

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

**File Number:** [REDACTED]

**Date:** 10-5-21

**In the Matter of:**

**In Removal Proceedings**

[REDACTED]

Respondent.

**Charges:**

INA § 237(a)(1)(C)(i) – Any alien who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status in which the alien was admitted or to which it was changed under section 248, or to comply with the conditions of any such status, is deportable.

**Applications:**

Asylum, Withholding of Removal, and Protection under the Convention Against Torture.

**ON BEHALF OF RESPONDENT:**

Kimberly Hunter  
Kim Hunter Law PLLC  
656 Selby Ave., Suite 100  
St. Paul, MN 55104

**ON BEHALF OF THE DHS:**

Ken Knapp  
Asst. Chief Counsel/ICE  
1 Federal Dr., Suite 1800  
Fort Snelling, MN 55111

**DECISION OF THE IMMIGRATION JUDGE**

**I. Background**

On December 28, 2020, the Department of Homeland Security (DHS) initiated removal proceedings against [REDACTED] (DOB: [REDACTED], Respondent, native and citizen of Burundi, by filing a Notice to Appear (Form I-862) with the Immigration Court. See Exhibit (Ex.) 1. DHS charges Respondent with removability under section 237(a)(1)(C)(i) of the Immigration and Nationality Act (INA or Act). Respondent admitted the factual allegations and conceded the charge of removability. The Court sustained the charge of removability. Burundi is designated as the country of removal, should removal become necessary.

Respondent is seeking asylum, withholding of removal under the Act, and protection under the Convention Against Torture. Prior to the issuing of this written decision, the Court held an individual hearing in this case. For the reasons set for the below, the Court grants

Respondent's application for asylum and does not reach her applications for withholding of removal under the Act or protection under the Convention Against Torture.

## II. Summary of the Evidentiary Record

The Court marked sixteen (16) exhibits. Respondent objected to the article at pages 5–10 in exhibit 14, as the article does not list the publication source. The DHS described that the article is from Voice of America and the article itself describes that the “story originated in VOA’s Central Africa service” and “[s]ome information is from AP, AFTP and Reuters wire services,” Ex. 14 at 9. The Court overrules the objection to the article. The Court admitted all exhibits. At the individual hearing, the Court instructed the parties to argue the as the weight the Court should give the articles included in the record. And the parties were provided such an opportunity. The Court considered all exhibits and evidence regardless of whether specifically referred to in this decision. Further, the Court gives weight to the evidence as it deems appropriate.

### A. Documentary Evidence

- Ex. 1: Notice to Appear (Form I-862), filed December 28, 2020;
- Ex. 2: Respondent's Submission, U.N. Human Rights Counsel, *Report of the Commission of Inquiry on Burundi*, U.N. Doc. A/HRC/36/54 (August 11, 2017);
- Ex. 3: Respondent's Submission, U.N. Human Rights Counsel, *Report of the Commission of Inquiry on Burundi*, U.N. Doc. A/HRC/36/54 (August 11, 2017)<sup>1</sup>;
- Ex. 4: Respondent's Documents in Support of I-589 Application for Asylum, 178 pages;
- Ex. 5: Respondent's Documents in Support of I-589 Application for Asylum, 99 pages;
- Ex. 6: Copy of Respondent's I-589 Application, Passport, and Declaration, originally filed with USCIS;
- Ex. 7: Respondent's Motion to Advance, filed August 2, 2021;
- Ex. 8: Respondent's Country Conditions Documents Submitted with Original I-589 Filing, filed August 6, 2021<sup>2</sup>;
- Ex. 9: Respondent's Updated Country Conditions Documents, filed August 6, 2021;
- Ex. 10: Respondent's Country Conditions Documents Submitted at Asylum Office Interview, filed August 6, 2021<sup>3</sup>;
- Ex. 11: Redlined Application for Asylum and for Withholding of Removal (Form I-589);
- Ex. 12: Copy of Respondent's Sister's Asylum Card from the United Kingdom;

<sup>1</sup> Exhibit 3 is the same report submitted by Respondent in exhibit 2. For clarity, the Court will cite only to exhibit 2 when citing to this report.

<sup>2</sup> Exhibit 8 is the same submission of articles as submitted in exhibit 5. For clarity, the Court will cite only to exhibit 5 when citing to these articles.

<sup>3</sup> Exhibit 10 is the same submission of articles as submitted in exhibit 4. For clarity, the Court will cite only to exhibit 10 when citing to these articles.

- Ex. 13: Respondent's Asylum Declaration and Country Conditions Documents, dated August 11, 2021;  
Ex. 14: DHS Submission of Country Conditions Evidence, 13 pages;  
Ex. 15: Copy of USCIS Assessment to Refer, dated April 15, 2020; and  
Ex. 16: Respondent's Witness List, filed August 13, 2021.

### B. Testimony

On August 13, 2021, Respondent and her brother, [REDACTED] (DOB: [REDACTED]) testified in support of her application. Mr. [REDACTED] testified about his time in Burundi during and immediately after the protests and violent repression of 2015, including his father's disappearance, his grandparent's deaths, and his departure from Burundi. Respondent testified about her political opinion, her imputed political opinion, and her fear of harm if she returns to Burundi.

### III. **Credibility and Corroboration**

Respondent filed their application after May 11, 2005, and thus, the REAL ID Act credibility standards apply. REAL ID Act § 101(h)(2), Pub. L. No. 109-13, 119 Stat. 231 (2005); see also INA § 240(c)(4).

An immigration judge may base their credibility determination on:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.

INA § 240(c)(4)(C).

An applicant's testimony is sufficient to meet their burden of proof if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for their fear. 8 C.F.R. § 1208.13(a). Where it is reasonable to expect corroborating evidence for 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 their 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.

Even where the applicant testifies credibly, the Court may determine that the applicant must provide further corroborative evidence to meet their burden of proof. INA § 208(b)(1)(B)(ii). When corroborative evidence is requested, the applicant must be given an opportunity to provide the evidence or explain why the evidence is not readily available. Khrystodorov v. Mukasey, 551 F.3d 775, 782 (8th Cir. 2008).

The Court finds Respondent and Mr. [REDACTED] credible. The record, including testimony and documentary evidence, is generally consistent. The testimony was sufficiently detailed and inherently plausible. Respondent and Mr. [REDACTED] were responsive and candid. Respondent and Mr. [REDACTED] did not appear dishonest or deceptive. The Court did not encounter inconsistencies requiring corroboration and did not request corroborative evidence.

#### IV. Findings of Fact

Respondent, [REDACTED] (DOB: [REDACTED]), was born in Bujumbura, Burundi. She is a member of the Tutsi ethnic group. Respondent's mother is [REDACTED] and father is [REDACTED]. Respondent has five siblings: [REDACTED] (DOB: [REDACTED]), [REDACTED] (DOB: [REDACTED]), [REDACTED] (DOB: [REDACTED]), [REDACTED] (DOB: [REDACTED]), and [REDACTED] (DOB: [REDACTED]). Burundi tradition and cultural norms do not require that parents pass along their surname to their children, or that siblings have the same surname. Respondent's mother operated a small grocery store out of the family compound in the neighborhood of Musaga. Respondent's father was a successful entrepreneur, owning and operating [REDACTED], in Bujumbura.

On September 8, 2013, Respondent entered the United States on an F-1 student visa. Respondent maintained her F-1 status until November 2018. In October 2016, Respondent filed an affirmative asylum application with the U.S. Citizenship and Immigration Services (USCIS). On April 15, 2020, USCIS issued an assessment to refer, referring Respondent's asylum application to the Immigration Court.

Burundi declared independence from Belgium in 1964. See Ex. 10 at 19. From 1993 to 2005, Burundi suffered from an internal conflict, in which "Hutus rebelled against the Tutsi-dominated armed forces." Id. In 2005, a power-sharing constitution brought Pierre Nkurunziza to power as president. Id. In April 2015, President Nkurunziza declared that he was seeking a third presidential term. This announcement prompted significant protests in Burundi by persons believing this third term was unconstitutional. These protests were met with significant and brutal violence at the hands of government and government affiliated forces. The ruling party was, and continues to be, the National Council for the

Defense of Democracy-Forces for the Defense of Democracy (CNDD-FDD). See id. at 48. The National Intelligence Service (SNR) and police are directly influenced and responsive to the CNDD-FDD and the president. See id. at 48. The CNDD-FDD's youth group, the Imbonerakure, acts both independently of any indefinable oversight, and in concert with the police and military apparatuses. Id. at 48. For example, though the Imbonerakure have no arrest powers, they often arrest persons with impunity. Id. at 48.

In April 2015, police often responded to peaceful protests by indiscriminately shooting protesters. Id. at 94. "On May 13, 2015, a group of military officers attempted a coup and announced the President Nkurunziza had been dismissed." Id. at 94. Loyal military forces fought against the coup, and the following day officers involved in the coup announced their coup had failed. Id. at 94. Peaceful protesters, members of the opposition, and coup supporters, were lumped together by the Nkurunziza administration and treated in a similar manner. See generally Ex. 10 (articles describing the events of 2015, including the protest, the coup, and the state sponsored violent response).

In April 2015, Respondent's parents, [REDACTED] and [REDACTED] were residing in the family compound. Respondent and [REDACTED] were in the United States, and [REDACTED] and [REDACTED] were at boarding school. [REDACTED] initially participated in protests. However, [REDACTED] stopped participating in protests when the demonstrations escalated into violence. [REDACTED] had recently completed studying medicine in China and volunteered at the hospital, treating protesters. Starting on May 19, 2015, the family provided support to the protesters by opening the grocery store for a specific period of time each day to provide food and water to the protesters. They did this from May through July.

On September 1, 2015, the Imbonerakure and the police cordoned off the neighborhood in which Respondent's family compound is located. The Imbonerakure were searching for illegal weapons. The family home was subjected to search for illegal weapons. Respondent's parents, [REDACTED] and [REDACTED] were home at the time. [REDACTED] was fearful the police and Imbonerakure would detain him for having been an active protester and hid in the ceiling. Their father was detained, removed from the family property, and beaten while in custody. He was released from custody that same day. [REDACTED] had an entry visa for Ethiopia, and fled Burundi that day. Respondent's father started looking in earnest for study abroad opportunities to get [REDACTED] out of Burundi.

On December 11, 2015, attacks against military camps in the Musaga neighborhood occurred, resulting in a neighborhood lock down. Police and Imbonerakure broke down the family compound's gate and shouted for the family to come outside the house. During this incident Respondent's parents and [REDACTED] were bound—a police officer held a knife to Respondent's mother's throat, [REDACTED] was hit in the abdomen, and Respondent's father was beaten. The officers took Respondent's father when they left, while stating they would come back for [REDACTED]. Respondent's mother and [REDACTED] locked themselves in the house until that evening when they used the family car to travel to Respondent's paternal aunt's house

in Muzinda, where they stayed the night. The next day, they travelled to Respondent's paternal grandparent's house in Bubanza.

On February 15, 2016, Respondent's mother returned to Muzinda to commence further efforts to search for Respondent's father.

On February 20, 2016, a police officer and two Imbonerakure entered Respondent's grandfather's home and demanded to inspect the household notebook. The household notebook is a system implemented after the events of the spring of 2015, which requires heads of houses to log all residents and visitors to their home. Ex. 2 at 12 ("the head of each household is required to list all his dependents, as well as visitors. The booklets, which are inspected by the police during raids on homes, are allegedly intended to enable law enforcement officials to keep track of the population."). [REDACTED] and his grandfather told them [REDACTED] was the grandfather's son, instead of his grandson, and his grandfather paid the men to not take [REDACTED] away for questioning.

This visit scared the family into finding a way to move [REDACTED] out of the household. They arranged for a man to guide [REDACTED] to a family friend's home in Cibitoke province, about a day's walk from the grandparent's home. [REDACTED] made this trip on February 22, 2016.

On February 24, 2016, [REDACTED], an employee of Respondent's father's company who had taken over the business in his absence, located [REDACTED] and informed him that his grandparents had been killed on the same day that [REDACTED] fled their home. Mr. [REDACTED] assisted [REDACTED] in obtaining a visa to enter the United States, and used his connections at the airport to get [REDACTED] on a plane out of Burundi. [REDACTED] departed Burundi on August 8, 2016.

Respondent's father has not been heard from since his detention in December 2015. Respondent's mother and sisters, [REDACTED] and [REDACTED], left Burundi and reside in Rwanda. None of Respondent's immediate family have returned to Burundi. Respondent's aunts residing in Burundi refuse to assist in obtaining death certificates or government documents relating to the family's experiences for fear of governmental retaliation.

President Pierre Nkurunziza did not seek an additional term in the 2020 elections. In May 2020, Évariste Ndayishimiye won the presidential election. President Nkurunziza died after the elections and Ndayishimiye was allowed to swear into the office of President in June. The CNDD-FDD remained the majority party throughout the government, including the office of president. "During his inaugural speech, President Ndayishimiye promised to reform the judiciary and ensure that all government and other officials who commit offense are held accountable. Since his election, there have been isolated cases of arrests and trials of ruling party youth league members and security forces accused of committing crimes." Ex. 9 at 9. However, the Ndayishimiye administration retained and promoted multiple loyal CNDD-FDD party members, including the appointment of Alain Gillaume Burnyoni as Prime Minister and Gervais Ndirakouka as Minister for the Interior, Community

Development, and Public Security. Both men are under international sanctions for their alleged roles in the violence of 2015. Ex. 9 at 9. President Ndayishimiye has paid lip service to reforms and the inclusion of the opposition party in the government, but “[s]ince the elections, Human Rights Watch has received credible reports of real or suspected opposition members being killed, disappeared, arbitrarily arrested, threatened, and beaten, particularly in rural areas.” *Id.* at 8.

These findings will be further developed *infra*, including applicable Burundi country conditions.

## V. Relief

Respondent applied for asylum under section 208 of the Act, withholding of removal under section 241 of the Act, and protection under the Convention Against Torture.<sup>4</sup>

### A. Asylum

An asylum applicant must show that they are a “refugee” as defined in section 101(a)(42)(A) of the Act. INA § 208(b)(1)(A), (B)(i); 8 C.F.R. § 1208.13(a). The applicant may qualify as a refugee by having suffered past persecution in their country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to return to, or avail themselves of the protection of, the country owing to such persecution. 8 C.F.R. § 1208.13(b)(1).

If an asylum applicant presents specific facts establishing that they have been the victim of past 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. Absent this presumption, the applicant must demonstrate a well-founded fear of future persecution, on account of one of the enumerated grounds, by establishing the fear is subjectively genuine and objectively reasonable, meaning that a reasonable person in the applicant’s circumstances would fear future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987); *Kratchmarov v. Heston*, 172 F.3d 551, 553 (8th Cir. 1999) (citation omitted). Finally, the applicant must demonstrate they are not subject to a mandatory denial category, *see* INA § 208(b)(2); 8 C.F.R. § 1208.13(c), and eligibility for asylum as a matter of discretion. *See* INA § 208(b)(1)(A); 8 C.F.R. § 1208.14; *see also* *Cardoza-Fonseca*, 480 U.S. at 423.

#### a. Past Persecution

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,

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<sup>4</sup> Article 3 of the United Nations Convention Against Torture, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988).

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)).

Respondent does not argue she suffered harm amounting to past persecution and the Court agrees the evidence in this record does not establish Respondent suffered past persecution.

*b. Well-Founded Fear of Future Persecution*

Since Respondent has not suffered past persecution she is not entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). She therefore bears the burden of establishing that her fear is well-founded. See 8 C.F.R. § 1208.13(b)(1). An applicant has a well-founded fear of persecution if: (1) the applicant has a fear of persecution in their country of nationality or, if stateless, in the 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 the applicant were to return to that country; and (3) the applicant is unable or unwilling to return to, or avail themselves of the protection of that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). 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. 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 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

To establish a well-founded fear of persecution, an applicant must present credible evidence that demonstrates that the feared harm amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or already is aware of the characteristic, and that the persecutor has the means and inclination to persecute. Matter of Y-B-, 21 I&N Dec. 1136, 1149 (BIA 1998). 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. Matter of Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant’s subjective fear must be supported by “credible, 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. Cardoza-Fonseca, 480 U.S. at 431; Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

In evaluating whether the applicant has sustained the burden of proving a well-founded fear of persecution, the applicant is not required to provide evidence that they would be singled out individually for persecution if the applicant establishes that there is a pattern or practice of persecution of persons similarly situated to the applicant on account of one of the enumerated grounds and that the applicant is a member of and identified with that



group, 8 C.F.R. § 1208.13(b)(2)(iii); see also Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997). However, to constitute a “pattern or practice,” the persecution of the group must be “systemic, pervasive, or organized.” Nguire v. Ashcroft, 367 F.3d 975, 991 (8th Cir. 2004).

Respondent argues she has a well-founded fear of future persecution based on multiple grounds, including political opinion, imputed political opinion, ethnicity as a Tutsi, and the particular social group of immediate family of [REDACTED].

*c. Political Opinion and Imputed Political Opinion*

Respondent argues she has a well-founded fear of future persecution based on her political opinion of being against the former president’s 2015 decision to run for a third term, and that subsequent events and actions by the majority party, including killing and abducting people, tarnished the government.

Alternatively, Respondent argues she has a well-founded fear of future persecution based on an imputed political opinion—opposition to the government.

To establish “persecution on account of political opinion,” an applicant must show that their political opinion is the “particular belief or characteristic” that the persecutor seeks to overcome. See Matter of Acosta, 19 I&N Dec. 211, 234–35 (BIA 1985) (explaining that “‘persecution on account of political opinion’ refers not to the ultimate political end that may be served by persecution, but to the belief held by an individual that causes him to be the object of the persecution”). Persecution or a well-founded fear of persecution on account of political opinion refers to persecution on account of *the victim’s* political opinion, not *the persecutor’s* political opinion. INS v. Elias-Zacarias, 502 U.S. 478, 481 (1992) (finding that a Guatemalan guerrilla organization’s attempt to conscript the alien into its military forces did not necessarily constitute persecution on account of political opinion); see also Matter of E-A-G-, 24 I&N Dec. 591, 597 (BIA 2008).

If persecution occurs on account of political opinion, it is irrelevant whether the applicant actually holds the political opinion that the persecutor attributes to them. See Marroquin-Ochoma v. Holder, 575 F.3d 574, 577 (8th Cir. 2009); see also De Brenner v. Ashcroft, 388 F.3d 629, 635 (8th Cir. 2004). For instance, “[i]t is the political opinion attributed to the victim, not the political opinion of the persecutor, that is ultimately relevant.” Marroquin-Ochoma, 575 F.3d at 577.

Additionally, the applicant’s political opinion or imputed political opinion must be “at least one central reason” for the persecution. See INA §208(b)(1)(B)(i); see also Marroquin-Ochoma, 575 F.3d at 577; Carmenatte-Lopez v. Mukasey, 518 F.3d 540, 541 (8th Cir. 2008); 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). 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). “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).

The Court finds Respondent’s political opinion of being against the government after the former president decided to run for a third term in 2015 is sincerely held. Respondent articulated that she was against the run for another term, and she is against the subsequent actions by the ruling party and the youth wing involving the killing and abductions of citizens of Burundi.

The Court finds this articulation by Respondent of her political opinion is broad, but such broadness does not in and of itself mean such an opinion is insufficient for an asylum claim. Respondent has sincerely held beliefs that former President Nkurunziza’s running for, and his election to, a third term as president in 2015 was in violation of the constitution. Respondent communicated these beliefs with close friends via text message. Respondent has personal experience with the government disappearing a family member. Respondent is against the actions of the ruling party in killing and abducting people it sees as opposition to their governance. Such beliefs are a sincerely held political opinion.

Further, Respondent’s evidence supports the government of Burundi is likely to view her as a member of the opposition—an imputed political opinion. Peaceful protesters, members of the opposition political party in government service, and coup supporters, were amalgamated by the Nkurunziza administration and treated in the same or similar manner. See generally Ex. 10 (articles describing the events of 2015 and immediately after, including the protest, the coup, and the state sponsored violent response); Id. at 32 (“In contrast with Burundi’s armed conflicts in previous decades, which were largely fought along ethnic lines, the current tensions in Burundi are primarily political, with the government targeting anyone suspected of opposing it.”).

Respondent must establish that the harm she fears is on account of her political opinion or imputed political opinion amounts to persecution, and that the persecutor could become aware or is already aware of her political opinion. First, the Court finds the government of Burundi, and its proxies, are aware of Respondent’s imputed political opinion. When police and Imbonerakure were at the family compound in September 2015, they told Respondent’s father of the government’s belief that his children in the United States were protesting against the Burundian government. This included the Respondent. The evidence in the record does not establish that the Imbonerakure would no longer view Respondent as a member of the opposition.

Further, the evidence in this record does not establish that the election of a new president is sufficient to establish that the operating procedure of the broader government, government affiliated groups, or the ruling party has changed as to the treatment of those

individuals viewed as opposing the government. As such, Respondent has established that the harm she fears would be on account of her political opinion or imputed political opinion and there is a reasonable possibility of future harm.

For example, the Imbonerakure continue to operate in Burundi. The group remains without official arrest powers, but “[t]hey routinely assumed the role of state security agents and as such detained and turned over individuals to members of the official security services, in some cases after committing human rights abuses.” Ex. 9 at 75. Civilian authorities continued to be ineffectual in controlling security forces. *Id.* Yet, most security forces reported directly to the president or the ruling party. Ex. 10 at 48. The U.S. Department of State describes that human rights abuses continue in Burundi, including unlawful or arbitrary killings, including extrajudicial killings on behalf of the government; forced disappearances on behalf of the government; torture; the holding of political prisoners; arbitrary interference with privacy; and restrictions of free expression. Ex. 9 at 75. Impunity continues for “the government and ruling party officials and for their supporters and proxies.” *Id.* This impunity continues because of “the reluctance of police and public prosecutors to investigate and prosecute cases of government corruption and human rights abuse and of judges to hear them in a timely manner.” *Id.* Arbitrary and unlawful killings by the police, the National Intelligence Service, military personnel, and the Imbonerakure, continued “against perceived supporters of the political opposition or those who exercised their lawful rights.” *Id.* at 76. The U.N. reported that in 2020 summary executions and arbitrary killings continued. *Id.* at 76–77. This same report describes that “grave abuses of human rights and crimes against humanity continued to be committed in the country, including extrajudicial killings, systemic torture, sexual violence, and political oppression.” *Id.* at 105–06. “[T]hese abuses were primarily attributable to state officials at the highest level and to senior officials and members of the SNR, police, the Burundian National Defense Forces, and the Imbonerakure.” *Id.* at 106. Because Burundi refuses to allow civil society organizations or human rights monitors into the country, and with the continued complications with COVID-19, it has been difficult for agencies to report on the human rights violations occurring within Burundi. *Id.* at 77. These agencies have been able to determine that “bodies bearing signs of violence continued to be found in public places, [and] authorities made no attempts to establish the victims’ identities or the circumstances of their death.” *Id.* Further, it has been reported that “human rights violations are mainly committed by members of the Imbonerakure and local administrative officials acting alone or jointly with police or the National Intelligence Service.” *Id.* “Victims were generally perceived as opponents of the government or the ruling party.” *Id.* Further, “Burundian nationals who returned to the country after having sought refuge abroad were also targeted, as were young men following travel abroad, who were accused of belonging to or supporting armed opposition groups.” *Id.* The Imbonerakure acted in place of authorities, including “killing persons accused of ordinary crimes, including theft and witchcraft, thus arrogating to themselves the right to dispense justice.” *Id.* at 77. Victims of government and government proxy violence “were generally perceived as opponents of the government or the ruling party or, first and foremost, members of the new political opposition party.”

Id.

Politically motivated disappearances continued, including the disappearance of persons returning from exile. Id. at 79. “There were no reports of efforts to prevent, investigate, or punish such acts.” Id.

Following his taking office, President Ndayishimiye “made efforts to curb the violence,” including “the first prosecution and sentencing . . . against a high-level member of the Imbonerakure.” Id. at 78. The Court notes an Imbonerakure member was convicted of murdering a workman who stole items from the member’s home, and not a politically motivated offense. Id. “There were a few reports of investigations or prosecutions for serious abuses of human rights.” Further, “[t]he extent of the impunity was a significant problem in the security forces and their proxies, particularly the Imbonerakure.” Id. at 80. Additionally, the “judiciary continued to be used as a tool of political repression and was biased in favor of the CNDD-FDD party.” Id. at 86. This led to the continued detention of political prisoners on pretextual grounds. Id. at 87. Arbitrary arrests of individuals associated with the opposition party continued, including the arrests of relatives of opposition party members when party members themselves could not be located. Id. at 84. A few members of the media have been released from detention and sanctions against media groups have been lifted. Ex. 14 at 3. President Ndayishimiye released about 40% of the prison population, due to overcrowding, but many of the political prisoners remain in detention. Id. And while the U.N. Security Council has removed Burundi from its agenda, in the first year of President Ndayishimiye’s regime, 563 dead bodies were recorded as “showing up” across the country and hardliners from the former government regime remain in the Ndayishimiye’s administration, or have in fact been promoted. Id. at 3–4.

As of March 2021, the U.N. Human Rights Council reported that Burundi has made progress as to the security situation, held broadly peaceful elections, and took steps to fight impunity. Ex. 13 at 12. Further, the European Union is moving towards a gradual resumption of political dialogue with the Burundian government. Id. at 13. The government of Burundi has shown it has the means, and will when it wants to exercise it, to prosecute the Imbonerakure. Id. The conviction of Imbonerakure for the murder of political opponents shows that “impunity is not inevitable, nor is it linked to a lack of resources or capacity of the judicial system but rather a matter of political will.” Id. This first step has not resulted in significant and actual change. There have been arrests of members of the Imbonerakure and the National Intelligence Service, but there have been no explanations as to why these members were arrested, what the charges are, or the status of the proceedings. Id. at 13–14. Human rights violations have continued, including in responding to armed attacks, the government is “targeting persons suspected of belonging to or supporting the armed opposition groups responsible for these attacks increased, and was generally based on ethnic and/or political profiling, or simply for having crossed the border.” Id. at 14. This has resulted as ex-soldiers, young men, and members of their families, often Tutsu, and members of opposition parties, being subjected to “extrajudicial

executions, enforced disappearances, arrests and arbitrary detentions often accompanied by acts of torture.” Id. at 14. President Ndayishimiye has made public statements about not considering political opponents enemies, but his administration has failed to end practices of human rights violations within agencies directly under his control, such as the National Intelligence Service, ruling party hardliners continue to hold and be appointed to government positions, and opposition party members continue to be “closely monitored by the police and security forces, as well as the Imbonerakure.” Id. at 14–16. Further, “[a]ttempts in early summer 2020 to better control the Imbonerakure came to nothing. They continue to regularly replace police and security forces, especially in rural areas, and many pursue their criminal activities.” Id. at 16. An undated news report describes that the Imbonerakure “have reportedly been told by the government not to interfere in security matters,” and the “new behaviour” of the Imbonerakure has “greatly surprise[d]” opposition party members. Ex. 14 at 2–3. Ultimately, a March 2021 U.N. report determines “the current situation in Burundi is too complex and uncertain to be referred to as genuine improvement. We hope that the actions taken by President Ndayishimiye are the beginning of profound structural changes, which have yet to materialize.” Ex. 13 at 17. President Ndayishimiye met with the U.N. Human Rights High Commissioner in 2021 to discuss the returning refugees. Ex. 14 at 13. However, the Court finds persuasive the U.N. research and reporting that President Ndayishimiye has made cursory changes to the government of Burundi, including to its proxies, such as the Imbonerakure, but these have yet to result in a true change in behavior toward the opposition. Although the Court recognizes that President Ndayishimiye’s statements and these changes have been enough for the international community to re-engage with Burundi.

The Court finds human rights abuses, including abuses that result in persecution under the Act, continue under the Ndayishimiye administration. Further, the Court finds that this persecution is being perpetrated against those holding opposition political views, whether real or imputed. As such, Respondent has met her burden to establish harm amounting to persecution, on account of her political opinion or imputed political opinion is a possibility. Therefore, the Court must determine if there is a reasonable probability Respondent is likely to suffer persecution.

The Court finds, based on the evidence in this record, that even under the new administration there is a reasonable possibility Respondent will suffer persecution because of her political opinion or imputed political opinion. Respondent’s been outside of Burundi since 2013. None of Respondent’s immediate family remains in Burundi. In 2015, her father was disappeared by the government and its proxies. Her brother [REDACTED] was followed from one location to another by government officials, but was eventually able to secure departure from Burundi. Respondent’s grandparents were killed after they assisted [REDACTED] Respondent’s mother and two youngest sisters have remained outside of Burundi in Rwanda. There are no remaining immediate family in Burundi for the government or the Imbonerakure to directly threaten. Returnees from the countries surrounding Burundi, including Rwanda, the Democratic Republic of the Congo, and Tanzania, have been

returning to Burundi. See Ex. 9 at 2–13; Ex. 14 at 6–13. The evidence in the record demonstrates that refugees have been returning to Burundi since 2017. Ex. 14 at 12 (May 2021 U.N. article describing, “Since 2017, at least 145,000 Burundian refugees have been assisted to return home, with more than 25,000 coming from Rwanda in recent months.”). Starting in February 2021, “the UNHCR, the government of Burundi and 19 partners launched the Join Refugee Return and Reintegration Plan,” which seeks \$104.3 million to assist returnees. Id. at 13. The Court finds that Burundians returning to Burundi does not establish that there is not a reasonable possibility Respondent will be persecuted. Returnees were going back to Burundi starting in 2017, under the highly oppressive regime of President Nkurunziza, the willingness of some to return during this time of repression and continuing into 2021 does not establish that Respondent does not face a reasonable possibility of persecution. Further, the Court notes that with the global COVID-19 pandemic, borders were shut down and returnees were prevented from entering Burundi for a period of time for reasons other than political repression. See Ex. 14 at 8.

As such, with the evidence of this record, as a whole, Respondent has established that the harm she fears is subjectively and objectively reasonable, is on account of her political opinion or imputed political opinion, amounts to persecution, and would be perpetrated by the government or its proxies. Further, there is a reasonable possibility of this feared harm.

Because the Court is granting Respondent asylum based on her political opinion or imputed political opinion, the Court does not reach the remaining protected grounds upon which Respondent fears persecution. These include the protected grounds of ethnic status as a Tutsi or the particular social group of family of [REDACTED]. See INS v. Bagamasbad, 429 U.S. 24, 25–26 (1976) (“As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the result they reach,” (internal citation omitted)).

#### *d. Internal Relocation*

The Court finds Respondent cannot internally relocate anywhere in Burundi where she could avoid persecution. The persecutor Respondent fears is the government and the government via its proxies, thus, Respondent enjoys a regulatory presumption that internal relocation is unreasonable, and the DHS bears the burden to prove otherwise. See 8 C.F.R. § 1208.13(b)(3)(ii) (“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 Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.”); see also Matter of M-Z-M-R-, 26 I&N Dec. 28, 35–36 (BIA 2012). The DHS has not met this burden

First, Respondent’s brother, [REDACTED], was repeatedly located by the government and the Imbonerakure before he left the country. Second, the implementation of the household logbook to keep track of the population continues and persons who have failed to register

in the household logbooks were arrested in 2020. Ex. 9 at 96. Third, as refugees returned in 2020, they were assigned to a transit facility for a number of days and then debriefed by local officials. Ex. 14 at 6. As noted above, the U.S. Department of State documented that nationals who returned have been targeted by the government, including being disappeared. Ex. 9 at 77, 79. Evidence in the record establishes that the persecution Respondent fears is at the hands of the government or its proxies and that the evidence, including that submitted by DHS, does not rebut the presumption that she would be unable to reasonably relocate within Burundi.

*e. Discretion*

Finally, the Court finds Respondent merits asylum as a matter of discretion. She has no criminal convictions and has no other negative factors. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987) (“The danger of persecution should generally outweigh all but the most egregious adverse factors). Respondent studied at Minot State University and is employed in the United States. Respondent described in an affidavit that she experienced two panic attacks related to the trauma of the family’s experiences. Ex. 7. In light of the above, the Court concludes that Respondent merits a grant of asylum under section 208 of the Act.

*f. Remaining Issues*

Because the Court is granting Respondent’s asylum application under INA § 208, the Court does not reach Respondent’s applications for withholding of removal under INA § 241(b)(3) and protection under Article III of the Convention Against Torture.

*g. Summary*

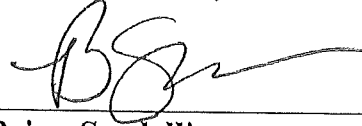
In summary, as stated above, the Respondent has been outside of Burundi since 2013. None of Respondent’s immediate family remains in Burundi. Also, in 2015, her father was disappeared by the government and its proxies. Her brother [REDACTED] was followed from one location to another by government officials, but was eventually able to secure departure from Burundi. The Respondent’s grandparents were killed after they assisted [REDACTED]. Respondent’s mother and two youngest sisters have remained outside of Burundi in Rwanda. There are no remaining immediate family in Burundi for the government or the Imbonerakure to directly threaten. Although there has been a change in Presidents and some discussion of change, the government of Burundi, including to its proxies, such as the Imbonerakure, have yet to implement a true change in behavior toward the opposition or those believed to be opposed to the government.

Based on the facts of this particular case, the record establishes that the persecution Respondent fears of the government are reasonable and that she would be unable to reasonably relocate within Burundi.

Accordingly, the Court enters the following orders:

**ORDERS**

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



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**Brian Sardelli**  
**United States Immigration Judge**

If either party elects to appeal this decision, 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).