

Attorney General**Case:** *Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020)**Date:** Feb. 26, 2020**Adjudicated by:** A.G. William Barr**Tags:** Immigration, CAT, deferral of removal, mental health facility, torture definition**Holdings:** BIA decision affirming IJ's grant of deferral of removal is vacated; case remanded.**Rationale:** BIA & IJ erred because they did not consider that the poor conditions in a mental health facility in MX do not constitute "torture" under the statutory definition.**Facts:** Mexican citizen protesting removal by claiming CAT relief because he would be institutionalized for mental health concerns if he returned, and the poor conditions of the facility would = "torture."**History of the Case:**

- **IJ:** granted deferral of removal for CAT claims.
- **DHS:** appealed to BIA; BIA affirmed IJ's decision.
- **2020:** A.G. referred this one to himself to set the record straight.

Appeals to Statute & Precedent:

- **8 C.F.R. § 1208.16(c)(2):** To qualify for deferral of removal, "[t]he burden of proof is on [the respondent] to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal."
- **8 C.F.R. § 1208.18(a)(5):** to qualify as torture, the act must be "specifically intended to inflict severe physical or mental pain or suffering."
- **8 C.F.R. § 1208.18(a)(1):** Purpose of torture: "obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind."
- ***Matter of J-R-G-P-*, 27 I&N Dec. 482, 484 (BIA 2018):** "'torture' does not cover 'negligent acts' or harm stemming from a lack of resources." (Also a case involving Mexican mental health facility.)
- ***Villegas v. Mukasey*, 523, F.3d 984 (9th Cir. 2008):** "terrible squalor" of MX mental health facility did not amount to torture because there was no specific intent to inflict pain and suffering.
- ***Oxygene v. Lynch*, 813 F.3d 541, 548 (4th Cir. 2016):** specific intent to inflict harm in order for it to qualify as torture.
- ***Matter of J-E-*, 23 I&N Dec. 291, 299, 301 (BIA 2002):** torture does not cover terrible conditions; must have element of intent. Not just negligence or recklessness.

- ***Auguste v. Ridge*, 395 F.3d 123, 153 (3d Cir. 2005)**: Prison conditions in Haiti don't amount to "torture" because absent intent.
- ***Pierre v. Gonzales*, 502 F.3d 109, 111 (2d Cir. 2007)**: Prison conditions don't amount to torture unless deliberately awful—poverty, neglect, and incompetence don't cut it.

Quotes:

- "On remand, therefore, the Board should consider *de novo* whether the deprivations that the immigration judge found the respondent likely to experience upon return to Mexico would rise to the level of torture under the governing CAT regulations and the relevant precedents." (780)

Commentary:

- Board should have reviewed case *de novo* because while the IJ may have been right that bad things would happen in the Mexican mental health facility, the Board missed that those bad things did not rise to the level of "torture" under the statute. (So it was a question of *legal* significance, not factual significance.)