

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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***Hernandez-Avalos v. Lynch*, No. 14-1331, 2015 WL 1936721 (4th Cir. Apr. 30, 2015)**

The Fourth Circuit granted a petition for review of the Board's decision affirming an Immigration Judge's denial of an application for asylum and withholding of removal to El Salvador. The petitioner had been threatened with death three times by members of "Mara 18," a criminal gang. She testified that she feared that gang members would kill her if she was returned to El Salvador. The Immigration Judge found the petitioner credible but denied her applications for relief, determining that she had not established a nexus to a protected ground. Additionally, the Immigration Judge found that the petitioner had not shown that she had been threatened by people that the Salvadoran government was unable or unwilling to control. The Board affirmed the Immigration Judge's decision. The court of appeals found that the petitioner had established a well-founded fear of persecution on account of a protected ground, namely her membership in the particular social group of her nuclear family. The court noted that, under Fourth Circuit precedent, an applicant for asylum must demonstrate that a protected ground serves as "at least one central reason for" the feared persecution, but not necessarily the central reason. The court determined that the petitioner had been threatened by Mara 18 in order to recruit her son into their ranks, but also because of her maternal relationship with her son. Therefore, the court found that the petitioner's relationship to her son was at least one central reason for the threats she received. The Fourth Circuit also rejected the Immigration Judge's conclusion that the petitioner had not shown that the Salvadoran government was unwilling or unable to control the gang members who threatened her. The court concluded that the Board and the Immigration Judge had drawn unjustified conclusions from the petitioner's testimony. The court further concluded that the petitioner's claims were supported by the 2011 State Department Human Rights Report for El Salvador, which noted the existence of widespread gang influence and corruption within El Salvador's prisons and judicial system. The court found this evidence (considered in conjunction with the petitioner's testimony) sufficient to establish that the government was unwilling or unable to protect the petitioner from the gang members who threatened her. The Fourth Circuit also held that the Immigration Judge had relied on his "unsupported personal knowledge of conditions in El Salvador" in assessing whether the Salvadoran government was willing and able to protect the petitioner.