

must be assessed in the social and cultural context of the applicant's country of citizenship or nationality. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 241 (BIA 2014); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 214-15 (BIA 2014). A proffered social group must avoid being too broad to have definable boundaries and too narrow to have larger significance in society. *See Matter of A-B-*, 27 I&N Dec. 316, 336 (A.G. 2018).

A group is socially distinct if "society in general perceives, considers, or recognizes persons" sharing a particular characteristic or set of characteristics as constituting a group. *Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74-76 (BIA 2007) (holding that the proposed social group of "affluent Guatemalans" lacked the requisite social distinction and did not have well-defined boundaries), *aff'd sub nom. Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007); *Matter of C-A-*, 23 I&N Dec. 951, 960-61 (BIA 2006) (finding that non-criminal informants who provided information to the Colombian government about the Cali drug cartel were not a sufficiently socially distinct group); *see also Koudriachova*, 490 F.3d 255, 262 (2d Cir. 2007) (holding that the BIA's interpretation of "particular social group," including the social distinction requirement, is reasonable and merits deference). Whether a social group is "socially distinct" must be determined by the perception of the society in question, rather than solely by the perception of the persecutor. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 242 (BIA 2014); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 218 (BIA 2014) (noting that the "perception of the applicant's persecutors may be relevant because it can be indicative of whether society views the group as distinct," but that "the persecutors' perception is not itself enough to make a group socially distinct"). However, "persecution can be the 'catalyst' for a group of individuals to 'experience a sense of 'group'' and for society to 'discern that this group of individuals . . . is distinct in some significant way.'" *Paloka v. Holder*, 762 F.3d 191, 196 (2d Cir. 2014) (quoting *M-E-V-G-*, 26 I&N Dec. at 243). "Being the victim of a crime or even being a likely target for criminal opportunistic behavior does not necessarily preclude the existence of a valid asylum claim if the claimant would likely be targeted because of her membership in a sufficiently defined social group." *Paloka v. Holder*, 762 F.3d 191, 198 (2d Cir. 2014) (citing *M-E-V-G-*, 26 I&N Dec. at 243; *Cece v. Holder*, 733 F.3d 662, 671-72 (7th Cir. 2013) (en banc)). There is no requirement that members of the group have a "voluntary associational relationship" or "share an element of 'cohesiveness' or homogeneity." *Koudriachova*, 490 F.3d 255, 263 (2d Cir. 2007) (citing *Matter of C-A-*, 23 I&N Dec. 951, 956-57 (BIA 2006)).

In the instant case, the Court finds that Respondent's proposed group, "Guatemalan women who defy gender norms," is defined with the requisite immutability, particularity, and social distinction. *M-E-V-G-*, 26 I&N Dec. at 243. The Court finds that the group is immutable as gender has long been held to be an immutable characteristic. *See Matter of Kasinga*, 21 I&N Dec. 357, 365-66 (BIA 1996) (finding "young woman" is an immutable characteristic); *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).

The group is particular because it encompasses actions that narrow her proposed group and provide concrete boundaries. *M-E-V-G-*, 26 I&N Dec. at 237; *W-G-R-*, 26 I&N Dec. at 210-12; *Paloka v. Holder*, 762 F.3d at 196. The Court finds that gender and nationality limitations imposed on the group provide adequate benchmarks. Additionally, "defy gender norms" sets that members of the proposed group have taken actions in Guatemala that do not conform with societal

expectations of women. This too further narrows Lead Respondent's proposed group and provides necessary, recognizable boundaries.

The proposed group is also socially distinct. Lead Respondent argues that her group is socially distinct because it is exposed to more violence than other segments of Guatemalan society. Respondent's brief at 22-23 (filed May 30, 2019). The Court agrees and also finds that her proposed group is distinct as her job as a female sales representative at [REDACTED] was unique as she filled a role traditionally held by men. From Lead Respondent's own testimony, she was the only female sales representative at [REDACTED] at the time she worked there. In an expert report written by Professor John Tomas Way, he concludes that Lead Respondent's "professional experience in retail marketing and distribution situates her well outside of Guatemalan gender norms." Exh. 5, Tab H at 79. He notes that in his research on retail and commerce in Guatemala he has rarely come across women working in such a male-dominated field. Exh. 5, Tab H at 77. The submitted country condition reports also indicate that violence against women is a prevalent human rights issue in Guatemala, however, "women who fill jobs traditionally held by males...are particularly vulnerable to sexual violence at work and extortion in the neighborhoods where they live." Exh. 5, Tab K at 137. In an article entitled, "Patriarchal Power and Gender-Based Violence in Guatemala and El Salvador," the author notes that "in Guatemala, as women leave the home and gain more independence, men feel a resentment as [they] believe that a woman belongs in the home...therefore, men use violence to force women back into limited roles in the home and society." Exh. 5, Tab II at 334. The Court concludes that Lead Respondent's actions and job in a role typically held by men demonstrate that her proposed group is socially distinct in Guatemalan society. For the forgoing reasons, the Court finds Lead Respondent's proposed group "Guatemalan women who defy gender norms" is defined with the required characteristics of immutability, particularity, and social distinction, therefore, it constitutes a particular social group.

## **2. Past Persecution on account of membership in proposed group**

To establish past persecution, an asylum applicant must demonstrate that he suffered persecution in his country of nationality or, if stateless, in his country of last habitual residence, on account of a protected ground, and that he is unable or unwilling to return to, or avail himself of the protection of, that country because of such persecution. INA §§ 101(a)(42)(A), 208(b)(1)(B); 8 C.F.R. § 1208.13(b)(1). Lead Respondent testified that [REDACTED] constantly harassed her while she worked at [REDACTED]. He ridiculed her and told her that women were not meant to work they were meant to stay in the home and have sex. He also forced her to watch porn. Lead Respondent ceased going to work at [REDACTED] after [REDACTED] raped her. The Court finds in considering these experiences cumulatively that they rise to the level of past persecution.

Additionally, the Court finds that she experienced this past persecution on account of her membership in the particular social group, "women who defy gender norms." Lead Respondent testified that [REDACTED] constantly harassed her at work. He told her that he did not believe that she should not work outside of the home and that she was only good for sex. He resented her high sales number. [REDACTED]'s statements and actions demonstrate that he raped her on account of her membership in the particular social group, "Guatemalan women who defy gender norms."

### **3. Well-founded fear of future persecution on account of proposed group**

If past persecution is established, a regulatory presumption arises that the applicant has a well-founded fear of future persecution on the basis of her original claim. 8 C.F.R. § 1208.13(b)(1). The Department may rebut this presumption if it establishes by a preponderance of the evidence that the applicant's fear is no longer well-founded due to a fundamental change in circumstances or because the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to expect him to do so. 8 C.F.R. § 1208.13(b)(1)(i)-(ii).

In considering the given case, the Court finds that Lead Respondent has established past persecution therefore she is entitled to a presumption of a well-founded fear of future persecution. The Court finds that DHS has not rebutted this presumption by a preponderance of evidence. For these reasons, the Court finds that Lead Respondent has a well-founded fear of future persecution on account of a protected ground.

### **4. Discretion**

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. *See* INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 428. In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered, and the danger of persecution should outweigh all but the most egregious adverse factors. *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987). General humanitarian factors, such as age, health, or family ties, should also be considered in the exercise of discretion. *Matter of H-*, 21 I&N Dec. 337, 347-48 (BIA 1996); *Pula*, 19 I&N Dec. at 474.

In the present matter, Lead Respondent has no criminal convictions. Lead Respondent has demonstrated a true concern about her safety and her fear was corroborated with documentary evidence. Additionally, Lead Respondent and her sons volunteer in their community. Exh. 5, Tab YY. Accordingly, the Court finds that Lead Respondent merits a favorable exercise of discretion.

### **5. Conclusion**

For the forgoing reasons, the Court finds that Lead Respondent has met her burden to demonstrate that she qualifies for asylum. The Court will grant asylum to Lead Respondent. The Court will also grant asylum to Rider Respondent [REDACTED] and Rider [REDACTED] as derivatives.

### **C. Withholding of Removal and Relief Under the Convention Against Torture**

As Respondent has demonstrated her eligibility for asylum, the Court need not and will not reach Respondent's eligibility for withholding of removal or protection under the Convention Against Torture. *See Matter of Mogharrabi*, 19 I&N Dec. at 449; *see also Bagamasbad*, 429 U.S.

24 (government agencies are not required to make findings on issues which are unnecessary to the result).

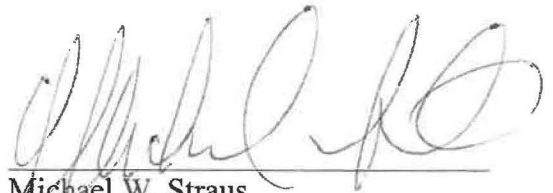
Accordingly, after careful review of the record, the following Order will be entered:

**ORDER**

**IT IS HEARBY ORDERED** that Lead Respondent's application for asylum pursuant to INA § 208 be **GRANTED** with all Rider Respondents as derivative grantees.

Date:

July 10, 2019

A handwritten signature in dark ink, appearing to read "Michael W. Straus", written over a horizontal line.

Michael W. Straus  
Immigration Judge

*Both parties have the right to appeal the Court's decision. The Notice to Appeal is due at the BIA within thirty (30) days of mailing this decision.*



UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
SAN FRANCISCO, CALIFORNIA

Matter of

Date: Sept. 13, 2018

File Number:

Respondent

In Removal Proceedings

Charge: Section 212(a)(7)(A)(i)(I), of the Immigration and Nationality Act, as amended, as an immigrant who, at the time of application for admission, was not in possession of a valid entry document as required by the Act

Applications: Asylum, Withholding of Removal, and Protection under the Convention Against Torture

On Behalf of Respondent:

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San Francisco, California 94110

On Behalf of DHS:

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**DECISION OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL HISTORY**

On December 13, 2017, the Department of Homeland Security ("DHS") initiated these removal proceedings against Respondent, \_\_\_\_\_, by filing a Notice to Appear ("NTA") with the San Francisco, California, Immigration Court. Exh. 1. The NTA alleges that Respondent is a native and citizen of Mexico, who applied for admission into the United States at the Nogales, Arizona, Port of Entry on July 10, 2017, and did not then possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document. *Id.* Based on these allegations, DHS charged Respondent with removability under the Immigration and Nationality Act ("INA" or "Act") § 212(a)(7)(A)(i)(I), as amended, as an immigrant who, at the time of application for admission, was not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document as required by the Act. *Id.*

On \_\_\_\_\_, Respondent admitted the factual allegations in the NTA and conceded the charge of removability but declined to designate a country of removal. Based on her admissions and concession, the Court sustained the charge of removability and directed

Mexico as the country of removal, should removal become necessary. 8 C.F.R. § 1240.10(c), (f). On 2018, Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), applying for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Exh. 3A.

## II. EVIDENCE PRESENTED

The Court has thoroughly reviewed the evidence in the record, even if not explicitly mentioned in this decision. The evidence of record consists of the testimony of Respondent and the following exhibits:

- Exhibit 1: NTA;
- Exhibit 2: Form I-213, Record of Deportable/Inadmissible Alien;
- Exhibit 3: Letters in support of Respondent's Form I-589;
- Exhibit 3A: Form I-589;
- Exhibit 4: 2016 United States Department of State Human Rights Report for Mexico;
- Exhibit 5: Respondent's documentation in support of her Form I-589;
- Exhibit 6: Respondent's amendments to her Form I-589;
- Exhibit 7: Respondent's supplemental documentation;
- Exhibit 8: Respondent's additional supplemental documentation; and
- Exhibit 9: Respondent's additional supplemental documentation.

### A. Respondent's Testimony and Declaration

Respondent testified before the Court on August 23, 2018, and submitted two declarations in support of her applications for relief. Exhs. 5 at Tab B, 9 at Tab B. The Court summarizes Respondent's testimony and declarations together below.

#### 1. Background.

Respondent was born on \_\_\_\_\_, in \_\_\_\_\_ Mexico. She grew up in Morelos, Mexico with her parents and five siblings. Respondent studied art education and worked as a teacher.

#### 2. Abuse by: \_\_\_\_\_

From the age of 5, until the age of 22, Respondent's mother, \_\_\_\_\_, physically and mentally abused Respondent on a daily basis. Beginning when Respondent was approximately five years old, her mother forced her to complete the duties of a servant, including sweeping, mopping, and washing clothing, to teach Respondent how to be a good housewife. Respondent testified that her mother also beat her to make her strong and to prepare her to be a good wife, teaching her how to tolerate a beating by her future husband. She beat Respondent with a belt, cables from a washing machine, a broomstick, and a kitchen spoon. On one occasion, when Respondent told her father about the abuse, Respondent's mother beat her so severely that she was unable to sit or leave her bed the following day. Respondent also testified that her mother taught her that women always needed to obey their husbands and that

once Respondent was married, Respondent would need to ask him for permission to do anything because he was in charge. She also taught Respondent that the husband is the "superior being who can do no wrong," and if a husband beats his wife, it is her fault.

Respondent also testified that when she was nine or ten years old, she was raped during a robbery of her family's home. She told her mother who committed the robbery but not that she was raped; her mother called her a "liar and blamed [Respondent] for not alerting her to the robbery."

### 3. Abuse by

In 1989, Respondent met her husband, \_\_\_\_\_ ("Mr. B"). They married in \_\_\_\_\_ Mexico on \_\_\_\_\_, 1993. They have one child, \_\_\_\_\_ ("Ms. R."), born on \_\_\_\_\_, 1993.

Approximately three months after they married, Mr. B began consistently beating Respondent. On the first occasion, while on a trip to the United States, he slapped her twice across the face and punched her mouth, breaking her two front teeth. When they returned to Mexico, Mr. B continued to abuse her, often after consuming alcohol. Respondent testified that Mr. B abused her because "he felt wounded in his machismo" and told her "you're not going to step on me. I'm the man and you're going to do what I say." She believes he beat her because she was a woman and believed that she was his equal with a right to her own opinions and ideas.

Respondent also testified that on two occasions, Mr. B burned her with cigarettes, leaving permanent scars. During the first incident, in the middle of the night, Mr. B burned Respondent's arm with a cigarette while she slept, demanding that she cook for him. She refused, but he insisted that she must cook for him because it was her job. He dragged her by her hair to the kitchen, stating, "A woman's only job was to shut up and obey her husband." Respondent continued to refuse to cook for him, and in response, Mr. B slapped her. In the second incident, Mr. B burned Respondent's face with a cigarette because she continued to work, despite his orders to quit her job, thus, explicitly disobeying Mr. B and continuing to express that she had a right to work. Respondent testified that he burned her to show her that they were not equals, he was in charge, and to impress these principles upon her since he believed she did not understand them.

Eventually, Respondent quit her job. However, Mr. B abandoned her approximately six months after they married; Respondent and her daughter lived with Respondent's family. Mr. B and Respondent remain married because Respondent's family is Catholic, and her family would disown her if they divorced.

### 4. Abuse by

In January 1995, Respondent entered the United States and began living in Phoenix, Arizona. Approximately two months later, she met \_\_\_\_\_ ("Mr. H"), and they began a relationship in May 1995. They have three United States citizen

children together, born 1997, and born 1996,

2004. Shortly after beginning their relationship, Respondent and Mr. H began living together, and Mr. H beat Respondent for the first time because he believed she was having an affair with his friend. However, he did not harm Respondent again until approximately two years later.

Respondent testified that from approximately 1998 until 2016, Mr. H consistently abused her; he also used drugs and abused alcohol often. He beat, raped, and strangled her over the course of their relationship. Mr. H raped her approximately five times per month and beat her approximately three times per month. Respondent testified that she bears physical scars from multiple incidents of his abuse. On one occasion, when Respondent refused to give Mr. H money or sex, he hit her, broke a beer bottle, cut her leg with the bottle, and then raped her. On other occasions when Respondent rejected his sexual advances, Mr. H stated that Respondent was "his woman and had to have sex with him whenever he wanted" before raping Respondent. Mr. H stated that Respondent needed to have sex with him whenever he wanted because she was a woman and thus, "his slave" and required to obey him. On another occasion, in 2004, Respondent entered their home and told Mr. H that his friends should leave. Mr. H warned Respondent that she was not to speak when entering the room and beat Respondent so severely she had a vaginal hemorrhage.

Mr. H often ordered Respondent to quit her job and beat her when he was jealous of her male supervisors. He also demanded she only work with other women and dress as he desired. Respondent testified that when she wore an outfit Mr. H did not approve of, he ripped it off of her. Mr. H also frequently bit Respondent, leaving marks on her neck and arms to show that she was "[his] woman" because others "need[ed] to know it." Respondent also testified that if she resisted due to her belief that they were equal partners, Mr. H harmed her.

Respondent attempted to end her relationship with Mr. H numerous times; however, he refused to leave and would beat and rape her to emphasize his refusal. She believed he mistreated her because she was the mother of his children and he believed he had the power and could do whatever he wanted. In 2015, Respondent moved into a house without Mr. H. Yet, Mr. H found opportunities to physically harm Respondent, often utilizing their children to have contact with her.

In the spring of 2017, Mr. H was removed to his native Guatemala. Shortly thereafter, Respondent was subsequently removed to Mexico, and she returned to her parents' home. She fled Mexico approximately two weeks later because she received menacing phone calls from Mr. H.

##### 5. Criminal History

In 2007, Respondent was arrested for criminal impersonation. She testified that when she went to the Department of Motor Vehicles to renew her Arizona identification, the clerk informed her that a social security number was required for the renewal application. When

Respondent expressed that she did not have a social security number, the clerk threatened to call the police; Respondent became fearful and wrote down a random number. She was ultimately convicted and sentenced to one year of probation.

6. Fear of Returning to Mexico

Respondent fears that if she returns to Mexico, she will be persecuted by both Mr. B and Mr. H.

Respondent testified that approximately two years ago, Mr. B. called her requesting information regarding her whereabouts. He expressed his desire to rekindle their relationship, but Respondent refused and told him to leave her alone. Thereafter, Respondent changed her phone number. However, Mr. B. continued to contact Respondent through Facebook messages, again seeking information on her whereabouts. Respondent deleted her account to prevent Mr. B. from contacting her. Yet, Respondent testified that she heard from her daughter that Mr. B. visited her and was aggressive; he threatened to take "revenge" against Respondent for rejecting him and having relationships with other men.

Respondent testified that approximately one week after she was removed to Mexico, Mr. H. called her on her cell phone and told Respondent he planned to locate her. Respondent believes Mr. H. could find her in Mexico because his entire family resides in Chiapas, Mexico. During a second phone call, Mr. H. stated that he already confirmed that Respondent was residing at her parents' home in Mexico, and he would be "coming for [Respondent]." Despite Respondent's repeated pleas to Mr. H. to leave her alone, he continued to attempt to acquire information about Respondent's whereabouts through their children. She fled to the United States after she continued to feel fear and distress from Mr. H.'s menacing phone calls. Respondent testified that if Mr. H. harmed her in Mexico she would attempt to report him to the police, but she did not believe they would help her. She believed that he would be able to locate her through their children.

B. Documentary Evidence

Respondent submitted a copy of her marriage certificate to the Court. Exh. 9 at 1. Respondent also submitted her psychological evaluation by Dr. Jane Christmas, a licensed clinical psychologist; Dr. Christmas diagnosed Respondent with post-traumatic stress disorder and major depressive disorder. *Id.* at 7-24. Respondent also submitted letters of support from community members. *See* Exh. 3.

Respondent submitted declarations from her daughter, Ms. R., and her son, [redacted], in which they described the abuse Respondent suffered by both of their fathers. Exh. 5 at 20-25. [redacted] stated that Mr. H. called him after Respondent was removed to Mexico seeking information on her location. *Id.* at 21. Ms. R. stated that Mr. B. is very aggressive and angry with Respondent because she had a relationship with another man. *Id.* at 23. She also stated that both Mr. B. and Mr. H. are seeking information on Respondent's whereabouts. *Id.* at 23-24. Respondent also submitted a copy of text messages Mr. H. sent to Ms. R. seeking information regarding Respondent's location. *Id.*

at 39. The record also includes photographic evidence of the injuries Respondent sustained from the abuse by Mr. H. *Id.* at 29–38.

Respondent submitted a letter from Adriana Prieto-Mendoza, a Mexican attorney; Ms. Prieto-Mendoza stated that Mr. H would be able to obtain permanent residency in Mexico because his children with Respondent are Mexican citizens and included copies of Mexican law to support her statement. Exh. 7 at 30–54.

Finally, Respondent submitted documentation of her criminal convictions. *Id.* at Tab A. The record evinces that in 2007, Respondent was convicted of criminal impersonation and was sentenced to one year of probation, and she was convicted of shoplifting and sentenced to pay a fine. *Id.* at 3–25. In 2017, Respondent was convicted for illegal entry in violation of 8 U.S.C. § 1325(a)(2) and sentenced to 150 days of confinement. *Id.* at 27–29.

### C. Country Conditions Evidence

Respondent submitted extensive documentary evidence regarding country conditions in Mexico. *See* Exhs. 5 at Tabs G–OO, 7 Tabs D–M. DHS also submitted country conditions evidence. Exh. 4. The Court has comprehensively reviewed all country conditions evidence in the record and discusses the relevant information in the analysis below.

## III. ANALYSIS

### A. Credibility

A respondent has the burden of proof to establish she is eligible for relief, which she may establish through credible testimony. *See* INA § 240(c)(4). In making a credibility finding under the REAL ID Act, the Court may base its credibility determination on the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of her account; the consistency between her written and oral statements; the internal consistency of each such statement; the internal consistency of such statements with other evidence of record; any inaccuracies or falsehoods in such statements; or any other relevant factor. *Id.*

The Court analyzed Respondent's testimony for consistency, detail, specificity, and persuasiveness. Overall, Respondent testified in a consistent, believable, and forthright manner, and DHS conceded that Respondent was credible. Considering the totality of the circumstances, the Court finds that Respondent testified credibly and accords her testimony full evidentiary weight. *Id.*

### B. Asylum

To qualify for a grant of asylum, an applicant bears the burden of demonstrating that she meets the statutory definition of a refugee. INA § 208(b)(1)(B)(i). The Act defines the term "refugee" as any person who is outside her country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of that country because of



past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A).

Respondent argues she is eligible for asylum relief based on the past persecution she suffered at the hands of her mother and her husband and based on an independent well-founded fear of harm by her ex-partner.<sup>1</sup> The Court analyzes Respondent's claims for relief below.

#### I. Past Persecution

To establish past persecution, an applicant must show that she experienced harm that (1) rises to the level of persecution, (2) was on account of a protected ground, and (3) was committed by the government or forces the government is unable or unwilling to control. *Navas v. INS*, 217 F.3d 646, 655-56 (9th Cir. 2000).

##### a. *Harm Rising to the Level Necessary to Establish Persecution*

"Persecution" is "the infliction of suffering or harm upon those who differ . . . in a way regarded as offensive." *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). Physical violence, such as rape, torture, assault, and beatings, "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). In assessing whether an applicant has suffered past persecution, the Court may not consider each individual incident in isolation but must instead evaluate the cumulative effect of the abuse the applicant suffered. *See Krutova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

While living in Mexico, Respondent experienced harm by her mother and her husband, Mr. B. *See* Exhs. 5 at Tab B, 9. The Court addresses the harm Respondent suffered by each in turn.

As an initial matter, the Court notes that Respondent was a child at the time of the harm she suffered by her mother, and "age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted . . ." *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007) (internal quotation marks omitted). The Court must assess the alleged persecution from the child's perspective, as the "harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution." *Id.* By its common usage, "child abuse" encompasses "any form of cruelty to a child's physical, moral, or mental well-being." *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991, 996 (BIA 1999) (internal quotation marks omitted); *see also Velazquez-Herrera v. Gonzales*, 446 F.3d 781, 782 (9th Cir. 2006). From the age of 5 until the age of 22, Respondent's mother physically harmed Respondent on a daily basis. She beat Respondent with a belt, cables from a washing machine, a broomstick, and a kitchen spoon. On one occasion, Respondent's mother beat her so severely that she was unable to sit or leave her bed the following day. In addition, Respondent's mother forced her to perform all of the duties of a servant at home, which imposed psychological harm upon Respondent. Considered cumulatively, the Court finds that the physical and mental

<sup>1</sup> The Court does not analyze whether the harm Respondent experienced by Mr. B constitutes past persecution because it occurred in the United States and not in the country of prospective return. *See* INA § 101(a)(42)(A).

abuse of Respondent by her mother constitutes harm rising to the level of persecution. *See Krolova*, 416 F.3d at 1084; *Chand*, 222 F.3d at 1073.

Next, the Court considers the harm Respondent suffered by her husband, Mr. B. Respondent testified that after they married, Mr. B. consistently physically and psychologically abused Respondent during their marriage. He frequently beat her, pulled her hair, slapped her, and on two occasions, burned her with a cigarette, once on her face, leaving permanent scars. He abused her for months before he left her and moved away. The Court finds the harm Respondent suffered by Mr. B. rises to the level of persecution. *See Krolova*, 416 F.3d at 1084; *Chand*, 222 F.3d at 1073.

*b. On Account of a Protected Ground*

In addition to showing harm rising to the level of persecution, an applicant must show that the persecution was on account of one or more of the protected grounds enumerated in the Act: race, religion, nationality, political opinion, or membership in a particular social group. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

Respondent asserts that she was persecuted on account of her membership in numerous particular social groups,<sup>2</sup> including "women in Mexico." The Court understands Respondent's proposed social group to constitute the particular social group "Mexican females." Accordingly, the Court adopts this refined formulation of the particular social group and addresses each of the three requirements to determine the group's cognizability under the INA below. Respondent also asserts that she was harmed on account of her political opinions, including: (1) that women have the right to pursue a career; (2) men and women have equal rights; and (3) husbands and wives have equal status. The Court understands each of these three political opinions to constitute a feminist political opinion and analyzes the protected ground as such. The Court analyzes each protected ground in turn.

*i. Particular Social Group*

A "particular social group" must be (1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316, 319 (AG 2018) (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)). "To be cognizable, a particular social group must 'exist independently' of the harm asserted in an application for asylum or statutory withholding of removal." *Id.* (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). The Board of Immigration Appeals ("Board") stated that "[s]ocial groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups." *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006); *see Matter of Acosta*, 19

<sup>2</sup> Respondent proposed additional particular social groups related to her claim for past persecution including: (1) "direct descendants of \_\_\_\_\_"; (2) "female children of \_\_\_\_\_"; (3) "women and girls in Mexico;" and (4) "married women in Mexico." Further, Respondent also proposed additional particular social groups for her claim of well-founded fear of persecution including: (5) "married women in Mexico who are unable to leave their relationship;" (6) "mothers of the children of \_\_\_\_\_;" and (7) "women in Mexico who are unable to leave their relationship with the father of their children." However, the Court does not address their cognizability at this time.

I&N Dec. 211, 233 (BIA 1985).

First, common and immutable characteristics are those attributes that members of the group "either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." *Acosta*, 19 I&N Dec. at 233 (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). Respondent's social group, "Mexican females," satisfies the immutability requirement because it is defined by gender and nationality, two innate characteristics that are fundamental to an individual's identity. *Id.*; see also *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (reiterating that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group"); *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[G]irls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group . . .").

Second, to be cognizable, the proposed social groups must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 ("A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group.") (citation omitted); see also *Henríquez-Rivas v. Holder*, 707 F.3d 1081, 1091 (9th Cir. 2013) (en banc). The "particularity" requirement addresses the outer limits of the group's boundaries and requires a determination as to whether the group is sufficiently discrete without being "amorphous, overbroad, diffuse, or subjective;" "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *A-B-*, 27 I&N Dec. at 335 (quoting *M-E-V-G-*, 26 I&N Dec. at 239). Here, the group is sufficiently particular because the membership is limited to a discrete section of Mexican society—female citizens of Mexico—and is thus distinguishable from the rest of society. See *Perdomo*, 611 F.3d at 667, 669 (rejecting the notion that a persecuted group could represent too large a portion of the population to constitute a particular social group); *M-E-V-G-*, 26 I&N Dec. at 239.

Finally, Respondent must demonstrate that the group is socially distinct within Mexico. To establish social distinction, an applicant must show that members of the social group are "set apart, or distinct, from other persons within the society in some significant way," *M-E-V-G-*, 26 I&N Dec. at 238, and that they are "perceived as a group by society." *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014) (emphasis in original). The Board clarified that "a group's recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor." *A-B-*, 27 I&N Dec. at 330 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). Legislation passed to protect a specific group can be evidence that the society in question views members of the particular group as distinct. See *Henríquez-Rivas*, 707 F.3d at 1092. Yet, "a social group may not be defined exclusively by the fact that its members have been subjected to harm." *A-B-*, 27 I&N Dec. at 331 (citing *M-E-V-G-*, 26 I&N Dec. at 238). "[S]ocial groups must be classes recognizable by society at large" rather than "a victim of a particular abuser in highly individualized circumstances." *Id.* at 336 (citing *W-G-R-*, 26 I&N Dec. at 217 (providing that "[t]o have the 'social distinction' necessary to establish a particular social group, there must be evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group")).

The Court finds the evidence in the record demonstrates that Mexican society views members of the particular social group “Mexican females” to be distinct. *See id.* Notably, country conditions documentation in the record evinces that violence committed against Mexican females is “pandemic,” including femicide and domestic violence. Exh. 5 at 80, 255, 280. The 2017 United States Department of State Human Rights Report for Mexico (“2017 HR Report”) identified that federal law criminalizes femicide and rape, however, impunity for all crimes remained high. *Id.* at 42, 67. Indeed, Respondent’s home state of Morelos is tied for the highest number of rape and femicides. Exh. 7 at 73. Furthermore, in 2015 and 2016, the federal government began utilizing a “gender alert” mechanism to direct local authorities to “take immediate action to combat violence against women by granting victims legal, health, and psychological services and speeding investigations of unsolved cases.” Exh. 5 at 100. The government issued a “gender alert” for Morelos, and a federal agency worked to set in place measures for the security and prevention of violence for women. *Id.*; Exh. 7 at 83. The existence of these efforts demonstrates the government’s recognition of the need for specialized protection for Mexican females and, thus, that Mexican females are viewed as a distinct group from the general population in Mexico. *See Henriquez-Rivas*, 707 F.3d at 1092; *Silvestre-Mendoza v. Sessions*, No. 15-71961, 2018 WL 3237505 (9th Cir. July 3, 2018) (unpublished) (the Ninth Circuit remanded to the BIA to consider whether “Guatemalan women” constituted a particular social group because the record appeared to support that it may be “socially distinct”).<sup>3</sup>

Accordingly, the Court finds that Respondent’s particular social group “Mexican females” is cognizable under the Act. Furthermore, the Court finds that Respondent is a member of the particular social group.

## ii. Particular Social Group Nexus

“Applicants must also show that their membership in the particular social group was a central reason for their persecution.” *A-B-*, 27 I&N Dec. at 319; INA § 208(b)(1)(B)(i). A “central reason” is a “reason of primary importance to the persecutors, one that is essential to their decision to act. In other words, a motive is a ‘central reason’ if the persecutor would not have harmed the applicant if such motive did not exist.” *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2008). The applicant may provide either direct or circumstantial evidence to establish that the persecutor was or would be motivated by the applicant’s actual or imputed status or belief. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Proof of motivation may consist of statements made by the persecutor to the victim. *See Sinha v. Holder*, 564 F.3d 1015, 1021–22 (9th Cir. 2009) (providing that attackers’ abusive language showed they were motivated at least in part by a protected ground).

Here, Respondent provided sufficient direct and circumstantial evidence to establish that her membership in the social group of “Mexican females” was at least one central reason for the persecution she suffered by her mother and her husband. Although Respondent’s mother is also a member of the particular social group “Mexican females,” a person may be persecuted by members of her own social group. As the Ninth Circuit explained, “[t]hat a person shares an identity with a persecutor does not . . . foreclose a claim of persecution on account of a protected ground.” *Maini v. INS*, 212 F.3d 1167, 1175 (9th Cir. 2000). Respondent’s mother consistently

<sup>3</sup> Although unpublished decisions are not precedential, they serve as persuasive authority.

beat her, reasoning she was preparing Respondent for her life with her future husband. Exh. 5 at 5. She told Respondent that women needed to obey their husbands, and she beat Respondent because Respondent was female and needed to prepare to be a good wife. *Id.* at 4. Viewing the evidence of record in its totality, and, in particular, her mother's statements, the Court finds that Respondent's membership in her particular social group was at least "one central reason" for her persecution by her mother. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

Similarly, Respondent testified that Mr. B frequently abused her because she was a Mexican woman. On one occasion, he awoke Respondent in the middle of the night, intentionally burned her with a cigarette, and demanded that she cook him food, dragging her by the hair to the kitchen and stating that "a woman's only job was to shut up and obey her husband." Exh. 5 at 5. During another occasion of abuse, Mr. B threw Respondent to the floor and said, "You're not going to step on me. I'm the man and you're going to do what I say." *Id.* The record supports that many individuals in Mexico have an endemic perception that women are inferior to men. *See generally id.* The record also includes the declaration of Nancy K. D. Lemon, an expert on domestic violence, in which she opined "gender is one of the main motivating factors, if not the primary factor, for domestic violence. In other words, the socially or culturally constructed and defined identities, roles, and responsibility that are assigned to women, as distinct from those assigned to men, are at the root of domestic violence." *Id.* at 118. In particular, Mr. B's statements in the context of Mexican society are strong evidence that if Respondent were not a woman, he would not have harmed her in this manner. Further, a report from Mexico's interior department, the National Women's Institute, and UN Women stated, "Violence against women and girls . . . is perpetrated, in most cases, to conserve and reproduce the submission and subordination of them derived from relationships of power." *Id.* at 253. As such, in the totality of the circumstances, the Court finds that Respondent's membership in the particular social group "Mexican females" was "at least one central reason" for her persecution by Mr. B. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

### iii. Political Opinion

To establish that past persecution is on account of political opinion, an asylum applicant must meet two requirements. First, the applicant must demonstrate that she held, or that her persecutors believed she held, a political opinion. *Ahmed v. Keisler*, 504 F.3d 1183, 1192 (9th Cir. 2007). Second, the applicant must show that she was persecuted "because of" this actual or imputed political opinion. *Id.* The Ninth Circuit held that "[a] political opinion encompasses more than electoral politics or formal political ideology or action." *Id.* The factual circumstances of the case alone may at times be sufficient to demonstrate that the persecution was committed on account of a political opinion. *Navas*, 217 F.3d at 657.

Respondent asserts that Mr. B and her mother also persecuted her on account of her feminist political opinion. Respondent expressed her belief in the equality of men and women, including equality in opinions, worth, and support; she also believes that as a woman, she has the right to work. The Court finds Respondent's views constitute a political opinion. *See Ahmed*, 504 F.3d at 1192; *see also Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993) (stating there is "little doubt that feminism qualifies as a political opinion within the meaning of the relevant statutes").

Next, the Court considers whether Respondent's political opinion was one central reason for the persecution she suffered by her mother and Mr. B. See INA § 208(b)(1)(B)(i); *Navas*, 217 F.3d at 656. Respondent testified that her mother abused her to teach her that women needed to obey their husbands and that husbands were in charge. Respondent also testified that her mother admitted to physically abusing Respondent because she would "answer back." The record indicates that Respondent's mother was not primarily motivated to harm Respondent because of her political opinion. See *Parussimova*, 555 F.3d at 741. Therefore, the Court finds that Respondent's political opinion was not one central reason for the persecution she suffered by her mother. See INA § 208(b)(1)(B)(i). However, the Court finds that Respondent's feminist political opinion was "a reason" for the persecution because Respondent's mother disagreed with Respondent's political opinion and abused Respondent, in part, for disagreeing with her. See INA § 241(b)(3)(A); see *Barajas-Romero v. Lynch*, 846 F.3d 351, 360 (9th Cir. 2017) (nexus standard for withholding of removal is the protected ground must have been "a reason" for the persecution).

However, the evidence in the record demonstrates that Respondent's feminist political opinion was one central reason for the persecution by Mr. B. Respondent testified that Mr. B. burned her with a cigarette because she refused to quit her job and disobeyed his instruction to quit. Mr. B. also burned her face with a cigarette to show her that they were not equals, he was in charge, and to impress these principles upon her since he believed she did not understand them. She also testified that he beat her because she believed she had the right to her own opinions and ideas; specifically, Mr. B. beat her when she expressed her opinion that she had a right to work or she refused to cook for him. Based on Mr. B.'s actions and statements, the Court finds that Respondent's political opinion was at least one central reason for the persecution by Mr. B. See INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741. Therefore, the Court finds that Mr. B. persecuted Respondent on account of her feminist political opinion. See *Ahmed*, 504 F.3d at 1192.

c. *Government Unable or Unwilling to Control Persecutor*

Finally, the applicant must demonstrate that the persecution she experienced was inflicted by the government or forces the government was unable or unwilling to control. *Navas*, 217 F.3d at 655-56. Prior unheeded requests for authorities' assistance or showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect. See *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073-74 (9th Cir. 2017) (en banc) (providing that where "ample evidence demonstrates that reporting [persecution to police] would have been futile and dangerous," applicants are not required to report their persecutors"); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that "the authorities' response (or lack thereof)" to reports of persecution provides "powerful evidence with respect to the government's willingness or ability to protect" the applicant and noting that authorities' willingness to take a report does not establish they can provide protection). Yet, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *A-B-*, 27 I&N Dec. at 338. The Ninth Circuit also recognizes that there are significant barriers for children to report abuse. *Bringas-Rodriguez*, 850 F.3d at 1071.



Respondent testified that she did not report the abuse she suffered by her mother or Mr. B to the police because she believed it would be futile and that the police would not help her. *See id.* at 1073–74. Specifically, Respondent mentioned a friend who reported severe abuse by her husband to the police; however, the police merely told Respondent's friend to "stop gossiping," instructed Respondent's friend to return to her house to do her "duties," and blamed Respondent's friend for the abuse because she was not doing her chores. *See Afriyie*, 613 F.3d at 931.

The country conditions evidence in the record overwhelmingly establishes that any efforts by Respondent to report the abuse by Mr. B would have been futile. Although "[t]he fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime," here, the record supports Respondent's testimony and indicates that the Mexican government is unable or unwilling to control Respondent's persecutors. *A-B-*, 27 I&N Dec. at 337. The 2017 HR Report states that impunity for human rights abuses in Mexico remained a problem, "with extremely low rates of prosecution for all forms of crimes." Exh. 5 at 42. Morelos, Respondent's home state, has the fourth highest murder rate in the country and ranks in the top two for rape. Exh. 7 at 94. Relatedly, police and military were involved in serious human rights abuses and benefitted from the trend of impunity. Exh. 5 at 80, 88. A 2016 report found that nearly one in ten of Mexico's police officers are unfit for service, and the country faces serious issues of police corruption on both the federal and local level with federal counter corruption efforts continually failing. *Id.* at 308, 312–17.

Furthermore, "Mexican laws do not adequately protect women and girls against domestic and sexual violence." *Id.* at 269. Although federal laws address domestic violence, federal law does not criminalize spousal abuse, and the "[s]tate and municipal laws addressing domestic violence largely failed to meet the required federal standards and often were unenforced." *Id.* at 67. Violence against women and domestic violence continue to be some of the most serious human rights abuses in Mexico, with approximately two-thirds of women in Mexico having experienced gender-based violence during their lives. *Id.* at 80, 198. Although the federal government has issued some "gender alerts" to focus efforts on assisting women victims of domestic violence, there has not yet been a noticeable impact. *Id.* at 101, 202. In addition, often, domestic violence victims did not report abuses due to fear of spousal reprisal, stigma, and societal beliefs that abuse did not merit a complaint. *Id.* at 100.

Additionally, in protective services, including police services, bias against women leads to inadequate investigations of abuse, resulting in impunity for abusers. *Id.* at 185–86, 202. In fact, investigations regarding femicide cases revealed that 70% of femicides were committed by intimate partners, and "the majority of [victims] had sought help from government authorities, but that nothing had been done because this type of violence was considered to be a private matter." *Id.* at 187; *see also id.* at 297. Further, the Mexican government admitted its role in gender issues in the country, citing their "culture deeply rooted in stereotypes, based on the underlying assumption that women are inferior." *Id.* at 187–88. There "has not been success in changing the cultural patterns that devalue women and consider them disposable." *Id.* at 251.

Finally, despite efforts on the federal level to combat gendered violence, criminal investigations continue to be ineffective. *See id.* at 192. A common response from police is to not take a report of abuse seriously, similar to the response experienced by Respondent's friend. *Id.* Common responses by police include attempts to convince women not to file a complaint, or in the case where authorities do respond, they negotiate a "reconciliation" between the victim and the abuser. *Id.* Police treat domestic violence reporting as though it was the "normal state of affairs." *Id.* at 258 (internal quotation marks omitted). In addition, Mexican law enforcement authorities are not equipped to respond quickly or to effectively enforce protective orders. *Id.* at 193. The record indicates that "cases of violence against women are not properly investigated, adjudicated or sanctioned." *Id.* at 257.

In light of the evidence in the record, the Court finds that Respondent has shown that reporting the persecution to the authorities would have been futile or would have subjected her to further abuse. *See Bringas-Rodriguez*, 850 F.3d at 1073-74. Thus, the Court finds that Respondent met her burden to show that the government either condoned the actions of private actors or demonstrated a complete helplessness to protect victims like Respondent. *See A-B*, 27 I&N Dec. at 337.

Although the Attorney General stated in *A-B* that "[g]enerally, claims by aliens pertaining to domestic violence . . . perpetrated by non-governmental actors will not qualify for asylum," the Attorney General did not foreclose this possibility, and the Court finds that in this particular case, Respondent established that she was persecuted on account of her membership in the particular social group "Mexican females" and her feminist political opinion by actors the Mexican government was unable or unwilling to control. *A-B*, 27 I&N Dec. at 320; *see* INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b).

## 2. Well-Founded Fear of Future Persecution

Because Respondent has demonstrated that she suffered past persecution in Mexico on account of a protected ground by actors that the government is unable or unwilling to control, she is entitled to a presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that Respondent no longer has a well-founded fear of persecution in Mexico, or (2) Respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i).

### a. Fundamental Change in Circumstances

The evidence indicates that Respondent no longer has a well-founded fear of persecution by her mother on account of her particular social group of "Mexican females." Respondent's mother abused her during the time she resided at home with her parents. Now, however, Respondent is no longer a child and does not live in her parents' home. Given these facts, Respondent's circumstances have fundamentally changed such that her mother does not remain a

danger to her, and the Court finds that Respondent no longer has a well-founded fear of persecution by her mother on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A).

However, Mr. B has continued to contact and harass Respondent, including as recently as two years ago. Mr. B and Respondent's daughter, Ms. R, stated in her declaration that her father continues to ask about Respondent and is angry because Respondent was in a relationship with another man. Exh. 5 at 23. DHS did not present evidence to indicate a fundamental change in circumstances regarding Mr. B. See 8 C.F.R. § 1208.13(b)(1)(ii). Therefore, the Court concludes that DHS failed to meet its burden to show that there has been a fundamental change in circumstances such that Respondent no longer has a well-founded fear of persecution by Mr. B on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A).

*b. Internal Relocation*

In a case in which the applicant has demonstrated past persecution, DHS bears the burden of proving by a preponderance of the evidence that the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality and it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(ii); see also *A-B-*, 27 I&N Dec. at 344-45 (The Court "must consider, consistent with the regulations, whether internal relocation in [the applicant's] home country presents a reasonable alternative before granting asylum."). Generalized information about country conditions is not sufficient to rebut the presumption of a well-founded fear of future persecution. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Rather, DHS must introduce evidence that rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

Here, Respondent testified that her entire family lives on the same piece of land as her parents' home. In addition, Respondent remains married to Mr. B. As recently as two years ago, Mr. B called Respondent seeking information regarding her location; he expressed that he wanted her to live with him again. She refused and changed her phone number. However, Mr. B continued to send her messages through Facebook asking about her whereabouts. Further, DHS has not introduced individualized evidence demonstrating that Respondent could avoid future persecution by relocating to another part of the country. See *Gonzales-Hernandez v. Ashcroft*, 336 F.3d 995, 997-98 (9th Cir. 2003) (holding that the government must introduce evidence that, on an individualized basis, rebuts the applicant's specific grounds for fearing future persecution). Accordingly, the Court finds that DHS failed to meet its burden to show that Respondent could relocate within Mexico and thus, DHS failed to rebut Respondent's presumption of a well-founded fear of future persecution by Mr. B both on account of her particular social group membership and her political opinion. *Id.*; 8 C.F.R. § 1208.13(b)(1)(ii). Therefore, the Court finds Respondent is statutorily eligible for asylum. See INA § 208(b)(1)(A).

*c. Independent Well-Founded Fear*

In the alternative, even in the absence of past persecution, an applicant may be eligible for asylum based on a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of persecution if (1) she fears persecution in the country of

nationality on account of race, religion, nationality, membership in a particular social group, or political opinion, (2) there is a reasonable possibility of suffering such persecution if she were to return to that country; and (3) she is unable or unwilling to return to, or avail herself of the protection of that country because of such fear. See 8 C.F.R. § 1208.13(b)(2)(i). To demonstrate a well-founded fear, the applicant need not prove that persecution is more likely than not; even a ten-percent chance of persecution is sufficient to establish that persecution is a reasonable possibility. *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001) (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987)).

i. Subjectively Genuine and Objectively Reasonable Fear

A well-founded fear of future persecution must be both subjectively genuine and objectively reasonable. *Ahmed*, 504 F.3d at 1191. The subjective test is satisfied by credible testimony that the applicant genuinely fears persecution on account of a statutorily protected ground that is perpetrated by the government or by forces the government is unable or unwilling to control. *Rusak v. Holder*, 734 F.3d 894, 896 (9th Cir. 2013). The objective component requires “credible, direct, and specific evidence” that the applicant risks persecution in her home country. *Id.*

In the instant case, Respondent credibly testified that she fears her ex-partner, Mr. H , will locate her and physically harm or kill her in Mexico. A respondent’s credible testimony of fear of harm satisfies the subjective prong for a well-founded fear of persecution. See *id.* Accordingly, the Court finds that Respondent established that her fear is subjectively genuine. See *id.*

Next, the Court considers whether Respondent established through “credible, direct, and specific evidence” that her fear of returning to Mexico is objectively reasonable. See *id.* First, Respondent testified at length regarding the atrocious abuse she endured from 1998 until 2016 during her relationship with Mr. H in the United States. Over the course of their relationship, he consistently beat, raped, strangled, and psychologically abused her. Respondent testified that Mr. H raped her approximately five times per month and beat her approximately three times per month. The record also includes photographic evidence of the injuries Respondent sustained from the abuse by Mr. H . Exh. 5 at 29–38.

In addition, Ms. R stated in her declaration that Mr. H contacted her and her siblings seeking information regarding Respondent’s location and stated that he was in Chiapas, Mexico. Exh. 5 at 24; see also Exh. 5 at 39 (text messages from Mr. H seeking Respondent’s address in Mexico). Furthermore, the record reflects that Mr. H will have the ability, if he is not already present in Mexico, to enter Mexico and find and harm Respondent. Mr. H , as the father of three Mexican citizen children, could self-petition for permanent residency in Mexico, placing him in a position to have access to finding and harming Respondent. See Exh. 7 at Tab B–C. Additionally, Mr. H repeatedly beat and raped Respondent when she resisted reconciling with him or attempted to leave him in the past. Therefore, because Mr. H has expressed that he will attempt to find Respondent, it is likely that if Respondent again resists Mr. H , she is at a high risk of harm by him. Considering the totality of the circumstances, the Court finds that Respondent’s fear of future

harm by Mr. H is objectively reasonable, and she faces a chance greater than ten percent of persecution occurring upon her return to Mexico. *Al-Harbi*, 242 F.3d at 888.

iii. On Account of a Protected Ground

Respondent asserts that she will suffer persecution by Mr. H on account of her membership in the particular social group "Mexican females" and on account of her feminist political opinion. As discussed *supra*, the Court finds Respondent's proposed social group of "Mexican females" to be cognizable and that Respondent is a member of the group. In addition, the Court finds that Respondent holds a feminist political opinion, as discussed *supra*. Accordingly, the Court considers whether either protected ground would be one central reason for the persecution she would face in Mexico. INA § 208(b)(1)(B)(i).

The Court finds that Respondent's membership in the particular social group "Mexican females" would be at least "one central reason" for her future persecution. *Id.* Respondent has an objectively reasonable fear of persecution by Mr. H, particularly due to the abuse she suffered in the past. For example, on one occasion when Respondent rejected his sexual advances, Mr. H stated that Respondent was "his woman and had to have sex with him whenever he wanted," and thereafter raped Respondent. Exh. 5 at 8. On other occasions, Mr. H stated that Respondent needed to have sex with him whenever he wanted because she was a woman and thus, "his slave." *Id.* at 15. Mr. H also frequently bit Respondent, leaving marks on her neck and arms to show that she was "[his] woman" because others "need[ed] to know it." *Id.* at 9. These statements establish that Mr. H frequently harmed Respondent in the past because she was a woman, and the Court finds that her membership in her particular social group "Mexican females" would be at least one central reason for her future persecution. *See* INA § 208(b)(1)(B)(i).

The Court also finds that Respondent's feminist political opinion would be one central reason for her future persecution, particularly because of her past experiences, which form the basis of her objectively reasonable fear of persecution. *Id.* Respondent testified that Mr. H frequently beat and raped her when she resisted his domination of her as the male head of the household. *See* Exh. 5 at 9-10. On one occasion, Mr. H beat Respondent so badly that she had a vaginal hemorrhage because she entered their home and told Mr. H that his friends should leave; he warned Respondent that she was not permitted to speak when entering the room. He also beat Respondent when she expressed her own opinions, justifying the abuse by stating that she was not allowed to have her own opinions or a say. Mr. H also exerted his dominance and control over Respondent by demanding she only work with other women and dress as he desired. If she resisted due to her belief that they were equal partners, Mr. H harmed her. Because Respondent's feminist opinion was a focus of Mr. H's abuse in the past, the Court finds that her feminist political opinion would be one central reason for her future persecution. *See* INA § 208(b)(1)(B)(i).

Therefore, the Court finds Respondent would face future persecution on account of both her membership in the particular social group "Mexican females" and her feminist political opinion. *See id.*

iv. Government Unable or Unwilling to Control

Respondent must also establish that the persecution she would suffer will be inflicted by forces the government is unable or unwilling to control. *See Navas*, 217 F.3d at 655–56. The Court finds for the same reasons articulated in Section III.B.1.c. *supra*, the Mexican government would be unable or unwilling to control Mr. H. In addition, the Court notes that Respondent testified that if Mr. H. found her in Mexico and persecuted her, she would try to report it to the police, but she believed it would be futile. She believed the lack of police protection would result in impunity for Mr. H., giving him more power to abuse her in any manner he desired. Accordingly, the Court finds that Respondent met her burden to establish that the persecution she would suffer would be inflicted by actors the government is unable or unwilling to control. *See Navas*, 217 F.3d at 655–56.

v. Internal Relocation

If the applicant failed to demonstrate past persecution, to establish a well-founded fear of persecution, it is the applicant's burden to show that she could not avoid persecution by relocating to another part of the country and it would not be reasonable to expect her to do so. *See A-B-*, 27 I&N Dec. at 344–45; 8 C.F.R. § 1208.13(b)(2)(ii).

Here, Respondent established that she could not avoid persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(2)(ii). Respondent testified that although she believed Mr. H. was removed to his native Guatemala, she believes he is presently in Mexico because his entire family resides in Mexico. Further, Ms. R. stated in her declaration that she spoke with Mr. H. and he stated in was in Chiapas and persists in seeking information regarding Respondent from her. Exh. 5 at 24.

In addition, Respondent stated that approximately one week after she was removed to Mexico, Mr. H. called her on her cell phone and told Respondent he was going to find her. During a second phone call, Mr. H. stated that he already confirmed that Respondent was residing at her parents' home in Mexico, and he would be "coming for [Respondent]." Despite Respondent's repeated pleas to Mr. H. to leave her alone, he continued to attempt to acquire information about Respondent's whereabouts through their children. Respondent fled to the United States after she continued to receive menacing phone calls from Mr. H. Respondent believes Mr. H. would be able to locate her anywhere in Mexico through their children or through their children's school documentation. *See also* Exh. 5 at 194–96 (abusers continue to have a right to obtain information about their children, making it relatively easy for an abuser to locate a woman fleeing his abuse). Indeed, their son stated in his declaration that Mr. H. contacted him seeking information regarding Respondent's location. *Id.* at 21. In addition, as previously noted, Respondent's entire family lives on the same piece of land as her parents' home. Further, country conditions evidence evinces that violence against women is a nationwide problem. *See generally* Exhs. 5, 9.

Because Respondent has established that she is likely to face danger throughout Mexico on account of her membership in a particular social group or political opinion, the Court finds



that she has met her burden of establishing that she cannot internally relocate to avoid persecution and it would not be reasonable for her to do so. Therefore, the Court finds that Respondent established that she has a well-founded fear of persecution and is statutorily eligible for asylum. See INA §§ 101(a)(42)(A), 208(b)(2)(B).

### 3. Discretion

"Asylum is a discretionary form of relief from removal, and an applicant bears the burden of proving not only statutory eligibility for asylum but that she also merits asylum as a matter of discretion." *A-B-*, 27 I&N Dec. at 345 n.12; see also INA § 240(c)(4)(A)(ii). This determination requires a weighing of both the positive and negative factors presented in Respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139-40 (9th Cir. 2004); *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987) (*superseded in part by regulation on other grounds as stated in Andriasian v. INS*, 180 F.3d 1033, 1043-44, n.17 (9th Cir. 1999)). To determine whether an asylum applicant merits relief in the exercise of the Court's discretion, the Court must consider the totality of the circumstances including the severity of the past persecution suffered and the likelihood of future persecution. *Gulla v. Gonzales*, 498 F.3d 911, 916 (9th Cir. 2007); *Kalubi*, 364 F.3d at 1138. "[D]iscretionary factors should be carefully evaluated in light of the unusually harsh consequences which may befall an alien who has established a well-founded fear of persecution; the danger of persecution should generally outweigh all but the most egregious of adverse factors." *Pula*, 19 I&N Dec. at 474. Factors to consider include the applicant's age, health, and ties to the United States, among others. *Id.*

Here, Respondent has many positive equities. Respondent has lived in the United States for approximately 28 years. She is the primary wage earner for her family, has a consistent work history, and owns her own business. Respondent has three United States citizen children, two of whom live in the United States. She actively participates in her children's education. See Exh. 3. Furthermore, Respondent suffered severe past persecution and has a high likelihood of suffering severe persecution should she be removed to Mexico. Additionally, she continues to suffer from post-traumatic stress disorder and major depressive disorder due to the abuse and harm she experienced throughout her life. See Exh. 9 at Tab C. She testified that should she be granted asylum, she would like to continue working on her business and raising her children.

These positive equities must be weighed against Respondent's negative equities; namely, her criminal history. In 2007, Respondent was convicted of criminal impersonation and was sentenced to one year of probation. Exh. 7 at 6-25. Respondent testified that when she attempted renew her Arizona identification, she was instructed to include a social security number and she wrote down a random number. Respondent was also convicted of shoplifting and sentenced to pay a fine in 2007. *Id.* at 3-4. Finally, in 2017, Respondent was convicted for illegal entry and sentenced to 150 days of confinement. *Id.* at 27-29. While the Court does not condone Respondent's actions, her convictions are for relatively minor and nonviolent crimes. Respondent did not display an intent to defraud anyone, and Respondent's conviction for illegal entry was committed in the context of her attempt to flee Mexico.

Therefore, after carefully reviewing the entire record and weighing the equities in this case, the Court finds that Respondent warrants a favorable exercise of discretion, and the Court grants Respondent asylum in the exercise of discretion. *See A-B-*, 27 I&N Dec. at 345 n.12.

### C. Alternative Finding: Withholding of Removal

Withholding of removal requires an applicant to establish that his life or freedom would be threatened in the country of removal because of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 241(b)(3)(A); *see Barajas-Romero*, 846 F.3d at 360 (explaining that the nexus requirement for withholding of removal includes weaker motives than the "one central reason" asylum standard). An applicant may prove eligibility for withholding of removal either (1) by establishing a presumption of future persecution based on past persecution that DHS does not rebut, or (2) through an independent showing of a clear probability of future persecution. *INS v. Stevic*, 467 U.S. 407, 429-30 (1984); 8 C.F.R. §§ 1208.16(b)(1)-(2). The Supreme Court defined "clear probability of persecution" to mean that it is "more likely than not" the applicant would be subject to persecution on account of a protected ground if returned to the proposed country of removal. *Cardoza-Fonseca*, 480 U.S. at 429.

For the same reasons elucidated above, considering the entire record, the Court also finds Respondent is statutorily eligible for withholding of removal because it is more likely than not that her life or freedom would be threatened in the future in Mexico because of a protected ground. *See* INA § 241(b)(3)(A); 8 C.F.R. § 1208.16(b)(2). Accordingly, the Court grants Respondent withholding of removal in the alternative.

### D. Alternative Finding: Protection Under the Convention Against Torture

Protection under the CAT is mandatory relief if the requirements are met. 8 C.F.R. § 1208.16(c). The applicant bears the burden of establishing that it is more likely than not she would be tortured by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity if removed to Mexico. *Id.*; *Zheng v. Ashcroft*, 332 F.3d 1186, 1194 (9th Cir. 2003). Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as intimidation, coercion, punishment, or discrimination, by, at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, including willful blindness. 8 C.F.R. § 1208.18(a)(1). The Ninth Circuit held that the applicant need only show "awareness" and "willful blindness" on the part of government officials. *Zheng*, 332 F.3d at 1197. Under the Ninth Circuit's interpretation, "[i]t is enough that public officials could have inferred the alleged torture was taking place, remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it." *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1060 (9th Cir. 2006).

The Court must consider all evidence relevant to the likelihood of future torture, including, but not limited to: past torture inflicted upon the applicant; evidence that she could relocate to another part of Mexico where it is unlikely she will be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in Mexico.

See 8 C.F.R. § 1208.16(c)(3).

Respondent believes Mr. B. or Mr. H. will rape or kill her if she returns to Mexico. The evidence in the record corroborates Respondent's fear of torture. First, Respondent credibly testified that she experienced torture in the past by both men. See *Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010) (quoting *Nuru v. Gonzales*, 404 F.3d 1207, 1218 (9th Cir. 2005) (the existence of past torture "is ordinarily the principal factor on which [the court must] rely")). Mr. B. beat her numerous times, and he burned her with a cigarette on two occasions. In addition, Mr. H. repeatedly raped and beat Respondent. The Court is satisfied that both Mr. B. and Mr. H. intentionally inflicted severe pain and suffering upon Respondent that rises to the level of torture. See 8 C.F.R. § 1208.18(a)(1).

Moreover, Respondent continues to suffer the effects of the torture today. See *Mohammed v. Gonzales*, 400 F.3d 785, 802 (9th Cir. 2005) (stating that evidence of past torture that causes "permanent and continuing harm" may be sufficient to establish eligibility for CAT relief). Respondent suffers from post-traumatic stress disorder and major depressive disorder due to the abuse and harm she experienced throughout her life. See Exh. 9 at Tab C. She continues to think about the abuse she experienced every day and suffers from frequent nightmares of her former partners trying to kill her. *Id.*

Additionally, Mexican females continue to have limited, if any, means to escape violence, particularly in family relationships. Exh. 5 at 181. Mexico continues to display "deep and persistent insensitivity to gender issues," causing widespread gender-based violence throughout society, as well as in domestic relationships. *Id.* The Court previously found that Respondent could not relocate to avoid harm from either Mr. B. or Mr. H. If women attempt to move elsewhere in the country, they are unprotected and there are no guarantees for their safety. *Id.* Based on the combination of all of the above factors, the Court finds that Respondent would not be able to safely relocate in Mexico, contributing to the likelihood that she would more likely than not be tortured if returned to Mexico.

Respondent has also demonstrated that it is more likely than not that she will be tortured with the consent or acquiescence of the Mexican government. See 8 C.F.R. § 1208.18(a)(1). The country-conditions documentation indicates that the Mexican government has made attempts to curb violence against women; for example, it has enacted the gender alert systems intended to protect women. See Exh. 5 at 202. However, the record indicates that the government's actions have had no effect on the current situation in Mexico and laws protecting women are not enforced effectively. *Id.* The Mexican legal system is unresponsive and ineffective, and as discussed above, justice officials are unwilling or unable to protect women from gender-related harms in their homes and elsewhere, despite recent efforts to improve this problem. *Id.* at 181. This is reflected in the few prosecutions or convictions for femicides. *Id.* at 202.

Not only is the Mexican government ineffective in protecting women from sexual violence and torture, but the record contains evidence that the government is aware of and "willfully blind" to such treatment. The Mexican government admitted the country's difficult adjustment from its mentality that women are inferior. *Id.* at 187-88. As previously noted, police often do not seriously consider reports of abuse and commonly negotiate a reconciliation

with abusers, placing the woman reporting the abuse at risk of future harm; police treat domestic violence, including incidents of torture by a partner, as the "normal state of affairs." *See id.* at 192, 258. This culture of violence against women, combined with high levels of impunity for gender-based violence, sufficiently demonstrate a pattern of acquiescence by government officials to the type of violence women like Respondent face. *See id.* at 251, 253.

Based on this evidence, the Court finds that Respondent has established that it is more likely than not that she will be tortured with the acquiescence of the Mexican government upon her return. 8 C.F.R. § 1208.16(c). Accordingly, the Court grants Respondent protection under CAT in the alternative.

#### IV. CONCLUSION

The Court finds that Respondent suffered past persecution and has a well-founded fear of persecution on account of her membership in a particular social group and her political opinion. The Court also finds that the Mexican government is unable or unwilling to protect Respondent and that she cannot internally relocate within Mexico. Thus, she is statutorily eligible for asylum, and the Court grants her application in the exercise of its discretion. Finally, the Court finds that Respondent is statutorily eligible for withholding of removal under INA § 241(b)(3) and protection under CAT, and the Court would grant Respondent's applications for such relief in the alternative.

In light of the foregoing, the following order<sup>4</sup> shall enter:

#### ORDER

**IT IS HEREBY ORDERED** that Respondent's application for asylum under INA § 208(a) be and hereby is **GRANTED**.



Miriam Hayward  
Immigration Judge

<sup>4</sup> Pursuant to 8 CFR § 1003.47(i), a copy of the post order instructions and information on the orientation on benefits available to asylees is attached to this decision and hereby served on the parties.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
900 MARKET STREET, SUITE 504  
PHILADELPHIA, PA 19107

Sachs Law  
Mitchell, Adriana  
1518 Walnut St Suite 610  
Philadelphia, PA 19102

In the matter of \_\_\_\_\_ File A \_\_\_\_\_ DATE: May 20, 2019  
C \_\_\_\_\_

- Unable to forward - No address provided.
- Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals  
Office of the Clerk  
5107 Leesburg Pike, Suite 2000  
Falls Church, VA 22041
- Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:  
IMMIGRATION COURT  
900 MARKET STREET, SUITE 504  
PHILADELPHIA, PA 19107
- Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
- Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.
- X Other: ORDER OF THE IMMIGRATION JUDGE GRANTING RELIEF.

M.E.  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

FF

cc: DHS OFFICE OF THE CHIEF COUNSEL  
900 MARKET STREET, SUITE 346  
PHILADELPHIA, PA, 19107

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
PHILADELPHIA, PENNSYLVANIA**

**IN THE MATTER OF:**

**IN REMOVAL PROCEEDINGS**

[REDACTED]

**RESPONDENT**

**File No.:**

**Date: May 15, 2019**

**CHARGE:**

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (hereinafter "INA" or "the Act"), as amended, as an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

**APPLICATIONS:**

Asylum pursuant to INA § 208(a); Withholding of Removal pursuant to INA § 241(b)(3); and protection under Article III of the Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment ("CAT" or "Convention Against Torture").

**APPEARANCES**

**ON BEHALF OF RESPONDENT:**

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**ON BEHALF OF THE GOVERNMENT**

Joseph C. Scott, Esq.  
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Philadelphia, PA 19107



## **FINAL DECISION AND ORDER OF THE IMMIGRATION JUDGE**

### **I. Procedural History**

Respondent is a 20-year-old native and citizen of Guatemala who entered the United States as an unaccompanied minor on June 1, 2014. Exh. 1. The Department of Homeland Security ("DHS") initiated removal proceedings against Respondent on June 5, 2014, through personal service of a Notice to Appear ("NTA"). *Id.* The NTA alleges that: (1) Respondent is not a citizen or national of the United States; (2) she is a native and citizen of Guatemala; (3) she arrived in the United States at or near Hidalgo, Texas, on or about June 1, 2014; and (4) she was not then admitted or paroled after inspection by an Immigration Officer. *Id.* Based on these factual allegations, the NTA charges Respondent as removable pursuant to section 212(a)(6)(A)(i) of the Act. *Id.*

At a Master Calendar Hearing on May 28, 2015, Respondent, through counsel, admitted the factual allegations in the NTA and conceded the charge of removability. She declined to designate a country of removal and, based on DHS's recommendation, the Court designated Guatemala. Based on her status as an unaccompanied minor, Respondent filed a Form I-589, Application for Asylum and Withholding with the United States Citizenship and Immigration Services ("USCIS") on July 29, 2015. Exh. 2, Tab 1. She subsequently filed that application with the Court on October 7, 2016, after USCIS determined that she was ineligible for asylum. Exh. 3, Tab 5. Respondent testified in support of her application at an individual hearing on March 13, 2019.

### **II. Exhibits List**

**Exhibit 1:** Form I-862, NTA, dated June 5, 2014

**Exhibit 2:** Respondent's Submission in Support of Application for Asylum and Withholding of Removal, Tabs 1-4, filed October 6, 2016

**Tab 1:** Form I-589, Application for Asylum and Withholding of Removal Receipt Notice, dated August 6, 2015

**Tabs 2-4:** Country Conditions Evidence

**Exhibit 3:** Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs 5-7, filed October 7, 2016

**Tab 5:** Form I-589, Application for Asylum and Withholding of Removal, dated July 27, 2015

**Tab 6:** Respondent's Affidavit, undated

**Tab 7:** Respondent's Birth Certificate, with translation

**Exhibit 4:** Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs 8-11, filed February 22, 2018, *relevant tabs*:

**Tab 9:** Respondent's Supplemental Affidavit, undated

**Tabs 10-11:** Additional Country Conditions Evidence

**Exhibit 5:** Respondent's Additional Submission in Support of Application for Asylum and Withholding of Removal, Tabs A-F, filed March 5, 2019

**Tab A:** Respondent's Psychological Evaluation, dated February 19, 2019

**Tabs B-F:** Additional Country Conditions Evidence

**Exhibit 5A:** Respondent's Memorandum of Law in Support of Application for Asylum and Withholding of Removal, filed March 5, 2019

**Exhibit 6:** Additional Country Conditions Evidence, filed March 13, 2019

**Unmarked Exhibit 7:** Department of State Report on Human Rights Practices, 2018

### **III. Issues Presented**

The key issues before the Court are: (1) whether Respondent demonstrated past persecution or a well-founded fear of future persecution; (2) whether, under the particular facts of Respondent's case, "Guatemalan women" is a cognizable particular social group; and (3) whether Respondent demonstrated a nexus between her past persecution and/or well-founded fear of future persecution and particular social group.

### **IV. Testimonial Evidence**

Respondent was born and raised in [REDACTED]<sup>1</sup>, Guatemala in the Department of [REDACTED]. She lived with her grandmother and great grandmother starting at the age of nine after her mother and father moved to the United States to work. In June 2014, when Respondent left Guatemala, her grandmother was fifty-nine years old and her great grandmother was seventy-nine years old.

Respondent came to the United States in June 2014, because she feared for her life in Guatemala. One night in April 2014, Respondent was walking home from her friend's house around 10:00 p.m. when an unknown man approached her from behind and tried to kidnap her. He grabbed her arm, took her to a dark area without street lights, and threatened to harm Respondent if she screamed or called for help. Respondent was crying and afraid and struggled to escape from the man's grasp. Eventually, Respondent kicked the man in the genitals, which gave her an opportunity to escape and run away.

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<sup>1</sup> The Court takes administrative notice of the population of [REDACTED] which sits at approximately 47,000 and is comprised of about thirteen localities within that municipality.

Respondent ran the short distance back home, at which point she told her grandmother what had happened. Respondent's grandmother went outside with a stick to look for the man, but she did not see anyone in the area. Although it was dark, Respondent was able to see that the man who attacked her had a tattoo of the Virgin Mary. Later that night, Respondent's grandmother called Respondent's parents and told them what had happened. Everyone agreed that Respondent needed to leave Guatemala as soon as possible. Respondent left for the United States two weeks later.

During those two weeks, Respondent never left the house alone. She continued attending school, but her grandmother brought her to school and her brother-in-law picked her up at the end of the day. One day, a group of men started gathering on a corner near her house. The men wore long pants, were shirtless, and some had tattoos on their chests. The men whistled at Respondent and made fun of her when she passed. Respondent did not recognize the men and does not know why they showed an interest in her.

Before leaving Guatemala, Respondent talked to her older sister about her problems with men. Her sister advised her that the best course of action would be for her to leave Guatemala. Respondent does not know if her sister ever experienced similar problems with men because she never talked about it. Respondent also does not know if any of her female classmates in school were targeted by men because she never discussed this topic with them.

Respondent never reported her attack to the police because the police do not protect anyone in Guatemala, much less women. For example, ten years ago, Respondent's aunt was killed and it took the police several hours to begin investigating the crime after it happened. The police investigated for only short while and never arrested anyone for her aunt's murder. In addition, in 2013, Respondent and her aunt and cousin were robbed on a bus in Guatemala City. The man grabbed Respondent's aunt by the neck, pointed a knife at her, and stole all of her personal belongings. No one on the bus intervened or called the police.

Respondent did not move to another area of Guatemala instead of coming to the United States because all of her family lives in either the United States or [REDACTED]. Respondent's sister and brother-in-law live in Sutun, a rural village about twenty minutes' walk from Respondent's home in [REDACTED]. She could not move in with her sister because she lives with her in-laws and the house is very small. In addition to her sister, Respondent also has three aunts and other extended family in Guatemala. She is not very close with her aunts and other extended family, so she could not live with any of them if she returned to Guatemala.

If Respondent returns to Guatemala, she is afraid that the gangs would rape, kidnap, or kill her. Violence against women in Guatemala has increased in recent years, which makes it especially difficult for Respondent to live safely in Guatemala. Four months ago, a woman was found raped and killed in [REDACTED]. Respondent is afraid that the same will happen to her, and she wants to stay in the United States because she feels safe here.

## **V. Documentary Evidence**

Respondent provided an affidavit and supplemental affidavit about her past experiences in Guatemala. See Exhs. 3, Tab 6; 4, Tab 9. She also provided a psychological evaluation conducted by Dr. Daniel Schwarz and ample country conditions evidence about the mistreatment of females in Guatemala. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs A-F; 6. The Court has reviewed all of these documents, but does not summarize the contents of the documents herein.

## **VI. Statement of the Law and Legal Analysis**

### **A. Credibility and Corroboration**

In considering Respondent's application, the Court must make a threshold determination of her credibility. INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C) (2012). See Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998); Matter of Vigil, 19 I&N Dec. 572 (BIA 1988); Matter of Pula, 19 I&N Dec. 467 (BIA 1987). The statutory amendments of the REAL ID Act, P.L. 109-13, 119 Stat. 231 (2005), apply in this case because Respondent's asylum application was made after May 11, 2005. See Matter of S-B-, 24 I&N Dec. 42 (BIA 2006).

The REAL ID Act under INA § 208(b)(1)(B)(iii) provides:

Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's 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 statement, the consistency of such statements with other evidence of the record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

The testimony of an applicant may, in some cases, be the only evidence available, and it can suffice where the testimony is believable, consistent, and sufficiently detailed, in light of general conditions in the home country, to provide a plausible and coherent account of the basis for the alleged fear. Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989); 8 C.F.R. § 1208.16(b) (2012). An overall credibility determination "does not necessarily rise or fall on each element of the witness's testimony, but rather is more properly decided on the cumulative effect of the entirety of all such elements." Jishiashvili v. Att'y Gen., 402 F.3d 386, 396 (3d Cir. 2005). An applicant may be given the "benefit of the doubt" if there is some ambiguity regarding an aspect of her asylum



claim. See Matter of Y-B-, 21 I&N Dec. 1136, 1139 (BIA 1998). In some cases, an applicant may be found to be credible even if he has trouble remembering specific facts. See, e.g., Matter of B-, 21 I&N Dec. 66, 70–71 (BIA 1995) (finding that an alien who has fled persecution may have trouble remembering exact dates when testifying, and such failure to provide precise dates may not be an indication of deception).

Where an alien's claim relies primarily on personal experiences not reasonably subject to verification, corroborating documentary evidence of the alien's particular experience is not essential. See Matter of S-M-J-, 21 I&N Dec. 722, 725 (BIA 1997). The body of evidence, including testimony, must be considered in its totality. Id. at 729. Where it is reasonable, however, to expect such corroborating evidence for certain alleged facts pertaining to the specifics of the claim, the alien should provide such evidence or explain why it was not provided. Id. See also Matter of M-D-, 21 I&N Dec. 1180 (BIA 1998). When an alien's testimony is weak or lacking in specific details, there is an even greater need for corroborative evidence. Y-B-, 21 I&N Dec. at 1139. When the Court requires corroborative evidence it must (1) identify the facts for which it is reasonable to expect corroboration, (2) inquire as to whether the applicant had provided information corroborating those facts, and, if not, (3) analyze whether the applicant had adequately explained her failure to do so. Abdulai v. Ashcroft, 239 F.3d 542, 554 (3d Cir. 2001). It is improper for an Immigration Judge to deny an alien notice and an opportunity to produce corroboration of her claims or an opportunity to explain her failure if he could not do so. Saravia v. Att'y Gen., 905 F.3d 729, 738 (3d Cir. 2018).

Having reviewed the record in its entirety, the Court finds Respondent credible. Respondent testified candidly about her past mistreatment in Guatemala, her demeanor was forthright, and she answered all questions posed by her attorney, DHS, and the Court. Respondent testified consistently with her affidavit and supplemental affidavit, as well as with the information she provided during her psychological evaluation. See Exhs. 3, Tab 6; 4, Tab 9; 5, Tab A. Additionally, her testimony is plausible in light of the country conditions evidence in the record, which details the pervasive violence facing women in Guatemala. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs B-F; 6.

The Court also finds that Respondent adequately corroborated her claim. Respondent provided her psychological evaluation conducted by Dr. Daniel Schwarz, who confirms that Respondent exhibits symptoms consistent with the trauma she states she experienced. See Exh. 5, Tab A. In addition, the country conditions evidence in the record corroborates the fact that violence against women, including domestic violence, rape, and femicide, is widespread in Guatemala, thus lending support to Respondent's claimed instances of harm. See Exhs. 2, Tabs 2-4; 4, Tabs 10-11; 5, Tabs B-F; 6. Though Respondent provided sparse documentary evidence, this evidence is sufficient to corroborate her claim in conjunction with her credible, plausible, and detailed testimony. In addition, given that Respondent's claim is based on her own personal experiences, it is not reasonable to expect additional corroborating evidence of her claim, with the exception of perhaps a few statements of support from members of her family.

DHS ultimately did not raise any issues with Respondent's credibility or the corroboration of her claim. For this reason, and those noted above, the Court finds that Respondent is credible and that she adequately corroborated her claim. INA § 208(b)(1)(B)(iii).



## B. Asylum

In an asylum adjudication, the applicant bears the burden of establishing statutory eligibility for relief. See INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a); see also S-M-J, 21 I&N Dec. at 722; Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985), modified on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987). To establish this eligibility, the applicant must demonstrate that she meets the definition of a refugee as defined in INA § 101(a)(42). INA § 208(b)(1)(A); 8 C.F.R. § 1208.13(a). Thus, the applicant must show that she either suffered past persecution or has a well-founded fear of persecution, and that this persecution is on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). If eligibility is established, asylum may be granted in the exercise of discretion. INA § 208(b)(1)(A); INS v. Cardoza-Fonseca, 480 U.S. 421 (1987). Regardless, however, asylum may not be granted to any alien who falls under the exceptions of INA §§ 208(a)(2) and (b)(2).

Respondent claims that she experienced past persecution and has a well-founded fear of future persecution on account of her membership in the particular social groups, "Guatemalan women" and "Guatemalan women living in households without male relatives." Exh. 5A. For the reasons set forth below, the Court finds that Respondent has demonstrated a well-founded fear of persecution on account of a cognizable particular social group.

### 1. Timeliness of Application

As a threshold issue, an applicant must affirmatively prove by clear and convincing evidence that she filed her asylum application within one year of the date of her last arrival into the United States or April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). If the applicant filed after the one-year deadline, she must show, to the satisfaction of the Court that she qualifies for an exception to the filing deadline. Id. To qualify for an exception to the filing deadline, the applicant must demonstrate the existence of either (1) changed circumstances that materially affect her eligibility for asylum, or (2) extraordinary circumstances relating to the delay in filing an application within the filing time period. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5).

Respondent has not shown by clear and convincing evidence that she filed her asylum application within one year of her arrival. See INA § 208(a)(2)(B), (D). Respondent entered the United States on June 1, 2014, and filed her asylum application with USCIS on July 29, 2015 See Exhs. 1; 2, Tabs A. This is more than one year after Respondent's arrival in the United States, making her application untimely. However, Respondent argues, and DHS concedes, that extraordinary circumstances excuse her untimely filing because of a legal disability, *i.e.*, her status as an unaccompanied minor at the time of entry. See 8 C.F.R. § 1208.4(a)(5)(ii).<sup>2</sup> The Board of Immigration Appeals ("BIA" or the "Board") has conclusively determined that "the meaning of 'minor' in the context of a '[l]egal disability' . . . is a person less than eighteen years old." See

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<sup>2</sup> Even though the one-year filing deadline is inapplicable to unaccompanied alien children, Respondent does not, nor has she ever, qualified as an unaccompanied alien child as statutorily defined in 6 U.S.C. § 279(g)(2)(C) because her parents are in the United States. See 6 U.S.C. § 279(g)(2)(C). Therefore, the one-year filing deadline applies in this case.



Anna Dai, A200 753 526 (BIA May 26, 2017). Respondent entered the United States when she was fifteen years old and filed her asylum application one year and one month later, when she was sixteen years old. See Exhs. 1; 2, Tab A. Given the young age at which Respondent entered the United States and filed her application, the Court agrees that extraordinary circumstances excuse her untimely filing. As such, the Court will consider her eligibility for asylum under INA § 101(a)(42).

## 2. Past Persecution

Respondent has not met her burden of proving that she merits asylum on the basis of past persecution. Persecution is “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” Acosta, 19 I&N Dec. at 222; Li v. Att’y Gen., 400 F.3d 157, 164–68 (3d Cir. 2005). Persecution “encompasses a variety of forms of adverse treatment, including non-life threatening violence and physical abuse or non-physical forms of harm.” Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25–26 (BIA 1998). It does not include “all treatment that our society regards as unfair, unjust or even unlawful or unconstitutional.” Fatin v. INS, 12 F.3d 1233, 1240 (3d Cir. 1993). In addition, “[g]enerally harsh conditions shared by many other persons” have not been found to amount to persecution. Acosta, 19 I&N Dec. at 222; see also Matter of Sanchez and Escobar, 19 I&N Dec. 276 (BIA 1985) (finding that harm resulting from country-wide civil strife is not persecution on account of one of the five enumerated grounds). An isolated incident of physical abuse does not rise to the level of persecution. Voci v. Gonzales, 409 F.3d 607, 615 (3d Cir. 2005). However, multiple beatings combined with other harassment may constitute persecution. Id. at 614–15 (citing O-Z- & I-Z-, 22 I&N Dec. at 26 (holding that incidents of harm suffered by the alien may, in the aggregate, rise to the level of persecution)). Torture is harm sufficiently severe to constitute persecution. See Acosta, 19 I&N Dec. at 222; Li, 400 F.3d at 164–68.

Respondent experienced two discrete instances of mistreatment in Guatemala, neither of which, individually or cumulatively, rise to the level of past persecution. In April 2014, Respondent was accosted on the street by an unknown man whom Respondent believed intended to rape her. See Exh. 4, Tab 9. Then, later that same month, a group of men started catcalling Respondent on her way to and from school. See id. These incidents were certainly frightening for Respondent given that she was a young girl at the time. However, Respondent did not suffer any physical harm from either of these two incidents, or at any point during her fifteen-year residence in Guatemala. In fact, the incident where Respondent was accosted lasted very briefly and ended before the perpetrator had the chance to physically or sexually abuse Respondent. Therefore, given that Respondent experienced two isolated incidents of mistreatment without any concomitant physical harm, the Court does not find that Respondent experienced past persecution in Guatemala under the Third Circuit Court of Appeals’ (“Third Circuit”) stringent standard. See Kibinda v. Att’y Gen., 477 F.3d 113, 120 (3d Cir. 2007) (holding that a five-day detention and beating that required stitches and left a scar were not “severe enough to constitute persecution under our stringent standard”).

The Court recognizes that Respondent was a minor at the time of her past mistreatment in Guatemala. Several circuit courts have recognized that age can be a critical factor in determining whether the harm an individual suffered constitutes past persecution. See Hernandez-Ortiz v.



Gonzales, 496 F.3d 1042, 1045 (9th Cir. 2007); Jorge-Tzoc v. Gonzalez, 435 F.3d 146, 150 (2d Cir. 2006); Liu v. Ashcroft, 380 F.3d 307, 314 (7th Cir. 2004); Abay v. Ashcroft, 368 F.3d 634, 640 (6th Cir. 2004). This is because the harm a child fears or has suffered may be relatively less than that of an adult and still constitute persecution. Liu, 380 F.3d at 314. Even under this heightened standard, the Court does not find that Respondent experienced past persecution in Guatemala. Respondent's psychological evaluation states that she meets the diagnostic criteria for Upbringing Away from Parents and Acculturation Difficulty, both of which stem from her upbringing and environment in Guatemala and the United States. Exh. 5, Tab A. The Court is sympathetic to the difficulties Respondent experienced as a child growing up without her parents and in her transition to the United States. Nonetheless, without evidence of some type of physical harm or lasting psychological trauma, the Court cannot find that Respondent's past experiences constitute harm rising to the level of past persecution, even when viewing those experiences through the lens of a minor.

### **3. Well-Founded Fear of Future Persecution**

If an applicant has not demonstrated past persecution, she may still establish that she has an independent well-founded fear of future persecution on account of a statutory ground committed by the government or by forces that the government is unable or unwilling to control. See Gao v. Ashcroft, 299 F.3d 266, 272 (3d Cir. 2002). An asylum applicant may demonstrate an independent well-founded fear of future persecution by showing that she has a genuine fear, and that a reasonable person in her circumstances would fear persecution if returned to her country of origin. Id. at 272. An applicant satisfies the subjective prong of this test by testifying credibly regarding her fear. Lie v. Ashcroft, 396 F.3d 530, 536 (3d Cir. 2005). An applicant satisfies the objective prong of this test by demonstrating that she would be individually singled out for persecution or by demonstrating that "there is a pattern or practice in his or her country of nationality . . . of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion . . . ." 8 C.F.R. § 208.13(b)(2)(iii)(A); see also Lie, 396 F.3d at 536. Significantly, an applicant cannot have a well-founded fear of future persecution if she could avoid persecution by relocating to another part of her country of origin, if under all circumstances it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(2)(ii).

#### **a. Persecution**

Respondent has not demonstrated that she suffered past persecution. As such, she is not entitled to a rebuttable presumption that she has a well-founded fear of future persecution. Respondent satisfies the subjective prong of the well-founded fear test because she credibly testified regarding her fear of harm in Guatemala. For the reasons discussed below, Respondent also satisfies the objective prong of the well-founded fear test given the pattern and practice of violence against women in Guatemala.

#### **i. Objectively Reasonable Fear**

Respondent has met her burden of proving that she merits asylum on the basis of an objectively reasonable well-founded fear of future persecution. To demonstrate an objectively



reasonable fear, there must be a “reasonable possibility,” but not a certainty, that the applicant will suffer persecution. Cardoza-Fonseca, 480 U.S. at 430; 8 C.F.R. §1208.13(b)(2). “Reasonable” means a one-in-ten chance of suffering persecution, not a ninety or fifty percent chance of suffering persecution. See Cardoza-Fonseca, 480 U.S. at 421; 8 C.F.R. § 1208.13(b)(2). Therefore, to support a claim based on a well-founded fear of future persecution, the applicant must “provide some objective, credible evidence, direct or circumstantial, that her fear is reasonable” and demonstrate an objectively reasonable possibility of persecution. Cardoza-Fonseca, 480 U.S. at 421; Zubeda v. Ashcroft, 333 F.3d 463, 476 (3d Cir. 2003).

Although Respondent cannot demonstrate that she would be singled out for persecution upon her return to Guatemala, the Court finds that her fear of future persecution is objectively reasonable given the pattern and practice of violence against women in Guatemala as documented by the country conditions evidence in the record. See Lie, 396 F.3d at 537 (explaining that pattern and practice requires proof of persecution that is “systemic, pervasive, or organized”). Persistent stereotypes and biases regarding the status of women in Guatemala has contributed to a society in which women face brutal forms of violence because of their gender. Exh. 4, Tab 11. Such violence takes on many forms, such as “life-threatening and degrading” forms of domestic violence, sexual assault, and rape, and is carried out by various actors within Guatemalan society, such as romantic partners, criminal groups, and the police. Exh. 2, Tab 3. Documented cases of domestic violence have involved rape and physical beatings with baseball bats and other weapons. Id., Tab 2. Much of the violence against women is carried out in the home or by armed criminal groups that exert complete control over the communities in which women live. Id. The gangs, for example, use violence against women as a way to initiate new male members and as a way to punish women for refusing to join the gang. Id. Women who refuse to join a gang are threatened, raped, tortured, and killed. Id. Consequently, in order to avoid physical harm by the gangs, women routinely barricade themselves and their children inside their home, which requires them to give up school and work and go into hiding. Id. While this tactic may offer protection from criminal groups, it does not, as noted by the country conditions, offer a solution for those women who experience violence from “criminal armed groups alongside repeated physical and sexual violence at home,” as is common in Guatemala. Id.

The high rate of crime against women illustrates that violence against women is a serious, growing, and pervasive problem in Guatemala that spans all demographics of women. Forty-five percent of Guatemalan women have suffered from some form of violence in their lifetimes, and many more have witnessed violence against female relatives. Exh. 5, Tab F. Guatemala has the third highest rate of femicide in the world, with the majority of those killings also involving sexual assault, torture, and mutilation. Exh. 4, Tab 11. 748 women were murdered in 2013, which equates to an average of two murders of women per day. Id. In addition, the Public Ministry reported 11,449 cases of sexual or physical assault against women in 2015, and 29,128 complaints of domestic violence in only the first eight months of 2015. Exh. 5, Tab C. Furthermore, as of September 8, the PNC reported at least forty-eight investigations against PNC officials for violence and discrimination against women. Unmarked Exh. 7 at 17. In light of such violence against women, the Guatemalan government established a 24-hour court in Guatemala City to offer services related to violence against women, including sexual assault, exploitation, and trafficking of women and girls. Id. at 16. The judiciary also created special courts in certain departments to handle cases involving violence against women, and Guatemala’s Public Ministry established a



special prosecutor for femicide. Id. It is reasonable to infer that the existence of these tools for addressing the unique problem of violence against women is a reflection of the pervasiveness of that societal problem in Guatemala. Despite these initiatives, however, the PNC often fails to respond to requests for assistance related to domestic violence, and the government fails to enforce the laws against femicide, rape, and domestic abuse effectively, leading to pervasive impunity for violence against women. Id.

The foregoing evidence reflects the pervasiveness of the danger facing women in Guatemala. Such danger ranges from single incidents which constitute persecution, such as rape, Matter of D-V-, 21 I&N Dec. 77 (BIA 1993), and violent assaults Voci, 409 F.3d at 607; Stanojkova v. Holder, 645 F.3d 943, to the accrual of incidents over time where the aggregate harm rises to the severity of persecution. O-Z- & I-Z-, 22 I&N Dec. at 26. In these circumstances, the fact of pervasive or systemic persecution of women in Guatemala constitutes a well-founded fear of persecution. The documentation in the record paints a stark picture of Guatemala, far from the glossy brochures for ecotourism. DHS has chosen to rely on the argument that Respondent has not met her burden of proof in establishing statutory eligibility for asylum, either because she failed present a cognizable social group, a nexus to a protected ground, conduct the government is unable or unwilling to control, or an inability to internally relocate. What DHS has not done, however, is provide the Court with a counter factual narrative of the conditions in Guatemala. DHS has not presented any evidence to refute the depiction of Guatemala as a country rife with danger for women merely because they are women, thus constraining the evidence the Court is able to consider.

Respondent's personal experiences align with the reality facing thousands of women in Guatemala. As she got older, Respondent noticed that she was attracting the attention of unknown men on the street, whom she believed belonged to a gang or other criminal group. Exh. 4, Tab 9. Respondent was watched and street harassed by groups of men and on one occasion, was accosted by an unknown man who had tattoos. Id. Respondent believed that the man intended to rape her, perhaps with the help of some of his fellow gang members, and struggled to escape from the man's grasp. Id. Respondent eventually escaped from the man, ran home, and, that night, made arrangements with her parents to leave Guatemala. Id. Growing up, Respondent knew of several women in her community who had disappeared or been murdered, causing Respondent to live in fear that the same would happen to her. More recently, Respondent learned from her sister that a woman's body was found raped and beaten on the street in their hometown of Cubulco, thus showing that even a small town like Cubulco has its share of brutal violence. Respondent testified that she does not trust the police to protect her given that her aunt's murder is still unsolved today, ten years after it happened, due in large part to police inaction and disinterest. From all of this evidence, it is clear that there is a pervasive and indiscriminate practice of harming women in Guatemala on the basis of their gender, and that such practices are able to persist due to police and government indifference towards gender-based violence. As such, the Court finds that Respondent has met her burden in proving there is at least a one in ten chance that she—as a female—would be harmed if she returned to Guatemala.



## **ii. Internal Relocation**

Respondent must also demonstrate that she could not avoid persecution by relocating within Guatemala. In Matter of A-B-, the Attorney General reiterated that Immigration Judges must determine, consistent with the regulations, whether internal relocation in the alien's home country presents a reasonable alternative before granting asylum. 27 I&N Dec. 316 (A.G. 2018). Applying this rule in the context of an asylum claim based on private criminal activity, the Attorney General reasoned that "when the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country's government." Id. at 345. This statement fails to address this Court's obligation to consider the reasonableness of internal relocation in light of several factors, including, but not limited to, "other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. § 1208.13(b)(3). Thus, even though Respondent suffered past harm at the hands of "only a few specific individuals," the Court will adhere to its obligation to analyze her ability to relocate in light of the regulatory factors noted in 8 C.F.R. § 1208.13(b)(3).

Under the regulatory framework, the Court finds that Respondent could not avoid persecution by relocating within Guatemala due to the pattern and practice of violence against women throughout Guatemala. As noted above, women face staggering rates of violence in the form of domestic violence, sexual assault, rape, and femicide by various actors throughout Guatemala, which necessarily eliminates the possibility of internal relocation to avoid harm. See Exh. 4, Tab 11. In addition, social and cultural constraints make internal relocation unreasonable in Respondent's case. Respondent's parents live in the United States and, aside from a few distant relatives, she has little familial ties outside of her hometown of Cubulco. Moreover, Respondent testified that she lived in Cubulco for her entire life and rarely traveled to other areas of Guatemala. Given Respondent's lack of social and family ties, it is unreasonable to expect Respondent, a young girl of twenty years old, to relocate to another area of Guatemala on her own. As such, internal relocation is not a viable option, and Respondent has met her burden in establishing a well-founded fear of future persecution.

## **b. Membership in a Particular Social Group**

Respondent must also establish that her future persecution would be inflicted on account of her membership in a particular social group. A particular social group is defined as a group of individuals who share a common, immutable characteristic that cannot be changed or that they should not be required to change because it is fundamental to their individual identities or consciences. Acosta, 19 I&N Dec. at 211; Fatin, 12 F.3d at 1233. Immutable characteristics include innate characteristics such as "sex, color, or kinship ties" or shared past experiences. Acosta, 19 I&N Dec. at 233. Although past experience is an immutable characteristic, a social group "must exist independently of the persecution suffered" and "must have existed before the persecution began." Lukwago v. Ashcroft, 329 F.3d 157, 172 (3d Cir. 2003).



Additionally, the Board has held that a social group must be defined with particularity. Matter of W-G-R-, 26 I&N Dec. 208, 214 (BIA 2014); Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 76 (BIA 2007). Particularity entails that the group have “discrete and definable boundaries” and not be too broad or amorphous. See Matter of M-E-V-G-, 26 I&N Dec. 227, 239 (BIA 2014). Further, a social group must be “socially distinct” within the society in question such that people with shared, immutable characteristics are recognized or perceived as a particular group. W-G-R-, 26 I&N Dec. at 212–13; M-E-V-G-, 26 I&N Dec. at 237 (citing Matter of C-A-, 23 I&N Dec. 951, 956–57 (BIA 2014)). Notably, a group’s limiting characteristics or boundaries must exist independently of persecution, and social distinction may not be determined solely by the perception of an applicant’s persecutors. W-G-R-, 26 I&N Dec. at 218. However, persecutors’ perceptions may be relevant because it is indicative of whether society views a group as distinct and in cases involving imputed grounds, where one may mistakenly be believed to belong to a particular social group. M-E-V-G-, 26 I&N Dec. at 243 (citations omitted).

The Board has repeatedly held that the determination of whether a particular social group is cognizable is a fact-based inquiry that must be made on a case-by-case basis. See Matter of W-Y-C & H-O-B-, 27 I&N Dec. 189 (BIA 2018); M-E-V-G-, 26 I&N Dec. at 243; W-G-R-, 26 I&N Dec. at 218. The Circuit Courts of Appeals have similarly held that factual findings underlie the analysis of a group’s cognizability, particularly social distinction. See e.g., Hernandez-De La Cruz v. Lynch, 819 F.3d 784, 787 (5th Cir. 2016); Sanchez-Robles v. Lynch, 808 F.3d 688, 691 (6th Cir. 2015). Recently, the Attorney General in A-B- adhered to the fact-based inquiry for particular social groups by reinforcing that respondents must articulate the exact delineation of any proposed social group on the record so that the immigration judge can engage in the necessary factual and legal findings. 27 I&N Dec. at 344.

As her primary claim, Respondent asserts that she is entitled to asylum on the basis of her membership in the particular social group, “Guatemalan woman.” Exh. 5A. For the reasons set forth below, the Court finds that this social group is immutable, particular, and socially distinct under the specific facts of Respondent’s case.

#### **i. Immutable**

Respondent’s social group is immutable because it consists of two innate characteristics that are fundamental to an individual’s identity. Acosta, 19 I&N Dec. at 233; See also, A-B-, 27 I&N Dec. at 320 (reaffirming the common immutable characteristic standard set forth in Acosta). “Guatemalan” and “women,” or nationality and gender, are prototypical examples of immutable characteristics because one cannot change, or should not be required to change one’s nationality and gender. Acosta, 19 I&N Dec. at 233; Fatin, 12 F.3d at 1233. Moreover, in Acosta, the Board specifically concluded that “sex” is a “shared characteristic” on which particular social group membership can be based. See Acosta, 19 I&N Dec. at 233. Therefore, analyzing Respondent’s two traits together, the Court finds that “Guatemalan women” describes immutable characteristics.

#### **ii. Particular**

Respondent’s articulated group is also sufficiently particular. The particularity analysis focuses on whether the terms defining the group are sufficiently objective to establish a group with