UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
NEWARK, NEW JERSEY

File: A[redacted] April 24, 20[redacted]

In the Matter of

[redacted]) IN REMOVAL PROCEEDINGS
)
RESPONDENT)

CHARGES: Section 212(a)(6)(A)(i), Immigration and Nationality Act;
Section 212(a)(2)(A)(i), Immigration and Nationality Act.

APPLICATIONS: Section 208 Immigration and Nationality Act - asylum; Section 241(b)(3) Immigration and Nationality Act - withholding of removal; relief under Article 3 of the Convention against Torture.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: [redacted]
Assistant Chief Counsel
Department of Homeland Security
Newark, New Jersey

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 36-year-old female, native and citizen of [redacted], who entered the United States without being admitted or paroled after inspection by an Immigration officer.

The respondent admitted the truthfulness of the factual allegations contained on the Notice to Appear (Exhibit 1), but denied that she is removable pursuant to Section

212(a)(6)(A)(i) of the Immigration and Nationality Act (Act) as an alien present in the United States without being admitted or paroled. She also denied factual allegation 5 as contained on the Form I-261, dated November 27, 2[redacted] (Exhibit 1-A), and the charge on that document that she is removable pursuant to Section 212(a)(2)(A)(i)(I) of the Act in that she is inadmissible as an alien who is convicted of a crime involving moral turpitude.

The respondent has admitted that she is a native and citizen of [redacted] and her alien has been established by that admission. She must now establish by clear and convincing evidence that she was lawfully admitted in the United States. If she cannot do so, she has the burden of proving clearly and beyond a doubt she is entitled to be admitted and is not inadmissible as charged.

The respondent has provided no evidence whatsoever that she was lawfully admitted to the United States. Therefore, she has failed to meet her burden to show by clear and convincing evidence she was lawfully admitted and has failed to show clearly and beyond a doubt that she is entitled to be admitted and is not inadmissible pursuant to Section 212(a)(6)(A)(i) of the Act for coming to the United States without being admitted or paroled after inspection. That charge is sustained.

The Department of Homeland Security submitted a judgment of conviction establishing that respondent was convicted on December 14, 20[redacted] in the [redacted] Municipal Court, New Jersey for engaging in prostitution in violation of New Jersey Law 2C:34-1B1. See Exhibit 2. However, that is a petty offense and does not render her inadmissible pursuant to Section 212(a)(2)(A)(i)(I) of the Act. The Court has no evidence in the record she has ever been convicted of any other crime involving moral turpitude. Therefore, the Court does not sustain the charge under 212(a)(2)(A)(i)(I) of the Act.

Because the respondent declined to designate a country of removal, the Court designated [redacted] should such action become necessary. As relief from removal, she submitted an application for asylum pursuant to Section 208 of the Act (Exhibit 3), which is also considered a request for withholding of removal pursuant to Section 241(b)(3) of the Act. She also requested relief under Article 3 of the Convention against Torture.

She testified that she does not have the money to pay her own passage out of the United States. Therefore, she is not statutorily eligible for voluntary departure pursuant to Section 240B(b) of the Act. Also, although she has two United States citizen children, [redacted] and [redacted], she has only been in the United States since June of 20[redacted], and she was placed into proceedings by service of the Notice to Appear on September 26, 20[redacted], less than ten years after her arrival in the United States. Therefore, she is not eligible statutorily for cancellation of removal pursuant to Section 240A(b)(1) of the Act.

The record consists of the Notice to Appear (Exhibit 1); Form I-261, dated November 27, 20[redacted] (Exhibit 1-A); Department of Homeland Security filing, 1 through 3 (Exhibit 2); Form I-589 and a partial copy of the Country Report for [redacted] for 20[redacted] (Exhibit 3); a letter from the respondent (Exhibit 3-A); the bond decision from the Board of Immigration Appeals dated January 31, 20[redacted] and the 20[redacted] Country Report for [redacted] (Exhibit 4); supporting documents (Exhibit 5); the Country Report for [redacted] for 20[redacted], a newspaper article and an Internet article (Exhibit 6); letters from [redacted] and [redacted] (Exhibit 7); a rap sheet (Exhibit 8); the 20[redacted] Country Report for [redacted] (Exhibit 9); and a letter from Pastor [redacted] (Exhibit 10). The respondent presented her testimony and the testimony of [redacted] in support of her applications.

The respondent bears the evidentiary burden of proof and persuasion in any application for withholding of removal under Section 241(b)(3) of the Act or asylum under Section 208 of the Act. To be eligible for withholding of removal pursuant to Section 241(b)(3) of the Act, her facts must show a clear probability of persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The burden of proof required to establish eligibility for withholding of removal is higher than that required for asylum.

To be eligible for asylum under Section 208 of the Act, she must meet the definition of a "refugee", which requires her to show persecution or a well-founded fear of persecution in a particular country on account of one of the five statutory grounds. Under the regulations applicable to asylum applications, an asylum applicant must show that "there is a reasonable possibility of actually suffering such persecution" if returned to the country where she fears persecution.

The respondent must establish that she filed her claim for asylum within one year of arriving in the United States and, if not, establish that there were changed or extraordinary circumstances justifying the delay in filing the application. If she cannot do so, she cannot be granted asylum.

Her claims for asylum and for withholding of removal are governed by the REAL ID Act because the claim was filed in 20[redacted] Under those provisions, there is no presumption of credibility. The court may base its credibility finding upon the respondent's demeanors, candor or responsiveness, the inherent plausibility of her account, the consistency between her 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 each such statement, the consistency of such statements with the evidence of record, and any inaccuracies or

falsehoods in such statements without regard to whether an inconsistency, inaccuracy or falsehood goes to the heart of her claim, or any other relevant factor.

In considering relief under the Convention against Torture, she must establish that it is more likely than not that she would be tortured if removed to the proposed country of removal. The "more likely than not" standard is the same as for withholding of removal under Section 241(b)(3) of the Act.

In this case, the respondent is 36 years old and single. She has five children, [redacted] and [redacted], who are citizens of the U.S., and [redacted], [redacted] and [redacted] [redacted], [redacted] and [redacted] are neither residents nor citizens of the United States, but reside in [redacted]. The respondent's parents are neither residents nor citizens of the United States. Her mother was deported from the United States to [redacted] about 18 years ago, and deceased from cancer in 1995. The respondent said that she did not know the name of her father. She has one sister who lives in [redacted] and is neither a resident nor citizen of the United States. She has cousins in the United States in addition to her children. [redacted], who testified on her behalf, and his statement is at Exhibit 7, is a former boyfriend and the father of her daughter [redacted]

She first entered the United States on June 27, 20[redacted] and has not departed since that time. No visa petitions have ever been filed on her behalf, and prior to filing the Form I-589 with the Court in 20[redacted], she had never made any other applications for Immigration benefits. As noted above, she stated she had no money to pay her own passage out of the United States, although she claims to possess a valid passport.

Her own statement and testimony about her fear of return was fairly general. The Government attorney asked very detailed and specific questions to establish the basis of her claim. In answer to those questions, she advised that her grandfather's brother, [redacted], died April 17, 20[redacted] in [redacted] while he was detained in jail.

The jail in which he was detained caught fire and he died. He had been detained for fighting. She advised that her mother's brother, [redacted], died March 27, 20[redacted] in [redacted]. He was stabbed while sitting in "a place." She had asked her grandmother what happened, and the grandmother advised that [redacted] was stabbed by the son of a woman for some reason the respondent does not know.

She further advised that her mother's brother, [redacted] died in 19[redacted]. He was drinking a place on December 24, 19[redacted] and unknown persons who were shooting guns in the air to celebrate Christmas. He was shot accidentally by one of these bullets. She advised that the son of her grandfather's brother, [redacted], died November 15, 20[redacted] also in the fire in the jail where [redacted] was detained. [redacted] was also in jail for fighting. She advised that [redacted] died December 23, 20[redacted] when he was riding his motorcycle in [redacted] near a place where people were shooting. He got hit and fell from his motorcycle and hit his head. She does not know who shot him or why.

Although she initially advised the Government attorney that no one else in her family had been killed in [redacted] she later added that she also had a cousin, [redacted], who was shot and killed March 10, 20[redacted], when he was buying cattle and persons came out in the middle of the road and killed him because they wanted to rob him of his money. She said he was the victim of a crime and his death did not form a reason for her fear of returning to [redacted]

In her own testimony she claimed that her "father" had abused her. She clarified to the Government counsel that the person she identified as her "father" was actually her maternal grandfather. She lived with him when she was growing up. By saying he abused her, she testified she meant he used bad words and beat her. She denied he ever sexually abused her. She said he used to hit her when she did things he

disapproved of. She lived with him until age 18, around 19[redacted] when she moved to live and work in another town. After she left the house to live and work in the other town, her grandfather no longer abused her. He is still alive and is 88 years old. She advised that she no longer fears him.

She claims that her uncles had also abused her. In her testimony she named them as [redacted] and [redacted] [redacted] is presumptively the gentleman who died March 27, 20[redacted] and [redacted] is presumptively the man who was shot December 24, 19[redacted], and died. She told the Government attorney her Uncle [redacted] also abused her. These uncles lived in the grandfather's house when she did. She denied in testimony they sexually abused her. She said rather they hit her and called her bad words like her grandfather used to do. She said [redacted] only mistreated her while she lived in the house. Of course, now [redacted] and [redacted] are dead. She said once her Uncle [redacted] was drunk and jumped on top of her on her bed, but the grandfather came by and he always defended her and he stopped [redacted] from doing anything to her. In fact, the grandfather defended her from as much harm as he could from the uncles.

The Government attorney pointed out that her Form I-589 at Exhibit 2 says she had an uncle gunned down in 20[redacted] by gangs. She said this was a nephew of her grandmother who came from the United States and lived in another town. He was shot by a gang. An aunt on her father's side told her that the gang wanted this man's gold chain and jewelry.

She also spoke in her own statement about mistreatment from the fathers of her children. The father of her daughter [redacted] is [redacted]. She met him after she moved out of her grandfather's house. When he found out she was pregnant with Janeth, he abandoned her.

Her daughter [redacted]s father is [redacted], who is from [redacted] He also

abandoned her like [redacted] did, but never physically mistreated her.

She testified initially to the Government attorney that her daughter [redacted]s father is [redacted], and she denied he ever mistreated her. He gave her money, but did not live with her when [redacted] was born. He wanted to take [redacted] from her, but she did not want to agree. Mr. [redacted]ater gave her money to come to the United States in 20[redacted]

The Government attorney asked why her statement at Exhibit 3-A says that the father of [redacted] (identified in testimony as [redacted] sexually harassed and raped her. She said this was probably a mistake. The only man who abused her is the father of [redacted], [redacted]. She met this man in the U.S. [redacted] used to come home drunk and sometimes beat her. She denied he ever raped her.

She claimed initially in testimony to the Government counsel that she was raped once in [redacted]y an unknown man who grabbed her when she was walking to a supermarket in [redacted] she was around 19, after she had moved out of her grandfather's house. She reported this incident to the police, but nothing was done.

In her statement at Exhibit 3-A, she claims that nine family members in [redacted] were brutally murdered. The Government attorney asked her to identify these persons. She named [redacted], [redacted], [redacted], and some other cousins whose names she could not recall.

She acknowledged that [redacted] was assassinated with a gun while buying cattle and the victim of a crime. She acknowledged that [redacted] was shot accidentally when people fired guns in the air on Christmas Eve in 19[redacted]. When asked why she would identify him as a victim of murder, she said she does not know who killed him. She acknowledged again that [redacted] died in a jail fire and was not brutally murdered.

The Government attorney asked why the alleged rape she suffered at age 19 on her way from the supermarket was not in her Form I-589 or statement at Exhibits 3 and 3-A. She said she might have forgotten about it. She did not know how she could forget it.

The Government attorney pointed out that her statement at Exhibit 3-A alleges that the father of her daughter [redacted] harassed and raped her and that [redacted] was a result of such a rape. As she had testified that [redacted] s the father of her daughter [redacted] and she had testified he never mistreated her, the Government attorney asked her for clarification. She then said Mr. [redacted] had not done so, but the father of her daughter [redacted] had forced her to have a relationship. She essentially said that her testimony that [redacted] father forced her to have a relationship was correct and her affidavit at Exhibit 3-A was incorrect. She said she confused [redacted] father and [redacted] s father in her statement at Exhibit 3-A because there was lots of noise in jail when she was preparing it.

The Government attorney pointed out that her statement at Exhibit 3-A says she left home with the father of [redacted] to avoid abuse, but she testified she never lived with that man. She said then that her affidavit about that is true, but her testimony is not.

Mr. [redacted] essentially confirmed that he is the father of her daughter [redacted] and that he helped the with the documents from [redacted] that were submitted in support of her claim at Exhibit 5. He did not know her in [redacted] and had no personal knowledge of any problems she had there.

Unfortunately, the respondent has not been a credible witness in this case. Her affidavit and application at Exhibits 3 and 3-A are not consistent with her testimony. For example, she claims that multiple family members were brutally murdered in her statement. But when asked to actually state their names and the circumstances of their

murder, it turned out the only one who was murdered was her cousin, who was robbed and was the victim of a crime, and his death formed no reason for which she fears return to

Her I-589 claims fear of torture by gang members. She says she was subjected to physical, mental and sexual abuse by her father, her grandfather and two uncles who were drunk all the time and beat her up. She has denied in testimony that her father, grandfather or uncles sexually abused her. She apparently had no relationship with her father, but her grandmother and three uncles who lived with her spoke harshly to her and periodically hit her. Therefore, her account of the relationship with them is not consistently presented. Her testimony provided absolutely no indication why the gang members would have any interest in her in her country.

The only person who seems to have possibly been harmed by gang members is a nephew who was shot when a gang member robbed him of gold jewelry in 20 after he returned from the United States. This appears to have nothing to do with the respondent at all. As noted above, her claims of harm by family and the fathers of her various children were not consistently presented in her testimony and her application. Under these circumstances, the Court is not able to conclude that she has been a credible witness as to what has happened to her in r even why she fears harm upon return to that country.

For that reason, she has failed to meet her burden to establish she has a well-founded fear she would be persecuted in n account of any of the five statutory grounds.

Even if she is deemed credible, based on the detail of her life in she has not established that she was persecuted in the past by anyone on account of any statutory ground. While it is unfortunate that her grandfather had a heavy hand in

raising her and her uncles were also inclined to drink and sometimes hit her, it does not rise to the level of persecution and the record does not establish it was on account of any of the five statutory grounds.

The rape in [redacted] while always abominable, was a random act of violence and does not establish past persecution. Her testimony about her treatment at the hands of the fathers of her children in [redacted] seems mostly to be that those gentlemen impregnated her and then left her and did not support to her emotionally and possibly financially. She provided very inconsistent information about whether any of the men ever abused her in any way, at one point saying no, and then later changing her mind. She has not established on this record that her treatment at the hands of the fathers of her children in [redacted] ose to the level of persecution or was on account of any of the five statutory grounds. Therefore, even if credible, she has failed to meet her burden that she has been the victim of past persecution in [redacted] or that she has a well-founded fear she would be persecuted there upon return now.

The grandfather who harmed her left her alone after she moved out of his house and he is now 88 years old. There is little reason to believe he would try to continue to harm her now. Two of the uncles that she said were abusive are dead, and the remaining uncle only mistreated her when she lived in her grandfather's house and did not continue the mistreatment when she moved away. Under those circumstances, it is not reasonable to believe that he would now seek her out for harm.

Also, as noted above, her generalized claims in her affidavit or statement that she fears the gang are not borne out by any of the testimony or evidence. There is no reason to believe on this record that she would be treated any differently than any other citizen of [redacted] upon her return. While the multiple Country Reports in the record reflect that it is a poor country and does have a problem with gangs, a generalized

concern about those problems does not establish a well-founded fear of future persecution on account of any of the five statutory grounds. For all of these reasons, her claim for asylum must be denied.

Because she has failed to meet the lower burden of a well-founded fear of future persecution, the Court must conclude she has also failed to meet the higher burden that it is more likely than not she would be persecuted on account of any of the five statutory grounds if she returns to [redacted] Her claim for withholding of removal must also be denied.

She has also made a claim under the Convention against Torture. Her claim was not consistently presented. None of the background documents resolve the inconsistencies. As discussed above, when details were elicited, this did not establish that the government of [redacted] ever sought to torture her or harm her in the past. It also does not establish that the government of [redacted] has a specific intent to torture her upon her return or that anyone in that country has such an intent. Further, it does not establish that the government of [redacted] would acquiesce in her torture by anyone or turn a blind eye to her torture by anyone. Therefore, her claim for relief under the Convention against Torture must also be denied.

The respondent presents a sad situation to the Court. She has multiple children, three in [redacted] two in the United States. She seems to have been ill-treated by the fathers of her children, except for Mr. [redacted], who continued to emotionally support her and helped her provide documents in her case. The other fathers seemed to have abandoned her and provided limited emotional or financial support. Apparently also she was left to grow up in her grandfather's home with uncles who were rough and wild, and perhaps she did not have a very happy childhood. It appears after coming to the United States she had problems with the father of [redacted], who was also a violent man. These

are all very sad circumstances. Unfortunately, the Court may only adjudicate the claims that are before the Court, and she has not met her burden to establish her eligibility for those means to avoid removal.

ORDER

IT IS HEREBY ORDERED the application for asylum be denied.

IT IS FURTHERED ORDERED the application for withholding of removal be denied.

IT IS FURTHER ORDERED the application for relief under Convention against Torture be denied.

IT IS FURTHER ORDERED that the respondent be removed from the United States to [redacted] pursuant to Section 212(a)(6)(A)(i) of the Act as contained on the Notice to Appear, as amended.

April 24, 20[redacted]

[redacted]
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before JUDGE [redacted] in the matter of:

[redacted]

A[redacted]

NEWARK, NEW JERSEY

was held as herein appears, and that this is the original transcript thereof for the file of the Executive Office for Immigration Review.

[redacted]

[redacted](Transcriber)

FREE STATE REPORTING, Inc.-2

JUNE 9, 20[redacted]

(Completion Date)