



## WRITTEN DECISION OF THE IMMIGRATION JUDGE

### **I. Background**

The respondents are a mother and son, who are both natives and citizens of El Salvador. Exhibits (Exs.) 1A and 1B. The Court will refer to Respondent (1) as "Respondent," and the Court will refer to Respondent as . The Court will refer to Respondent and Respondent collectively as "Respondents."

Respondents entered the United States at or near Hidalgo, Texas on August 16, 2015. Id. Respondents were not admitted or paroled after inspection by an immigration officer. Id. On December 8, 2015, the Department of Homeland Security (DHS) commenced removal proceedings against Respondents with the filing of a Notice to Appear (NTA), charging Respondents as removable pursuant to the above-captioned charge of the Immigration and Nationality Act (the Act or INA). Id. Respondents admitted the allegations and conceded the charge of removability. Exs. 16A and 8B. Respondent seeks relief in the form of asylum under INA § 208, withholding of removal under INA § 241(b)(3), and protection under the Convention Against Torture. Ex. 4A. Respondent is a derivative on the application for asylum. Id. For the reasons below, the Court<sup>2</sup> now grants Respondents' application for asylum.

### **II. Evidence Presented**

The Court has considered all admitted evidence in this decision, regardless of whether specifically mentioned.

#### **a. Documentation**

##### **i. *Respondent***

- Ex. 1A: Notice to Appear, Form I-862, received December 8, 2015.<sup>3</sup>  
Ex. 2A: Record of Deportable/Inadmissible Alien, Form I-213, received December 22, 2015.  
Ex. 3A: Record of Determination/Credible Fear Worksheet, Form I-870, received

<sup>1</sup> At various points in the record, Respondent is also referred to with the last name ' . " This change references her marriage to , which occurred after proceedings began.

<sup>2</sup> This case was originally heard by Judge Susan Castro, who retired after hearing the matter. Judge Carr familiarized herself with the record in this case pursuant to 8 C.F.R. § 1240.1(b).

<sup>3</sup> By and through this order, the Court marks Exhibits 1A, 8A, 9A, 10A, 11A, 12A, 13A, 14A, 15A, 16A, 1B, 6B, 7B, and 8B.

- December 22, 2015
- Ex. 4A: Respondent's Filing: Application for Asylum and for Withholding of Removal, Form I-589, received March 3, 2016.<sup>4</sup>
- Ex. 5A: Respondent's Filing: Exhibits in Support of I-589 Application, received March 3, 2016.
- Ex. 6A: Respondent's Filing: Evidence in Support of Form I-589, received November 17, 2016.
- Ex. 7A: Respondent's Filing: Redline Version of Form I-589, received January 31, 2017.
- Ex. 8A: Respondent's Filing: Motion for Issuance of a Subpoena, received May 10, 2019.
- Ex. 9A: Order of Immigration Judge granting Motion for Issuance of a Subpoena, dated May 14, 2019.
- Ex. 10A: Respondent's Filing: Motion for Extension of Time for Production of Additional Evidence, received June 3, 2019.
- Ex. 11A: Respondent's Filing: Evidence in Support of Motion for Extension of Time for Production of Additional Evidence, received June 3, 2019.
- Ex. 12A: Order of the Immigration Judge granting Respondent's Motion for Extension of Time for Production of Additional Evidence, dated June 15, 2019.
- Ex. 13A: Respondent's Filing: Brief in Support of Asylum, received September 16, 2019.
- Ex. 14A: Respondent's Filing: Additional Evidence in Support of Asylum, received September 16, 2019.
- Ex. 15A: Order of the Immigration Judge regarding Written Pleadings, dated November 20, 2019.
- Ex. 16A: Filing of Pleadings, received December 6, 2019.

ii. *Respondent*

- Ex. 1B Notice to Appear, Form I-862, received December 8, 2015.
- Ex. 2B Record of Deportable/Inadmissible Alien, Form I-213, received December 22, 2015.
- Ex. 3B Respondent's Filing: Application for Asylum and for Withholding of Removal, Form I-589, received March 3, 2016.
- Ex. 4B Respondent's Filing: Exhibits in Support of I-589 Application, received March 3, 2016.
- Ex. 5B Respondent's Filing: Redline Version of Form I-589, received January 31, 2017.
- Ex. 6B Order of the Immigration Judge granting Respondent's Motion for Extension

<sup>4</sup> The Court notes Exhibits 4A through 7A and Exhibits 3B through 5B are marked February 6, 2016. This stamp contradicts the receipt stamp for each document. The Court notes the individual merits hearing took place on February 6, 2017, and, therefore, the exhibits were likely marked on that date, rather than February 6, 2016.

- of Time for Production of Additional Evidence, dated June 15, 2019.
- Ex. 7B: Order of the Immigration Judge regarding Written Pleadings, dated November 20, 2019.
- Ex. 8B: Filing of Pleadings, received December 6, 2019.

b. Testimony<sup>5</sup>

i. *Respondent*

Respondent testified about her life and family in El Salvador, country conditions in El Salvador, and her journey to the United States.

**III. Credibility**

It is the applicant's burden to satisfy the Immigration Judge (IJ) that her testimony is credible. See Fesehay v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As Respondent's 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). Inconsistencies about facts that "may seem like minutiae" are appropriate factors to consider. Ali v. Holder, 776 F.3d 522, 527 (8th Cir. 2015). When an applicant makes implausible allegations and fails to present corroborating evidence, an adverse credibility determination may be warranted. See Rucu-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (affirming vague testimony without any corroborating evidence created an implausible claim). 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 her fear. 8 C.F.R. § 1208.13(a). The testimony of the applicant, if credible, is sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.13(a). In determining whether the applicant has met her burden, the IJ may weigh credible testimony along with other evidence of record. Where the IJ determines 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). The need for corroborative evidence is greater when the applicant's testimony is less detailed. Matter of Y-B, 21 I&N Dec. 1136, 1139 (BIA 1998).

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<sup>5</sup> This section is a summary of the testimony and does not constitute a finding of fact.

Respondent's testimony was candid and responsive. Her testimony was plausible, internally consistent, and largely consistent with previous written and oral statements. See Exs. 2A, 3A, and 4A. The Court recognizes some minor inconsistencies, particularly regarding when she lived with her mother, the presence of her daughter when she traveled to the coast of El Salvador, and her status as a student. However, the Court finds Respondent credibly explained those inconsistencies. In addition, Respondent has submitted evidence that corroborates her account. See Exs. 5A and 6A. Therefore, the Court finds Respondent credible.

#### IV. Findings of Fact

Respondent was born on \_\_\_\_\_ in Zacatecoluca, El Salvador.

In 2008, when Respondent was fifteen years old, she met \_\_\_\_\_ was born \_\_\_\_\_ and is approximately five years older than Respondent. Respondent met \_\_\_\_\_ at church and they began dating. In 2009, \_\_\_\_\_ invited Respondent to live with him as his wife. Respondent and \_\_\_\_\_ never legally married. On October 3, 2009, Respondent gave birth to their daughter, \_\_\_\_\_.

After \_\_\_\_\_ birth, \_\_\_\_\_ stopped attending church. He started going out with his friends and coming home drunk and his treatment towards Respondent changed. \_\_\_\_\_ was verbally abusive to Respondent. He called her a bitch and a whore and worthless. He said he could treat her how he wanted because he provided her food and a place to live.

\_\_\_\_\_ was also physically and sexually abusive to Respondent. He would come home, insult her, grab her by the hair, hit her, throw her on the bed, and choke her. He abused her often, sometimes every three days. In addition to hitting her with his fists, \_\_\_\_\_ burned Respondent with an iron. He said he could beat her because she was his "wife" and he was supporting her. \_\_\_\_\_ forced Respondent to have sex whenever he wanted.

In one instance, \_\_\_\_\_ threw a glass at Respondent. \_\_\_\_\_ niece, \_\_\_\_\_ was present, stepped on the shattered glass, and injured herself. Respondent took \_\_\_\_\_ to the hospital where \_\_\_\_\_ reported to hospital staff that she was injured because \_\_\_\_\_ was fighting with Respondent. The hospital reported to the police that Respondent was being abused. Based on this report, the police went to Respondent's home in search of \_\_\_\_\_. Respondent told the police \_\_\_\_\_ was at work, but when the police went to \_\_\_\_\_ workplace, he hid from them. The police returned and informed Respondent they could not find \_\_\_\_\_. The police asked

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<sup>6</sup> At various points in the record, his name is also spelled

Respondent if she wanted a "stay away" order and she said yes. The police said they would send the order to her house, but they never did.

After the police looked for \_\_\_\_\_, he was angry. When he returned to the house, Respondent was cooking with oil. \_\_\_\_\_ demanded to know why she had told the police where he worked and he told Respondent things would be bad for her because she had spoken to the police. \_\_\_\_\_ grabbed Respondent from behind and attempted to burn her with the cooking oil, but she managed to get away from him. \_\_\_\_\_ followed Respondent, grabbed her by the hair, and took her to the bedroom where he beat her.

In 2013, when Respondent was eight months pregnant with her son, Respondent \_\_\_\_\_ threw Respondent on the ground, beat her, and kicked her in the back and stomach. Respondent was unable to stand due to the pain. When \_\_\_\_\_ saw Respondent could not get up from the floor, he left her lying there and departed the house. Once \_\_\_\_\_ was gone, Respondent managed to get up and take a bus to the hospital. At the hospital, Respondent's baby had to be delivered immediately or he would not have survived. Respondent gave birth to Respondent \_\_\_\_\_ via caesarean section. The hospital kept Respondent \_\_\_\_\_ on an incubator for twenty-two days because he was born with a lung infection. The hospital staff gave Respondent \_\_\_\_\_ a short life expectancy because of the blows he suffered when Respondent, his mother, was kicked in the stomach by \_\_\_\_\_.

Respondent remained in the hospital for four days. After leaving the hospital, Respondent went to her mother's house where she stayed for almost two years. Respondent helped her mother sell food in exchange for shelter and food. During this time, \_\_\_\_\_ came to Respondent's mother's house almost every night to intimidate Respondent. He would call her a slut, a bitch, and a whore from outside the house. The neighbors did nothing because such behavior by a husband is not outside the norm in El Salvador. At one point, Respondent's mother allowed \_\_\_\_\_ into the house and she, along with Respondent's children and sister, witnessed \_\_\_\_\_ choke Respondent. The children cried and her sister tried to tell \_\_\_\_\_ to stop, but he did not.

After Respondent had been living with her mother for approximately a year and nine months, her mother moved to live with \_\_\_\_\_. She took Respondent's younger sister and Respondent's daughter, \_\_\_\_\_, with her. Respondent's mother went to live with \_\_\_\_\_ because she thought Respondent should return to live with her husband. Respondent's mother believed that as \_\_\_\_\_ "wife," Respondent should stay with him. After Respondent's mother and sister left, Respondent remained in her mother's home, but she hid in the house with the lights off so \_\_\_\_\_ would think she was not there.

After some weeks, Respondent, with Respondent , went to Costa del Sol, about forty-five minutes away from her town. Her friends, , and , had relatives in Costa del Sol and Respondent stayed with those relatives. After about a week, Respondent left El Salvador for the United States with . After she left Costa del Sol, came to the area looking for her. He went to her friends' relatives' house demanding to see her. was accompanied by two men when he went in search of Respondent. Respondent believes may have connections to gangs and his companions may have been gang members.

Respondent married on November 29, 2017 in Minnesota.

Since Respondents' arrival in the United States, has also entered the United States with Respondent's daughter, and lived around Maryland or Virginia. was placed in foster care after an investigation of neglect and alleged sexual abuse. Respondent gained custody of in April 2019.

The preceding summary of factual findings will be further developed in the analysis below, including applicable El Salvador country conditions.

## V. Relief

### a. Asylum

#### i. *Legal Standard*

An applicant carries the initial burdens of proof and persuasion for establishing 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 her country of nationality because of past persecution or because she has a well-founded fear of future persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. See INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a). Although the protected ground does not need to be the sole reason for the persecution, it must be at least one central reason. See Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212-14 (BIA 2007).

If an applicant's fear of persecution is unrelated to past persecution, she bears the burden of establishing that the fear is well-founded. See 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of future persecution if: (1) she has a fear of persecution in her country of nationality or, if stateless, in her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if she were to return to

that country; and (3) she is unable or unwilling to return to, or avail herself of the protection of, that country because of such fear. See 8 C.F.R. § 1208.13(b)(2)(i).

A future threat to life or freedom can be established by demonstrating either an individualized risk or a pattern of persecution of similarly situated persons based on one of the five protected grounds. 8 C.F.R. § 1208.16(b)(2); Thu v. Holder, 596 F.3d 994, 999 (8th Cir. 2010). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. See 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant's fear of persecution must be country-wide. Mohamed v. Ashcroft, 396 F.3d 999, 1003, 1006 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014). To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant's subjective fear must be supported by "[c]redible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country." Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010) (quoting Mamana v. Gonzales, 436 F.3d 966, 968 (8th Cir. 2006)). A ten percent chance of future persecution can be sufficient to meet the asylum requirements. INS v. Cardoza-Fonseca, 480 U.S. 421, 431 (1987); Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

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

## ii. *Past Persecution – Level of Harm*

Past persecution is "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). "[M]inor

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). Rather, “persecution is an extreme concept.” Litvinov, 605 F.3d at 553 (quoting Zakirov v. Ashcroft, 384 F.3d 541, 546 (8th Cir. 2004)). Rape or sexual assault can rise to the level of persecution. Matter of D-V-, 21 I&N Dec. 77, 78 (BIA 1993); see also Matter of Kasinga, 21 I&N Dec. 357, 362 (BIA 1996). Persecution is treated cumulatively. See Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008); Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25-26 (BIA 1998).

Here, Respondent suffered constant beatings and rapes, as well as verbal abuse, for an extended period of time at the hands of her partner, He beat her with his fists, with an iron, and with a glass. Exs. 4A at 5-6, 3A at 12. Respondent testified forced her to have sex whenever he wanted. beat Respondent so brutally while she was pregnant with her son that the hospital determined the baby could not remain in her womb to term. Exs. 4A at 5, 3A at 12; see Ex. 6A at 147. Respondent’s son was born twenty-two days premature. Ex. 3A at 12. After she finally left he continued to verbally harass her at her mother’s house, where he called her a whore and a bitch. See Ex. 3A at 13. The violence also continued at her mother’s house, when choked Respondent in front of her children, mother, and sister. Id. at 12. In addition to Respondent’s own testimony, she provided corroboration regarding the prevalence of domestic violence in El Salvador. See generally Ex. 5A at 66-74.

Taken cumulatively, Respondent’s treatment at the hands of her partner rises to the level of persecution. These beatings were not minor. They involved a variety of instrumentalities, including fists, an iron, a glass, and hot cooking oil. The beatings escalated to the point where Respondent went into premature labor, which caused great damage and risk for both Respondents. Verbal harassment and rape accompanied the physical assaults. The physical, sexual, and verbal attacks were consistent over roughly six years. Based on the cumulative nature of the conduct, the Court finds Respondent suffered harm rising to the level of persecution.

### iii. *Past Persecution – Protected Ground*

Among other grounds,<sup>7</sup> Respondent claims persecution due to her membership in a particular social group. “An applicant’s burden includes demonstrating the existence of a cognizable particular social group, [her] membership in that particular social group, and a

<sup>7</sup> In her initial asylum application, Respondent also claimed persecution based on her political opinion. Ex. 4A. Respondent did not address that claim in her testimony or her most recent brief. See Ex. 13A. The Court need not address Respondent’s claim she fears persecution based on her political opinion. 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).

risk of persecution *on account of* [her] membership in the specified particular social group.” Matter of W-G-R-, 26 I&N Dec. 208, 223 (BIA 2014).

### 1. Particular Social Group

Respondent claims four particular social groups: 1) ~

s; 2)

3) Salvadoran women perceived as inferior to men; and 4

m. Ex. 13A.

When requesting asylum on account of membership in a particular social group, applicants must “clearly indicate, on the record and before the immigration judge, the exact delineation of any proposed particular social group.” Matter of A-B-, 27 I&N Dec. 316, 344 (A.G. 2018).

A cognizable particular social group must (1) include members who share a common immutable characteristic; (2) be defined with particularity; and (3) be socially distinct within the society in question. Ngugi v. Lynch, 826 F.3d 1132, 1137-38 (8th Cir. 2016); Matter of W-G-R-, 26 I&N Dec. at 211-12. First, 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. at 233. Second, particularity requires the group is distinct enough that it “would be recognized, in the society in question, as a discrete class of persons.” Matter of W-G-R-, 26 I&N Dec. 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. Third, social distinction “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. Matter of W-G-R-, 26 I&N Dec. at 216.

Notably, 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). A proposed particular social group must “exist independently of the harm asserted.” Matter of A-B-, 27 I&N Dec. at 334-335. Thus, a proposed particular social group is not cognizable unless its members “share a narrowing characteristic other than their risk of being persecuted.” Id. (internal citations omitted). “Social group determinations are made on a case-by-case basis.” Matter of M-E-V-G-, 26 I&N Dec. at 251 (citing Matter of Acosta, 19 I&N Dec. at 233-34).

Gender can be the foundation of a particular social group. See Ngengwe, 543 F.3d at 1034 (finding Cameroonian widows constitute a particular social group); Hassan v. Gonzales, 484 F.3d 513, 518 (8th Cir. 2007) (finding Somali females constitute a particular social group); but see Safaie v. INS, 35 F.3d 636, 640 (8th Cir. 1994) (finding Iranian women do not constitute a particular social group). A particular social group based on gender must still be made up of members who share a common immutable characteristic, be defined with particularity, and be socially distinct within the society in question. Matter of A-B-, 27 I&N Dec. at 317.

First, sex is an immutable characteristic. Matter of Acosta, 19 I&N Dec. at 233 (“The shared characteristic might be an innate one such as sex”). Thus, “Salvadoran women perceived as inferior to men” is a group whose members share an immutable characteristic.

Next, the Court finds “Salvadoran women perceived as inferior to men” is particular. Salvadoran society recognizes women perceived as inferior as a discrete class of persons. The culture of El Salvador is steeped in *machismo*, a “set of misogynistic gender biases that relegate women to being the property of men.” Ex. 6A at 122. Just as “a factfinder could reasonably conclude that all Somali females have a well-founded fear of persecution based solely on gender given the prevalence of [female genital mutilation],” Hassan, 484 F.3d at 518, the prevalence of *machismo* in El Salvador supports the particular social group of “Salvadoran women perceived as inferior to men.” The Court notes the potentially large membership of the group does not defeat its particularity because the size of a proposed particular social group is not determinative. See Malonga v. Mukasey, 546 F.3d 546, 554 (8th Cir. 2008) (finding an ethnic group within a tribe is a particular social group despite the size of the group); Matter of S-E-G, 24 I&N Dec. 579, 584 (BIA 2008) (finding size may be a factor, but the key question is whether the group is “sufficiently distinct”).

Further, the Court finds the particular social group of “Salvadoran women perceived as inferior to men” is socially distinct. Respondent confirmed this societal perception in her testimony. She noted her mother, her neighbors, and the police all failed to see any problem with her treatment because of her position in society as a “Salvadoran wom[a]n perceived as inferior to men.” All these members of society distinguished Respondent based on that position. The social distinction is further evidenced through the government’s creation of “women cities” to provide services exclusively for women. Ex. 6A at 137. These centers provide treatment for abuse, reproductive and sexual healthcare, and economic empowerment. Id. This evidence, both from testimony and reports, shows Salvadoran society—and the Salvadoran government—view “Salvadoran women perceived as inferior to men” as a distinct group.

Finally, the Court acknowledges a particular social group may not be defined by the fact that the group suffers harm. Matter of A-B-, 27 I&N Dec. at 317. Although “Salvadoran women perceived as inferior to men” references a detriment (the perception of inferiority),

the harm is in the form of how such women are treated based on their perceived inferiority. The harm is not simply the inferiority, but the violence and mistreatment it engenders.

Based on the facts and evidence in the record, the Court finds Respondent's proposed particular social group of "Salvadoran women perceived as inferior to men" is cognizable under the law. The Court need not address the other groups suggested by Respondent. 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).

## 2. Membership

In addition to the existence of a cognizable group, a respondent must also demonstrate he or she is a member of such a group. INA §§ 101(a)(42)(A), 208(b)(1)(B); 8 C.F.R. § 1208.13(a); Matter of W-G-R-, 26 I&N Dec. at 223.

Respondent is a Salvadoran woman. Ex. 5A at 1. \_\_\_\_\_ said Respondent was useless and good for nothing. Ex. 3A at 12. Respondent testified \_\_\_\_\_ said he could do whatever he wanted to her because she was a woman. Respondent's mother knew of the abuse and believed Respondent should stay with \_\_\_\_\_. Id. at 13. Respondent testified her neighbors knew of \_\_\_\_\_'s verbal abuse and did not interfere because abuse of women by men is acceptable in El Salvador. These actions indicate members of Salvadoran society viewed Respondent as inferior to men.

Based on the above facts, the Court finds Respondent is a member of "Salvadoran women perceived as inferior to men."

## 3. Nexus

An asylum applicant must demonstrate the persecution or she fears was or would be "on account of" 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. 473, 483 (1992) (explaining that an asylum claim fails unless the applicant establishes the requisite nexus between the alleged harm and a statutorily protected ground). For an applicant to show she has been targeted on account of a protected ground, the applicant must demonstrate her claimed ground was at least "one central reason" for the claimed harm. INA § 208(b)(1)(B)(i); Matter of A-B-, 27 I&N Dec. at 317; Matter of N-M-, 25 I&N Dec. 526, 531-33 (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. at 212-14. 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).

abuse of Respondent included verbal assaults. Respondent called her worthless, a bitch, and a whore, and said he could do whatever he wanted to her because she was a woman and he provided for her. See Ex. 3A at 12. These verbal attacks reflect his mentality during his abuse of Respondent. He viewed Respondent as an inferior woman and therefore subject to his abuse.

For the above reasons, the Court finds Respondent was harmed on account of her membership in a particular social group (“Salvadoran women perceived as inferior to men”).

#### *iv. Government Unwilling or Unable to Control*

To constitute persecution, the alleged 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)); Matter of A-B-, 27 I&N Dec. at 317. To establish persecution by private actors, the applicant must show more than just that the government has difficulty controlling private behavior, rather 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).

Here, Respondent—not the government—inflicted harm on Respondent. However, the police were unwilling to control Respondent spoke with the police twice. Ex. 3A at 12. Respondent testified the police never returned after they made a single attempt to locate Respondent at his place of employment. She requested a “stay away order,” but the police never sent it to her. Id. Respondent’s mother also was previously in an abusive relationship and never received meaningful assistance from the police when she sought it. Ex. 3A at 14. Despite her own abusive relationship, Respondent’s mother encouraged Respondent to remain with her abuser. This advice reflects the ingrained, systemic, and cyclical nature of domestic violence in El Salvador—a nature the government has not changed in two generations.

Respondent’s testimony regarding the inefficacy of the government is corroborated by independent reports. Exs. 5A and 6A. “Incidents of rape continue to be underreported for several reasons, including . . . ineffective and unsupportive responses by authorities toward victims.” Ex. 5A at 42. Although the law prohibits domestic violence, such laws are “not well enforced and cases [are] not effectively prosecuted.” Id. “A large portion of the population consider[] domestic violence socially acceptable.” Id. There is only one shelter for women fleeing domestic violence in El Salvador and it has limited resources compared

to the high needs. Ex. 6A at 139. Respondent testified she never went to the shelter because she would only be there for a month before she would have to return to her mother (who supported her persecutor) or to her persecutor.

The combined testimony and independent reports demonstrate the government not only fails to act in incidents of domestic violence, but condones domestic violence. Laws enacted to protect victims of domestic violence exist in name only. Resources are not available or not effective, thus rendering the laws futile. The mere existence of “women cities” (referred to *supra*) and a single shelter does not equate to an ability to enforce the law. The police talked to Respondent about her complaints. But the police made only a cursory effort to find Respondent’s persecutor and did not provide her with any meaningful forms of protection, such as a stay away order. The government offered Respondent no realistic means of protection.

For the above reasons, the Court finds the Salvadoran government is unable to protect Respondent from persecution she faces based on her membership in a particular social group.

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

If a respondent can establish that she suffered past persecution, then she is entitled to a rebuttable presumption that 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) there has been a “fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” in her native country; or (2) 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.” See 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). In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the DHS establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate. 8 C.F.R. § 1208.13(b)(3)(ii).

Here, the Court finds *supra* Respondent suffered past persecution. Respondent, therefore, is entitled to a rebuttable presumption that her fear of future persecution is well-founded. In cross-examination, the DHS contended Respondent has the ability to move within the country and Respondent’s fear of \_\_\_\_\_ in El Salvador has fundamentally changed given \_\_\_\_\_ relocation to the United States.

Respondent attempted to relocate at various points, but Respondent’s attempts were all unsuccessful. First, she went to her mother’s home, where \_\_\_\_\_ found her and

continued to harass her. Ex. 3A at 13. She next went to Costa del Sol, forty-five minutes farther away, in order to avoid her abusive partner. Id. came to Costa del Sol to find her, and he brought two friends with him, who may have been gang members. Id. Respondent testified was friendly with gang members and sometimes dressed like gang members, though he was not a member of any gang. See Ex. 4A at 5. One survey of women fleeing domestic violence in Central America reported “that members of criminal armed groups were able to track [the women] when they moved.” Ex. 6A at 201. More generally, El Salvador is a small country, making internal relocation difficult. See id. at 145 (referring to El Salvador as “the little thumb of Central America” because of the small size of the country”).

The Court acknowledges has resided in the United States, and not El Salvador, for some time, though the Court does not have an exact date or any information about his status. See Ex. 11A. Based on’s own relocation, Respondent may be safer in El Salvador as is no longer there. However, pursued Respondent to her mother’s house, her friends’ home in Costa del Sol, and now the United States. The Court does not assume will choose to remain in the United States, will be permitted to stay in the United States, or will not follow Respondent back to El Salvador. The United States domestic violence laws are stronger than El Salvador’s, and the United States has a stronger history of enforcing those laws. Additionally, s relocation to the United States does not diminish Respondent’s concern for’s friends in El Salvador, who participated in his search for her and who appear to be gang members.

Based on success in locating her and the geographically limited options within El Salvador, the Court finds it is not reasonable to expect Respondent to relocate within El Salvador. Moreover, based on unclear future and connections to gangs in El Salvador, the Court finds being currently present in the United States does not constitute a fundamental change in circumstances. For these reasons, the Court finds the DHS has not rebutted the presumption of a well-founded fear of persecution by a preponderance of the evidence.

Further, the Court finds Respondent 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). (“[T]he danger of persecution should generally outweigh all but the most egregious adverse factors”). For the reasons above, the Court concludes Respondent has met her burden to show a well-founded fear of persecution on account of a protected ground. This Court, therefore, grants her asylum application.

b. Withholding of Removal

To establish eligibility for withholding of removal, a respondent must show there is a “clear probability” her 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 it is more likely than not that she would be persecuted upon return to her country. Goswell-Renner v. Holder, 762 F.3d 696, 700 (8th Cir. 2014). Although the protected ground does not need to be the sole reason for the persecution, it must be at least one central reason. J-B-N- & S-M-, 24 I&N Dec. at 212-14. In other words, the protected ground cannot be “incidental, tangential, superficial, or subordinate to another reason.” Id. at 214.

While asylum and withholding claims rely on the same factual basis, there is a heavier burden of proof for withholding of removal relief. Matter of Dass, 20 I&N Dec. 120, 121 (BIA 1989).

The Court need not address Respondent’s claim for withholding of removal because Respondent’s application for asylum is granted. See Bagamasbad, 429 U.S. at 25-26 (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).

c. Convention Against Torture

For asylum applications filed on or after April 1, 1997, the applicant shall also be considered for eligibility for protection under the Convention Against Torture. See 8 C.F.R. § 1208.13(c)(1). The burden of proof is on the applicant to establish that it is more likely than not that she would be tortured if removed to the proposed country of removal. See 8 C.F.R. § 1208.16(c)(2). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. Id.

The Court need not address Respondent’s claim for protection under the Convention Against Torture because Respondent’s application for asylum is granted. See Bagamasbad, 429 U.S. at 25-26 (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).


Accordingly, the Court enters the following orders:

**ORDERS**

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

**IT IS FURTHER ORDERED** that Respondent's derivative request for asylum under INA § 208 is **GRANTED**.

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

  
\_\_\_\_\_  
**M. Audrey Carr**  
United States Immigration Judge