



U.S. Department of Justice

Executive Office for Immigration Review

*Board of Immigration Appeals
Office of the Clerk*

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Name: O [REDACTED] B [REDACTED], L [REDACTED] Y [REDACTED] A [REDACTED] 267

Date of this notice: 11/2/2015

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Neal, David L.
Greer, Anne J.
O'Herron, Margaret M

Userteam: Docket

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Falls Church, Virginia 22041

Files: A [REDACTED] 267 – San Antonio, TX

Date: **NOV - 2 2015**

In re: L [REDACTED] Y [REDACTED] C [REDACTED] B [REDACTED]

IN ASYLUM AND/OR WITHHOLDING PROCEEDINGS

MOTION

ON BEHALF OF APPLICANT: Bryan S. Johnson, Esquire

ON BEHALF OF DHS: Warren R. Kaufman
Assistant Chief Counsel

APPLICATION: Reopening

This matter was last before the Board on May 11, 2015, when we summarily dismissed the applicant's appeal. The applicant, a native and citizen of Honduras, has filed a timely motion to reopen, alleging ineffective assistance of prior counsel.¹ The Department of Homeland Security opposes the granting of the motion to reopen. The applicant has also filed a motion to consolidate proceedings.² The motion to consolidate will be denied. The motion to reopen will be granted.

The applicant seeks reopening based on alleged ineffective assistance of prior counsel. The applicant contends that prior counsel failed to file an appellate brief after indicating that a brief would be filed and also failed to meaningfully apprise the Board of the reasons underlying the applicant's appeal in the Notice of Appeal (Motion at 12). The applicant further contends that when she followed up with her attorney to check on the status of her appeal, her attorney misrepresented the basis for the Board's denial (Motion at 18-19). Specifically, she contends that although the appeal was summarily dismissed due to failure to provide a Notice of Appeal with sufficient facts and arguments to apprise the Board of the basis for her appeal and for failure to submit a brief, her attorney told her that the appeal had been dismissed because the Board did

¹ Although the motion indicates that the applicant has been removed from the United States and is currently residing in Honduras, we note that the post-departure limitations on motions to reopen do not apply to statutory motions to reopen. See *Garcia-Carias v. Holder*, 697 F.3d 257, 264 (5th Cir. 2012) and *Lari v. Holder*, 697 F.3d 273 (5th Cir. 2012).

² The applicant, who is in withholding proceedings, seeks to consolidate proceedings with her 4-year-old son, [REDACTED] who is in removal proceedings. Given the circumstances, the Immigration Judge agreed to consider these cases concurrently, although he issued two separate decisions (Tr. at 4-5, 17-18). See generally 8 C.F.R. § 1240.1 (a)(iv). As the proceedings are distinct, the motion to consolidate proceedings is denied. However, like the Immigration Judge, we will consider the cases concurrently and issue two separate decisions.

not agree with his argument on appeal (Motion at 13-14). In support of her claims, the applicant has submitted copies of emails sent between her and her former attorney to corroborate that these statements were made (*see* Motion attachments at 21-24).

Additionally, the applicant argues that former counsel's failure to adequately prepare her case constitutes ineffective assistance of counsel (Motion at 16, 20-21). In support of her claim that she merits relief, the applicant states that she is a member of the particular social group of Honduran women unable to leave a domestic relationship, and cites *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) (Motion at 22-29).

The applicant has complied with the procedural requirements for ineffective assistance of counsel claims before the Board (*see* Motion attachments at 1-14, 15-20, 25). *See Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). Moreover, we agree with the applicant that her proceedings were rendered fundamentally unfair by her attorney's conduct, because his failure to apprise the Board of the reasons for her appeal and his misrepresentation to her that he had done so are manifestly prejudicial. *See Matter of Assaad*, 23 I&N Dec. 553 (BIA 2003); *Matter of B-B-*, 22 I&N Dec. 309, 311 (BIA 1998) (requiring ineffective assistance to be so egregious as to render the hearing unfair); *Matter of Lozada*, *supra*, at 640; *see also Ogbemudia v. INS*, 988 F.2d 595, 598 (5th Cir. 1993) (requiring an alien to demonstrate "substantial prejudice" in order to establish that a hearing is fundamentally unfair). Moreover, in light of evolving case law pertaining to the applicant's asylum claim, counsel's failure to argue that the facts and evidence in the applicant's case could form the basis of a particular social group in light of *Matter of A-R-C-G-*, is also prejudicial. *See Matter of A-R-C-G-*, *supra* ("married women in Guatemala who are unable to leave their relationship" can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal).

In view of prior counsel's ineffective assistance and the resulting prejudice, we will reopen proceedings and remand the record to the Immigration Judge for further consideration of the applicant's eligibility for relief.³ We express no opinion as to the applicant's ultimate eligibility for relief. In light of our disposition of this case, we need not reach the applicant's remaining arguments in her motion to reopen, many of which pertain to issues over which we do not have jurisdiction (Motion at 2-3).

ORDER: The motion to reopen proceedings is granted.

FURTHER ORDER: The motion to consolidate is denied.

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



FOR THE BOARD

³ We note that while the applicant's suicide attempt may raise issues relating to competency, no competency concerns were raised in the applicant's motion. Any potential concerns relating to competency may be raised before the Immigration Judge on remand. *See generally Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011).