ADDENDUM

Please find enclosed the following unpublished decisions that are relevant to the issues under review:

U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Delgado, Violeta
Law Offices of Violeta Delgado
2112 North Main Street Unit 200
Santa Ana, CA 92706

DHS/ICE Office of Chief Counsel - LOS
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014

Name: S[redacted]-M[redacted], T[redacted] **A[redacted]-911**
Riders:[redacted]

Date of this notice: 4/16/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Connor, Blair

Userteam: Docket

Files: A[redacted]-911 – Los Angeles, CA
A[redacted]

Date: APR 16 2019

In re: T[redacted] S[redacted]-M[redacted]
[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Violeta Delgado, Esquire

APPLICATION: Asylum; withholding of removal

This matter was last before the Board on May 29, 2015, when we dismissed the lead respondent's [1] appeal from an Immigration Judge's decision denying her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). [2] On July 3, 2018, the United States Court of Appeals for the Ninth Circuit remanded proceedings for the Board to consider in the first instance whether "Guatemalan women" constitutes a particular social group. [3]

To establish that a group defined as "Guatemalan women" is cognizable under the asylum and withholding of removal statutes, the respondent must prove that the group is: "'(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Guatemalan] society . . . .'" *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

We agree with the respondent's position on remand[4] that being a woman is an immutable characteristic (Respondent's Br. at 2, 4), as gender is fundamental to one's individual identity or conscience. *See Matter of A-B-*, 27 I&N Dec. at 316, 318. However, we are unable to determine

[1] The lead respondent's son is a derivative of her asylum application. Hereafter, references to "the respondent" will refer to the lead respondent.

[2] The respondent did not challenge on appeal the denial of her request for protection under the Convention Against Torture and it is not implicated in the Ninth Circuit's remand.

[3] The court agreed with our determination that "young Guatemalan females who have suffered violence due to female gender" is not a particular social group.

[4] The Department of Homeland Security did not submit a brief on remand.

from the record before us whether the social group of "Guatemalan women" satisfies the foregoing "particularity" and "social distinction" requirements. As the requirements of particularity and social distinction involve fact-finding that we cannot do in the first instance, remand to the Immigration Judge is necessary. *See* 8 C.F.R. § 1003.1(d)(3)(iv); *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008); *see also Matter of A-B-*, 27 I&N Dec. at 340-41 (emphasizing the importance of Immigration Judges as fact-finders). In evaluating the particularity and social distinction of the claimed group of "Guatemalan women," the Immigration Judge should consider the Ninth Circuit's decision in *Perdomo v. Holder* 611 F.3d 662, 669 (9th Cir. 2010), and its rejection of the "notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum." *See also Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[T]he recognition that girls or women of a particular clan or nationality[,] or even in some circumstances females in general[,] may constitute a social group is simply a logical application of our law.") (internal parentheses omitted); *accord Ticas-Guillen v. Whitaker*, 744 F. App'x 410 (9th Cir. Nov. 30, 2018).

Remand will allow the Immigration Judge to conduct additional fact-finding that may be necessary for the required "evidence-based inquiry" as to whether the social group of "Guatemalan women" meets the requirements of particularity and whether that group is perceived as "distinct" in Guatemalan society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 241-44; *Matter of W-G-R-*, 26 I&N Dec. at 221; *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). If the social group is found to be cognizable under the Act, the Immigration Judge should consider whether the respondent has demonstrated a nexus between the social group of "Guatemalan women" and the past harm she suffered or future harm she fears. Additionally, per the Ninth Circuit's order, the Immigration Judge should reevaluate whether the respondent's failure to report her abuse to the Guatemalan police precludes her from showing that the Guatemalan government is unwilling or unable to protect her. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069-70 (9th Cir. 2017) (en banc); *see also Matter of A-B-*, 27 I&N Dec.at 337-38 (an applicant seeking to establish persecution based on violent conduct of a private actor must show the government condoned the private actions or demonstrated an inability to protect the victims). We express no opinion regarding the ultimate outcome of the respondent's case.

ORDER: The record is remanded for further proceedings consistent with this decision.

FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BOSTON, MASSACHUSETTS

IN THE MATTER OF:	)	
[redacted]	)	**In Removal Proceedings**
A[redacted]	)	
Respondent	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"): 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
Withholding of Removal, pursuant to INA § 241(b)(3)
Withholding of Removal under the Convention Against Torture, pursuant to 8 C.F.R. § 1208.16

ON BEHALF OF THE RESPONDENT:
Gerald D. Wall, Esq.
Greater Boston Legal Services
197 Friend Street
Boston, Massachusetts 02114

ON BEHALF OF DHS:
Jernita Hines, ACC
U.S. Department of Homeland Security
U.S. Immigration and Customs Enforcement
15 New Sudbury Street, Room 425
Boston, Massachusetts 02203

DECISION OF THE IMMIGRATION COURT

I. Procedural History

The Respondent, [redacted] is a native and citizen of Guatemala. Exh. 1. The U.S. Department of Homeland Security ("DHS") initiated removal proceedings against the Respondent on [redacted] by filing of a Notice to Appear ("NTA") with the [redacted] Immigration Court. *Id.* The NTA alleges that the Respondent: (1) is not a citizen or national of

the United States; (2) is a native and citizen of Guatemala; (3) arrived in the United States at or near an unknown place, on or about [redacted] and (4) was not then admitted or paroled after inspection by an Immigration Officer. *Id.* The NTA charges the Respondent as removable under INA § 212(a)(6)(A)(i). *Id.* [redacted], a change of venue was granted for the Boston Immigration Court ("Court"). Order of the Immigration Judge (IJ Eleazar Tovar [redacted]).

The Respondent conceded proper service of the NTA and waived a formal reading of the allegations. She admitted the allegations and conceded the charge of removability. She declined to designate a country of removal. Exh. 2. In lieu of removal, the Respondent indicated that she would apply for asylum, withholding of removal, withholding of removal under Article III of the U.N. Convention Against Torture ("CAT"). *Id.* The Respondent filed Form I-589, Application for Asylum and for Withholding of Removal, on [redacted]. Exh. 3. At a hearing on [redacted], the Respondent indicated that she was no longer seeking voluntary departure. On June 3, 2019, the Respondent filed a memorandum of law and supporting documents.

II. Documentary Evidence

Exhibit 1:	Notice to Appear, filed [redacted].
Exhibit 2:	Written Pleading, filed October 30, 2007.
Exhibit 3:	Form I-589, Application for Asylum and for Withholding of Removal, filed February 12, 2008.
Exhibit 3A:	Updated Form I-589, Application for Asylum and for Withholding of Removal, filed October 14, 2009.
Exhibit 4:	Respondent's Supplemental Supporting Documents, filed October 14, 2009.
Exhibit 5:	Respondent's Supplemental Supporting Documents, filed May 25, 2011.
Exhibit 6:	Respondent's Supplemental Supporting Documents, filed February 13, 2012.
Exhibit 7:	Respondent's Supplemental Supporting Documents, filed April 23, 2019.

III. Testimonial Evidence

On May 7, 2019, the Respondent testified in support of her applications for relief. Her partner, [redacted], also testified on her behalf. In lieu of testimony, the parties stipulated to the evaluation of Dr. [redacted], Ed.D., Licensed Clinical Psychologist. *See* Exh. 6 at 186.

IV. Standards of Law

A. Removability

A respondent who is charged with an inadmissibility ground must prove by clear and convincing evidence that she is lawfully in the United States pursuant to a prior admission, or that she is clearly and beyond a doubt entitled to be admitted to the United States and is not inadmissible as charged. INA § 240(c)(2). The determination regarding removability shall be based only on evidence produced at the hearing. INA § 240(c)(1)(A).

B. Credibility and Corroboration

In all applications for asylum, the Court must make a threshold determination of the alien's credibility. *See* INA § 208(b)(a)(B); *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). The provisions of the REAL ID Act of 2005 apply to the Court's credibility analysis in applications filed after May 11, 2005. REAL ID Act § 101(h)(2) (codified at INA § 208 note). Considering the totality of the circumstances and all relevant factors, the Court 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 such statement, the consistency of such statements with other evidence of 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.

INA § 208(b)(1)(B)(iii).

An applicant's testimony may be sufficient to sustain her burden of proving eligibility for asylum or withholding of removal without corroboration as long as the Court is satisfied that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that she is a refugee. *See Jianli Chen v. Holder*, 703 F.3d 17, 21 (1st Cir. 2012). However, if the Court determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided. INA §§ 208(b)(1)(B)(ii), 240(c)(4)(B); *Balachandran v. Holder*, 566 F.3d 269, 273 (1st Cir. 2009). "[T]he weaker an alien's testimony, the greater the need for corroborative evidence." *Mukamusoni v. Ashcroft*, 390 F.3d 110, 122 (1st Cir. 2004) (quoting *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998)).

Unreasonable demands may not be placed on an applicant to present evidence to corroborate particular experiences, but "where it is reasonable to expect corroborating evidence

for certain alleged facts . . . such evidence should be provided." *Soeung v. Holder*, 677 F.3d 484, 487-88 (1st Cir. 2012) (quoting *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997)). If such evidence is unavailable, the applicant must explain its unavailability, and the Court must ensure that the explanation is included in the record. *Id.* at 488. The absence of such corroboration can lead to a finding that an applicant has failed to meet her burden of proof. *See Guta-Tolossa v. Holder*, 674 F.3d 57, 62 (1st Cir. 2012) ("[A]n IJ can require corroboration whether or not she makes an explicit credibility finding . . . ."); *see also Matter of S-M-J-*, 21 I&N Dec. at 725.

An applicant's inconsistent statement may lead to an adverse credibility finding, regardless of whether the inconsistency goes to "the heart" of the claim. INA § 208(b)(1)(B)(iii); *see also Rivas-Mira v. Holder*, 556 F.3d 1, 4 (1st Cir. 2009). Credibility determinations must be "reasonable" and "take into consideration the individual circumstances of the applicant." *Lin v. Mukasey*, 521 F.3d 22, 27 n.3 (1st Cir. 2008) (quoting H.R. Rep. No. 109-72, at 167 (2005), *reprinted in* 2005 U.S.C.C.A.N. 240, 292). The Court must provide "specific and cogent reasons why an inconsistency, or a series of inconsistencies, render the alien's testimony not credible." *Jabri v. Holder*, 675 F.3d 20, 24 (1st Cir. 2012) (quoting *Stanciu v. Holder*, 659 F.3d 203, 206 (1st Cir. 2011)). The Court must also consider an applicant's corroborative evidence, as "the presence of corroboration may save an asylum application notwithstanding [an] alien's apparent lack of credibility." *Ahmed v. Holder*, 765 F.3d 96, 101 (1st Cir. 2014).

C. Asylum Pursuant to Section 208 of the Act

1. Statutory Eligibility

The Court may grant asylum to an applicant who proves that she is unwilling or unable to return to her country of nationality because of 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), 208(b)(1)(A)-(B); 8 C.F.R. § 1208.13(a); *see also Jutus v. Holder*, 723 F.3d 105, 110 (1st Cir. 2013).

a. Timeliness of Application

An asylum applicant must prove by clear and convincing evidence that her application was filed within one year of her arrival in the United States, or by April 1, 1997, whichever is later. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i)(A). An applicant who cannot meet this burden must prove to the satisfaction of the Court that a changed or extraordinary circumstance excuses her late filing. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5).

To prove an extraordinary circumstance, the applicant must establish that (1) she did not intentionally create the circumstances through her own action or inaction, (2) those circumstances were directly related to her failure to file the application within the one year period, and (3) the delay was reasonable under the circumstances. *Matter of Y-C-*, 23 I&N Dec. 286, 287 (BIA 2002). Possible examples of extraordinary circumstances include serious illness; mental, physical, or legal disability; ineffective assistance of counsel; maintenance of other lawful immigration status; or the death or serious illness of the applicant's representative or immediate family member. 8 C.F.R. § 1208.4(a)(5).

b. 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." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Persecution does not encompass generally harsh conditions shared by many others in a country or the harm an individual may experience as a result of civil strife. *Maryam v. Gonzales*, 421 F.3d 60, 63 (1st Cir. 2005). Instead, to qualify as persecution, a person's experience must "rise above unpleasantness, harassment, and even basic suffering" and consist of systemic mistreatment rather than a series of isolated events. *Rebenko v. Holder*, 693 F.3d 87, 92 (1st Cir. 2012) (quoting *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000)). The "severity, duration, and frequency of physical abuse" are relevant factors to this determination. *Topalli v. Gonzales*, 417 F.3d 128, 133 (1st Cir. 2005). The targeted abuse of an applicant's family may qualify as persecution of the applicant. *Precetaj v. Holder*, 649 F.3d 72, 76 (1st Cir. 2011) ("Two kidnappings, three beatings, and an aggravated rape of his children – specifically designed to send a message to [the respondent] – were clearly part of the persecution of him.").

c. Well Founded Fear of Future Persecution

An applicant who has suffered past persecution on account of a protected ground is presumed to have a well-founded fear of future persecution on account of that same protected ground. 8 C.F.R. § 1208.13(b)(1). This presumption may only be rebutted if DHS establishes by a preponderance of the evidence that (1) the applicant can reasonably relocate within his country of origin or (2) there has been a "fundamental change in circumstances" in the country at issue, such that the applicant's fear is no longer well-founded. *Id.*

An applicant who has not suffered past persecution must demonstrate a subjectively genuine and objectively reasonable fear of future persecution. 8 C.F.R. § 1208.13(b)(2)(i); *see also Sunarto Ang v. Holder*, 723 F.3d 6, 10 (1st Cir. 2013). Generally, an individual's credible testimony that she fears persecution satisfies the subjective component of this inquiry. *See Cordero-Trejo v. INS*, 40 F.3d 482, 491 (1st Cir. 1994). An applicant satisfies the objectively reasonable component by either (1) producing "'credible, direct, and specific evidence' supporting a fear of *individualized* persecution in the future," or (2) "demonstrating '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' a protected ground." *Decky v. Holder*, 587 F.3d 104, 112 (1st Cir. 2009) (quoting *Guzmán v. INS*, 327 F.3d 11, 16 (1st Cir. 2003) & 8 C.F.R. § 1208.13(b)(2)(iii)(A)).

An applicant seeking asylum based on a well-founded fear of persecution by a non-government actor must also demonstrate that she could not avoid persecution by relocating to another part of her country of nationality. 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3)(i). An applicant may meet this burden by showing either that she is unable to relocate safely or that, under all the circumstances, it would not be reasonable to expect him to do so. *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33-36 (BIA 2012); *see also* 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3)(i).

d. On Account of a Protected Ground

The applicant must establish that a statutorily protected ground—race, religion, nationality, membership in a particular social group, or political opinion—is "at least one central reason" for the applicant's past persecution or the future persecution that he or she fears. INA §§ 101(a)(42)(A), 208(b)(i); *see also Sugiarto*, 586 F.3d at 95; *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-215 (BIA 2007). Persecution on account of any of the statutorily protected grounds refers to persecution motivated by the victim's traits, not the persecutor's. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

Overall, an applicant for asylum or withholding of removal based on membership in a particular social group must establish that the proposed group: (1) is composed of members who share a common immutable characteristic; (2) is defined with particularity; and (3) is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 222, 237 (BIA 2014). The shared characteristic may be innate or it may be a shared past experience. *Matter of Acosta*, 19 I&N Dec. at 233. However, it must be a characteristic that the members of the group cannot change or should not be required to change as a matter of conscience. *Id.* at 233-34. Particularity requires that the proposed group be "discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse or subjective." *Matter of M-E-V-G-*, 26 I&N Dec. at 239. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217. Social distinction may not be determined solely by the perception of an applicant's persecutors. *See id.* at 218; *Matter of M-E-V-G-*, 26 I&N Dec. at 242. A respondent may meet their burden by providing "some evidence" of her persecutors' motives. *Elias-Zacarias*, 502 U.S. at 483.

e. Government Action

The applicant must also show that the persecution she faced or fears is a direct result of government action, government-supported action, or the government's unwillingness or inability to control private conduct. *Mendez-Barrera v. Holder*, 602 F.3d 21, 27 (1st Cir. 2010). "[V]iolence by private citizens . . . absent proof that the government is unwilling or unable to address it, is not persecution." *Butt v. Keisler*, 506 F.3d 86, 92 (1st Cir. 2007). "[A]n applicant seeking to establish persecution by a government based on violent conduct of a private actor must show more than 'difficulty . . . controlling' private behavior." *Ortiz-Araniba v. Keisler*, 505 F.3d 39, 42 (1st Cir. 2007) (internal quotation marks omitted) (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)); *see also Matter of McMullen*, 17 I&N Dec. 542, 546 (BIA 1980). This standard will not be met if the country's "inability to stop the problem is [in]distinguishable from any other government's struggles to combat a criminal element." *Burbiene v. Holder*, 568 F.3d 251, 255 (1st Cir. 2009); *see also Khan v. Holder*, 727 F.3d 1, 7 (1st Cir. 2013). However, a government's willingness to take on a persecutor does not necessarily establish its ability to protect citizens from that persecution. *Khattak v. Holder*, 704 F.3d 197, 206 (1st Cir. 2013).

2. Discretion

Statutory and regulatory eligibility for asylum does not compel a grant of asylum. 8 C.F.R. § 1208.14(a). An applicant for asylum must also prove that a favorable exercise of discretion is warranted. *Matter of F-P-R-*, 24 I&N Dec. 681, 685-86 (BIA 2008) (citing *Matter of Pula*, 19 I&N Dec. 467, 473-74 (BIA 1987), *superseded by regulation on other grounds*). Factors that fall short of the grounds for mandatory denial may constitute discretionary considerations. *Matter of Pula*, 19 I&N Dec. at 473-74.

D. Withholding of Removal Pursuant to Section 241(b)(3) of the Act

Section 241(b)(3) of the Act is a non-discretionary provision requiring the Court to withhold removal of an individual upon proof that her life or freedom would be threatened in the proposed country of removal on account of her race, religion, nationality, political opinion, or membership in a particular social group. 8 C.F.R. § 1208.16(b). If an applicant establishes that she suffered past persecution in the proposed country of removal on account of a protected ground, the Court shall presume that the applicant's life or freedom would be threatened in the future in the country of removal on account of the same ground. 8 C.F.R. § 1208.16(b)(1). This presumption may only be rebutted if DHS establishes by a preponderance of the evidence that either (1) there has been a fundamental change in circumstances such that the applicant's life or freedom would no longer be threatened on account of a protected ground, or (2) the applicant could avoid future threats to her life or freedom by relocating to another area within the proposed country of removal where it is reasonable to expect the applicant to do so. *Id.* An applicant who has not suffered past persecution is eligible for withholding of removal if she demonstrates that it is "more likely than not" that she would be persecuted in the future in the proposed country of removal on account of a protected ground. 8 C.F.R. § 1208.16(b)(2).

E. Protection Under the Convention Against Torture

The CAT and implementing regulations mandate that no person shall be removed to a country where it is more likely than not that she will be subject to torture. *See* Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988); 8 C.F.R. §§ 1208.16-18; *see also Matter of G-K-*, 26 I&N Dec. 88, 93 (BIA 2013).

An applicant for withholding of removal under the CAT bears the burden of proof. 8 C.F.R. § 1208.16(c)(2). As with asylum adjudications, the applicant's testimony, if credible, may be sufficient to sustain the burden of proof without corroboration. *Id.*; *see also* INA § 240(c)(4)(C). However, an adverse credibility finding does not bar CAT relief. *Settenda v. Ashcroft*, 377 F.3d 89, 94-95 (1st Cir. 2004); *see also Matter of B-Y-*, 25 I&N Dec. 236, 245 (BIA 2010) (affirming the Immigration Judge's adverse credibility determination but remanding the record for consideration of the respondent's CAT application).

To establish a *prima facie* claim under the CAT, the "applicant must offer specific objective evidence showing that [s]he will be subject to: (1) an act causing severe physical or mental pain or suffering; (2) intentionally inflicted; (3) for a proscribed purpose; (4) by or at the instigation of

or with the consent or acquiescence of a public official who has custody or physical control of the victim; and (5) not arising from lawful sanctions." *Rashad v. Mukasey*, 554 F.3d 1, 6 (1st Cir. 2009) (quoting *Romilus v. Ashcroft*, 385 F.3d 1, 8 (1st Cir. 2004)) (internal quotations omitted). Acquiescence of a public official requires that the official have awareness of or remain willfully blind to the activity constituting torture, prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. *Mayorga-Vidal v. Holder*, 675 F.3d 9, 19-20 (1st Cir. 2012); *Matter of W-G-R-*, 26 I&N Dec. at 226 (citing *Zheng v. Ashcroft*, 332 F.3d 1186, 1196 (9th Cir. 2003)); 8 C.F.R. § 1208.18(a)(7).

In assessing whether the applicant has established a *prima facie* claim under the CAT, the Court must consider all evidence relevant to the possibility of future torture, including evidence that the applicant has suffered torture in the past; evidence that the applicant could relocate to a part of the country of removal where she is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; and other relevant country conditions information. 8 C.F.R. § 1208.16(c)(3). However, a pattern of human rights violations in the proposed country of removal is not sufficient to show that a particular person would be tortured; specific grounds must exist to indicate that the applicant will be personally at risk of torture. *Settenda*, 377 F.3d at 95-96; *Matter of J-E-*, 23 I&N Dec. 291, 303 (BIA 2002). There is no requirement, however, that the torture be on account of a protected ground or that the applicant prove the reason for the torture. *Rashad*, 554 F.3d at 6.

V. Findings of Fact and Conclusions of Law

A. Removability

The Court finds that the Respondent is removable from the United States. The Respondent admitted the allegations and conceded the charge under section 212(a)(6)(A)(i) of the Act, 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. Exh. 1; Exh. 2. Therefore, the Court finds that the Respondent is removable by evidence that is clear and convincing, and will proceed to consider her application for asylum, withholding of removal, protection under the CAT. The Court designates Guatemala as the country of removal.

B. Credibility and Corroboration

Because the Respondent filed her applications for relief after May 11, 2005, the REAL ID Act applies to her case. Applying those standards and considering the totality of the circumstances, the Court finds credible the Respondent's testimony regarding her experience in Guatemala and her fear of return. *See* INA §§ 208(b)(1)(B)(iii), 240(c)(4)(B)-(C). Her testimony was sufficiently internally consistent and generally consistent with her written declarations, including the Respondent's account of the abuse she suffered at the hands of her husband, [redacted] Further, DHS did not express concern regarding the Respondent's credibility or corroboration of her claim. Considering the foregoing and the entirety of the record, the Court declines to make an overall adverse credibility finding against the Respondent. Accordingly, the Court finds that the Respondent provided credible testimony and sufficient corroboration of her claim. *See* INA § 208(b)(1)(B)(iii).

C. Asylum Pursuant to Section 208 of the Act

1. Statutory Eligibility

a. Timeliness of Application

On May 7, 2019, the parties stipulated that the Respondent timely filed her asylum application, pursuant to *Mendez Rojas v. Johnson,* 305 F.Supp.3d 1176 (W.D. Wash. Mar. 29, 2018). Thus, the Court will treat the application as timely filed.

b. Nexus

The Court finds that the Respondent belongs to the particular social group of "Guatemalan women," and that such group is cognizable under the law. To be cognizable under the law, 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. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 237, 237 (BIA 2014).

First, the Court finds that this social group is immutable, as it consists of two innate characteristics fundamental to an individual's identity. An immutable characteristic is one that the members of the group cannot change or should not be required to change as a matter of conscience. *Matter of Acosta*, 19 I&N Dec. at 233-34; *Matter of A-B-*, 27 I&N Dec. at 320 (reaffirming the common immutable characteristic standard set forth in *Matter of Acosta*). Both terms, "Guatemalan" and "women," or more generally, nationality and gender, are prototypical examples of immutable characteristics because one either cannot change or be required to change one's nationality or gender. *Matter of Acosta*, 19 I&N Dec. at 233; *Perez-Rabanales v. Sessions*, 881 F.3d 61, 66 (1st Cir. 2018) (gender constitutes an immutable characteristic for purposes of a particular social group). Furthermore, in *Matter of Acosta*, the Board of Immigration Appeals ("Board") specifically noted that "sex" is a "shared characteristic" on which particular social group membership can be based. *Matter of Acosta*, 19 I&N Dec. at 233. Therefore, the Court finds that the social group, "Guatemalan women" is comprised of immutable characteristics.

Second, the Court finds that the Respondent's particular social group is sufficiently particular. Particularity requires that the proposed group be "discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse or subjective." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. at 189. These defining characteristics provide a clear benchmark for determining who falls within the group and who does not. *Matter of M-E-V-G-*, 26 I&N Dec. at 239. The definitional terms of the Respondent's social group are clearly defined and precise, as both gender and nationality have commonly understood meanings that are unlikely to change when defined by different individuals. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007) (finding that the particular social group defined by "affluent Guatemalans" was not particular because "affluence is simply too subjective, inchoate, and variable."). Accordingly, Respondent's group is not amorphous because its defining terms provide an adequate benchmark – gender – for determining group membership.

The Respondent's proposed particular social group is large, however this is not fatal to finding the group cognizable. Though size is a factor to be considered in the analysis of particular social groups, the Board has routinely found large particular social groups to be cognizable. For example, in *Matter of S-E-G-*, the Board stated that while "the size of the group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed description is sufficiently 'particular' or is 'too amorphous . . . to create a benchmark for determining group membership.'" *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008) (internal citations omitted). The Board and several circuits have employed such reasoning to affirm large social groups. For example, the Board has repeatedly found particular social groups based on sexual orientation to be cognizable, despite the fact that such groups may be vast in number. *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group); *Matter of W-G-R-*, 26 I&N Dec. at 219 (affirming "homosexuals in Cuba" as a particular social group because, in part, it is defined with particularity). *Cf. Matter of H-*, 21 I&N Dec. 337, 342-43 (BIA 1996) (finding a Somali clan can constitute a particular social group); *see also Cece v. Holder*, 733 F.3d 662, 674-75 (7th Cir. 2011) (citing to *Matter of H-*, 21 I&N Dec. 337, and stating that the "breadth of the social group says nothing about the requirements for asylum"); *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007) (recognizing "Somali females" as a particular social group given the widespread practice of female genital mutilation); *Mohammed v. Gonzalez*, 400 F.3d 785, 797 (9th Cir. 2005) (finding "Somali females" to be a cognizable particular social group due to the 98% prevalence of female genital mutilation, and stating that "the recognition that girls or women of a particular clan or nationality . . . may constitute a social group is simply a logical application of our law"); *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2005) (rejecting the notion that "a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum"). In these cases, and as explained by the Board in *Matter of S-E-G-*, the "key question" is not the group's size, but whether the definition provides an adequate benchmark for determining who is a member based on the record at hand. *Matter of S-E-G-*, 24 I&N Dec. at 584. The Court further notes that none of the other protected grounds contained in INA § 101(a)(42) are limited by size or prohibit diverse membership. For example, a nation may host millions of members of a particular religion, yet these individuals are not precluded from asylum if persecuted. Similarly, religious groups are composed of individuals with a wide variety of characteristics and experiences. Each protected ground is bound by an immutable characteristic. Thus, it follows that a proposed social group that establishes clear boundaries by way of its immutable characteristics is cognizable under the Act regardless of its size.

The Court finds that the Respondent's proffered particular social group, "Guatemalan women," is sufficiently particular. In the Respondent's case, the benchmark determinant is a combination of nationality and gender. The Court finds that the Respondent's social group is distinguishable from a similar social group struck down by the First Circuit in *Perez-Rabanales v. Sessions*. Therein, the First Circuit found that the proffered social group, "Guatemalan women who try to escape systemic and severe violence but who are unable to receive official protection," was insufficiently particular and was not socially distinct. *See Perez-Rabanales*, 881 F.3d at 67. The First Circuit reasoned that the "amorphous nature of this sprawling group precludes determinacy and renders the group insufficiently particular," and that the group "lacks any socially visible characteristics independent of the harm" suffered. *Id.* at 66-67. The Court finds that the Respondent's proffered group, "Guatemalan women" is more akin to those discussed above, and

particularly to the group accepted by the Eighth Circuit in *Hassan v. Gonzales*. *Hassan v. Gonzales*, 484 F.3d at 518. Given the widespread practice of female genital mutilation in Somalia, the Eighth Circuit recognized "Somali females" as a particular social group. The Eighth Circuit reasoned that "all Somali females have a well-founded fear of persecution based solely on gender given the prevalence of FGM," noting that "there is little question that genital mutilation occurs to a particular individual because she is a female. That is, possession of the immutable trait of being female is a motivating factor – if not a but-for cause – of the persecution." *Id.* (internal citation omitted); *see also Mohammed v. Gonzalez*, 400 F.3d at 797. Similarly, as discussed below, the nation-wide epidemic of violence against women in Guatemalan informs the recognition of the Respondent's social group and indicates that such violence occurs to a particular individual because she is a female. The Respondent's proffered group is thus distinguishable from that in *Perez-Rabanales*. It is neither amorphous nor sprawling, nor is it based on the harm feared.

The Court's analysis of sizeable and diverse groups is consistent with the Attorney General's decision in *Matter of A-B-*, which contains several statements, in dicta, cautioning against such groups. *Matter of A-B-*, 27 I&N Dec. 316. The decision suggests that social groups composed of "broad swaths of society" likely lack particularity, as they may be "too diffuse to be recognized as a particular social group." *Id.* at 335 (citing *Constanza v. Holder*, 647 F3d. 749, 754 (8th Cir. 2011)). For example, the Attorney General found that a group composed of "victims of gang violence" may not be sufficiently particular because members "often come from all segments of society, and they possess no distinguishing characteristic or concrete trait that would readily identify them as members of such a group." *Id.* This echoes the Board's decision in *Matter of W-G-R-*, which struck down a social group based on former gang membership because the respondent had not established that Salvadoran society would "generally agree on who is included" in the group. *Matter of W-G-R-*, 26 I&N Dec. at 221 (finding the proposed group lacked particularity "because it is too diffuse, as well as being too broad and subjective" as it "could include persons of any age, sex, or background"). In contrast, the Respondent's proffered social group possesses an objective, defining characteristic – gender – and is thus distinguished from the groups discussed in *Matter of A-B-* and *Matter of W-G-R-*. As explained below, and as supported by the facts on the record, this characteristic enables Guatemalan society to readily identify group members, despite the presence of other diverse characteristics. Finally, in *Matter of A-B-*, the Attorney General reiterated the necessity for a fact-based, case-by-case inquiry in the social group analysis – such as that undertaken here. This mandate cannot be reconciled with a broad prohibition against large, diverse social groups. *Matter of A-B-*, 27 I&N Dec. at 344; *W-Y-C- & H-O-B-*, 27 I&N Dec. at 189. Accordingly, the Respondent's proposed social group "Guatemalan women" meets the particularly requirement.

Third, the Court finds that the Respondent's proposed social group is socially distinct within Guatemalan society. Social distinction (formerly known as social visibility) means that the group must be perceived as a distinct social group by society, regardless of whether society can identify the members of group by sight. *Matter of W-G-R-*, 26 I&N Dec. at 216-17 (renaming the "social visibility" element as "social distinction" to clarify that social visibility does not mean "ocular" visibility). To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. *Id.* at 217. The Board has further explained that the "members of a particular social group will generally understand their own affiliation with the grouping." *Matter*

of M-E-V-G-, 26 I&N Dec. at 238. Through the Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group.

The Court finds that the Respondent's proposed social group is socially distinct within Guatemalan society. Through the Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group. The country conditions evidence in the record supports the finding that women in Guatemala are seen as a distinct group within the society, notably in terms of the violence and danger that they face in the country. The 2018 Department of State Human Rights Report states that "[v]iolence against women, including sexual and domestic violence, remained serious problems." Exh. 7 at 311. Femicide remained a serious issue. *Id.* Moreover, the Guatemalan government has passed specific laws to combat the problem of gender-based violence, including penalties for femicide, development of specialized courts for violence against women, and the creation of a national alert system for missing women. *Id.* This evidence indicates that Guatemalan society views women as a separate and distinct group, and the Respondent's testimony shows that she affiliates herself with such group. *Matter of M-E-V-G-*, 26 I&N Dec. at 238.

Finally, the Court emphasizes that the Respondent's articulated social group is perceived by Guatemalan society independently from any group member's experienced persecution. Thus, the Respondent's articulated group is neither defined solely by the persecutor's perception nor by its persecution. *Matter of A-B-*, 27 I&N Dec. at 317 (holding that the social group must "exist independently of the alleged underlying harm"); *Perez-Rabanales v. Sessions*, 881 F.3d 61, 67 ("A sufficiently distinct social group must exist independent of the persecution claimed to have been suffered by the alien and must have existed before the alleged persecution began") (collecting cases). Here, recognizing the nation-wide epidemic of violence against women informs the recognition of the Respondent's social group as opposed to creating it. In other words, the persecution faced by women may act as the catalyst that causes Guatemalan society to meaningfully distinguish the group, but the defining immutable characteristic exists independently of that persecution. *Matter of M-E-V-G-*, 26 I&N Dec. at 243; *see also Matter of W-G-R-*, 26 I&N at 237 (clarifying that persecutor's perceptions may be relevant because it is indicative of whether society views the group as distinct). As such, the Respondent has shown that Guatemalan women are "set apart, or distinct, from other persons within [Guatemala] in some significant way." *Matter of M-E-V-G-*, 26 I&N Dec. at 238. Therefore, the Court finds that the Respondent's articulated social group meets the requirements for social distinction and is cognizable under the Act.

c. Past Persecution on Account of a Protected Ground

The Court finds that the harm the Respondent suffered in Guatemala rises to the level of persecution. The Respondent testified that as a teenager she moved to Guatemala City to work as a domestic worker. It was during her employment that she was first attacked and raped by [redacted], the son of the family where she worked. She was later forced to marry [redacted] by her mother and her employer. Throughout the course of their marriage, the Respondent was repeatedly raped and abused by [redacted]. When the Respondent started working outside the home, [redacted] threatened her, telling her there would be consequences if she did not stop. Exh. 4 at 5. He then

hired four men to attack and rob the Respondent when she was carrying money that belonged to her employer. [redacted] threats and abuse continued. The Respondent feared that he would kill her. The Court finds that the harm the Respondent suffered – being repeatedly and consistently abused and raped – rises to the level of past persecution. *Matter of A-T-*, 24 I&N Dec. 296, 304 (2007) (listing rape as an example of "common types of persecution" a woman might endure), *vacated and remanded on other grounds by Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008).

The Court finds that the Respondent's membership in a particular social group comprised of "Guatemalan women" was one central reason for the harm that she suffered in Guatemala. As previously detailed, the Respondent suffered harm rising to the level of persecution. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208. [redacted] repeatedly raped the Respondent because he believed that he was entitled to sex with her by virtue of her womanhood. He told her she "needed to fulfill [her] role as his wife." When he threatened her for working outside the home he told her "he did not like his wife going to work." Further, at one point early in their marriage, the Respondent left for her father's house, but was forced to return to [redacted]. Her father told her "a wife needed to be with her husband." The Respondent "need not establish the exact motivation of a 'persecutor' where different reasons for actions are possible, [but] [s]he does bear the burden of establishing facts on which a reasonable person would fear that the danger arises on account of [her] . . . membership in a particular social group." *Matter of Fuentes*, 19 I&N Dec. 658, 658 (BIA 1988). The Court further notes that the motives for the Respondent's persecution at the hands of her husband are echoed in the record evidence, which evinces a culture of machismo and illustrates a patriarchal culture within Guatemala where men feel as though they can control women and oftentimes use violence as a means of exerting that control. A staggering number of women in Guatemala face gender related violence. Country conditions evidence that there is a high incidence of violence against women in Guatemala. *See generally* Exh 4 (evidencing a pattern and culture of violence against women in Guatemala). Taking all of this into consideration, the Court finds that under the circumstances, the Respondent has established that her membership in a particular social group comprised of "Guatemalan women" was at least one central reason for the harm she suffered.

d. Government Action

The Respondent claims that she was persecuted by a private individual. As such, she must demonstrate that "flight from her country [was] necessary because her home government [was] unwilling or unable to protect her." *Matter of A-B-*, 27 I&N Dec. at 317; *see also* 8 C.F.R. § 1208.13(b)(1); *Ivanov v. Holder*, 736 F.3d 5, 20 (1st Cir. 2013) (to constitute persecution, the harm must be the direct result of government action, government-supported action, or the government's unwillingness or inability to control private conduct) (quoting *Sok v. Mukasey*, 526 F.3d 48, 54 (1st Cir. 2008)). The government must be unable or unwilling to protect the Respondent.[1] *Rosales Justo v. Sessions*, 895 F.3d 154, 167 (1st Cir. 2018) (finding that the BIA

[1] In *Matter of A-B-*, the Attorney General reaffirmed the "unable or unwilling to control" standard, but also held that an asylum applicant must show that the government "condoned" the private actors or at least "demonstrated a complete helplessness to protect the victims." 27 I&N Dec. at 337 (citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000)). Thus, the Attorney General sets forth three different standards: "unable or unwilling to control," "condoned," and "complete helplessness." *Matter of A-B-*, 27 I&N Dec. at 337. This conflicting language leaves the Court with questions as to what standard to apply when adjudicating asylum applications. To resolve this issue, the Court has reviewed relevant Board and First Circuit precedent. It is clear from a review of First Circuit case law that "unable or

erred in conflating unable and unwilling). The Court finds that the Respondent has established that the Guatemalan government is unable to protect her.

The Respondent testified that she never reported the abuse to police because she did not think the police would protect her. The record illustrates that despite the existence of these laws and attempts by the Guatemalan government, it continues to be unable to protect women such as the Respondent. Police are insufficiently trained and the government does not effectively enforce the laws criminalizing rape, including spousal rape. Exh. 7 at 311. Although the government has taken steps to combat femicide and violence against women, femicide has remained a "significant problem" and "violence against women, including sexual and domestic violence" has remained a "serious problem[.]" *Id.* at 311-12. "There is widespread immunity for the perpetrators due to the failure of the government to adequately investigate and prosecute these crimes." *Id.* at 274. The passage of laws and other steps taken by the Guatemalan government to combat violence against women "show only the willingness of the government to enact laws, not the ability of the police [and society] to enforce the law." *Rosales Justo v. Sessions*, 895 F.3d 154, 167 (1st Cir. 2018) (internal citation omitted). Therefore, despite the evidence in the record regarding the Guatemalan government's efforts in combatting violence against women, the Court finds that the government is unable to protect the Respondent.

e. Well Founded Fear of Future Persecution

As the Respondent has established past persecution on account of a protected ground, she is presumed to have a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS has not established by a preponderance of the evidence that the Respondent can reasonably relocate in Guatemala or that there has been a "fundamental change in circumstances" in the Guatemala, such that her fear is no longer well-founded. *Id.*

2. Discretion

As discussed above, the Respondent meets the definition of a refugee and is eligible for asylum. *See* INA §§ 101(a)(42), 208(b)(1)(B). However, the Respondent must also prove that she merits asylum in the exercise of discretion. 8 C.F.R. § 1208.14(a); *see also Matter of F-P-R-*, 24 I&N Dec. at 685-86 (citing *Matter of Pula*, 19 I&N Dec. at 473-74).

The Court also finds that the Respondent merits relief as a matter of discretion. *Pula*, 19 I&N Dec. at 473-74. As there appears to be no countervailing negative factors in her case, the Court will grant her application for asylum as a matter of discretion. *See Matter of H-*, 21 I&N Dec. at 348 ("[T]he danger of persecution should generally outweigh all but the most egregious of

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unwilling to control" is the governing standard in the First Circuit. *See e.g.*, *Rosales Justo*, 895 F.3d at 166-67. The Court could not find Board or First Circuit case that uses or interprets the term "complete helplessness" as used by the Attorney General in *Matter of A-B-*. Absent such controlling case law, the Court chooses to apply the "unable or unwilling to control" standard when analyzing the Respondent's asylum claim. This interpretation is consistent with the D.C. District Court's recent decision in *Grace v. Whitaker*, 344 F.Supp.3d 96, 130 (D.D.C. 2018) ("The "unwilling or unable" persecution standard was settled at the time the Refugee Act was codified, and therefore the Attorney General's "condoned" or "complete helplessness" standard is not a permissible construction of the persecution requirement.").

adverse factors.")(quoting *Matter of Pula*, 19 I&N Dec. at 474).

D. Other Relief

As the Respondent has demonstrated her eligibility for asylum pursuant to section 208 of the Act, the Court need not and will not reach Respondent's eligibility for withholding of removal or relief under the Convention Against Torture. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (government agencies are not required to make findings on issues which are unnecessary to the result); *see also Mogharrabi*, 19 I&N Dec. at 449. The applications are deemed moot.

Based on the foregoing, the following orders shall enter:

ORDER

IT IS HEREBY ORDERED that the Respondent's application for asylum pursuant to INA § 208 is **GRANTED**.

If either party elects to appeal this decision, the Notice of Appeal must be received by the Board of Immigration Appeals within thirty (30) days of this decision. 8 C.F.R. § 1003.38(a)-(b).

6/12/15
Date

PAUL M. GAGNON
United States Immigration Judge

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 [redacted] File A [redacted] DATE: May 20, 2019

__ 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]	)	**File No.:** [redacted]
RESPONDENT	)	**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
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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][1], 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.

[1] 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).[2] 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

[2] 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

"discrete and definable boundaries." See M-E-V-G-, 26 I&N Dec. at 239; Matter of W-Y-C- & H-O-B-, 27 I&N Dec. at 189. These defining characteristics will provide a clear benchmark for determining who falls within a group and who does not. M-E-V-G-, 26 I&N Dec. at 239. A group that is "amorphous, overbroad, diffuse, or subjective," shall not fulfill these requirements. Id. Here, the terms that define Respondent's group are clear and precise, as gender and nationality both have commonly understood meanings that are unlikely to change when defined by different persons. See Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 76 (BIA 2007) (finding that the particular social group defined by "affluent Guatemalans" was not particular because "affluence is simply too subjective, inchoate, and variable."). Accordingly, Respondent's group is not amorphous because its defining terms provide an adequate benchmark, gender, for determining group membership. Id. Thus, the boundaries of the group are identifiable: women in Guatemala are members, while men are not.

The Court recognizes that Respondent's social group is large; however, the size of a group does not necessarily preclude a particularity finding. The Board has routinely upheld large social groups despite its recognition that size is a factor that should be considered in the analysis. In S-E-G-, the Board stated that "while size of the group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed definition is sufficiently particular or is too amorphous . . . to create a benchmark for determining group membership." 24 I&N Dec. 579, 584 (BIA 2008). This affirms the reasoning in Matter of H-, in which the Board found that Somali clans constitute a particular social group, despite the fact that some number in the millions. 21 I&N Dec. 337 (BIA 1996); see also Mohammed v. Gonzalez, 400 F.3d 785 (9th Cir. 2005) (finding a group comprised of "Somali females" to be a cognizable social group given the widespread practice of female genital mutilation); Cece v. Holder, 733 F.3d 662, 674–75 (7th Cir. 2011) and Perdomo v. Holder, 611 F.3d 662, 669 (9th Cir. 2005) (rejecting the notion that a group can be too large to be a particular social group). Similarly, the Board has repeatedly upheld particular social groups based on sexual orientation as cognizable, even though such groups are sizeable. Matter of Toboso-Alfonso, 20 I&N Dec. 819, 822–23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group); W-G-R-, 26 I&N Dec. at 219 (affirming "homosexuals in Cuba" as a particular social group because, in part, it is defined with particularity). In these cases, and as explained by S-E-G-, the "key question" is not the group's size, but whether the definition provides an adequate benchmark for determining who is a member and who is not based on the record at hand. The dispositive factor in Matter of H- was the shared kinship and linguistic attributes of clan members. 21 I&N Dec. at 343. In Respondent's case, the benchmark determinant is a combination of nationality and gender.

The Court's analysis of sizeable and diverse groups is consistent with the Attorney General's decision in A-B-, which contains several statements, in dicta, cautioning against such groups. A-B- surmises that social groups composed of "broad swaths of society" are likely insufficiently particular, as they may be "'too diffuse to be recognized as a particular social group.'" A-B-, 27 I&N at 335 (citing Constanza v. Holder, 647 F3d. 749, 754 (8th Cir. 2011)). For example, a group composed of "victims of gang violence" may not be particular because members "often come from all segments of society, and they possess no distinguishing characteristic or concrete trait that would readily identify them as members of such a group. A-B-, 27 I&N at 335. This echoes the Board's decision in W-G-R-, which struck down a social group based on former gang membership because the respondent had not established that Salvadoran society would

"generally agree on who is included" in the group. 26 I&N Dec. at 221 (finding the proposed group lacked particularity "because it is too diffuse, as well as being too broad and subjective" as it "could include persons of any age, sex, or background"). However, the shortcomings considered in A-B- and W-G-R- are not present in this case because Respondent's group possesses an objective, distinguishing characteristic: gender. As explained below, and as evidenced by the facts on the record, this characteristic enables Guatemalan society to readily identify group members, despite the presence of other diverse characteristics. Moreover, A-B-, reiterates the necessity for a fact-based, case-by-case inquiry in the social group analysis, a mandate which cannot be squared with a broad prohibition against large, diverse social groups. A-B-, 27 I&N at 344; W-Y-C- & H-O-B-, 27 I&N at 189. In this case, and on this record, the facts demonstrate that Respondent's social group exists in Guatemala and is consistent with the requirements of M-E-V-G- and W-G-R-.

Importantly, the Court notes as a final point that none of the other protected grounds in INA § 101(a)(42) are limited by size or prohibit diverse membership. A nation may host millions of members of a particular religion, yet these individuals are not precluded from asylum if persecuted. Likewise, religious groups are composed of individuals with a wide variety of characteristics and experiences. Each protected ground is bounded by an immutable characteristic. See Acosta, 19 I&N Dec. at 233. Thus, it follows that a proposed social group that establishes clear boundaries by way of its immutable characteristics is cognizable under the Act regardless of its size or internal diversity. Accordingly, Respondent's proposed social group "Guatemalan women" meets the particularly requirement.

iii. Socially Distinct

Finally, Respondent's proposed social group is socially distinct. In M-E-V-G-, the Board explained that "[a] viable particular social group should be perceived within the given society as a sufficiently distinct group," and that "[t]he members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society." 26 I&N Dec. 227, 238; see also W-G-R-, 26 I&N Dec. at 217 (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). Through Respondent's testimony and documentary evidence, she has established that Guatemalan society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group.

As noted above, violence against women is one of the principal human rights abuses in Guatemala today. Exh. 5, Tab B at 1. The U.N. Human Rights Committee and the Committee on the Elimination of Discrimination Against Women have repeatedly expressed concern at the "persistence of very high levels of violence against women" in Guatemala. Exh. 4, Tab 11. Forty-five percent of women in Guatemala have suffered some form of violence in their lifetime, and many more have witnessed violence against a female relative. Exh. 5, Tab 7. Violence from criminal armed groups often occur alongside repeated physical and sexual violence at home, which includes life-threatening and degrading forms of domestic violence. Exh. 2, Tab 2. Women who come into contact with gangs are subject to threats, kidnapping, extortion, rape, sexual assault, and murder and as a result, increasing numbers of women and girls are fleeing Guatemala. Exhs. 2, Tab 2; 4, Tab 11. As one Guatemalan woman noted: "The gangs treat women much worse than

men. They want us to join as members, but then women are also threatened to be gang members 'girlfriends' and are raped, tortured, and abused" if they refuse. Exh. 2, Tab 2. This quote highlights the discord between the treatment of men and women and shows how Respondent's social group is distinct in Guatemalan society. It also shows how a group comprised of "Guatemalan women" is different from other social groups defined by vulnerability to harm, such as those who resist gang recruitment and who face violence from only a discrete segment of the population.

Recently, the Guatemalan government has recognized that Guatemalan women require special protection, as their law enforcement needs are different than other victims. The government enacted a femicide law in 2008, which criminalized gender motivated violence. Exh. 4, Tab 11. It also established a special prosecutor and court for female crime victims, as well as 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. Exhs. 5, Tab B at 17; Unmarked Exh. 7 at 17. These reforms illustrate how the abuse of women is tied to circumstances that only women suffer. However, despite these reforms, violence against women remains a serious problem, in part because both the general public and state actors continue to view it as normal. Exh. 4, Tab 11. The public fails to view violence against women as unusual due to its decades-long acceptance. Id. Similarly, its normalization has created a lack of political will towards investigating and prosecuting gender-motivated crimes. Id. In an effort to change these views, the U.N. Human Rights Committee recently recommended that Guatemalan schools include women's rights and protection of women from violence in its curricula. Exh. 4, Tab 11. This reluctance to protect women, despite efforts by state and international organizations, further demonstrates how women are viewed as a separate, subordinate group within Guatemala.

The Court emphasizes that Respondent's articulated social group is perceived by Guatemalan society independently from any group member's experienced persecution. Thus, Respondent's articulated group is neither defined solely by the persecutor's perception nor by its persecution, despite the Court's discussion of violence against women in its analysis. See M-E-V-G-, 26 I&N Dec. at 242 (cautioning that the persecutors' perception is not itself enough to make a group socially distinct); A-B-, 27 I&N Dec. at 317 (holding that the social group must "exist[s] independently of the alleged underlying harm"); Lukwago v. Ashcroft, 329 F.3d at 172. Here, recognizing the nation-wide epidemic of violence against women informs the recognition of Respondent's social group as opposed to creating it. In other words, the persecution faced by women may act as the catalyst that causes Guatemalan society to meaningfully distinguish the group, but the defining immutable characteristic exists independently of that persecution. M-E-V-G-, 26 I&N Dec. at 243; see also W-G-R-, 26 I&N at 237 (clarifying that persecutor's perceptions may be relevant because it is indicative of whether society views the group as distinct). As such, Respondent has shown that Guatemalan women are "set apart, or distinct, from other persons within [Guatemala] in some significant way." M-E-V-G-, 26 I&N Dec. at 238. Therefore, Respondent's articulated social group meets the requirements for social distinction and is cognizable under the Act.[3]

[3] Because the Court finds that "Guatemalan women" is a cognizable particular social group, the Court need not address the cognizability of Respondent's alternative social group, "Guatemalan women living in households without male relatives."

c. Nexus

In addition to establishing a cognizable particular social group, Respondent must also show that the harm she fears would be inflicted on account of her membership in that social group. 8 C.F.R. § 1208.13(b)(1). To demonstrate a nexus to a protected ground, an applicant need not show that she would be persecuted exclusively on account of the protected ground, but that the protected ground would be "one central reason" for the feared persecution, not just an "'incidental, tangential, or superficial' reason for persecution." Ndayshimiye v. Atty's Gen., 557 F.3d 124, 130 (3d Cir. 2009); Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–13 (BIA 2007). The Third Circuit has stressed that the proper standard is "one central reason" and not "the central reason." See Ndayshimiye, 557 at 129–31 (finding that the BIA's decision in J-B-N- & S-M- is not entitled to Chevron deference to the extent that it suggests a hierarchy of motives). The question of a persecutor's motive will involve a particularized evaluation of the specific facts and evidence in an individual claim. See L-E-A-, 27 I&N Dec. at 44 (citing Matter of N-M-, 25 I&N Dec. 526, 530 (BIA 2011).[4] In making this determination, the Court can consider both direct and circumstantial evidence of a persecutor's motive, and may make reasonable inferences based on the evidence in the record. L-E-A-, 27 I&N Dec. at 44.

Here, in drawing all reasonable inferences based on the evidence in the record, the Court finds that Respondent's status as a "Guatemalan woman" would be "one central reason" for her feared persecution. Respondent testified that women in Guatemala are targeted for harm simply because of their gender, an assertion which receives support from Respondent's own experiences. Respondent testified that she did not know or have any prior experiences with the man who accosted her or the men who catcalled her on the street. Given that she had no prior connection to these men, it is reasonable to infer that some other overt characteristic caused the men to take an interest in Respondent, such as her gender. Various anecdotal stories provided in the country conditions evidence confirm that women are targeted at such high rates in Guatemala because of their gender, which, according to Guatemalan society, makes them inferior and subservient to men. Exh. 2, Tab 2. While gangs or other actors may have mixed motives for harming women, these motives do not change the fact that women are specifically targeted for harm based on how gangs, and Guatemalan society as whole, view women and their worth in Guatemalan society. In this environment, Respondent's status as a "Guatemalan woman" would be "one central reason" for her feared persecution.

d. Government Unable or Unwilling to Control

Respondent also must demonstrate that her well-founded fear of future persecution would be committed by the Guatemalan government, or by forces the government is unable or unwilling to control.[5] See Gao, 299 F.3d at 272. Here, the evidence in the record demonstrates that the

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[4] The Court is aware that the Attorney General stayed L-E-A- on December 3, 2018. See 27 I&N Dec. 494 (A.G. 2018). Nonetheless, the Court considers L-E-A- as persuasive authority in its analysis of the statutory nexus requirement in this case.

[5] The Attorney General in A-B- reaffirmed the "unable or unwilling to control" standard set forth in Gao, but also held that an asylum applicant must show that the government "condoned" the private actors or at least "demonstrated a complete helplessness to protect the victims," citing to a case from the Seventh Circuit Court of Appeals ("Seventh Circuit"). 27 I&N Dec. at 337 (citing Galina v. INS, 213 F.3d 955, 958 (7th Cir. 2000)). Thus, the Attorney General sets forth three different standards: "unable or unwilling to control," "condoned," and "complete helplessness." A-B-

Guatemalan government is both unable and unwilling to control violence against women, especially and including gang violence against women. Deeply-entrenched biases regarding the status of women in Guatemala have resulted in wide acceptance of violence against women, including by the police and judiciary. Exh. 4, Tab 11. Some officials, including judges and police officers, have refused to investigate crimes against women due to the appearance or attire of the victim. Id. As of September 8, the PNC reported forty-eight open investigations against officers for violence or discrimination against women or children. Unmarked Exh. 7 at 17. Despite the strides made by the International Commission against Impunity in Guatemala ("CICIG"), an organization responsible for investigating and prosecuting corrupt officials and narco-interests, President Morales recently announced he would not renew the organization's mandate, a move viewed by the UN and the Guatemalan Constitutional court as condonation of the violence in Guatemala. Id. at 1.

Compounding these problems is the fact that the PNC is understaffed, underfunded, and inadequately trained on how to investigate crimes against women. Exh. 2, Tab 3. For example, support for victims of sexual assault is lacking outside of major cities, and arrest and prosecution of assailants in sexual assault cases is difficult without private legal assistance. Id. The result of the biases against women and the inadequacy of the state institutions in Guatemala is virtual impunity for gender-based crimes. Id. Guatemala has the third highest rate of femicide in the world, with a conviction rate of only one to two percent. Exh. 4, Tab 11. Between 2012 and April 2016, the judicial system handed down 391 sentences for femicide, but in the same period, the National Institute of Forensic Sciences performed 2,512 autopsies on women who died violently. Exh. 5, Tab 6. Moreover, in the first ten months of 2015, there were 11,449 complaints of physical or sexual assault and 29,128 reports of domestic violence, yet there were only 527 and 141 convictions for those crimes, respectively. Id. In light of this evidence, it is clear that the Guatemalan government is unable and unwilling to control violence against women. Therefore, Respondent has established a well-founded fear of future persecution by an actor the Guatemalan government is unable and unwilling to control.

e. 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).

, 27 I&N Dec. at 337. This conflicting language leaves the Court with questions as to what standard to apply when adjudicating asylum applications. To resolve this issue, the Court has reviewed relevant Board and Third Circuit precedent. In O-Z- & I-Z-, which remains controlling Board precedent, the Board paired the term "unable and unwilling to control" with the term "condoned," indicating to the Court that the two terms are the same, legally, for purposes of an asylum analysis. 299 F.3d at 26. Moreover, it is clear from a review of Third Circuit case law that "unable or unwilling to control" is the governing standard in the Third Circuit. See e.g., Gao, 299 F.3d at 272. The Court could not find a Board or Third Circuit case that uses or interprets the term "complete helplessness" as used by the Attorney General in A-B- and the Seventh Circuit in Galina. Absent such controlling case law, the Court chooses to apply the "unable or unwilling to control" standard when analyzing Respondent's asylum claim. This interpretation is consistent with the D.C. District Court's recent decision in Grace v. Whitaker, 344 F.Supp.3d 96, 130 (D.D.C. 2018) ("The "unwilling or unable" persecution standard was settled at the time the Refugee Act was codified, and therefore the Attorney General's "condoned" or "complete helplessness" standard is not a permissible construction of the persecution requirement.").

In determining whether a favorable exercise of discretion is warranted, both favorable and adverse factors should be considered, Pula, 19 I&N Dec. at 473, including adverse factors such as "the circumvention of orderly refugee procedures," A-B-, 27 I&N Dec. at 345 n.12, and humanitarian factors, such as age, health, and family ties. Matter of H-, 21 I&N Dec. at 348. The danger of persecution should outweigh all but the most egregious adverse factors. Pula 19 I&N Dec. at 473.

Here, the only adverse factor present in Respondent's case is her entry into the United States without inspection. This one factor is not so egregious as to warrant a denial of Respondent's asylum claim when compared with the numerous favorable factors present in her case. Respondent has lived in the United States for over four years and resides in Philadelphia with her parents. She graduated from Northeast High School in June 2018 and hopes to attend college to study nursing in the future. See Exh. 4, Tab 9. Respondent has not had any criminal contacts in the United States and faces an articulable risk of harm if she is returned to Guatemala. For these reasons, the Court finds that Respondent's case merits a favorable exercise of discretion.

C. Withholding of Removal and Withholding of Removal under the CAT

As the Court grants Respondent asylum under INA § 208, the Court does not reach her application for withholding of removal pursuant to INA § 241(b)(3) or her request for protection under the CAT.

VII. Conclusion

Respondent has demonstrated a well-founded fear of future persecution on her account of her membership in the particular social group, "Guatemalan women." Respondent has also demonstrated that she merits asylum as a matter of discretion. Therefore, the Court grants Respondent asylum pursuant to INA § 208.

Accordingly, the Court enters the following order:

ORDER

ORDER: IT IS HEREBY ORDERED that Respondent [redacted]'s application for asylum pursuant to section 208 of the Act be GRANTED.

May 15, 2019
Date

Steven A. Morley
Immigration Judge
Philadelphia, Pennsylvania

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
United States Immigration Court
1901 South Bell Street, Suite 200
Arlington, VA 22202

IN THE MATTERS OF:	)	**IN REMOVAL PROCEEDINGS**
[redacted],	)	**File Nos.:** [redacted]
Respondents.	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended ("INA" or "Act"), 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; humanitarian asylum pursuant to 8 C.F.R. § 1208.13(b)(1)(iii); withholding of removal, pursuant to INA § 241(b)(3); and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"), pursuant to 8 C.F.R. §§ 1208.16-.18.

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DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The respondents—[redacted] ("[redacted]") and [redacted] ("[redacted]"), a mother and daughter, respectively—are natives and citizens of Honduras. *See* Ex. 1; Ex. 1A. They entered the United States at or near Laredo, Texas, on May 9, 2015, and were not then admitted or paroled after inspection by an immigration officer. *Id.* On June 1, 2015, the Department of Homeland Security ("DHS") filed a Notice to Appear ("NTA") against each respondent, charging them as inadmissible pursuant to INA § 212(a)(6)(A)(i). Ex. 1; Ex. 1A. On February 25, 2016, the respondents admitted the factual allegations contained in their NTAs and

conceded inadmissibility as charged. Accordingly, the Court finds inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On February 25, 2016, [redacted] filed an Application for Asylum and for Withholding of Removal (Form I-589) with the Court, claiming [redacted] as a derivative asylum applicant. Ex. 2. Subsequently, on October 15, 2019, [redacted] filed an amended asylum application. Ex. 5, Tab H. On October 29, 2019, the Court held an individual hearing on the merits of [redacted] applications for relief. For the following reasons, the Court grants her application for asylum and, as a result, also grants [redacted]'s derivative application for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

Exhibit 1: NTA for [redacted] filed June 1, 2015;
Exhibit 1A: NTA for [redacted], filed June 1, 2015;
Exhibit 2: Form I-589 and Supporting Documents, including Tabs B-D,[1] filed February 25, 2016;
Exhibit 3: Additional Documents in Support of Form I-589, including Tabs E-F, filed August 24, 2016;
Exhibit 4: [redacted]'s Sworn Statement, filed September 26, 2017;
Exhibit 5: Additional Documents in Support of Form I-589, including Tabs G-M, filed October 15, 2019; and
Exhibit 6: [redacted]'s Statement on Qualifying Particular Social Groups, filed October 15, 2019.[2]

B. Testimonial Evidence

On October 29, 2019, the Court heard testimony from [redacted]. The testimony provided in support of her applications for relief, although considered by the Court in its entirety, is not fully repeated herein as it is already part of the record. Rather, her testimony is summarized below to the extent it is relevant to the subsequent analysis.

[redacted] was born in San Pedro Sula, Honduras, and was twenty-six years old at the time of her individual hearing. She and her partner, [redacted]), have two children together: [redacted], who was six years old at the time of the individual hearing, and [redacted] a U.S. citizen who was one year old. [redacted]'s mother and two sisters still reside in Honduras.

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[1] [redacted] filed Exhibit 2, with her Form I-589 marked as Tab A, at a master calendar hearing on February 25, 2016. Ex. 2, Tab A. However, the presiding immigration judge at that hearing inadvertently failed to stamp the Form I-589 to indicate that she filed it on that date. Thus, the Court here notes that [redacted] timely filed her Form I-589 on February 25, 2016, as the audio recording of proceedings in this matter clearly reflects, despite the fact the document bears a stamp indicating she filed it on August 24, 2016. *See* INA § 208(a)(2)(B).

[2] The Court marked [redacted] Statement on Qualifying Particular Social Groups for identification purposes only as it is not evidence, but rather legal argument. *See* Ex. 6.

Prior to departing Honduras, [redacted] attended high school and worked in the accounting department at [redacted], a company that manufactured billboards. Around 2012, when she was eighteen years old, she met a man named [redacted] claimed to be very well connected, wealthy, and powerful; he was related to the owners of [redacted], as well as [redacted]'s landlord. [redacted]'s parents owned their own company called [redacted] which supposedly provided cable and internet services. However, those services were merely a façade for their criminal enterprises, including money laundering and drug trafficking schemes.

[redacted] harassed [redacted] at work nearly every day, telling her that he so frequently visited the company because he wanted to see her. He told her that he desired to date her because she was an attractive "chick," unlike the other women he "had before." When she rejected his advances, he claimed that "nobody says no" to him and, if she did not oblige, he would "do it the bad way." He also bragged to [redacted] about his family's illicit dealings, encouraging her to work for his family because he could "profit" off her. He explained that his family paid the police for protection and impunity. When she declined to join his family's black-market businesses, he repeated that "nobody says no" to him. Nevertheless, [redacted] continued to reject his aggressive advances.

One day, while [redacted] waited in front of Imagen Global after work for her bus home, [redacted] approached her in his car. He pointed a gun at her and demanded that she enter the car, threatening to shoot her. She complied. He continued to point the gun at her as he drove the car to nearby secluded hills. He stopped the car, brandished a blade, and then raped her. He cut her multiple times, resulting in deep gashes on her arm, leg, and back. Afterwards, he left her in the street, and she hitchhiked home. As a result of the rape and beating, she was severely bruised, bloodied, and lacerated.

Two days after this rape, [redacted] and two other men approached [redacted] at their home and threatened to kill him if he did not end his relationship with [redacted]. Thereafter, one of [redacted]'s associates repeatedly and menacingly rode past [redacted]'s home on a motorcycle. [redacted] recognized the associate, as he had previously approached her at a store and told her that she was going to receive "a little surprise" from [redacted].

Following the abuse, [redacted] filed a police report against [redacted]. However, she was hesitant to do so because the Honduran police are corrupt and only protect affluent individuals. As she reported [redacted] abuse, the police officer who took the report asked her whether she knew what she was "getting into" when she identified [redacted] as the perpetrator. She felt compelled to omit or distort certain details of the event in order to mitigate any retaliation that could arise from her complaint, as [redacted] indicated his family bribed the police for protection and impunity. For example, she inaccurately told the police officer that [redacted] had abandoned her. She also declined to explicitly mention that [redacted] raped her and instead only claimed that he "touched" her. While she was at the police station, the police officer input [redacted]'s name into the police database, which revealed multiple complaints against him related to his mistreatment of other women.

Subsequently, [redacted] forcibly entered [redacted]'s home and kidnapped her. He forced her into a car and, accompanied by three other men and a woman, brought [redacted] to an unknown location. He held her there for about three days and repeatedly raped her. The other men and woman watched as he raped her. He cursed at her and beat her, punching and kicking her face and head. He reminded her that he told her he would "do things the bad way" if she did not "accept"

him. He threatened to kill [redacted], and, eventually, the woman helped to convince [redacted] to allow [redacted] to leave.

Thereafter, [redacted] left her home to seek protection at various other locations. She moved to her mother's home in Loma Larga, San Antonio de Cortes, Honduras, about three hours away from her home. She stayed there for a few days, before moving to a friend's home in Siguatepeque, Comayagua, Honduras. She also spent some time at a hospital during and after [redacted]'s birth. Meanwhile, [redacted] sent her text messages indicating that he was looking for her and intended to kill her. He also repeatedly called her, as well as [redacted], and posted threatening messages on her Facebook page; for example, he claimed that he was going to find her and kill her "wherever" she was, referring to her as a "bitch." She believes he was searching for her in order to traffic her to Guatemala and force her to join his prostitution and drug distribution businesses. Shortly thereafter, she fled Honduras.

In May 2015, [redacted] entered the United States with [redacted]. Immigration officials apprehended her and [redacted] upon their arrival. Although documents filed by DHS suggest [redacted] told immigration officials she did not fear return to Honduras, she claimed that she did indeed state a fear of harm upon her return due to the abuse she suffered, as well as the rampant crime in the country. Nevertheless, the immigration officials allegedly responded to her claim with rebuffs, retorting that "all immigrants lie" and provide the same narrative underlying their requests for protection. After her arrival, [redacted] learned that [redacted] was murdered.

She fears returning to Honduras because of the abuse she suffered and lack of government protection she was provided. Every time she looks at the scars on her body, she remembers the times [redacted] raped her and beat her. On two occasion, she unsuccessfully attempted to commit suicide. Six months prior to the individual hearing in this matter, [redacted] sister received threatening text messages, menacingly asserting that [redacted] would soon return to Honduras. Honduras is rife with crime and corruption and the authorities do not protect women, in part due to cultural *machismo*. [redacted] believes that, regardless of where they lived in the country, the government would not protect her or her children from violence. Indeed, multiple members of [redacted]'s family have been murdered. Men wearing police uniforms murdered [redacted]'s pregnant sister-in-law. [redacted]'s father was also murdered. The police neither performed an autopsy on her father nor pursued any suspects of the two murders. For those reasons, [redacted] requests protection in the United States.

III. LAW, ANALYSIS, AND FINDINGS

The Court has reviewed all evidence and testimony in the record, even if not specifically addressed in this decision, and has given the evidence appropriate weight. *See generally Orellana v. Barr*, 925 F.3d 145, 153 (4th Cir. 2019); *Alvarez Lagos v. Barr*, 927 F.3d 236, 251 (4th Cir. 2019).

A. Credibility and Corroboration

When an applicant offers testimonial evidence to support an application for relief, the Court must assess credibility. *See* INA § 240(c)(4)(B). The REAL ID Act of 2005 governs the credibility analysis for cases in which the applicant filed for relief on or after May 11, 2005. *Matter*

of S-B-, 24 I&N Dec. 42, 42-43 (BIA 2006). In making a credibility determination, a court must consider the totality of the circumstances and all relevant factors. INA § 240(c)(4)(C); *see Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007). Generally, a witness must provide detailed, plausible, and consistent testimony. INA § 240(c)(4)(B). To be credible, the witness's testimony should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). A court may also base a credibility determination on a witness's demeanor, candor, or responsiveness, and the inherent plausibility of the witness's account. *Id.* Additionally, a court may consider the consistency between a witness's written and oral statements; the internal consistency of each such statement; the consistency of such statements with other evidence of record; and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. *Id.*

An applicant also "bears the burden to provide reasonably available supporting evidence for material facts that are central to [her] claim," and the absence of "corroborating evidence [can] lead to a finding that an applicant did not meet [her] burden of proof." *Matter of L-A-C-*, 26 I&N Dec. 516, 519 (BIA 2015) (citing *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997)). However, an applicant's own testimony, without corroborating evidence, may be sufficient proof to support an application if that testimony is believable, consistent, and detailed enough to provide a plausible and coherent account of the basis for the fear of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987); 8 C.F.R. § 1208.13(a).

Considering the totality of the circumstances and all relevant factors, the Court finds [redacted]'s testimony generally credible. *See* INA § 240(c)(4)(C). The Court notes some areas of concern, but finds that she satisfactorily explained them, or that they are too minor to warrant an adverse credibility finding. DHS did not explicitly contest the credibility of [redacted] testimony but did inquire as to certain inconsistencies in the record during cross-examination.

It is true that some of [redacted]'s testimony regarding the events occurring before and after the abuse she suffered were inconsistent with her written statements. For example, her declaration states that her landlord's son introduced her to [redacted], while she testified that she met [redacted] at Imagen Global. Ex. 2, Tab B at 13. However, she credibly explained that [redacted] was related to both her landlord and the owners of Imagen Global; thus, it is not inconceivable that she had interactions with [redacted] both by virtue of her employment at Imagen Global as well as through her relationship with her landlord. Additionally, the police report indicates that [redacted] informed the police officers that [redacted] had abandoned her after learning about the rape, while she testified that such abandonment never occurred. Ex. 5, Tab L at 232-36. Yet, this inconsistency is minor, and [redacted] adequately explained that she believed she needed to distort her account of the abuse to mitigate any possible retaliation arising from her contact with the authorities, in light of government corruption. Notably, moreover, she explained that [redacted] had connections with law enforcement and also explicitly threatened to kill [redacted]. *See also* Ex. 5, Tab I at 221 (stating that [redacted] "had friends in the police"). Thus, it is plausible that [redacted] dishonestly informed the police that [redacted] abandoned her in order to protect him from [redacted] and his criminal associates. Such inconsistencies do not merit an adverse credibility finding. INA § 240(c)(4)(C).

Finally, there were inconsistencies within [redacted]'s accounts of the repeated rapes and beating from which she suffered. However, it has long been documented that victims of severe

abuse often struggle to recall certain details of the traumatizing events.[3] Moreover, victims of sex crimes often suffer "from further trauma and embarrassment" when discussing the harm they suffered and, thus, may be reluctant to fully describe the abuse, instead providing different details during different retellings. *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596, 607 (1982). Relatedly, DHS stipulated that [redacted] could provide cursory testimony regarding the abuse she suffered in order to avoid retraumatization. [redacted] also credibly explained that her descriptions of the attacks differed because of the emotional distress such retellings induce. Based on the foregoing, the Court finds that the inconsistencies in [redacted] testimony and written statements are excusable.[4] INA § 240(c)(4)(C).

As such, the Court finds that [redacted] testified credibly. Her testimony generally provides a plausible, coherent, and sufficiently consistent and detailed basis for her claims. *Mogharrabi*, 19 I&N Dec. at 445; 8 C.F.R. § 1208.13(a). It was also largely consistent with her Form I-589 and the objective evidence in the record. *See generally* Ex. 2, Tab D at 24-124; Ex. 3, Tab F at 128-88; Ex. 5, Tab M at 244-441. She was candid and forthright, even as to unfavorable facts. The Court observed her demeanor as she testified and did not identify any effort to obfuscate the truth in order to bolster her claims. Additionally, she was responsive to DHS's questions and honestly attempted to address inconsistencies in the record. She also provided some corroborating evidence, including a declaration from her sister, the police report, and an article about [redacted]. *See* Ex. 5, Tab L at 232-43. Accordingly, the Court finds [redacted]'s testimony both credible and generally corroborated. INA § 240(c)(4)(B).

B. Asylum

To qualify for asylum, an applicant must demonstrate she is a "refugee" within the meaning of INA § 101(a)(42). INA § 208(b)(1)(B)(i). To satisfy the "refugee" definition, an applicant must demonstrate that she is unable or unwilling to return to her country of origin because of a "well-founded fear" of future persecution on account of one of the five statutory grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). If an applicant establishes that she suffered past persecution on account of a protected ground, then she benefits from a rebuttable presumption that she also has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). An applicant must also establish that the persecution was or will be at the hands of the applicant's government or a private actor the government is unwilling or unable to control. *See Crespin-*

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[3] *See* Robert Timothy Reagan, *Scientific Consensus on Memory Repression and Recovery*, 51 Rutgers L. Rev. 275 (1999); Sheree L. Toth & Dante Cicchetti, *Remembering, Forgetting, and the Effects of Trauma on Memory: A Developmental Psychopathology Perspective* (1998); Maura Dougherty, *Evaluating Recovered Memories of Trauma as Evidence*, 25-JAN Colo. Law. 1 (1996).

[4] With regard to the encounter between [redacted] and immigration officials at the border, the Court does not find that the contradictory statements [redacted] allegedly made to them undercut the credibility of her statements in her testimony and declaration. Indeed, such interviews at ports of entry "are brief affairs given in the hours immediately following long and often dangerous journeys into the United States." *Qing Hua Lin v. Holder*, 736 F.3d 343, 352-53 (4th Cir. 2013). [redacted]'s testimony and demeanor also clearly show she genuinely fears return to Honduras, notwithstanding the immigration officials' record stating she did not express such a fear. The Court declines to comment on the propriety of any alleged derogatory statements made by the immigration officials and instead cites generally to 5 C.F.R. § 2635.101.

Valladares v. Holder, 632 F.3d 117, 128 (4th Cir. 2011). The applicant also must demonstrate that one of the protected ground was or will be at least one central reason for her persecution. INA § 208(b)(1)(B)(i). Finally, the applicant must show that the court should favorably exercise its discretion to grant asylum. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

[redacted] claims that she suffered past persecution at the hands of [redacted] and his criminal associates on account of her membership in the particular social group composed of "Honduran women." *See* Ex. 6 at 5.[5] For the following reasons, the Court grants [redacted] asylum application.

1. Past Persecution

Persecution within the meaning of the Act is harm surpassing the level of "mere harassment," and occurring at the hands of the applicant's government or an agent the government is unwilling or unable to control, on account of a protected ground. *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); *Crespin-Valladares*, 632 F.3d at 128; *see Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

a. Harm Rising to the Level of Persecution

"'Persecution involves the infliction or threat of death, torture, or injury to one's person or freedom, on account of one of the enumerated grounds in the refugee definition.'" *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009) (quoting *Li*, 405 F.3d at 177). In determining whether mistreatment rises to the level of persecution, the Fourth Circuit has observed that persecution is systematic, whereas less-severe mistreatment is generally limited to isolated incidents. *Id.* Thus, when the alleged mistreatment is in the form of brief detentions, repeated interrogations, or "[m]inor beatings," courts generally do not regard it as persecution. *Li*, 405 F.3d at 177 (quoting *Kondakova v. Ashcroft*, 383 F.3d 792, 797 (8th Cir. 2004)). In contrast, the Fourth Circuit has expressly held that "the threat of death alone constitutes persecution," even without more. *Tairou v. Whitaker*, 909 F.3d 702, 707-08 (4th Cir. 2018); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (quoting *Crespin-Valladares*, 632 F.3d at 126); *but see Cortez-Mendez v. Whitaker*, 912 F.3d 205, 209 n. (4th Cir. 2019) (a death threat may not always rise to the level of persecution if it is too "distant," "unspecific," or remote in time and place). Rape may also rise to the level of persecution. *See Matter of D-V-*, 21 I&N Dec. 77, 79-80 (BIA 1993). A court must consider all of the threats and harm "[i]n the aggregate" to determine whether an applicant has suffered past persecution. *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998).

The Court finds [redacted] has established that she suffered past harm rising to the level of persecution. DHS does not argue otherwise. The credible testimonial and documentary evidence in the record show that [redacted] kidnapped, repeatedly raped, and beat [redacted] *See* Ex. 2, Tab B at 14. Such abuse constitutes persecutory mistreatment. *D-V-*, 21 I&N Dec. at 79-80. [redacted] then

[5] [redacted] also argues that she suffered past persecution and has a well-founded fear of future persecution on account of other alleged protected grounds; however, for the sake of administrative efficiency, the Court declines to address those asserted grounds as [redacted] has met her burden to show that she has a fear of future persecution on account of her membership in the cognizable social group composed of "Honduran women." *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1040 (1984) (noting removal hearings "provide a streamlined determination of eligibility to remain in this country").

continually lodged credible threats—including death threats—against [redacted] which also constitute harm rising to the level of persecution. *Tairou*, 909 F.3d at 707-08; *Hernandez-Avalos*, 784 F.3d at 949; *see also* Ex. 2, Tab B at 14; Ex. 5, Tab I at 221. [redacted] and his associates' persistent pursuit of [redacted] was not contained to isolated incidents; they repeatedly threatened to kill her, [redacted], and [redacted]. *Baharon*, 588 F.3d at 232; Ex. 2, Tab B at 15; Ex. 5, Tab I at 221. Thus, [redacted] has met her burden to establish past harm of sufficient severity to constitute persecution. *Crespin-Valladares*, 632 F.3d at 128.

b. Government Unwilling or Unable to Control

An applicant for asylum must show she fears persecution by the government or an agent the government is unwilling or unable to control. *Hernandez-Avalos*, 784 F.3d at 950; *Acosta*, 19 I&N Dec. at 222. Whether the government is unable or unwilling to control private actors must be determined on a case-by-case basis. *See Crespin-Valladares*, 632 F.3d 117, 128-29 (4th Cir. 2011). "[T]he mere fact that a country may have problems effectively policing certain crimes . . . cannot itself establish an asylum claim." *Matter of A-B-*, 27 I&N Dec. 316, 320 (A.G. 2018), *abrogated on other grounds by Grace v. Whitaker*, 344 F.Supp.3d 96 (D.D.C. Cir. 2018). Moreover, in *Orellana v. Barr*, the Fourth Circuit explained that an applicant's failure to report abuse "does not prove the availability of government protection." 925 F.3d 145, 153 (4th Cir. 2019). Even if an applicant sought government protection, mere "access to a nominal or ineffectual remedy," or "empty or token 'assistance,'" is not sufficient to establish that the government is able to control a private persecutor—a separate and distinct question from whether it is willing to do so. *Id.* at 151-52 & n.3 (citing *Rahimzadeh v. Holder*, 613 F.3d 916, 921 (9th Cir. 2010)). Finally, an applicant need not have persisted in seeking government protection if doing so would have been futile or resulted in further abuse. *Id.* at 153 (citing *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1058 (9th Cir. 2006)).

The Court finds that [redacted] has met her burden of proving that the Honduran government is unable or unwilling to protect her. Importantly, she credibly testified that she contacted law enforcement and filed a police report, a copy of which she provided to the Court. Ex. 5, Tab L at 232-36. She further explained that the police officer who documented her complaint asked her whether she knew what she was "getting into" when she identified [redacted] as the perpetrator. *See also* Ex. 2, Tab B at 15. In spite of her effort to report the abuse, the record suggests that the Honduran government took no action at all. *Id.* at 14-15; Ex. 5, Tab K at 230.

DHS argues that, because [redacted] only filed one police report, whereas the petitioner in *Orellana* contacted law enforcement multiple times, the Court should find that [redacted] failed to show that the government is unwilling or unable to protect her. It further argues that she failed to meet her burden because, when she did actually file a police report, she lied about the relevant events. First, the Court does not read into the relevant law any requirement regarding the number of police reports an asylum applicant must file to show that a government is unwilling or unable to control a persecutor. Indeed, an applicant is not required to show that she filed even one complaint, particularly if doing so would be futile or risk further abuse. *Orellana*, 925 F.3d at 153. Futility and risk were high in [redacted]'s decision to report [redacted] she credibility testified that [redacted] told her that his family bribed the police for protection and impunity, an assertion which is supported by his family's elevated social status. *See* Ex. 5, Tab I at 221 (stating that [redacted] "had friends in the police"); *id.*, Tab L at 239 (referring to [redacted] as the son of "entrepreneurs" and

owners of Cable Sula); *id.*, Tab M at 244 (noting "widespread government corruption" and impunity). Second, while it is true that [redacted] did not accurately describe to the police the traumatic abuse she suffered, her dishonesty was justified. As explained above, she distorted the relevant events in an attempt to mitigate any potential retaliation arising from her complaint, as well as to protect [redacted]. *Id.* at 233-34. Her reasonable decision to do so is supported by objective evidence showing government corruption, as well as her testimony that the officer who took the report suggested that reporting the abuse was unwise. *See also* Ex. 2, Tab B at 15; Ex. 5, Tab I at 221; *id.*, Tab M at 239, 331.

Nevertheless, regardless of the number of complaints [redacted] filed or the contents therein, she did report clearly criminal conduct to the police, yet the authorities took no action at all. *See* Ex. 5, Tab L at 233-34. Such inaction aligns with [redacted]'s credible testimony that Honduran law enforcement is corrupt and only protects wealthy individuals. In fact, "[t]he police force is reported to be one of the most corrupt and mistrusted in Latin America." *Id.*, Tab M at 331. For example, there have been "several reports that the government or its agents committed arbitrary or unlawful killings." *Id.* at 245. Numerous government officials have also been exposed for their illicit dealings, including "attempted murder" and "premediated killings." *Id.* at 246. Relatedly, many police officers have "faced prosecution or were convicted in the United States for involvement in organized crime." *Id.* at 283. Nevertheless, such corruption in the government is "reported to continue to contribute to widespread impunity for crimes committed by members of drug smuggling structures." *Id.* at 332.

As a result of rampant crime and government corruption, "there are no areas in major urban cities free of violent crime." *Id.* at 286. Indeed, "[v]iolent crime is rampant in Honduras," and women and girls in particular "face high levels of gender-related violence." *Id.* at 283, 281. Passengers on public transportation are often raped, robbed, kidnapped, and murder. *Id.* at 287. The corrupt government even struggles to control crime in its prisons, which are saturated with "pervasive gang-related violence." *Id.* at 249. Moreover, abundant independent evidence in the record generally shows that "[o]rganized criminal elements," such as those in which [redacted]'s family and associates were involved, were "significant perpetrators of violent crimes and committed acts of murder, extortion, kidnapping, torture, [and] human trafficking," often targeting "members of vulnerable populations," including "women." *Id.* at 244, 247, 252, 263. Thus, the record reflects that the Honduran government does not merely "have problems" policing "certain crimes." *A-B-*, 27 I&N Dec. at 320. Instead, it is a significant part of the broader problem itself. *See* Ex. 5, Tab M at 405 (reporting that "[t]he Honduran government has been unable and unwilling to protect women from various forms of violence through direct action, such as engaging in their persecution and killings"). Finally, while the record does show that some sectors of the government make some efforts to protect residents, "nominal or ineffectual" assistance is insufficient to demonstrate that the government is willing or able to protect [redacted]. *Orellana*, 925 F.3d at 152.

In light of the foregoing, the Court concludes that [redacted] has shown that the government of Honduras is unable or unwilling to protect her. *Hernandez-Avalos*, 784 F.3d at 950.

c. Membership in a Cognizable Particular Social Group

An applicant for asylum alleging persecution on account of membership in a particular social group must show that she is a member of a cognizable "particular social group" within the

meaning of the Act. *See* INA § 101(a)(42)(A). A cognizable 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." *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *see Temu v. Holder*, 740 F.3d 887, 892 (4th Cir. 2014).

[redacted] argues that she suffered persecutory abuse on account of her membership in the particular social group composed of "Honduran women." *See* Ex. 6 at 5. For the reasons that follow, the Court concludes this is a cognizable particular social group under the Act.

First, the Court finds Honduran women share an immutable characteristic—the fact that they are Honduran women. One's sex and nationality are so fundamental to identity that one should not be required to change them in order to avoid persecution. *See Acosta*, 19 I&N Dec. at 233 (recognizing that sex is an immutable characteristic); *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996) ("The characteristic[] of being a 'young woman' . . . cannot be changed."); *see also Perdomo v. Holder*, 611 F.3d 662, 666-67 & n.5 (9th Cir. 2010); *see also* INA § 101(a)(42)(A) (listing nationality, *inter alia*, as protected grounds). Accordingly, the Court finds that the group "Honduran women" is comprised of members who share a common immutable characteristic. *M-E-V-G-*, 26 I&N Dec. at 237.

Next, the Court finds that the group "Honduran women" is defined with sufficient particularity. To satisfy the particularity requirement, a proposed group "must be defined by characteristics that provide a clear benchmark for determining who falls within the group." *M-E-V-G-*, 26 I&N Dec. at 239; *accord Alvarez Lagos*, 927 F.3d at 253. "The group must also be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective." *M-E-V-G-*, 26 I&N Dec. at 239; *see also Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must "be defined with sufficient particularity to avoid indeterminacy").

"[T]he size and breadth of a group alone does not preclude a group from qualifying as [a particular] social group." *Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (internal quotation marks omitted); *see also Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016). This is in keeping with the other protected grounds in the statutory series—for example, there may be tens of millions of members of a certain race or religion in a given country, but this fact does not preclude any one of those members from qualifying for asylum if they can show persecution on account of race or religion. *See* INA § 101(a)(42)(A); *see also M-E-V-G-*, 26 I&N Dec. at 234 (applying the *ejusdem generis* canon of construction to construe the statutory phrase "membership in a particular social group" harmoniously with the other four protected grounds). Indeed, the Board of Immigration Appeals ("Board") has held cognizable numerous particular social groups that have a high number of members. *See, e.g.*, *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (finding that the grouping of homosexuals in Cuba is sufficiently particular); *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996) (concluding that members of the Marehan subclan in Somalia belong to a sufficiently particular group); *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997) (finding that Filipinos of mixed Filipino-Chinese ancestry are members of a sufficiently particular group). Moreover, a group need not have "an element of 'cohesiveness' or homogeneity among group members" for it to satisfy the particularity requirement. *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006).

In *Matter of A-M-E- & J-G-U-*, the Board ruled that "affluent Guatemalans" are not members of a cognizable particular social group, holding that "[t]he terms 'wealthy' and 'affluent' standing alone are too amorphous to provide an adequate benchmark for determining group membership." 24 I&N Dec. 69, 74 (BIA 2007). In *Temu*, the Fourth Circuit commented that the group in *A-M-E- & J-G-U-*, "affluent Guatemalans," was not defined with particularity "because the group changes dramatically based on who defines it." 740 F.3d at 895. The Fourth Circuit explained that "[a]ffluent might include the wealthiest 1% of Guatemalans, or it might include the wealthiest 20%," and that the group therefore "lacked boundaries that are fixed enough to qualify as a particular social group." *Id.*

Unlike the group "affluent Guatemalans," the group "Honduran women" does not change based on who defines it, and therefore it has boundaries that are fixed enough to meet the particularity requirement. There is a clear and unambiguous benchmark to determine who is a member of the group—Honduran women are members; Honduran men and people of other nationalities are not. This is not a subjective or amorphous criterion. *See Temu*, 740 F.3d at 895. Nor do the size or internal diversity of the group "Honduran women" imply that the group is not particular, any more than the size or internal diversity of the groups "homosexuals in Cuba" or "Filipinos of mixed Filipino-Chinese ancestry" defeated the particularity of those groups. *Toboso-Alfonso*, 20 I&N Dec. at 822-23; *V-T-S-*, 21 I&N Dec. at 798; *see Alvarez Lagos*, 927 F.3d at 253 (quoting *Perdomo*, 611 F.3d at 669) (noting that a large group can be particular); *C-A-*, 23 I&N Dec. at 957 (explaining that intra-group homogeneity or cohesiveness is not required). The group "Honduran women" is "at least as 'particular and well-defined' as other groups whose members have qualified for asylum," such as "former gang members," "the educated, landowning class of cattle farmers," and "Iranian women who advocate women's rights or who oppose Iranian customs relating to dress and behavior." *See Crespin-Valladares*, 632 F.3d at 125 (collecting cases). Therefore, the Court finds that the articulated group satisfies the particularity requirement.

Finally, the Court finds that the group composed of "Honduran women" is socially distinct. The social distinction inquiry turns on whether the proposed group is "perceived as a group by society"—specifically, "the society in which the claim for asylum arises." *M-E-V-G-*, 26 I&N Dec. at 240-41. A group need not be ocularly visible to others in society for it to be socially distinct. *Id.* at 240. "Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group." *Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014). The dispositive reference point in the social distinction analysis is the perception of the society in question, as opposed to the perception of the persecutor. *M-E-V-G-*, 26 I&N Dec. at 241-42. However, the perception of the persecutor "may be relevant, because it can be indicative of whether society views the group as distinct." *Id.* at 242. Evidence that is probative on the issue of social distinction may include "country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like." *Id.* at 244-47. The fact that members of the proposed group are singled out for greater persecution than the general population is also "highly relevant" to the social distinction analysis. *Temu*, 740 F.3d at 894.

[redacted] has shown that women in Honduras are "set apart" and "distinct" from other persons in Honduras in "some significant way," and are therefore socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238. Generally, the record reflects that, because women in Honduras are seen as subordinate to the rest of society, they are significantly set apart from the public at large. The

phenomena of *machismo* and *marianismo*, common cultural tenets widely held in Hondurans, give rise to the belief that women are inferior to men and must carry out certain subaltern societal roles. *See* Ex. 5, Tab M at 362, 369-70, 375. An inherent aspect of these principles is that "men can do anything they want to women in Honduras." *Id.* 364. Although the social distinction requirement does not necessitate ocular visibility, the subordination of and violence against women in nearly omnipresent in Honduras. *See, e.g., id.* at 276, 278, 345-47, 405. Indeed, gender-based violence in Honduras is unavoidable—in the country itself and abroad; for example, only a few years prior to the issuance of this decision, a global beauty pageant contestant and her sister fell victim to femicide; "[t]heir joint funeral was broadcast around the world and attended by thousands." *Id.* at 364. The sister was shot by her boyfriend "[b]ecause of his machismo." *Id.* (internal quotation marks omitted). Such atrocious gender-based violence is commonplace and frequently published in the media. *See, e.g., id.* at 404.

Even when not reported in the media, the record reveals that the subordination of Honduran women—and violence against them—is inescapably perceptible. In fact, Honduras "has the highest recorded rate of femicide in Latin America, and also one of the highest rates of femicide among girls . . . in the world." *Id.* at 345, 404; *Temu*, 740 F.3d at 894 (explaining that whether a group "is singled out for greater persecution than the population as a whole" is a "highly relevant factor" in determining social distinction). Such "widespread and systematic" violence against women and girls is carried out by a diverse array of members of the public, including "members of gangs and other organized criminal groups, the security services[,] and other individuals." *Id.* at 345, 244, 247. The ubiquity of the problems Honduran women face is only increasing, as there has been a "recent spiral of violence in the lives of women." *Id.* at 405. For example, one of the many forms of gender-based abuse, domestic violence, is widespread, "as is impunity for the perpetrators." *Id.* at 347. "Large numbers of Honduran girls and women . . . are also reported to be forced into prostitution in Honduras and trafficked into sex slavery in Mexico, Guatemala, El Salvador, the United States[,] and elsewhere." *Id.* at 346. The subordination of women results in obvious barriers to women's fundamental participation in civil society, such as accessing adequate employment and voting in election, further setting them apart in the margins of society. *Id.* at 276, 278, 263; *id.* at 267 (noting that, notwithstanding that "the law accords women and men the same legal rights and status . . . , many women did not fully enjoy such rights").

Thus, the record clearly reflects that Honduran women are significantly set apart from Guatemalan society at large. As such, the Court finds that [redacted]'s proposed group is sufficiently socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238.

Accordingly, the Court concludes that [redacted] is a member of the cognizable particular social group composed of "Honduran women."[6] *See* INA § 101(a)(42)(A).

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[6] The notion that women in a given country can form a particular social group is not novel. As noted above, the Board stated in 1985 in *Acosta* that one's "sex" is a "shared characteristic" on which particular social group membership can be based. 19 I&N Dec. at 233. In *Mohammed v. Gonzales*, the Ninth Circuit stated that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law." 400 F.3d 785, 797 (9th Cir. 2005). In its 2010 decision in *Perdomo v. Holder*, the Ninth Circuit interpreted its *Mohammed* decision as "clearly acknowledg[ing] that women in a particular country, regardless of ethnicity or clan membership, could form a particular social group." 611 F.3d 662, 667 (9th Cir. 2010). Similarly, in *Hassan v. Gonzales*, the Eighth Circuit found that "Somali females" are members of a particular social group. 484 F.3d 513, 518 (8th Cir. 2007). In *Fatin v. INS*, the Third Circuit stated

d. Nexus

An asylum applicant must demonstrate that a protected ground, such as membership in a particular social group, was "at least one central reason" for the persecution she suffered or fears she would suffer. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-14 (BIA 2007). "The applicant need not prove that the protected ground was *the* central reason or even a dominant central reason for the persecution; she need only show that the protected ground was more than an incidental, tangential, superficial, or subordinate reason underlying the persecution." *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017) (quoting *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009)) (internal quotation marks omitted). In conducting the nexus analysis, a court must consider not only the "'articulated purpose'" of a persecutor's threats, but also the "'intertwined reasons'" for those threats. *Id.* at 248 (quoting *Cantillano Cruz v. Sessions*, 853 F.3d 122, 129 (4th Cir. 2017)). A court should consider both direct and circumstantial evidence of a persecutor's motive, and is free to make reasonable inferences from that evidence. *Matter of L-E-A-*, 27 I&N Dec. 40, 44 (BIA 2017), *overruled in part on other grounds*, 27 I&N Dec. 581 (A.G. 2019).

The Court finds [redacted] has met her burden of proving that her status a Honduran woman was at least one central reason why [redacted] and his associates targeted her. DHS argues that she failed to establish the requisite nexus because the record merely shows that [redacted] was a stalker who pursued her because he was obsessed with her. While DHS's theory may be one part of the aggressors' broader motive, the record clearly reflects that [redacted]'s sex and inseparably attendant vulnerability was at least one central reason for the mistreatment. *Zavaleta-Policiano*, 873 F.3d at 247. Indeed, the evidence and testimony in this case establish that the abuse [redacted] suffered goes beyond a simple case of gender-based mistreatment within a personal relationship. *See Velasquez v. Sessions*, 866 F.3d 188, 195 (4th Cir. 2017).

As discussed above, there is a belief in Honduras that a man can "do anything" he wants to a women; thus, "[b]ecause of his machismo," he will willfully carry out horrific acts of abuse—on account of the fact that the victim is a Honduran woman is therefore largely helpless. Ex. 5, Tab M at 364. This gendered motivation is present [redacted] and his associates' pursuit of [redacted]. In fact, [redacted] credibly testified that law enforcement informed her that [redacted] had engaged in such abuse before, revealing his awareness that he could harm Honduran women with impunity on account of the cultural gender bias in Honduran society. Ex. 2, Tab B at 15. Of course, this awareness was not at all misguided; indeed, the government took no action against [redacted], and he and his associates continued to pursue [redacted]. Moreover, the language [redacted] used when speaking to [redacted] evinces his gender-based motive and recognition of her perceived inferior status, repeatedly referring to her possessively and as a "bitch," as well as asserting that he could mistreat her without punishment. *Id.* at 13-15. Importantly, he also told her he could "profit" off her, again suggesting he targeted her because of her identity as a woman. It could be argued that [redacted] was targeted in order to enrich the Canahuati criminal enterprise, but her status as a Honduran woman is inextricably intertwined with any such motive, as the record clearly shows

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that, under *Acosta*, "to the extent that the petitioner in this case suggests that she would be persecuted or has a well-founded fear that she would be persecuted in Iran simply because she is a woman," she has articulated a cognizable particular social group. 12 F.3d 1233, 1240 (3d Cir. 1993). This Court is aware of no precedential opinion of the Board or of any circuit court holding that a group made up of all the women in a given country cannot be a particular social group.

that her sex was a crucial factor in [redacted]'s and his associates' decision to pursue her. *Zavaleta-Policiano*, 873 F.3d at 247. Based on the foregoing, the record clearly corroborates the notion that [redacted] and his associates pursued [redacted] because of her identity, as it demonstrates that women in Honduras are widely subject to unpunishable mistreatment due to their subordination to men. *See, e.g.*, Ex. 5, Tab M at 263, 276, 278, 345-47, 362, 364, 404-05.

As such, the Court finds that [redacted] has shown by a preponderance of the evidence that at least one central reason [redacted] and his criminal associates targeted her, rather than another person, is that she is Honduran woman. *Hernandez-Avalos*, 784 F.3d at 949-50. Therefore, the Court concludes that she has demonstrated the requisite nexus. INA § 208(b)(1)(B)(i).

2. Rebuttable Presumption of Well-Founded Fear of Future Persecution

Because [redacted] has demonstrated that she suffered past persecution on account of membership in a particular social group, she benefits from a rebuttable presumption that she has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that, *inter alia*, there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution in Honduras on account of a protected ground. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B).

DHS argues that [redacted]'s death is a fundamental change in circumstances that rebuts the presumption of a well-founded fear of future persecution. It is true that [redacted], one of the aggressors who pursued [redacted], has died. Ex. 5, Tab L at 238-43. However, the record shows that multiple criminal associates affiliated with [redacted] and his family likewise pursued [redacted]. Indeed, [redacted] informed [redacted] that "his family has orders to kill" her and his bodyguards were searching for her. Ex. 2, Tab B at 14-15. She also credibly explained that his family is well connected and powerful. Ex. 5, Tab I at 222. [redacted] threateningly asserted that he had "a lot of friends in the police" and that his boss, a high-ranking drug trafficker, would target [redacted]. Ex. 5, Tab I at 221-22; Ex. 2, Tab B at 14-15. His associates also made their presence known in the lives of [redacted]'s family. For example, suspicious cars and a motorcycle frequently drove by [redacted]'s home. Ex. 2, Tab B at 15. Importantly, moreover, [redacted]'s sister has received numerous threatening phone calls from "various numbers," as well as text messages. *See* Ex. 5, Tab I at 221. In fact, only two months prior to the individual hearing in this matter, [redacted]'s sister received text messages that menacingly claimed that [redacted] would soon return to Honduras. Similarly, men recently approached [redacted]'s mother at her business to inquire about [redacted]'s whereabouts, asserting they will find [redacted] because they have numerous "contacts" in Honduras. Ex. 2, Tab B at 15. Therefore, even though [redacted] is dead, [redacted] would face abuse at the hands of [redacted] family and criminal associates if she were returned to Honduras.

As such, the Court finds DHS has not met its burden to prove a fundamental change in circumstances sufficient to rebut the presumption of a well-founded fear of future persecution.

3. Humanitarian Asylum

In the alternative, the Court grants [redacted]'s asylum application due to the severity of the past persecution she suffered. Even where an applicant might not be able to establish a well-

founded fear of future persecution, if she has established particularly severe past persecution, then a court may grant asylum in an exercise of its discretion. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(A); *Matter of Chen*, 20 I&N Dec. 16, 21 (BIA 1989). Under Fourth Circuit precedent, "[e]ligibility for asylum based on severity of persecution alone is reserved for the most atrocious abuse." *Naizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006) (quoting *Gonahasa v. INS*, 181 F.3d 538, 544 (4th Cir.1999)) (internal quotation marks omitted); *see also Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1072 (9th Cir. 2004) (noting that rape may constitute atrocious abuse to support a grant of humanitarian asylum). Thus, a court may only grant humanitarian asylum when the past persecution was "so severe that it would be inhumane to return the [applicant] even in the absence of any risk of future persecution." *Gonahasa*, 181 F.3d at 544 (quoting *Vaduva v. INS*, 131 F.3d 689, 690 (7th Cir. 1997)) (internal quotation marks omitted).

The Court finds that [redacted] has established past persecution so severe that she merits a grant of humanitarian asylum. 8 C.F.R. § 1208.13(b)(1)(iii)(A). The record reflects that she was kidnapped, violently raped, and brutally beaten multiple times. Ex. 2, Tab B at 14; *Garcia-Martinez*, 371 F.3d at 1072. On at least one occasion, other people watched while she was raped. The beatings to which she was subjected left her bruised and bloodied. She was cut multiple times on her arm, leg, and back. Following this abuse, she, [redacted], and [redacted] were threatened with death several times. Ex. 2, Tab B at 14; *see also* Ex. 5, Tab I at 221. When [redacted] attempted to escape harm, her aggressors incessantly pursued her. Ex. 5, Tab I at 221. As a result of this repeated, prolonged abuse, [redacted] suffers from severe emotional trauma. *Id.* She has twice attempted to commit suicide. She is constantly reminded of attacks she endured due to the scars left on her body. The Court observed her demeanor during the individual hearing and does not doubt that she suffered extreme, inhumane mistreatment that permanently affected her life.

The severity of the abuse [redacted] suffered is largely unparalleled by the harm discussed in Fourth Circuit decisions addressing requests for humanitarian asylum. In *Naizgi*, for example, the Fourth Circuit affirmed the Board's denial of humanitarian asylum, concurring that harm in the form of expatriation as well as the loss of livelihood and property was insufficient to warrant a grant of humanitarian asylum. 455 F.3d at 487. The atrocious abuse that [redacted] experienced, resulting in her enduring trauma, is certainly more deplorable and depraved than the terrible mistreatment the petitioner in *Naizgi* suffered. Again, she was sequestered and repeatedly raped and beaten, resulting in lasting physical and emotional damage. Therefore, the Court concludes that this is such a case where the past persecution was so severe that it would be inhumane to remove [redacted] to Honduras, even if there were an absence of a risk of future persecution. *Gonahasa*, 181 F.3d at 544.

As such, the Court grants [redacted]'s request for humanitarian asylum in the alternative. 8 C.F.R. § 1208.13(b)(1)(iii)(A).

IV. CONCLUSION

The Court concludes that [redacted] has shown she faced past persecution on account of a protected ground and, thus, benefits from the presumption of a well-founded fear of future persecution on the same basis. DHS has not rebutted that presumption. Therefore, the Court will

[redacted]

grant her application for asylum in an exercise of its discretion.[7] Alternatively, the Court finds that she warrants a grant of humanitarian asylum based on the severity of the past harm she experienced. As such, the Court also grants [redacted]s derivative application for asylum.

Accordingly, the Court enters the following order:

ORDERS

It Is Ordered that: [redacted] application for asylum be **GRANTED**.

It Is Further Ordered that: [redacted] derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

5/1/2020
Date

Wynne P. Kelly[8]
United States Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals on or before thirty (30) calendar days from the date of service of this decision.

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[7] Once an applicant has shown her statutory eligibility for asylum, a court must consider whether to grant or deny asylum in its discretion. 8 C.F.R. § 1208.14(a). The Fourth Circuit has recognized that discretionary denials of asylum are "'exceedingly rare'" and require "egregious negative activity by the applicant." *Zuh v. Mukasey*, 547 F.3d 504, 507-14 (4th Cir. 2008) (quoting *Huang v. INS*, 436 F.3d 89, 92 (2d Cir. 2006)). [redacted] merits a favorable exercise of discretion. She has a well-founded fear of persecution in Honduras on account of membership in a particular social group. There is no evidence she has any criminal history or any previous violations of U.S. immigration law. Notably, [redacted]s removal would profoundly negatively affect the life of her both of her minor children: [redacted], a U.S. citizen who is currently two years old. Ex. 5, Tab J at 226. As detailed above, violence and crime is widespread in Honduras, so there is a high likelihood [redacted] and her children will face harm. Thus, a grant of asylum would advance humanitarian interests. Under the totality of the circumstances, the Court concludes this is not the exceedingly rare case in which a discretionary denial of asylum is warranted.

[8] The signing Immigration Judge was transferred this matter for resolution. Pursuant to 8 C.F.R. § 1240.1(b), the signing Immigration Judge has familiarized himself with the record.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
970 BROAD STREET, ROOM 1200
NEWARK, NJ 07102

Law Offices of Patrick C. McGuinness LLC
McGuinness, Patrick C
304 Maple Ave.
South Plainfield, NJ 07080

In the matter of [redacted] File A [redacted] A [redacted] DATE: Mar 17, 2020

[redacted]

__ Unable to forward - No address provided.

X 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
970 BROAD STREET, ROOM 1200
NEWARK, NJ 07102

__ 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.

__ Other: _____

RD
COURT CLERK
IMMIGRATION COURT FF

cc: [redacted]
970 BROAD STREET, ROOM 1300
NEWARK, NJ, 07102

3/17/20 RD

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

File Nos.	**A** [redacted] **(Lead)**	)
	A [redacted]	)
In the Matter of		)
[redacted],		) **In Removal Proceedings**
[redacted],		)
Respondents.		)

CHARGE:	INA § 212(a)(6)(A)(i)	Present in the United States without being admitted or paroled
APPLICATIONS:	INA § 208	Asylum
	INA § 241(b)(3)	Withholding of Removal
	8 C.F.R. § 1208.16	Relief under the Convention against Torture

ON BEHALF OF RESPONDENT
Raquel Montenegro, Esq.
Law Offices of Patrick C. McGuiness LLC
304 Maple Ave.
South Plainfield, NJ 07080

ON BEHALF OF ICE/DHS
[redacted].
Assistant Chief Counsel
970 Broad Street, Room 1300
Newark, New Jersey 07102

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Procedural History

The lead respondent, [redacted] ("the Respondent"), is a 29-year-old female native and citizen of Honduras. Exh. 1; Exh. 2. The Respondent's minor daughter, [redacted], is the derivative respondent in this matter (collectively "the Respondents"). Exh. 1. On September 4, 2013, both the Respondents entered the United States at or near Hidalgo, Texas. *Id.* They were not admitted or paroled upon inspection by an immigration officer. On September 4, 2013, the Department of Homeland Security ("DHS") commenced removal proceedings against the Respondents by filing Notices to Appear ("NTA") with the New York Federal Plaza Immigration Court, charging them as inadmissible under section 212(a)(6)(A)(i) of the Act. On February 27, 2015, the Respondents' Motion for Change of Venue was granted and venue was changed to the Newark Immigration Court. On March 6, 2015, the charges were

sustained. On September 20, 2016, the Respondents filed I-589 Applications for Asylum and Withholding of Removal ("I-589 Application") with this Court, after they had been previously lodged on August 14, 2015. Exh. 2; Exh. 2A.

On October 25, 2019, the Respondents appeared for an individual hearing before this Court and the lead respondent testified with the assistance of a Spanish language interpreter.

II. Summary of the Evidence

A. Documentary Evidence

The evidentiary record of this proceeding consists of documentary Exhibits 1 through 3. All admitted evidence has been considered in its entirety regardless of whether specifically mentioned in the text of this decision.

Exhibit 1:	Respondent's and Derivative's Notices to Appear, filed November 12, 2013
Exhibit 2:	Respondent's Form I-589, Application for Asylum and Withholding of Removal and Personal Statement, filed September 20, 2016
Exhibit 2A:	Derivative's Form I-589 Application for Asylum and Withholding of Removal, filed September 20, 2016
Exhibit 2U:	Respondent's Updated Form I-589 Application for Asylum and Withholding of Removal, filed October 24, 2019
Exhibit 2AU:	Derivative's Updated Form I-589 Application for Asylum and Withholding of Removal, filed October 24, 2019
Exhibit 3:	Respondent's Supplemental Evidence in Support of I-589 Application (Tabs A – D), filed September 8, 2016

B. Testimonial Evidence

The Respondent was born on [redacted] in Tela, Honduras. She grew up in a large town called Arizona, where she attended six years of school. Growing up, the Respondent lived with her father, one older sister, and one younger brother. Her mother died when she was eight years old. After completing six years in school, she stayed at home. Her father would make her clean the house and do other chores around the house. She stated that her father mistreated her sometimes. For instance, he wouldn't let her go see her grandmother or any other family member and he would never buy her any clothing. He would also punish her with "whatever he had in hand," such as "a belt, a switch, [and] a stick." Both the Respondent and her sister suffered mistreatment at the hands of their father, which began after their mother died. The Respondent's brother was not abused. She believes this is because her father "preferred boys over girls."

When the Respondent was 17 years old, she met the future father of her children named [redacted] was 28 years old at the time. He worked as a day laborer in a palm tree farm. They met by chance in the middle of 2007. They started going on dates and about one month later, the Respondent and [redacted] became boyfriend and girlfriend. At first, they would see each other every five to eight days. When they spent time together, [redacted] would pick up the Respondent and they would go out to eat. In February of 2008, the Respondent moved in with [redacted] and his family in a town called Hicaque, about half an hour from Arizona, where she had been living. [redacted] lived with his father, mother, and two brothers. At that point, the Respondent was already two months pregnant with their daughter [redacted] She stated that another reason she moved in with [redacted] was because she just wanted to leave her home.

When the Respondent and [redacted] first moved in together, she said that "he was a beautiful person . . . he was gentle, sympathetic, [and] very caring." On September 23, 2008, the Respondent gave birth to their daughter, [redacted] She stated that during that time, things were still going well with [redacted] However, shortly after, in December of 2008, the Respondent began having problems with [redacted] parents, Patrocina and Gregorio. She said that they started to see her "as a maid" and "a slave." They demanded that she clean the entire house, wash and iron their clothes, and cook for everyone. The Respondent stated that she did this all alone and did not have help from anyone. She complained about this treatment to [redacted] but she said that he never defended her and never did anything to help her. The Respondent became even more afraid [redacted] parents after listening to their conversations about being willing to do "anything" to people who went against them.

In 2011, due to the mistreatment by [redacted] parents, the Respondent told [redacted] that they had to make a decision and find a place where they could live together just the three of them: [redacted] the Respondent, and their daughter. Thus, they moved out [redacted] parent's house and to the house next door. However, the Respondent said that "things got worse" because she still had to take care of Patrocina's house, in addition to her own house. She still had to clean [redacted] parents' house because they and [redacted] forced her to. As she stated, "Braulio said I had to do it, [so] I had to do it—period."

When she first moved in with [redacted] the Respondent would visit an aunt who lived in the town of Arizona every weekend. She would go on Saturday and then return Sunday to her home with [redacted] Occasionally, she would also visit her father. The Respondent said that her father had asked for her forgiveness and would invite her over to his house occasionally. She would go see him so that he "wouldn't feel bad." However, in 2011, [redacted] wouldn't let the Respondent visit her family members anymore. He told her that she could not go because she had to "take care of his mother" and since his mother did not have anyone to help her, the Respondent "had to be there all the time." He also said that he did not want the Respondent to see her aunt because he believed she would tell her aunt about the mistreatment she was experiencing.

The Respondent stated that towards the end of 2011, things with [redacted] started to worsen. [redacted] placed a lock on the gate of the house and would not let her leave. She said that he had her "like a slave in the house." In October of 2011, [redacted] stopped bringing home food for the Respondent. He would only bring food for their daughter. The Respondent could not leave to get her own food because she was locked inside their house. She was only able to leave the house to

go to [redacted] parents' house to clean because the two houses were both on one lot and were connected by a gate that was unlocked. The Respondent was able to communicate with relatives who live in the United States about not having food, so they sent her money through the Respondent's female neighbor. The neighbor would receive the money, buy food for the Respondent, and bring it to her house in hiding.

Additionally, around that same time, [redacted] began abusing the Respondent. She would often tell him that she wasn't anyone's servant, but he would say that she *was* his servant. He used physical force on her and foul language when talking to her. [redacted] would tell her that the only reason she wanted to go out to the street was to become a prostitute and that's why he didn't let her go out. He would also say that a person like her deserved to be locked up.

One day, the Respondent tried to escape. She was able to break the lock but [redacted] and his father caught her, so she was never able to leave. [redacted] asked her why she wanted to go out to the street and told her that she had to be locked up. He said that if she managed to get out, she would "regret it in a thousand ways." He then grabbed the Respondent and forced her back inside the house. The Respondent said that he locked the gate once again but that time he used a type of lock that was used by the military during the war with El Salvador. Things worsened after she tried to escape.

The Respondent's second child with [redacted] a son, was born on [redacted]. At that time, she moved to another room in the house and [redacted] would go there to try to abuse her. The Respondent said "he tried to force me and I refused." On one occasion, he grabbed her by the hair and smacked her. On another occasion, he "tried to force himself upon [her]" but then her daughter started to cry and scream. The screams caused him to stop because he was afraid that someone was going to hear her and come to the house. Another day, he tried to do it again and that is when "he grabbed [her and] threw [her] down the stairs," which caused the Respondent to injure her ankle.

The physical and verbal abuse continued well into 2013. The Respondent stated that "it got to the point that I was fearful when I saw him arrive [home.]" The Respondent's neighbor who would bring her food told her that she needed to escape or "things were going to get ugly." Thus, one day in June of 2013, when neither [redacted] nor his parents were home, the neighbor helped the Respondent escape. She passed the Respondent a ladder, which the Respondent put "over the wall on the inside and [the neighbor] had another [ladder] on the outside." The Respondent first got her children over the wall and then the Respondent herself jumped "over to the other side." She fell and was injured above her left eye, where she now has a scar. The Respondent was able to escape. She hailed a taxi and went to her aunt's house. Her neighbor told the Respondent that when [redacted] got home and noticed that the Respondent wasn't home, he started looking for her. The neighbor called the Respondent and told her that "they were like crazy on the way to look for [her] at the bus stop," since they thought she was there. The Respondent then went to the police and told them what had been happening to her. The police told her that "there was nothing they could do for [her]" and that "they couldn't have a person there to guard [her]" all the time. Thus, the Respondent went back to her aunt's house and they spent most of their time in hiding.

They spent five days hiding and on the fifth day, the Respondent's daughter, [redacted] went to the store with her cousin. At that point, [redacted] had gone to the Respondent's father's house to

look for the Respondent. He then realized that she was at her aunt's house and went there to look for the Respondent. When [redacted] was heading back to the Respondent's aunt house with her cousin, [redacted] found her, grabbed her, and took her with him back to his parents' house. The Respondent's son was still with the Respondent at the aunt's house safely. The Respondent went to the police once again and told them what had happened with [redacted] The police assigned an officer to go with her to [redacted]s house to rescue [redacted] The police returned [redacted] to the Respondent "in a bad way" and told her to "figure out what to do because they couldn't be keeping an eye on [her.]" The Respondent and [redacted] went back to the Respondent's aunt's house. Shortly after, on June 27, 2013, the Respondent's cousin helped her and [redacted] flee to Mexico. The Respondent left her son with her aunt in Honduras.

In Mexico, the Respondent and [redacted] were staying with another aunt named [redacted]. The Respondent worked for three months in Mexico in order to save money so that they could flee to the United States. One day, when she arrived back at Ms. [redacted] house from work, about one month after she had arrived in Mexico, Ms. [redacted] informed the Respondent that she had some news for her. She told the Respondent that [redacted] had called and told her that he knew the Respondent was living in Mexico and that he was "going to come get [her]" and bring her back to Honduras. The Respondent was fearful that he would find her and take her back to Honduras "to continue torturing [her.]" The Respondent continued to work for two more months to save money and finally, on September 5, 2013, she and [redacted] left Mexico. The Respondent and [redacted] traveled through Mexico for seven days until they reached the United States, where she said she finally "felt free."

When they arrived in the United States, they first lived in New York with another aunt named [redacted] Two months after they arrived, [redacted] found out that the Respondent was living in New York. He also obtained her phone number and would call her repeatedly. He would tell her that she was "better off dead" because she came to the United States and "now he [was] not able to do anything." He told her that he knew she was in New York and that he had her phone number now. He told her that he was going to get in touch with one of his cousins who is a police officer in Virginia and give him her number so that he could find her and deport her. He said that once she was deported, he would be waiting for her in Honduras. After receiving these threats, the Respondent changed her phone number, deleted all her social media accounts, and moved to New Jersey in September of 2014 to live with a female cousin named [redacted]. She said she decided to move so that nobody would know where she was.

The Respondent's brother who still lives in Honduras told the Respondent that [redacted] is still trying to find out where she is. However, he thinks that she is still in New York. If she were to return to Honduras, she believes that he would begin to torture her again like he used to. She would not be able to move to another city in Honduras because "he knows that whole place" and "wherever I go, he is going to find me." Finally, she stated that she feels safe in the United States because she does not think that [redacted] would be able to "make it up here." She added that "here, there are laws" and "people respect the law."

III. Relief from Removal—Law and Analysis

A. Timeliness

An applicant for asylum must prove by clear and convincing evidence that her asylum application was timely filed within one year of the date of her last arrival into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(ii). The evidence in the record indicates that the Respondents' I-589 Applications were lodged on August 14, 2015, before their first master calendar hearing at the Newark Immigration Court. Thus, the Court will honor the lodging date. Moreover, the parties do not dispute the timeliness of the Respondents' applications for relief.

B. Application of The REAL ID Act of 2005

All applications for relief filed after May 11, 2005 are subject to the REAL ID Act of 2005. The REAL ID Act amended INA § 208 and places all burdens of proof on the applicant. INA § 240(c)(4). The applicant must establish that she satisfies the applicable eligibility requirements and that she merits a favorable exercise of discretion for relief. In this case, the REAL ID Act governs the Respondents' applications.

1. Credibility

As a threshold matter, the Court must make a determination of the Respondent's credibility. A credibility finding is independent of an analysis of the sufficiency of an applicant's evidence. *Chen v. Gonzales*, 434 F.3d 212, 221 (3d Cir. 2005). Pursuant to the REAL ID Act, credibility determinations will be made "considering the totality of the circumstances and all relevant factors." INA § 240(c)(4)(C). A trier of fact may base a credibility determination on:

> 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, the internal consistency of each such statement, the consistency of such statements with other evidence of record, and any inaccuracies or falsehoods in such statements, *without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of 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.

INA § 208(b)(1)(B)(iii) (emphasis added); *see generally, Lin v. Att'y Gen.*, 543 F.3d 114 (3d Cir. 2008) (affirming the IJ's adverse credibility determination based on discrepancies between his testimony and affidavit). The statutory language suggests that all relevant factors in the record be considered when determining credibility and that all the circumstances be considered when weighing any one factor.

After a careful consideration of all relevant factors, the Court finds the Respondent credible. Her testimony was internally consistent and generally consistent with her detailed declaration and with the evidence in the record. Furthermore, the Respondent was forthcoming and candid with information that was asked of her. During difficult parts of her testimony, the Respondent's voice would shake, indicating that it was distressing for her to talk about what she experienced. Accordingly, the Court finds the Respondent credible.

2. Corroboration

An applicant bears the evidentiary burden of proof and persuasion in connection with any application under INA § 208. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a); *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). An applicant's own testimony may be sufficient to sustain the burden of proof for asylum without corroboration if the testimony is credible, persuasive, and "refers to specific facts sufficient to demonstrate that the applicant is a refugee." INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Sandie v. Att'y Gen.*, 562 F.3d 246, 252 n.2 (3d Cir. 2009); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007). The Board of Immigration Appeals ("BIA") has recognized the difficulties an asylum applicant may face obtaining documentary or other corroborative evidence to support her claim of persecution. *Matter of Dass*, 20 I&N Dec. 124 (BIA 1989). As such, "[u]nreasonable demands are not placed on an asylum applicant to present evidence to corroborate particular experiences (e.g., corroboration from the persecutor)." *Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997). However, the weaker an applicant's testimony, the greater the need for corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998) (citing *Matter of E-P-*, 21 I&N Dec. 860 (BIA 1997)).

The Court finds that the Respondent has corroborated her claim through, *inter alia*, country conditions on Honduras, a police report, and numerous affidavits from her father, her brother, the neighbor who helped her escape, the aunt she stayed with in Honduras, her cousin, and a Honduran attorney she spoke to regarding her domestic violence situation. *See* Exh. 3; *see also* Respondent's Submission of Evidence, filed December 5, 2019; United States Department of State Honduras 2018 Human Rights Report. Thus, the Court finds that the corroborating documents the Respondent submitted, coupled with her testimony, are sufficient to meet the standard for corroboration.

C. Asylum under Section 208 of the Act

The Respondent bears the evidentiary burden of proof and persuasion regarding eligibility for relief from removal. INA § 240(c). To be eligible for asylum pursuant to section 208 of the Act, the Respondent must establish that she was persecuted in the past or that she has a well-founded fear of persecution in the future on account of race, religion, nationality, membership in a particular social group, or political opinion. *See* INA § 101(a)(42)(A); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); 8 C.F.R. § 1208.13(a). A claim of persecution must have a nexus to one of the five statutorily protected grounds. In cases where the REAL ID Act applies, such as this case, the applicant must demonstrate that the protected ground would be "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i). The protected ground does not need to be "the only central reason for the persecution … [further,] an applicant need not prove that a protected ground was

the most important reason why the persecution occurred." *Ndayshimiye v. Att'y Gen.*, 557 F.3d 124, 130 (3d Cir. 2009).

If the Respondent establishes past persecution on account of one of the protected grounds, it "shall be presumed that [her] life or freedom would be threatened in the future in the country of removal on the basis of the original claim." 8 C.F.R. § 1208.16(b)(1)(i). The persecution must be or have been 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); *Kibinda v. Att'y Gen.*, 477 F.3d 113, 119 (3d Cir. 2007) (quoting *Fiadjoe v. Att'y Gen.*, 411 F.3d 135, 160 (3d Cir. 2005)).

1. Past Persecution

There is no universally accepted definition of "persecution." *See Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, ¶ 51 (Geneva, January 1992). While "persecution" has generally been interpreted to include threats to life, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom, courts have also recognized that "the concept of persecution is broad enough to include governmental measures that compel an individual to engage in conduct that is not physically painful or harmful but is abhorrent to that individual's deepest beliefs." *Fatin v. INS*, 12 F.3d 1233, 1242 (3d Cir. 1993).

Evidence that an asylum applicant was physically harmed by her persecutors and that the harm was severe and required medical attention, along with other harassment, may rise to the level of persecution. *See Voci v. Gonzales*, 409 F.3d 607, 615 (3d Cir. 2005) (finding past persecution where the petitioner was found to have been beaten by police numerous times, which on one occasion, necessitated the petitioner's extended hospitalization for a broken knee). Unfulfilled threats are generally not sufficient enough to constitute persecution, unless they are "so menacing as to cause significant actual suffering or harm." *Chavarria v. Gonzalez*, 446 F.3d 508, 518 (3d Cir. 2006) (citing *Li v. Att'y Gen.*, 400 F.3d 157 (3d Cir. 2005)). The severity of each incident should not be addressed in isolation without considering the cumulative effect of events. *Fei Mei Cheng v. Att'y Gen.*, 623 F.3d 175, 190-98 (3d Cir. 2010).

The Court finds that Respondent suffered harm rising to the level of past persecution. For more than two years, the Respondent's partner, [redacted] kept the Respondent captive in their own home. He kept her inside a locked gate and deprived her of food. During that time, [redacted] physically and verbally abused the Respondent. On one occasion, he grabbed her by the hair and smacked her. On another occasion, he pushed her down the stairs which caused her to injure her ankle. He would constantly insult her and tell her that she deserved to be locked up and he would not let her leave. Looking at these events cumulatively, the Court finds that the harm suffered by the Respondent rises to the level of severe past persecution.

2. Nexus to a Protected Ground – Particular Social Group

An applicant for asylum must demonstrate that the persecution she fears would be "on account of" her race, nationality, religion, membership in a particular social group, or political

opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A); 8 C.F.R. §§ 1208.13, 1240.8(d); *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996).

In determining whether the alleged persecution is "on account of" one of the protected grounds, the court must examine the persecutor's views of the applicant's actions or lack of action. *See INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992) (finding that "the mere existence of a generalized 'political' motive underlying the guerrillas' forced recruitment [of the respondent] is inadequate to establish . . . the proposition that he fears persecution on account of political opinion"). In certain cases, "the factual circumstances alone may constitute sufficient circumstantial evidence of a persecutor's . . . motives." *Espinosa-Cortez v. Att'y Gen.*, 607 F.3d 101, 108 (3d Cir. 2010) (quoting *Canales-Vargas v. Gonzales*, 441 F.3d 739, 744 (9th Cir. 2006)) ("[C]ircumstantial evidence of motive may include, *inter alia*, the timing of the persecution and signs or emblems left at the site of persecution."). Moreover, the court may rely on the applicant's credible testimony to assess the motive and perspective of the persecutor. *Chavarria v. Att'y Gen.*, 446 F.3d 508, 521 (3d Cir. 2006).

A "particular social group" must (1) be composed of members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. *S.E.R.L. v. Att'y Gen.*, 894 F.3d 535 (3d. Cir. 2018); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). The characteristic may be innate or based upon a shared past experience. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *see also Matter of C-A-*, 23 I&N Dec. 951, 958 (BIA 2006).

In this matter, the Respondent claims to have suffered past persecution on account of her membership in a particular social group. The evidence of record and the Respondent's testimony lead this Court to conclude that the applicable particular social group is "Honduran women." Thus, the Court will proceed to analyze whether this group is cognizable under the standards set forth in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018).

First, the proposed social group of "Honduras women" is immutable. One's nationality is immutable because it is not a characteristic that one should be required to change. Further, in *Matter of Acosta*, the BIA found that one's "sex" is a "shared characteristic" on which particular social group membership can be based. *See Matter of Acosta*, 19 I&N Dec. at 233. Second, the Court finds that the evidence of record demonstrates that the group is sufficiently particular. A particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. *M-E-V-G-*, 26 I&N Dec. at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). The terms used to describe the group must have commonly accepted definitions in the society of which the group is a part. *Id.* The group must be discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse, or subjective. *Id.* Here, it is clear who falls within the social group "Honduran women" and who does not because nationality and gender have commonly understood definitions that limit and define the membership of the group. Although the group is admittedly large, the boundaries of the group are fixed and inalterable.

Finally, "Honduran women" is a socially distinct group in Honduras. "Social distinction" means social recognition, or "whether the people of a given society would perceive a proposed group as sufficiently separate or distinct [.]" *M-E-V-G-*, 26 I&N Dec. at 241. The evidence of record demonstrates that Honduran society perceives the Respondent's particular social group as distinct in Honduras. Honduran law indicates that members of the Respondent's social group are treated differently and seen as a distinct group. Specifically, the U.S. Department of State Human Rights Report on Honduras states that discrimination against women is illegal and female victims of domestic violence are accorded special protections under the law. *See* United States Department of State Honduras 2018 Human Rights Report, pp. 17-18. However, though women and men have equal educational, labor, and legal rights, such protections were not adequately enforced under the law. *Id.* Even if laws are not enforced to the fullest extent, the presence of such specific legal protections for women indicate that Honduran society recognizes women as a distinct group in society.

Thus, the Court finds that the Respondent has demonstrated that "Honduran women" is a cognizable particular social group.

Furthermore, the Respondent has shown that at least one of the central reasons [redacted] targeted her was on account of her membership in her particular social group. [redacted] felt entitled to abuse the Respondent because of her status as a Honduran woman. He locked the Respondent up in their own house and would not let her leave. He said that he did not want to let her out because, according to him, she would start prostituting herself on the streets. He even stopped bringing her food and told her she had to stay home "like a servant." [redacted] forced the Respondent to do housework both at their own home and [redacted] parents' home. He physically abused the Respondent and used foul language towards her, telling her that she deserved to be locked up. When the Respondent eventually escaped, [redacted] went "crazy" and began looking for her everywhere and even kidnapped their daughter. Even after the Respondent came to the United States, [redacted] continued to look for her and harassed her over the phone, telling her that she was "better off dead." All of these facts indicate that [redacted] was controlling and possessive over the Respondent and felt entitled to abuse her as a result of the Respondent's status as a Honduran woman.

Accordingly, the Court finds that the Respondent has demonstrated past persecution on account of her membership in the particular social group of "Honduran women," and she is therefore entitled to a regulatory presumption that her life or freedom would be threatened in the future in Honduras. 8 C.F.R. § 1208.16(b)(1)(i).

3. Persecution the Government is Unable or Unwilling to Control

An applicant for asylum must demonstrate that the persecution was committed by the government or by forces that the government is unable or unwilling to control. *Kibinda v. Att'y Gen.*, 477 F.3d 113, 119 (3d Cir. 2007).

The Respondent testified that, after she escaped, she went to the police to tell them everything that had been happening with [redacted] Evidence that the Respondent filed a complaint with the police was submitted to this Court. However, the police told her that "there was nothing

they could do for [her]" and that "they couldn't have a person there to guard [her.]" A few days later, when [redacted] kidnapped their daughter, the Respondent went back to the police. Although the police was able to bring the Respondent's daughter back to her, they told the Respondent to "figure out what to do because they couldn't be keeping an eye on [the Respondent.]" It appears that the police only acted that time because it involved the minor daughter's safety, but it did not act when the problem only involved the Respondent. Therefore, it is clear that the police was and is not able to protect the Respondent from [redacted]

Additionally, country conditions for Honduras stated that "corruption and impunity remain serious problems within the security forces. Some members of security forces allegedly committed crimes." *See* United States Department of State Honduras 2018 Human Rights Report, p. 7. Moreover, as of November of 2018, "the Police Purge Commission reported that, since its creation in 2016, it had referred for removal or provisional suspension more than 5,600 police officers on various grounds including corruption, criminal activity, and poor performance." *Id.*

Based on the foregoing, the Respondent has demonstrated that the Honduran government is unwilling and unable to protect her.

4. Rebuttable Presumption of Well-Founded Fear of Future Persecution

The Respondent has established past persecution in Honduras on account of a protected ground and is therefore entitled to a rebuttable presumption that she has a well-founded fear of future persecution if she must return to Honduras. 8 C.F.R. § 1208.13(b)(1). The DHS bears the burden to rebut the Respondent's presumption of a well-founded fear of persecution. Specifically, the DHS must establish by a preponderance of the evidence that the Respondent's fear is no longer well-founded due to a fundamental change in circumstances. 8 C.F.R. § 1208.13(b)(1)(i)(A). The presumption of a well-founded fear of future persecution may also be overcome if the DHS demonstrates that the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to do so. 8 C.F.R. § 1208.13(b)(1)(i)(B). The DHS must show that there is a specific area of the country where the risk of persecution to the applicant falls below the well-founded fear level. *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012).

In this case, the DHS failed to rebut the presumption that the Respondent has a well-founded fear of future persecution. No evidence was present that internal relocation is possible and reasonable or that a fundamental change in circumstances had occurred. Consequently, the Respondents have met all the requirements for asylum and the Court will grant the applications as a matter of discretion.

D. Withholding of Removal under Section 241(b)(3) of the Act and Withholding of Removal under the Convention Against Torture

Because the Court grants the Respondents' applications for asylum, it need not reach the merits of their applications for withholding of removal under Section 241(b)(3) of the Act or withholding or deferral of removal under the Convention Against Torture. *See Mogharrabi*, 19 I&N Dec. at 449; *see also INS v. Bagamasbad*, 429 U.S. 24 (1976) (government agencies are not required to make findings on issues which are unnecessary to the result).