum of law.

These documents were all admitted without objection. In making this decision,

the Court has considered the totality of the admitted evidence, including taking judicial notice of country conditions reports as necessary, and while not all those exhibits will be discussed in detail, ~~and~~ the decision of the Court has taken into account the totality of the evidence.

CREDIBILITY/CORROBORATION

The REAL ID Act of 2005 applies to this case. Respondent was the sole witness in this case. The Court finds that respondent was not credible. He, for example, testified to someone attempting to convert him to Islam. The name of the person attempting to convert him to Islam is (b)(6) The Court took testimony on this attempted conversion. It forms the core of the respondent's claim in these proceedings.

Questioned by the Court as to what ways the person attempting to convert him, Mr. (b)(6) did so, the respondent could not state that Mr. (b)(6) had ever invited him to a mosque, introduce him to classes that would inculcate in him the ways of becoming a Muslim, introduce him to his Imam, or taken any other affirmative step to convert the respondent. The respondent provided inconsistent testimony on this issue, stating in a subsequent part of the hearing that he had been invited to a mosque, but his initial testimony was that he had not been so invited.

The Court can make an adverse credibility finding on an issue that does not necessarily go to the heart of respondent's claim. The Court in this case finds the respondent was giving inconsistent testimony regarding the issue of the attempted conversion, and as will be discussed elsewhere, this attempted conversion happened by the roadside through chance encounters. Mr. (b)(6) never sought out the respondent to convert him to Islam, and he claimed in testimony today that Mr. (b)(6) did not even know the place or location where respondent was residing.

Corroboration

Given the lack of credible testimony, the respondent would be expected to provide evidence in support of his claims in corroboration of his claims. Courts have generally stated that the weaker a respondent's testimony, the more the need for corroboration. In the Fifth Circuit, ~~the~~ even credible testimony has to be supported by corroboration where that corroboration is reasonably available. Rui Yang v. Holder, 664 F.3d 580 (5th Cir. 2011).

In this case, the Court finds the respondent did not provide reasonably available corroboration. He claimed that his parents are aware of the threats that were issued to him by Mr. (b)(6) He claimed that his brother and sister are aware of the threats that had been issued by Mr. (b)(6) H~~They~~ claimed that his pastor, Pastor (b)(6) was aware of the threats against him by Mr. (b)(6) and his~~their~~ attempt to convert him to Islam. Yet respondent did not provide a statement from any one of these persons. Pursuant to Matter of L-A-C-, the Court inquired as to why the respondent did not provide statements in support of his application.

Respondent stated that he was not aware that he needed those documents. However, the respondent has previously been before another Judge and been advised of his need to provide corroboration to his claims. The Court does not need to specify the exact documents the respondent needs to support his claims. This Court is not asking for specific documents, it is stating that the respondent lacks corroboration generally.

And this Court finds that his explanations are not reasonable. Therefore, the Court would find that he has not met his burden of proof. The failure to meet his burden of proof would be a reason to deny his applications. In the interest of a full decision, the Court will examine his claims on the merits.

ASYLUM

As an initial matter, the Department of Homeland Security has objected to the filing of asylum in this case. They stated that the new law, the Circumvention of Lawful Pathways, applies in this case and prevents the respondent from seeking asylum. The Department states that the respondent entered the United States after May 11, 2023 from Mexico on the southern border of the United States and did not seek asylum or relief in Mexico, and therefore, respondent is not eligible for asylum.

The Court finds that the respondent is not eligible for asylum because he left Egypt on June 27, 2023 and entered the United States on August 1, 2023 across the southern land border, which is a date after May 11, 2023, as set forth in 8 C.F.R. Section 1208.33(a)(1) without having documents sufficient for lawful admission and without having requested asylum in any country of transit.

Additionally, exceptionally compelling circumstances do not exist in that the respondent did not face an acute medical condition, an imminent and extreme threat to life or safety, and he was not a victim of a severe form of human trafficking. Lastly, respondent does not qualify as a principal applicant as defined in Section 1208.33(c), as he had not been given authorization to travel to the United States to seek parole. Therefore, as no exception or rebuttal of the presumption applies, the Court finds that the respondent is not eligible for asylum. The Court will consider the respondent's application for asylum as if he had been eligible.

Even assuming the respondent had been eligible for asylum, the application will be denied for lack of credible testimony and lack of corroboration. In the alternative, the application will be denied for failure to prove that respondent was persecuted in the past or will likely be persecuted in the future in Egypt. While the respondent has stated religion as a particular ground and that ground is sufficient under the Immigration and

Nationality Act, his description of what happened to him in Egypt does not rise to the level of harm that would be described as persecution under the INA. The respondent claimed that (b)(6) wanted to convert him to Islam. He claimed he had met (b)(6) a few times before the talk on May 15, 2023. He said although he had seen (b)(6) before, it was on May 15th when (b)(6) talked to him and asked him his name. Respondent stated his name is (b)(6) Respondent claimed that that name is a Christian name, and (b)(6) immediately knew that he is a Christian. He also claimed that he was wearing a crucifix, and that was also an additional reason (b)(6) knew he was a Christian. He claimed that (b)(6) was a member of the Muslim Brotherhood. He claims on May 15, 2023, they just discussed the issue of his faith, and (b)(6) said ~~yesterday~~ it was best for him to become a Muslim, as it was a better religion. In (b)(6) view, Christianity was not the way to practice one's faith, and he claimed that (b)(6) told him he needed to convert or else he would kill the respondent.

Mr. (b)(6) did not, on this date, tell the respondent how he could convert. He did not tell the respondent where to meet him next so that they could start the conversion process. On that day, respondent was walking to work. His meeting with (b)(6) was purely accidental, and respondent claimed he, again, met (b)(6) by chance on June 6, 2023 in (b)(6) in Alexandria, Egypt on a street. He claimed on that day (b)(6) grabbed him by the hand and said to him I told you to convert, and if I see you again and you do not convert, I will kill you.

It was not clear to the Court how (b)(6) expected respondent to have converted, having not given him any instructions on how to convert. As stated before, (b)(6) had not provided to the respondent a mosque or the name of an imam to whom to report for instruction. The Court asked the respondent if (b)(6) had given him any books or literature to guide him to become a Muslim or given him the Quran, and the respondent

said no.

Respondent rejected the request by (b)(6) to convert to Islam, and a few days later on June 10, 2023, he went to the police station to report his fears of the threats made by (b)(6) The police made light of the fact that (b)(6) was trying to convert the respondent, describing him as a religious fanatic. Respondent stated that he never saw or heard from (b)(6) again. He went and talked to his parents about his fears, and his parents arranged for his travel to ~~outside~~ the United States.

The first thing the Court must do is review the harms claimed by the respondent in the aggregate to determine if they rise to the level of persecution. In this case, the respondent claimed he has not been physically harmed in Egypt. He talked of two threats, one on May 15, 2023 and one on June 6, 2023. Of relevance to the Court is the analysis in the case Gjetani v. Barr, where the Fifth Circuit states that persecution means a sustained pursuit, and there the Court gave the example of Tamara in Tamara-Gomez. In this case, the Court finds there was no sustained pursuit against the respondent. The two occasions where he meets Samir are both chance encounters. After they meet, the alleged persecutor Samir does not pursue the respondent. The respondent testified that (b)(6) did not even know where respondent lived. The respondent never faced any threats at his residence or his workplace from (b)(6) and a review of the threats made to respondent is necessary.

In the Fifth Circuit, death threats may amount to persecution if they reflect "regular and methodical targeting of the victim." On the other hand, where death threats reflect sporadic events rather than methodical targeting, the Fifth Circuit has declined to find persecution even where those threats were paired with physical attacks. See Guillen Cedio v. Garland (5th Cir. 2021).

Furthermore, a look at the statements made by the alleged persecutor shows

that his threats lack immediacy, they are not imminent, they are not concrete, and therefore, the Court finds that they are not credible death threats. This conclusion follows from the Court's analysis that when (b)(6) asked the respondent to convert, he did not engage in a sustained campaign to convert the respondent to Islam.
It is also strange that the respondent felt these were credible threats, especially where respondent stated that in Islam (b)(6) would have received favor for having converted him from Christianity to Islam. This inference follows from the respondent's own testimony that (b)(6) would have been in great favors if respondent had become a Muslim.

The statements, themselves, read as an inducement for respondent to become a Muslim rather than a death threat. In the Court's conclusion, the two death threats are insufficient to meet the definition of persecution as that term is defined in the Fifth Circuit. For that reason, the Court would deny the respondent's application in terms of his request for a finding of past persecution.

Alternatively, the Court would also deny his applications because he did not prove that the government of Egypt was unable or unwilling to protect him. The fact that respondent went to the police and the police were aware of the presence of a man called Ahmad (b)(6) whom they did not deem to be a threat is indication to the Court that the respondent's issue was well-known to the government. The respondent's ~~of the~~ government does not show an unwillingness to protect the respondent if they deemed the threat to be credible.

The respondent did not testify to (b)(6) killing anyone in the past, and the Court can make an inference that the police likely knew he was merely interested in converting people to Islam. If any of that inference is not reasonable, the Court still finds that respondent did not prove to the Court that the government of Egypt was or will

be unable or unwilling to protect him.

WITHHOLDING OF REMOVAL

The Court has already stated that respondent cannot meet the standard for asylum which is lower than the standard for withholding of removal. It follows that the respondent cannot meet the higher standard for withholding of removal. To prevail on an application for withholding of removal, respondent must show that it is more likely than not his life or freedom would be threatened on account of a protected ground. The preceding analysis in the asylum section showed that respondent could not prove past persecution. The same follows here.

The respondent can also not objectively prove a fear of future persecution. Respondent fears an individual, (b)(6) (b)(6) has~~is~~ not confronted or sought out the respondent since June 20, 2023. This by itself is an indication that respondent fails to show a clear probability of persecution. In terms of the objective evidence, the respondent did not provide proof of any statements from anyone that Samir still seeks the respondent.

Respondent left the country after just threats from (b)(6) which the Court has deemed not to be credible threats. The respondent has not provided corroboration to support his claims. The Court has the country conditions reports for Egypt, and the Court has also taken into account the International Religious Freedom Report for Egypt. Often, general country condition reports do not corroborate the particularized claim of respondent, and the same is true here.

The respondent has not provided particularized evidence to show that he himself will be harmed in the context of the freedoms for religion as enjoyed in Egypt. He told the Court that his family are Christians. He did not describe a single incident of attack or harm to his family members, including his parents and his brother and sister. The

respondent fears a private individual, Mr. (b)(6) Mr. (b)(6) does not have national or countrywide reach, and the Court applying the analysis of being singled out finds that respondent would not be singled out by (b)(6) for harm.

Specifically, under the Mogharrabi factors, the Court finds that (b)(6) does not have the inclination to punish the respondent. The Court finds that his threats were not credible death threats, and the Court finds (b)(6) has not shown an inclination to punish the respondent, given that he has not even found it necessary to find out where respondent lives.

Even though~~Given that~~ Egypt is a majority Muslim country, country conditions evidence
does show that Christians coexist alongside Muslims. Respondent himself stated that he has practiced the Christian faith all his life, and therefore, the Court finds that respondent's life or freedom would not be threatened in the future because of his Christian faith.

The Court also finds generally there is not a pattern or practice of harming Christians in Egypt. Such harm exists in the form of discrimination or harassment does not rise to the level of persecution. Respondent testified to an attack on a Christian church. That happened in the year 2011. Respondent claimed he was in the church at the time. However, this incident happened more than 12 years ago. As stated before, respondent failed to provide to the Court credible testimony and corroboration to support his claims. Although the Court does not doubt respondent ~~he~~ is a Christian, he has not provided proof to the Court that he belongs to the church which he claimed he worships.

The respondent's other fear is that the government of Egypt will punish him for having left the country and traveled to other countries for which he had no permission.

Respondent provided no objective evidence to show that the government has legislation or laws that punish persons who travel outside Egypt or apply for asylum in other countries.

Finally, the Court finds that in terms of objective evidence, the respondent has not proven today that he cannot relocate within Egypt to avoid Mr. (b)(6) Mr. (b)(6) does not have a countrywide reach, and respondent could relocate to other parts of Egypt. Respondent claimed that to be difficult due to expenses. However, the Court notes that he was able to travel to the United States which is further than relocation within his country.

Respondent is not situated any differently from his parents and his siblings who reside in Egypt. The respondent is a Christian, as his parents and his brother and sister, and his parents and his brother and sister remain unharmed in Egypt, and the fact that they have lived in Egypt for years without harm as Christians weakens the respondent's claim that he would be harmed in Egypt. Accordingly, the Court will deny the respondent's application for withholding of removal.

WITHHOLDING UNDER THE CONVENTION AGAINST TORTURE

For the reasons that follow, the respondent's application for relief under the Convention against Torture will be denied. First, the Court finds that the respondent has not been tortured in the past. The definition of torture and the requisite definitions as to what constitutes torture is stated in the addendum, Exhibit 4. The Court finds that the two encounters between respondent and Mr. (b)(6) are insufficient to constitute torture within the definition of the Convention.

The second reason the Court would deny the application for relief under the Convention against Torture is that the respondent cannot prove that any harm to him would be by or at the instigation or with the consent or acquiescence of a public official.

Respondent is afraid is (b)(6) who is a private individual. The respondent did not provide any evidence that (b)(6) is a government official. It follows that his fear of harm under the Convention against Torture must fail, as it lacks the requirement of harm to be at the hands of a government official.

The third reason the Court will deny the respondent's application here is that he could relocate. Respondent lived in Alexandria, which is a big city. In Egypt, there are many other large cities, including Cairo, and respondent could relocate to other parts of Egypt to avoid Mr. (b)(6)

Finally, with regard to his claim that the government would harm him for his violation of the government's departure laws, the Court finds that that fact has not been proven. Second, to the extent that the government of Egypt has its own laws regarding departure and entries into the country, any inquiry into the respondent's conduct as to departure or travel history would be within lawful sanctions. Such lawful sanctions are not torture within the meaning of the Convention against Torture.

The Court has considered the country conditions evidence. Its adverse credibility finding has not affected the Court's separate analysis of his eligibility for CAT. However, respondent did not provide independent evidence to support his claims, and country conditions evidence, by itself, is insufficient to meet the requirements for CAT. The respondent has not proven that it is more likely than not he would be tortured upon return to Egypt. The Court has considered all the evidence, including country conditions, whether specifically stated here or not.

Accordingly, the following orders will enter.

ORDERS

The respondent's application for asylum is pretermitted or, in the alternative, denied.

The respondent's application for withholding of removal under INA Section 241(b)(3) of the Act is denied.

The respondent's application for withholding under the Convention against Torture is denied.

The Court orders the respondent be removed to Egypt pursuant to the Notice to Appear.

Please see the next page for electronic signature

~~Mwangi,~~ Francis M. Mwangi
United States Immigration Judge

APPEAL RIGHTS

Both parties may appeal the decision of the Court. The appeal must be filed with the Board of Immigration Appeals within 30 days of today's decision, and the deadline for such filing will be October 23, 2023.

Digitally signed by

Mwangi, Francis Immigration Judge

October 30, 2023 1:05 PM

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

DHS/ICE Office of Chief Counsel - OAK
1010 East Whatley Road
Oakdale LA 71463-1128

Name: (b)(6) **A** (b)(6)

Date of this Notice: 12/19/2023

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Userteam: Docket

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
Dec 19, 2023

ON BEHALF OF RESPONDENT: Pro se

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

Before: Owen, Appellate Immigration Judge

OWEN, Appellate Immigration Judge

The respondent, a native and citizen of Colombia, has appealed from the Immigration Judge's decision dated September 11, 2023, that denied her applications for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT").[1] The appeal will be dismissed.[2]

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).

As summarized in the Immigration Judge's decision, the respondent presented claims for relief related to a criminal gang that attempted to extort the respondent in connection with her business ventures (IJ at 4-6). The gang threatened the respondent for resisting their demands, and she was also threatened because the gang thought that she might report the murder of her two brothers, who were similarly extorted (IJ at 4). The respondent moved to a farm where she was able to live safely with her mother (IJ at 4). The respondent claimed that she was in hiding at that location, although

[1] 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.

[2] The case was heard via video conferencing by an Immigration Judge sitting in the San Juan, Puerto Rico Immigration Court (IJ at 1). However, the case has been adjudicated and the appeal is considered under the law of the United States Court of Appeals for the Fifth Circuit, where the respondent is located, and venue lies. *See Matter of Garcia*, 28 I&N Dec. 693, 703 (BIA 2023) (holding that the circuit law of the jurisdiction where venue lies will be controlling).

she ultimately opened a business and was again targeted for extortion and physically attacked for resisting and attempting to organize merchants to file a report with the police (IJ at 5).

On appeal, the respondent states that she does not agree with the decision of the Immigration Judge that denied her claims for relief (Respondent's Notice of Appeal). The respondent does not explain the basis for her disagreement or present specific arguments to challenge the Immigration Judge's analysis of her claims.

We will set aside the issues of whether the respondent is ineligible for asylum because she failed to apply for that relief while traveling through Mexico, and whether the respondent could avoid future persecution through relocation within Colombia (IJ at 8, 10). Resolution of those questions is not necessary to our ultimate disposition in this matter. *See Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal regarding ineligibility for relief where an applicant is otherwise statutorily ineligible for such relief); *see also INS v. Bagamasbad*, 429 U.S. 24, 25 (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.").

We will affirm the Immigration Judge's denial of asylum because the respondent did not provide adequate corroboration for her claim (IJ at 7-8). Section 208(b)(1)(B)(ii) of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158(b)(1)(B)(ii), provides that when an Immigration Judge determines that corroborative evidence is required, even if an applicant's testimony is otherwise credible, the applicant must provide such evidence unless the applicant does not have the evidence and cannot reasonably obtain the evidence. Here, the Immigration Judge identified evidence that would have corroborated key aspects of the respondent's narrative. We agree that the evidence appears to be reasonably available and that its absence was not adequately explained. Therefore, we will uphold the denial of asylum on this basis.

We will also uphold the Immigration Judge's determination that the respondent did not meet her burden to establish a past persecution or a well-founded fear of future persecution that was or will be on account of one of the protected grounds enumerated in section 101(a)(42)(A) of the INA, 8 U.S.C. § 1101(a)(42)(A) (IJ at 9-10). *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-14 (BIA 2007).

The Immigration Judge concluded that the gang's extortion efforts and threats were not motivated by anything more that the desire for financial gain and personal animus generated by the respondent's resistance to its criminal demands (IJ at 9-10). Inasmuch nothing in the record appears to support a contrary determination, we conclude that the Immigration Judge's factual finding as to motive is not clearly erroneous.

Absent some demonstrated nexus to protected ground, ordinary criminal extortion or other mistreatment motivated by personal animus does not constitute persecution for asylum purposes. *See Castillo-Enriques v. Holder*, 690 F.3d 667, 668 (5th Cir. 2012) (holding that economic extortion is not a form of persecution); *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);

Adebisi v. INS, 952 F.2d 910, 913 (5th Cir. 1992) (explaining that fear of harm arising out of a personal dispute will not support claims for asylum or withholding of removal); *Matter of Mogharrabi*, 19 I&N Dec. 439, 447 (BIA 1987) (stating that individuals fearing harm over purely personal matters would not qualify for asylum).

We will also uphold the denial of asylum on the alternative ground that the respondent did not establish that Colombian authorities would be unable or unwilling to protect the respondent from persecution (IJ at 10-11). *See Adebisi v. INS*, 952 F.2d at 913. As explained by the Immigration Judge, the country conditions evidence reflects that authorities are responsive to reports of criminal activity and the respondent did not show that they would fail to protect her from persecution if made aware of and provided with an opportunity to do so.

Having failed to meet the lower burden of proof for asylum, the respondent cannot show a clear probability of persecution to establish eligibility for withholding of removal. *See* section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A); *Efe v. Ashcroft*, 293 F.3d 899, 906 (5th Cir. 2002).

Finally, we will uphold the denial of protection under the CAT (IJ at 12-14). We agree that the respondent did not present sufficient evidence to establish that it is more likely than not that she would be tortured in Colombia and that authorities would acquiesce in or turn a blind eye to such harm. Given the Immigration Judge's finding that the respondent did not establish an individualized risk of past torture, the lack of evidence that such harm would have a state nexus, and considering the speculative nature of the respondent's claim, we conclude that the Immigration Judge's determination regarding the likelihood of torture in Colombia with state acquiescence or willful blindness is not clearly erroneous. *See Matter of Z-Z-O-*, 26 I&N Dec. 586, 590 (BIA 2015) (stating that an Immigration Judge's determination concerning the likelihood of future harm is reviewed for clear error); *see also Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (A.G. 2006) (explaining that the burden of proof under the CAT cannot be met by stringing together a series of speculative suppositions).

Accordingly, the following order is entered.

ORDER: The appeal is dismissed.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
OAKDALE, LOUISIANA

File: A (b)(6)

September 11, 2023

In the Matter of

(b)(6)	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	

CHARGES:

APPLICATIONS:

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Magdalena Ramos

ORAL DECISION OF THE IMMIGRATION JUDGE

The case was docketed for hearing in Basile, Louisiana. The respondent is located there. And this immigration judge is sitting in the San Juan immigration court located in Guaynabo, Puerto Rico and hearing the case through video conference pursuant to Section 240(b)(2)(A) of the Immigration and Nationality Act. Accordingly, this immigration judge is considering the respondent's claim under precedent decisions

of the United States court of appeals for the first circuit. See Bazile v. Garland, (1st Cir. 2023), and Matter of Garcia, (BIA 2023).[1]

Today is September 11th, 2023. This is Immigration Judge (b)(6). The hearing in the matter of (b)(6) A-number (b)(6), was conducted in Guaynabo, Puerto Rico through video conference pursuant to INA Section 240(b)(2)(A).

INTRODUCTION

The respondent is a 45-year-old single female who is a native of citizen of Colombia which was the designated as the country of removal. The U.S. Department of Homeland Security brought these removal proceedings against the respondent under the authority of the Immigration and Nationality Act. A Notice to Appear, NTA, dated June 7th, 2023 has been served on the respondent and filed with this court. Respondent was charged as being removable under Section 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Act.

The respondent admitted all the factual allegations in the Notice to Appear, and the charges of inadmissibility were sustained. Consequently, the court finds that removability has been established by clear and convincing evidence pursuant INA Section 240(c)(3). See Exhibit 1.

On September 11, 2023, an individual merits hearing was held considering the respondent's application for asylum under INA 208, withholding of removal under INA Section 241(b)(3), and withholding of removal under the Convention Against Torture.

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[1] Pursuant to 8 C.F.R. § 1003.11, all correspondence and documents pertaining to this case must be filed with the admittance of the control court. The address is (b)(6) office under number (b)(6) (b)(6)

The respondent's form I-589 application is contained in the record at Exhibit 3. The respondent was given an opportunity to make any necessary corrections, and then swore or affirmed before the court that the contents of the application were all true and correct to the best of her knowledge.

The evidentiary record in these proceedings have been previously identified, and all admitted evidence has been considered in its entirety regardless of whether it is specifically mentioned in this oral decision.

STATEMENT OF THE LAW

An addendum stating the standards of law and burdens of proof relevant to asylum, withholding of removal, and protection under the Convention Against Torture will be provided to both parties, and a copy will be placed in the record of proceedings. That addendum is hereby incorporated into this decision by reference.

MOTIONS

On September 11, 2023, the respondent filed some evidence with the court. Even though the evidence was untimely filed, the court will proceed to analyze whether to admit or reject that filing. The court will not consider the documents that were submitted in Spanish with no corresponding English translation. The court will also not consider the proposed letter from the respondent's because it has no signature or other elements that would allow the court to determine that it was really prepared in English by the respondent's 15-year-old daughter. Regarding the rest of the documents and photographs, the court admits those documents and will give their due weight.

LEGAL ANALYSIS

SUMMARY OF THE FACTS

The following is a summary of the court facts that are relevant to respondent's applications for relief. All the testimony provided by the respondent has

been considered in its entirety regardless of whether it is specifically mentioned in the following summary of court facts, or in any other part of this oral decision.

According to the respondent's testimony, she has four children, and all of them are currently living in the country of Colombia. The respondent is afraid of big criminal, or paramilitary group, or gang known as the (b)(6) The respondent does not know who the leader of this group is. This group operates in the eastern part of Caldas, and they extort people and harm, torture, and kill people who refuse to pay them extortion money. Members of that group killed her brothers (b)(6) and (b)(6) on (b)(6) 2018 because they owned a hardware store and refused to pay the extortion money to the (b)(6) The respondent did not submit a copy of their death certificates or any news reports that covered those events. The respondent explained that a copy of their death certificates was not provided to her daughter in Colombia because she is still a minor. However, the respondent's 15-year-old daughter was able to obtain the respondent's medical records. The respondent received threats in Manzanares because they thought that she was going to seek justice for her brothers, and file reports against the people that killed them. The (b)(6) also asked her for money at the end of October after the death of her siblings.

In 2019, the (b)(6) destroyed her business in Manizales because she refused to pay them extortion money, and because they thought that she wanted to seek justice for the murder of her brothers. The respondent did not take any photographs of her business, and she just said that she did not think about that possibility of taking photographs of that incident. After that incident occurred, the respondent moved to the farm with her mother and safely lived there for three years. The respondent said that she remained hidden there. But her children went to school there, and she worked at the farm with a small margin of profit by harvesting coffee

beans and sugar cane. Nothing happened to the respondent or her children during those three years. The (b)(6) did not claim any quotas or extortion money from her while working at the farm. The respondent said that the (b)(6) were not aware that she had a family farm, or they would have gone to the farm to ask for extortion money.

Even though her mother did not want her to, the respondent opened her nail parlor, clothing, and accessory business in January 2023 in Manzanares. She had to open that business because their earnings at the farm were not enough to support the family. The next incident with the (b)(6) was in January or February 2023 in Manzanares. They started calling her in March 2023 and asking her for extortion money because she had recently opened a business and she had to do it just like all other business owners did if she wanted to operate her business there. The (b)(6) (b)(6) were demanding money because she had a business that was generating a significant amount of money. On April 16, 2023, they punched and kicked her several times because she refused to pay them extortion money, and because they knew that she was organizing a group of merchants to file a report with the police. The respondent stated that the police never do anything in Colombia. The member of the (b)(6) who harmed her told her that she had eight days to pay that money or that she would end up like her brothers. The respondent went to the hospital to seek medical attention, and then went to her mother's farm. The respondent's daughter took the photographs of the bruises on her legs. See Exhibit 4.

On April 17th, 2023, her friend (b)(6) was harmed by the (b)(6) (b)(6) and suffered cuts with a sharp object in her neck and arms. (b)(6) had her business next to the respondent's. The respondent heard that her friend was in the hospital for some time and then lost touch with her friend because she moved away

from the town. The respondent stated that even though she relocated several times in Colombia, the (b)(6) kept finding her. The respondent never thought of leaving her children behind but had to do that because the mistreatment that she suffered. The respondent never reported any incidents to the police because she was afraid. Two of her children have been living in Manizales since 2020 and are safe there. One of her sons once received a phone call from an unknown person, and that person told him that his mother was going to die. The respondent's son changed his phone number, and no more threats were received by him. The respondent's son did not file a written statement on her behalf because she did not see the need of that. The respondent testified that she never paid any quotas to the (b)(6) or she will be still working normally in Colombia. The respondent does not know the identity of the people that threatened her over the phone or harmed her because the person that hit her on April 16, 2023 had a ski mask on, and she only could see that person's eyes.

The respondent traveled with her Colombian passport and arrived in Mexico on May 14th, 2023, but did not seek protection in that country because she didn't even think about that possibility. The respondent then entered the United States on May 19th, 2023. The respondent admitted that she could have relocated elsewhere and not entered the United States if she had known that her asylum process would take place and be completed while being detained.

LEGAL ANALYSIS

CREDIBILITY

The respondent testified. After reviewing all the documentary and testimonial evidence in the record, the court finds in the totality of the circumstances that the respondent was a credible witness. The court's finding is based upon its observation of the respondent's demeanor, and her candor in answering the questions.

CORROBORATION

It's important to note, however, that even when an applicant is found to be a credible witness, the court may require an applicant to provide reasonably available evidence to corroborate his or her testimony. See Matter of S-M-J-, (BIA 1997). The REAL ID Act codified the requirements outlined in Matter of S-M-J- making it clear that an applicant who seeks asylum or withholding of removal has the burden of demonstrating eligibly for such relief which may require the submission of corroborative evidence. See Matter of L-A-C-. An I.J. may deny an application for asylum because the applicant failed to submit evidence corroborating his or her testimony. Here the court finds that the applicant's failure to provide reasonably available corroboration of some aspects of her case should be dispositive.

The respondent did not submit a written statement from her son who received a phone call telling him that his mother was going to die. The respondent did not ask for that letter because she did not see the need of that. The respondent also did not file a written statement from her mother who is taking care of her 15-year-old and 8-year-old children. The respondent said that her mother is a very sick person who does not know how to write or read. And the respondent did not ask her daughter to help her mother complete a statement on her behalf. The respondent did not submit any evidence pertaining to her brother's murders. The respondent never took any photographs of the business that was destroyed in 2019, so she did not submit any corroboration that her business was destroyed. Even though the respondent submitted a document stating that she had been authorized by the government to run a business, that document was in Spanish. So, the court cannot take that document into consideration. The respondent did not submit a written statement from her friend,

(b)(6) because that person left the town, and she does not know where that person is now.

The respondent's relatives continue living safely in Colombia, and the court believes that they could have assisted the respondent in obtaining additional photographs, news reports, her siblings' death certificates, more information about the Aguilas Negras, online search results, copies of telephonic records to demonstrate that she was receiving threats from the Aguilas Negras, social media records, and statements from her sons, daughters, and/or mother.

Upon consideration of all the evidence in the record, and the totality of the circumstances, the court concludes that the respondent has not provided reasonably available and sufficient evidence to corroborate significant aspects of her claim. The court finds that the absence of that corroborating evidence leads to a finding that the applicant has failed to meet her burden of proof. See Matter of S-M-J-, (BIA 1997). As an alternative holding, the court will analyze the statutory basis of the respondent's asylum claim.

APPLICATIONS FOR RELIEF

ASYLUM

BARS TO ASYLUM

The government has argued that the circumvention of lawful pathways rule applies to the respondent. The court agrees with that statement from the government's attorney. In this case, the respondent did not rebut the presumption that she's ineligible for asylum. The respondent entered Mexico and did not seek asylum there. The respondent has not demonstrated that she qualifies for any of the exceptions, so the court finds that the respondent did not rebut the presumption. However, in the alternative, the court will analyze the respondent's application for relief.

The respondent has never been threatened, harmed, detained, or imprisoned by government officials in Colombia. Respondent testified that her brothers were killed for refusing to pay extortion money to the (b)(6) criminal gang. The respondent's business was also destroyed for refusing to pay money to that group, and she was threatened and attacked on April 16, 2023 because of her refusal to pay extortion money. The respondent's friend, (b)(6) was also attacked with a sharp object, and she required medical attention.

Even if the court determines that the respondent suffered harm that rises to the level of persecution, the court also finds that any harm suffered in the past, or that she could suffer in the future, has not been, and would not be, on account of her protected ground, including membership in a legally cognizable particular social group. The evidence in this case shows that the (b)(6) criminal gang has threatened and harmed the respondent because of her refusal to pay them the extortion money, not on account of any protected grounds, including membership in a legally cognizable particular social group. The record indicates that the extortion demands of the gang were motivated solely by the desire for economic gain through criminal means. Conduct that is driven by criminal, nonpolitical motives does not constitute persecution. See Matter of N-C-M-, from the BIA 2011, Page 536, footnote number one (evidence that the noncitizen and his or her family members were extorted, threatened, beaten, and robbed by gang members did not establish a nexus to a protected ground under the Act). The respondent has presented no evidence to show that the Colombian community or society abuse individuals who are victims of extortion as being distinct from the rest of the society. The most recent country conditions report makes clear that crimes committed by organized criminal organizations in Colombia are widespread, affects several different parts of the country, and that there are criminal organizations

committing extortions and killings in Colombia. Thus, not only are the individuals who are victims not distinct, but they, in fact, constitute a large segment of the population. The respondent has not shown that any acts of harm by members of the gang and against her were because of any status she has other than the (b)(6) gang members desire enrich themselves, and a personal grudge that the respondent resisted their extortion attempts. See Matter N-Z-M-.

Even if the respondent had established a well-founded fear of persecution on account of a protected ground, and because the government of Colombia is not the alleged persecutor in this case, respondent additionally had the burden of establishing that persecution is not geographically limited in such a way that relocation within the country of origin will be unreasonable. Although the respondent protected her children by leaving them with their grandmother so they could continue living safely in a farm in Colombia, the respondent did stay there and decided instead to come to the United States. And the respondent also mentioned that if she had known that she would have been detained in the U.S., she would have relocated elsewhere.

The court has taken administrative notice of the 2022 United States department of state country conditions report for the country of Colombia. That report states that armed paramilitary groups and drug trafficking gangs continued to operate in that country. Armed groups as well as narcotics traffickers were reported as significant perpetrators of human rights abuses and violent crimes including acts of extrajudicial, and unlawful killings, extortion, and/or the abuses or crimes such kidnapping, torture, human trafficking, bombings, restrictions on freedom of movement, sexual violence, unlawful recruitment, and use of child soldiers, and threats of violence against journalists, women, human rights defenders, and religious leaders. The government generally investigated these actions and prosecuted those responsible.

In this case, the court cannot make a finding that the government of Colombia is unable or unwilling to protect the respondent if she never reported any incidents to the police. The respondent did not give the police the opportunity to investigate her allegations and protect her from the (b)(6) criminal gang. The country conditions report also demonstrates that it would not have been futile for the respondent to report what happened to her to the authorities. The respondent mentioned that the (b)(6) told her that they would kill her like they killed her siblings if she reported them to the police. It follows that this group is concerned that the government officials will investigate and prosecute them if she reported them to the police.

In this case, the court finds that while the Colombian government's efforts to hold nongovernmental attackers accountable could be slow and limited, country conditions evidence does not establish the government unwilling or unable to control guerillas and paramilitary organizations. As previously mentioned, the country conditions report indicates that the government of Colombia generally investigated human rights abuses and violent crimes committed by armed groups and prosecuted those responsible. In other words, the U.S. department of state report demonstrates that the government of Colombia is actively involved in the demobilization and prosecution of guerillas and the paramilitary groups. The Colombian government has taken steps to combat violence and provide protection for its citizens, so it would not have been a futile endeavor to have sought protection from the Colombian authorities. Even if there was some evidence of control efforts that might not always be entirely effective, that is not sufficient to show the necessary inability to control the guerrillas and paramilitary organizations.

In sum, respondent has not established that she suffered past persecution, or has a well-founded fear of future persecution on account of her protected ground. Additionally, she has not established persecution by forces that the government of Colombia is unable or unwilling to control. As such, the court does not need to analyze the other elements of the claim for asylum. Because respondent did not meet her burden to demonstrate that she qualifies as a refugee, the court thus denies her application for asylum.

WITHHOLDING OF REMOVAL

As withholding of removal is a higher standard than asylum, one who fails to show entitlement to asylum fails to show entitlement to withholding of removal. As respondent has failed to meet the standard of proof needed to demonstrate eligibility for asylum, respondent has necessarily failed to meet the higher standard of proof needed to demonstrate eligibility for a withholding of removal claim under the INA. Thus, respondent's application for withholding of removal is denied.

PROTECTION UNDER THE CONVENTION AGAINST TORTURE

Under the United Nations Convention Against Torture, and other cruel, inhuman, or degrading treatment or punishment, an applicant is eligible for with or deferral of removal if he or she establishes that it is more likely than not that he or she will be tortured in the proposed country of removal by, or at the instigation of, or with the consent or acquiescence of a public official.

Unlike asylum and withholding of removal, the respondent need not prove that the tortures that she fears will be on account of any protected ground. She need only prove it is more likely than not that she will suffer torture in Colombia. The applicant must establish that each step in the claim's hypothetical chain of events is more likely than not to occur. Matter of J-F-F-, (A.G. 2006).

The respondent fears harm from members of the (b)(6) criminal group in Colombia. The court finds that based on the objective evidence in the record, the respondent failed to satisfy her burden for withholding of removal under the Convention Against Torture.

Even though the court recognizes that the applicant might be at some risk of harm as a citizen living in a country with high crime rates, the court finds that she has not provided sufficient evidence that it is more likely than not that she will be personally at risk of harm which rises to the level of torture inflicted by, or at the instigation of a public official acting in an official capacity. The record fails to adequately establish that the applicant faces a foreseeable real and personal danger of being subjected to torture by government officials in breach of their duty to intervene to prevent torture. Respondent has never been harmed the Colombian authorities, and respondent's risk of torture at the hands of the police or other government officials remains a hypothetical which does not provide specific grounds. This matter is suppositions is sufficient to meet the applicant's burden. See Matter of J-E-, and Matter of J-F-F-.

Furthermore, the applicant has failed to demonstrate that the Colombian government would more likely than not consent or acquiesce in her torture by private individuals such as members of the (b)(6) criminal group, or other nongovernmental actors. The evidence in this case shows that the government of Colombia has generally investigated human rights abuses and violent crimes committed by armed groups in that country and prosecuted those responsible. Therefore, it's obvious that the Colombian government is aware of acts of torture inflicted by private parties in that country. See H.H. v. Garland from the 1st Circuit, 2022.

However, the evidence in the record does not support the finding that the government of Colombia has breached their legal duty to prevent such activity. The

country conditions report shows that throughout the years hundreds, if not thousands, of police and military officers in Colombia have died in the line of duty while defending that country from the paramilitary armed groups. For example, the most recent country conditions reports shows that between January 1st and July 31st, armed groups allegedly killed 98 members of state security, including 40 police officers, and wounded 512 other members. The government has been investigating and prosecuting those responsible for human rights abuses and violent crimes. The government has also been able to rescue people that have been kidnapped by armed groups. It follows that the government of Colombia has not surrendered or capitulated to the guerilla's criminal groups or paramilitary groups in that country, and actively combatting those groups. Even if a government's efforts may not completely irradicate violence, it's an ability to provide complete security does not rise to acquiescence. The standard is not whether the Colombian government's efforts at managing violence in the country has been completely effective. See Matter of W-G-R- from the BIA 2014. This court's review of the entire record including the country conditions report does not compel the conclusion that the respondent will be tortured. As such, the evidence is insufficient to establish a claim for relief. Thus, the court will deny respondent's application for protection under the Convention Against Torture.

Accordingly, the following orders will be entered.

ORDERS

It is ordered that the respondent's application for asylum under Section 208 of the Act be denied.

It is further ordered that the respondent's application for withholding of removal under Section 241(b)(3) of the Act be denied.

It is further ordered that the respondent's application for protection under the Convention Against Torture be denied.

It is further ordered that the respondent be removed from the United States to Colombia on the charges contained in the Notice to Appear.

The court has ordered the respondent removed from the United States. If the respondent willfully fails or refuses to apply for the required travel documents to depart the United States, to present herself for removal as instructed, to depart the United States as instructed, or to take any action or conspire to take any action to prevent or hamper her departure, she will be subject to a civil monetary penalty of not more than $813 per day she is in violation.

Talavera-Peraza, Elvin
Immigration Judge

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

(b)(6)

DHS/ICE Office of Chief Counsel - OAK
1010 East Whatley Road
Oakdale LA 71463-1128

Name: (b)(6) **A** (b)(6)

Date of this Notice: 3/14/2024

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

John Seiler
Acting Chief Clerk

Enclosure

Userteam: Docket

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
Mar 14, 2024

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Dina Avila-Jimenez, Deputy Chief Counsel

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

Before: Baird, Appellate Immigration Judge; Liebowitz, Appellate Immigration Judge; Mahtabfar, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Liebowitz

LIEBOWITZ, Appellate Immigration Judge

The Department of Homeland Security (DHS) has appealed the Immigration Judge's November 13, 2023, decision denying the respondent's application for asylum and withholding of removal and request for protection under the Convention Against Torture.[1] Immigration and Nationality Act (INA) §§ 208, 241(b)(3), 8 U.S.C. §§ 1158, 1231(b)(3); 8 C.F.R. § 1208.16(c)-1208.18. The respondent, a native and citizen of the Dominican Republic, has not filed an appeal or responded to the DHS appeal. The record will be remanded.

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).

DHS avers that the Immigration Judge erred by not addressing its motion requesting that the Immigration Judge find that the respondent knowingly made a frivolous application for asylum (Tr. at 57-58; DHS Br. at 1). INA § 208(d)(6), 8 U.S.C. § 1158(d)(6). DHS contends that the Immigration Judge breached her legal duty to address the mandatory bar as they raised it, and it is supported by the record (DHS Br. at 3-5).

[1] 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 the United States Nov. 20, 1994).

The record reflects that in denying the respondent's application for asylum and withholding and request for Convention Against Torture protection, the Immigration Judge rendered an adverse credibility finding and found that the respondent did not present sufficient corroborative evidence to otherwise establish eligibility for relief (IJ at 3-6). In her decision, the Immigration Judge referenced a notice that the respondent received containing warnings of the consequences of filing a frivolous asylum application (IJ at 2; Exh. 2). The hearing transcript also reflects that the Immigration Judge entered this notice into the record and reminded the respondent of the warnings during the hearing (Tr. at 4, 45).

At the conclusion of the hearing, DHS requested that the Immigration Judge find the respondent's asylum application frivolous, citing *Matter of M-M-A-*, 28 I&N Dec. 494 (BIA 2022) and *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007) (Tr. at 57-58). The Immigration Judge stated that she was "seriously considering making a frivolous finding" (Tr. at 59). However, in her written decision, the Immigration Judge did not address this issue despite her obligation to do so. *See Matter of M-M-A-*, 28 I&N Dec. at 497-99; *Matter of X-M-C-*, 25 I&N Dec. 322, 324 n.1 (BIA 2010).

As the Immigration Judge's decision did not contain sufficient findings of fact and conclusions of law regarding whether the requirements for a frivolousness determination under *Matter of Y-L-* have been met, a remand is warranted. *Matter of M-M-A-*, 28 I&N Dec. at 497-98. On remand the Immigration Judge should consider whether any material elements of the respondent's asylum application were deliberately fabricated. Thereafter, the Immigration Judge should issue a decision addressing whether the respondent filed a frivolous asylum application, in accordance with *Matter of M-M-A-* and *Matter of Y-L-*.[2]

Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings in accordance with this decision.

[2] As the respondent did not timely appeal any aspect of the Immigration Judge's decision, the only action required on remand is that the Immigration Judge address the DHS' motion for a determination on whether the respondent filed a frivolous asylum application.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1900 EAST WHATLEY ROAD
OAKDALE, LA 71463

(b)(6)

In the matter of
(b)(6)

File A (b)(6)

DATE: Nov 13, 2023

__ Unable to forward - No address provided.

_X_ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
1900 EAST WHATLEY ROAD
OAKDALE, LA 71463

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

__ Other: _____

MPEREZ
COURT CLERK
IMMIGRATION COURT FF

cc: CHIEF COUNSEL
1010 EAST WHATLEY ROAD
OAKDALE, LA, 71463

EOIR - 1 of 9

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
GUAYNABO, PUERTO RICO

File No.: A (b)(6)	)	
	)	
In the Matter of:	)	
	)	**IN REMOVAL PROCEEDINGS,**
(b)(6)	)	DETAINED
	)	
Respondent	)	

CHARGES: 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Asylum, pursuant to INA § 208, Withholding of Removal, pursuant to INA § 241(b)(3), and Protection under the Convention Against Torture ("CAT").

ON BEHALF OF RESPONDENT
Stephen Stanford, Esquire
Rozas & Associates
7967 Office Park Blvd.
Baton Rouge, LA 70809

ON BEHALF OF DHS
Nelson Echevarria, Esquire
Assistant Chief Counsel
U.S. Department of Homeland Security
#7 Tabonuco Street, Suite 300 (Room 313)
Guaynabo, PR 00968

WRITTEN DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. Procedural History

The respondent entered the United States on July 29, 2023. On July 30, 2023, the respondent was served by the Department of Homeland Security ("DHS") with a Notice to Appear charging her with removability under § 212(a)(6)(A)(i) of the Act. On August 29, 2023, the respondent filed an I-589 application seeking asylum and withholding of removal under the Act and withholding of removal under the CAT. At a master calendar hearing celebrated on September 6, 2023, the respondent admitted through counsel the factual allegations and conceded the charge of removability contained in the Notice to Appear (NTA). The respondent had an individual hearing on November 8, 2023. At her individual hearing the respondent testified as the sole witness.

II. Evidence

A. Documentary Evidence

The documentary evidence in these proceedings consists of the following documents, which have been admitted into evidence:

Exhibit 1 – Notice to Appear (NTA), filed on August 7, 2023;
Exhibit 2 – Frivolous asylum warnings, filed on August 9, 2023;
Exhibit 3 – Scheduling order, filed on August 9, 2023;
Exhibit 4 - Respondent's I-589, filed on August 29, 2023;
Exhibit 5 - Respondent's Submission, Tabs A-H, filed on October 10, 2023;
Exhibit 6 – DHS's submission, Tab A, filed on October 18, 2023;
Exhibit 7 – DHS's submission, Tab A, filed on October 26, 2023;
Exhibit 8 – DHS's submission, (Respondent's credit report), filed on November 8, 2023;
Exhibit 9[1]- DHS's submission, Council of Alderman pictures, filed on November 8, 2023;
Exhibit 10- DHS's submission, Report of Investigation, filed on November 8, 2023.

B. Respondent's Claim

The respondent was born on (b)(6) 1997, in the Dominican Republic, and is a citizen of that country. The respondent left the Dominican Republic because she feared her ex-husband, (b)(6). The respondent affirms that (b)(6) wants to kill her and that he abused her physically, psychologically, and sexually. Because the respondent is a lesbian her family forced her to marry (b)(6) when she was only 16 years old. Her family did this to cleanse the honor of the family. Specifically, on September 23, 2016, the respondent was at the house of her parents. Her parents and (b)(6) told her to come to the living room. That is when the respondent was told that she had to go with (b)(6), otherwise they were going to send her to a convent because she is a lesbian. The respondent told her parents that she did not want to go with (b)(6), but her father said that she had to go because (b)(6) was a well-respected man. The respondent answered that she would go to the convent, but they forced her to go with (b)(6) and moved all her belongings that same day.

Gregorio used to frequently abuse the respondent physically, emotionally, and sexually. Gregorio used to slap the respondent in the face. Gregorio would call the respondent "bitch", "motherfucker", and "dirty woman". Gregorio used to take the respondent to the basement and abused her physically and sexually down there. Gregorio would use an exposed wire to shock the respondent with electricity. Gregorio used to come home from work and bring the respondent to a dark room in the basement. If the respondent attempted to resist Gregorio at all, Gregorio would shock her in the legs and feet. The respondent would try to keep her legs closed to stop him, and he would shock her with the wire. Gregorio used to rape the respondent and tell her that he was teaching her how to be attracted to men. In 2021, there was a time when the respondent did not have her period for three months. The respondent believed that she was pregnant. Gregorio was suspicious as well that the respondent was pregnant and one night, he kicked the respondent in her

[1] This exhibit was admitted in part. Pages 1-3 were admitted. However, pages 4-11 were not admitted for not being translated to the English language.

stomach very hard because he did not like children. The respondent had her period after this happened and bled profusely. The respondent believes that she bled so much because she was pregnant and lost the baby.

On July 5, 2023, (b)(6) caught the respondent with (b)(6) in the house and he beat the respondent for this. Specifically, when the respondent thought that (b)(6) left for work she had her neighbor (b)(6) Consuegra call (b)(6) so she could go to the respondent's home. (b)(6) suspected they were having a secret relationship and instead of arriving home at 7 p.m. as he usually did, (b)(6) arrived home at 3 p.m. and caught the respondent and (b)(6) in bed. (b)(6) started beating the respondent and (b)(6) was able to escape. After (b)(6) finished beating the respondent, he began smoking marijuana. He fell asleep and the respondent escaped and went to her grandmother's farmhouse. (b)(6) arrived two hours later. He found the respondent there and began choking her. While he choked the respondent, he insulted her by calling her things like "bitch" and "dirty woman." He threw the respondent on the floor and while he was beating her, the respondent was able to escape. The respondent ran into a coffee field and hid. (b)(6) was unable to find her. Once (b)(6) left the respondent was able to stop a taxi. The driver agreed to help the respondent and took her to her cousin's house. The respondent's cousin loaned her money, and the driver brought her to a hotel where she was able to stay until she was able to escape the country.

On July 23, 2023, the respondent left the Dominican Republic, and traveled to El Salvador, where she stayed for less than a day. From El Salvador, the respondent traveled to Guatemala, where she stayed for less than a day. The respondent then traveled to Mexico and stayed there for about two days. Finally, the respondent arrived in the United States on July 29, 2023. The respondent alleges that she is scared to return to the Dominican Republic and requests the remedies of asylum, withholding of removal, and CAT.

III. Credibility

The respondent bears the burden to establish that she is eligible for relief. INA § 240(c)(4)(A). In determining whether she has met this burden, the Court will ascertain whether her testimony is credible, persuasive, and fact specific. *See* INA § 240(c)(4)(B). The Court weighs the testimony along with other record evidence. *Id.* The respondent must also submit documentation in support of her application for relief as provided by law or by regulation. *Id.*

In making its credibility determination, the Court considers the totality of the circumstances, and all relevant factors, including: the demeanor, candor, or responsiveness of the applicant or witness; the inherent plausibility of the applicant's or witness's account; the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made); the internal consistency of such statements; the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions); and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. INA § 240(c)(4)(C). There is no presumption of credibility. *Id.*

The Court finds that the respondent is not credible, because of the following reasons:

First, the respondent submitted a letter from Dr. (b)(6) attesting to the respondent receiving physical and sexual abuse. The DHS contacted the (b)(6) Hospital. The DHS found that this hospital never had a doctor called (b)(6) In addition, the DHS was informed that the letter is a fraud. *See* Exh. 10 at 3. When confronted with this, the respondent explained that the letter is not fraudulent because the letter includes the email and phone number of the hospital. The Court finds that this explanation is not sufficient to resolve the credibility issue here because anybody can simply put an email and phone number in a letter. In addition, the DHS investigated and found that the telephone number provided does not exist in the Dominican Republic. *See* Ex. 10 at 8.

Second, the Court notes the demeanor of the respondent as indicative of her not being truthful to the Court. Specifically, the Court had to advised her to keep her hands off her face for the Court to make an accurate credibility determination. The Court further explained the respondent that she had to look at the camera and stop looking away.

Third, the respondent testified that she lived with (b)(6) for 8 years and that during those years she was constantly raped and tortured and that she was locked in the house. The respondent further testified that during those 8 years she never worked, did not have any bank accounts, did not have any credit cards, and never had loans. However, the respondent's testimony is inconsistent with the evidence of record which shows the following: 1- that the respondent received a personal loan in May 2021 for 60,000 Dominican pesos. 2- That in June 2021, the respondent got a credit card with 10,000 Dominican pesos as credit line. 3- In September 2021, the respondent received a personal loan of 20,000 Dominican pesos. 4- In February 2022, the respondent received a commercial loan of 25,000 Dominican pesos. 5- In March 2022, the respondent received a personal loan of 150,000 Dominican pesos. *See* Exh. 8 at 5-6. The respondent was asked if she agreed that she had to be physically present in the bank to obtain these loans especially the commercial loans for which she would need to have a business under her name. The respondent answered that she went with her mother because all the aforementioned loans and the credit card were obtained for her mother. The Court finds that this explanation is unlikely and in addition, it does not resolve the problem at issue because the latter is evidence that the respondent was actually able to leave Gregorio's house. In addition, the Court notes that on March 26, 2019, the respondent got out of her house and applied for a Dominican passport.

Fourth, the respondent was asked by the DHS why (b)(6) affidavit was prepared on July 7, 2023, two weeks before she left the Dominican Republic. The respondent answered that it was not made in that date and continued saying that this affidavit was made while she was detained. This explanation is inconsistent with the evidence of record which clearly shows that the respondent was detained on July 29, 2023, and that (b)(6) affidavit was made on July 7, 2023. *See* Exh. 5 at 15.

Fifth, the respondent did not testify about the rape suffered at the hands of (b)(6) friend. The Court finds that this is a significant omission. When confronted with this omission, she simply stated that she did not mention it because she was not asked about it. The Court notes that in her written declaration, the respondent stated that she scaped to her grandmother's farmhouse and that

then she escaped to a cabin where she was found by (b)(6) and that (b)(6) made his friend rape her as punishment. *See* Exh.5 at 7. However, this is inconsistent with the respondent's I-589 application where it is stated that the respondent scaped to her grandmother's farmhouse and that (b)(6) arrived and beat her there but that she was able to escape and that she hid in a coffee field and that (b)(6) was unable to find her again. *See* Exh.4 at 18. The Court notes that the I-589 does not mention the friend of (b)(6) raping her and that does not mention the cabin where she allegedly hid herself after escaping her grandmother's farmhouse. According to the declaration she was found two times while according to the I-589 she was only found once.

Sixth, the respondent alleges that her family forced her to be with a man called (b)(6) She testified that on September 23, 2016, (b)(6) went to the house of her parents to pick her up to live together. The respondent further testified that she was 16 years old at the time and that she was raped while being a girl that same day by (b)(6) The Court finds this part of the respondent's statement to be false. The Court notes that the respondent was born on (b)(6) 1997, which means that when she allegedly went to (b)(6) house, she was 18 years old and not 16.

Because of the aforementioned, the Court finds that the respondent is not credible.

IV. Corroboration

An applicant's testimony without corroboration may be sufficient to meet his or her burden of proof if the testimony is credible, persuasive, and refers to specific facts. INA § 208(b)(1)(B)(ii); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). However, the Immigration Judge may determine that corroborating evidence is necessary for the applicant to meet his or her burden of proof. INA § 208(b)(1)(B)(ii). When the Court determines corroborating evidence is necessary, "such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii). Unreasonable demands are not placed on an applicant to present evidence to corroborate particular experiences. *Soeung v. Holder*, 677 F.3d 484, 488 (1st Cir. 2012). However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence should be provided. INA § 208(b)(1)(B)(ii); *Avelar Gonzalez v. Whitaker*, 908 F.3d 820 (1st Cir. 2018) (holding that the Immigration Judge reasonably found that the respondent had not met his burden of proof when the respondent (1) was able to obtain corroborating evidence, (2) knew the importance of providing such evidence, and (3) failed to explain why such evidence was unavailable); *Soeung v. Holder*, 677 F.3d at 487-88. If such evidence is unavailable, the applicant must explain its unavailability and the Court must ensure that the applicant's explanation is included in the record. *Soeung v. Holder*, 677 F.3d 484, 488 (1st Cir. 2012). The absence of such corroboration can lead to a finding that an applicant has failed to meet his or her burden of proof. *Soeung v. Holder*, 677 F.3d at 488; *Guta-Tolossa v. Holder*, 674 F.3d 57, 62 (1st Cir. 2012) ("[A]n IJ can require corroboration whether or not she makes an explicit credibility finding."); *see Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997).

As it was stated above, the respondent is not credible. However, even if she was credible, the Court finds that the respondent's case does not have enough corroboration. Here, other than her own declaration, the respondent submitted the affidavit of a friend called (b)(6) country conditions evidence, and a medical certificate from a doctor. The Court finds that the affidavit of a friend can certainly be taken in consideration but has diminished weight for being the statement of an interested party. Regarding the country conditions evidence, the Court finds that although relevant these are general country conditions and this evidence do not address the specific circumstances of the respondent. In addition, as it was stated above the medical certificate submitted by the respondent was fabricated and as a consequence lacks any weight. Finally, the Court does not even have corroboration that the respondent is in fact a lesbian. The only affidavit submitted in the record does not make any mention of this. There is also no pictures that could prove this fact.

Because of the aforementioned, the Court finds that the respondent did not provide enough corroborating evidence and, thus, cannot meet her burdens or proof.

V. Circumvention of Lawful Pathways Rule ("CLP")

Under the CLP Final Rule, noncitizens who cross the southwest land border or adjacent coastal borders without authorization after traveling through another country, and without having (1) availed themselves of an existing lawful process, (2) presented at a port of entry at a pre-scheduled time using the CBP One application, or (3) been denied asylum in a third country through which they traveled, are presumed ineligible for asylum unless they meet certain limited exceptions. 88 Fed. Reg. 31314, 31449–52 (May 16, 2023). In other words, the CLP rule applies a presumption of asylum ineligibility to noncitizens who traveled through a country other than their own before entering the United States through the southern border with Mexico.

Noncitizens can also rebut this presumption based on exceptionally compelling circumstances, including if they demonstrate that, at the time of their unauthorized entry, they or a member of their family with whom they were traveling: (1) faced an acute medical emergency; (2) faced an extreme and imminent threat to their life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; (3) were a victim of a severe form of trafficking, as defined in 8 CFR § 214.11.

Noncitizens in expedited removal who are subject to and do not rebut the rebuttable presumption would be screened for whether there is a reasonable possibility they will face persecution or torture in the designated country of removal. The rebuttable presumption may apply to migrants of any nationality who enter the United States at the southwest land border or adjacent coastal borders without authorization after traveling through at least one other country, but would not apply to unaccompanied minors. The rebuttable presumption is also time-limited, to address the urgent need to respond to and prevent the influx of migrants expected following the lifting of the Title 42 public health Order in the absence of a such a rule. It would apply only to those who enter the United States during the 24-month period after the rule's effective date.

The respondent entered the United States on July 29, 2023, after the CLP rule went into effect. The respondent traveled through El Salvador, Guatemala, and Mexico on her way to the

U.S.-Mexico border. The respondent is thus presumed ineligible for asylum. The respondent did not rebut that presumption.

The respondent did not claim that she was provided with authorization to travel to the United States pursuant to a DHS-approved parole process. The respondent also did not claim that she applied and was denied asylum in any other countries on her way to the United States.

The respondent did not claim that she used the CBP One application to schedule a time and place to present herself at a port of entry.

The respondent also did not establish that at the time of her unauthorized entry into the United States through the Mexico border, there were some exceptionally compelling circumstances that could rebut the presumption of ineligibility for asylum. The respondent did not claim that, when she entered the United States through the Mexico border, she, or a member of her family with whom she was traveling, faced an acute medical emergency.

The respondent also did not claim that she faced an extreme and imminent threat to her life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or that she was a victim of a severe form of trafficking.

Based on all the above, the respondent is ineligible for asylum due to the CLP rule. In the alternative, if a reviewing Court determines that the CLP rule or its effects should not be applied in this case, the Court will have denied the asylum application due to lack of credibility and corroboration as stated above.

VI. Conclusion

In sum, the Court finds that the respondent has not established that she is eligible for asylum, withholding of removal under section 241(b)(3)(A) of the Act or for protection under the CAT because she was found not credible, and because there is lack of corroboration. In addition, the respondent is not eligible for asylum because the CLP bar applies. Therefore, the Court will deny the respondent's applications. In light of the foregoing, the Court enters the following orders:

ORDERS

IT IS ORDERED that the respondent's application for Asylum be pursuant to INA Section 208 is hereby **DENIED.**

IT IS FURTHER ORDERED that the respondent be **REMOVED** to the Dominican Republic pursuant to the charges in the Notice to Appear.

IT IS FURTHER ORDERED that the respondent's application for Withholding of Removal pursuant to INA Section 241(b)(3)(A) is hereby **DENIED**.

IT IS FURTHER ORDERED that the respondent's application for protection under the Convention Against Torture is hereby **DENIED.**

11/13/2023
Date

Honorable Julia Diaz-Rex
United States Immigration Judge

NOTICE: The Immigration Court has ordered respondent removed from the United States. If respondent willfully fails or refuses to apply for the required travel documents to depart the United States, to present herself for removal as instructed, to depart the United States as instructed, or to take any action, or conspire to take any action, to prevent or hamper her departure, she will be subject to a civil monetary penalty of not more than $874 per day she is in violation. INA §§ 240(c)(5), 274D(a); 8 C.F.R. § 1240.13(d).

The Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR-26) shall be filed directly with the Board of Immigration Appeals within 30 calendar days after the stating of an Immigration Judge's oral decision or the mailing of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. *See* 8 C.F.R. § 1003.38(b). If the time period expires and no appeal has been filed, this decision becomes final. *See* 8 C.F.R. § 1003.38(d).

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [M] ALIEN c/o Custodial Officer [M] ALIEN'S ATT/REP [M] DHS

DATE: 11/13/2023 BY: COURT STAFF

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

CBPONE™

Tips for Users

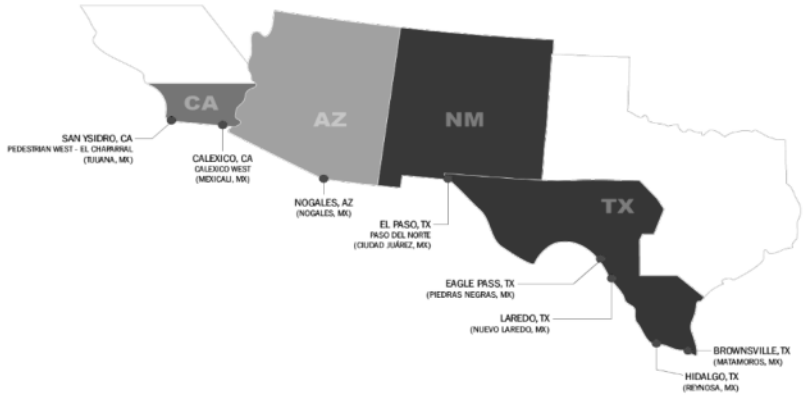
1. Download the CBP One application.

2. Complete your profile and submit advanced information.

3. Add all family members you are traveling with that you intend to seek an exception with. Ensure that all family members traveling with you are added by selecting "add individual" and completing all the fields for each member. Repeat this process for all family members you are traveling with.

4. Schedule an appointment. When you are ready to schedule your appointment(s), select "submit advance information", select your preferred language, allow location permissions, and you will see your prior submission. All persons arriving at a port of entry must have an appointment.

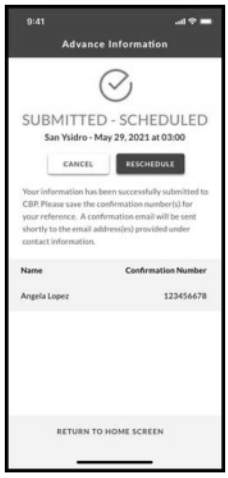
5. Check the distance to the Port of Entry before you select an appointment time. It is recommended to select the one closest to you.



6. CBP One can be accessed in English, Spanish, or Haitian Creole. If additional translation assistance is needed, many mobile devices have translation capabilities or both Apple and Google App Stores have free translation apps available.

7. Ensure you are submitting a good photo. When prompted to take your photo, make sure you are near shade to ensure your surroundings are not too bright or the photo submission may be rejected. If the photo is not accepted, please be patient and select "Try Again." **Do not exit the spinning seal.**

8. You do not have an appointment until you see the screen with a green checkmark that says SUBMITTED-SCHEDULED. Click "Continue" and follow the prompts.



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CBPOne@cbp.dhs.gov

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From: Mosman, Jocelyn (EOIR)
Sent: Mon, 29 Apr 2024 19:02:40 +0000
To: All of Varick Judges (EOIR); All of New York Federal Plaza Judges (EOIR); All of Broadway Judges (EOIR); Auh, Kyung (EOIR); Sagerman, Roger (EOIR); Ouslander, Charles (EOIR); All of Varick JLC (EOIR); NYC Fed Plaza JLCs & AAs (EOIR); New York – Broadway JLCs & AAs (EOIR); Llerena, Maria (EOIR); Fernandez, Rafael (EOIR); Hanley, Victoria (EOIR)
Cc: Chiles, Alexandra (EOIR)
Subject: RE: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1
Attachments: Circumvention of Lawful Pathways Rule PowerPoint.pdf

Happy Monday all!

Attached please find the PDF PowerPoint slides for our upcoming brown bag training on the Circumvention of Lawful Pathways Rule. This training series is being conducted by the New York Brown Bag Training Committee, which consists of Attorney Advisors from all three New York City Immigration Courts. You should have received a Teams invite from Alexandra Chiles just a few minutes ago.

Please let us know if you have any further questions in advance of the Wednesday training and we will do our best to answer them, if not on Wednesday, then via email.

Look forward to seeing you all Wednesday, May 1, 2024 at 12 pm in Courtroom 5 at Varick Immigration Court or via Teams.

Best,
Jocelyn Mosman
Alexandra Chiles

From: Mosman, Jocelyn (EOIR) (b)(6)@usdoj.gov>
Sent: Monday, April 22, 2024 11:09 AM
To: All of Varick Judges (EOIR) <All.of.Varick.Judges@doj365.onmicrosoft.com>; All of New York Federal Plaza Judges (EOIR) <AllofNewYorkFederalPlazaJudges@EOIR.USDOJ.GOV>; All of Broadway Judges (EOIR) <AllofBroadwayJudges@EOIR.USDOJ.GOV>; Auh, Kyung (EOIR) (b)(6)@usdoj.gov>; Sagerman, Roger (EOIR) (b)(6)@usdoj.gov>; Ouslander, Charles (EOIR) (b)(6)@usdoj.gov>; All of Varick JLC (EOIR) <AllofVarickJLCs@EOIR.USDOJ.GOV>; NYC Fed Plaza JLCs & AAs (EOIR) <NYCFedPlazaJLCsAAs@EOIR.USDOJ.GOV>; New York – Broadway JLCs & AAs (EOIR) <NewYorkBroadwayJLCs&AAs@EOIR.USDOJ.GOV>
Cc: Chiles, Alexandra (EOIR) <(b)(6)@usdoj.gov>
Subject: RE: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1

Good morning,

This is your friendly reminder that Alexandra Chiles (NY-Fed Plaza) and myself (NY-Varick) will be hosting a Circumvention of Lawful Pathways Training for you all on May 1, 2024 at 12 pm at Varick (Courtroom 5) and on Teams. The materials and Teams link will be sent out next week leading up to the training. This is **not** CLE eligible.

This is the first in a series of brown bag trainings being offered by the New York AA / JLC Brown Bag Training Committee. Mark your calendars for the following trainings, which will all be held both in person at one of the three NYC courts and available to access via Teams or WebEx:

(b)(5)

If you have any questions regarding the upcoming training next week, you can reach us at (b)(6)@usdoj.gov and (b)(6)@usdoj.gov. We look forward to seeing you May 1st at noon!

Best,
Jocelyn

From: Mosman, Jocelyn (EOIR)
Sent: Monday, April 1, 2024 9:12 AM
To: All of Varick Judges (EOIR) <All.of.Varick.Judges@doj365.onmicrosoft.com>; All of New York Federal Plaza Judges (EOIR) <AllofNewYorkFederalPlazaJudges@EOIR.USDOJ.GOV>; All of Broadway Judges (EOIR) <AllofBroadwayJudges@EOIR.USDOJ.GOV>; Auh, Kyung (EOIR) <(b)(6)@usdoj.gov>; Sagerman, Roger (EOIR) (b)(6)@usdoj.gov>; Ouslander, Charles (EOIR) (b)(6)@usdoj.gov>
Cc: Chiles, Alexandra (EOIR) <(b)(6)@usdoj.gov>
Subject: SAVE THE DATE: Circumvention of Lawful Pathways Brown Bag Training 5/1

Good morning,

As part of the Training Committee, we are looking forward to presenting our first Brown Bag Lunch training on the Circumvention of Lawful Pathways on May 1, 2024 at 12 pm at Varick (Courtroom 5) and via Teams. You will be receiving an official invitation and materials in the coming weeks. For now, we recognize that Lawful Pathways has been appearing more often in the courtrooms and we are compiling a list of questions from you all that we will strive to answer as part of our training. If you've seen this pop up in your hearings lately and have questions, please let us know. You can email me at (b)(6)@usdoj.gov and Alexandra Chiles at (b)(6)@usdoj.gov.

We look forward to seeing you May 1st and answering all your questions!

Best,

Jocelyn Mosman
Attorney Advisor
Executive Office of Immigration Review
U.S. Department of Justice
201 Varick Street, 5th Floor
New York, New York 10014
Phone: (b)(6) | Telework: (b)(6)

Presented by Alexandra Chiles and Jocelyn Mosman

Circumvention of Lawful Pathways Rule

Background

- The Rule establishes a rebuttable presumption of ineligibility for asylum.
- The presumption applies to certain noncitizens who enter the US during a particular period.
- A noncitizen can rebut the presumption in certain instances.
- IJs apply the rule in both credible fear and removal proceedings.
- The Rule sets up a new, **2-step inquiry** in credible fear proceedings.

Who is Subject to the Rule?

- The presumption of asylum ineligibility applies to a noncitizen who enters the U.S. from Mexico at the southwest land border or adjacent coastal borders, who does not have documents sufficient for lawful admission, and whose entry is --
  - Between May 11, 2023 and May 11, 2025;
  - Subsequent to the end of Title 42 public health Order (May 11, 2023); and
  - After they traveled through a country that was both
    - Not their country of citizenship, nationality, or, if stateless, last habitual residence, and
    - A party to the 1951 UN Convention, or the 1967 Protocol, relating to the Status of Refugees, E.g., Mexico
- *See* 8 C.F.R. 1208.33(a)(1)

Who is *NOT* Subject to the Rule?

- The presumption does *not* apply if the noncitizen does not meet all the above requirements. For example, the presumption does not apply to a noncitizen who --
  - Is a citizen of Mexico (because they would not have passed through a qualifying third country);
  - Enters over the U.S.-Canada border;
  - Enters over a maritime border after departing from a country other than Mexico; or
  - Enters at an interior port of entry (i.e., an airport).

Exceptions to the Rule

- The noncitizen meets the above requirements but the noncitizen, or a member of their family with whom they are traveling --
  - Received authorization to travel to the U.S. to seek parole;
  - Presented at a port of entry pursuant to a prescheduled time and place (CBP One app);
  - Presented at a port of entry without a prescheduled time and place but shows it was not possible to access or use the DHS scheduling system (CBP One app) due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or
  - Sought asylum or protection in a country through which they traveled and received a final decision denying that application.
- *See* 8 C.F.R. 1208.33(a)(2)(ii).

Unaccompanied Minors

- Another exception to the Rule includes:
  - The noncitizen meets the above requirements but was an unaccompanied child at the time of entry.
- *See* 8 C.F.R. 1208.33(a)(2)(I).

IJ Questions

- If counsel for the respondent concedes to no exceptions, is that enough? Or is it the court's duty to make sure/ask questions regarding exceptions?
  - Although IJs have a duty to develop the record, an IJ may accept the concessions of a noncitizen's freely retained counsel that are not contradicted by the record. *See Hoodho v. Holder*, 558 F.3d 184, 192 (2d Cir. 2009) (noncitizens "- like all other parties to litigation – are bound by the concessions of freely retained counsel. *Ali v. Reno*, 22 F.3d 442, 446 (2d Cir. 1994)"). *See also Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986).

Terms & Definitions

- For a discussion of the CBP One app, see final rule preamble at 278-94
- Re: "language barrier, illiteracy, significant technical failure, or other ongoing serious obstacle," see final rule preamble at 299-303
- "Final Decision" = Any denial by a foreign government of the applicant's claim for asylum or other protection through one or more of that government's pathways for that claim. Does not include a determination by a foreign government that the noncitizen abandoned the claim. *See* 8 C.F.R. 1208.33(a)(2)(ii).

How is the presumption rebutted?

- The presumption can be rebutted if the noncitizen shows by a preponderance of the evidence that exceptionally compelling circumstances exist, including if, at the time of entry, the noncitizen or a member of their family with whom they are traveling --
  - Faced an acute medical emergency;
  - Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
  - Satisfied the regulatory definition of "victim of a severe form of trafficking in persons."
- *See* 8 C.F.R. 1208.33(a)(3).

IJ Questions

- Does the respondent's testimony alone satisfy the preponderance of the evidence?
  - Yes, provided that the respondent testifies credibly. A noncitizen can satisfy their burden of proof through credible testimony alone; the rule does not require any particular evidence to rebut or establish an exception to the presumption. Where appropriate, an adjudicator may request evidence to corroborate the noncitizen's credible testimony. However, the applicant is not required to provide the evidence if they do not have the evidence and cannot reasonably obtain it. 88 FR 31314. *See* INA 208(b)(1)(B)(ii), 8 U.S.C. 1158(b)(1)(B)(ii), INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v).

Acute Medical Emergency

- Acute medical emergencies include situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that they cannot adequately address outside of the United States. https://www.federalregister.gov/d/2023-10146/p-724.
- If the noncitizen rebuts the presumption based on the acute medical emergency of a family member with whom they were traveling, the noncitizen's eligibility for asylum will not change if the family member who faced the medical emergency subsequently passes away; this is because the language of the rebuttal circumstances focuses on whether the family member faced an acute medical emergency "at the time of entry." 8 C.F.R. 1208.33(a)(3)(i).
- The acute medical emergency ground for rebutting the presumption of asylum ineligibility is not limited to physical medical ailments but could include mental health emergencies. Federal Register: Circumvention of Lawful Pathways at 31348. 8 C.F.R. 1208.33(a)(3)(i)(A).

Imminent and Extreme Threat to Life and Safety

- Threats cannot be speculative, based on generalized concerns about safety, or based on a prior threat that no longer posed an immediate threat at the time of entry. 88 C.F.R. at 11707 n.27. https://www.federalregister.gov/d/2023-10146/p-737
- The threat must be sufficiently grave, such as a threat of rape, kidnapping, torture, or murder. *Id*.
- Where the noncitizen is a member of a particularly vulnerable group (e.g., LGBT or HIV-positive people), their membership in such a group may be a relevant factor in assessing the extremity and immediacy of the threats faced at the time of entry.
- For threats that are less imminent or extreme, noncitizens may attempt to demonstrate on a case-by-case basis that they otherwise present "exceptionally compelling circumstances" that overcome the presumption of ineligibility.

Severe Form of Trafficking in Persons

- Severe form of trafficking in persons means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act is under the age of 18 years; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. 8 C.F.R. 214.11

Other Exceptionally Compelling Circumstances

- Depending on the noncitizen's or accompany family member's particular circumstances, any serious mental impairments or associated competency issues may qualify as an "exceptionally compelling circumstance" sufficient to rebut the presumption of ineligibility for asylum. 8 CFR 1208.33(a)(3)(i). *See also* https://www.federalregister.gov/d/2023-10146/p-338
- While an acute medical emergency is a *per se* example of an exceptionally compelling circumstance to rebut the presumption of ineligibility, IJs may determine, on a case-by-case basis, whether less severe health-related situations also qualify as "exceptionally compelling circumstances." 8 C.F.R. 1208.33(a)(3).

IJ Question: Who is included in the Family Unity Provision?

- In removal proceedings, where a principal applicant is eligible for statutory withholding of removal or CAT withholding and would be granted asylum but for the presumption, and where an accompanying spouse or child does not independently qualify for asylum or other protection from removal, the presumption shall be deemed rebutted as an exceptionally compelling circumstance. *See* 88 FR at 11752 (proposed 8 CFR 1208.33(d)).
- The Departments have expanded the provision to also cover principal asylum applicants who have a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A). *See* 8 CFR 1208.33(c).

IJ Question: Does being robbed at gunpoint in Mexico rise to the level of imminent and extreme threat to life or safety?

- Likely constitutes a sufficiently grave threat of murder, particularly if the respondent lost her phone in the robbery, which prevented her from being able to make CBP One App appointment. However, these determinations should be fact-specific and made on a case-by-case basis.
- See the final rule preamble for DHS's / DOJ's interpretations of the following terms.
  - Imminent and extreme threat to life and safety – preamble at 256-258
  - Other Exceptionally Compelling Circumstances

Application of the Rule

- Initial determination in Credible Fear Interview by the Asylum Officer
- Non-citizens may seek *de novo* review by an Immigration Judge if the Credible Fear Interview comes back negative.
  - **First Inquiry:** Is the noncitizen subject to the presumption of asylum ineligibility?
  - **Second Inquiry:** The standard of proof the noncitizen must meet is determined by the outcome of the first inquiry.
- Where the IJ vacates DHS's credible fear determination, DHS initiates removal proceedings. See 8 C.F.R. 208.33(b)(2)(v)(B).
- Where the IJ affirms DHS's credible fear determination, the case is returned to DHS for removal of the noncitizen. 8 C.F.R. 208.33(b)(2)(v)(C).

IJ Question: If a noncitizen did not have a credible fear interview, are they subject to the Rule?

- The Rule is applicable even without a CFI.
- For noncitizens, the rebuttable presumption will apply in expedited removal proceedings, as well as to asylum applications affirmatively filed with the Asylum Office or filed in immigration court proceedings as a defense to removal.
- *See* DHS Fact Sheet, Fact Sheet: Circumvention of Lawful Pathways Final Rule | Homeland Security (dhs.gov).

CFI and *de novo* Review: First Inquiry

- Is the noncitizen subject to the presumption of asylum ineligibility?
  - Does an exception apply?
  - Has the noncitizen rebutted the presumption?

CFI and *de novo* Review: Second Inquiry

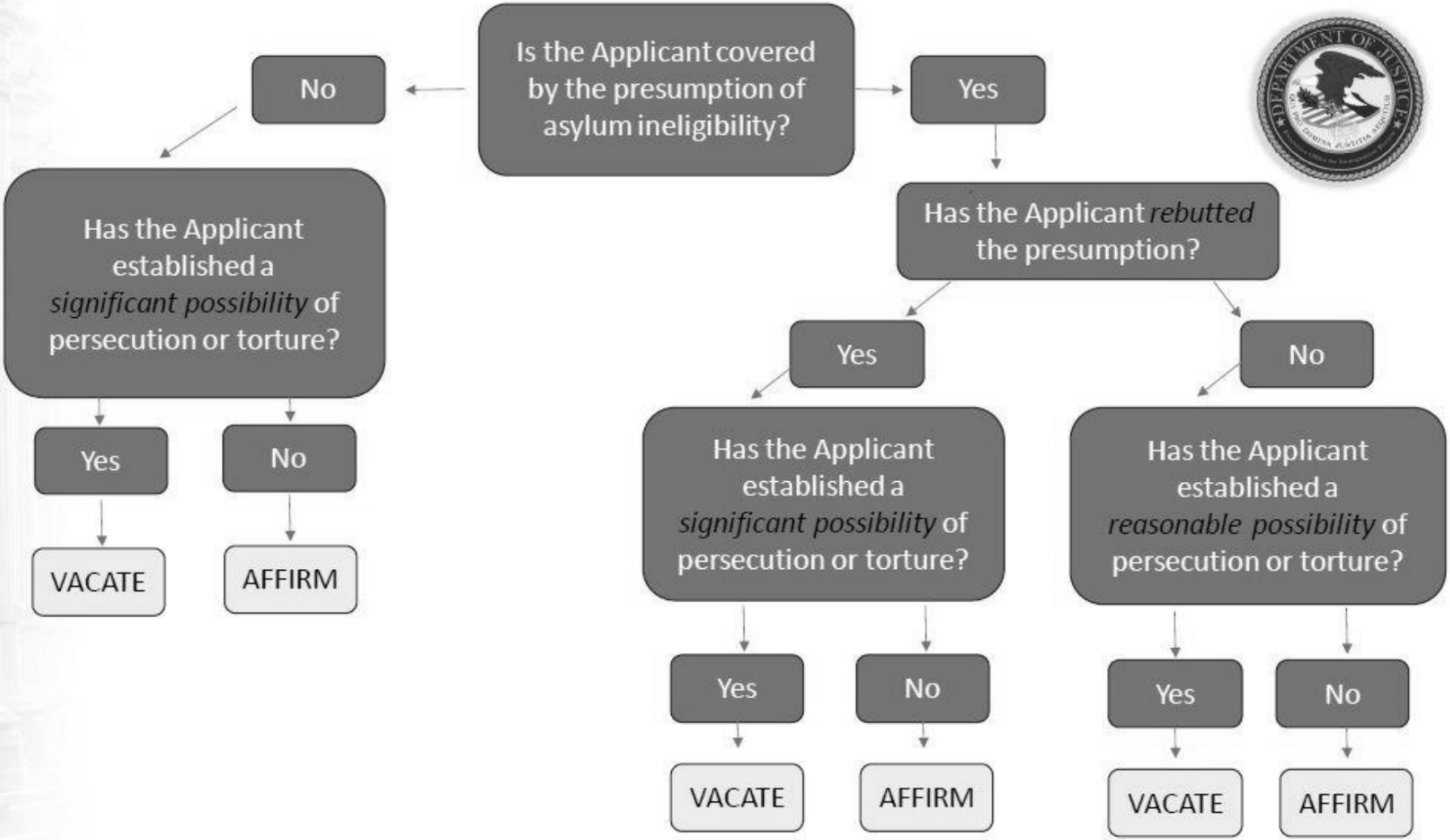
- **IF**: R is not covered by presumption (i.e., an exception applies), OR presumption is rebutted, **THEN** the IJ determines whether the R has established a **significant possibility** of eligibility for asylum, withholding of removal, or CAT protection.
- **IF**: R is covered by the presumption AND the presumption has not been rebutted, **THEN** the IJ determines whether the R has established a **reasonable possibility** of persecution or torture.
- *See* 8 C.F.R. 1208.33(b)(2)(ii).

R not covered by/rebutted presumption = significant possibility of asylum eligibility

- Whether there is a significant possibility that the noncitizen would be able to show at a full hearing by a preponderance of the evidence that the presumption does not apply or that they meet an exception to or can rebut the presumption. 8 CFR 1208.33(a)(2), 3(i). Federal Register :: Circumvention of Lawful Pathways at 31380.
- The "significant possibility" standard asks a predictive question: whether there is "significant possibility" that the noncitizen "could establish" asylum eligibility at a merits hearing. INA 235(b)(1)(B)(v), 8 USC 1225(b)(1)(B)(v). *Id.*

R is covered by presumption = reasonable possibility that he will be persecuted or tortured

- "While the 'reasonable possibility' standard is lower than the 'clear probability' standard required to demonstrate eligibility for statutory withholding or CAT protection, it is a more demanding standard than the 'significant possibility' standard used in credible fear proceedings to screen for asylum." Federal Register :: Circumvention of Lawful Pathways at 31380 (citing Regulations Concerning the Convention Against Torture, 64 FR 8474, 8485 (Feb. 19, 1999)).
- The reasonable possibility standard used when the reasonable fear proceedings were created required a showing of a probability of persecution or torture. *Id.*


Is the Applicant covered by the presumption of asylum ineligibility?
No
Yes
Has the Applicant established a *significant possibility* of persecution or torture?
Yes
No
VACATE
AFFIRM
Has the Applicant *rebutted* the presumption?
Yes
No
Has the Applicant established a *significant possibility* of persecution or torture?
Has the Applicant established a *reasonable possibility* of persecution or torture?
Yes
No
VACATE
AFFIRM
Yes
No
VACATE
AFFIRM

Application in Removal Proceedings

- The rebuttable presumption applies in immigration court proceedings where asylum applications are filed as a defense to removal.
- In removal proceedings, determine whether the presumption of asylum ineligibility applies to the respondent.
- If the respondent is subject to the presumption, and he or she has not demonstrated an exception or rebuttal to the presumption applies, then he or she is ineligible for asylum and the IJ should proceed with the remaining fear-based claims for relief (i.e., withholding of removal under the Act, and/or withholding or deferral of removal under the CAT).

IJ Question: Any update on settlement talks?

- The Ninth Circuit granted a Joint Motion to Place Appeal in Abeyance pending settlement negotiations in *East Bay Sanctuary Covenant v. Biden*, 23-16032 (9th Cir.), and the related case, *M.A. v. Mayorkas*, No. 1:23-cv-1843 (D.D.C.).
- The parties were ordered to file a joint status report after 60 days, and every 60 days thereafter.
- On March 7, 2024, the States of Alabama, Kansas, Georgia, Louisiana, and West Virginia filed a Motion to Intervene. Both parties opposed the States' motion. No further orders or updates have been posted by the Ninth Circuit Court of Appeals.

References

- BIA Unpublished Decisions for samples of the CLP analysis:

(b)(6)

- Regulations:
  - 8 C.F.R. §§ 1208.33, 208.33
- DHS Fact Sheet:
  - Fact Sheet: Circumvention of Lawful Pathways Final Rule | Homeland Security (dhs.gov)
- EOIR Resources:
  - LERS Training Materials File Location: (b)(6)

(b)(6)

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