



Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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Name: RAMIREZ-PERYO, GUILLERMO

A [REDACTED]

Date of this notice: 3/18/2010

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

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Received

MAR 22 2010

Law Office Jodi Goodwin

Enclosure

Panel Members:  
Cole, Patricia A.

Falls Church, Virginia 22041

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File: A [REDACTED] - Bloomington, MN

Date: **MAR 18 2010**

In re: GUILLERMO RAMIREZ-PERYO a.k.a. Guillermo Eduardo Ramirez-Peyro

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jodi Goodwin, Esquire

ON BEHALF OF DHS: Daniel J. Pomschloegl  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -  
Immigrant - no valid immigrant visa or entry document

APPLICATION: Convention Against Torture

The respondent is a native and citizen of Mexico. This matter is before the Board pursuant to a remand of the United States Court of Appeals for the Eighth Circuit. *Ramirez-Peyro v. Holder*, 574 F.3d 893 (8th Cir. 2009). The court has vacated our July 9, 2008, decision sustaining the Department of Homeland Security's ("DHS") appeal of the Immigration Judge's October 11, 2007, grant of the respondent's application for deferral of removal under the Convention Against Torture. The complex facts and procedural history of this case are summarized in the Eighth Circuit's decision. *See id.* at 895-99. In short, the respondent claims that he more likely than not would be tortured, by or with the acquiescence of a public official of the Mexican government, due to his work as a drug informant for the United States government. Upon consideration of the points raised in the Eighth Circuit's decision, the DHS's appeal will be dismissed.

In our previous decision, we found no clear error in the Immigration Judge's positive credibility finding or his other factual findings. *See* 8 C.F.R. § 1003.1(d)(3)(i); *see also Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564 (1985) (holding that where there are two permissible views of the evidence, the fact-finder's choice between them cannot be deemed clearly erroneous); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). We concluded that the record supports the determination that the respondent's work as an informant has placed him at serious risk of harm at the hands of the Carillo Fuentes drug cartel. We saw no reason to disturb the finding that this cartel possesses the means to locate him throughout Mexico. Additionally, we affirmed the Immigration Judge's finding of pervasive corruption in Mexican law enforcement agencies, despite

remedial efforts at the highest government levels.<sup>1</sup> Nevertheless, we agreed with the DHS's argument that the respondent failed to establish a likelihood of torture within the meaning of the applicable regulations, as he did not show that he faces a likelihood of torture by or with the acquiescence of a "public official or other person *acting in an official capacity*." 8 C.F.R. § 1208.18(a)(1) (emphasis added); *see also* 8 C.F.R. § 1003.1(d)(3)(ii) (the Board reviews questions of law *de novo*); 8 C.F.R. § 1208.17(a); *Merjivar v. Gonzales*, 416 F.3d 918, 923 (8th Cir. 2005); *Matter of V-K-*, 24 I&N Dec. 500 (BIA 2008).

The Eighth Circuit deferred to our interpretation of the "in an official capacity" language as the equivalent to the "under color of law" standard employed in civil rights cases. *Ramirez-Peyro, supra*, at 900. On the other hand, the court held that we improperly applied this standard in determining that Mexican law enforcement officers would not harm the respondent in their official capacities. *Id.* at 901. In this regard, the court determined that we neglected relevant fact-findings supported by substantial evidence. The court referred to the Immigration Judge's finding that "people within the Mexican law enforcement community" would harm the respondent directly or by turning him over to the cartel, whose members (perhaps including the same police officers) would then harm or kill him. *Id.* at 902. The court further called attention to the finding that the respondent's participation in the deportation process would provide Mexican officials with information about his whereabouts, which they would then make known to the cartel. *Id.* In addition, the court noted the finding that the Mexican police force is rife with corruption at all but the highest levels of government, and that attempts to reign in such corruption have failed. *Id.* at 904. Therefore, the court found it necessary to remand the case for the Board to apply these fact-findings in connection with the "under color of law" standard summarized in its decision. *Id.* at 900-01, 904.

The Eighth Circuit also found impermissibly narrow the Board's stance that even if Mexican law enforcement officers would consent or acquiesce to torture at the hands of the cartel, they "would not be acting under the pretense of law [but] following a purely personal pursuit." *Id.* at 904. The court reasoned that officers engaging in harmful actions of this nature would simultaneously breach their responsibility for stopping such crimes, and acquiescence "in an official capacity" would thereby occur. *Id.* at 905. Moreover, the widespread level of police participation in harmful actions on behalf of the cartel distinguished this case from others in which a government was unable to control third-party torturers despite concerted attempts. *Id.* at 905-06. The court thus remanded the case for further analysis.

The DHS has filed a Motion to Remand, seeking further fact-finding tailored to the Eighth Circuit's decision. We agree with the respondent that the decision forecloses such a remand, as it instructs the Board to apply the appropriate standard to the highlighted fact-findings. *Id.* at 904-06. In light of the Eighth Circuit's affirmance of the Immigration Judge's fact-findings, we discern no error in the grant of torture protection. The respondent has shown that he more likely than not would be tortured upon return to Mexico, either directly by government agents or indirectly

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<sup>1</sup> We did, however, emphasize that we did not affirmatively find that corruption is pervasive in Mexico to the extent alleged by the respondent; rather, we were unable to find clear error in the Immigration Judge's finding to that effect.

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by government agents turning him over to the cartel. While the record demonstrates that the government of Mexico opposes drug violence and corruption at its highest levels, it also shows that Mexican law enforcement remains rife with corruption. Thus, the instant scenario is distinguishable from one in which "rogue government agents" would engage in torture. Furthermore, the Eighth Circuit's discussion of the "under color of law" standard makes clear that a government agent would not merely be following a personal pursuit by consenting or acquiescing to the respondent's torture at the hands of the cartel, but also breaching his or her responsibility to intervene. In the absence of a showing that the Mexican government has succeeded in its efforts to curtail corruption in law enforcement, the respondent has proven that he more likely than not would be tortured upon removal by or with the acquiescence of a public official of the Mexican government. However, as the Immigration Judge stated, deferral of removal is a temporary form of protection, and should the Mexican government make significant inroads in its battle against drug cartels and corruption, the respondent would at that point be subject to removal.

Accordingly, the following orders are entered.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the DHS the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

  
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FOR THE BOARD