UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1 FEDERAL DRIVE, SUITE 1850
FORT SNELLING, MN 55111

The Advocates for Human Rights
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Suite 800
Minneapolis, MN 55401

In the matter of [redacted] File A [redacted] DATE: Jul 29, 2019

__ Unable to forward - No address provided.

X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
1 FEDERAL DRIVE, SUITE 1850
FORT SNELLING, MN 55111

__ Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

__ Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

X Other: IJ's order Appeal Date 8-28-19

COURT CLERK
IMMIGRATION COURT FF

cc: OCC

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MINNESOTA

File Numbers: A[redacted]	)	**Date:** July 25, 2019
A[redacted]	)	
A[redacted]	)	
A[redacted]	)	
A[redacted]	)	
	)	
In the Matters of:	)	
	)	
[redacted],	)	**IN REMOVAL PROCEEDINGS**
[redacted],	)	
[redacted],	)	
[redacted],	)	
[redacted],	)	
	)	
Respondents.	)	
_____	)	

Charge: INA § 212(a)(6)(A)(i) – 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 under INA § 208, Withholding of Removal under INA § 241(b)(3); and Relief under the Convention Against Torture.

ON BEHALF OF RESPONDENTS:
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WRITTEN DECISION OF THE IMMIGRATION JUDGE

I. Background

On September 24, 2015, the U.S. Department of Homeland Security (DHS) commenced proceedings against the following individuals by filing Notice to Appears (NTAs): [redacted] (Respondent [redacted]) (DOB: [redacted]); [redacted] (Respondent [redacted]) (DOB: [redacted]); [redacted]

(Respondent [redacted]) (DOB: [redacted]); and [redacted] (Respondent [redacted]) (DOB: [redacted]). See Ex. 1A; Ex. 1B; Ex. 1C; Ex. 1D. The DHS alleged these four individuals are not citizens or nationals of the United States; they are natives and citizens of Guatemala; they arrived in the United States at or near Douglas, Arizona, on or about [redacted]; and they were not then admitted or paroled after inspection by an Immigration Officer. See Ex. 1A; Ex. 1B; Ex. 1C; Ex. 1D. On January 10, 2014, the DHS filed an NTA and commenced removal proceedings against [redacted] (Respondent [redacted]) (DOB: [redacted]). See Ex. 1E. The DHS alleged Respondent [redacted] is not a citizen or national of the United States; he is a native and citizen of Guatemala; he arrived in the United States at or near Douglas, Arizona, on or about [redacted]; and he was not then admitted or paroled after inspection by an Immigration Officer. See id. The DHS charged all five respondents under the above-captioned section of the Immigration and Nationality Act ("INA" or "the Act"). All five Respondents admitted the factual allegations and conceded the charge of removability.[2] The Respondents declined to designate a country of removal and the Court designated Guatemala, should such action become necessary. The Court added Respondent [redacted] as a dependent on Respondent [redacted]'s asylum application. See Ex. 27A.

For the reasons below, the Court now grants Respondent [redacted]'s application for asylum. Accordingly, the Court also grants Respondent [redacted], Respondent [redacted], [redacted], and [redacted] derivative requests for asylum.

II. Evidence Presented

a. Testimony

i. Respondent [redacted]

Respondent testified about her life in Guatemala, the difficulties she and her family have endured, her journey to the United States, and the fears she has of returning to Guatemala.

ii. Dr. Linda Buckley Green

Respondent offered Dr. Green as an expert witness. Dr. Green testified about her qualifications and about country conditions in Guatemala.

[1] The Court finds Respondent [redacted] second name is correctly spelled "[redacted]." See 9E at 10-13 (birth certificate with English translation).

[2] Pleadings for Respondent [redacted] are contained in his motion to change venue, filed October 5, 2016. See Ex. 8E at 1-2.

b. Documentation

All admitted evidence identified below has been carefully considered in its entirety regardless of whether specifically mentioned in the text of this decision. The Court incorporates here the Exhibit List issued by this Court on August 21, 2018. See Ex. 38A. In addition, the Court now notes and marks the following exhibits:

i. Respondent [redacted]

Ex. 39A: Respondent's Exhibit, Tabbed A, 206 pages, filed August 6, 2018[3]
Ex. 40A: Order of the Immigration Judge, dated August 21, 2018 granting Respondent's Motion for Extension of Filing Deadline
Ex. 41A: Respondent's Supplemental Brief in Support, received August 21, 2018
Ex. 42A: Respondent's Exhibit, Tabbed A-B, 377 pages, received August 21, 2018[4]

ii. Respondent [redacted]

Ex. 18B: Order of the Immigration Judge, dated August 21, 2018 granting Respondent's Motion for Extension of Filing Deadline
Ex. 19B: Respondent's Supplemental Brief in Support, received August 21, 2018

iii. Respondent [redacted]

Ex. 18C: Order of the Immigration Judge, dated August 21, 2018 granting Respondent's Motion for Extension of Filing Deadline
Ex. 19C: Respondent's Supplemental Brief in Support, received August 21, 2018

iv. Respondent [redacted]

Ex. 18D: Order of the Immigration Judge, dated August 21, 2018 granting Respondent's Motion for Extension of Filing Deadline
Ex. 19D: Respondent's Supplemental Brief in Support, received August 21, 2018

[3] The Court admitted pages 1–187 but excluded pages 188–206 because the publication date precedes the filing deadline for the April 2017 removal hearing and Respondent offered no reasonable explanation for why this evidence could not have been presented prior to April 2017.

[4] The Court admits and considers pages 1–18, 97–98, and 114–377, to the extent that they support Respondent's claims made prior to April 2017. The Court excludes and will not consider pages 19–95, and 99–113 because these sources predated the filing deadline for the April 2017 removal hearing and Respondent offered no reasonable explanation for why this evidence could not have been presented prior to April 2017.

v. Respondent [redacted]

Ex. 24E: Order of the Immigration Judge, dated August 21, 2018 granting Respondent's Motion for Extension of Filing Deadline
Ex. 25E: Respondent's Supplemental Brief in Support, received August 21, 2018

c. Expert Qualification

"The sole test for admission of evidence is whether the evidence is probative and its admission is fundamentally fair." Nyama v. Ashcroft, 357 F.3d 812, 816 (8th Cir. 2004) (quoting Espinoza v. INS, 45 F.3d 308, 310 (9th Cir. 1995)); Matter of D-R-, 25 I&N Dec. 445, 458 (BIA 2011) (same). The traditional rules of evidence are not binding in immigration proceedings, except to the extent that due process is implicated. Zeah v. Holder, 744 F.3d 577, 581 (8th Cir. 2014) (quoting Lybesha v. Holder, 569 F.3d 877, 882 (8th Cir. 2009)). While the Federal Rules of Evidence are not binding, the BIA views them as providing "helpful guidance . . . because the fact that specific evidence would be admissible under the Federal Rules lends strong support to the conclusion that the admission of the evidence comports with due process." Matter of D-R-, 25 I&N Dec. at 458 n.9 (internal quotation marks and citation omitted). Evidence must comport with due process rights. INA § 240(b)(4)(B). Additionally, an "Immigration Judge may receive in evidence any oral or written statement that is material and relevant to any issue in the case." 8 C.F.R. § 1240.7(a).

According to the Board of Immigration Appeals ("BIA" or "the Board"), "[a]n expert witness is broadly defined as someone who is 'qualified as an expert by knowledge, skill, experience, training, or education'" and who has "'scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue.'" Matter of D-R-, 25 I&N Dec. at 459 (quoting FED. R. EVID. 702). The Seventh Circuit has indicated that, although the Federal Rules of Evidence do not apply to administrative agencies, "the spirit of Daubert . . . does apply to administrative proceedings." Niam v. Ashcroft, 354 F.3d 652, 660 (7th Cir. 2004) (citing Daubert v. Merrill Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993) (interpreting FED. R. EVID. 702 and setting forth the rules for qualifying an expert witness in federal court)). Even if an Immigration Judge (IJ) qualifies someone as an expert witness, the IJ may still decide the weight and persuasiveness of that testimony in light of all other evidence. See Dukuly v. Filip, 553 F.3d 1147, 1149-50 (8th Cir. 2009) (finding the IJ properly considered expert testimony and did not ignore it but, instead, found it unpersuasive when weighed against other evidence).

The Court qualifies Dr. Green as an expert on country conditions in Guatemala. Specifically, Dr. Green is an expert on the social, cultural, political, economic, and historical conditions in Guatemala, and more precisely, she is an expert on indigenous women in rural areas in Guatemala. Dr. Green testified about her qualifications. She has a

PhD in socio-cultural and medical anthropology, and she has been working with issues of violence and human rights with regards to Mayan women in Guatemala since 1987. Her curriculum vitae also shows her extensive, relevant experience. See Ex. 42A at 3-20. Dr. Green has previously been qualified as an expert in immigration court proceedings. She has specialized knowledge that assists the Court in understanding the country conditions in Guatemala relevant to Respondent [redacted]'s asylum claims. Based on this evidence, the Court finds Dr. Green is qualified as an expert witness.

III. Credibility

It is the applicant's burden to satisfy the IJ that his or her testimony is credible. See Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As the application was filed after May 11, 2005, the credibility provisions of the REAL ID Act govern. INA § 208(b)(1)(B); INA § 241(b)(3)(C). Consistent with the REAL ID Act, the following factors may be considered in assessing an applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); see also Matter of J-Y-C-, 24 I&N Dec. 260, 262-63 (BIA 2007). The testimony of the applicant, if credible, is sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.13(a). To be credible, an applicant's testimony must be believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his or her fear. 8 C.F.R. § 1208.13(a). In determining whether the applicant has met his or her burden, the IJ may weigh credible testimony along with other evidence of record. Where the IJ determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. INA § 208(b)(1)(B)(ii).

In this case, Respondent [redacted]'s testimony was largely consistent with her prior written statements and applications. Respondent [redacted] gave an account that was internally consistent and inherently plausible. Respondent [redacted] was responsive and candid. In addition, Respondent [redacted]'s testimony is generally consistent with the evidence in the record. Therefore, the Court finds Respondent [redacted] generally credible. Likewise, the Court finds Dr. Green to be a credible witness. Her testimony was consistent, responsive, and candid.

IV. Findings of Fact

Respondent [redacted] was born on [redacted], in [redacted] Guatemala. Respondent [redacted] is indigenous. She does not speak the [redacted] indigenous language. Respondent [redacted] grew up during the Guatemalan Civil War, and she saw many indigenous people suffer. Starting around the age of seven years

old, she saw tortured and disfigured bodies strung up in the trees by guerilla fighters. Some of her male neighbors and one of her cousins were forcibly conscripted to fight in the war. Many of these people never returned. She stopped going to school in about fourth grade, around age nine. She remembers not being able to go outside unaccompanied, and she lived in fear for many years.

When Respondent [redacted] was 17 years old, she began a relationship with a man who would become her "common-law husband," [redacted].[5] (Ex. 5A at 52). Together, they had five children: [redacted] When Respondent [redacted] was about 18 years old, she went to live with [redacted]'s parents in [redacted]. They lived there for about seven years, then they bought their own small home in [redacted].

At first, Respondent [redacted] felt safe living in [redacted]. Then, in February 2013, a man named [redacted] threatened [redacted]. [redacted] was a farmer, and he had a piece of land in [redacted]. He did not have title to the land, but his mother owned it, and she had started arranging a transfer to [redacted]. [redacted], who lived nearby in [redacted], came to this piece of land and started cutting down trees and growing marijuana on the land. [redacted] was a drug dealer; he and his father grow marijuana and traffick cocaine. [redacted] began to insult and hit [redacted] often, and he would constantly attempt to extort him for money. [redacted] consistently refused and would run away from [redacted]. In September 2013, [redacted] murdered [redacted] by running into his head with the front tire of a motorcycle. Respondent [redacted]'s oldest son, [redacted], was present when [redacted] was killed.

About three months later, in December 2013, [redacted] came in person to Respondent [redacted]'s house. He had a gun and a knife, so Respondent [redacted] locked herself and the children in the house. [redacted] yelled at them that he had killed her husband and he was coming for her and her children, threatening to kill them. He tried to get into the house, but he was unable because of the metal door. He was outside the house for about one hour. About three days after this incident, Respondent [redacted] went to the police station in [redacted] to report [redacted]. The Chief Officer refused to help Respondent [redacted], and he said [redacted] was probably just drunk. The police did not investigate or write anything down. Respondent [redacted] also tried to speak with the mayor of [redacted], but his deputy turned her away, even when she told the deputy about [redacted]'s threats and the police chief's refusal to help.

Then [redacted] began threatening Respondent [redacted]. He would pass by her house and yell that he would kill her and her children. He also left her about 60 to 70 notes threatening her with death. In these notes, he would state that he was going to kill her and her children. He would also state that he was going to rape her and she was "going to be his." Id. at 59.

[5] For purposes of this decision, the Court will refer to [redacted] as Respondent [redacted]'s "husband."

In these notes, [redacted] also threatened to kidnap her son [redacted], stating details about [redacted]'s route to school. He stated he would kill her children in front of her, then torture her, rape her, and cut her into pieces. The notes would be signed by [redacted], and he wrote that she would get no help from law enforcement because he had paid off the police. Because Respondent [redacted] was scared, she left her home around December 2013 went to hide at her parents' house in [redacted]. However, the threatening notes continued to appear at her parents' house. The notes stated that [redacted] knew where she was, and he again threatened to kill her and her children. One note stated, "Time has gone by and any moment you will find one of your children dead in the street. I will kill you and destroy you and all your children. . . ." Id. at 60. This note came with a plastic bag filled with red liquid and a separate note that said, "In this bag, pieces of your children will be left in here for you." Id. [redacted] also sent his uncle in person to Respondent [redacted]'s parents' house to threaten her. The uncle told Respondent [redacted] that [redacted] knew she had gone to the police because [redacted] had paid the police to protect him and inform him of any reports. The uncle told Respondent [redacted] that [redacted] would come as soon as possible to kill her. The written threats continued until days before Respondent [redacted] fled Guatemala.

On August 17, 2015, Respondent [redacted] entered the United States with three of her children. Respondent [redacted] entered the United States in December 2013, but he returned to Guatemala in March 2014 and went into hiding in [redacted]. See Ex. 8E at 6. He later entered the United States again in February 2016. See id. [redacted] was deported from the United States and lives in a remote town in Guatemala called [redacted]. Respondent [redacted] was informed by one of her children's uncles that [redacted] is still looking for her.

Respondent [redacted] fears returning to Guatemala because she believes [redacted] will rape and kill her. She also fears [redacted] will kill her children. She testified, "I don't know why he wants to finish with my family. He killed my husband, and he says he wants to kill me and my kids."

V. Relief

a. Asylum

i. Legal Standard

The applicant carries the initial burden of proof to establish his or her eligibility for asylum. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a). To establish eligibility, an applicant must meet the definition of a "refugee," defined as an individual who is unwilling or unable to return to his or her country of nationality because of past persecution or because he or she has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). The harm must also be inflicted by the government or actors the government is "unwilling or unable to control." Cubillos v. Holder, 565 F.3d 1054, 1057

(8th Cir. 2009) (citing Flores-Calderon v. Gonzalez, 472 F.3d 1040, 1043 (8th Cir. 2007)).

If the applicant can establish that he or she suffered past persecution, then he or she is entitled to a rebuttable presumption that his or her fear of future persecution is "well-founded." 8 C.F.R. § 1208.13(b)(1). The government can rebut this presumption if a preponderance of the evidence shows either: (1) that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution" in his or her native country; or (2) that he or she "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(i)-(ii); see also Bushira v. Gonzales, 442 F.3d 626, 631 (8th Cir. 2006); Matter of D-I-M-, 24 I&N Dec. 448, 450-51 (BIA 2008).

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an applicant who establishes statutory eligibility for relief. See INS v. Cardoza-Fonseca, 480 U.S. 421, 441 (1987); Matter of Mogharrabi, 19 I&N Dec. 439, 447 (BIA 1987).

ii. Past Persecution

1. Level of Harm

The Eighth Circuit has defined past persecution as "'the infliction or threat of death, torture, or injury to one's person or freedom on account of race, religion, nationality, membership in a particular social group, or political opinion.'" Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010) (quoting Davila-Mejia v. Mukasey, 531 F.3d 624, 628 (8th Cir. 2008)). Persecution within the meaning of the INA "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, 798 (BIA 1997). Low-level intimidation and harassment alone do not rise to the level of persecution, Alavez-Hernandez v. Holder, 714 F.3d 1063, 1067 (8th Cir. 2013), nor does harm arising from general conditions such as anarchy, civil war, or mob violence. Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014). Even minor beatings or limited detentions do not usually rise to the level of past persecution. Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). For example, the Eighth Circuit has held that "minor beatings and brief detentions, even detentions lasting two to three days, do not amount to political persecution, even if government officials are motivated by political animus." Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004); see also Njong v. Whitaker, 911 F.3d 919, 923 (8th Cir. 2018) (being detained for four days with no physical harm plus being detained a second time seven months later with minor injuries was not persecution); Samedov v. Gonzales, 422 F.3d 704, 707 (8th Cir. 2005) (finding that neither a four-day detention without physical injury or a police beating leading to broken thumb and injuries to left arm were persecution). Rather, "'persecution is an extreme concept.'" Litvinov, 605 F.3d at 553.

"Past persecution does not normally include unfulfilled threats of physical injury." Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006). Rather, "[t]hreats alone constitute persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual suffering or harm." Lemus-Arita v. Sessions, 854 F.3d 476, 481 (8th Cir. 2017) (discussing unfulfilled threats) (quoting La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012)). Threats that "are exaggerated, nonspecific, or lacking in immediacy" may be insufficient to establish persecution. La, 701 F.3d at 571. A threatening phone call and a letter from a gang demanding money might not be enough for persecution. See De Guevara v. Barr, 919 F.3d 538, 540 (8th Cir. 2019). However, under certain circumstances, even a single threat of death could be enough to qualify as persecution. See Corado v. Ashcroft, 384 F.3d 945, 947 (8th Cir. 2004).

The Court finds Respondent [redacted] has suffered past persecution. Over the course of about 20 months, Respondent [redacted] received approximately 60 to 70 direct death threats. These threats were all from the same man, [redacted]. He first threatened her in person in December 2013, when he attempted to enter her home for about an hour, carrying a knife and a gun and shouting death threats at her. This was about three months after he murdered her husband, [redacted]. Then [redacted] began leaving signed notes threatening to rape her, kill her, and kill her children. The Court finds these threats specific. Respondent [redacted] was so scared she abandoned her home in [redacted] and went to hide at her parents' house. [redacted] found her there and continued sending threatening notes. The threats continued until August 2015, a few days before she left the country. Given that [redacted] had already murdered Respondent [redacted]'s husband, the Court also finds these threats were not exaggerated. Respondent [redacted] reasonably feared [redacted] would kill her and her children. He had already demonstrated his willingness and ability to do so. Further, the Court finds the threats were not lacking in immediacy. The threats began not long after [redacted] murder, and they continued until Respondent [redacted] fled Guatemala. After Respondent [redacted] tried hiding at her parents' home, [redacted] sent his uncle in person to tell her [redacted] knew where she was and would come as soon as possible to kill her. One of the notes [redacted] sent Respondent [redacted] at her parents' house essentially told her that her time was up. See Ex. 5A at 60 (Time has gone by and any moment you will find one of your children dead in the street. I will kill you and destroy you and all your children. . . ."). Respondent [redacted] suffered extensive psychological anguish trying to escape these tormenting threats in the wake of her husband's murder. Cumulatively, the Court finds these threats rise to the level of persecution.

2. Protected Ground

To qualify for asylum, the persecution in question must be on account of at least one of five specially protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Respondent [redacted] claims she was persecuted on account of her membership in two particular social groups (PSGs);

"Rural indigenous Guatemalan widows" and "Indigenous Guatemalan women who lack male partners." See Ex. 41A at 3.

a. Particular Social Group

A particular social group requires members have an immutable characteristic. Matter of W-G-R-, 26 I&N Dec. 208, 210 (BIA 2014). An immutable characteristic is 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." Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). In addition, the group must have the elements of "social distinction" and "particularity." Matter of W-G-R-, 26 I&N Dec. at 212. Particularity requires that the group is distinct enough that it "would be recognized, in the society in question, as a discrete class of persons." Id. at 214 (quoting Matter of S-E-G-, 24 I&N Dec. 579, 584 (BIA 2008)). This particularity inquiry may require looking into the culture and society of a respondent's home country to determine if the class is discrete and not amorphous. Id. at 214-15. Social distinction is not determined by the persecutor's perception but "exists where the relevant society perceives, considers, or recognizes the group as a distinct social group." Id. at 217-18; see also Matter of M-E-V-G-, 26 I&N Dec. 227, 242 (BIA 2014). Social distinction does not require "ocular" visibility. A group cannot be circularly defined by the fact that it suffers persecution. Matter of C-A-, 23 I&N Dec. 951, 959 (BIA 2006); see also Matter of W-G-R-, 26 I&N Dec. at 215 ("Persecutory conduct aimed at a social group cannot alone define the group, which much exist independently of the persecution."). However, evidence of widespread persecution can sometimes demonstrate social distinction. See Matter of A-M-E- & J-G-U-, 24 I&N Dec. 69, 74 (BIA 2007) ("Although a social group cannot be defined exclusively by the fact that its members have been subjected to harm . . . this may be a relevant factor in considering the group's visibility in society."). "[A] social group determination must be made on a case-by-case basis." Matter of M-E-V-G-, 26 I&N Dec. at 242. Matter of W-G-R-, 26 I&N Dec. at 216. "An applicant's burden includes demonstrating the existence of a cognizable particular social group, his membership in that particular social group, and a risk of persecution *on account of* his membership in the specified particular social group." Id. at 223.

i. "Rural indigenous Guatemalan widows"

Respondent [redacted]'s proposed PSG of "rural indigenous Guatemalan widows" is cognizable. The Eighth Circuit has held a very similar PSG to be cognizable. See Ngengwe v. Mukasey, 543 F.3d 1029, 1034-35 (8th Cir. 2008) (holding that "Cameroonian widows" was a cognizable PSG).[6] In Ngengwe, the Eighth Circuit stated that "widows share the past

[6] The Eighth Circuit has also held that gender is an immutable characteristic. See Hassan v. Gonzales, 484 F.3d 513, 518 (8th Cir. 2007) (holding "Somali females" was a valid particular social group, based on gender and the prevalence of female genital mutilation); see also Matter of Acosta, 19 I&N Dec. at 233 (finding that sex is an immutable

experience of losing a husband-an experience that cannot be changed." Id. at 1034. Further, the Eighth Circuit stated that female widows in Cameroon were viewed by society as members of a PSG, citing evidence describing the rituals and societal treatment of Cameroonian widows, including pervasive discrimination. See id. at 1034-35.

Similarly, Respondent [redacted]'s proposed PSG is cognizable. First, the members of the PSG shared immutable characteristics. Respondent [redacted] cannot change the fact that her husband was killed, which made her a widow. She also cannot change the fact that that she is from a rural part of Guatemala or that her race is indigenous.

Second, Respondent [redacted]'s proposed group is defined with particularity. Rural indigenous widows are a discrete group in Guatemala. See Ex. 5A at 103 (referencing Dr. Green's book, titled Fear as a Way of Life: Mayan Widows in Rural Guatemala); Ex. 5A at 130 ("[A] critical social position in Guatemala is ethnicity, which exacerbates the situation for women, since the indigenous Maya, who make up more than half the country's population, have been found at a disadvantage in every social indicator."). "Mayan women are disproportionately rural, poor, discriminated against and lack support from the police, as well as access to justice system institutions. See Ex. 5A at 130; see also Ex. 5A at 254-55 (stating that people in Guatemala experience discrimination if they are indigenous, poor, women, and rural); Ex. 5A at 349 (stating poverty among "rural, indigenous women" remained a problem). The Guatemalan civil code contains provisions that codify gender differences between men and women, reflecting society's views of gender roles. See id. at 133-34. Only a small percentage of women hold titles to agricultural lands, showing that property laws exist in the context of profound gender discrimination. See id. at 135, 227, 231. Further, women, including widows, are often excluded form inheriting land. See id. at 231. This marginalization is worse for women in indigenous communities. See id. The record also shows widows are sometimes bypassed for estate inheritance, with the deceased male's estate going to the children instead of the widowed woman. See id. at 142. Guatemala lacks basic laws that address the land rights of indigenous people, and "[w]omen are prevented from enjoying legal rights to land and are insecure in their access due to patriarchal customs and attitudes." See id. at 225. This evidence shows Respondent's PSG is defined with particularity.

Third, Respondent [redacted]'s proposed group is socially distinct. The evidence cited in the previous paragraph supports this finding. Furthermore, Dr. Green testified that Guatemalan society views indigenous women from rural areas who live alone as part of a distinct social group, and widows are part of that group. Dr. Green testified that being a widow in Guatemala is associated with a particular social status. Dr. Green also stated that society sees indigenous people as inferior to non-indigenous people in Guatemala. She testified society views women in Guatemala as inferior to men, given that patriarchy and

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characteristic). Moreover, the size of a particular social group is not determinative. See Malonga v. Mukasey, 546 F.3d 546, 554 (8th Cir. 2008); Matter of S-E-G, 24 I&N Dec. at 584.

misogyny are prevalent and woven into the fabric of society. She stated that being a widow puts a woman even lower in the social hierarchy. Dr. Green testified that Respondent [redacted]'s history reflects what Dr. Green has seen working with other widows in Guatemala: they are subject to violence, threats, and the loss of property. She stated that this harm is tied to the status of a person as a woman who is alone without male protection. Dr. Green asserted that Respondent [redacted]'s community would know her husband had died, based on the relatively small population in the region in which she lived. This expert testimony supports the conclusion that Respondent [redacted]'s proposed PSG is particular and socially distinct.

Further, Dr. Green's affidavit states indigenous Mayan people are recognizable in Guatemala by their facial features and traditional dress. See id. at 104. Indigenous Guatemalans suffer disproportionate deprivation and marginalization, and gender inequality places indigenous women at the bottom of the social hierarchy. See id. Mayan women have less access to justice than non-indigenous ("ladino") counterparts. See id. In addition, violence against women, including femicide (the gender-motivated killing of women), is a serious problem in Guatemala, and the government prosecutes only a small percentage of reported violent crimes against women. See id. at 104-05. "Mayan women are at a greater risk to manipulation and victimization. This is particularly true for women alone, either abandoned or widowed, who are often the poorest of the poor. Without a vital economic partner – many of these women are often landless – Mayan women are the most likely victims" of acts of violence. See id. at 106. "Land is crucial to survival in the rural highlands of Guatemala . . . without land one is bereft of event he most meager access to food." Id.

Moreover, Respondent [redacted]'s personal experience provides a concrete illustration of these country conditions. A lawyer in Guatemala told Respondent [redacted] that she could not inherit the land [redacted] was to inherit because she was not legally married to him. See id. at 63-64. [redacted]'s mother refuses to give Respondent [redacted] the land for the same reason. See id. at 64. Her in-laws have also shunned Respondent [redacted] since [redacted]'s death; the married women on that side of the family see her as a threat and as someone who could try to steal their husbands. See id. Finally, Respondent [redacted] testified she has heard about seven other widows from her home region who were discriminated against and ostracized.

In light of the above, the Court concludes Respondent [redacted]'s PSG "rural indigenous Guatemalan widows" is cognizable and is a valid protected ground. Based on Respondent [redacted]'s personal characteristics, the Court also finds Respondent [redacted] to be a member of this PSG.

ii. "Indigenous Guatemalan women who lack male partners"

Because the Court is finding past persecution on account of Respondent [redacted]'s first proposed PSG ("rural indigenous Guatemalan widows"), the Court need not address Respondent [redacted]'s second proposed PSG ("indigenous Guatemalan women who lack male partners). See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976) (stating that as a general rule, courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach).

3. Nexus

The protected ground must be "at least one central reason" for the applicant's persecution. Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212-14 (BIA 2007). "It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute." Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004).

[redacted] killed Respondent [redacted]'s husband, [redacted], because [redacted] refused [redacted] extortion efforts and [redacted] wanted to take the piece of land [redacted] farmed. Extortion efforts, without more, are generally insufficient for finding persecution. See, e.g., Martin Martin v. Barr, 916 F.3d 1141, 1144 (8th Cir. 2019); Matter of T-M-B-, 21 I&N Dec. 775 (BIA 1997). However, this is the principal reason [redacted] targeted [redacted]. While [redacted] may have sought to prevent Respondent [redacted] from interfering with his use of the particular piece of land, [redacted] also targeted Respondent [redacted] for additional, central reasons. The finding of a particular motive "do[es] not . . . preclude a finding of additional motives that may concern a protected ground." Marroquin-Ochoma v. Holder, 574 F.3d 574, 577 (8th Cir. 2009) (citing De Brenner v. Ashcroft, 388 F.3d 629, 637 (8th Cir. 2004)).

The Court finds [redacted] targeted Respondent [redacted] because she was a rural indigenous Guatemalan widow. The timing of her persecution is strong evidence of this fact. [redacted] started threatening her only a few months after he killed her husband. That is, he only started his persecution of Respondent [redacted] soon after she became a widow. Moreover, [redacted] threatened to kill her, but he also threatened to rape her—a form of harm that directly relates to her status as a female. He further stated Respondent [redacted] was "going to be his." (Ex. 5A at 59). This shows [redacted] saw himself as dominant over her. Respondent [redacted] was vulnerable precisely because of her status as a widow. She did not have a male partner to protect her from [redacted]. As further evidence that [redacted] targeted Respondent [redacted] because of her membership in this group, [redacted] tried to rape Respondent [redacted]'s niece, who was also a widow. This shows a pattern and a motive for targeting widows by Respondent [redacted]'s persecutor.

The Court notes that threats based on personal retribution are not a valid basis for asylum. See Martinez-Galarza v. Holder, 782 F.3d 990, 993-94 (8th Cir. 2015) (holding alleged threats were based on purely personal retribution, and thus, could not support an asylum claim). Here, however, the Court finds the threats by [redacted] were not based on a personal vendetta. Respondent [redacted] did nothing to harm [redacted]; thus, he had no reason to seek revenge. [redacted] extorted and killed Respondent [redacted]'s husband and took over his land. [redacted] seeks to prevent Respondent [redacted] or her children from interfering with his use of the land, but [redacted] also targeted Respondent [redacted] because she was vulnerable as a rural indigenous Guatemalan widow. Dr. Green testified about how being rural, indigenous, and a woman makes Respondent [redacted] vulnerable. She testified that [redacted]'s threats against Respondent [redacted] show [redacted] wants to assert his dominance over her, and this motivation is rooted in the patriarchal, misogynistic Guatemalan society. Dr. Green also testified that Respondent [redacted]'s social status as an indigenous woman from a rural community plays a role in these threats because she is at the bottom of the social hierarchy and killing an indigenous widow is "no big deal"—no one is going to pay a price for it. Impunity reigns, especially in the rural communities. Dr. Green's affidavit adds:

> Without a partner or male family members to protect them, rural indigenous women are at risk for sexual violence by other community members. As in many cultures worldwide, women who have lived outside their community for some time – whether due to political or economic reasons – become the subjects of gossip and rumor, which can have detrimental social consequences, raising the potential for violence to be used (and justified) against them. As a result, Mayan women are the most vulnerable of all victims of violence.

(Ex. 5A at 106). Based on the above, the Court finds Respondent [redacted]'s membership in the PSG of "rural indigenous Guatemalan widows" was at least one central reason for her persecution.

4. Government Unwilling or Unable

To qualify for asylum, the persecution must be inflicted by the government of a country or by persons or an organization that the government is unwilling or unable to control. Quinteros v. Holder, 707 F.3d 1006, 1009 (8th Cir. 2013). To establish persecution by private actors, the applicant must show more than just that the government has difficulty controlling private behavior; rather, he or she must demonstrate that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims. Salman v. Holder, 687 F.3d 991, 995 (8th Cir. 2012).

The persecutor Respondent [redacted] a fears, [redacted], is a private actor. The Court finds the government was unwilling and unable to protect Respondent [redacted] from her

persecutor. Respondent [redacted] reported [redacted] to the police about three days after he came to her house in person to threaten her. The Chief Officer ignored her pleas for help, so she sought help from the mayor of [redacted], who likewise turned her away. In general, a few ineffective local law enforcement practices may not mean all law enforcement agents in a country are unwilling or unable to protect a particular person. See Saldana v. Lynch, 820 F.3d 970, 976 (8th Cir. 2016) ("Neither difficulty controlling private behavior nor failure to solve every crime or to act on every report is sufficient to meet the standard."); see also Menjivar v. Gonzales, 416 F.3d 918, 921 (8th Cir. 2005) ("'[T]he fact that police take no action on a particular report does not necessarily mean that the government is unwilling or unable to control criminal activity, because there may be a reasonable basis for inaction.'"). In this case, however, Respondent [redacted] attempted to seek help from two government actors: the chief of police and the mayor in [redacted], and both authorities refused to help her, even after she told them about [redacted] murdering her husband and threatening her with weapons while trying to get into her house. The record shows no reasonable basis for law enforcement not to investigate, especially considering the murder of Respondent [redacted]'s husband. To the contrary, the record shows the Chief Officer merely speculated that [redacted] was drunk without any investigation. [redacted] later told Respondent [redacted] that he had paid off the police, so any attempt to report him would be futile. Respondent [redacted] subsequently received numerous additional threats from [redacted], but she reasonably believed law enforcement authorities would ignore her pleas for help, as they did in the first incident. An applicant does not need to report to the police if it would be futile. See Gathungu v. Holder, 725 F.3d 900, 906-09 (8th Cir. 2013). But see Shaghil v. Holder, 638 F.3d 828, 834 (8th Cir. 2011) (stating a failure to report to the police can be significant in this regard). On the fact of this case, the Court finds government authorities were unwilling to help Respondent [redacted], and she reasonably believed any further attempts to seek assistance from law enforcement would be futile.

Furthermore, the country conditions evidence in the record show Respondent [redacted]'s experience is common in Guatemala. Corruption and deficient law enforcement assistance for people similarly situated to Respondent pervade Guatemalan society. Dr. Green testified that generally the government is not present in rural, indigenous communities in Guatemala. Often, the nearest access to services such as a police station would be a few hours away by car. She also testified that impunity for crimes in Guatemala is common. She stated a person in the situation of Respondent [redacted] could go to the police for help, but her efforts would be unavailing because the police would pay her no mind: they are underfunded and poorly trained; they are corrupt; and they share the same societal conceptions of indigenous women as inferior. Basically, they would only pay attention to Respondent [redacted] if they could extort her. Respondent [redacted] also lacks the money to seek any other legal recourse, such as a lawyer, who may also take advantage of rural indigenous women.

Dr. Green asserts in her affidavit that men rarely face any penalty for crimes against indigenous women in Guatemala. See Ex. 5A at 105. She also states, "Mayan women in

Guatemala rightly understand that neither the National Civil Police nor other government actors will protect them from violence." Id. at 107. Police are unlikely to help indigenous women because of their low societal status. See id. Reporting would be futile because of widespread corruption and police incompetence. See id. at 107-08. Further, "reporting is also dangerous for Mayan women as reprisals from both the government and community are common," including violent acts and abuse. See id. at 108.

The record also shows a high level of corruption in Guatemalan government. See, e.g. Ex. 39A at 1. Moreover, [redacted], a drug trafficker, communicated to Respondent [redacted] that he knew she had reported him to the police, which supports his assertion that he had bribed the police to protect him and keep him informed.

Overall, based on the facts and evidence in the record, the Court finds the government was unable to control Respondent [redacted]'s persecutor and protect her from harm. As Respondent [redacted] has established the harm she suffered rose to the level of persecution, the harm was on account of a protected ground, and the government was unable or unwilling to control the persecutor, the Court finds Respondent [redacted] has established that she suffered past persecution.

iii. Well-Founded Fear of Future Persecution

Because Respondent [redacted] has established that she suffered past persecution, she is entitled to a rebuttable presumption that her fear of future persecution is "well-founded." 8 C.F.R. § 1208.13(b)(1). To overcome this presumption, the DHS now bears the burden of showing either a "fundamental change in circumstances" or that she "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." 8 C.F.R. 1208.13(b)(1)(i)-(ii). The Court concludes the DHS has not met its burden to rebut the presumption of past persecution.

1. Fundamental Change in Circumstances

The DHS has not demonstrated there has been a fundamental change in circumstances in Guatemala such that Respondent [redacted] no longer has a well-founded fear of future persecution.

Respondent [redacted] testified that she heard from one of her children's uncles that [redacted] is still looking for her in Guatemala. The Court finds [redacted] still seeks to harm Respondent [redacted] for the same reasons he targeted her in the past. The Court also notes the seriousness of the threats [redacted] made against Respondent [redacted]. He also threatened to kill her about 60 to 70 times, and he followed her to a second village after she fled [redacted]. The last threat happened around August 2015, just before she fled Guatemala. The Court finds these threats to be specific, numerous, and indicative of a strong likelihood that [redacted] will carry out his threats in the near future, should Respondent [redacted] be

forced to return to Guatemala. Cf. Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008) (stating credible threats may contribute to a well-founded fear of future persecution). Further, Respondent [redacted] has no male family members who can protect her. She testified her son [redacted] is older now, but he lives in a remote region in [redacted], and she cannot live there because [redacted] operates his drug trade in that area. Respondent [redacted]'s brother [redacted] also lives in [redacted], but he is ill and cannot protect her either. Respondent [redacted]'s in-laws have shunned her after her husband's death, and she has no other family or connection with whom she can live or seek protection.

In addition, the country condition reports show that rural indigenous Guatemalan widows still face a reasonable possibility of persecution. Exclusion and racism have resulted in structural, legal, and institutional violence and discrimination against women, especially "in the case of indigenous women, particularly [] those who live in rural areas." (Ex. 39A at 30). Guatemala ranks among the countries with the highest rate of violent deaths among women. See id. at 31. Although the government has made some efforts to try to slow this trend, impunity rates for femicide have been estimated as high as 98 percent. See id.; see also Ex. 42A at 161 (stating the impunity rate for homicide in recent years has hovered around 99.1 and 98.4 percent). Dr. Green testified in April 2017 about the country conditions for rural indigenous Guatemalan widows in Guatemala. In August 2018, Dr. Green testified that country conditions worsened since her prior testimony, specifically citing an increased level of violence against indigenous women in rural Guatemala. Dr. Green testified Guatemala is among the top five countries in the world (that are not at war) with the highest levels of homicide and femicide. Dr. Green also testified that Respondent [redacted] would likely not be safe living in her community, as an indigenous widow.

With regards to the government's ability and willingness to protect Respondent [redacted], Dr. Green testified that conditions have worsened with regards to violence and accountability of the government, and investigation and prosecution rates for crime remain abysmal. The Court recognizes that the Guatemalan government has taken some positive steps to improve conditions for indigenous women in Guatemala. For example, the government also has created some laws and institutions seeking to protect women generally and indigenous women in particular. See id. at 97, 177-78. However, a lack of financial and political resources has limited the effectiveness of these measures. See id. at 97, 178. Despite the institutional mechanisms created, the Inter-American Commission on Human Rights (IACHR) specifically found on a recent site visit that indigenous women consistently face obstacles in obtaining access to justice, and a high level of impunity for violent crimes against women persists. See id. at 179-82. Likewise, the IACHR reported indigenous people face significant difficulties in trying to access justice in Guatemala. See id. at 182-85. In general, Guatemala experiences high levels of violence and organized crime. See id. at 307. Women are particularly vulnerable to acts of extortion, threats, sexual violence, torture, and murder by gangs. See id. at 310. The IACHR also reports, "The violence faced by indigenous people is closely connected to the situation of discrimination and exclusion they experience." Id. at 315. The IACHR has commended the government

of Guatemala for its efforts to cooperate with some international actors to combat corruption and impunity. See Ex. 42A at 162-70. However, the IACHR also reported structural problems persist in Guatemala, including racial discrimination, social inequality, lack of access to justice, impunity, and corruption. See id. at 133.

The 2017 U.S. Department of State Human Rights Report for Guatemala states that among the most significant human rights problems were "cases of killing of women because of their gender, which authorities were prosecuting" and "widespread government corruption." (Ex. 39A at 1). "Corruption and inadequate investigation made prosecution difficult, and impunity continued to be widespread." Id. While the law criminalizes rape, police had minimal training and capacity to investigate sexual crimes, and "the government did not enforce the law effectively." See id. at 16. The Court recognizes that the Guatemalan government has taken some steps to combat femicide and violence against women. See id. at 16-17. However, rape, sexual offenses, violence against women, and femicide remained significant problems." See id. The police "often failed to respond to requests for assistance related to domestic violence." See id. at 17. In addition, women and indigenous people faced discrimination. See id. at 17, 20-21. The IACHR has reported generally that indigenous women have great difficulties accessing justice in the Americas when they are victims of human rights violations. See id. at 129-53. One international human rights group has expressed concern over how indigenous women in Guatemala are unaware of their rights. See id. at 135.

Additionally, The United Nations Special Rapporteur on the rights of indigenous peoples stated after her May 2018 visit to Guatemala that "serious obstacles remain in relation to the adequate protection of the rights of indigenous peoples at the national level." (Ex. 42A at 97). She added that she "observed persistent racism, discrimination and exclusion of indigenous peoples at all levels, resulting in a situation of de facto racial segregation, within a context of weak State institutions, corruption and impunity." Id.; see also Ex. 42A at 117 (noting persistent mistreatment of women and indigenous peoples); Ex. 42A at 118 (noting reports of "parallel power structures that prevent the fight against impunity and corruption"); Ex. 42A at 133.

Finally, the IACHR has reported on the extensive violence and discrimination against indigenous women in the Americas in general. See Ex. 39A at 95-125. "In its numerous reports on Guatemala, the IACHR has reiterated its concern over the situation of violence and discrimination faced by indigenous women, the racism and exclusion that affect them, and the barriers to access basic health services and judicial protection when they suffer human rights violations." See id. at 59-60.

Given the above evidence, the Court concludes the DHS has failed to meet its burden to rebut the presumption that Respondent [redacted] has a well-founded fear of persecution.

2. Internal Relocation

The DHS also has not established that Respondent [redacted] could reasonably avoid persecution by relocating to another part of Guatemala.

The BIA has summarized the two-step approach used to determine whether an applicant has the ability to internally relocate and whether such relocation would be reasonable:

> Under the first step, an Immigration Judge must decide whether "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality." 8 C.F.R. § 1208.13(b)(1)(i)(B). The second step of the inquiry is whether "under all the circumstances, it would be reasonable to expect the applicant to do so." Id.

Matter of M-Z-M-R-, 26 I&N Dec. 28, 32 (BIA 2012). For the first step, the BIA stated that if a respondent demonstrates past persecution:

> the DHS must demonstrate that there is a specific area of the country where the risk of persecution to the respondent falls below the well-founded fear level. If the evidence (such as, for example, country reports, Department of State bulletins, or reputable news sources) indicates that the area may not be practically, safely, and legally accessible, then the DHS would also bear the burden to show by a preponderance of the evidence that the area is or could be made accessible to the applicant.

Id. at 33–34 (internal citations omitted). The BIA explained:

> [B]ecause the purpose of the relocation rule is not to require an applicant to stay one step ahead of persecution in the proposed area, that location must present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim.

Id. at 33. For the second step, an IJ must consider factors affecting the reasonableness of the internal relocation:

> whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

8 C.F.R. § 1208.13(b)(3); Matter of M-Z-M-R-, 26 I&N Dec. at 34–35.

In this case, the DHS has not met its burden to show by a preponderance of the evidence that Respondent [redacted] can relocate in Guatemala. Respondent [redacted]'s testimony and the evidence in the record support this conclusion. Respondent [redacted] left [redacted] because of the death threats from [redacted], and she moved to a different town, [redacted], to hide at her parents' house. The distance between the towns is approximately one hour and a half apart by foot and 40 minutes by car. [redacted] soon found her in [redacted] and continued to send written death threats, stating he knew where she was. [redacted] also sent his uncle—a representative of his own family—to threaten Respondent [redacted] personally. In total, [redacted] made about 60 to 70 threats over the course of about 20 months. In addition, [redacted] is a drug trafficker with connections that would enable him to find Respondent [redacted] if she returns. This evidence shows [redacted] is motivated and capable of seeking out Respondent [redacted] if she returns to any part of Guatemala.

Respondent [redacted] cannot relocate to [redacted]. Respondent [redacted]'s son [redacted] lives in [redacted], but she cannot live with him because [redacted] is in the area by the Guatemala–Mexico border in which [redacted] trafficks drugs. She would be in danger of discovery by [redacted] if she lived in that area, and she would face a reasonable possibility of persecution there. Respondent [redacted] also cannot relocate to [redacted] for practical reasons. This village is remote—about 22 to 25 hours away by car from her home area. Geographically, it is difficult to reach because it is in the mountains. Her son lives and works on a ranch, and Respondent [redacted] testified she would be unable to stay there. Her brother, [redacted], also lives in [redacted], but he is ill and cannot help Respondent [redacted].

Similarly, relocation to the towns where Respondent [redacted] used to live would not be safe for Respondent [redacted]. She cannot go to [redacted] because that is where [redacted] first targeted her and killed her husband. She abandoned that house when she fled, and [redacted] will easily find her if she returns there. Respondent [redacted] also cannot live with her parents in [redacted]. [redacted] found her there and sent her numerous threats at that address. Respondent [redacted] would be in grave danger from [redacted] there as well. Respondent [redacted] testified she has several sisters who live near [redacted], but she testified they have large families and small houses, so Respondent [redacted] cannot reasonably live with them.

Respondent [redacted] also cannot relocate with her in-laws. Respondent [redacted]'s in-laws have shunned her since [redacted]'s death because she is a widow. See Ex. 5A at 64-65. Also, even though [redacted]'s mother indicated she would allow Respondent [redacted]'s eldest male son, [redacted], to inherit the parcel of land [redacted] was to inherit, [redacted] has not tried to claim the land for fear that [redacted] will harm him. Respondent [redacted] likewise cannot try to claim this land because [redacted] will target her.

Respondent [redacted] testified that she will face severe discrimination in Guatemala because she is a widow. See id. at 65. As discussed previously in this Decision, the Court finds pervasive discrimination against rural indigenous Guatemalan women. In addition, the Court finds evidence of widespread corruption and violence in Guatemala.

In her affidavit, Dr. Green states it is "virtually impossible" for indigenous women to successfully relocate in rural or urban areas in Guatemala and survive." Id. at 108. She adds that indigenous women who attempt to resettle in Guatemala alone are vulnerable to poverty and violence. See id. Dr. Green testified Respondent [redacted] would have an extremely difficult time trying to reintegrate herself and live safely in Guatemala, given her lack of education and skills to get employment, the lack of access to social services and protection, and the fact that women who lack male partners are at great risk in Guatemala. Dr. Green noted that news Respondent [redacted]'s return would likely spread quickly in the community she is from, if she tries to activate her indigenous social network for support by returning there.

Altogether, the DHS has not shown enough evidence to overcome the presumption that relocation to Guatemala is impossible and unreasonable. The Court finds Respondent [redacted] cannot possibly or reasonably relocate within Guatemala. Based on the above, the DHS has failed to rebut the presumption of a well-founded fear. The Court finds Respondent [redacted] has met her burden to show there is a reasonable possibility that she would suffer persecution if she were returned to Guatemala. 8 C.F.R. § 1208.13(b)(2)(i).

iv. Discretion

Finally, the Court finds Respondent [redacted] merits asylum as a matter of discretion. She has no criminal history or other negative factors. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987) ("The danger of persecution should generally outweigh all but the most egregious adverse factors). In light of the above, the Court concludes Respondent [redacted] merits a grant of asylum under INA § 208.

v. Humanitarian Asylum

Because the Court is granting Respondent [redacted]'s asylum application under INA § 208, the Court does not reach the issue of humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii).

b. Withholding of Removal

Because the Court is granting Respondent [redacted]'s asylum application under INA § 208, the Court does not reach the issue of relief under withholding of removal under INA § 241(b)(3).

c. Convention Against Torture

Because the Court is granting Respondent [redacted]'s asylum application under INA § 208, the Court does not reach the issue of relief under Article III of the Convention Against Torture.

Accordingly, the Court enters the following orders:

ORDERS

IT IS HEREBY ORDERED that Respondent [redacted]'s application for asylum under INA § 208 be **GRANTED**.

IT IS FURTHER ORDERED that Respondent [redacted]'s derivative request for asylum under INA § 208 be **GRANTED**.

IT IS FURTHER ORDERED that Respondent [redacted]'s derivative request for asylum under INA § 208 be **GRANTED**.

IT IS FURTHER ORDERED that Respondent [redacted]'s derivative request for asylum under INA § 208 be **GRANTED**.

IT IS FURTHER ORDERED that Respondent [redacted]'s derivative request for asylum under INA § 208 be **GRANTED**.

Katherine L. Hansen

Katherine L. Hansen
Immigration Judge