

May 23, 2014

HAND DELIVEREDArlington Asylum Office
1525 Wilson Boulevard, Suite 300
Arlington, Virginia 20598

Re: [REDACTED] (A# [REDACTED])
Application for Asylum and for Withholding of Removal

Dear Sir or Madam:

Please find the enclosed letter brief and supplemental documentation in support of the Application for Asylum and for Withholding of Removal for Ms. [REDACTED] (A# [REDACTED]), originally filed on February 6, 2014. Exhibits 1-5, listed here, were included in the initial filing, and are not enclosed in these materials.

- Exhibit 1: Form I-589, Application for Asylum and for Withholding of Removal for Ms. [REDACTED] with affixed photograph, as well as two additional copies;
- Exhibit 2: Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative for Mr. Matthew Brewer;
- Exhibit 3: Copy of Ms. [REDACTED]'s ORR Verification of Release Form, submitted as evidence of Ms. [REDACTED]'s designation as an Unaccompanied Alien Child;
- Exhibit 4: USCIS, *Questions and Answers: Updated Procedures for Determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children* (June 10, 2013);
- Exhibit 5: Memorandum from U.S. Citizenship & Immigration Servs. Acting Chief, Asylum Division Ted Kim to Assoc. Dir., Serv. Ctr. Operations Donald Neufeld, *Updated Serv. Ctr. Operations Procedures for Accepting Forms I-589 Filed by Unaccompanied Alien Children* (June 4, 2013);

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- Exhibit 6: *In the Matter of* __ (Arlington, VA, May 21, 2003);
- Exhibit 7: *In re Jose* (San Francisco, CA, February 12, 2003);
- Exhibit 8: *In the Matter of E-S-A-M* (Phoenix, AZ, March 20, 2003);
- Exhibit 9: *In the Matter of* __, A 088-733-323 (Baltimore, MD, July 22, 2011);
- Exhibit 10: *In re Juan*, A76 312 250, (Harlingen, TX, March 12, 1998);
- Exhibit 11: *In re Juan*, A76 312 250, (BIA January 20, 1999);
- Exhibit 12: USCIS Asylum Division, AOBTC Lesson Plan: Guidelines for Children's Asylum Claims (September 1, 2009);
- Exhibit 13: Declaration of [REDACTED];
- Exhibit 14: Declaration of [REDACTED];
- Exhibit 15: *In re Jose* (San Francisco, CA, February 12, 2003);
- Exhibit 16: State's Attorney for the Defense of Human Rights, *Informe Especial sobre el Impacto de la Violencia en los Derechos de las Niñas, Niños y Adolescentes en El Salvador* [Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador], translation (May 2013);
- Exhibit 17: U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, *El Salvador 2013 Human Rights Report* (2013);
- Exhibit 18: Nina Lakhani, *Violence against women rises in El Salvador*, Al Jazeera, June 7, 2013;
- Exhibit 19: *Annual Report 2011 for El Salvador, TACRO*, UNICEF (February 24, 2012);
- Exhibit 20: Visit of the Special Representative of the UN Secretary-General on Violence against Children, Ms. Marta Santos Pais, SRSG ON VIOLENCE AGAINST CHILDREN (June 14, 2013);
- Exhibit 21: Paulo Sergio Pinheiro, *World Report on Violence Against Children*, U.N. SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN (2006);

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- Exhibit 22: Edgardo Ayala, *New Child Protection Law Starved of Resources*, INTER PRESS SERVICE (August 4, 2011);
- Exhibit 23: *Everyday aggression*, The Economist, (September 21, 2013);
- Exhibit 24: *Special Representative of the Secretary General on Violence Against Children concludes her visit to El Salvador*, SRSG on Violence Against Children (June 14, 2013);
- Exhibit 25: *El Salvador*, UNITED NATIONS HUMAN RIGHTS COMMITTEE (November 18, 2010); and
- Exhibit 26: Godfrey St. Bernard, *Major Trends Affecting Families in Central America and the Caribbean*, UNITED NATIONS DIVISION OF SOCIAL POLICY AND DEVELOPMENT DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS PROGRAM ON THE FAMILY (May 23, 2003).
- Exhibit 27: Ms. [REDACTED]'s Family Tree
- Exhibit 28: Birth Certificate of Ms. [REDACTED]

For these reasons, please find enclosed the original and two copies of these supporting documents for Ms. [REDACTED] application. Please feel free to contact me at 202-346-4192 or mbrewer@goodwinprocter.com if you have any additional questions or concerns.

Sincerely,



Matthew Brewer, Esq.

Enclosures

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May 23, 2014

Arlington Asylum Office
Bureau of Citizen & Immigrations Services
U.S. Dept. of Homeland Security
1525 Wilson Boulevard
Mailstop 2500
Arlington, VA 20598-2500

Re: [REDACTED] (A# [REDACTED])
Letter Brief in Support of Application for Asylum and Withholding of Removal

Dear Asylum Officer:

I write to request a grant of asylum for Ms. [REDACTED], a young woman from El Salvador who has endured past persecution and has a well-founded fear of future persecution due to her membership in a particular social group consisting of her maternal family.¹ Ms. [REDACTED] also has a well-founded fear of future persecution, because, were she to return to El Salvador, she would have no viable options other than to return to her abusive family, where the persecution would resume.

While living as a minor in El Salvador, Ms. [REDACTED] was subject to persecution in the form of more than a decade of persistent and severe emotional and physical abuse at the hands of her paternal family. Ms. [REDACTED] and her younger sister [REDACTED], were forced to live with their abusive relatives because her mother, who had been kicked out of the house by her father, could not earn enough money living on her own to support them. Ms. [REDACTED] was abused by her paternal family because of their hatred of her mother, and thus, her persecution is on account of her membership in the "paradigmatic," immutable social group of family members, in this case children born to her biological mother. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 124 (4th Cir. 2011). This abuse continues for her younger sister, who still lives in El Salvador, and would resume for Ms. [REDACTED] were she to return.

Ms. [REDACTED] filed an application for asylum on February 6, 2014, at which time she was a minor. While Ms. [REDACTED] filed her application for asylum more than a year after entering the United States, her application is not time-barred because she was an unaccompanied alien child ("UAC") at the time of her application, and she is the principal applicant.

¹ For convenience, a partial family tree showing relevant family members is attached as Exhibit 27.

I. MS. [REDACTED] MEETS THE STATUTORY REQUIREMENTS FOR ASYLUM BECAUSE SHE HAS BEEN PERSECUTED IN THE PAST AND HAS A WELL-FOUNDED FEAR OF FUTURE PERSECUTION SHOULD SHE RETURN TO EL SALVADOR

Ms. [REDACTED] is entitled to a favorable grant of asylum because she is a refugee under Section 208 of the Immigration and Nationality Act ("INA"), which defines a refugee as:

[A]ny person who is outside any country of such person's nationality...who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...

8 U.S.C. § 1101(a)(42)(A) (2013). A showing of either actual past persecution or a well-founded fear of future persecution is grounds for the grant of asylum. *See* 8 C.F.R. § 208.13(b) (2013). The past persecution or well-founded fear of future persecution can be based on any of five enumerated protected grounds, including membership in a particular social group. 8 U.S.C. § 1101(a)(42)(A) (2013).

Ms. [REDACTED] qualifies for asylum because she suffered persistent and severe emotional and physical abuse in El Salvador at the hands of her paternal relatives, and because she has a well-founded fear of future persecution at the hands of those relatives if she were to return to El Salvador. Ms. [REDACTED] believes that she would continue to be the target of physical and emotional abuse at the hands of her paternal relatives because of her relationship to her mother. Her paternal relatives harbor a deep-seated hatred of Ms. [REDACTED]'s mother and have repeatedly vented that anger by physically and emotionally abusing Ms. [REDACTED] and her younger sister, [REDACTED] who still lives with their paternal grandmother in El Salvador.²

A. Ms. [REDACTED] Has Already Suffered Persecution

1. The Past Persecution Standard

An applicant may be granted asylum with evidence of past persecution alone. 8 C.F.R. § 208.13(b)(1)(i) (2013); *see also Matter of Chen*, 20 I. & N. Dec. 16, 19 (BIA 1989). Although persecution is not defined in the Act or its accompanying regulations, it is often described as "the infliction of suffering or harm upon those who differ... in a way regarded as offensive. *See, e.g., Desir v. Ilchert*, 840 F.2d 723, 727 (9th Cir. 1988); *see also Cardoza-Fonesca v. INS*, 767 F.2d 1448, 1452 (9th Cir. 1985), *aff'd*, 480 U.S. 421 (1987). Threats to life or freedom are uniformly found to be persecution (*Matter of Acosta*, 19 I. & N. Dec. 211, 216 (BIA 1985)) and physical abuse, even when not life-threatening, will generally constitute persecution when the suffering or

² Even if Ms. [REDACTED]'s fear of future persecution if removed to El Salvador was not well-founded, she nonetheless qualifies for a grant of asylum under 8 C.F.R. § 208.13(b)(1)(iii) (2013) because there is a reasonable possibility that she may suffer other serious harm upon removal.

harm experienced amounts to more than mere harassment. *Begzatowski v. INS*, 278 F.3d 665, 670 (7th Cir. 2002). In addition, persecution is generally assessed cumulatively, and relevant incidents are not to be evaluated in isolation. *See Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009).

Several decisions by Immigration Judges have recognized that abuse of a child at the hands of a family member caregiver, and specifically mental and physical abuse of the type, frequency and duration experienced by Ms. [REDACTED] can rise to the level of persecution. *See, e.g., In the Matter of [REDACTED]* (Arlington, VA, May 21, 2003) (attached as Exhibit 6); *In re Jose* (San Francisco, CA, February 12, 2003) (attached as Exhibit 7); *In the Matter of E-S-A-M* (Phoenix, AZ, March 20, 2003) (attached as Exhibit 8). In a recent case, a Baltimore, Maryland Immigration Judge found that years of physical and emotional abuse of a young boy at the hands of his caregiver grandfather “unquestionably constitute past persecution under the case law.” *See In the Matter of [REDACTED]*, A 088-733-323 Baltimore, MD, (July 22, 2011) (attached as Exhibit 9) citing *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005); *Baharon*, 588 F.3d 226; *Crespin-Valladares*, 632 F.3d 117. Similarly, *In re Juan*, the immigration judge found, and the BIA agreed, that persistent physical abuse of a child by his stepfather, coupled with the absence of government protection, provided sufficient grounds to grant the abused child discretionary asylum. *In re Juan*, A76 312 250, (Harlingen, TX, March 12, 1998), *aff’d*, (BIA January 20, 1999) (attached as Exhibits 10 and 11)(upholding grant of asylum based on persecution of a social group defined as “minors without resources who have been abused by a custodial parent.”). These decisions clearly establish that persistent emotional and physical abuse by family members will constitute past persecution sufficient to support a grant of asylum.

Furthermore, U.S. Citizenship and Immigration Services (“USCIS”) “Guidelines for Adjudicating Children’s Asylum Claims” explicitly recognize that the bar for establishing persecution for children may be lower than for adults, stating that, “because children [are] dependent on others for their care, [they] are prone to be more severely and potentially permanently affected by trauma than adults,” and therefore, “[t]he harm a child fears or has suffered may still qualify as persecution despite appearing to be relatively less than that necessary for an adult to establish persecution.” *See* USCIS Asylum Division, AOBTC Lesson Plan: Guidelines for Children’s Asylum Claims (September 1, 2009) at 37 (attached as Exhibit 12). In Ms. [REDACTED]’s case, the persistent mental and physical abuse she endured at the hands of paternal family members for more than a decade meets the standard for past-persecution as applied to adults, and thus easily surpasses the standard for past-persecution applicable to children, which USCIS itself recognizes is lower than for an adult applicant.

2. Ms. [REDACTED]’s Persecution in El Salvador

For more than a decade, Ms. [REDACTED] was subject to frequent and severe emotional and physical abuse, perpetrated by her paternal family members as a projection of their extreme antipathy for her mother, [REDACTED] [REDACTED] who was abandoned by her mother at a young age, moved in with her boyfriend, Ms. [REDACTED] father, [REDACTED] and his family when she was about 14 years old in order to escape attempted molestation and

physical abuse at the hands of her own caregivers. Declaration of [REDACTED] ("MLR Decl.") at ¶¶ 1-3 (attached as Exhibit 13). From the beginning, [REDACTED] sister, [REDACTED] was extremely jealous of [REDACTED] and the attention she received from [REDACTED] and her other brother [REDACTED] and would verbally abuse [REDACTED] on an almost daily basis. MLR Decl. at ¶ 3.

At about the age of 18, [REDACTED] became pregnant by [REDACTED] with Ms. [REDACTED]. MLR Decl. at ¶ 4. When Ms. [REDACTED] was born, [REDACTED] convinced [REDACTED] and their mother, [REDACTED], that Ms. [REDACTED] was not his biological daughter. *Id.* After that, the emotional abuse only escalated, with both [REDACTED] and [REDACTED] joining [REDACTED] in belittling and tormenting [REDACTED]. MLR Decl. at ¶¶ 4-6. [REDACTED] would call [REDACTED] a prostitute that [REDACTED] was paying to stay there, and called her "whore" and "slut" so often that she taught the young Ms. [REDACTED] to call her mother "whore" as well. MLR Decl. at ¶¶ 5-6.

When [REDACTED]'s second daughter by [REDACTED], [REDACTED] was born, [REDACTED] and [REDACTED] again accused [REDACTED] of having fathered the child with another man, though it was [REDACTED] who had been seeing other women. MLR Decl. at ¶ 7. Because [REDACTED] did not want another woman he was seeing, [REDACTED], to know about [REDACTED] and the children, one day, without warning, he gave [REDACTED] \$25 and told her and her two young daughters to get out, with no regard to whether they had a place to live. *Id.* [REDACTED] moved in with an impoverished aunt several hours away, but, as a single mother, she was unable to adequately provide for her daughters and was so malnourished that she herself could not even produce milk. MLR Decl. at ¶ 8. With both [REDACTED] and her daughters starving, [REDACTED] mother [REDACTED] agreed to take in Ms. [REDACTED] and her sister, so that [REDACTED] could work to earn money for the children's food. MLR Decl. at ¶ 9.

Left with no other options, [REDACTED] sent Ms. [REDACTED] and her sister to move back in with their father and his family, which included [REDACTED], who was by then [REDACTED] wife. MLR Decl. at ¶¶ 9, 11.

Once Ms. [REDACTED] moved back in with their father, she and her sister became the constant target of their stepmother [REDACTED]'s jealousy and hatred of their biological mother. See Declaration of [REDACTED] ("SGR Decl.") at ¶¶ 3-4 (attached as Exhibit 14). [REDACTED] continuously belittled their mother in front of Ms. [REDACTED] and her sister, and both she and [REDACTED] refused to let [REDACTED] visit the girls. SGR Decl. at ¶¶ 8, 11. [REDACTED] also frequently beat Ms. [REDACTED] and her sister, both with her bare hands and with a thick leather belt, often covering their arms and legs with marks and bruises. [REDACTED] Decl. at ¶ 3. On one occasion, [REDACTED] hit Ms. [REDACTED] in the face hard enough to leave a black eye and a painful bruised cheek. [REDACTED] Decl. at ¶ 4.

Ms. [REDACTED]'s father was largely unaware of [REDACTED]'s abuse of the children, as he would be gone for long periods of time while traveling for work. [REDACTED] Decl. at ¶ 6. When her father did notice marks and bruises on the girls, [REDACTED] would tell him they were the result of innocent child's play. *Id.* On the few occasions when Ms. [REDACTED] tried to tell her father about the abuse, [REDACTED] would glare at her menacingly to keep her from telling him, and would threaten even worse abuse if they continued to complain to him. [REDACTED] Decl. at ¶ 5. The abuse at

the hands of [REDACTED] continued for approximately two years, after which she and Ms. [REDACTED] s father divorced and she moved out. [REDACTED] Decl. at ¶ 13.

After [REDACTED] moved out, Ms. [REDACTED] s father dated another woman, [REDACTED] for about 9 months. SGR Decl. at ¶ 14. [REDACTED] would let Ms. [REDACTED] mother visit the girls, but she also physically abused the girls, hitting them with a belt. SGR Decl. at ¶¶ 15-16. Sometime after [REDACTED] moved out, Ms. [REDACTED] s father moved to the United States, and Ms. [REDACTED] and her sister moved back in with their mother. SGR Decl. at ¶ 19. This reunion was short-lived, as Ms. [REDACTED] s mother could not, on her own, earn enough money to support the girls, so she, too, moved to the United States. SGR Decl. at ¶ 20; MLR Decl. at ¶ 15. Her only option at that point was for the girls to move back in with [REDACTED] family. SGR Decl. at ¶ 21; MLR Decl. at ¶ 16.

After living with her aunt [REDACTED] for about six months, Ms. [REDACTED] and her sister moved in with their grandmother [REDACTED] where their emotional and physical abuse only escalated. SGR Decl. at ¶ 21. Shortly after moving in, [REDACTED] began to physically abuse Ms. [REDACTED] and her sister, beating them on an almost daily basis with just about anything she could get her hands on, including belts with metal buckles, pieces of firewood, cooking utensils, and rubber shoes, as well as with her bare hands. SGR Decl. at ¶ 29. She would throw hot water on the girls, leaving their skin red and swollen, and would sometimes beat them until their legs were bleeding. SGR Decl. at ¶ 30. Her grandmother and aunt [REDACTED] would hurl constant insults at Ms. [REDACTED] such as “dumbass,” “whore,” “bitch,” and “thief,” and tell her that she was not [REDACTED] daughter, and that she was just like her mother, sleeping around with other men. SGR Decl. at ¶¶ 27, 37. The constant beatings and berating left Ms. [REDACTED] feeling helpless and *constantly* afraid of further angering her aunt and grandmother. SGR Decl. at ¶ 36. Once, when her sister refused to do a small task, Ms. [REDACTED] witnessed [REDACTED] grab [REDACTED] by the hair and slam her face against a cement table in the house, leaving her forehead bleeding and impregnated with pieces of cement. SGR Decl. at ¶ 32. Ms. [REDACTED] did what she could to protect herself and her younger sister, but she could not stop or prevent the beatings. SGR Decl. at ¶ 34. As a minor, Ms. [REDACTED] was too young to go to the police for help, and due to the acceptance of domestic and child abuse in Salvadorian culture (*see* section I.D. below), she would have received no help had she gone. SGR Decl. at ¶ 36.

In addition to the physical beatings and emotional abuse, [REDACTED] would starve Ms. [REDACTED] and her sister, collecting the money [REDACTED] was sending from the United States, but not using it to feed the children, instead claiming that [REDACTED] had not sent enough money to provide food for the girls. SGR Decl. at ¶ 23; MLR Decl. at ¶¶ 17-18. Any small inconvenience for the grandmother would result in the girls not being fed anything for the day. SGR Decl. at ¶ 22. On one occasion, Ms. [REDACTED] asked her grandmother what she had done with the money her mother had sent for she and her sister, and in response, [REDACTED] grabbed her and pushed her down a flight of stairs, hurting her knee badly. SGR Decl. at ¶ 33. Following this incident, Ms. [REDACTED] s aunt [REDACTED] took her to the doctor, and she had to wear a knee brace for over a month and could barely stand the pain of sustaining her own weight without the brace. *Id.*

Ms. [REDACTED]'s emotional and physical abuse continued until June 2012, when at the age of 16, she used money sent to her by her mother to pay a coyote to take her from El Salvador to the United States to be with her mother. [REDACTED] Decl. at ¶¶ 41, 43. The trip to the United States was very difficult for Ms. [REDACTED] made more so by the fact that she was almost six months pregnant at the time, the result of her having been raped by a man in El Salvador whom she had met at a street fair in Batres near her home. SGR Decl. at ¶ 43; MLR Decl. at ¶ 21. Only when she arrived in the United States did her abuse end.

The abuse suffered by Ms. [REDACTED] is similar to the harm suffered by the applicants in *Matter of Lopez-Cruz*, *In re Jose*, and *Matter of E-S-A-M*. As was determined for these applicants, the years of severe emotional and physical abuse suffered by Ms. [REDACTED] at the hands of her paternal family is a form of past persecution that meets the threshold requirement for asylum. *impetus*

B. Ms. [REDACTED] Also Is Eligible For Asylum Based on Her Well-Founded Fear of Future Persecution.

In addition to Ms. [REDACTED]'s eligibility for asylum based on her experience of past persecution, she also is eligible for asylum because she has a well-founded fear of future persecution. *See* 8 U.S.C. § 1101(a)(42) (2013); 8 C.F.R. § 1208.13(b) (2013); *see also Khalil v. Ashcroft*, 337 F.3d 50, 56 (1st Cir. 2003).³ To establish a well-founded fear of future persecution, Ms. [REDACTED] does not need to show a clear probability of future persecution; Ms. [REDACTED] need only show a "reasonable possibility" of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); *INS v. Stevic*, 467 U.S. 407, 424-425 (1984). This reasonable possibility may be established by showing that there is even a 10 percent chance that she will be persecuted. *Cardoza-Fonseca*, 480 U.S. at 440. While the establishment of a well-founded fear of future persecution is determined on a case-specific, factual basis, it encompasses both an objective and a subjective element. 8 U.S.C. § 1101(a)(42) (2013), *see also Huaman-Cornelio v. BIA*, 979 F.2d 995, 999 (4th Cir. 1992). To satisfy the subjective component, an individual must show that he or she has a genuine fear of returning to his or her home country. *Asani v. INS*, 154 F.3d 719, 725 (7th Cir. 1998). To satisfy the objective component, the applicant must demonstrate that a reasonable person in his or her circumstances would fear persecution if forced to return to his or her native country. *Id.*

Ms. [REDACTED]'s affidavit (Exhibit 14) and the affidavit of her mother (Exhibit 13), demonstrate that she has satisfied both the objective and subjective components of the test. Ms. [REDACTED] has a real, subjective fear of persecution in her own mind, because, as a single mother with no other family in El Salvador with whom she could live, she would have no choice

³ Because Ms. [REDACTED] suffered persecution in the past, she is entitled to a presumption of a well-founded fear of future persecution, even without any additional showing. 8 C.F.R. § 208.13(b)(1); *Baharon*, 588 F.3d at 232, citing *Li*, 405 F.3d at 177; *see In re C—Y—Z—*, 21 I. & N. Dec. 915, 919 (BIA 1997) ("The regulatory presumption may be rebutted only by . . . evidence, that since the time the persecution occurred, conditions in the applicant's country have changed to an extent that the applicant no longer has a well-founded fear of persecution."). The government cannot rebut this presumption because conditions in El Salvador have not changed, as Ms. [REDACTED]'s relatives are still living in El Salvador and continue to harbor deep-seated hatred against her and her mother.

but to live with her paternal family if she were to return, where she would be subject to the same abuse she experienced before leaving for the United States. *See* SGR Decl. at ¶¶ 54-55. If anything, Ms. [REDACTED] fears that if she were to return, her family would treat her even worse than before she left, tormenting her both for leaving to be with her mother, whom they already despise, and for having failed to remain in the United States. *Id.* Ms. [REDACTED] also fears for the safety of her baby, [REDACTED] who she believes her paternal family would reject and would thus suffer the same persecution that she experienced as a child. *Id.*

Ms. [REDACTED]'s fear also is objectively reasonable based on the experience of her younger sister, who still lives with her paternal grandmother in El Salvador and who continues to be the victim of physical and emotional abuse on account of her relationship to their shared biological mother. SGR Decl. at ¶ 53. Moreover, the current country conditions in El Salvador (described in Section I.D of this letter), under which child abuse and domestic abuse against women are rampant, have not changed since Ms. [REDACTED] left for the United States, and the government is unable or unwilling to protect women and children from such abuse. Thus, Ms. [REDACTED] has both an objectively and subjectively reasonable well-founded fear of future persecution by her paternal family should she be returned to El Salvador.

C. Ms. [REDACTED]'s Persecution Is On Account Of Her Membership In The Social Group of Children Born to Respondent's Mother

Ms. [REDACTED] belongs to the particular social group of children born to her biological mother. The Fourth Circuit firmly recognized the existence of this social group in *Crespin-Valladares v. Holder*, noting it is based on "kinship ties" that are "paradigmatically immutable, and the BIA has since affirmed that family bonds are innate and unchangeable." *Id.* at 124 (citations omitted). "[E]very circuit to have considered the question has held that family ties can provide a basis for asylum." *Id.* at 125; *see also Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004) ("[w]e join our sister circuits in holding that 'family' constitutes a 'particular social group' under 8 U.S.C. §1101 (a)(42)(A)."); *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) ("There can, in fact, be no plainer example of a social group based on common identifiable and immutable characteristics than that of the nuclear family."); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) ("Perhaps a prototypical example of a 'particular social group' would consist of the immediate members of a certain family, the family being a focus of fundamental affiliation concerns and common interests for most people.")

Ms. [REDACTED] and her sister, [REDACTED] are the biological daughters of their mother, Ms. [REDACTED] and as such are members of a discrete and recognizable social group of children born to their mother. The abuse both sisters suffered was the product of their paternal family's animosity towards and rejection of their mother, and thus Ms. [REDACTED] and her sister's persecution is on account of their membership in that social group.⁴ Ms. [REDACTED]'s paternal relatives (stepmother, grandmother, and aunt) abused only she and her sister, and did so

⁴ Under the REAL ID Act of 2005, asylum applicants must demonstrate only that one of the enumerated grounds (e.g., membership in a social group) was or will be, "at least one central reason" for their persecution. *See* 43 INA § 208(b)(1)(B)(i).

because of their hatred of Ms. [REDACTED]'s biological mother. Ms. [REDACTED]'s membership in this social group is immutable and socially visible because she cannot change who her biological mother is.

D. The Government of El Salvador Is Unwilling Or Unable to Protect Ms. [REDACTED] From Persecution.

Additionally, Ms. [REDACTED] is eligible for asylum because the Salvadorian government is unable or unwilling to protect her from persecution. Ms. [REDACTED] satisfies the "state action" requirement for asylum because El Salvador has demonstrated a persistent failure to protect children from domestic violence and child abuse. *See In re Jose* at 7 (stating that "the rights of the child are systematically not protected in El Salvador, leaving children such as Respondent vulnerable to the abuse meted out to him by his father"); *In re [REDACTED]*, at 8 (San Francisco, CA March 23, 2009) (attached as Exhibit 15); *see generally* State's Attorney for the Defense of Human Rights, *Informe Especial sobre el Impacto de la Violencia en los Derechos de las Niñas, Niños y Adolescentes en El Salvador* [*Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador*], translation (May 2013) (hereinafter "2013 El Salvador Child Violence Report"), attached as Exhibit 16.

Child abuse and domestic violence continue to be widespread and serious problems in El Salvador. *See* U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, *El Salvador 2013 Human Rights Report*, 15, 17 (2013) ("2013 Human Rights Report"), attached as Exhibit 17; *see also* Nina Lakhani, *Violence against women rises in El Salvador*, AL JAZEERA, June 7, 2013, at 1 ("Endemic levels of sexual abuse and gender based violence have made El Salvador one of the most dangerous countries in the world for girls and women"), attached as Exhibit 18. In particular, physical harm in the form of severe corporal punishment has become a natural corrective practice directed at children and adolescents in the home to the extent that it is essentially a cultural norm, and is viewed as socially acceptable and even necessary in the eyes of the perpetrators. 2013 El Salvador Child Violence Report at 41. Child abuse in El Salvador is not limited to physical abuse, but also manifests as deprivations of basic necessities such as food and clothing. *Id.* at 43.

Unfortunately, the Salvadorian government has failed to take remedial steps to protect the ongoing human rights violations perpetrated against children and adolescents. *Id.* at 41-43. The Salvadorian government's continued unwillingness and inability to protect children from abuse is enabled by widespread corruption, and weaknesses in the judiciary and security forces that lead to a high level of impunity for such abuse. 2013 Human Rights Report at 1. Even the Salvadorian State's Attorney for the Defense of Human Rights acknowledges a "lack of action in the form of forceful communication on the part of the central government and of the municipal governments to adopt measures to increase awareness and institutional mechanisms to eradicate violence against children and adolescents" and admits that the government has failed to carry out the United Nation's recommendations for child abuse protections, noting that violence against children is one of the frequently reported abuses of children and adolescents year after year. 2013 El Salvador Child Violence Report at 41-43.

In El Salvador, “[s]even out of every ten children are mistreated, two of every five children and adolescents live without their mother, father or both, [and] 64% subsists in abandonment because of maternal or paternal irresponsibility.” *Annual Report 2011 for El Salvador, TACRO*, UNICEF, at 2 (February 24, 2012), attached as Exhibit 19. In a June 2013 report, the Special Representative of the UN Secretary-General on Violence against Children stated that “[in] many cases, deprivation is the norm at home, with one in every two children living in poverty, with limited access to social services of quality to help prevent and respond to incidents of violence.” *See Visit of the Special Representative of the UN Secretary-General on Violence against Children, Ms. Marta Santos Pais, SRSG ON VIOLENCE AGAINST CHILDREN*, at 4 (June 14, 2013), attached as Exhibit 20.

The home is the most dangerous place for children, and in El Salvador, as throughout Latin America, the authoritarian values which underlie families and institutions rely on violence for implementation. Paulo Sergio Pinheiro, *World Report on Violence Against Children*, U.N. SECRETARY-GENERAL’S STUDY ON VIOLENCE AGAINST CHILDREN, 70-72 (2006), attached as Exhibit 21. The Law for the Comprehensive Protection of Children and Adolescents and the Law on Violence against Women, both passed in 2011, were viewed as steps toward addressing the long-standing issues of child abuse and domestic violence; however, as is typical, implementation and enforcement efforts have been neglected, (*see Annual Report 2011 for El Salvador, TACRO* at 1; Edgardo Ayala, *New Child Protection Law Starved of Resources*, INTER PRESS SERVICE (August 4, 2011), attached as Exhibit 22) and the efforts initiated have been minimally effective at best. *See El Salvador 2013 Human Rights Report* at 15 (referring to domestic violence); *Everyday aggression*, THE ECONOMIST, (September 21, 2013), attached as Exhibit 23; Lakhani at 3. In the three years following the passage of these bills, the government has failed to implement the necessary measures to allow for effective protection of children and adolescents. *See 2013 El Salvador Child Violence Report* at 97-98. The United Nations Special Representative of the Secretary General also noted a social indifference to violence against children and a lack of a comprehensive State policy with a long-term vision for children. *See Special Representative of the Secretary General on Violence Against Children concludes her visit to El Salvador*, SRSG ON VIOLENCE AGAINST CHILDREN (June 14, 2013), attached as Exhibit 24; *see also In re* __ at 8 (granting asylum based on child abuse, finding the expert’s testimony credible that “[i]t is not unusual [in El Salvador] that the police and society view this as a family matter and that it is not a problem in the country; that even in the police force it is simply not taken seriously. It is not likely that someone who is seeking protection based on domestic violence would even be taken seriously, and if they do get taken seriously in a report, that report would not be followed up on or prosecuted by the Salvadorean authorities.”)

Young women and girls are particularly susceptible to violence, especially sexual abuse. *El Salvador 2013 Human Rights Report* at 17 (“According to a 2012 World Bank report, 41 percent of the first pregnancies of girls between the ages of 10 and 19 resulted from sexual abuse, and 12 percent of such pregnancies resulted from sexual abuse committed by a family member.”). The “most risky place for girls and women is still at home.” Lakhani at 1. Laws against domestic violence regularly go unenforced, and cases are not effectively prosecuted. *See El Salvador 2013 Human Rights Report* at 15; *Everyday aggression* (stating that in the first 16

months after passage of the 2011 law, only 16 of 63 reported cases of violence against women were followed up).⁵ The abuses are so pervasive that “[a] large portion of the population considered domestic violence socially acceptable, and, as with rape, its incidence was underreported.” *El Salvador 2013 Human Rights Report* at 15.

Moreover, young women are unlikely to be able to successfully avoid such abuses by living on their own. In *In re* ___, the court reiterated the country condition expert’s discussion of the inability of young women to live alone, stating

“that due to social-cultural reasons, that young women are very unlikely to be able to live elsewhere in El Salvador, that young women only in instances such as they are professional, well off financially, and have a steady job, live by themselves. Otherwise, they live simply with family members, and individuals like the respondent who are orphans and have no family members seek even less protection.”

In re ___ at 8 (orphaned respondent moved in with her maternal uncle after the death of mother and he began physically and emotionally abusing her and her brother). It is even more challenging for single mothers who live at the margins of Salvadorian society. “They are among the most vulnerable and often depend upon the financial contribution of men who wield power on the basis of their occupations, community status, age or some other symbolic criterion.” Godfrey St. Bernard, *Major Trends Affecting Families in Central America and the Caribbean*, UNITED NATIONS DIVISION OF SOCIAL POLICY AND DEVELOPMENT DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS PROGRAM ON THE FAMILY, at 5 (May 23, 2003), attached as Exhibit 26.

E. Ms. [REDACTED]’s Request for Asylum Is Not Barred By Any of the Statutory Disqualifiers.

Ms. [REDACTED]’s asylum request is not barred by any of the statutory disqualifiers because she has never persecuted others, has never resettled in another country, and is not a danger to the security of the United States. *See generally* 8 U.S.C. § 1158(b)(2) (2013). There is no third country available to Ms. [REDACTED] and although she traveled briefly through Honduras, Guatemala and Mexico on her way to the United States, this does not represent an intent to permanently resettle in another location. *See Matter of Pula*, 19 I. & N. Dec. 467 (BIA 1987).

⁵ *See also El Salvador*, UNITED NATIONS HUMAN RIGHTS COMMITTEE, at 3 (November 18, 2010), attached as Exhibit 25 (showing concern for situation of women in the state, “the persistence of stereotypes and prejudices regarding the role of women in society, reports that the number of murders of women has remained constant or even increased during the reporting period, impunity for these murders, the lack of disaggregated statistical data on crimes against the lives and integrity of women, the high rates of domestic violence in the State party, inadequate coordination among State bodies involved in preventing and punishing domestic violence...”).

Although Ms. [REDACTED] entered the United States around June 5, 2012, more than one year prior to filing the application, Ms. [REDACTED]'s application is not subject to the one year filing deadline because she is a UAC and the principal applicant. *See* INA § 208(a)(2)(E), 78 U.S.C. § 1158(a)(2)(E) (2013).

Nor would it be reasonable to expect Ms. [REDACTED] to avoid future persecution by relocating within El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(i)(B) (2013). Although Ms. [REDACTED] suffered persecution in her hometown of Usulután, it is unreasonable to expect her to relocate within El Salvador. The only family with whom she could live in El Salvador is the same paternal family in Usulután that has already severely abused her. SGR Decl. at ¶ 55; MLR Decl. at ¶ 24. If forced to relocate, she would have to live on her own as a single mother to fend for herself and her young baby. This would not only be next-to-impossible, as evidenced by her mother [REDACTED]'s own experience (MLR Decl. at ¶¶ 8, 15), but potentially dangerous, as Ms. [REDACTED] has already been raped once in the town in which she grew up. SGR Decl. at ¶ 52. Consequently, if Ms. [REDACTED] were to return to El Salvador, she would be faced with a Hobson's choice of living with her abusive family, where her persecution would resume, or living on her own, which is not possible.

II. MS. [REDACTED] QUALIFIES FOR WITHHOLDING OF REMOVAL

In addition to meeting the standards for asylum, Ms. [REDACTED] also meets the heightened "more likely than not" standard required for withholding of removal because it is more likely than not that she will face future persecution if forced to return to El Salvador. *See Stevic*, 467 U.S. at 424. As discussed above, Ms. [REDACTED] faces future persecution at the hands of paternal relatives because of her relationship with her mother.

Further, the one year deadline required for an asylum application does not apply to withholding of removal. While Ms. [REDACTED]'s status as an unaccompanied alien child exempts her from the one year bar, she would still be eligible for withholding of removal.

III. MS. [REDACTED] QUALIFIES FOR WITHHOLDING UNDER THE UNITED NATIONS CONVENTION AGAINST TORTURE

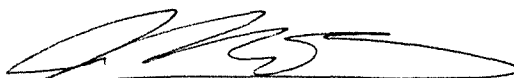
The evidence also shows that Ms. [REDACTED] is more likely than not to be tortured by her persecutors, persons the government will not control, if she returns to El Salvador. Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("Convention Against Torture") at 1465 U.N.T.S. Section 85 (Dec. 10, 1984) prohibits refoulement – the return of an alien to a country where it is more likely than not that she will be tortured. *See also* 8 U.S.C. § 1231(a) (2013).

Ms. [REDACTED]'s family exposed her and her sister to almost constant violent abuse, causing them to feel scared and helpless, which could constitute torture. The severity of harm necessary to establish torture is equal to or higher than the standard for persecution. Under the regulations, torture is defined as "any act by which severe pain or suffering, whether physical or

mental, is intentionally inflicted on a person” for purposes such as, punishing, intimidating or coercing a person, among others. 8 C.F.R. § 1208.18(a)(1) (2013). Mental pain or suffering that constitutes torture must be “prolonged” and result from intentional infliction or threatened infliction of severe physical pain or suffering, threat of imminent death or *the threat that another person will imminently be subjected to death, severe physical pain or suffering*. 8 C.F.R. § 1208.18(a)(4) (2013) (emphasis added). As a child, Ms. [REDACTED] was forced to watch her sister [REDACTED] be beaten almost daily. SGR Decl. at ¶¶ 3, 31, 32, 37, 53. Witnessing this violence perpetrated against her sibling is harm which is of the type and severity sufficient to establish torture, because it was being done by her maternal family in an effort to punish and intimidate them.

For these reasons, I respectfully requests a grant of asylum for Ms. [REDACTED], or, in the alternative, withholding of removal or withholding under the Convention Against Torture.

Sincerely,

A handwritten signature in black ink, appearing to read 'Matthew Brewer', with a long horizontal flourish extending to the right.

Matthew Brewer

MB
Enclosures

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- **Exhibit 23; *Everyday aggression*, THE ECONOMIST, (September 21, 2013).**

“In theory, such crimes should not go unpunished. In 1994 Latin American countries signed the pioneering Convention of Belem, which required them to educate their people about women’s rights, to fight machismo and pass laws to protect women from violence. Most have done so. Brazil’s law on violence against women is widely seen as exemplary. **The trouble is that in many cases these laws have made little practical difference.**

Unpunished violent crime is a more general problem in the region. Nevertheless, the statistics of violence against women are particularly gruesome. A recent report by UN Women, a UN agency, found that many Latin American countries have a higher -than-average incidence of domestic violence. According to the agency, a woman is assaulted every 15 seconds in Sao Paulo, Brazil’s largest city. In Colombia attacks in which acid is thrown at women’s faces, disfiguring them, nearly quadrupled between 2011 and 2012. Of the 25 countries in the world that are ‘high’ or ‘very high’ in the UN’s ranking for ‘femicides’ (killings of women that seem to be related to their sex), more than half are in the Americas, with El Salvador the worst in the world.

Activists say the problem is that most cases of violence against women are not investigated, let alone effectively prosecuted. **Take El Salvador, which passed a law in 2011. In its first 16 months, only 16 of 63 reported cases were followed up.** In the first three months of this year 1,822 rapes were reported in the Brazilian state of Rio de Janeiro; only 70 men were arrested.” (Pgs. 1-2)

- **Exhibit 24; *Special Representative of the Secretary General on Violence Against Children concludes her visit to El Salvador*, SRSG ON VIOLENCE AGAINST CHILDREN (June 14, 2013).**

“Despite progress achieved, the Special Representative of the Secretary-General **identified challenges that need to be addressed with decisive action by all actors of society. ‘To face the crisis caused by the magnitude and social indifference to violence against children, it is imperative to develop a comprehensive State policy, based on a long term vision,** that goes beyond the action of a single administration and which cannot be restricted to fragmented interventions from different government departments’ said Ms. Santos Pais.

‘El Salvador needs a cultural transformation and sustainable social investment in children to prevent and address dramatic situations of violence such as homicides and the disappearance of children and young people, child sexual abuse and early pregnancy, and the worst forms of child labor, as well as to eradicate the trivialization of violence against children and to ensure that a priority attention is given to these situations in the policy agenda and in the public debate. It is essential to guarantee a safe family environment, and provide support to overcome the trauma caused by violence so that children can face life with a sense of confidence.’

She recommended giving visibility to the phenomenon of violence and to its devastating impact on children's development and on the human capital of the society. 'The media plays a crucial role in the promotion of a culture of zero tolerance to violence, in overcoming the stigmatization of vulnerable children and contribute to the sensitization and mobilization of society for the prevention and elimination of violence.'

The Special Representative urged the Government to invest in capacity building of all professionals responsible for the protection of children to ensure respect of children's rights. In addition, she recalled for the promotion and empowerment of children and young people for the promotion and protection of their rights." (Pgs. 1-2)

- **Exhibit 20; Visit of the Special Representative of the UN Secretary-General on Violence against Children, Ms. Marta Santos Pais, SRSG ON VIOLENCE AGAINST CHILDREN (June 14, 2013).**

"In addition, investment in prevention must be a key priority. For countless Salvadorian children and adolescents life is defined by one word: fear. In many cases, they do not benefit from a protective and supportive family environment to overcome the trauma of violence and face life with confidence. In reality, forty per cent of Salvadorian children and adolescents live with only one or without any parent, as a result of abandonment or of the high rate of migration in the country. In many cases, deprivation is the norm at home, with one in every two children living in poverty, with limited access to social services of quality to help prevent and respond to incidents of violence.

The low investment in children aggravates inequality across all stages of children's life cycle. A paradigmatic indicator in El Salvador is that it records the lowest public spending in Central America while it shows the highest spending on security in the region: in 2011, 43.8 per cent was allocated to surveillance and police patrols while three per cent was devoted to crime prevention. The budget for education is particularly low, representing about three per cent of GDP, while investment in early childhood for children up to three years is even lower." (Pg. 4)

- **Exhibit 18; Nina Lakhani, *Violence against women rises in El Salvador*, AL JAZEERA, June 7, 2013.**

"Endemic levels of sexual abuse and gender based violence have made El Salvador one of the most dangerous countries in the world for girls and women, amid entrenched 'machismo' attitudes and a criminal justice system that too often fails victims.

More than seven sexual attacks were reported every day in the first three months of 2013 – a 17 percent rise in 12 months, according to official police figures. Two thirds of the reported 636 rapes and sexual offences were committed against children under the age of 18. El Salvador has a population of 6.2 million.

While much of the country's escalating violence over the past decade can be blamed on street gangs and drug traffickers, **the most risky place for girls and women is still at home.** (Pg. 1)

"A radical new law designed to improve access to justice by identifying specific crimes and sentences for violence against women was introduced by President Mauricio Funes' left-wing FMLN government on January 1, 2012. It came after years of campaigning by feminist and human rights organisations." (Pg. 3)

- **Exhibit 16; State's Attorney for the Defense of Human Rights, *Informe Especial sobre el Impacto de la Violencia en los Derechos de las Niñas, Niños y Adolescentes en El Salvador* [Special Report on the Impact of Violence on the Rights of Children and Adolescents in El Salvador], translation (May 2013).**

"5.2 Children and adolescents as victims of maltreatment and other forms of violence.

Physical maltreatment, both with girls as with boys, happens in the form of **corporal punishment, and it is serious due to how much it 'has become naturalized' as part of the corrective practices inside family and educational groups.** Physical punishment is maintained as a method to correct conduct, but in reality, **it is a form of social violence that has become a cultural practice that is considered immutable:** 'that is how it has been throughout life, and that is how it will continue to be' as the consulted nongovernmental organizations point out.

Physical and psychological child abuse in the family is attributed to child-rearing models, where still they have not overcome the paradigm that 'to correct a boy or a girl it is necessary to beat them.' **For many fathers and mothers it is 'right' to deliver slaps to their children, pull on their ears or their hair, hit them with belts or horsewhip and beat them. Such that, socially this has become accepted as normal and even necessary.**

[...]

The children and adolescents consulted express a suffering experienced by abuse at the hands of people who are supposed to protect them:

I have had violence in my own house, thank God not anymore since they killed my stepfather, but the person that was the most abusive toward me or my family was our stepfather (...) there are times that society, the State, the authorities don't act, they don't attack the problem...they don't try to investigate how or where to attack the root of the problem, but in my (opinion) the place where there is the most violence pitifully is in the home. (Adolescent man participating in focus group, San Salvador, January 2013).

In this sense, the Salvadorian State has not carried out the second and fourth recommendation of the United Nations World Study on Violence Against Children and

Adolescents oriented to ‘promulgate and enforce laws that do not permit any form of violence or corporal punishment, on top of the lack of action in the form of forceful communication on the part of the central government and of the municipal governments to adopt measures to increase awareness and institutional mechanisms to eradicate violence against children and adolescents (see in recommendations appendix).

- *Deprivation [Restriction or denial of access to shared or family property]*

Deprivation in the form of restriction or denial of access to shared or family property exercised against children and adolescents is one of the frequent violations of the rights of childhood that are registered and are attended to specifically by the State’s Attorney’s Office of the Republic (PGR) and that are reported year after year. **Denial of access to family property is exercised predominately by parents, by denying their children basic necessities. This violence is manifested as a deprivation on the part of the parents, by robbing their children of the material resources to develop and have a dignified life, producing further collateral effects on mental health of children who feel abandoned because the father, the majority being men, don’t want to provide these basic necessities.**

In accordance with the data provided by the PGR, the following table shows that in the last three years the trend shows that year after year more than 12,000 cases are registered with the PGR. As compiled by the consulted representative, in general, these cases accompany cases of intra-family violence or of gender violence against mothers who demand the basic necessities from fathers. Additionally, in 2012, 39 cases of sexual violence against girls and adolescents between 9 and 18 years old were received accompanied by the demand for basic necessities.” (Pgs. 41-43)

“Throughout this study, it is confirmed that the vast majority of the observations and recommendations issued by the Committee on the Rights of the Child to the Salvadorian State, three years ago, have not been fulfilled adequately. Among those, is the call for a quick response by the CONNA [National Council for Children and Adolescents, ‘CONNA’] to put in place its respective mechanisms. In that respect, LEPINA [the Law for the Comprehensive Protection of Childhood and Adolescence, ‘LEPINA’] was approved in March 2009, and was put into effect April 16, 2010; however, the President of the Republic requested an extension from congress so that everything in LEPINA related to CONNA would not be effective until January 2011. **For 2012, the Salvadorian Government approved only half of the proposed budget for CONNA, as of May of this year they have only created 9 of the 14 protection committees, and not one out of 262 Local Councils for the Rights of Children and Adolescents has been established. Nor has the National Policy for Children, the strategic work plan for CONNA, or the creation of the Child’s Council been resolved, topics that have had a slow development.**” (Pg. 97)

“The Salvadorian State has not made an effort to comply with the Recommendations of the United Nations Study on Violence Against Children. In spite of the seriousness of the cases, **there have been no observed actions or specific or concrete measures taken to**

stop the infringement of rights that demonstrate substantial acts or changes in children's situations, addressing the fundamental causes of those violent acts, among them impunity, poverty and exclusion. (Pg. 98)

- **Exhibit 17; U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, *El Salvador 2013 Human Rights Report* (2013).**

"The principal human rights problems were widespread corruption; weaknesses in the judiciary and the security forces that contributed to a high level of impunity; and abuse, including domestic violence, discrimination, and commercial sexual exploitation against women and children." (Pg. 1)

"The law criminalizes rape, and the criminal code's definition of rape may apply to spousal rape. The law requires the FGR to prosecute rape cases whether or not the victim presses charges, and the law does not permit the victim to nullify the criminal charge. Generally, the penalty for rape is six to 10 years of imprisonment, but the law provides for a maximum sentence of 20 years for rape of certain classes of victims, including children and persons with disabilities.

Incidents of rape continued to be underreported for several reasons, including societal and cultural pressures on victims, fear of reprisal, ineffective and unsupportive responses by authorities toward victims, fear of publicity, and a perception among victims that cases were unlikely to be prosecuted. Laws against rape were not effectively enforced.

Rape and other sexual crimes against women were widespread. As of August 28, the FGR reported 4,826 cases of alleged sexual crimes resulting in 392 convictions during the year. As of October 10, the ISDEMU reported 3,466 cases of alleged sexual abuse, physical abuse, rape, and psychological abuse.

As of October, the ISDEMU provided health and psychological assistance to 5,535 women who experienced sexual abuse, domestic violence, mistreatment, sexual harassment, labor harassment, commercial sexual exploitation, trafficking in persons, or alien smuggling.

The law prohibits domestic violence and generally provides for sentences ranging from one to three years in prison, although some forms of domestic violence carry higher penalties. The law also permits obtaining restraining orders against offenders. Laws against domestic violence were not well enforced, and cases were not effectively prosecuted. A 2011 law prohibits mediation in domestic violence disputes.

Violence against women, including domestic violence, was a widespread and serious problem. As of July, the PNC reported 1,904 cases of alleged domestic violence. A large portion of the population considered domestic violence socially acceptable, and, as with rape, its incidence was underreported. (Pgs. 14-15)

“During the year President Funes engaged in a government campaign to support SIS in its efforts to eliminate violence against women. ISDEMU coordinated with the judicial and executive branches and civil society groups to conduct public awareness campaigns against domestic violence and sexual abuse. The PDDH, FGR, Supreme Court, Public Defender’s Office, and PNC collaborated with NGOs and other organizations to combat violence against women through education, increased enforcement of the law, and NGO support for programs for victims. SIS, through ISDEMU, defined policies, programs, and projects on domestic violence and continued to maintain one shared telephone hotline and two separate shelters for victims of domestic abuse and child victims of commercial sexual exploitation. The government’s efforts to combat domestic violence were minimally effective.” (Pg. 15)

“Child abuse was a serious and widespread problem. Incidents of rape continued to be underreported for a number of reasons, including societal and cultural pressures on victims, fear of reprisal against victims, ineffective and unsupportive responses by authorities toward victims, fear of publicity, and a perception among victims that cases were unlikely to be prosecuted.

The Salvadoran Institute for Children and Adolescents (ISNA), an autonomous government entity, defined policies, programs, and projects on child abuse; maintained a shelter for child victims of abuse and commercial sexual exploitation; and conducted a violence awareness campaign to combat child abuse. From January through September, ISNA reported sheltering 496 abused children in 11 shelters. According to a 2012 World Bank report, 41 percent of the first pregnancies of girls between the ages of 10 and 19 resulted from sexual abuse, and 12 percent of such pregnancies resulted from sexual abuse committed by a family member.” (Pg. 17)

- **Exhibit 19; *Annual Report 2011 for El Salvador, TACRO*, UNICEF (February 24, 2012).**

“The increasing violence, emergencies and the financial economic crisis that El Salvador is going through, reduces the political attitude towards a serious implementation and of the new legislation, which has limited budget allocations to the detriment of children and adolescent rights.” (Pg. 1)

“Cultural practices and conceptions devoid of human rights approach and rooted in social and family dynamics, as well as migration, have increased the vulnerability of children and adolescents to violence. Seven out of every ten children are mistreated, two of every five children and adolescents live without their mother, father or both, 64% subsists in abandonment because of maternal or paternal irresponsibility.” (Pg. 2)

- **Exhibit 22; Edgardo Ayala, *New Child Protection Law Starved of Resources*, INTER PRESS SERVICE (August 4, 2011).**

“Lack of budget resources and political will, according to activists, is preventing fulfillment of the provisions of El Salvador’s long-awaited new law for the

comprehensive protection of children and adolescents.

Delays in implementing the law, in spite of the fact that it is already in force, seem to be due to lack of foresight on the part of lawmakers who drafted it in March 2009 but omitted to secure the necessary state funds and infrastructure.

In April 2010, Salvadoran President Mauricio Funes asked Congress to postpone the entry into force of the child protection law until Jan. 1, 2011, but even since that date it has not been implemented for want of essential funding, estimated at 432 million dollars.

The law is an improvement on previous child protection legislation, as it commits the state to ensuring comprehensive child protection and full enjoyment by children of universal human rights, such as health and education.

It also includes safeguards against all forms of slavery, trafficking in children, forced and bonded labour, and the use of children in drug trafficking.

An effort has been made to integrate child protection measures provided in other legislation, like the Family Code, and to construct a coherent legal system.” (Pg. 1)

- **Exhibit 25; *El Salvador*, UNITED NATIONS HUMAN RIGHTS COMMITTEE (November 18, 2010).**

“The Committee expresses its concerns about the situation of women in the State party, the persistence of stereotypes and prejudices regarding the role of women in society, reports that the number of murders of women has remained constant or even increased during the reporting period, impunity for these murders, the lack of disaggregated statistical data on crimes against the lives and integrity of women, **the high rates of domestic violence in the State party, inadequate coordination among State bodies involved in preventing and punishing domestic violence** and the still sparse representation of women in public or elected office (articles 3, 6, 7 and 25 of the Covenant).

The State Party should design and implement programmes aimed at eliminating gender stereotypes in society. It should implement the right of women victims of violence to justice and reparation, including fair and adequate compensation. The State should also use all the means at its disposal to investigate acts of violence against women, especially murders of women, identifying those responsible, prosecuting them and imposing appropriate penalties, and establishing a statistical system that can provide aggregated data on gender violence. The State should also improve coordination among the bodies responsible for preventing and punishing domestic violence, in order to make them more effective. The State party should also ensure that those responsible for domestic violence are identified, prosecuted and duly punished, and should adopt special measures to further increase the participation of women in public or elected office.” (Pg. 3, emphasis in original, underline added)

- **Exhibit 21; Paulo Sergio Pinheiro, *World Report on Violence Against Children*, U.N. SECRETARY-GENERAL'S STUDY ON VIOLENCE AGAINST CHILDREN (2006).**

“Families, defined widely, hold the greatest potential for protecting children from all forms of violence. Families can also empower children to protect themselves. A basic assumption of the Convention on the Rights of the Child (CRC) is that the family is the natural environment for the growth and well-being of all its members — particularly for children — while the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights proclaim the family as being the fundamental group unit of society. The CRC requires the State to fully respect and support families.

But families can be dangerous places for children and in particular for babies and young children. The prevalence of violence against children by parents and other close family members — physical, sexual and psychological violence, as well as deliberate neglect — has only begun to be acknowledged and documented.

Challenging violence against children is most difficult in the context of the family in all its forms. **There is a reluctance to intervene in what is still perceived in most societies as a ‘private’ sphere.** But human rights to full respect for human dignity and physical integrity — children’s and adults’ equal rights — and State obligations to uphold these rights do not stop at the door of the family home.

State responsibility to respect, protect and fulfill the rights of children extends beyond its direct activities and those of State agents, and requires the adoption of measures to ensure that parents, legal guardians and others do not violate children’s rights. It is obliged to put in place a framework of laws, policies and programmes to prevent violence by providing adequate protection, and responding to violence if it occurs.

Younger children tend to be more vulnerable to violence in the home. In some industrialised States, where child deaths are most rigorously recorded and investigated, infants under one year of age face around three times the risk of homicide, almost invariably by parents, than children aged one to four, and twice the risk of those aged five to 14. **While all physical punishment is degrading, there are other cruel and degrading and potentially equally damaging non-physical forms of violence which children suffer within the family. These include enduring persistent threats, insults, name-calling or other forms of verbal abuse, belittling, isolation or rejection.** In addition to the direct violence, many children witness violence between adult family members, which in itself has serious consequences, only very recently recognised.

Everywhere that sexual violence has been studied, it is increasingly acknowledged that a substantial proportion of children are sexually harassed and violated by the people closest to them. Forced sex within forced and early marriage is common in many States. So-called ‘honour killings’ of adolescent girls, regarded as having breached moral codes, occur in some countries. Despite legislation and advocacy efforts, female genital mutilation or cutting (FGM) remains widespread: in parts of North and Eastern Africa, over 90% of girls undergo this operation, usually at around the age of seven.

- **Exhibit 26; Godfrey St. Bernard, *Major Trends Affecting Families in Central America and the Caribbean*, UNITED NATIONS DIVISION OF SOCIAL POLICY AND DEVELOPMENT DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS PROGRAM ON THE FAMILY (May 23, 2003).**

“Despite greater acceptance of the Western ideal of the nuclear family with male breadwinners and a growing tendency for females to be in the labour force, in contemporary Caribbean society, there is a concern for the plight of the single mother and the matrifocal extended family that lives on its margins. They are among the most vulnerable and often depend upon the financial contribution of men who wield power on the basis of the occupations, community status, age or some other symbolic criterion. With the current educational advancement of women, the latter pattern is likely to intensify. This is also likely to sustain or even further exacerbate levels of single motherhood in the Caribbean as well as in Central American countries.” (Pg. 5)

EXHIBIT 6

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
United States Immigration Court
901 North Stuart Street, Suite 1300
Arlington, Virginia 22203

IN THE MATTER OF:

) IN REMOVAL PROCEEDINGS
)
)
)
)
)
)

[REDACTED]
a/k/a [REDACTED]

Respondent

File No.: A# [REDACTED]

CHARGES:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act [INA or 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);
Withholding of Removal under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [Convention Against Torture], pursuant to 8 C.F.R. § 1208.16 (2003)

APPEARANCES

ON BEHALF OF RESPONDENT:

[REDACTED]
[REDACTED]
[REDACTED]
Center for Applied Legal Studies
111 F Street, NW, Suite 332
Washington, D.C. 20001

ON BEHALF OF THE DHS:

Assistant District Counsel
4420 N. Fairfax Drive, Room 500
Arlington, VA 22203

DECISION AND ORDER

Respondent is a male, native and citizen of Honduras. Respondent entered the United States at or near Douglas, Arizona, on or about July 31, 2001. The Immigration and Naturalization Service [DHS]¹ arrested and detained Respondent, then commenced proceedings by filing a Notice to Appear [NTA], dated August 1, 2001, with the Phoenix, Arizona, Immigration Court on August 7, 2001. Venue was changed to this Court on October 26, 2001.

¹On March 1, 2003, the Immigration and Naturalization Service became part of the Department of Homeland Security. Homeland Security Act of 2002, Pub. L. No. 107-296, Title IV, 116 Stat. 2135 (Nov. 25, 2002), as amended.

At a hearing before this Court, Respondent admitted to all of the allegations and conceded removability. Based on these admissions and concession, the Court finds that Respondent's removability is established by clear and convincing evidence. See 8 C.F.R. § 1240.8(a) (2003). As relief from removal, Respondent seeks asylum pursuant to INA § 208(a), withholding of removal pursuant to INA § 241(b)(3), and withholding of removal under the Convention Against Torture, pursuant to 8 C.F.R. § 1208.16.

TESTIMONY AND EVIDENCE

A. Respondent's Asylum Application (Form I-589) and Affidavit of March 27, 2003

Respondent states in his asylum application that he is seeking asylum based on his membership in a particular social group and his political opinion. Respondent is a native and citizen of Honduras, who turned eighteen years of age during the pendency of proceedings. He claims that he was subjected to severe physical and emotional abuse at the hands of his parents on account of his membership in the particular social group of his full siblings. He further claims that he will face persecution from members of a gang, La Mara Salvatrucha [MS], on account of his elder brother's past opposition to the gang and his own refusal to join the MS. He also claims that he faces future persecution in Honduras as a street child, as he has no home in Honduras to which he can return, and he will be forced to become a street child. Respondent claims that street children are a particular social group in Honduras that faces persecution by members of Honduran society. Furthermore, his application states that neither the government nor the police acted to protect him from the previous abuse at the hands of his parents or from the threats of the MS, and that neither the government of Honduras nor the police have shown themselves willing or able to protect him from future persecution.

Respondent has three siblings that share his parentage: an elder brother, a sister, and a younger brother. Respondent claims that he and his siblings were physically abused by his mother on a daily basis. His earliest memories are of his father beating his mother, and his mother then beating him. The mother beat Respondent with whatever came to hand, including electrical cords, sticks, machetes, and her hands. When the mother beat Respondent, she would call him bad names. The mother also blamed Respondent and his siblings for anything that went wrong, and demanded that they perform heavy labor, both in the fields and in the home.

Respondent's parents abandoned the children for extended periods of time. The father would leave to work in the fields and to visit his twelve or thirteen other children (by different mothers). The mother would leave for assignations with her lover, leaving the children for days at a time. The children worked and begged for food during these periods, and a neighbor would also help by giving them food. The family moved from [REDACTED] to [REDACTED] when Respondent was about six or seven years old, but the family situation did not improve. After about six months, or when Respondent was eight years old, the mother took Respondent, his sister and his younger brother to live on her lover's coffee farm without informing their father. At the coffee farm, the children were put to work at physically grueling work on the farm. One of Respondent's chores was processing coffee beans through a hand-operated coffee grinder. During their year at the coffee farm, the

mother's lover tried to rape the sister. Two days after the attempted rape, the family left the coffee farm. The mother blamed the children for forcing her to leave her lover.

While in [REDACTED] and [REDACTED], Respondent was able to attend school. Once they moved to the remote coffee farm, no schooling was available. When the family left the coffee farm, they moved to El Salvador. At this time, Respondent was nine years old. The first year, he worked to bring money home, and could not attend school. His mother did not support his efforts to go to school, but after a year, Respondent managed to attend school in the afternoon for five years. The mother continued to beat Respondent and his other siblings throughout their childhood. Respondent's younger brother tried to hang himself at the age of twelve, but Respondent stopped him.

The two children that Respondent's mother had with her lover were treated differently. They were given whatever they needed, and the mother showered them with favor and affection.

When Respondent was about fifteen years old, he stopped attending school, and went back to working full time. In February 2001, the roof of the house in El Salvador collapsed in the earthquake and the family returned to Honduras. They family initially stayed with an aunt in [REDACTED]. Because Respondent did not feel welcome at his aunt's house, he moved to [REDACTED] and stayed in his father's house. Respondent's half-brother [on the father's side] [REDACTED] had openly opposed the MS. [REDACTED]'s throat was slit in his sleep. His killers were never found, and Respondent and his family believe that [REDACTED] was killed by members of the MS.

Both in [REDACTED] and in [REDACTED] Respondent was approached by members of MS. The gang members tried to get Respondent to join MS, and threatened to initiate Respondent and kill him if he did not join. His cousin told Respondent that the MS members in [REDACTED] had identified Respondent as [REDACTED]'s brother. After two weeks, Respondent moved back to [REDACTED] to live with his aunt, but did not feel safe. [REDACTED] was only a few miles from [REDACTED]. Respondent fled to the United States. Since he arrived, Respondent's sister informed him that his younger brother had joined the MS.

When Respondent attempted to enter the United States on July 31, 2001, he was arrested and detained by the DHS. After ten days, an older brother came to pick him up. Respondent lived with his brother for about a year. The brother told Respondent he was wasting his time applying for asylum, and wanted Respondent to work illegally. Respondent tried to stop his brother from hitting his wife; the brother turned from his wife and started choking Respondent. Respondent moved out of his brother's house, and found a place to live at the [REDACTED] Living Program. Respondent had sleeping problems, and was referred to a psychologist. He attends school daily.

If returned to Honduras, Respondent fears facing the violence and neglect he suffered at the hands of his parents. He also fears that the MS will succeed in locating him and target him for recruitment or death. Finally, Respondent fears that his situation will force him to become one of Honduras' street children, living from hand to mouth on the streets.

B. Respondent's Testimony

Respondent testified that he was born in [REDACTED] Honduras, on [REDACTED] 1984, into a family that consisted of his father, mother, and older brother and an older sister. His father had twelve or thirteen other children with other women. The mother would beat Respondent every day from when he was three or four years old, using electrical cable, sticks, whatever she found at hand. Respondent remembers his mother hitting him with a machete when he was four years old. No one from the government intervened in the beatings.

Respondent recalled that his father would leave to go to work, and his mother would go to his grandmother's house to meet her lover. Respondent and his siblings were abandoned for long periods of time. Either a neighbor would give them food, or the children would beg. Another brother was born when Respondent was about five years old, and the family moved to [REDACTED]. They lived in [REDACTED] for six months, then Respondent, his mother, his sister and his younger brother moved to a coffee farm in the mountains owned by his mother's lover. After they left the coffee farm, they moved to El Salvador for seven or eight years.

Respondent worked all of his life. He managed to attend two years of school while in Honduras, and five years of school in El Salvador, where he completed the seventh grade.

When Respondent was fifteen years old, he returned to Honduras to visit his father, who was 83 years old. He felt a responsibility to visit his father because of the father's age, and used his own money to pay for the trip. Respondent stated that his father was not a good father because he forced Respondent to work in the fields. Respondent's father gets angry, and has a voice that makes Respondent fear him. During that visit, Respondent told his father about the beatings, but the father said it was not his fault. Respondent believes that his father was angry with him because Respondent left to live with his mother and her lover, and Respondent did not ask his father if he could live with him. Also during his stay in Honduras, Respondent was recruited by members of the MS, and threatened if he did not join. Respondent was unable to testify how long he stayed during the visit, how long he was in Honduras before the threat, or how long he stayed in Honduras after the threat before returning to El Salvador.

When the family's house in El Salvador was destroyed by the earthquake, he did not want to return to Honduras because of the recruitment attempt by the MS. After he and his family returned to Honduras, Respondent first lived with his aunt. The aunt told him she did not want him to live with her, so Respondent lived in the streets. Although he did not feel safe anywhere in Honduras, Respondent did not attempt to go to his father's house. Members of the MS again tried to recruit Respondent. Respondent did not report either of the threats from the MS to the police, because he believes that the police will do nothing.

Respondent's older brother, who is in the United States, paid a smuggler \$1500 to bring Respondent to the United States. He stayed with the brother when he first arrived in the United States, but left and came to Virginia because his brother is an angry violent person. This older brother also was beaten by the mother. The brother did not testify, and has refused to complete an affidavit or a letter

regarding the arrangements to bring Respondent to the United States, but did complete an affidavit regarding the family's life in Honduras and El Salvador, and his own experiences with the MS.

C. Testimony of Dr. Richard Filson.

Dr. Richard [REDACTED] is a licensed psychologist in the District of Columbia. He met with Respondent for two and one half hours. He also reviewed Respondent's affidavit and the affidavit from Respondent's brother. Dr. [REDACTED] attempted to talk to the brother, but he was hostile and uncooperative. Dr. [REDACTED] diagnosed Respondent as having two disorders, a major depressive disorder, moderately severe, and post-traumatic stress disorder [PTSD], which manifests itself, among other symptoms, in somatization, defined as bodily symptoms without a known medical cause. Dr. [REDACTED] saw no evidence of any malingering or faking by Respondent, and it is Dr. [REDACTED]'s opinion that the disorders result from years of physical abuse, abandonment, and neglect.

Dr. [REDACTED] also testified that there is a large body of evidence that persons with PTSD cannot remember times and dates. It is Dr. [REDACTED]'s medical opinion that returning Respondent to either El Salvador or Honduras would exacerbate Respondent's mental condition.

D. Documentary Evidence

In support of his asylum claim, Respondent submitted the following documents: Application for Asylum and for Withholding of Removal [I-589] (Ex. 2); Affidavits from Respondent, his older brother, an interpreter regarding a conversation with Respondent's older sister, Dr. Filson, Drs. Galbis and Gavia, Bruce Harris, Ondina Murillo, and Jose Mundo (Group Ex. 4, Tabs A, D, E, F, G, H, I, and J); the 2001 Department of State Country Report on Human Rights Practices for Honduras (Group Ex. 4, Tab T); articles and reports regarding gang activity and street children in Central America, including Honduras (Group Ex. 4, Tabs U-Z; Group Ex. 5, Tabs AA-VV); INS memorandum of Dec. 10, 1998, "Guidelines for Children's Asylum Claims" (Ex. 4, Tab WW); and various government publications regarding asylum law and the definition of persecution (Group Ex. 5, Tabs XX-AAA). DHS submitted the 2002 Department of State Country Report on Human Rights Practices for Honduras (Ex. 3).

LEGAL ANALYSIS

A. Asylum

1. Applicable Standards

An alien requesting asylum bears the evidentiary burden of proof and persuasion in connection with any application under section 208 of the Act. 8 C.F.R. § 1208.13(a); see also Matter of S-M-J-, 21 I&N Dec. 722 (BIA 1997); Matter of Acosta, 19 I&N Dec. 211, 215 (BIA 1985), modified on other grounds; Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987). To qualify for a grant of asylum, an alien must credibly demonstrate that he or she is a "refugee" within the meaning of section 101(a)(42)(A) of the Act. INA § 208(b)(1); see also INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). As such, the alien must demonstrate that the alleged persecution or well-founded fear of persecution

is "on account of [his or her] race, religion, nationality, membership in a particular social group, or political opinion," INA § 101(a)(42)(A). Additionally, the alien must establish that he or she is unable or unwilling to avail himself or herself of the protection of the alien's country of nationality or last habitual residence. *Id.* Moreover, the alien's fear of persecution must be country-wide. Matter of C-A-L, 21 I&N Dec. 754 (BIA 1997); Matter of R-, 20 I&N Dec. 621 (BIA 1992); Matter of Acosta, *supra*, at 235; *see also* Matter of Fuentes, 19 I&N Dec. 658 (BIA 1988). Finally, the alien must demonstrate that he or she is eligible for asylum as a matter of discretion. INA § 208(b)(1); *see also* INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987).

2. Credibility

In all applications for asylum, the Court must make a threshold determination of the alien's credibility. Matter of O-D-, 21 I&N Dec. 1079 (BIA 1998); *see also* Matter of Pula, 19 I&N Dec. 467 (BIA 1987). An applicant's own testimony is sufficient to meet his or her burden of proving his or her asylum claim if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his or her fear. Matter of Dass, 20 I&N Dec. 120, 124 (BIA 1989); *see also* 8 C.F.R. § 1208.13(a). However, testimony is not considered credible when it is inconsistent, contradictory with current country conditions, or inherently improbable. Matter of S-M-J, *supra*. While omissions of facts in an asylum application or during testimony alone might not, in themselves, support an adverse credibility determination, the omission of key events coupled with numerous inconsistencies may provide a specific and cogent reason to support an adverse credibility finding. Matter of A-S-, 21 I&N Dec. 1106 (BIA 1998).

3. Corroboration

In determining whether an asylum applicant has met his or her burden of proof, the Board of Immigration Appeals (BIA or Board) has recognized the difficulties that an alien may face in obtaining documentary or other corroborative evidence to support the alien's claim of persecution. Matter of Dass, *supra*. As such, unreasonable 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, *supra*. In fact, lack of corroborative evidence is not necessarily fatal to an asylum application, as uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for asylum. 8 C.F.R. § 1208.13(a); *see also* Matter of Mogharrabi, *supra*, at 444-445.

However, where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence should be provided. Matter of S-M-J, *supra*; *see also* Matter of M-D-, 21 I&N Dec. 1180 (BIA 1998). If such evidence is unavailable, the applicant must explain its unavailability, and the Immigration Judge must ensure that the applicant's explanation is included in the record. Matter of S-M-J, *supra*. The absence of such corroboration can lead to a finding that an applicant has failed to meet his or her burden of proof. *Id.* at 725.

4. Persecution

The meaning of "persecution," as developed through United States case law, contemplates harm or suffering inflicted upon an individual in order to punish him or her for possessing a belief or characteristic a persecutor seeks to overcome. Matter of Acosta, supra, at 223. Persecution within the meaning of the Act does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. Matter of V-T-S-, 21 I&N Dec. 792 (BIA 1992). Persecution is not limited to physical harm, but may include mental suffering or even economic deprivation so severe as to constitute a threat to an individual's life or freedom. Matter of Acosta, supra, at 222. Prosecution for violating laws of general applicability does not constitute persecution unless the punishment is imposed for invidious reasons or is grossly disproportionate to the proscribed conduct. *Id.*

a. Past Persecution

An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she suffered persecution in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or available himself or herself of the protection of, that country owing to such persecution. 8 C.F.R. § 1208.13(b)(1). An applicant who is found to have established such past persecution shall also be presumed to have a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). The regulatory presumption may be rebutted if the DHS establishes that either: (1) there has been a fundamental change in circumstances² such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of one of the enumerated grounds; or (2) the applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under the circumstances, it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(i), (ii). If the applicant's fear of persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded. 8 C.F.R. § 1208.13(b)(1).

b. Well-Founded Fear of Persecution

An applicant has a well-founded fear of persecution if: (1) the applicant has a fear of persecution in his or her country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion;

²By adopting the language "fundamental change in circumstances" rather than requiring a showing of "changed country conditions" to overcome the presumption, other changes in the circumstances surrounding the asylum claim, including a fundamental change in personal circumstances may be considered, so long as those changes are fundamental in nature and go to the basis of the fear of persecution.

(2) there is a reasonable possibility of suffering such persecution if he or she was to return to that country; and (3) he or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). In general, the applicant's fear should be considered well-founded if the applicant can establish, to a reasonable degree, that his or her continued stay in that country has become intolerable for the applicant on the basis of one of the enumerated grounds, or would for the same reasons, be intolerable if he or she returned there. Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, ¶42, p.12-13. (Geneva, January 1992). An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(2)(ii).

To establish a well-founded fear of persecution, an applicant must present credible testimony that demonstrates that his fear of harm is of a level that amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or is already aware of the characteristic, and that the persecutor has the means and inclination to persecute. Matter of Mogharrabi, *supra*, at 446; *see also* Matter of Acosta, *supra*, at 226. A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. INS v. Cardoza-Fonseca, *supra*. To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Matter of Acosta, *supra*, at 221. The objective component requires a showing by credible, direct, and specific evidence in the record that the alien's fear of persecution is reasonable. DeValle v. INS, 901 F.2d 787,790 (9th Cir. 1990).

c. On Account of

An applicant for asylum must demonstrate that he or she is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of his country because of persecution or a well-founded fear of persecution "on account of" race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b)(2)(i)(A). Even treatment that is regarded as "morally reprehensible" is not "persecution" within the meaning of the Act unless it occurs "on account of" one of the five enumerated grounds in the Act. Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997).

5. Discretion

Statutory and regulatory eligibility for asylum, whether based on past persecution or a well-founded fear of future persecution, does not necessarily compel a grant of asylum. INS v. Cardoza-Fonseca, *supra*. An applicant for asylum has the burden of establishing that the favorable exercise of discretion is warranted. Matter of Pula, *supra*; *see also* Matter of Shirdel, 19 I&N Dec. 33 (BIA 1984). In exercising discretion, it is appropriate to examine the totality of the circumstances and actions of an alien in his flight from the country where persecution is feared. Matter of Pula, *supra*.

General humanitarian reasons, independent of the circumstances that led to the applicant's refugee status, such as his or her age, health, or family ties, should also be considered in the exercise of discretion. Matter of Pula, supra. Although the totality of circumstances and actions of an alien in his or her flight from the country where persecution was suffered to the United States are to be considered and may weigh against a favorable exercise of discretion, "the danger of persecution should generally outweigh all but the most egregious of adverse factors." Id. at 474. Even if there is little likelihood of future persecution, an individual may establish eligibility for asylum if he or she shows that he or she has suffered such severe past persecution on account of one or more of the enumerated grounds that it would be inhumane to return him or her to his or her country. Matter of Chen, 20 I&N Dec. 16 (BIA 1989).

6. Discussion

a. Credibility of Respondent

The Court finds that Respondent is a credible witness. As indicated above, an applicant must establish the facts underlying his claim for such relief by believable, consistent, and sufficiently detailed evidence which provides a plausible and coherent account of the basis for his fear. Consequently, it is necessary to assess the credibility and the probative force of the evidence put forward by Respondent. In assessing the credibility of his testimony, the Court has taken into account, not only his demeanor while testifying, but also the rationality, internal consistency, and inherent persuasiveness of his testimony, and the manner in which Respondent's testimony is consistent with other evidence in the record. Carbo v. United States, 314 F.2d 718 (9th Cir. 1963). Respondent's testimony was generally consistent with his asylum application and supporting declaration. Although his testimony about dates and times, specifically regarding his contacts with MS was vague, he generally testified in detail about the abuse he suffered. In addition, Respondent's demeanor while testifying was credible.

b. Past Persecution

Although the Court is sympathetic to Respondent's fears of the consequences of his rejection of MS membership, the Court finds that Respondent has failed to establish past persecution on account of his recruitment by the MS. The Court finds that the attempted recruitment of Respondent and the ensuing threats do not rise to the level of persecution. Just as conscription by guerilla organizations does not rise to the level of persecution on account of a political opinion, see INS v. Elias-Zacarias, 502 U.S. 478 (1992), conscription or recruitment by organized gangs does not rise to the level of persecution on account of a political opinion. Similarly, the Court finds that Respondent's claim of persecution by MS on account of his membership in a particular social group (consisting of [REDACTED]'s siblings) also fails. Respondent's elder brother is also a member of that group; his affidavit relates that the MS came after him only after he was accusing them of killing [REDACTED], not because he was [REDACTED]'s half-brother. Similarly, the fact that Respondent's younger brother has seemingly been successfully recruited by the MS does not support Respondent's claim; he has offered no evidence that the younger brother suffered any persecution on account of his family relationship, or even that the brother was invited to join on account of his family relationship.

Respondent's claim of persecution by his mother is another matter. Respondent has credibly testified about the vicious and pervasive abuse suffered at the hands of his mother and the abandonment for long periods of time by both parents. His testimony is buttressed by the affidavit from his brother and the conversation with his sister. Moreover, Respondent has suffered serious long-term health and psychological problems as a result of that abuse. Finally, Respondent credibly testified that the abuse he and his siblings suffered at the hands of their mother was not visited upon the children she had with her lover. Thus, Respondent contends that the abuse and abandonment rose to the level of persecution on account of his membership in a particular social group, consisting of Respondent's full siblings.

"Membership in a particular social group" refers to person who hold "an immutable characteristic or common trait such as sex, color, kinship" Matter of Acosta, *supra*, at 233. Members of a particular social group share a "common, immutable characteristic" that they cannot change, or should not be required to change because such characteristic is fundamental to their individual identities. Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996). Members of an immediate family share an common characteristic, kinship, that cannot be changed. See Gebremichael v. INS, 10 F.3d 28, 36 (1st Cir. 1999). The First Circuit also suggested that the characteristic must be central to the persecutor's motivation to act against the group. *Id.* at 35. Here, Respondent testified that his mother saw the four siblings as different from the children of her lover: she directed physical and psychological abuse at the children of Respondent's father, but not at the children of her lover.

Finally, for the harm or suffering to be considered persecution, it must be inflicted either by the government or by persons or organizations the government is unable or unwilling to control. Matter of S-A-, I&N Dec. 22 (BIA 2000). Respondent testified that he reported the abuse to his father, whose only action was to state that he (the father) was not responsible for the abuse. Respondent has also stated that no governmental entity stepped in to assist him or his siblings. Although the government of Honduras established mechanisms to provide support and protection for victims of intra familial violence in the mid-1990's (see Group Ex. 4, Tab AA at 40), resources to fund the programs are limited, and have been directed primarily towards meeting educational goals and the need for water and sanitation (*Id.* at 44; see also Ex. 3 at 13.). The 2002 Department of State report further confirmed that although the Honduran Children's Code prohibits a child of fourteen and younger from working, even with parental permission, the law is not enforced in practice. After examining the record as a whole, the Court finds that Respondent has established past persecution on account of his membership in the particular social group, which consists of his full siblings.

c. Well-Founded Fear of Future Persecution

An applicant who is found to have established past persecution shall also be presumed to have a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). The regulatory presumption may be rebutted if the Service establishes by a preponderance of the evidence that either: (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the applicant's country of nationality or, if stateless, in the applicant's country of last habitual residence, on account of one of the enumerated grounds; or (2) the applicant could avoid future persecution by relocating to another part

of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under the circumstances, it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(i), (ii). The DHS has not carried its burden to rebut the regulatory presumption. The 2002 Country Report, submitted by DHS, relates that Honduras has not addressed the problems associated with child labor. No showing has been made of an increased ability of the Honduran government to address issues of child abuse. Accordingly, Respondent is presumed to have a well-founded fear of future persecution should he return to Honduras.

The Court will exercise its discretion favorably and grant Respondent the relief of asylum. Alternatively, the Court would also exercise its discretion favorably to grant asylum under Matter of Chen, 20 I&N Dec. 16 (BIA 1999), even without a showing of a past persecution on account of Respondent's membership in a particular social group. Dr. [REDACTED]'s testimony regarding Respondent's major depressive disorder and post-traumatic stress disorder documented that Respondent has been severely traumatized by his experiences. Additionally, Dr. [REDACTED] testified that Respondent's forced return to Honduras would pose a serious threat to Respondent's mental health, and likely would seriously exacerbate and worsen his condition. As a result it would be inhumane to remove Respondent to Honduras, and the Court would exercise its discretion favorably.

B. Application for Withholding of Removal

Because the Court will grant Respondent's application for asylum, the Court will not consider his alternative request for withholding of removal to Honduras under INA § 241(b)(3).

C. Application for Withholding of Removal under the U.N. Convention against Torture

Likewise, because the Court will grant Respondent asylum, the Court will not consider his alternative application for withholding of removal to Honduras under the Convention Against Torture.

After a careful review of the entire record, the following order will be entered:

ORDER

It is Ordered that:

Respondent's application for asylum pursuant to INA § 208(a) be **GRANTED**.

5-21-03
Date

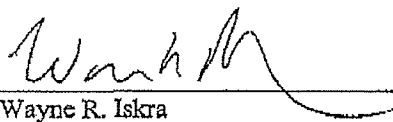

Wayne R. Iskra
United States Immigration Judge

EXHIBIT 7

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

In Re

Jose [REDACTED]

Respondent.

File Number: A [REDACTED]

In Removal Proceedings

Charges: 212(a)(6)(A)(i)
Applications: Asylum, Withholding of Removal, and
Relief under Article 3, Convention Against Torture

On Behalf of Respondent:
Lina M. Alta, Esq.
3 Hayford Court
Novato, CA 94949

On Behalf of the Service:
Kristine C. D'Alesandro, Esq.
Assistant District Counsel
550 Kearny Street, Suite 1000
San Francisco, CA 94108

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent is a 17 year old single male, a native and citizen of El Salvador. At a hearing before this Court on December 11, 2001, Counsel on Respondent's behalf admitted the factual allegations in the Notice to Appear, which is dated July 25, 2001, and conceded removability. Respondent declined to designate a country of return if return should be required. The Court thereupon directed that El Salvador be the country of return, based upon Respondent's admissions in the Notice to Appear.

As Respondent has admitted the factual allegations in the Notice to Appear and has conceded removability, I find that removability has been demonstrated by clear and convincing evidence as required by Section 240(c) of the Act.

In lieu of removal, Respondent has applied for asylum, withholding of removal, and relief under Article III of the Convention Against Torture.

The Exhibits of the record of proceedings, other than the NTA, include Exhibit 2, the asylum application, 2A, Respondent's birth record with an English translation; 2B, Respondent's school record; 2C, Student I.D. card from USA; Exhibit 3-1 Background documents on domestic violence against women and children in El Salvador; Exhibit 3-2, Background documents on gang violence in El Salvador; Exhibit 4, the Country Report on Human Rights Practices Report for El

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Salvador for the year 2001.

At the hearing in this matter, which was held on July 26, 2002, the respondent testified to the statutory requirements for relief from removal in the forms described above. He also presented as witnesses his mother, Angela Jasmin Elizondo-García, and his uncle, Luis Ogdulio García. These were the only witnesses who testified.

FINDINGS OF FACT

In arriving at a decision in this case, this Court has carefully observed Respondent's demeanor while he has testified. In addition, the Court has carefully analyzed Respondent's testimony for consistency, detail and specificity, as well as persuasiveness. The Court has weighed Respondent's demeanor and testimony against the standards set forth in Ninth Circuit and Board of Immigration Appeals precedent. It is the conclusion of this Court that Respondent has testified in a sincere and genuine manner, without hesitation. Indeed, there is no issue between the parties regarding Respondent's credibility. Thus, Respondent's testimony will be given full weight as evidence.

Respondent's claim is centered upon his allegation that he has a well-founded fear of persecution from his father if he returns to El Salvador. Respondent and his witnesses have testified that his father is a violent and abusive man who deprived his family of basic needs such as food, education and protection from harm, and who also abused them all both physically and emotionally.

As stated previously, the facts are not in dispute. Respondent, along with his mother and three sisters, were systematically abused by Respondent's father in extreme and inhumane circumstances. None of the abused family members attempted to obtain assistance from the government. The stated reason for not seeking outside help was that they already knew it would do no good. From the age of five to sixteen, Respondent was beaten, tied up and forced to watch the physical abuse of other family members including his mother, starved, forced to beg for food, forced to quit school and to work for money at age 11, and deprived of education, all by his father.¹ Respondent's uncle attempted to intervene and Respondent's father responded by threatening to kill him. Respondent is afraid that if he returns, the country is so small that his father will be able to find him anywhere and continue to mistreat him.

Respondent has also had violent confrontations with gangs and is afraid to go back because of the pervasive influence of gangs in El Salvador today.

¹As stated in Exhibit 4, education is mandatory to age 14, and children are not permitted to work before the age of 14.

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ANALYSIS AND FINDINGS OF THE LAW

In order to establish eligibility for asylum, Respondent must show that he suffered past persecution and/or has a well-founded fear of future persecution on account of one or more of the five grounds enumerated in INA § 208(a). "Persecution means the infliction of harm or suffering upon those who differ in a way regarded as offensive." *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). A finding of past persecution gives rise to a presumption of future persecution. 8 C.F.R. §§ 208.13 (2002). The Service may rebut the presumption by showing by a preponderance of the evidence the existence of a fundamental change in circumstances or the reasonable availability of internal relocation. *Id.* subsection (b)(1)(i) ("Discretionary referral or denial").

To establish eligibility for asylum based on past persecution, Respondent must show three things: (1) what happened to him rises to the level of persecution; (2) the persecution was "on account of" one of the statutorily protected grounds; and (3) the persecution is imputable to the government or to forces that the government was unable or unwilling to control. *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). In the instant case, there is no doubt that Respondent suffered from past persecution in the form of repeated beatings, emotional and verbal abuse, and death threats against him and his mother and sisters over a number of years. See e.g. *Duarte de Guinac v. INS*, 179 F.3d 1156, 1162 (9th Cir. 1999) (repeated beatings, severe verbal harassment and death threats as persecution). The Service itself stipulated to the fact that Respondent suffered persecution at the hands of his father.

The Service nonetheless argued that Respondent is not eligible for asylum because the persecution he suffered was not on account of a protected ground. The Service rejected both of Respondent's arguments, first, that his family constitutes a social group and second, that he is a member of another social group comprised of child victim of domestic violence. The Court will now examine the existence of persecution on account of a protected ground as well as the evidence in rebuttal of Respondent's claim.

I. Past Persecution on Account of a Protected Ground.

Respondent claims that he would face persecution in El Salvador on account of his membership in a particular social group, that is, either the social group of his father's immediate family, or the social group of child victims of domestic violence in El Salvador. He needs to establish both the existence of a qualifying group and a nexus to that group in the form of "evidence, direct or circumstantial, of the persecutor's motive." *Lopez-Galarza v. INS*, 99 F.3d 954, 959 (9th Cir. 1996).

1.1 Membership in a Particular Social Group.

The Board has defined "a particular social group" as one in which a group of people share a common characteristic that is immutable or fundamental to an individual's conscience or identity.

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Matter of Acosta, 19 I. & N. Dec. 211, 233 (BIA 1985). Both the Board and the Ninth Circuit have ruled that a particular social group can be based on gender. *Id.*; *Matter of Kasinga*, 21 I. & N. Dec. 357, 365-66 (BIA 1996) (social group consisting of young women of the Tchamba-Kunsuntu tribe who have not undergone genital mutilation and oppose the practice); *Hernandez-Montiel v. INS*, 225 F. 3d 1084, 1094-95 (9th Cir. 2000) (identifying gender and sexual identity as social group characteristics fundamental to the identities or consciences of its members).

A social group may also be based on other characteristics such as opposition to a social practice. *Matter of Kasinga, supra*. This is apparent in another of the Ninth Circuit's definitions of a particular social group as "a collection of people closely affiliated with each other, who are actuated by some common impulse or interest." *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (giving as example the immediate members of a certain family as a focus of fundamental affiliational concerns).

Respondent in the present case belongs to the particular social group of child victims of domestic violence in El Salvador. He is also part of the narrower group of children who have tried to escape from such domestic violence, but are unable to receive official protection in El Salvador.² He is also a member of the particular social group made up of himself and of members of his family, specifically his siblings and mother, who were all abused by his father. Such a closely affiliated group is defined by its opposition to the violence of Respondent's father and motivated by a common concern for their safety.

The Service argued that 1) Family units as social groups have been defined as the entire family. Respondent's family unit cannot be considered a qualifying social group because his father is an integral part of the group and is the persecutor; and 2) Domestic violence should not be regarded as an immutable characteristic, and further, that being a victim of domestic violence should not be considered as so fundamental to an individual's identity or conscience that one should not be required to change that condition.

This Court does not believe that any precedent decision precludes Respondent from articulating a social group that contains all of his immediate family members who are or have been abused by his father. Moreover, once a person has become a victim of domestic violence, no matter how hard that individual would wish to change that fact, it is clearly immutable. That violence cannot be taken back. While a person can do everything in his or her power to put it behind oneself, one cannot reverse what has already happened.

Thus, Respondent has established the existence of particular social groups suffering from persecution, and now needs to show a nexus between that persecution and social group membership.

²That limitation of the group's size may not be necessary to qualify as a refugee, but is nonetheless present in this case and supported in the analysis of the nexus. Further, the membership characteristics of the parent-child relationship, resistance to violence, and lack of protection are consistent with the principle that the group must exist independently of the persecution.

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1.2. "On Account of."

An "asylum applicant [need not] show conclusively why persecution has occurred or may occur." *Matter of S.P.*, 21 I. & N. Dec. 486, 489 (BIA 1996) (relying on *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), and on "well-founded fear" standard in the "refugee" definition). Rather, an asylum applicant "bear[s] the burden of establishing facts on which a reasonable person would fear that the danger arises on account of his race, religion, nationality, membership in a particular social group, or political opinion." *Id.* (citing *Matter of Fuentes*, 19 I. & N. Dec. 658, 662 (BIA 1988)). The lesser evidentiary burden alleviates the difficulty of establishing motivation, which is significant in situations involving mixed motives and/or two or more actors jointly acting to produce the same result.

The nexus requirement can be met in situations involving mixed motives and a plurality of actors under certain conditions. The Ninth Circuit has held that "[p]ersecutory conduct may have more than one motive, and so long as one motive is one of the statutorily enumerated grounds, the requirements have been satisfied." *Singh v. Ilcheri*, 63 F.3d 1501, 1509-10 (9th Cir. 1995); see also *Borja v. INS*, 175 F.3d 732, 735 (9th Cir. 1999) (en banc) (reaffirming mixed motive persecution as statutory persecution). Thus, the alien need only demonstrate "the reasonableness of a motivation which is related to one of the enumerated grounds." *Id.*; compare with *Gebremichael v. INS*, 10 F.3d 28, 35 (1st Cir. 1993) (alien must show that one of the five characteristics is "at the root of persecution, such that [the characteristic] itself generates a specific threat to the [applicant]"). Further, the nexus can be established by either showing the persecutor's own motives or the broader societal reasons for the persecution. *Matter of Kasinga*, 21 I. & N. Dec. at 366 (recognizing FGM -- female genital mutilation -- as a form of societal "control of woman . . . in order to ensure male domination"). In effect, the societal motivations are imputed to the non-state actor and explain the state's failure to protect the victim of persecution.

The reason for this broad recognition of a nexus is that the state's failure to address and deter domestic violence is a contributing or substantial factor in that violence:

[I]f the state is unwilling to extend protection . . . [then] the harm visited upon her by her husband is based on the state's unwillingness to protect her for reasons of a Convention ground.

United Nations Refugee Agency, *Guidelines on International Protection No. 2: "Membership of a Particular Social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, HCR/GIP/02/02, para. 20 (2002) (UNRA Guidelines No. 2); see also *Guidelines on International Protection No. 1: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees* HCR/GIP/02/01, para. 21 (2002). Therefore, it may be enough for a victim of domestic violence to show that, although she cannot establish her husband's motives, "the . . . unwillingness of the State to offer protection is for a Convention reason." UNRA Guidelines No. 2, para. 23; see also the Service's proposed asylum regulations, 65 Fed. Reg. 76,588, 76,593 (Dec. 7, 2000) (societal patterns of domestic violence supported by legal system, social norms and beliefs as circumstantial evidence that the specific persecutor . . . "because of [her] social status [as] a woman [in] a domestic relationship . . . believes he has the authority to

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abuse and control the victim 'on account of' her status in the relationship").³ In interpreting the 1951 Convention, tribunals in other countries have also recognized that state tolerance or condonation of domestic violence, and systematic discriminatory implementation of the law may be sufficient to establish nexus. As indicated by the High Court of Australia, refugee law is predicated upon the unavailability of national protection making a refugee unable or unwilling to return to the place of persecution. *Minister for Immigration and Multicultural Affairs v. Khawar*, HCA 14, 187 A.L.R. 574, para. 20 (J. Gleeson) (2002);⁴ accord definition of refugee in INA §§ 101(a)(42) (indicating that refugee protection is a substitute to national protection). Under normal circumstances, the state has the primary responsibility to protect its citizens' fundamental rights and freedoms. *Id.* at para. 19. The failure of a state to provide protection is an element of persecution when such failure is not simply due to incompetence or ineptitude, but reflects "systematic discrimination against women, involving selective enforcement of the law [and] amount[ing] to a failure of [a] state . . . to discharge its responsibilities to protect women." *Id.* at paras. 25-26. Further, the Convention refers to persecution rather than to a persecutor, leaving open the possibility that persecution be "the combined effect of two or more agents" where one of the agents -- the state -- disregarded its duty to act. *Id.* at paras 25-26; accord INA § 101(a)(42) (similar focus in statutory definition of refugee). Thus, when persecution involves both: criminal conduct of private citizens and toleration or condonation of such conduct by the state or agents of the state . . . then the [nexus] requirement may be satisfied by the motivation of either the criminals or the state.

Id. at para. 31; accord *id.* at para. 120 ((J. Kirby) (relying on a New Zealand Refugee Status Appeals Authority's decision, *Refugee Appeal No 71427/99* (2000)).

The High Court's reference to the state's duty to act may be based on a tort-like rationale supporting a broad interpretation of nexus. We expect that society should regulate behavior and, at least to some extent, conform our behavior to the prohibitions established by law and effectively enforced. Conversely, we interpret the lack of prohibitions or enforcement in specific areas as a confirmation that such behavior is permissible and may be freely pursued. When societal attitudes, including official tolerance, are a substantial factor in persecution, it is appropriate to recognize the unbroken causal link between the state and non-state actors and look at the motivation of the state actor to determine whether the nexus requirement is satisfied.⁵

³The Court finds these guidelines and, in particular, the U.N. Refugee Agency's Guidelines to be persuasive in the absence of clear, relevant authority. The seminal asylum cases involving domestic violence were recently vacated. *Muller vs R-A-*, int. Dec. 3403 (BIA 1999), vacated, 22 I. & N. Dec. (AG 2001); *Aguirre-Cervantes v. INS*, 242 F.3d 1169 (9th Cir. 2001), vacated, 273 F.3d 1220 (9th Cir. 2001).

⁴The four judges in the 4-1 majority wrote separate opinions.

⁵Although we are not dealing with liability, causation in the area of torts also provides an interesting analogy where dereliction of duty made the harm possible through a third actor:

The act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should

According to another, similar view, supported by two of the judges of the High Court of Australia in *Khawar*, the denial of a fundamental right by the state amounts to persecution: "the persecution . . . lies in the discriminatory inactivity of State authorities in not responding to the violence of non-State actors . . . [and not in] the violence." *Id.* at para. 87 (joint concurring opinion of Judges McHugh and Gummow). Other countries have reached similar results. *See, in particular*, the House of Lords' decision in *Islam v. Secretary of State for the Home Department, Regina v. Immigration Appeals Tribunal, ex parte Shah* 2 WLR 1015 (1999) (indicating that elements of (1) harm at the hand of husband, a "personal affair", and (2) state's denial of protection against such harm combine to constitute persecution within the meaning of the Convention).⁶ The Court finds the above authorities to be persuasive and consistent with the refugee definition in the Act, which incorporates the definition in the 1951 Convention. Whether focusing on the state's denial of protection or on the combined state and non-state contributions to the harm, the result is the same: the asylum applicant need not show the motivation of the non-state actor when the unwillingness or inability of the state to provide protection is related to a protected ground.

While the above references discuss domestic violence against women, the argument for children must be equally if not more compelling. Theoretically, a woman in an abusive relationship with a partner can leave the relationship. A child who is abused by a parent will always be the child of that parent, for the rest of their natural lives. Although the child will eventually reach majority, the parent-child relationship remains, with all the vestiges of abuse that the history of the relationship generated. By simply reaching the age of majority, the child has no guarantee that the abuse will stop.

The Convention on the Rights of the Child, at Article 2, states that all appropriate measures should be taken by nations to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members. Article 16, guarantees children protection from attack. While the United States remains the only advanced nation which has not ratified this convention, we as a nation have signed it. *See* www.unhcr.org website "Convention on the Rights of the Child." El Salvador signed and ratified this treaty in 1990. Yet, the background documents provide ample evidence that the rights of the child are systematically not protected in El Salvador, leaving children such as Respondent vulnerable to the abuse meted out to him by his father.

Generally, the broad societal and state discrimination against women and children remains

have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.

Restatement (Second) of Torts §§ 448 (1965). The state's systematic failure to act in situations involving widespread violations of women's basic rights is arguably such an exception to the rule that intentional torts or crimes are a superseding cause of harm.

⁶For a broader review of foreign asylum guidelines and case law, *see* Karen Musalo, *Revisiting Social Group and Nexus in Gender Asylum Claims: A Unifying Rationale for Evolving Jurisprudence*, forthcoming publication in: *De Paul Law Review*.

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in the background as an implicit recognition or validation of the individual persecutor's actions and, when present, of the persecutor's belief in his "right" to abuse his victim. By condoning persecution and ensuring impunity, however, the state increases a foreseeable risk for these victims, and, thus, is a contributing or substantial factor in domestic violence in those countries where the problem is disregarded.

As a further consideration, the Court notes that constructive or imputed intent is not new in the asylum provisions of the Act, where nexus has been broadly interpreted to find persecution of others "on account of" a protected ground as a bar to asylum. See INA § 208(b)(2)(A). Courts have imputed the motivation of others to the individual who assisted in persecution. *Fedorenko v. United States*, 449 U.S. 490, 512 (1981) (looking at objective effect of conduct rather than at motivation of individual providing such assistance). The logic of imputing motive of a third party to an actor knowingly acting in concert with that party should extend to the determination of asylum eligibility. See identical language in INA §§ 101(a)(42) (refugee definition) & 208(b)(2)(A)(1) (asylum bar). In *Matter of Kasinga*, the Board has also broadly interpreted the nexus requirement by focusing on the state and/or societal context of persecution, rather than on the persecutors' own motivation, to determine eligibility for asylum. 21 I. & N. Dec. at 366 (focusing on FGM as a form of societal "control of woman . . . in order to ensure male domination" to find a qualifying nexus). Therefore, the Court will look at the motivation of Respondent's father and at official attitudes to determine whether he was persecuted on account of his social group membership.

In the instant case, Respondent has established that he has a reasonable basis to fear persecution by his father on account of his membership in the particular social groups of child victims of domestic violence in El Salvador, or of children who try to escape domestic violence, but are unable to receive official protection in El Salvador, or of victims of his father's abuse. He presented both circumstantial and direct evidence that such persecution is related to a protected ground.

There is ample circumstantial evidence of a nexus between domestic violence and the social status of women and children in El Salvador, where such violence is endemic and reflects prevailing norms and beliefs regarding abused women and their children. Respondent and his mother testified that his mother, sisters and he did not seek help, because Respondent's mother knew that the authorities were unwilling to help them. Respondent also submitted many articles discussing the societal and official support or tolerance for discrimination and domestic violence against women and children in that country. See, for instance, Exhibit 3-1. Further, the country report for El Salvador submitted by the Service states that:

Violence against women, including domestic violence, is a widespread and serious problem. . . . Incidents of domestic violence and rape continued to be underreported for several reasons: societal and cultural pressures against the victim; a fear of reprisal; poor response to victims by the authorities; fear of publicity; and the belief that the cases are unlikely to be resolved.

Exhibit 4: United States Department of State, *2001 Country Reports on Human Rights Practices: El Salvador*. In 1996, a law was passed in El Salvador entitled the "Law Against Family Violence." See discussion, Exhibit 3-1 ("Central America Report," Vol. XXVI No.2). The law stipulates the creation of a special police division to handle cases of domestic violence. Three years after the law passed there had only been a broad Family Department established. The special prosecutors are located only in the large cities, and there is a chronic shortage of

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personnel.

Another article in Exhibit 3-1, "El Salvador Proceso," November 10, 1999, states that "Abuse begins at home. A five year old child tied for hours to a tree in his home, without company and without food is a sad representation of the violation of human rights, and it is a daily sight for many people in El Salvador. In this country, human rights of minors are not respected; they are trampled upon, scorned, undervalued and ignored..." "...It is practiced behind the shield of being a private affair."

The evidence shows the unwillingness of El Salvadoran authorities to control persecutors in situations involving domestic violence, in effect denying protection given to other groups. The Court believes that that is enough to establish nexus. *See, for instance*, UNRA Guidelines No. 2, *supra*. Alternatively, it is also circumstantial evidence of Respondent's father's own motivation as it is reasonable to infer that his behavior was influenced by the lack of protection and societal attitudes towards women and their children in a domestic relationship. *See* Service's proposed asylum regulations, *supra*. There is a reasonable basis to believe that the societal attitudes in El Salvador played at least a part in his father's motivation by validating his beliefs that he had the right to abuse his wife and children freely because of the domestic relationship. Such a reasonable basis also meets Respondent's burden of proof. *Sing*, 63 F.3d at 1509-10 (requiring only evidence sufficient to establish well-founded fear or reasonable basis to believe that at least one motive is one of the statutorily enumerated grounds).

Further, beyond that minimum showing, Respondent provided direct evidence of his father's motivation. In her testimony, Respondent's mother indicated that her husband believed that he had the right to beat her because she was his wife. That he harbored such a belief is also evidenced by the fact that he did not hesitate to defend his "right" against interference by Respondent's mother's sibling who tried to protect them. Further, Respondent's mother testified that her husband did not fear arrest or prosecution as the authorities generally do not interfere in domestic violence cases. Thus, the nexus is clearly established in this case, not only circumstantially, but through direct evidence that Respondent's father was motivated at least in part by Respondent's, his sisters' and his mother's status in their domestic relationship.

As a result, the Court need not examine the nexus between persecution and Respondent's family. On the basis of the foregoing, the Court finds that Respondent sufficiently established that he was persecuted on account of his membership in the particular social groups of child victims of domestic violence in El Salvador or of children who try to escape domestic violence, but are unable to receive official protection in El Salvador due to the unwillingness of the authorities to provide protection. Because of the showing of past persecution, we must presume that Respondent has a well-founded fear of persecution in El Salvador. In turn, the Service has the burden of rebutting the presumption.

2. Rebuttal of Well-Founded Fear Presumption.

As the Service failed to rebut the presumption based on past persecution, the Court must presume that Respondent has a well-founded fear of persecution if he returns. Furthermore, as

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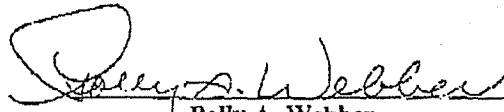
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there are no adverse factors in the Record, this Court will grant his application for asylum. Inasmuch as this Court finds Respondent's application for asylum should be granted, it need not address his other applications.

Based on the foregoing, the following is the order of the court:

ORDER

IT IS HEREBY ORDERED that Respondent's application for asylum pursuant to section 208(a) be GRANTED.



Polly A. Webber
United States Immigration Judge
February 12, 2003

EXHIBIT 8

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Phoenix, Arizona

File No.: A
A

March 20, 2003

In the Matter of

~~XXXXXXXXXX~~ S ~~XXXXXX~~
A ~~XXXXXX~~ M ~~XXXXXX~~

)
IN REMOVAL PROCEEDINGS

)
Respondents

CHARGE: Intending immigrants without documents and likely
to become a public charge.

APPLICATIONS: Asylum;
Restriction on removal;
Protection under the Convention against Torture

ON BEHALF OF RESPONDENTS:

Sue Ming Sher, Esquire
(Shiu-Ming Chao)

ON BEHALF OF SERVICE:

Arthur Raznick
Assistant District Counsel

DECISION OF THE IMMIGRATION COURT

The respondents are a 17-year-old female and her 18-month-old daughter. They are aliens, natives and citizens of Guatemala. They were placed in removal proceedings with issuance of Notices to Appear, dated October 22, 2002. At this proceeding, through counsel, they have admitted all the factual allegations except that pertaining to the public charge. They

have admitted the first charge of intending immigrant without documents and the second charge of likely to become a public charge. The Government has presented no evidence on the denied allegation and charge. On the other hand, the respondent has produced income tax returns for the older respondent's adult brother in the United States, indicating that he has the means to support them. Therefore, the Court will sustain the immigrant charge but does not sustain the public charge charge. The respondents have declined to name of country of removal. The Court will designate Guatemala.

ASYLUM

The older respondent has submitted an application for political asylum, in which she claims that she will be persecuted in Guatemala because of membership in a particular social group and that she has suffered past persecution in Guatemala account of that membership.

An applicant for asylum bears the evidentiary proof and persuasion in an application for asylum under Section 208 of the Act. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987); Matter of V-T-S-, Int. Dec. 3308 (BIA 1997). 8 C.F.R. Section 208.13(a).

To establish eligibility for a grant of asylum, an applicant demonstrate that she is a refugee within the meaning of the Section 101(a)(42)(A) of the Act, 8 U.S.C. Section 1101(a)(42).

Section 208 of the Act. That section defines a refugee as

any person who is unable or unwilling to return to his or home country because of persecution or well-founded fear of persecution on the account of on account of race, religion, nationality, membership in a particular social group or political opinion. See also INS v. Elias-Zacarias, 502 U.S. 478 (1992)

An applicant for asylum has established a well-founded fear if she presents specific facts establishing that she has actually been a victim of persecution or if she shows that a reasonable person in her circumstances would fear persecution if she were returned to her native country. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of Mogharrabi, *supra*. An asylum applicant must also demonstrate that he merits such relief as a matter of discretion by this Court.

An applicant is required to present specific facts, object to evidence to prove either past persecution or a good reason to fear future persecution. INS v. Cardoza-Fonseca, *supra*. It is only after objective evidence sufficient to suggest a risk of persecution has been introduced that the alien's subjective fears and desire to avoid the risk laden situation in his or her native land becomes relevant. *Id.* The subjective component requires a showing that the alien's fear is genuinely objective. This component requires a showing by credible, direct, and specific evidence in the record of facts that would support a reasonable fear that the petitioner faces persecution. Diaz-Escobar v. INS, 782 F.2d 1488 (9th Cir. 1986). What is critical is that

alien prove his fear is subjective and genuine and objectively reasonable. Id. As low as a ten percent chance of persecution is sufficient to support a well-founded fear of persecution. INS v. Cardoza-Fonseca, supra. Harbinger Singh v. Ilchert, 623 F.3d 1301 (9th Cir. 1995)

The petitioner cannot simply prove there existed generalized or random possibility of persecution in their native country, she must show that she is at particular risk. That is, that her predicament is appreciably different from the dangers faced by her fellow citizens. Kotasz v. INS, 31 F.3d 849 (9th Cir. 1994), Goodis v. INS, 782 F.2d 1463 (9th Cir. 1986). However, no singling out is required if the alien establishes a pattern or practice of persecution in his country of a group of persons similarly situated to him on account of one of the five enumerated grounds and he establishes his inclusion and identification with such group. 8 C.F.R. Section 208.13(b)(2). Where the evidence of the persecution directed at a particular group is extensive, the level of individualized risk that must be shown is lower. Hoxha v. Ashcroft F.3d (2003, W.L. 346979 9th Cir. February 18, 2003).

An alien's own testimony may be sufficient to prove persecution where that testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of her claim. See Matter of Dass, 20 I&N Dec. 120 (BIA 1989). Matter of Mocharabi, supra.

An alien may also establish statutory eligibility for asylum by demonstrating that she has been persecuted in the past on account of political opinion and any other ground enumerated in the Act. § U.S.C. Section 208.13(b)(1). Matter of H-, Int. Dec. 3276 (BIA 1996); Matter of Chen, 21 I&N Dec. 16 (BIA 1989); Harbinger Singh v. Ilchert, *supra*.

An alien who has established past persecution is presumed to have a well-founded fear of future persecution. § Section 208.13(b)(1)(i). Matter of Chen, 20 I&N Dec. 16 (BIA 1989), and she need not show countrywide persecution in order to establish this presumption. Harbinger Singh v. Ilchert, *supra*. The burden then shifts to the Government to attempt to prove that asylum or withholding should be denied in the exercise of discretion by proving that the respondent would be safe in other parts of the country or attempt to rebut the presumption by proving that there has been a fundamental change in circumstances, such that the applicant no longer has a well-founded fear of persecution. Even when the Government proves one of these points, however, an alien may still warrant a discretionary grant of asylum in some circumstances. One circumstance is where the past persecution has been particularly severe or atrocious. See 8 C.F.R. Section 208.13(b)(1)(iii)(A) Matter of Chen, *supra*; Kazlauskas v. INS, 46 F.3d 902 (9th Cir. 1995). In other circumstances where the applicant has established that there is a reasonable possibility that she may

suffer other serious harm upon removal to that country. 8 C.F.R. Section 208.13(b) (1) (iii) (B).

PARTICULAR SOCIAL GROUP

In order for the respondent to establish eligibility for relief based upon her membership in a particular group, she must establish that the group is recognizable as a particular social group under the Act and that she possesses the traits to make the group so recognizable. See, for example, Sanchez-Trujillo v. INS, 801 F.2d 1571 (9th Cir. 1986). It is held in Matter of Acosta, *supra*, 233, persecution on account of membership in a particular social group refers to persecution that is directed toward an individual who is a member of a group that share common and immutable characteristics. The Ninth Circuit Court of Appeals has held that a particular social group is a group united by voluntary association, including a former association or an innate characteristic that is unfundamental to the identities or consciousness of its members, that members either cannot or should not be required to change. Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000). The Board of Immigration Appeals has opined that the share characteristic must be an innate one, such as sex, color or kinship ties, or in some circumstances, it might be a shared past experience, such as former military leadership or land ownership. Matter of R-, Int. Dec. 3276 (BIA 1996) Only when this is the case does the mere fact of group membership become something comparable to the other grounds of persecution

under the Act, namely something that is either beyond the power of the individual to change or it is so fundamental to her identity or conscious that it ought not to be changed. Id. Matter of Kasinga, Int. Dec. 3278 (BIA 1996).

An example of a particular social group would consist of the immediate members of a certain family, the family being a focus of fundamental affiliation concerns and common interests. A well-founded fear may, hence, be on account of membership in a family. Hernandez-Ortiz v. INS, 777 F.2d 509 (9th Cir. 1985). Lwin v. INS, 144 F.3d 305 (7th Cir. 1998). But see Estrada Pasadas v. INS, 924 F.2d 916 at 919, where the Court said that persecution based upon family membership does not qualify as persecution on account of membership in a particular social group so as to qualify an alien for political asylum, where the family consisted the cousin of an unidentified degree, an uncle, and relatives on her mother's side of the family.

When persecution is inflicted by a nongovernmental entity, an applicant for asylum must show that his persecutor is someone the government is unable and unwilling to control. Sangha v. INS, 103 F.3d 1482 (9th Cir. 1997). Police in action in the face of persecution by nongovernmental groups suffices. Navas v. INS, 217 F.3d 646, 656, n. 10 (9th Cir. 2000). Children, their families, society and the government may qualify as a particular social group. This is particularly true where the government demonstrates deliberate indifference and outwardly

targets them for harm. They share a common immutable characteristic. They are children who are forced to live on the streets due to government neglect. Their most basic needs are unmet due to this neglect, because the children are susceptible to exploitation and crime. They search out other similarly situated children to form social groups, which serve as substitute families. Each member cannot change his status in the group because the government provides no opportunities for street children to advance their status.

JUVENILE CONSIDERATIONS

The Handbook on Procedures and Criteria for Determining Refugee Status, Office of the United Nations High Commissioner for Refugees, Geneva January 1992, hereinafter referred to as Handbook, under the 1951 Convention and the 1967 Protocol relating to the status of refugees provides special consideration for juvenile asylum applications in Sections 213 through 219.

A child applicant must, of course, meet the statutory definition of a refugee. The United Nations High Commissioner for Refugees Handbook states that the definition of a refugee applies to all people regardless of their age. See Handbook, Section 213 at 50. Sensitivity to the age of the child, however, may affect the analysis of his or her status. Although the same definition of refugee applies to all individuals regardless of their age and the examination of the factual elements of her claim of an unaccompanied child, in particular regard should be

given to circumstances, such as the child's stage of development her possibly limited knowledge of conditions in the country of origin, and the significance to the legal concept of refugee status as well as her special vulnerability. Guidelines on policies and procedures in dealing with unaccompanied children seeking asylum. United Nations High Commissioner for Refugees, February 1997, Sections 9.4 and 10.5, hereafter referred to as Guidelines. Thus, when a child must meet the definition of a refugee, the evidence that the child is able to present regarding his or her claim should be carefully evaluated by a case by case basis.

The harm a child fears or has suffered may be relatively less than that of an adult and still qualify as persecution, given the variations of the psychological make-up of individuals in the circumstances of each case. The interpretation as to amounts persecution are bound to the Handbook, Section 213 at 50.

The objective component of an applicant's well-founded fear does not have to be solely based upon his or her preference. See Handbook, supra. Section 43 at 43. Indeed, experiences of the applicant's friends, relatives, or other members of the same racial or social group may well show that the applicant's fear of persecution is well-founded. Id. See also Matter of Villalta, 20 I&N Dec. 142 (BIA 1990); Ramos-Vasquez v. INS, 57 F.3d 857 (9th Cir. 1995). Each situation must be

assessed on its own merits. However, all factors such as a person's character, background, influence, wealth, or outspokenness may lead to the conclusion that his or her fear of persecution is well-founded. See Handbook, supra. Section 43 at 13.

For child asylum seekers, the balance between subjective fear and objective circumstances may be more difficult for a court to assess. The Handbook suggests that children may, under the age of 16, may lack the maturity to form a well-founded fear of persecution, which would require an adjudicator to give more weight to objective factors. See Handbook, supra. Sections 215, 217 at 51. Minors under 16 years of age may have a fear and a will of their own, but these may not have the same significance as in the case of an adult. Id., Section 216.

In general, the applicant's fear should be considered well-founded if the applicant can establish to a reasonable degree that her continued stay in that country has become intolerable on the basis of one of the enumerated grounds or would for the same reasons be intolerable if she returned there. See Handbook, supra. Section 42 at 12-13.

CREDIBILITY AND FINDINGS

The Court has closely observed the testimony demeanor of the respondent, in particular, and find testimony to be credible and truthful. Her testimony is internally consistent. It is consistent with the Exhibits, it is

consistent with country conditions in Guatemala per the United States Department of State and other authorities in evidence before the Court. Her testimony has been very detailed, sincere, straightforward, and delivered without provocation.

The inconsistencies in Dr. McCorder's report do not go to the heart or essence of the respondent's asylum claim. The Government, in two hours of testimony by the respondent, has disclosed one discrepancy. That discrepancy is whether she was naked or clothed during sexual abuse by her stepfather. This is a mere detail. The essence of the claim is consistent, given the level of abuse and harm all of her life and her mental state and psychological condition. It is amazing that she is able to remember, relate, and relate as detailed as she has today.

FACTS

The respondent is a female, 17 years of age, from Guatemala and her 18-month-old female child. The respondent, and furthermore, in these facts will refer to 17-year-old female.

has four siblings, three brothers, of whom I believe all are older and one sister who the Court believes is three years of

The respondent lived with her parents until she was five or six years of age. Her father died when she was very young. When she was five or six, her mother took up with another man, whom she refers to as her stepfather. She did not have a good relationship with her mother or her stepfather. Her stepfather mistreated the respondent and respondent's siblings and her

mother. The respondent's mother beat her, she struck her with hands and electric cords. She also mistreated the respondent's siblings. The respondent worked with her making tortillas.

The respondent's stepfather also beat that the respondent on a regular basis, three or four times a week. He wanted to bathe her and do things to her and she refused. He would beat her and kick her. He once hit her on the head with a broomstick. She has scars on her left breast and knee. The scar on her knee resulted when her father kicked her down the stairs and she struck her knee on the way down. The scar on her right breast was where he kicked her in the breast and the tip of his shoe caused a laceration in her breast. He also sexually abused and exploited the respondent on a regular basis.

Her stepfather would put the respondent between his legs and fondle her sexually. He would do whatever he wished to do to

He tried to rape her regularly. The respondent was aware that he was "excited" on such occasions. The respondent's mother worked and when she would return from work, the respondent would report what her stepfather was doing to her, but her mother would not believe her and accused her of lying.

Her stepfather also abused her siblings, using his hands, wires, or whatever was available. Her siblings have various scars from such beatings. He required her siblings to go to work in the construction business with him and the work was very

difficult. Her stepfather once almost killed one of her brothers when he hit him in the back with a machete. Her brother was in the hospital for a week or so.

Her stepfather regularly beat and kicked the respondent, also her mother. She has spoken to her mother since arriving in the United States and learned that her mother has recently miscarried, due to being kicked by her stepfather. Her mother cannot leave the house because she has no money to support herself and her family.

After some three years of abuse by her stepfather, at the age of eight, she went to live with her godmother. When she informed her mother that she was going to do this, the reply was something along the lines of, one less mouth to feed. She was with her godmother almost a year. Also in the house was her godfather and their children. Her godmother sold marijuana and used the respondent to package the drug and transport the drugs. She had a poor relationship in the house. Her godmother's children beat the respondent and treated her as a servant. However, she was permitted to attend school during this period of time.

The respondent left this abusive environment and went to the streets when she was approximately ten years of age. She lived on the streets for approximately two years. At the most, she would have maybe been 10 and 11. She slept on the streets or in the dump. She ate items that she was able to find at the dump or

she begged.

She had a thoroughly miserable life. She tried to commit suicide on one or more occasions, due the sexual abuse by her stepfather, the danger of the street and the gang abuse.

She joined the 18 gang when she was some 10 years of age. She had no other choice. She had no food to eat, no place to

The gang, or at least her particular group or cell of the gang, rented a room for everyone to live in and then the various cells would work to support the group. Apparently there were some eight of them sharing this room or apartment. The respondent went to work making tortillas. Other members of the gang stole and had violence with other rival gang members and did drugs. The respondent never used drugs. On one occasions, she stole a wallet. This was before she joined the gang.

When she was 12 years of age, she married a fellow gang member. After two years, he left. She was pregnant at this time. He, as well as the other members of the respondent's group or cell, were targeted for death by the other neighborhood rival gang, the MS Gang, and he fled to avoid being killed. The rival gang left a list on the door of the apartment of the respondent's group. The respondent was no. six on the list to be killed. She saw other members of the group and her friends killed. The list

left at the house by the rival MS Gang in the neighborhood. It was a blood stained piece of paper with eight names on it and these were the eight names of the people living at the apartment

Other members of this group that the respondent lived with had killed the neighborhood rival gang leader. The respondent was not involved nor was she present at the time of that murder. However, because she was a member of the cell or the group, she was included in the targeted list.

The police in Guatemala treat street children very poorly. They beat them with their batons, they detain them and harass them, they even rape them. They do not offer any help or assistance. The government and society ignore the street children.

When her baby daughter was four months of age, she left Guatemala for the United States. She was afraid for her own life as well as that of her baby. En route, coyotes bringing her to the United States raped her. She was raped in front of her baby at apparently repeated times.

Upon her arrival in the United States, she turned herself into Immigration. The respondent still has nightmares about the abuse of her stepfather, and the dangers and misery of life on the streets, and the violent deaths that she has witnessed. She learned that the boy who was no. seven on the list was killed. This was after she came to the United States. He who had given her the necessary money to leave Guatemala and come to the United States for her safety. She has since her arrival in the United States attempted suicide on at least one occasion due to the nightmares that she has had and the depression and

helplessness that she fears.

The respondent, among other diagnoses, suffers from post-traumatic stress disorder, PTSD, major depressive episode depression, markedly diminished interest in pleasure in all or almost all activities, insomnia, feelings of worthlessness and guilt, recurrent thoughts of death and suicidal tendencies, concentration difficulties. These symptoms are consistent with child sexual abuse, child neglect, witnessing violent death of other people and receiving death threats. The respondent is convinced that if she returns to Guatemala, she will be killed. In the United States she is able to cope with her conditions. At Southwest Key, she has an adequate level of care, medication and a stable environment.

Child abuse in Guatemala is prevalent. Physical and sexual abuse by parents and stepparents is common. It is a culture where parents can do as they please. The police and society do not interfere with the family unit.

There are a few government agencies that work to help these victims. Children are pushed out of the family on to the streets. It is not the child's choice. Children feel that nothing could be worse than a situation at home, but soon learn that life on the street is, in fact, much worse. In Guatemala about a fourth of these street children are females. Females are even more vulnerable on the streets, they're more susceptible to sexual abuse and exploitation than males. Even the police

victimize the children and sexually exploit, especially females. Few police officers are prosecuted for abuse of these children. There is a lack of interest by the government and by society. These street children are breeding a second generation of street babies. Many die, many are stolen at gunpoint, the chances of survival for street babies with street child mothers is very minimal. The murder of street children is not uncommon. The murder rate is going up, few are investigated. Police are often implicated in such murders and also in rapes.

There are very few social services available to the street children, almost none. Perhaps there are fewer than 100 services offered to take care of a few hundred of these children when the total exceeds 10,000. The children often look upon gangs as surrogate families and others join the gangs for survival. The situation between gangs is "open warfare" on the streets. It is a brutal environment and subculture.

The police views all street children as criminals, abuse and harm them.

FINDINGS AND CONCLUSIONS

The respondent's persecution was initially caused by her membership in a particular social group, comprising of her immediate family. Her mother and her stepfather abused the respondent simply because she was a member of this nuclear family. There is no evidence that the respondent would have been abused by her mother or stepfather if she were not part of her

family. Thus, the respondent's persecution results from no other reason that she is a member of her family.

This initial persecution by her parents was exacerbated when she was forced from the house and she had to flee to escape an intolerable situation. The respondent's persecution then became caused by her membership in a particular social group comprised of abandoned street children. She is abused by society and the government simply because she is a member of this group. There is no evidence that the respondent would be abused if she were not part of this particular social group. Thus, the respondent's persecution as a street child results from no other reason that she is a member of the abandoned street children in Guatemala.

The government's efforts to protect its children is ineffective. The police often exploit and abuse the children, themselves. No shelters are provided or the number and quality of shelters provided with the government is grossly inadequate, so the children are left to fend for themselves. Street children are murdered regularly, most of the murders are not properly investigated. In fact, many are believed to have been committed by the police. If street children avoid being murdered, they still face the perils of hunger, lack of shelter, lack of basic needs and services, exploitation, prostitution, gang violence and HIV infection. The respondent has experienced first hand the ineffectiveness of the government's response and is a prospect of continued abuse with no realistic end in sight, that a 16-year-

old to travel alone with her infant daughter from her home in Guatemala to a completely foreign country.

Child abuse by parents in Guatemala is very rare. The respondent was a victim of physical and psychological and sexual abuse by her parents. Primarily her stepfather, but physical abuse by her mother. She fled to the streets to escape this abuse. She was literally forced from the family the streets.

Abandoned street children in Guatemala are severely persecuted. The background country conditions even include the Department of State current report on Guatemala establishes a chilling pattern of persecution in Guatemala of abandoned street children, a particular social group. The Department of State reports at page 26 through 27, states in pertinent part as follows, 51 percent of the population is under 18 years of age. 83 percent live in poverty. 200 throughout the country and approximately 10,000 children in gangs and 6,500 children living on the streets. More than 450 children have disappeared since 1996. The reports of child abuse continue to increase. This abuse includes physical abuse, and psychological abuse. Sexual exploitation of children is a growing problem, including child prostitution and the trafficking of children for sexual purposes of prostitution. There are more than 15,000 sexually exploited boys and girls in the country. Child labor is a problem, abuse of street children remains a

serious problem. The most credible estimates put the number of street children at approximately 6,500 nationwide. A majority of the street children run away from home after they were abused. Criminals often recruit these children into thievery or prostitution rings. Drugs, prostitution, gangs pose the greatest danger to this group during the year.

The government and a number of nongovernmental organizations operate youth centers, but the funds devoted to them are not sufficient to alleviate the problem. A new phenomenon developed as street children began giving birth to a second generation of street children called street babies. The persecution is by the government and by society and the persecution is passive, that is, neglect, and that is active, that is exploitation, assault, and murder. The respondent is a member of this particular social group. She was forced to the streets to escape persecution by her family, her mother and her stepfather. Temporary refuge with her grandmother was almost as abusive. Thereafter, she suffered all the horrors of life as an abandoned street children for approximately six years or so.

The respondent's fear of continued persecution in Guatemala is genuine and is based upon objective evidence. The record states that she was terrified to return to the streets of Guatemala and the dangers associated with it. She is also terrified for the safety of her infant daughter. She has suffered past persecution. There has been no fundamental change

in circumstances nor can she relocate and avoid persecution in Guatemala.

Additionally, given the severity and the atrociousness of this persecution, she is entitled to a humanitarian grant of asylum. The abuse began from the earliest moments that the respondent can recall intensified approximately at the age of six when she acquired a stepfather. Initial abuse was by her mother and stepfather, normally figures that are considered to be nurturing and protective. She was forced to the streets at age of nine or 10. She suffered the horrors of abuse and neglect by the government when she was approximately 16 years of age. Once she was on the streets, she joined a gang to. was targeted for death, she escaped to the United States with her infant, being raped in route.

The respondent had a thoroughly miserable life for some 16 years, from her earliest memory. She has known nothing but fear and suffering and pain until she arrived in the United States. She continues to have problems due to the memories of her life and her fear of returning to Guatemala.

The Court will grant asylum as a matter of discretion.

The following orders are hereby entered:

ORDER

IT IS HEREBY ENTERED that the applications for asylum is granted.

IT IS FURTHER ORDERED that the respondent's infant daughter
is derivatively granted asylum through her mother.

JOHN W. RICHARDSON
Immigration Judge

EXHIBIT 9

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

CONNOLLY, ADAM
[REDACTED]

IN THE MATTER OF [REDACTED]

FILE A 088-773-323

DATE: Jul 22, 2011

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
P.O. BOX 8530
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. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

OTHER: _____

COURT CLERK
IMMIGRATION COURT

CC: DHS, ICE, OFFICE OF THE CHIEF COUNSEL
31 HOPKINS PLAZA 16TH FLOOR
BALTIMORE, MD 212010000

FF

IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

In the Matter of

Case No.: A088-773-323

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 7.22.2011.
This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

- ☐ The respondent was ordered removed from the United States to HONDURAS or in the alternative to
- ☐ Respondent's application for voluntary departure was denied and respondent was ordered removed to HONDURAS or in the alternative to
- ☐ Respondent's application for voluntary departure was granted until upon posting a bond in the amount of \$ _____ with an alternate order of removal to HONDURAS.

Respondent's application for:

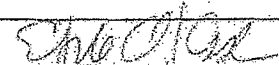
- ☒ Asylum was ☒ granted ☐ denied ☐ withdrawn.
- ☐ Withholding of removal was ☐ granted ☐ denied ☐ withdrawn.
- ☐ A Waiver under Section _____ was ☐ granted ☐ denied ☐ withdrawn.
- ☐ Cancellation of removal under section 240A(a) was ☐ granted ☐ denied ☐ withdrawn.

Respondent's application for:

- ☐ Cancellation under section 240A(b)(1) was ☐ granted ☐ denied ☐ withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
- ☐ Cancellation under section 240A(b)(2) was ☐ granted ☐ denied ☐ withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Adjustment of Status under Section _____ was ☐ granted ☐ denied ☐ withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
- ☐ Respondent's application of ☐ withholding of removal ☐ deferral of removal under Article III of the Convention Against Torture was ☐ granted ☐ denied ☐ withdrawn.
- ☐ Respondent's status was rescinded under section 246.
- ☐ Respondent is admitted to the United States as a _____ until _____.
- ☐ As a condition of admission, respondent is to post a \$ _____ bond.
- ☐ Respondent knowingly filed a frivolous asylum application after proper notice.
- ☐ Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.
- ☐ Proceedings were terminated.

☐ Other:

Date: Jul 21, 2011


ELIZABETH A. KESSLER
Immigration Judge

Appeal: Waived/Reserved Appeal Due By:

United States Department of Justice
Executive Office for Immigration Review
Immigration Court
Baltimore, Maryland

In the Matter of

In Removal Proceedings

Case #

Respondent

Charge: Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i)

Applications: Asylum (INA § 208); Restriction on Removal under INA § 241(b)(3);
Relief under the Convention Against Torture

Individual Hearing Date: July 21, 2011

Appearances: Adam Connolly, on behalf of Respondent;
Veronica Puvak, on behalf of the Department of Homeland Security

Decision and Order of the Immigration Judge

The Respondent is a native and citizen of Honduras who was born in 1991. He entered the United States on May 9, 2008. He was issued a notice to appear (NTA) on May 15, 2008. At a master calendar hearing on August 13, 2009, Respondent admitted all allegations and charges in the NTA. Respondent has requested asylum, restriction on removal under INA § 241(b)(3), and relief from removal under the Convention Against Torture. The Court has found that the Respondent is removable by clear and convincing evidence. *See* INA § 240(c)(1)(A). In the event that Respondent is removed, the country designated for removal is Honduras. Still at issue before the Court is whether Respondent is eligible for relief from removal.

DHS confirmed on the record that all necessary background and security checks were current and complete.

Statement of the Case

The following documentary evidence was considered by the Court and admitted into the record: Exhibit 1, the Notice to Appear; Group Exhibit 2, the Respondent's Asylum Application and Supporting Material (A-C); and Group Exhibit 3, the Respondent's Additional Material

Tabbed A-RR.

The following individuals appeared in court and presented testimony: the Respondent; and his sister, [REDACTED] (3/F).

Briefly summarized, the Respondent testified that he is now 20. He was born on February 9, 1991. His father registered him on the 7th, but he was born on the 9th.

He has four brothers and sisters (one brother and three sisters). He has one sister in Honduras; the other siblings are in Maryland.

The Respondent lives in Columbia, MD with his two younger brothers. Their mother lives with them. His father lives in North Carolina.

He thought he was between 16 and 17 when he came to the U.S.

He came to the U.S. because he wanted to be with his mother. The Respondent was seven or eight years old when his mother came to the U.S. He was two when his father came to the U.S.

When his mother came to the U.S., she left him with his grandparents. His grandfather is [REDACTED]. His sisters lived with them. That is [REDACTED] and [REDACTED].

He lived with his grandfather about an hour by car away from a big city.

They lived in a house that was half wood and half cement with a tin roof. When he came, there was no electricity but they have since connected it with electricity. There was no gas to cook with. They would use a stove with wood.

He was four years old when his grandfather began to abuse him. He hit him almost every day. He hit him with a belt and with a rope. When he was a kid, he hit him with a whip used on horses. He beat him because he was crying and wanted food.

When he was drinking, he would send the Respondent to fetch liquor. Because there was no electricity, he was afraid to go and he would hit him. He would beat him two or three times per week. He beat his sisters too. He was always drinking and was very aggressive.

His grandmother tried to protect him. It did not work at all because he would hit her too.

When he was fourteen, he tried to get away. He went to the streets so that he would not beat him.

He never told the police about the abuse. The police were one hour away from where he lived going by car.

He did not think that the police would have done anything because in Honduras it is common for people to beat their children.

His grandfather had more than ten grandchildren, between thirty and forty. Some lived in the same town. His grandfather never beat the other grandchildren. That is because they did not visit him because he drank too much. Also, some of them were abandoned by the father but not the mother.

The Respondent went to school up until the fourth grade because his grandfather withdrew him from school. He said that he needed help on the farm. He was nine years when he started working on the farm. The Respondent would cut and haul the coffee to the house. The Respondent also used to sow corn and beans.

His grandfather would ask him to bring him liquor every day.

The Respondent worked on the farm five days a week, and on the weekends he had to bring animals. He would get up at dawn at 5 and leave to work at 6; he would work until 3 or 4 but then he would come home and take the animals out.

He was kidnaped when he was just 8 years old. His grandfather had a worker who said he knew the U.S. and would bring the Respondent here. The Respondent thinks he lied to the Respondent because he brought the Respondent back to his grandfather's house. The Respondent was gone for five days. The man took the Respondent to the border of Honduras and Guatemala, but he did not know that until later. The man did not hurt him. He just lied to him. He did not think he was right in his head.

He thinks his family complained to the police, but the police in Honduras do not do much and are corrupt.

When he returned, his family was there and was worried. A friend of the family brought the Respondent. The guy who took him stayed in a village. His family did not know where he was when the Respondent was gone.

His family (his sister and cousins) looked for him everywhere but did not find him.

He first realized he had difficulty hearing all the time when people were not speaking loudly. At school last year, he was examined. He has two ruptured ear drums, but one is worse. His grandparents never took him for medical treatment for his ears or hearing.

He first tried drugs when he was thirteen or fourteen. It was cocaine. He got the drugs from a woman. It was his woman. He lived with her. She was thirty to forty years old. He then said that he was sixteen when he started to see her. He was asked how she began to give him drugs when he was thirteen or fourteen. He said he began to use drugs when he was thirteen, but that she began to give him drugs when he was sixteen. A friend gave him drugs when he was

younger. He had sexual relations with the woman, which she initiated.

The Respondent last used drugs when he was coming here and was in Mexico. He used drugs in Mexico because the coyotes told him that would give him energy. The coyotes gave him the drugs. (The psychological evaluation notes that when he was close to the U.S.-Mexican border he walked with smugglers for seven days through the desert without food and that the smugglers gave him continuous doses of cocaine to keep him aroused and energized. See Group Exhibit 3 Tab. C page 30.)

He has been able to stop using drugs because when he came immigration caught him in Arizona and took him to Tampa to a detoxification clinic where he was for seven months.

He came to the U.S. because his mother lived here. He described his travels to the U.S.

His mother paid for him to come to the U.S.

Immigration sent him to Boys' Town in Miami. He was there for almost a month. Then he was sent to Tampa. At Tampa, he got medical care and medication. The medicine was to help detoxify him. They gave him many medicines, but he did not know what they were for. He was at Tampa for seven months. Then his mother went to bring him. She had permission to take him.

She took him to Columbia, MD.

She was taken to doctors. He needed more treatment. He took medications, but stopped when he did not need them. He did not remember when he stopped. The medicines made him feel bad. They clouded his vision. He had to use glasses. When he stopped them, he regained his normal vision.

He goes to school in Maryland; he goes to River Hill High School in Maryland.

He has gone there for about two and a half years. He is in ninth grade.

In the U.S., he has never been in any trouble with the police.

If he is allowed to stay in the U.S., he plans to learn English and get a job.

He is afraid of being deported. He has nowhere to live in Honduras. He cannot live with his grandfather because he is an alcoholic and is dangerous. He can't live with [REDACTED] because she is in a different state. She is studying in a boarding school. She is now 18 or 19.

His mother had problems with the ex-boyfriend. That is why they sent [REDACTED] to another state. He could not live anywhere else in Honduras. The people he knows have a lot of children and are very poor.

They did not have money to get a lawyer.

On cross-examination, the Respondent answered additional questions.

None of the other grandchildren lived with the grandparents.

He lived with the older woman before he came to the U.S. He lived with her for about one year. He explained he would go to her house at night for a while. He would return to his grandparents' house during the day.

He was about fourteen the last time his grandfather hit him.

He thinks it is because he was big and could run away.

He is not on any medications now.

He has not spoken to relatives about going to live with them.

He is going to school full-time. In the fall, he is not sure what grade he will be in.

He plays ball during the days in the summer. He plays with others.

He thinks things are going well for him.

He was asked if he was having any particular problems in his life at this point. He said he is having problems in math class. He is not having other problems.

His sister, [REDACTED] (3/F) then testified.

The Respondent is her brother. She is 22 years old. She was 15 when she came to the U.S. She came to the U.S. because her mother was in the U.S. and because she suffered domestic violence while in Honduras. This was by her grandfather. She provided some additional detail.

He would hit her hard. He would get mad at her grandmother when she tried to help. At one point, he hit the witness in the leg and she was taken to the hospital. He told the people in the village she was pregnant. She clarified that he hit her below her belly.

The other grandchildren lived with their parents. They did not face the same abuse.

She did not go to the police. The police are far away and do not cooperate on these matters.

She remembers when her brother was kidnaped. Her grandfather sent her brother with an unknown man to take the animals into the mountains. They took the animals, and then he took

her brother for five days. They looked for him for five days. He reappeared. They were all surprised, but he did not talk. He stayed silent. When eventually he did talk, he told his sister that they ate food from the brush and that he was told by the man that he would be taken to the U.S. where he would get to eat ice cream and where you could push a button on a machine and ice cream would come out.

He came back very, very strange and he spoke nonsense. He used to tie the dogs and put her sister's clothes on them. She saw him behaving strangely until he came to this country. She thinks that the man did something bad to him but that he does not want to tell.

If the Respondent was deported, he would have nowhere to go other than the grandfather's house. The grandfather is very aggressive. [REDACTED] lives in a house for students, so he could not live with her. She noted her mother was accompanied by a man from the same town and suffered domestic violence in the U.S. He told her if she called the police she would suffer the consequences beginning with her daughter in Honduras. He has brothers and nephews; it is an evil family and they work with drug people.

She thinks if he was in Honduras, he would relapse into drugs and could not live alone.

She lives close to [REDACTED].

Since he has been in Maryland, he has been doing much better. He is going to school and playing soccer. He is well-behaved. He has not been in trouble. He has many friends. They are his classmates. They are quiet.

Both sides presented brief closing arguments, which have been considered but will not be repeated here in their entirety. Respondent's counsel argues that he was abused on account of his membership in the family social group and also on account of his particular family group of having been abandoned by their parents. Counsel also notes that the Respondent has had a history of mental illness, but has been doing very well.

The Department of Homeland Security agrees that the Respondent is credible. DHS argues that the asylum application is subject to the one-year bar because he did not file for a little over a year after he turned 18. DHS argues that the abuse was not necessarily on account of a particular social group but because the grandfather was aggressive. DHS notes that he beat the grandmother as well. DHS argues that the social group is too specific in that it is not socially visible to the rest of the community. DHS also argues that there are changed circumstances in that the Respondent is not a child anymore. DHS notes that he could go to the police at this point and could likely relocate safely internally. DHS also argues that there is no showing that the police would be unwilling or unable to control the violence, particularly since the Respondent has now aged out of the social group. DHS notes that in this year's country report it indicates that the Honduran government is making efforts against child abuse.

Respondent's counsel notes that after the Respondent turned eighteen (in February 2009)

there were still circumstances making it difficult for him to file for asylum. In January 2009, he was under medication. Counsel notes it took some time to get the evaluation done and that there were hearing impairments, economic difficulties, and competency issues. The psychological evaluation was done on February 2, 2010. The asylum application was filed February 25, 2010.

Applicable Law

A. Asylum. To establish eligibility for asylum under section 208 of the Immigration and Nationality Act, an applicant must show that he or she is unable or unwilling to return to his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion. See INA § 101(a)(42)(A); *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997). Under the Real ID Act amendments, effective May 11, 2005 and applicable to this case, the applicant must demonstrate that one of the statutorily protected grounds would be "at least one central reason" for persecuting the applicant. See INA § 208(b)(1)(B)(i).

The applicant bears the burden of proof, and the court must make a threshold determination of credibility. See *Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998). An applicant's own testimony may be sufficient to meet the burden of proving an asylum claim. See *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); 8 C.F.R. 1208.13(a). Under the Real ID Act amendments, effective May 11, 2005, INA § 208 now explicitly provides that corroboration may be required if it can reasonably be obtained and that credibility is to be assessed under "the totality of the circumstances" considering "all relevant factors." See also *Matter of J-Y-C-*, 24 I&N Dec. 260 (BIA 2007). The Fourth Circuit requires that "[i]n assessing credibility, the immigration judge . . . must take into account both the petitioner's testimony and his or her corroborating evidence." *Kourouma v. Holder*, 588 F.3d 234 (4th Cir. 2009).

Persecution has been interpreted to include serious threats to an individual's life or freedom, or the infliction of significant harm on the applicant. See *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005). Persecution is generally assessed cumulatively, and relevant incidents are not to be evaluated in isolation. See *Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2009). A death threat qualifies as persecution. See *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011).

INA § 208 and 8 C.F.R. § 1208.4(a)(2) set a one-year deadline on the filing of an asylum application. Under INA § 208(a)(2)(B) and 8 C.F.R. § 1208.4(a)(2), an applicant has the burden of proving by "clear and convincing evidence" that an application has been filed within one year of the date of the alien's arrival in the U.S.

Exceptions to the deadline apply, however, where "the alien demonstrates to the satisfaction of the Attorney General either the existence of changed circumstances which materially affect the applicant's eligibility for asylum or extraordinary circumstances relating to the delay in filing an application." INA § 208(a)(2)(B) & (D).

Even where an exception to the 1-year time limit applies, the applicant is to file an asylum application "within a reasonable period" given those circumstances. See 8 C.F.R. §§ 1208.4(a)(4)(ii), 1208.4(a)(5)(iv).

No published precedent from the Board or the Fourth Circuit delineates precisely when a victim of domestic violence may be entitled to a grant of asylum. The Department of Homeland Security has acknowledged in briefs filed in other cases that a victim of domestic violence may be a member of a cognizable social group and may be able to show that the abuse was or would be persecution on account of such membership. Asylum claims based on domestic violence certainly raise a number of challenging issues.

Whether the particular social group identified in a domestic violence case is cognizable under the INA is a key threshold issue. The Board has held that, to be cognizable under the statute, members of a "particular social group" must share a "common immutable characteristic," which may be an innate characteristic or may be a shared past experience. In either case, it must be a characteristic that members of the group either cannot change or should not be required to change. The Board has also noted that the social visibility of the members of a claimed social group is an important consideration in evaluating whether a set of individuals is a particular social group for purposes of asylum. See *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007) (factors to be considered in determining whether a particular social group exists include whether the group's shared characteristic gives the members the requisite social visibility to make them readily identifiable in society and whether the group can be defined with sufficient particularity to delimit its membership; also noting that the group must not be indeterminate or too vaguely defined); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985). The Fourth Circuit has recognized that family ties can provided the basis for a cognizable particular social group under the INA. See *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011).

Whether the government is unable or unwilling to control the feared persecution is another difficult issue that arises in asylum cases based on domestic violence. Persecution at the hands of private individuals that a government is unable or unwilling to control can be the basis for a grant of asylum. *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000). This can be so even where the alien has not gone to government authorities to seek protection, provided that there is a sufficient showing that the government would be unable or unwilling to act. *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000). Where an applicant for asylum reported incidents of persecution to the police on several occasions, and they wrote a report but took no other action, a showing that the government is unwilling or unable to protect the victim may be made. *Matter of O-A- & I-Z-*, 22 I&N Dec. 23 (BIA 1998).

The nexus requirement must also be addressed in an asylum case based on domestic violence. In a Real ID Act case, a Respondent must demonstrate that a statutorily protected ground would be "at least one central reason" for the feared persecution. See INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007) (holding that in a mixed motive asylum case, an applicant must prove that race, religion, nationality, membership in a

particular social group, or political opinion was or will be at least one central reason for the claimed persecution). While it can be extremely difficult to get into the minds of persecutors, the BIA has stated that "an applicant does not bear the unreasonable burden of establishing the exact motivation of a 'persecutor' where different reasons for actions are possible." See *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007). The Board has reaffirmed that "an applicant need not show 'conclusively' that the persecution was, in fact, motivated on account of one of the five grounds protected under the Act[, rather] an applicant must produce evidence, either direct or circumstantial, from which it is reasonable to believe that the harm was or would be motivated in part by an actual or imputed protected ground." *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007)(citing *Matter of S-P-*, 21 I&N Dec 486, 489-494 (BIA 1996)).

B. Restriction on Removal Under 241(b)(3). To establish eligibility for restriction on removal (also referred to as withholding of removal) under INA § 241(b)(3), an individual must demonstrate a "clear probability" of persecution on account of one of the five statutorily protected grounds. See *INS v. Stevic*, 467 U.S. 407 (1984).

C. Relief from Removal Under the Convention Against Torture. To be extended protection under Article III of the Convention Against Torture, Respondent must establish that it is "more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. §§ 1208.16(c)(2), 1208.17(a). Under *Camara v. Ashcroft*, 378 F.3d 361 (4th Cir. 2004), in assessing a claim under the CAT an immigration court must consider "all evidence relevant to the possibility of future torture" and cannot rely solely on an adverse credibility determination to deny relief.

Analysis and Findings

A. Credibility. The Court has considered the documentary evidence in the record and the testimony presented, as well as the arguments of counsel. Based on the totality of the circumstances, the Court finds the Respondent credible. Taking into account the Respondent's cognitive and other mental issues, see, e.g., Group Exhibit 3 Tab C, the Respondent's testimony was sufficiently detailed and natural. His account was consistent with other information in the record and was supported by the testimony and statement from his sister [REDACTED], among other information.

B. One-Year Bar & Asylum. The Respondent entered the U.S. on May 9, 2008. He turned 18 on February 9, 2009. After he entered the U.S., he was sent to Boys Town in Miami and then for psychiatric treatment¹, followed by drug withdrawal treatment in Tampa for roughly

¹ This was in part because he displayed bizarre behaviors, to include an obsession with water and cleaning. He scrubbed a sink for an extended period of time, put a sandwich in water to make it easier to eat, and put a book in water in an effort to clean it. Staff at Boys Town reported that he screamed all night. He also had hallucinations and was aggressive. See Group

seven months. He was able eventually to secure pro bono counsel. Counsel represented that he needed time to obtain a psychological evaluation in order to prepare the asylum application. The psychological evaluation is dated February 2, 2010. See Group Exhibit 3 Tab C. The Respondent's asylum application was filed in court on February 25, 2010.

Under the regulations at 8 C.F.R. § 1208.4(a)(5), the term extraordinary circumstances may include, but is not limited to, (i) "[s]erious illness or mental or physical disability, including any effects of persecution or violent harm suffered in the past, during the 1-year period after arrival," and (ii) legal disability (including the applicant being an unaccompanied minor or suffering from a mental impairment) during the one-year period after arrival.

In this case, the Respondent entered the U.S. as an unaccompanied minor. He was just over seventeen years old. Not only was he an unaccompanied minor, but immigration officials and others responsible for his care and custody realized he was having serious psychiatric problems and sent him to a psychiatric facility and then to a drug recovery program. He also was diagnosed only in the last year or so with hearing loss. The Respondent was, fortunately, able eventually to secure pro-bono counsel. That counsel quite responsibly sought to obtain a psychological evaluation. That psychological report is dated February 2, 2010, and the asylum application was filed in court less than one month later.

Considering all of the above circumstances, the Respondent has demonstrated that he qualifies for the exception to the one-year filing deadline for extraordinary circumstances sufficient to excuse the delay in filing. He has also demonstrated that, due to the severe psychological effects he has suffered (which were likely in part due to the abuse he underwent throughout his childhood), he filed his application within a reasonable period given the circumstances in this case. As such, the Respondent's application for asylum is not subject to the one-year bar.

C. Burden of Proof & Persecution. The Respondent was subject to a childhood of severe physical, psychological, and emotional abuse at the hands of his grandfather. He was beaten from ages four to fourteen, to include with a whip and belt. Beatings occurred on an almost daily basis, and he was abused verbally and placed in frightening situations. His sisters were beaten as well. The extensive harm suffered by the Respondent while he was a child unquestionably constitute past persecution under the case law. See, e.g., *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005); *Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2009); *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011).

While the causes of domestic violence and child abuse can be difficult to ascertain and the motives of abusers hard to rationalize, I conclude as a factual matter that the Respondent has demonstrated that at least one central reason for the past persecution was his membership in the particular social group of the [REDACTED] siblings who were residing in the household in

Exhibit 3 Tab H:

Honduras with their grandparents. That group is sufficiently particular and socially visible, and case law certainly recognizes that family can be a cognizable social group. See *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011). Testimony and other evidence suggests that the grandfather singled out and severely abused Julio and his sisters. It is reasonable to conclude that he did so simply because they were his grandchildren living with him, and he wanted to take advantage of them and overpower them for that reason, perhaps among others.

The Respondent explained why he felt he could not go to the police. In part, he noted the police were not near, and he also noted that the police in Honduras are often unable or unwilling to help and are sometimes corrupt. Country condition information in the record and his sister's testimony support his concern. The Respondent has demonstrated that the police were unable to protect the Respondent and his siblings from the persecution, even though DHS is correct that the record reflects some efforts by the Honduran government to address the difficult problem of child abuse there.

The Court also finds that the Respondent could not have avoided the threat of persecution through internal relocation and that it would not be reasonable to expect him to try to relocate. He was subjected to severe abuse, and he has serious psychological issues and vulnerabilities.

The Respondent has accordingly demonstrated that he was subjected to past persecution on account of a statutorily protected ground.

Evidence of past persecution raises a rebuttable presumption that an alien has reason to fear future persecution. 8 C.F.R. § 1208.13(b)(1). This presumption may be rebutted by proving by a preponderance of the evidence that conditions in the country have changed to such a degree that there is little likelihood of present persecution. See *Ngariirih v. Ashcroft*, 371 F.3d 182 (4th Cir. 2004). In such a case, the burden is on DHS to demonstrate that there has been a "fundamental change in circumstances such that the alien no longer has a well-founded fear of future persecution." 8 C.F.R. § 1208.13(b)(1)(i)(A) & (ii).

DHS argues that the Respondent, who is now 20, is no longer a child and therefore has no well-founded fear of future persecution at the hands of his grandfather at this point. DHS has simply not met its burden of demonstrating that the changes are such that the Respondent would no longer have a well-founded fear of future persecution, which is often described as a ten percent chance of future persecution. The Respondent has ongoing psychological problems and cognitive issues and is quite vulnerable. He did not know of anywhere else he could go in Honduras. While he testified that when he was over 14 he could run away from his grandfather, he and his sister provided information that the grandfather is very aggressive and that he would beat their grandmother. The grandfather clearly has targeted the siblings for abuse, and there is no reason to believe that his animosity towards them has lessened. In short, while the evidence supports that the Respondent might be at less risk than when he was a child, that risk has not fallen below the well-founded fear level.

Further, in cases of extreme persecution, asylum can be granted notwithstanding changed

conditions. *Matter of Chen*, 20 I&N 16 (BIA 1989). Asylum may be granted based on past persecution alone in the discretion of the immigration judge based on the "severity" of past persecution or a reasonable possibility of suffering "other serious harm." 8 C.F.R. § 1208.13(b)(1)(iii). See also *Matter of H*, 21 I&N Dec. 337 (BIA 1996); *Gonahasa v. INS*, 181 F.3d 544 (4th Cir. 1999); *Natizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006). The Respondent's childhood was destroyed by abuse from his grandfather, with cascading, lasting and devastating effects. He was beaten almost daily from age four to roughly fourteen, at times with a whip used on animals. He was abused verbally and neglected. He was rendered vulnerable and able to be taken advantage of easily by other adults who caused him further harm. After his mother left for the United States, it appears that his contact with her was only once a year by phone, and he appears to have led an isolated existence. See, e.g., Group Exhibit 3 Tab C page 29. Given the extent of the mistreatment, how young he was when it began, and how isolated he was during his childhood, it would be inhumane to return him to Honduras. Thus, even if there were changed circumstances sufficient to rebut the presumption, the Court would grant asylum on a humanitarian basis in this case based on extensive child abuse and neglect.

The Court concludes that the Respondent meets the requirements for a grant of asylum and that asylum should be granted in the exercise of discretion. The Respondent appears to be doing quite well at this point and can be expected to make a positive contribution to this country. See, e.g., Group Exhibit 3 Tab P (letter from [REDACTED], Instructional Team Leader, River Hill High School).

Given the outcome on the Respondent's asylum claim, the Court is not reaching the alternative requests for relief because it is not necessary for the Court to do so.²

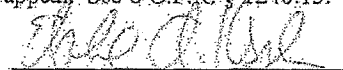
Order

It is ordered that the Respondent's applications for asylum is hereby granted.

Appeal Rights

Each party has the right to appeal this Court's decision to the Board of Immigration Appeals. Any appeal must be filed within 30 calendar days of the mailing of this decision. Under the regulations, a notice of appeal must be received by the Board by that deadline. The notice of appeal must also state the reasons for the appeal. See 8 C.F.R. § 1240.15.

Date: July 22, 2011


Elizabeth A. Kessler
Immigration Judge

² The Court thanks both sides for the high quality of legal work and argument presented in this case. The Court particularly thanks Kids in Need of Defense (KIND) and Mr. Connolly for their assistance to the Respondent. It is inconceivable that [REDACTED] could have presented his case effectively without their help.

EXHIBIT 10

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Harlingen, Texas

File No.: A [REDACTED]

March 12, 1998

In the Matter of

JUAN [REDACTED]

Respondent

)
) IN DEPORTATION PROCEEDINGS
)
)

CHARGES: Section 212(a)(6)(A)(i) of the Immigration & Nationality Act -- Removable for being 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 designated by the Attorney General.

APPLICATION: Asylum, withholding of removal, voluntary departure.

ON BEHALF OF RESPONDENT:

Steven Lang, Esquire
Patrick A. Pitts
Christy Leigh Hopkins
ProBAR
301 East Madison Street
Harlingen, Texas 78550

ON BEHALF OF SERVICE:

Cheri L. Jones, Esquire
INS
P.O. Box 1711
Harlingen, Texas 78551

ORAL DECISION OF THE IMMIGRATION JUDGE

Procedural History

Removal proceedings were commenced in this matter on June 17th, 1997. ^{ms 5-12-97} At that time the Immigration & Naturalization Service ("Service") filed with the Immigration Court ^{ms 5-12-98} a Notice To Appear ("NTA") in which it alleged that respondent, Juan [REDACTED]: was a native and citizen of Honduras; had entered the United States at or near Progresso, Texas on or about June 5th, ^{ms 5-12-98}

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1997 without being admitted or paroled after inspection by an Immigration officer. The Service further charged that Juan was removable pursuant to Section 212(n)(5)(A)(i) of the Immigration ^{in mms 5-12-98} Nationality Act ("Act") ^{in mms 5-12-98} that he was an alien present in the United States ^{in mms 5-12-98} 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. See Exhibit 1. ^{in mms 5-12-98}

At a hearing held on August 13th, 1997, Juan ~~_____~~, appearing pro se, admitted to the allegations in the charging document and conceded removability. Based on his admissions and concessions, the Court found that removability had been established by clear, convincing and unequivocal evidence. Juan declined to designate a country for removal should that become necessary. The Court designated his native country of Honduras.

Juan requested and was granted the opportunity to apply for asylum, withholding of removal and voluntary departure in the alternative. On September 9th, 1997, ^{in mms 5-12-98} Juan timely filed with the Court his application for asylum. Said application was forwarded to the Department of State ("DOS") for an advisory opinion. Thereafter, Juan appeared with counsel. At that time, Juan's attorney indicated to the Court on behalf of Juan that he had no dispute with Juan's previous pleadings nor did he have any dispute with the Court's previous findings of removability. Additionally, Juan, through counsel, indicated that he did not wish to designate a country for removal. Additionally, Juan requested and was

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March 12, 1998

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granted the opportunity to file an amended application for asylum. Said application was timely filed with the Court on December 9th, 1997. ^{WFO 5/12/98} See Exhibit 2. That application was also sent to the DOS for an advisory opinion. The DOS thereafter sent the Court a document entitled Honduras - Profile of Asylum Claims & Country Conditions. See Exhibit 3. Said document was received into the record without objection from either party.

A hearing on the merits of Juan's application for relief ^{March 2, WFO 5/12/98} was conducted on ~~November 12th~~. At that time, Juan presented his own testimony. Additionally, he offered to the Court a packet of supplementary documentation entitled Documentation Filed in Support of Application for Asylum and Withholding of Deportation. Said documentation was received into the record without objection from the Service. See Group Exhibit 4. Additionally, Juan provided to the Court a DOS 1997 human rights report on Honduras entitled U.S. Department of State Honduras Report on Human Rights Practices for 1997. See Exhibit 5. The Service did not present any witnesses nor did it present any other evidence. The only issue remaining before the Court at this time is whether Juan is statutorily eligible for and deserving of the relief that he is seeking.

Findings of Fact

Juan ~~XXXXXXXXXX~~ is a 15 year old native and citizen of Honduras, having been born on March 28th, 1982 in La Protesion, La Loma Cortez, Honduras. ^{WFO 5/12/98} Juan grew up in La Protesion

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March 12, 1998

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and lived there until fleeing his native country in January of 1997. La Proteccion is a small rural area where the population works primarily in agriculture. It is isolated from the city and there is very limited public transportation. Juan lived on a farm where his family raised crops as well as livestock.

Juan's problems began when his stepfather moved in with the family when Juan was only three years of age. Juan never knew his birth father nor does he have any idea where he is. Juan lived at home with his mother, stepfather, and three stepsiblings who were born as a result of Juan's mother's union with Juan's stepfather.

Juan's mother was a housewife who also on occasion worked outside of the home as a domestic. Jun's stepfather was a retired sergeant in the army who worked raising the crops and livestock on the family farm.

Juan completed six years of education in Honduras. He enjoyed going to school and did well. He hopes to continue his studies and eventually wants to become an attorney.

Juan's difficulties with his stepfather began almost from the time that his stepfather moved in with the family. One of the first memories that Juan has of his life with his stepfather was being brutally beaten by him because Juan wet the hammock in which he slept. The situation only deteriorated thereafter. Juan's stepfather ^{severely} ~~really~~ ^{more 5/1/18} abused him on a regular basis.

Juan was required by his stepfather to perform extremely

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strenuous work on the family farm on a daily basis. He was required to do everything from cutting and bringing in wood to taking care of the livestock. Any time he failed to meet his stepfather's expectations, he would be brutally punished. In fact, Juan's stepfather's punishment can only be characterized as torture.

Juan gave several examples of the manner in which his father would abuse him. On one occasion when Juan was seven years of age, he was ordered to take care of the cattle. Juan attempted to ride horseback in order to corral the animal. However, due to his young age, he had a very difficult time in controlling the cattle. As a result, Juan's stepfather ordered him to kneel down on the ground while he placed a rock on Juan's head and beat him with a belt. On other occasions, Juan's stepfather would force him to kneel on corn for about 30 minutes or on the floor for three hours. He would force Juan to kneel while the sun was directly overhead, around the noon hour.

Juan was constantly forced to do chores even throughout the school day. On one occasion, he was ordered by his stepfather to come home during the lunch break and give water to one of the animals. Juan came home as ordered but became busy doing other chores that also were required of him around the home. As a result, he forgot to give water to the animal. Juan returned to school and thereafter remembered the order that had been given to him by his stepfather. Juan, obviously distressed, immediately

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rushed home to give the animal water. Unfortunately, while he was doing so, his stepfather arrived and found out that Juan had forgotten to obey his instructions. Juan's punishment on that occasion was for his stepfather to brutally beat him with an electrical cord. Juan demonstrated to the Court a very visible scar left on his leg as a result of said beating. Along with belts and electrical cords, Juan's stepfather would also regularly beat him with a wet lasso.

On another occasion, Juan's stepfather had ordered Juan to go give water to the cattle. There was a newborn calf among the livestock and Juan's stepfather ordered him to be sure and not let anything happen to the young calf. However, when Juan went to give water to the other livestock, he was unable to control the calf who began to get into the water without Juan even realizing it. By the time he realized what was going on, the calf, who was unable to swim, had already gotten too far into the water for Juan to be able to save her. As a result, the calf drowned. ^{was 5'11" x 8"} Juan at first was extremely fearful about what might happen to him as a result of the incident. He thought for a long while and thereafter decided that perhaps, since it was not actually his fault that the calf had drowned, ^{was 5'11" x 8"} the stepfather would not punish him too terribly. Unfortunately, Juan was not correct. His stepfather first struck him in the face. Thereafter, his stepfather picked him up and, with the acquiescence of Juan's own mother, continued to punish him by severely beating him. Thereafter, Juan's stepfather and mother

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locked him up for one week in a room. On at least two days, Juan was given no food. The only reason Juan eventually got out after that one week period was because an uncle of his let him out of the room.

Although Juan's mother apparently attempted to protect Juan in the beginning, after Juan's stepfather beat her on one occasion she not only permitted Juan's stepfather to abuse Juan but she also even encouraged him to do so. Moreover, she would often encourage Juan's stepfather to punish Juan even more than his stepfather was already punishing him.

Among the other favorite techniques used by Juan's stepfather to abuse him was to hang Juan from the ceiling by his feet. Additionally, Juan's stepfather would force Juan to remain suspended by placing his hands on the floor and his feet on the wall. Juan would have a very difficult time remaining in said position, however, ^{MS 5-12-74} every time he fell ^{MS 5-12-74} down his stepfather would ^{Severely MS 5-12-74} only beat him and make him get back up. As a result, Juan indicated he actually preferred being hung by his feet from the ceiling because that was not as painful for him as the other method of torture.

As a result of Juan's abuse by his stepfather, Juan often found himself sleeping in the streets. He would also be forced to go to school in his bare feet. It was not until he began to work at the age of 12 that he actually was able to make enough money to buy himself a pair of shoes. Nonetheless, Juan's stepfather would

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go so far as to steal from Juan the money that he made on his own.

Juan's stepfather was never nice to him. As much as he abused Juan, his stepfather nonetheless never mistreated his own children. In Juan's opinion his stepfather wanted him to be his slave.

Despite the abuse, Juan did what he could to try to appease his stepfather. He would often climb very tall coconut trees, even though the height of the trees frightened him, in order to get the coconuts to sell so that he could give some extra money to his stepfather. However, his stepfather apparently only used the money to buy alcohol.

On those occasions when Juan would seek some type of relief in the streets, his stepfather would severely punish him once he returned home. ^{may 5 2:46} He generally punished him by either suspending him from the ceiling by his feet or by forcing Juan to remain suspended by standing on his hands with his feet up on the wall. Juan did not have any family members whom he could rely upon to offer him protection from his stepfather. As has been noted, he has never known the whereabouts of his own father. ^{File memo 5-12-98} As has been noted, his mother, instead of protecting him, actually assisted his stepfather in the abuse. Juan does have grandparents who lived nearby. However, his grandmother is in her late sixties and his grandfather is in his mid-seventies. Juan's grandparents are frail and, as a result, Juan was actually concerned about their safety in that he feared that if they attempted to protect Juan, his

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stepfather would harm them. Furthermore, due to the isolated nature of the area in which Juan lived, there were no relief agencies or other governmental authorities that were accessible to Juan from which he could seek protection.

On August 18th, 1997, Juan managed to convince his stepfather to allow him to attend a birthday party along with an uncle of Juan's. On the way home from the party, Juan and his uncle witnessed a gentleman, Santos Manzaneras, placing the body of another man on a railroad track. Apparently in Honduras it is common place for persons to do so in order to make murders appear to be accidents. Juan and his uncle recognized Mr. Manzaneras in that he lived in their town. Additionally, Mr. Manzaneras clearly saw Juan and his uncle. As a result, Mr. Manzaneras ran after Juan and his uncle, chasing them with a machete. Juan is convinced that Mr. Manzaneras' ^{was 5/12/98} goal was to kill both of them. However, Juan and his uncle were able to escape from Mr. Manzaneras by running through a banana plantation that Juan knew well due to his work in agriculture in the area.

Juan and his uncle went into hiding in Juan's grandfather's home. A friend of the family's, ^{5/12/98} Marian, ~~found them~~ out and told them that Mr. Manzaneras was going to kill them if he found them. Juan and his uncle were very frightened. Juan and his uncle were both of the opinion that they both needed to leave Honduras in order to save their lives.

Juan left Honduras with his uncle shortly thereafter.

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The two travelled first through Guatemala where they were for approximately three days. During that period of time, Juan never had permission to live or work in that country. The two then travelled on to Mexico. While in Mexico, Mexican immigration officials attempted to apprehend both of them. Although they were able to arrest Juan's uncle, Juan managed to escape. Thereafter, Juan ended up staying with a family he met in Mexico. However, he felt uncomfortable staying there because the family apparently had limited means and several children of their own to care for. Juan did not wish to become a burden on the family and felt that he needed to make some type of life for himself. Thus, he left that family in May of 1997. Before leaving, the mother of the family inquired of Juan where he intended to go. After Juan informed her that he intended to go to a Mexican border town, she advised him that he would be safer in the United States where the government protects minors. Juan obtained some work in Mexico and eventually was able to make his way to the United States. While in Mexico, Juan never had authorization to live or work there.

Shortly after coming to the United States, Juan was arrested by United States Immigration officials. In that he was arrested at the same time that the Service agents were apparently arresting some Mexican individuals, Juan was able to pass himself off as being Mexican and was thereafter returned to Mexico by the Immigration Service.

Juan immediately returned to the United States and was

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soon after once again arrested by the Service. On that particular occasion, although he tried to pass himself off once again as a citizen of Mexico, the Service agents were able to obtain from him his true identity. Juan has previously lied to the Service about his native country and attempted to lie on a second occasion about his native country because he truly feared returning to Honduras. Since his arrest by the Immigration Service in June of 1997, Juan has remained in Service custody.

Juan fears returning to Honduras for various reasons. He fears further abuse by his stepfather if he were to return to Honduras. Additionally, he is afraid that Mr. Manzaneres will harm him. Due to his fear of his stepfather, Juan quite honestly informed the court that only an idiot would return to live with his stepfather. Thus, due to Juan's fear of his stepfather as well as lack of family members able to protect him and other resources, Juan fears that he will be forced to live in the streets if he returns to his country. As a street child, Juan greatly fears for his safety. He believes that he will be victimized by other street children, gangs, and, more importantly, the police. Juan does have an aunt in Mexico. However, he does not believe that he would be welcome in her home by her husband. Moreover, Juan fears that the same type of abuse that he suffered at the hands of his stepfather may be visited upon him by his aunt's husband.

Along with the difficulties that Juan encountered while living in his country in terms of being able to even communicate

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with the authorities due to their lack of presence in his town, Juan was also greatly controlled by his stepfather and thus, particularly due to the lack of mass transit in his town, unable to have any access to any authorities in Honduras in order to report to them his stepfather. Furthermore, Juan is of the opinion that even if he were able to report the matter to the authorities, they would not believe him in that he is only a child. Furthermore, he greatly fears repercussions from his stepfather in the event that the authorities actually failed to protect him. Furthermore, although Juan did make some attempts to leave his home in Honduras before actually leaving his country, he indicated that due to lack of resources, he was never able to successfully leave. Furthermore, on those occasions when he did attempt to but failed to leave, he was brutally punished by his stepfather.

The documentary evidence presented to the Court by Juan corroborates to a great extent his testimony concerning protection of or, better said, lack thereof, for street children in Honduras. The documentation is replete with reports that indicate that street children in Honduras are subjected to a life of drugs and alcohol. Furthermore, they are often exploited by adults and forced to engage in illegal activities such as the drug trade and prostitution. More problematic, the authorities, rather than protecting these children, are more often likely to actually abuse them and, in many instances, go so far as to murder them. Furthermore, apparently there are some groups in Honduras that are

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affiliated with the military that also are engaged in attempting to eliminate, ^{my 5-2-98} by murdering, street children. The documentary evidence further indicates that many of the children who live in the streets are there due to their attempting to escape domestic abuse. See Group Exhibit 4. The most recent DOS report indicates that Honduras has passed legislation intended to protect children who are the victims of abuse, ^{my 5-18-98} Nonetheless the same reports indicates that police and members of the general population continue to engage in widespread violence against street children. See Exhibit 5. Furthermore, in general, the documentary evidence before the Court indicates that the military, police and judicial system in Honduras is extremely corrupt and that members of the military and police engage in widespread abuse with impunity. See Group Exhibit 4, Tabs 1, 2, 6, 13, 14 and 16. ^{my 5-17-98} See also, Exhibit 5.

Statement of the Law

The Attorney General through an Immigration Judge may grant asylum as a matter of discretion to an individual who is a refugee as defined in the Act. This provision defines a refugee as a person who is unable or unwilling to return to or is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion.

In defining persecution, the Board of Immigration Appeals ("BIA") has held that it is a "threat to the life or freedom of or

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the infliction of suffering or harm upon those who differ in a way regarded as ^{imm. S. 11.1V} "offensive". Matter of Sanchez and Escobar, 19 I&N Dec. 276 (BIA 1985), quoting from Cardoza-Fonseca v. INS, 767 F.2d at 1452. "...[I]t is oppression which is inflicted on groups or individuals because of the differences the persecutor will not tolerate." Matter of Maldonado-Cruz, 19 I&N Dec. 509, 513 (BIA 1988), quoting from Hernandez-Ortiz v. INS, 777 F.2d 509, 516 (9th Cir. 1985).

In order to establish a "well-founded fear" of persecution, an applicant must show: (1) that he possesses a belief or characteristic a persecutor seeks to overcome in others by means of punishment of some sort; (2) that the persecutor is already aware or could become aware that the applicant possesses this belief or characteristic; (3) that the persecutor has the capability of punishing the applicant; and (4) that the persecutor has the inclination to punish the applicant. Matter of Mogharrabi, 19 I&N Dec. 439, 446 (BIA 1987); Matter of Acosta, 19 I&N Dec. 211, 226.

The United States Supreme Court has held that the well-founded fear standard required ^{see 512-44, 1982 3-12-84} to show that a fear of persecution is based on the reasonable possibility that such harm would occur. INS v. Stevic, 467 U.S. 407, 424-425 (1984).

The reasonable possibility standard has been further refined by the "reasonable person" approach set forth by the Fifth Circuit and adopted by the Board. Under that approach, an

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applicant for asylum has a well-founded fear if he demonstrates that a reasonable person in similar circumstances would fear persecution. Matter of Mogharrabi, 19 I&N Dec. at 445; Guevara-Flores v. INS, 786 F.2d 1242, 1249 (5th Cir. 1986). 5.2

The Board acknowledged in Mogharrabi that a reasonable person may fear persecution even if the likelihood that it may occur is significantly less than a clear probability. The Board has also held that the applicant does not bear the unreasonable burden of establishing the exact motivation of the "persecutor" where different reasons for actions are possible.

The Supreme Court and the Fifth Circuit have held that an applicant may submit either direct or circumstantial evidence to establish the motivation of the persecutors. INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992); Rivas-Martinez v. INS, 997 F.2d 1143, 1147-1148 (5th Cir. 1993). However, an applicant need not show conclusively why the persecution has occurred or may occur. 5.12
In Re: S-P, Int. Dec. 3287 at 5; Matter of Fuentes, 19 I&N Dec. at 662. 6.26
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The United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status 5.16
("U.N.H.C.R. Handbook") states that a combination of minor actions taken against an individual may amount to persecution even where each individual incident in and of itself might not. A series of smaller incidents may, if taken together, produce an effect in the mind of the applicant which would reasonably justify a claim to a well-founded fear of persecution on cumulative grounds. Handbook

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at Section 53. Additionally, the Handbook indicates that in determining whether or not a minor qualifies for refugee status, his mental development and maturity must be taken into account. U.N.H.C.R. Handbook at Section 214.

The Board has interpreted the phrase "persecution on account of membership in a particular social group" to mean persecution that is directed toward an individual who is a member of a group of persons, all of whom share a common immutable characteristic. Matter of Acosta, 19 I&N Dec. at 233. The common characteristic that defines the group must be one that the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences. Id.

The applicant may also show statutory eligibility for asylum by establishing that he was persecuted in the past on account of one of the grounds enumerated in the Act. Matter of Chen, 20 I&N Dec. 15 (BIA 1989). If it is determined that the applicant has established past persecution he shall be presumed also to have a well-founded fear of persecution unless the Service demonstrates by a preponderance of the evidence that since the time the persecution occurred, conditions in the applicant's country have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if he were to return. 8 C.F.R. 208.13(b)(1)(I); Matter of Chen, *supra*. If an applicant establishes that he has been persecuted in the past, a favorable

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exercise of discretion may be warranted for humanitarian reasons, even if there is little likelihood of future persecution.

An application for asylum is also considered to be a request for withholding of removal. Withholding of removal is mandatory if the Court determines that an applicant's life or freedom would be threatened in the country of deportation on account of race, religion, nationality, membership in a particular social group or political opinion. INS v. Stevic, 467 U.S. 407 (1984).

To establish eligibility for withholding of removal an applicant must show a clear probability of persecution in the country designated for removal. This clear probability standard requires a showing that it is more likely than not that the applicant would be subject to persecution on account of one of the above enumerated grounds if he were returned to the country from which he seeks withholding of removal. *Id.* The clear probability standard is more difficult to meet than the "well-founded fear of persecution" standard for asylum. INS v. Cardoza-Fonseca, 480 U.S. at 430; Matter of Chen, *supra*.

An applicant for asylum has the burden of proof to establish a well-founded fear of persecution. Matter of Diaz, 20 I&N Dec. 120, 124 (BIA 1989). However, an applicant's own testimony without corroborative evidence may be sufficient to prove a well-founded fear of persecution where that testimony is believable, consistent and sufficiently detailed to provide

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ms plausible and coherent account for the basis of the fear. Matter of Mogharrabi, 19 I&N Dec. at 445.

Findings of the Court

The Court first finds that Juan was a credible witness. He testified in a clear and forthright manner. *ms 5-12-94* His testimony was believable, consistent and sufficiently detailed to provide a plausible and coherent account for the basis of his request for relief. Furthermore, his testimony was, for the most part, consistent with his application for asylum and further corroborated by the documentary evidence that he offered to the Court.

Turning to Juan's request for asylum, the Court finds that Juan clearly has been persecuted in the past by his stepfather. He was beaten and tortured by his stepfather on a number of occasions and said actions rise to the level of persecution. As Juan's custodial family member, Juan's stepfather apparently believed that he had the right to abuse Juan in that he was a minor, helpless child over whom he had control. As Juan put it, he apparently believed he had the right to make Juan his slave.

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Starting from the age of four, Juan's stepfather engaged in a pattern and practice of abusing Juan on a regular basis. His stepfather was also aware that as a minor, Juan had no real resources to protect him. Additionally, his other custodial parent, his mother, joined in the abuse. Furthermore, Juan was not

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only emotionally but physically isolated. As a result, he had no real support system to depend upon. As a small child, he obviously had very limited economic resources. Furthermore, he was physically isolated. There was an absence of police protection in his area. Furthermore, outside of his elderly grandparents who also had very limited economic as well as physical resources, Juan had no other family upon whom he could depend for protection. Juan's fears about his grandparents own lives being threatened by his stepfather were clearly well taken, due to the manner in which Juan's stepfather abused his mother when she early on tried to protect her son. Thus, Juan had no resources upon which he could depend to protect himself and Juan's stepfather was clearly aware of the situation and thus readily able and inclined to abuse Juan as a result thereof. Additionally, Juan's being a minor child without any resources was a situation or characteristic that he was powerless to change.

The Service has argued that Juan could have sought police protection. First, the situation in which Juan lived would have made that very difficult. As has been noted, he lived in a very rural and isolated area. There were no authorities around to protect him. His town was not the United States where ^{Juan} one only needed ^{MD 5 12 94} to pick up the phone and have the child protective services at his doorstep. Additionally, as the U.N.B.C.R. Handbook ^{MD 5 12 94} instructs the Court to do, it must bear in mind Juan's particular age and terms of his mental state. Abusers are able to exert

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tremendous power over people and, particularly when that abuse starts with a person when that person is only a small child, that victim of abuse is inclined to feel totally helpless. That scenario explains why, for example, otherwise bright, wealthy, professional women in this country put up with spousal abuse. Thus, the manner in which Juan's stepfather terrorized him from the very young age of Iqur ^{from 5 yrs} made it all that more difficult for Juan to have the courage to seek out any type of protection. And even if he did have the courage, as has been noted, he had very limited resources. Again, we are not talking about an adult who could just get in his car and drive to the nearest city to register a complaint against one's stepfather. We are talking about a very frightened, terrorized ^{ms 5-12-94} helpless child.

The Service has also pointed to recent legislation passed in Honduras whose goal it is to protect children such as Juan. But as Juan has also pointed out through his attorney, the same documentation speaks to the complete lack of protection for street children in Honduras and that the evidence indicates that many of those children are street children due to their coming from an abusive home environment like Juan's. ^{ms 5-12-94} That indicates to this Court ^{ms 5-12-94} that the authorities are not really interested in taking care of the problem that causes children to turn to the street but, rather, are more interested in taking care of the children who they see as being the problem by abusing and even killing them.

Furthermore, the documentary evidence further indicates

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that despite whatever laws may be imposed in Honduras, for the most part the courts, police and authorities in that country are extremely inefficient and incompetent at best and, as has been noted, the police and authorities regularly engage in abusing children while the courts are unable or unwilling to rectify the situation. Although laws may be in place for the most part it appears that the authorities in Honduras are not interested in enforcing them. Additionally, given Juan's stepfather's status in the military, it is more likely that the authorities would be even less interested in assisting Juan with any complaints that he may have brought against his stepfather.

The Service has also made reference to Juan's failure to seek shelter elsewhere in his country. However, again we must keep in mind the mentality of this young ^{and 5-12-98} terrorized child. First, he feared that his stepfather would come after him and obviously Juan had good reason to fear. Honduras is not a very big country and particularly if his stepfather knew people in the military, it would not be very difficult for him to locate Juan. Abusers in the United States do it all the time. It may take a while but eventually they generally succeed. Also, Juan did make some attempts to move but was severely punished.

Furthermore, with what exactly was Juan supposed to relocate in his country? As has been noted, Juan had no real resources, no family or friends who could assist him in his attempts to relocate. Where exactly are we to expect this child to

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go alone in Honduras and live safely with a maniac stepfather on the loose?

In sum, the Court finds that the record before it establishes that Juan has suffered past persecution on account of his social group and that the government in Honduras is unwilling or unable to assist him. Furthermore, the Court finds that he had reason to believe that he would be persecuted no matter where he went to in Honduras.

Turning to the question of future persecution, Juan now believes that if he is returned to Honduras, he will suffer not only future persecution by his stepfather but that he will also, in order to escape such persecution, be forced to live in the streets. The Court finds that Juan certainly has a well-founded reason to fear future abuse at the hands of his stepfather given his stepfather's previous abuse directed toward Juan. Furthermore, the Court finds that Juan's stepfather ^{will be no 5/12/88} was even more inclined to abuse him in that he was already able to do so in the past and get away with it. Furthermore, he would be further inclined to abuse Juan in retaliation for Juan's fleeing from him. Additionally, in that Juan's stepfather would see that Juan was even more helpless ^{no 5-7-88} and that he had attempted to escape but was unsuccessful in his attempt, he would be all the more motivated to continue his abuse of Juan. Furthermore, the record indicates that Juan's chances of being protected in Honduras are no greater now if he returns than when he fled his country approximately a year ago.

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In addition, there is a very real likelihood that Juan will now be faced with living life on the streets. As has been noted, he quite frankly testified that only an idiot would return to live with his stepfather and this ^{no 5-11-92} Court certainly agrees. However, what are Juan's options? Juan believes that his grandparents are too old and fragile to protect him and, as has already been discussed, given Juan's stepfather's abuse of Juan's mother for attempting to protect Juan, one can only conclude that the same harm would come to Juan's grandparents if they attempted to protect him. Furthermore, how hard would it be for Juan's stepfather to track him down at his grandparents? Additionally, as has been discussed, Juan cannot expect protection from the authorities. In the absence of any other family or friends to protect him, it does appear that Juan's only option would be to live on the streets.

However, as the documentary evidence amply demonstrates, as a street child, Juan certainly has reason to fear persecution at the hands of the authorities. As has been discussed, ^{no 5-11-92} the street children in Honduras are regularly victimized, physically and emotionally abused and murdered by the authorities in that country. Once again, the only way in which Juan would be able to escape that situation, change that particular characteristic, would be to go back and face persecution by his stepfather due to his status as a minor with no resources.

Thus, it is clear that Juan really has no choice. As the

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Service has pointed out, it is true that children in the United States are abused as was Juan all the time. However, the big difference is that here we do have a mechanism in place that actually rescues children from such abuse. Not only do we have laws on the books -- we have laws that are zealously enforced. And although there are street children in this country, they cannot begin to compare with the situation of street children in Honduras. Additionally, this Court can only hope that the authorities in this country do not participate in the victimization of those children as do the authorities in Honduras.

In sum, the Court finds that Juan possesses a characteristic for which a persecutor, his stepfather, has persecuted him in the past. Furthermore, the Court finds that Juan's stepfather not only has the capability of punishing Juan and has amply demonstrated his inclination to punish him in the past but, moreover, is inclined to punish him in the future. Furthermore, the Court finds that were Juan to return to Honduras, he would most likely become a street child and, as a result, also be a member of a social group and, hence, have a well-founded fear of persecution by the authorities in his country as a result. Additionally, the Court finds that a reasonable person in Juan's case would fear persecution in Honduras no matter where he went to in that country to live. The Court would add that particularly as a street child, there is no place in Honduras where he would be able to find safety. The Court finds additionally that given the

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type of hellish life that Juan was subjected to in his country in the past, a life wherein he preferred to be hung by his feet from the ceiling rather than be suspended by standing on his hands and having his feet in the air, said persecution is the type of persecution that the Courts had in mind when they held that it would be appropriate to grant asylum to an individual in Juan's circumstances on the basis of humanitarian grounds. Nonetheless, the Court further finds that despite past persecution in this case, he clearly has a well-founded fear of persecution both by his stepfather as a result of his being a minor child previously abused by a custodial family member who has no place to seek shelter. Furthermore, the Court is satisfied that the government of Honduras would be unwilling or unable to protect Juan. Furthermore, he has a well-founded fear of future persecution by the authorities in his country as a result of his becoming a member of the social group of street children in Honduras. Thus, the Court finds that Juan has demonstrated statutory eligibility for asylum based both on past persecution as well as a well-founded fear of future persecution. MO
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As to whether he merits said relief in the Court's discretion, the Court finds that there are no negative factors in the case at bar, such as would preclude the Court from exercising favorable discretion in this case. Therefore, ^{as of 5-12-77} the Court finds that Juan is both statutorily eligible for asylum and deserving of said relief in the Court's discretion.

Conclusions Of The Court

A ~~Supplement~~

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The Court finds that Juan is removable pursuant to Section 212(a)(6)(A)(i) of the Immigration ^{and NS 3/1/98} Nationality Act for being present in the United States without being admitted or paroled and/or for arriving in the United States at any time or place other than as designated by the Attorney General. The Court further finds that Juan is statutorily eligible for and deserving of asylum in the United States. Insofar as the Court has found that he is eligible for and deserving of asylum, it is not necessary to address his applications for withholding of removal or voluntary departure.

Accordingly, the following orders will be entered:

ORDERS

IT IS HEREBY ORDERED that the respondent, Juan Carlos Martinez-Mejia, IS REMOVABLE under Section 212(a)(6)(A)(i) of the Immigration & Nationality Act.

IT IS FURTHER ORDERED that Juan's application for asylum be and is hereby GRANTED.

IT IS FURTHER ORDERED that these proceedings be and are hereby TERMINATED.



MARGARET D. BURKHART
Immigration Judge

EXHIBIT 11

3918

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

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File:

Date:

In re: JUAN

JAN 20 1999

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: ~~Prose~~ STEVEN LANG, PROBAR

ON BEHALF OF SERVICE: Cheri L. Jones
Assistant District Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Asylum; withholding of deportation

ORDER:

PER CURIAM. In a decision dated March 12, 1998, an Immigration Judge found the respondent removable as charged under section 212(a)(6)(A)(i), as an alien, present without being admitted or paroled or who arrived at any time or place other than as designated by the Attorney General, 8 U.S.C. § 1182(a)(6)(A)(i). The Immigration Judge determined that the respondent was eligible and warranted asylum as a matter of discretion. The Immigration and Naturalization Service has appealed this determination. The appeal is dismissed.

→ The respondent is 17-year-old native and citizen of Honduras. He claims a well-founded fear of persecution if returned to Honduras on account of his membership in a particular social group, minors without resources who have been abused by a custodial parent/guardian. The respondent testified that since the age of three he was abused by his stepfather, when he failed to carry out his chores to his step-father's satisfaction. This abuse consisted of beatings with an electrical cord, kneeling on corn with the sun directly overhead for long periods of time, hanging upside down from the ceiling for extended periods of time, and beatings for falling down while standing on his hands with his feet against the wall. The respondent indicated that there was no one to stop his stepfather from abusing him. The respondent's mother attempted to stop her husband on one occasion and she was struck by him. After this incident, the respondent related that his mother never attempted to stop him again. The respondent did not want to involve his grandfather in the situation because of his

[REDACTED]

old age. The respondent related that he would sleep on the streets after many of the beatings, but upon his return home, he would be subjected to further punishment from his stepfather. According to the respondent, his uncle helped him to get away. The respondent related that if he were to return to Honduras he would become a street child because he could not return to his parent's home. He further asserts that there is no protection on the streets for street children because the government views the children as a problem.

The Immigration Judge determined that the respondent had testified credibly regarding his stepfather's abuse. She further determined that the documentary evidence presented to the Court corroborated the respondent's testimony regarding the fate of street children in Honduras. The Immigration Judge also determined that the respondent has been persecuted by his stepfather. She based this determination on the fact the respondent was beaten since the age of 3. She further determined that the respondent has a well-founded fear of persecution upon return because he would become a street child. Based on the probability of the respondent's becoming a street child, the Immigration Judge determined that he had no resources to preclude further persecution from his stepfather or the government.

On appeal, the Service asserts that the Immigration Judge erred in granting the respondent asylum because the evidence did not establish that he was a member of particular social group. The Service further argued that the respondent has offered no conclusive proof that he witnessed [REDACTED] commit a crime and that he has reason to fear him.¹ Further, the Service asserts that the respondent has not established that he cannot safely return to and live in Honduras.

We have reviewed the record, the Immigration Judge's decision, and the contentions made on appeal, and find the Service's contentions without merit. We find from our independent review that the Immigration Judge adequately and correctly addressed the issues raised on appeal and her decision is affirmed based upon and for the reasons set forth in her decision.

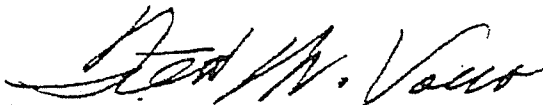
The respondent established a well-founded fear of persecution if returned to his native country, as required for asylum under section 208 of the Act. See section 101(a)(42)(a) of the Act, 8 U.S.C. § 1101(a)(42)(A); Matter of Acosta, 19 I&N Dec. (BIA 198). The Immigration Judge properly concluded that the respondent established that a reasonable person in his circumstances would fear persecution on account of membership in a particular social group. See Matter of Mogharrabi, 19 I&N Dec 439 (BIA 1987). Matter of Acosta, *supra*. As noted by the Immigration Judge, the respondent was the victim of torture from his stepfather since the age of 3. This torture was so severe that the respondent testified to the Court that he preferred hanging from the ceiling upside down rather than standing on his hands with his feet on the wall because it was not as painful (Tr. at 65). The abuse began at the early age of 3 and continued on as long as the respondent resided with his mother and stepfather. The respondent was without any resources to stop the abuse. Moreover,

¹ We note that the respondent asserted that he also feared persecution because he witnessed a murder committed by a [REDACTED]. In light of our determination that the Immigration Judge properly granted asylum based on the respondent's membership in a particular social group, we need not address this argument.

[REDACTED]

the respondent lived in a rural area, which did not provide access to governmental authority that would intervene. This supports his contention that he did not have the protection of the government. We further note, as did the Immigration Judge, that the respondent did not want to involve his grandfather in the matter because of his old age. Thus, considering the respondent's age, his resources and his inability to relocate because of a lack of resources, we conclude that the Immigration Judge was correct in determining that the respondent had a subjective fear of persecution.

We further note that the respondent's fear was objectively reasonable. Assuming that the respondent could live on the streets, the documentary evidence reflects that the respondent would objectively fear persecution because of the fate of street children in Honduras. In particular, the Department of State on Human Rights Practices for 1996 indicates that the police are responsible for torturing street children and a number of extrajudicial killings. The report further indicated that civilians and vigilante groups also participate in violence and the killing of street children. It states that street children are also routinely arrested without charge and placed in small cells with adult criminals. (Exh. 5). While the Honduran constitution prohibits torture, the report notes that the police continue to abuse street children. Consequently, the streets of Honduras would offer the respondent no protection from the abusive home of his mother and stepfather. Thus, the respondent established a well-founded fear of persecution. We further consider, as did the Immigration Judge, that the record contains no negative factors to preclude a discretionary grant of asylum. Matter of Pula, 19 I&N Dec. 467 (BIA 1987). Accordingly, the appeal is dismissed.



FOR THE BOARD