Respondent's Copy

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

Faegre Baker Daniels
Kain, Christine
90 South 7th Street
2200 Wells Fargo
Minneapolis, MN 55402

In the matter of [redacted] File A [redacted] DATE: Jul 26, 2019

[redacted]

X Unable to forward - No address provided.

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

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

__ Other: _____

[redacted] FF

cc OCC
1 Federal Drive # 1800
Fort Snelling, MN 55111

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

File Number: A [redacted]	)	Date: JUL 24 2019
	)	
In the Matter of:	)	**IN REMOVAL PROCEEDINGS**
[redacted]	)	
	)	
Respondent.	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act – 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 Immigration and Nationality Act § 241(b)(3), and Protection Under the Convention Against Torture.

ON BEHALF OF RESPONDENT: [redacted]

ON BEHALF OF THE DHS: [redacted]

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. Introduction, Jurisdictional Statement, and Procedural History

Respondent, [redacted] (DOB: [redacted]), is a native and citizen of El Salvador. See Ex. 1. On October 2, 2014, the Department of Homeland Security (DHS) commenced removal proceedings by filing the Notice to Appear (NTA) with the Fort Snelling, Minnesota Immigration Court charging Respondent as removable pursuant to Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or Act). Id. Respondent acknowledged receipt of the NTA, admitted the allegations, and conceded the charge of removability. Respondent declined to designate a country of removal, and the Court designated El Salvador, should such action become necessary. Respondent's case was administratively closed based on his pending applications for asylum under the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the cases were recalendared after U.S. Citizenship and Immigration

Services notified Respondent of his non-eligibility and referred the case back to the Immigration Judge (IJ). Ex. 3. Respondent subsequently filed the above-listed forms of relief. Ex. 4. Respondent is also a derivative on his father's pending asylum application. Ex. 5 at 29.

On May 25, 2017, Respondent's applications for asylum and withholding of removal under the Act were denied, as was his application for protection under the Convention Against Torture, and he was ordered removed to El Salvador. Ex. 17. Mr. [redacted] appealed the decision of the Immigration Judge to the Board of Immigration Appeals (Board or BIA). Ex. 18. On August 28, 2018, the Board requested supplemental briefing from both parties. In response, the DHS filed a motion to remand the case to the IJ for further proceedings, including additional fact finding as necessary, regarding whether Respondent suffered past persecution and the likelihood of his future persecution on account of a protected ground for purposes of asylum and withholding. Ex. 19 (DHS Motion to Remand in Lieu of Supplemental Brief). The DHS acknowledged the IJ's alternative findings on past persecution "did not consider the respondent's age and perspective as a child," and agreed with Respondent that further analysis and findings of fact would be valuable. Ex. 19 (DHS Motion to Remand in Lieu of Supplemental Brief at 2). Respondent indicated that he did not oppose a remand of the proceedings. Accordingly, the Board granted the motion, and the record was remanded to the Court for further proceedings, "including additional fact finding as necessary," and the entry of a new decision. Ex. 19.

On May 3, 2019, the DHS submitted its closing argument requesting the IJ deny the respondent's applications and order him removed to El Salvador. Respondent submitted his response and supplemental evidence on June 14, 2019.

For the reasons set forth below, in accordance with the Board remand, the Court grants Respondent's application for asylum and, in the alternative, his application for withholding of removal under the Act.

II. Summary of the Evidentiary Record

Respondent's Record of Proceeding (ROP) is comprised of twenty (20) documentary exhibits. The Court admitted all evidence and exhibits with no objections from the parties. The Court takes administrative notice of the Department of State El Salvador 2013 Human Rights Report.[1] The Court considered all admitted exhibits and evidence regardless of whether referred to in this decision.

A. Documentary Evidence

Ex. 1: Notice to Appear, dated August 29, 2014, and filed October 2, 2014.

[1] The report is accessible at https://2009-2017.state.gov/documents/organization/220654.pdf.

Ex. 2: Respondent's Form I-213, Record of Deportable/Inadmissible Alien, filed October 16, 2014.
Ex. 3: USCIS Unaccompanied Child (UAC) Decision Notice for Non-Eligibility, dated June 24, 2015, and filed October 15, 2015.
Ex. 4: Respondent's Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture (Form I-589), filed December 12, 2014, and marked into evidence October 15, 2015.
Ex. 5: Respondent's Pre-Hearing Brief and Supporting Documents in Support of Application for Asylum and Withholding of Removal (248 pages), filed September 6, 2016.
Ex. 6: Respondent's Witness List, filed September 6, 2016.
Ex. 7: News Article, "El Salvador Govt Warns of Unified Super Gang," filed September 21, 2016.
Ex. 8: Congressional Research Service, Gangs in Central America, filed September 21, 2016.
Ex. 9: Respondent's Filing: Letter from Commander of the 5th Military Zone of El Salvador regarding [redacted]'s military service, filed September 21, 2016.
Ex. 10: Respondent's Filing: Letter from Dr. [redacted] regarding [redacted]'s stabbing injury, filed September 21, 2016.
Ex. 11: Copy of Form I-213 for Respondent's Father, [redacted], filed September 21, 2016.
Ex. 12: Copy of Page 1 of Form I-589 for Respondent's Father, [redacted], filed September 21, 2016.
Ex. 13: Copy of Pages 8–9 of Form I-589 for Respondent's Father, [redacted], filed September 21, 2016.
Ex. 14: Copy of Form I-213 for Respondent's Brother, [redacted], filed September 21, 2016.
Ex. 15: Copy of Form I-589 for Respondent's Brother, [redacted], filed September 21, 2016.
Ex. 16: Transcripts of Respondent's Immigration Court Hearings between October 16, 2014 and September 21, 2016.
Ex. 17: Written Decision of the Immigration Judge, dated May 25, 2017.
Ex. 18: Copy of Respondent's Notice of Appeal submission to the Board of Immigration Appeals, filed June 23, 2017.
Ex. 19: Copy of Board's decision and order in Respondent's case, filed December 13, 2018.
Ex. 20: Respondent's Closing Argument (402 pages), filed June 14, 2019.

B. Testimony

On September 21, 2016, Respondent testified in support of his applications for relief. Respondent's brother, [redacted] (DOB: [redacted]), and father,

[redacted] (DOB: [redacted]), also testified in support of Respondent. At the same hearing, Respondent offered the testimony of Dr. [redacted] Associate Professor of Latin American History at the University of Minnesota, as an expert on gangs in El Salvador. The previous IJ determined that Dr. [redacted] was not an expert on this subject, but admitted his testimony as a lay witness. Ex. 15 at 2. The Court will follow the IJ's analysis for this determination and will give Dr. [redacted]'s testimony the weight it deems appropriate.

C. Findings of Fact

Respondent was born on [redacted] in La Paz, El Salvador. His father, [redacted], and mother, [redacted] had five children together. Respondent has a brother, [redacted] and three sisters, [redacted]

Respondent's father was part of El Salvador's military from 1981–1992, during the country's civil war. After [redacted] left the military, the leader of a gang attempted to recruit him to provide the gang with the weapons training [redacted] received as a soldier. [redacted] refused to join the gang. [redacted] Respondent's older sister, attested to the fact that Respondent's family had been targeted because [redacted] was a former member of the military. In [redacted] 2005, when Respondent was one and a half years old, the gang leader stabbed [redacted] in the chest and said it was because he does not like soldiers. Because of the severity of the wound, the doctor who tended to [redacted] recommended he take 30 days off work to recover. [redacted] reported the stabbing to the police. The stabbing left a permanent scar on [redacted]'s chest. Fearful of being killed by the gang member that stabbed him, [redacted] fled El Salvador in 2006. In 2008, when Respondent was about five years old, his mother also left El Salvador. Respondent and his siblings were left in the care of their great-uncle.

Around 2011, when Respondent was eight years old, his older brother [redacted] began to be threatened and harassed by armed gang members because [redacted] had refused to join the gang. On [redacted] 2011, [redacted] was physically assaulted by a gang member and [redacted] fled El Salvador a week later.

In [redacted] 2013, gang members sent a series of threatening text messages to Respondent's sister [redacted]'s cell phone, aimed at Respondent and [redacted] repeatedly reported the threats to the police, but the police did not file any reports or conduct any investigation. On one occasion, [redacted] showed the police the threatening text messages she had received from the gang. In response, the police told [redacted] to change her phone number. On a different occasion, [redacted] returned to the police to make a report and was told to break her phone and to get a new one. In [redacted] 2013, when Respondent was nine years old, his great-uncle died and Respondent was left in the sole care of [redacted], who was 20 years old at the time. The harassment and threats from the gang intensified. Gang members approached Respondent almost every time he went to school and called him "son of a soldier," they

also threatened to kill him if he did not disclose his father's location. The gang members did not similarly stop and threaten Respondent's friends, who used to walk with him to and from school. Threats toward Respondent escalated to physical harm. In 2013, Respondent was riding his bicycle when three gang members pulled him off his bicycle, repeatedly asked why his father had been in the military, and beat him. The assault left Respondent with a cut on his ankle that left a scar. [redacted] was also harmed when in 2014 she was sexually assaulted by the same man that stabbed [redacted].

Respondent left El Salvador on [redacted] 2014, because he feared being targeted and killed by gang members. Respondent entered the United States at Hidalgo, Texas, on [redacted] 2014.

Since arriving in the United States, Respondent's family and friends remaining in El Salvador have texted and called [redacted] warning him that gang members have threatened to kill Respondent and [redacted] if they are deported. Other members of Respondent's family have also been threatened and harmed since Respondent left El Salvador. Around [redacted] 2014, Respondent's sisters [redacted] and [redacted] received threatening messages from gang members saying they were in danger because they are [redacted]'s daughters. Approximately three to six months later, the gang that sent the threatening messages beat up [redacted]'s husband, Respondent's brother-in-law. Around [redacted] or [redacted] 2016, gang members attacked Respondent's half-brother, [redacted] and [redacted]'s brother-in-law in El Salvador. The gang members told them that they were being attacked because they knew [redacted] and [redacted] were brothers and that [redacted]'s father was a soldier. [redacted] escaped but his brother-in-law was killed. [redacted] subsequently went into hiding out of fear that he and his family would be killed by gang members.

III. Credibility

The respondent filed his applications for relief after May 11, 2005, and thus, the REAL ID Act credibility standards apply. INA § 208(b)(1)(B). Under this standard there is no presumption of credibility and the Court considers the totality of the circumstances in making its determination. Id.; see Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). Relevant factors include:

> the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim . . . .

INA § 208(b)(1)(B)(iii); see also Matter of J-Y-C-, 24 I&N Dec. 260, 262–63 (BIA 2007).

An applicant's testimony is sufficient to meet his or her burden of proof if it is 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). Where it is reasonable to expect corroborating evidence for certain specific elements of an applicant's claim, such evidence should be provided. See Matter of S-M-J-, 21 I&N Dec. 722, 725–26 (BIA 1997). If the Court encounters inconsistencies in the testimony, contradictory evidence, or inherently improbable testimony, the absence of corroboration can lead to a finding that an applicant has failed to meet her burden of proof. See Ruca-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (indicating that when an applicant makes implausible allegations and fails to present corroborating evidence, an adverse credibility determination may be warranted); Zewdie v. Ashcroft, 381 F.3d 804 (8th Cir. 2004); Matter of J-Y-C-, 24 I&N Dec. at 266; Matter of S-M-J-, 21 I&N Dec at 725–26.

The Court incorporates the written decision of the Immigration Judge issued [redacted] 2017 to the extent that it is consistent with the present decision. Ex. 17 at 6–8. The Court adopts the finding that the testimony of Respondent, Respondent's brother [redacted] and Dr. [redacted] is credible.

The Court does not adopt the adverse credibility finding for Respondent's father, [redacted], as "minor inconsistencies and omissions will not support an adverse credibility determination." Jian He Zhang v. Holder, 737 F.3d 501, 505 (8th Cir. 2013) (quoting Onsongo v. Gonzales, 457 F.3d 849, 853 (8th Cir. 2006)). [redacted]'s testimony was generally consistent with the information in his asylum application and the letter from the doctor who treated his stab wound. The Court notes that [redacted] testified he was stabbed on [redacted] 2005 while the letter from the doctor states he was injured exactly one month prior, on [redacted] 2005. However, [redacted]'s testimony as to the circumstances of his stabbing were consistent with his previous written statements and the Court observes that he was able to recall the correct day and year of an event that occurred more than a decade ago. The Court finds this minor inconsistency is insufficient to support an adverse credibility determination. See Tandia v. Gonzales, 487 F.3d 1048, 1052–53 (7th Cir. 2007) (overturning an adverse credibility ruling based on a two-year date inconsistency because "the central points of [the respondent's] testimony were consistent."). [redacted]'s testimony provided additional details that supplemented his asylum application regarding where and how we was stabbed, but omitted mention of his daughter's sexual assault. Given that [redacted] was testifying on behalf of his son and what he knew had happened to Respondent, the Court finds this omission in [redacted]'s testimony to be minor. See Tun v. Gonzales, 485 F.3d 1014, 1030 (8th Cir. 2007) ("[I]t is simply not necessary for a petitioner to precisely recite the contents of an affidavit verbatim in his testimony."); Bellido v. Ashcroft, 367 F.3d 840, 843–44 (8th Cir. 2004) (stating that a witness's omission of certain details does not necessarily undermine his entire testimony). The Court therefore finds the testimony of Respondent's father to be generally credible.

IV. Relief – Asylum – Elements Applicable to Respondent

As discussed *supra* in Part I, Respondent's proceedings were remanded by the Board for the Immigration Judge to further analyze whether Respondent suffered past persecution and the likelihood of his future persecution on account of a protected ground for purposes of asylum and withholding of removal. Ex. 19. Respondent articulated two protected grounds upon which he bases his claim: imputed political opinion and membership in a particular social group. Ex. 5 at 1.

Respondent articulates the following particular social group: "the nuclear family of [redacted], a former government soldier."[2] Ex. 20 at 4.

A. Legal Standard – Asylum Generally

In all asylum cases, the applicant "shall have the burden of establishing that he or she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion." 8 C.F.R. § 1240.8(d). To qualify for asylum under section 208 of the Act, an applicant bears the burden of proving that he or she is a refugee within the meaning of section 101(a)(42) of the Act. The applicant must demonstrate that he or she is unable or unwilling to return to the country of origin because of persecution or a well-founded fear of persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(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 an asylum applicant presents specific facts establishing that he or she has been the victim of persecution based on one of the five enumerated grounds, then the applicant is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R § 1208.13. 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). Finally, the applicant must demonstrate that he or she does not fall into any of the mandatory denial categories, see INA § 208(b)(2); 8 C.F.R. § 1208.13(c), and that he or she is eligible for asylum as a matter

[2] Respondent also proposed "the nuclear family of [redacted] a former Salvadoran soldier who openly criticized the MS-13 and Mara 18 gangs" and "individuals with close family ties to former members of the military" as particular social groups. Because Respondent's closing brief focused primarily on the particular social group of "the nuclear family of [redacted] a former government soldier" and the Court determines membership in this group to be a protected ground for the grant of asylum, the Court does not reach the other proposed groups.

of discretion. See INA § 208(b)(1)(A); 8 C.F.R. § 1208.14; see also Cardoza-Fonseca, 480 U.S. at 423.

B. Past Persecution

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)).

1. Persecution – Level of Harm

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). Rather, "persecution is an extreme concept." Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004). Low-level intimidation and harassment alone do not rise to the level of persecution, Matul-Hernandez v. Holder, 685 F.3d 707, 711 (8th Cir. 2012), 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). The combination of "numerous and credible threats" with attempts to fulfill those threats may establish past persecution, as the asylum standard does not require the applicant "to wait for [his or her] persecutors to finally carry out their death threats before [he or she] could seek refuge here." Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 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).

A respondent's young age at the time of the harm or suffering is a determinative factor in deciding if the events constitute persecution. See Jorge-Tzoc v. Gonzales, 435 F.3d 146, 150 (2d Cir. 2006) (remanding for the IJ to consider inter alia the harm from the perspective of a child); Liu v. Ashcroft, 380 F.3d 307, 314 (7th Cir. 2004) (holding that age can be a "critical factor" in determining past persecution). As the Department of Justice Guidelines for Children's Asylum Claims states, "harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution." Ex. 5 at 138. Additionally, "injuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child." Hernandez-Ortiz v. Gonzales, 496 F.3d 1042, 1046 (9th Cir. 2007). However, even in cases involving children, "[t]he mere presence of some physical harm does not require a finding of past persecution" Barillas-Mendez v. Lynch, 790 F.3d 787, 790 (8th Cir. 2015) (quoting Al Tawm v. Ashcroft, 363 F.3d 740, 743 (8th Cir. 2004)).

The Court concludes that the harm suffered by Respondent rose to the level of persecution. The violence Respondent experienced was the culmination of months of death threats and harassment directed toward him that made him feel fearful and unsafe leaving his home. Respondent was only nine years old when he was pulled from his bicycle by three gang members and beaten with it. While such a physical assault may be "minor" from an adult's perspective, consideration of Respondent's young age and the cumulative impact of the harm he suffered leads to a conclusion that such suffering constitutes persecution. See Ordonez-Quino, 760 F.3d at 91. Respondent's situation is distinguishable from the applicant in Barillas-Mendez v. Lynch, 790 F.3d 787 (8th Cir. 2015) in a number of ways. In that case, the physical abuse the applicant experienced from the ages of 13 to 17 was by family members, the abuse did not include death threats or threats to other family members, and none of the applicant's nuclear family members were subject to persecution. Id. Here, in contrast, Respondent's physical assault occurred when he was less than ten years old and with the knowledge that his father and siblings had also suffered numerous death threats and serious violence.

Respondent's young age compels further analysis of harms suffered by his family, upon whom he was totally dependent. Jorge-Tzoc, 435 F.3d at 150. By the time Respondent fled El Salvador when he was ten years old, multiple members of his immediate family had been subjected to death threats, harassment, sexual assault, and grave physical harm—Respondent's father was stabbed in the chest, his brother was physically assaulted, and his sister was sexually assaulted. This combination of events reflects a pattern of suffering that certainly had a cumulative effect on Respondent in his formative years, strongly supporting the finding he suffered harm rising to the level of past persecution.

2. Protected Ground

The articulated protected grounds are imputed political opinion and membership in a particular social group, as described *supra*.

a. *Political Opinion*

Respondent claims he suffered persecution because of his imputed political opinion—opposing gang activity in El Salvador. Ex. 5 at 1. However, this claim fails based on established precedent. Gangs are criminal rather than political in nature and perpetrate general violence on the relevant community at large. See Juarez Chilel v. Holder, 779 F.3d 850, 855 (8th Cir. 2015); Constanza v. Holder, 647 F.3d 749, 754 (8th Cir. 2011); Matter of M-E-V-G-, 26 I&N Dec. 227, 250–51 (BIA 2014). The BIA has also found that refusal to join a gang on its own does not amount to political opinion. Matter of E-A-G-, 24 I&N Dec. 591, 596 (BIA 2008). In Matter of S-E-G-, the BIA found that the respondent did not establish that MS-13 "persecuted or would persecute them on the basis of [political] opinion. There is no indication that the MS-13 gang members who pursued the respondents had any motives other than increasing the size and influence of their gang." Matter of S-E-G-, 24 I&N Dec. 579, 589 (BIA 2008). Claims will also fail when "gangs have directed

harm against anyone and everyone perceived to have interfered with, or who might present a threat to, their criminal enterprises and territorial power." Matter of S-E-G-, 24 I&N Dec. at 587. Moreover, the BIA has relied on the nature of gangs as criminal organizations that perpetrate general violence and that respondents have not shown "reasons other than gaining more influence and power." Matter of S-E-G-, 24 I&N Dec. at 588. The Eighth Circuit has held that opposition to a gang "does not compel a finding that the gang's threats were on account of an imputed anti-gang political opinion" and opposition to a gang "may have a political dimension, but refusal to join the gang is not necessarily politically motivated." Marroquin-Ochoma v. Holder, 574 F.3d 574, 578–79 (8th Cir. 2009).

Although there is evidence in the record suggesting that gangs in El Salvador are beginning to coalesce into political structures, the majority of the evidence shows that the gangs in El Salvador are criminal in nature and their motives are based on increasing their power rather than their political presence. See Ex. 5 at 43–248. Furthermore, there is insufficient evidence to establish that the gang threatened and harmed Respondent because it believed he held a political opinion. The record shows that the gang sought out Respondent's father based on his past military membership, rather than for a political opinion the gang attributed to [redacted]. Therefore, the Court finds that Respondent's case is not distinguishable from Matter of S-E-G-, 24 I&N Dec. 579 (BIA 2008) or Marroquin-Ochoma v. Holder, 574 F.3d 574 (8th Cir. 2009) and Respondent has not met his burden that he was harmed on account of his imputed political opinion.

b. *Membership in a Particular Social Group*

A cognizable particular social group must include members who share a common immutable characteristic; it should be defined with particularity; and the group must be socially distinct within the society in question. Ngugi v. Lynch, 826 F.3d 1132, 1137–38 (8th Cir. 2016). First, a particular social group requires members to share 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's fundamental to their individual identities or consciences." Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Second, the group must be particular. Matter of W-G-R-, 26 I&N Dec. at 212. To satisfy the particularity requirement, a group must be discrete and have definable boundaries. Id. at 214. Third, the group must be socially distinct. Id. at 212. Social distinction means that the group must be perceived as a group by society, regardless of whether society can identify the group's members by sight. Id. at 216–17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. Id. at 217. This social distinction inquiry may require looking into the culture and society of an applicant's home country to determine if the class is discrete and not amorphous. Id. at 214. Social distinction does not require "ocular" visibility. Id. at 216. A proposed particular social group must "exist independently of the harm asserted." Matter of A-B-, 27 I&N Dec. 316, 334–35 (A.G. 2018) (If a particular

social group is "defined by the persecution of its members, then the definition of the group moots the need to establish actual persecution."). When requesting asylum on account of membership in a particular social group, applicants must "clearly indicate, on the record and before the [I]mmigration [J]udge, the exact delineation of any proposed particular social group." Id. at 344. Thus, a proposed particular social group is not cognizable unless its members "share a narrowing characteristic other than their risk of being persecuted." Id. at 335 (internal citations omitted). If the alleged persecutor is a private actor, the applicant must also show that his or her home government would be unwilling or unable to protect him or her. Id.

Family can be the basis for a particular social group, and "the inquiry in a claim based on family membership will depend on the nature and degree of the relationships involved and how those relationships are regarded by the society in question." Matter of L-E-A-, 27 I&N Dec. 40, 43 (BIA 2017)[3] (finding the immediate family of the respondent's father to constitute a cognizable particular social group); see In Re C-A-, 23 I&N Dec. 959 (noting that "family relationship are generally easily recognizable and understood by others to constitute social groups"); Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985), overruled in part on other grounds (noting that one's "kinship ties" are immutable and innate); see also Bernal-Rendon v. Gonzalez, 419 F.3d 877 (8th Cir. 2005).

Respondent's articulated particular social group of "the nuclear family of [redacted], a former government soldier" is a cognizable particular social group. Respondent acquired membership into [redacted] nuclear family at birth, and cannot change the fact of this immutable characteristic. The nuclear family of an individual is also sufficiently particular to qualify as a particular social group. Respondent's nuclear family consists of his two parents and his four siblings. Ex. 5. This case does not implicate the blurrier lines of determining extended family relationships, and the father-and-son relationship between [redacted] and Respondent is of the same "nature and degree" of the particular social group recognized in Matter of L-E-A-, 27 I&N Dec. Respondent's nuclear family is socially distinct, as evidenced by the numerous times gang members called Respondent and his brother [redacted] "the son of a soldier" while threatening or injuring them. These reasons lead the Court to conclude that Respondent is a member of a particular social group protected under INA § 101(a)(42)(A).

3. Nexus

An asylum applicant must demonstrate that the persecution he or she fears was or would be "on account of" his or her race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(a); see INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992) (explaining that an asylum claim fails unless the applicant establishes the

[3] The Attorney General has referred this decision to himself and stayed the Board's decision pending his review, however the Board's decision remains valid as precedent until the Attorney General issues a decision vacating, modifying, or overruling the decision.

requisite nexus between the alleged harm and a statutorily protected ground). For an applicant to show that he or she has been targeted on account of a protected ground, the applicant must demonstrate that his or her claimed ground was at least "one central reason" for the claimed harm. INA § 208(b)(1)(B)(i); Garcia-Moctezuma v. Sessions, 879 F.3d 863, 867 (8th Cir. 2018); Matter of N-M-, 25 I&N Dec. 526 (BIA 2011). The protected ground cannot be "incidental, tangential, superficial, or subordinate to another reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–14 (BIA 2007). Circumstantial evidence that gang members referred to applicant's membership in his particular claimed social group while harassing him may not alone be sufficient to support a finding of past persecution. Gomez-Rivera v. Sessions, 897 F.3d 995, 998 (affirming the BIA's decision that the applicant's relationship to his police officer father was an "incidental or tangential" reason for his persecution). An applicant may show a persecutor's motives through direct or circumstantial evidence. Elias-Zacarias, 502 U.S. at 483. Such evidence may include statements by persecutors, or treatment of other similarly situated people. See Matter of S-P-, 21 I&N Dec. 486, 494 (BIA 1996).

The evidence in the record supports the conclusion that Respondent's relationship to his father was one central reason for the persecution he suffered. In contrast to the references gang members made to the applicant's relationship with his father in Garcia-Moctezuma, 879 F.3d 863, here, gang members threatened Respondent "almost every time that [he] would go to school" while harassing him for being "the son of a soldier." Ex. 16 (Sept. 21, 2016 Hearing) at 204. On multiple occasions, gang members asked Respondent about his father's location and threatened to kill Respondent if he did reveal Italmir's location. While beating Respondent with his bicycle, the gang members "kept asking why his dad was in the military" and promised to hurt Respondent further if he did not reveal where [redacted] had gone. Ex. 5 at 27. Additional evidence demonstrates that Respondent was singled out from his peers. When Respondent would walk with his friends, gang members would stop and threaten him but not his friends. Id. at 205. Respondent's friends "stopped walking with [him] to school because they did not want the gangs to threaten them too" and "were scared of being known as [Respondent's] friends." Ex. 5 at 27; see Ex. 16 (Sept. 21, 2016 Hearing) at 205. Respondent's brother [redacted] was similarly harassed by gang members on account of his relationship to his father and singled out among his friends. Ex. 16 (Sept. 21, 2016 Hearing) at 180–82. Gang members stopped only [redacted] referring to him as "son of this dog of a soldier," while letting his friends go. Id. The sexual assault of [redacted] by the same gang member responsible for stabbing [redacted], in conjunction with the receipt of threatening text messages directed toward both her and Respondent, is further evidence that the gang's mistreatment of Respondent and his siblings was because of their relationship to their father.

Respondent has established that he was harmed on account of a statutorily protected ground.

4. The Government Was Unwilling or Unable to Control the Persecutors

In order 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 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 Court concludes that the El Salvadoran government was unwilling or unable to control the persecutors in this case. In contrast to the adult respondent in Salman, 687 F.3d, whose asylum claim was based on the murder of a single relative by private actors, Respondent has presented the Court with adequate evidence the government of El Salvador was unable to protect him and his family from harm over a number of years. Before Respondent was ten years old, he endured months of harassment and death threats knowing that, over the course of many years, the same gang threatening him had physically harmed and threatened other members of his immediate family. After [redacted] was stabbed in the [redacted] of 2005 he reported the incident to police, but the gang continued to threaten and harm him and his children, including Respondent. In March and April of 2013, when gang members threatened to harm Respondent in text messages sent to his sister, she tried repeatedly to seek help from the police. Rather than investigating the threats, the police put the onus on [redacted] to protect herself and her brother. She was told to avoid the threats by changing her phone number or obtaining a new phone. These ineffective suggestions discouraged [redacted] and Respondent from seeking help from the El Salvadoran police thereafter and reflect the El Salvadoran government's inability to protect Respondent from his persecutors. In contrast, in Salman, the respondent presented evidence that after the murder of his uncle the Israeli police investigated the crime and arrested the private actors, leading an Israeli court to try, convict, and sentence those actors to imprisonment. Id. at 995. Respondent's repeated requests for protection from the El Salvadoran government went unanswered, and the threats made to Respondent culminated in Respondent being beaten by three gang members with his own bicycle. Respondent was too young to report the incident on his own, and [redacted] perceived going to the police as futile after so many failed attempts to get the police to protect Respondent. In light of this, the Court concludes Respondent has provided sufficient evidence to support his claim the government of El Salvador was unable to control his persecutors.

The 2013 Department of State Human Rights Report for El Salvador further supports the conclusion that the government of El Salvador was unable to control Respondent's persecutors. The report states that "weakness in the judiciary and the security forces that contributed to a high level of impunity" and "widespread corruption" were principal human rights problems in El Salvador during the time period when Respondent was most in need of police protection from his persecutors. Id. at 1. The National Civil Police (PNC),

responsible for maintaining public security, suffered from "[i]nadequate training, lack of enforcement of the administrative police career law, arbitrary promotions, insufficient government funding, failure to effectively enforce evidentiary rules, and instances of corruption and criminality" that limited its effectiveness. Id. at 5. Additionally, government officials, especially those in the judicial system, "often engaged in corrupt practices with impunity." Id. at 12. [redacted] repeatedly made the police aware of threats being made towards Respondent—a vulnerable child—and sought their help, but the government's response was to suggest [redacted] take action instead. Respondent's evidence demonstrates a pattern of targeted threats and violence directed at Respondent and his family, and an inability or unwillingness on the part of the El Salvadoran government to protect them. In light of this, the Court finds that the government was unwilling or unable to control Respondent's persecutors.

Because Respondent has established the harm he 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 persecutors, the Court finds Respondent has established that he suffered past persecution and is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1).

V. Relief – Asylum – Well-Founded Fear of Future Persecution

Because Respondent has satisfied his burden of showing that he suffered past persecution on account of a protected ground, he is entitled to a presumption of a well-founded fear of future persecution on the basis of his claim. 8 C.F.R. § 1208.13(b)(1). The burden shifts to the DHS to establish by a preponderance of the evidence that there has been a fundamental change in circumstances or that Respondent reasonably could avoid the persecution by relocating to a different part of the country. 8 C.F.R. §§ 1208.13(b)(1)(i)–(ii). The Eighth Circuit has held that an applicant need not fear the exact harm that he has suffered in the past. Hassan v. Gonzales, 484 F.3d at 513, 518 (8th Cir. 2007). Rather, to rebut the presumption of a well-founded fear of persecution already established, the DHS must show that conditions in El Salvador have changed to the extent that Respondent no longer has a well-founded fear of future persecution based on a protected ground. See id. at 518–19.

The DHS has not established by a preponderance of the evidence that there has been a fundamental change in circumstances that undermines the presumption that Respondent has a well-founded fear of future persecution. The DHS did not provide evidence that undermines the seriousness of the death threats Respondent received after arriving in the United States, nor the violent attacks on multiple members of Respondent's family who remained in El Salvador. Respondent's submissions show that former members of the police and military, as well as their families, continue to be targeted by criminal gangs. In fact, country conditions in El Salvador have worsened since Respondent fled and the targeting of current and former police, military, and their families has escalated since 2014. Ex. 5 at 218; Ex. 20 at 141; Ex 20 at 231–35. This led El Salvador's attorney general to

lobby in 2017 for a special protection law and funding specifically to protect soldiers, police, and their families, but the legislation did not pass, reflecting the government's continued inability to keep individuals such as Respondent safe from persecution by gang members. Ex 20 at 231–35. The weight of the country conditions evidence reflects that circumstances have not fundamentally changed so as to allow Respondent to live in his home country without fear of future persecution, and that he would likely face the same or more danger if he returned.

Also, the DHS has not established by a preponderance of the evidence that Respondent reasonably could avoid future persecution by relocating to a different part of El Salvador. The DHS neither suggested where else in El Salvador Respondent might relocate to in order to avoid his persecutors, nor addressed whether such relocation would be reasonable for a fifteen-year-old without a guardian. The reasonableness of relocation depends on a "broad range of relevant factors," including "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." Hagi-Salad v. Ashcroft, 359 F.3d 1044, 1048 (8th Cir. 2004) (citing 8 C.F.R. § 208.13(b)(1)(i)(B)). There continues to be significant civil strife in El Salvador, and the country's judicial system has not held gangs accountable for criminal acts. Ex. 5 at 153. Gangs are active in 94% of El Salvador's 262 municipalities and are able "to carry out attacks in any part of El Salvador, irrespective of territorial control of the specific zone." Ex. 20 at 133; Ex. 5 at 223. This suggests Respondent would not be able to reasonably relocate within El Salvador to an area outside of the gangs' reach. Respondent's young age and lack of a parent or guardian in El Salvador would make him especially vulnerable to future harm, especially because youth deported back to El Salvador "suffer severe threats from gangs . . . and experience community ostracization, shaming, and bullying." Ex. 20 at 119.

Thus, Respondent has established that there is a reasonable possibility that he may suffer future persecution if removed to El Salvador.

VI. Relief – Withholding of Removal

In the alternative, the Court finds Respondent is eligible for withholding of removal under INA § 241(b)(3).

A. Legal Standard

To establish eligibility for withholding of removal, an applicant must show that there is a "clear probability" that his life or freedom would be threatened on account of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. See INA § 241(b)(3)(C); Antonio-Fuentes v. Holder, 764 F.3d 902, 904 (8th Cir. 2014). Put another way, withholding of removal will be granted only if an applicant proves

that it is more likely than not that he would be persecuted upon return to the applicant's country. Goswell-Renner v. Holder, 762 F.3d 696, 700 (8th Cir. 2014). If the applicant can establish that he suffered past persecution, then he is entitled to a rebuttable presumption that his fear of future persecution is "well-founded." 8 C.F.R. § 1208.16.

B. Analysis

1. Past Persecution

The Court incorporates its analysis discussed *supra* in Part IV.B. concluding that Respondent has established past persecution. The threats and physical harm Respondent suffered—exacerbated by the death threats, harassment, sexual assault, and grave physical harm suffered by other members of his nuclear family before Respondent was ten years old—rise to the level of persecution. Respondent provided sufficient evidence that the harm he suffered was on account of his membership in the particular social group "nuclear family of [redacted] a former government soldier," and that the government of El Salvador was unwilling or unable to control his persecutors. The Court therefore concludes Respondent has established past persecution for purposes of withholding of removal eligibility.

2. 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. § 1208.16(b)(1). However, this 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; or (2) the applicant could avoid future persecution by relocating to another part of the country that the applicant is seeking asylum from, and, under the circumstances, it would be reasonable to expect the applicant to do so. See 8 C.F.R. § 1208.16(b)(1)(i)–(ii). A fundamental change in circumstances may involve either changed conditions in the home country, such as a new political climate, or a change in personal circumstances such that the applicant no longer has a well-founded fear of persecution. See Karim v. Holder, 596 F.3d 893, 898 (8th Cir. 2010); Mambwe v. Holder, 572 F.3d 540, 548 (8th Cir. 2009); Ixtlilco-Morales v. Keisler, 507 F.3d 651, 654–55 (8th Cir. 2007).

The Court incorporates its analysis discussed *supra* in Part V concluding that the DHS has not met its burden to overcome Respondent's presumption of a reasonable fear of future persecution. The DHS did not establish by a preponderance of the evidence that there has been a fundamental change in circumstances that undermines the presumption that Respondent has a well-founded fear of future persecution, nor that Respondent reasonably could avoid future persecution by relocating to a different part of El Salvador. Thus, the Court finds Respondent has established a well-founded fear of future persecution.

Therefore, in the alternative, the Court grants Respondent's application for withholding of removal.

VII. Relief – Convention Against Torture

As the Court is granting Respondent's asylum application under INA § 208 and finds that, in the alternative, Respondent is eligible for withholding of removal under INA § 241(b)(3), the Court does not reach his application for relief under Article III of the Convention Against Torture.

Accordingly, the Court enters the following order:

ORDER

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

IT IS FURTHER ORDERED that, in the alternative, Respondent's application for withholding of removal under INA § 241(b)(3) be **GRANTED**.

[redacted]

Immigration Judge