10-28-19

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

Montagut & Sobral PC
Ham Pong, Ashley Shea
5693 Columbia Pike
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Falls Church, VA 22041

In the matter of File A DATE: Oct 31, 2019

__ 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
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202
__ 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.

V Other: Order of the IJ

COURT CLERK
IMMIGRATION COURT FF

cc: CHRIS GAHM, ESQ.
1901 SOUTH BELL STREET, 9TH FL
ARLINGTON, VA, 22202

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
Arlington, Virginia

IN THE MATTERS OF:	)	IN REMOVAL PROCEEDINGS
	)	
	)	A.
	)	A
,	)	A
	)	
Respondents	)	
	)	

APPLICATIONS: Asylum, withholding of removal under the Immigration and Nationality Act, and protection under the Convention Against Torture

ON BEHALF OF THE RESPONDENT:
Ashley Ham Pong
Montagut & Sobral, P.C.
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ON BEHALF OF DHS:
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DECISION OF THE IMMIGRATION JUDGE

I. Introduction

This is a decision in the matters of , and . The respondents are citizens and nationals of El Salvador. Through counsel, they have admitted the factual allegations in their Notices to Appear and conceded that they are subject to removal as charged. The lead respondent, , is the mother of the rider respondents. The lead respondent has filed a Form I-589, *Application for Asylum and for Withholding of Removal*, on which the rider respondents are included as derivative asylum applicants. The lead respondent has submitted supporting documentation, and a total of four exhibits have been admitted into evidence. An individual calendar hearing was held , 2018. At the end of that hearing, I told the parties I was reserving my decision on the respondents' applications. As explained below, I now grant the lead respondent's asylum application. As the rider respondents are included as derivative asylum applicants, they receive asylum as well.

II. Testimony and Evidence

The lead respondent was the only person to testify at the individual calendar hearing. The lead respondent's claims are primarily based on abuse that she suffered and fears at the hands of her husband, the father of her two children. At the time of the hearing, her son

was twelve years old, and her son was eight years old. Below is a partial summary of the lead respondent's testimony and evidence. I have elaborated further on particular aspects of her testimony, and on certain documents, in section III, below.

The lead respondent testified that, before coming to the United States, she and the rider respondents lived in El Salvador with her husband, . The lead respondent, who was born in 1988, testified that she met Mr. when she was fifteen years old. He is approximately ten years older than she is. *See* ex. 4, Tab F. After being in a relationship with him for roughly a year, she began living with him. However, she moved back to her mother's house after roughly a week, testifying that he drank alcohol often and was violent. Mr. left El Salvador for the United States shortly before the lead respondent gave birth to their son , the older of the rider respondents, in 2005. Mr. returned to El Salvador in 2008, and the lead respondent and resumed living with him. They lived in the town of San Lorenzo, in the department of San Vicente. Their second son – , the younger of the rider respondents – was born in 2009. The lead respondent testified that she and Mr. were married on , 2014.

The lead respondent testified that she Mr. consistently mistreated her during their relationship. The lead respondent testified that she has suffered from anxiety and depression since at least early adulthood. Beginning when she was eighteen years old, she saw a psychiatrist regularly in El Salvador and took medication for her mental illness. The lead respondent said that she had suffered from "nerves" before living with Mr. , but that living with him made her conditions worse. He would often tell her she was "crazy" because she suffered from mental illness and had sought psychiatric help.

The lead respondent testified that Mr. was an alcoholic, and that he spent much of the money he earned on alcohol. She said that she wanted to sell lotion and other goods to support herself and the children, but that he tried to prevent her from doing so, accusing her of just wanting to look for other men. More broadly, she said that he tried to control her psychologically during their relationship, persistently telling her she was a "crazy bitch" and accusing her of being unfaithful to him.

The lead respondent testified that Mr. forced her to have sex with him three times. These incidents happened when their second son, , was young. On each occasion, Mr. came home drunk, and the lead respondent told him she did not want to have sex with him. However, Mr. would overpower her physically and force her to have sex.

The lead respondent testified about an incident that took place when the children were small, when Mr. came home after drinking with friends. His friends had told him that the lead respondent had been unfaithful when Mr. was in the United States. After arriving home, he chased her with a machete, threatening to kill her. The lead respondent was particularly frightened because Mr. had a cousin who was a gang member and had been jailed for killing someone. She testified that she was worried Mr. could ask his cousin to kill her. Following this incident, the lead respondent took the children and went

to live with her mother. However, the lead respondent and the children returned to live with Mr. , in part because the children requested to return, which the lead respondent stated "broke [her] heart."

The lead respondent testified that she never reported Mr. 's mistreatment to the police, stating that police in El Salvador do not help domestic violence victims and are "violent themselves." The lead respondent testified that she did not trust police in El Salvador in part because a police officer had tried to rape her when she was fourteen years old. He lived near the lead respondent's family, and, the respondent testified, once started touching her inappropriately and told her he wanted to have sex. The lead respondent told him to stop or she would yell. She said that he tried to "abuse" her three times.

The lead respondent and her children left El Salvador after an incident involving MS-13 gang members in October 2015. To support her family, the lead respondent would sell lotions and natural medicines out of a car. Two men she identified as MS-13 gang members approached her while she was working and demanded that she pay them $1000, or they would harm her and her children. They told her they knew her husband would go out drinking and leave her and her children alone. The lead respondent reported the threats to the police the next day. The police officers recorded her information and told her it would be eight days before the prosecutor's office could begin an investigation. The lead respondent testified that the officers also advised her to simply flee El Salvador with her children. The lead respondent followed the officers' advice, leaving El Salvador with her children a few days later. They were subsequently returned to El Salvador by Mexican immigration authorities. They spent four days with the lead respondent's mother, then left again. Again, they were returned to El Salvador by Mexican authorities. This time, they left El Salvador more or less immediately, eventually arriving in the United States.

The lead respondent stated that her sister saw the lead respondent's husband in El Salvador in early 2016, and that he was asking where the lead respondent was. In the United States, the lead respondent has continued to be treated for mental health issues, among other things seeking treatment beginning in May 2018 from , a licensed clinical social worker. *See* ex. 4, Tab G. The lead respondent has submitted a detailed written statement in support of her applications. *See* ex. 4, Tab F. With one exception discussed below, the lead respondent's written statement is largely consistent with her testimony.

III. Analysis

A. Credibility

The lead respondent has testified credibly in support of her applications. The Immigration and Nationality Act's (Act's) standard for credibility in an asylum case, as amended by the REAL ID Act of 2005, is as follows:

> Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a 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 (including the reports of the Department of State on country conditions), 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. There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.

Section 208(b)(1)(B)(iii) of the Act.[1] As the respondent's applications were filed after the REAL ID Act took effect, this case is governed by the above provision.

The lead respondent's testimony was detailed, plausible, and internally consistent. Her demeanor suggested that she was testifying honestly and candidly, and that she was not being in any way evasive. DHS counsel raised some concerns as to the lead respondent's credibility. The most serious related to how often the lead respondent had been sexually assaulted. The respondents were placed into removal proceedings after the lead respondent was found by an asylum officer to have a credible fear of persecution or torture in El Salvador. *See* ex. 1. In the lead respondent's credible fear interview, the asylum officer asked the lead respondent: "How often would your husband force you to have sex with him?" The lead respondent replied: "Very often." *See* ex. 3, Tab E at 27. The asylum officer followed up: "How many times a week would he force you to have sex with him? The lead respondent replied: "One or two times." *Id.* In her Form I-589, the lead respondent similarly stated that her husband "forced [her] to have sex with him for many years." Ex. 3, Tab A at 5. However, in her written statement, the lead respondent states something different: that her husband "forced [her to have sex with him] about three times in total." Ex. 4, Tab F at 36. This written statement was consistent with the lead respondent's testimony in court, that her husband forced her to have sex three times.

It is true that the lead respondent has not been entirely consistent regarding how many times Mr. forced her to have sex. However, the lead respondent has consistently maintained, from her credible fear interview through her written statement through her testimony in court, that her husband forced her to have sex. She has submitted some corroboration that he forced to have sex. Specifically, she has submitted letters from people who knew her in El Salvador; one of these letters, from a woman named , states that the lead respondent's husband "abused her sexually." Ex. 4, Tab L at 70. A treatment verification form filled out by , the licensed clinical social worker who evaluated the lead respondent in May 2018, states that she "endorsed having survived abuse, domestic violence, and

[1] *See also* section 240(c)(4)(C) of the Act (substantively identical provision covering credibility determinations for all applications filed in removal proceedings under the REAL ID Act).

sexual assault from her husband." *See* ex. 4, Tab G at 39.[2] Also, there may be some ambiguity about what it means to force a person to have sex. The lead respondent testified that, during the three incidents of forced sex she described in court, Mr. overpowered her physically. It may be that, on other occasions, she did not want to have sex and told him so, but she did not physically resist and he ended up having sex with her without having to physically overpower her. It is entirely plausible that this type of sexual encounter would occur repeatedly in a years-long abusive domestic relationship. This ambiguity could account for the lead respondent's seeming inconsistencies about how often Mr. forced her to have sex; at different times, she could have been using different definitions of what it means to force a person to have sex.

DHS counsel also noted that the lead respondent testified in court that she left El Salvador with her children a few days after police officers advised to her to flee the country, but that she wrote in her statement that she and her children left "[a]bout [two] weeks" after the incident. Ex. 4, Tab F at 37. The lead respondent's written statement is somewhat ambiguous, though; it is not entirely clear whether the lead respondent meant that she and her children left two weeks after the officers told them to flee or two weeks after the MS-13 gang members first threatened her. Even if this is an inconsistency, it is not particularly significant; the statement is largely consistent with the lead respondent's testimony. Taking the evidence as a whole, the concerns DHS counsel raised, even considered together, do not rise to level needed to support an adverse credibility finding. For these reasons, the lead respondent is credible under the standard in section 208(b)(1)(B)(iii) of the Act.

B. Asylum

1. One Year Filing Deadline

The lead respondent has established that her asylum application is not barred by the filing deadline at section 208(a)(2)(B) of the Act. Under that provision, an asylum applicant must "demonstrate[] by clear and convincing evidence that the application has been filed within 1 year after the date of [his or her] arrival in the United States." Here, the lead respondent entered the United Sates on December 9, 2015 and filed her application less than one year later, on October 12, 2016. *See* exs. 1, 3.

2. Persecution on Account of a Protected Ground

To qualify for asylum, an applicant must show that he or she is a "refugee," meaning that he or she has suffered "persecution," or has a "well-founded fear of persecution," "on account of race, religion, nationality, membership in a particular social group, or political opinion." Sections 101(a)(42), 208(b)(1)(A) of the Act. If an applicant establishes that he or she has been

[2] The attached notes from the licensed clinical social worker's initial evaluation of the lead respondent include the following notation, among many others: "Hx of sexual assault Denied." *See* ex. 4, Tab G at 40. However, the notes do not provide much context, it is not clear whether this statement means that the lead respondent denied having been sexually assaulted, or that she denied having sexually assaulted others. Again, the licensed clinical social worker's overarching comment was that the lead respondent had been sexually assaulted.

persecuted on account of a protected ground, then there is a rebuttable presumption that he or she has "a well-founded fear of persecution on the basis of the original claim." 8 CFR § 1208.13(b)(1). If DHS rebuts the presumption, then the application must be denied, unless the applicant independently establishes a well-founded fear of persecution on account of a protected ground. 8 CFR § 1208.13(b)(1)(i), (b)(2). If an applicant ultimately establishes eligibility for asylum, then the application may be granted or denied in the exercise of discretion. *See* section 208(b)(1)(A) of the Act (stating that an immigration judge "may grant asylum" to a qualified applicant).

a. Past Persecution

The lead respondent has established that she suffered past persecution in El Salvador. Mr. subjected the lead respondent to serious physical and emotional abuse for years. On one occasion, he chased her with a machete, threatening to kill her. On at least three occasions, he forced her to have sex by physically overpowering her. Considered cumulatively as required,[3] this repeated abuse rises above the level of "mere harassment" and is serious enough to be persecution. *See Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (stating that "persecution includes actions less severe than threats to life or freedom," but that the "actions must rise above the level of mere harassment" (quotation omitted)). DHS counsel did not attempt to argue that the abuse to which Mr. subjected the lead respondent was insufficiently serious to be persecution.

The lead respondent has also shown that the Salvadoran government was "unwilling or unable to control" Mr. , as she must for the harm to be persecution. *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). The lead respondent has submitted extensive documentation showing that, during the period the harm occurred, the Salvadoran government largely failed to control the type of violence she suffered. The State Department's Human Rights Report on El Salvador for 2017 states that, although rape is criminalized in El Salvador, "[l]aws against rape were not effectively enforced." Ex. 4, Tab N at 116. Although domestic violence is prohibited, "[l]aws against domestic violence remained poorly enforced, and violence against women, including domestic violence, remained a widespread and serious problem." *Id.* The State Department's Human Rights Report on El Salvador for 2016, the year after the lead respondent fled, states that "[a] large portion of the population considered domestic violence socially acceptable." 2016 State Department Human Rights Report on El Salvador at 17, *available at* https://2009-2017.state.gov/documents/organization/253225.pdf.[4] The United Nations High Commissioner for Refugees states, in a March 2016 report, that El Salvador "has one of the highest recorded rates of femicides in the world," and that "[d]omestic violence is reportedly considered the leading form of violence against women and girls in El Salvador." Ex. 4, Tab O at 166. Freedom House, in its 2018 report on El Salvador, states that "[w]omen are granted equal rights under the law, but are often subject to discrimination." Ex. 4, Tab P at 181.

[3] *See Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998).

[4] The lead respondent submitted the 2017 State Department Human Rights Report on El Salvador as evidence but not the 2016 report. I am taking administrative notice of the 2016 report; it is relevant as it was issued closer in time to the events giving rise to the lead respondent's asylum claim.

A 2015 report by the Immigration and Refugee Board of Canada cites numerous sources describing widespread violence against women in El Salvador. *See generally* ex. 4, Tab Q. El Salvador is characterized, for example: as "one of the most dangerous countries in the world for women"; as a country in which women are subjected "to a continuum of multiple violent acts" due to a "generalized state of violence"; and as a country in which women are systematically "terrorize[d]" through rape. *Id.* at 183 (citations omitted).

It is true that the lead respondent never reported Mr. to the police. However, her failure to report him does not preclude her from establishing that authorities were unwilling or unable to control him. The lead respondent explained her failure to report Mr. by stating that police in El Salvador do not help domestic violence victims and are "violent themselves." The lead respondent's belief that the police in El Salvador do not generally help women who have been raped, or otherwise harmed, by their domestic partners is common in El Salvador. According to the State Department's Human Rights Report on El Salvador for 2016, "[i]ncidents of rape continued to be underreported for several reasons, including . . . a perception among victims that cases were unlikely to be prosecuted." 2016 State Department Human Rights Report on El Salvador at 17.[5] Further, "[a] large portion of the population considered domestic violence socially acceptable, and, as with rape, its incidence was underreported." *Id.* The lead respondent may well have been correct that police would not have helped her; according to KIND's Latin America Working Group, "[i] 2014, 978 cases of violence against women were reported in El Salvador" but only four "resulted in convictions." Ex. 4, Tab R at 196. Moreover, the lead respondent had a personal reason for not trusting police officers on matters related to rape; a police officer had tried to rape her when she was fourteen years old. In *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 952-53 (4th Cir. 2015), the Fourth Circuit found the petitioner had established that authorities in El Salvador were unwilling or unable to control the gang members who were threatening her even though the petitioner did not report those gang members to authorities. The court reasoned that the petitioner had "provided abundant evidence that the authorities would not have been responsive to such a report." *Hernandez-Avalos*, 784 F.3d at 952. Similarly, the lead respondent has provided abundant evidence, both testimonial and documentary, that authorities in El Salvador would not have been responsive had she reported Mr. 's crimes. Therefore, her failure to report Mr. to the police does not preclude her from establishing that authorities were unwilling or unable to control him. *See id.* at 952-53.

To summarize, the lead respondent has established that authorities in El Salvador largely failed to control the type of violence she suffered during the period she was being harmed, and that authorities would not have been responsive had she reported Mr. 's crimes. Accordingly, the lead respondent has established that the Salvadoran government was unwilling or unable to control Mr. . *See id.* As the lead respondent has established that the abuse she suffered was serious enough to be persecution, and that the Salvadoran government was unwilling or unable to control Mr. , she has established that she suffered persecution in El Salvador. *See Li*, 405 F.3d at 177; *Matter of Acosta*, 19 I&N Dec. at 222.

[5] Again, I am taking administrative notice of the 2016 report.

b. On Account of a Protected Ground

The lead respondent argues that her persecution was on account of her membership in a particular social group. She has articulated three alternative such groups: (1) women in El Salvador; (2) Salvadoran women who lack effective male protection; and (3) Salvadoran women who are viewed as property by others. As explained below, the lead respondent has established that her persecution was on account of her membership in the particular social group of "women in El Salvador."

i. Women in El Salvador

The lead respondent has established that women in El Salvador are members of a cognizable particular social group. In *Matter of Acosta*, 19 I&N Dec. at 233, the Board of Immigration Appeals (Board) stated that a particular social group is made up of people "all of whom share a common, immutable characteristic." The Board stated that an immutable characteristic is "a characteristic that is either beyond the power of an individual to change or is so fundamental to individual identity or conscience that it ought not to be required to be changed." *Id.* One's sex qualifies as an immutable characteristic as it is generally unchangeable, and is certainly a characteristic that no one should be required to change. In fact, the Board specified in *Matter of Acosta* that one's "sex" is a "shared characteristic" on which particular social group membership can be based. *Id.* (stating that "[t]he shared characteristic might be an innate one such as sex, color, [or] kinship ties").

In addition, the Board has held that a particular social group must be distinct in the society in question. In *Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014), the Board explained that "[a] viable particular social group should be perceived within the given society as a sufficiently distinct group," and that "[t]he members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society." *See also Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014) (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). The lead respondent has established that Salvadoran society views women as sufficiently distinct to qualify as a particular social group. Again, the State Department has characterized "violence against women [in El Salvador], including domestic violence, [as] a widespread and serious problem." Ex. 4, Tab N at 116. According to the State Department, as of 2016, the year after the lead respondent fled, "[a] large portion of the population considered domestic violence socially acceptable." 2016 State Department Human Rights Report on El Salvador at 17.[6] The State Department's conclusions are consistent with the rest of the lead respondent's documentation regarding conditions for women in recent years in El Salvador. Again, according to this documentation, El Salvador has one of the world's highest rates of

[6] Again, I am taking administrative notice of the 2016 report.

femicide,[7] women in El Salvador are subject to pervasive discrimination,[8] and El Salvador ranks as one of the most dangerous countries in the world for women.[9]

Taken as a whole, the lead respondent's evidence establishes that cultural and legal norms in El Salvador permit widespread violence and discrimination against women. Considering this evidence, the lead respondent has shown that women in El Salvador "are set apart, or distinct, from other persons within [El Salvador] in some significant way," and are therefore socially distinct. *Matter of M-E-V-G-*, 26 I&N Dec. at 238.

The Board has also held that a particular social group must be defined with particularity. In *Matter of M-E-V-G-*, 26 I&N Dec. at 238, the Board explained that "[t]he particularity requirement relates to the group's boundaries or . . . the need to put outer limits on the definition of a particular social group." (Quotations omitted.) *See also Matter of W-G-R-*, 26 I&N Dec. at 214. That is, "[a] particular social group must be defined by characteristics that provide a clear benchmark for determining who falls within the group," and "be discrete and have definable boundaries." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *see also Matter of W-G-R-*, 26 I&N Dec. at 214. The requirement that a cognizable group be defined with particularity "chiefly addresses the question of delineation." *Matter of W-G-R-*, 26 I&N Dec. at 214. In other words, the requirement "clarifies the point . . . that not every 'immutable characteristic' is sufficiently precise enough to define a particular social group." *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *see also Matter of W-G-R-*, 26 I&N Dec. at 213. Or, as the Fourth Circuit put it, a "group must have identifiable boundaries to meet the [Board's] particularity element." *Temu v. Holder*, 740 F.3d 887, 895 (4th Cir. 2014); *see also Zelaya v. Holder*, 668 F.3d 159, 165 (4th Cir. 2012) (stating that a particular social group must "be defined with sufficient particularity to avoid indeterminacy").

The lead respondent's proposed group – women in El Salvador – is defined with particularity. The boundaries of the group are precise, clearly delineated, and identifiable: women are members and men are not. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 213-14; *Temu*, 740 F.3d at 895; *Zelaya*, 668 F.3d at 165. There is a clear benchmark for determining whether a person in El Salvador is a member of the group: whether that person is a woman. *See Matter of M-E-V-G-*, 26 I&N Dec. at 238-39; *Matter of W-G-R-*, 26 I&N Dec. at 213-14. In *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007), the Board ruled that "affluent Guatemalans" are not members of a cognizable particular social group, holding that "[t]he terms 'wealthy' and 'affluent' standing alone are too amorphous to provide an adequate benchmark for determining group membership." Here, by contrast, the term "woman" is not too amorphous to provide such an adequate benchmark; in the vast majority of cases, a person either is a woman or is not. In *Temu*, 740 F.3d at 895, the Fourth Circuit commented that the group in *Matter of A-M-E- & J-G-U-*, "affluent Guatemalans," was not

[7] *See* ex. 4, Tab O at 166 (United Nations High Commissioner for Refugees).

[8] *See* ex. 4, Tab P at 181 (Freedom House).

[9] *See* ex. 4, Tab Q at 183 (Immigration and Refugee Board of Canada).

defined with particularity "because the group changes dramatically based on who defines it." The court stated that "[a]ffluent might include the wealthiest 1% of Guatemalans, or it might include the wealthiest 20%," and that the group therefore "lacked boundaries that are fixed enough to qualify as a particular social group." *Id.* The group of "women in El Salvador" does not change based on who defines it, and it therefore has boundaries that are fixed enough to meet the particularity requirement.

The lead respondent's proposed group – women in El Salvador – is defined with particularity even though it is large. In *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008), the Board stated that:

> The essence of the particularity requirement . . . is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons. While the size of the group may be an important factor in determining whether the group can be so recognized, the key question is whether the proposed definition is sufficiently particular or is too amorphous . . . to create a benchmark for determining group membership.

(Quotations omitted.) Therefore, the "key question" relates not to the size of the group but to whether the group's definition provides an adequate benchmark for determining which people are members and which people are not. *See also Reyes v. Lynch*, 842 F.3d 1125, 1135 (9th Cir. 2016) (stating that the Board's "statement of the purpose and function of the 'particularity' requirement does not, on its face, impose a numerical limit on a proposed particular social group or disqualify groups that exceed specific breadth or size limitations"); *Perdomo v. Holder*, 611 F.3d 662, 669 (9th Cir. 2010) ("reject[ing] the notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum," and stating that "the size and breadth of a group alone does not preclude a group from qualifying as [a particular social] group"). In the lead respondent's case, as discussed above, the group's definition provides such an adequate benchmark: women are members and men are not.

Moreover, it would be inconsistent the principle of edjusdem generis to find that a large group necessarily cannot be defined with particularity. For decades, the Board has stated that edjusdem generis underlies its determinations of which groups qualify as particular social groups. *See Matter of M-E-V-G-*, 26 I&N Dec. at 234 (applying "the interpretive canon 'ejusdem generis'" in interpreting "the phrase 'membership in a particular social group'"); *Matter of Acosta*, 19 I&N Dec. at 233 (stating that "[w]e find the well-established doctrine of ejusdem generis . . . to be most helpful in construing the phrase 'membership in a particular social group'"). Ejusdem generis is "[a] canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." *Black's Law Dictionary* (10th ed. 2014).[10]

[10] Or, as the Board put it in *Matter of M-E-V-G-*, 26 I&N Dec. at 234 n. 10, "[e]jusdem generis is a more specific application of the cannon 'noscitur a sociis,' meaning that a word is known by the company it keeps." (Quotation omitted.)

As noted above, section 101(a)(42) of the Act defines a "refugee," in relevant part, as someone who has been persecuted, or has a well-founded fear of persecution, "on account of race, religion, nationality, membership in a particular social group, or political opinion." In this provision, "membership in a particular social group" is a general phrase as compared with the more specific words and phrases "race," "religion," "nationality," and "political opinion." Applying ejusdem generis, the phrase "particular social group" should be interpreted to include groups in the same class as the other protected grounds: race, religion, nationality, and political opinion.[11] *See Matter of M-E-V-G-*, 26 I&N Dec. at 234 (stating that "[c]onsistent with the interpretive cannon 'ejusdem generis,' the proper interpretation of the phrase [membership in a particular social group] can only be achieved when it is compared with the other enumerated grounds of persecution . . ."). None of the other protected grounds are limited by size. For example, there may be thousands or millions of people of a particular race or religion in a given country. Under ejusdem generis, particular social groups should similarly not be limited by size.

In addition, the Board has routinely recognized large groups as defined with particularity. Most obviously, the Board has long held that gay and lesbian people in various countries can qualify as members of particular social groups. *See Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 822-23 (BIA 1990) (recognizing "homosexuals . . . in Cuba" as members of a particular social group). The Board recently affirmed that "homosexuals in Cuba" are members of a cognizable particular social group because, among other things, the group is defined with particularity. *See Matter of M-E-V-G-*, 26 I&N Dec. at 245; *Matter of W-G-R-*, 26 I&N Dec. at 219. The Board has never found, in a precedent decision, that a group of gay and lesbian people in a given country is not defined with particularity, even though such groups are sizable. The Board has also recognized that particular social group membership can be based on clan membership. In particular, in *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996), the Board found that members of the Marehan subclan in Somalia are members of a particular social group. The Board later affirmed that the group of "members of the Marehan subclan" is defined with particularity, simply noting that the group is "easily definable." *See Matter of W-G-R-*, 26 I&N Dec. at 219 (stating that the group of "members of the Marehan subclan" is "easily definable and therefore sufficiently particular").

It is true that, in *Matter of W-G-R-*, 26 I&N Dec. at 221, the Board found that the proposed group of "former members of the Mara 18 gang in El Salvador who have renounced their gang membership" was not defined with particularity. The Board supported this conclusion as follows:

> The group as defined lacks particularity because it is too diffuse, as well as being too broad and subjective. *See Mayorga-Vidal v. Holder*, 675 F.3d 9, 15 (1st Cir. 2012) (stating that "loose descriptive phrases that are open-ended and that invite subjective interpretation are not sufficiently particular"). As described, the

[11] The Board conducted such an analysis in *Matter of Acosta*, 19 I&N Dec. at 233. There, the Board noted that persecution on account of race, religion, nationality, or political opinion is "aimed at an immutable characteristic." Therefore, the Board stated that, "[a]pplying the doctrine of ejusdem generis, we interpret the phrase 'persecution on account of membership in a particular social group' to mean persecution that is [likewise] directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic." *Id.*

> group could include persons of any age, sex, or background. It is not limited to those who have had a meaningful involvement with the gang and would thus consider themselves – and be considered by others – as "former gang members."
>
> For example, it could include a person who joined the gang many years ago at a young age but disavowed his membership shortly after initiation without having engaged in any criminal or other gang-related activities; it could also include a long-term, hardened gang member with an extensive criminal record who only recently left the gang. It is doubtful that someone in the former category would consider himself, or be considered by others, as a "former gang member" or could be said to have any but the most peripheral connection to someone in the latter category. Even if some in the former category might consider themselves "former gang members" in a general sense, this does not mean that they would perceive themselves as part of a discrete group within society or be so perceived. The boundaries of a group are not sufficiently definable unless the members of society generally agree on who is included in the group, and evidence that the social group proposed by the respondent is recognized within the society is lacking in this case.
>
> In this regard, the boundaries of the group of "former gang members who have renounced their gang membership" are not adequately defined. The group would need further specificity to meet the particularity requirement. Our analysis illustrates the point that when a former association is the immutable characteristic that defines a proposed group, the group will often need to be further defined with respect to the duration or strength of the members' active participation in the activity and the recency of their active participation if it is to qualify as a particular social group under the Act.

Id. at 221-22.

However, the Board's decision in *Matter of W-G-R-* does not support a finding that the group of "women in El Salvador" is not defined with particularity. The Board's conclusion in *Matter of W-G-R-* that the group in that case was not defined with particularity was based on its finding that the group's "boundaries" were "not adequately defined." That is, in the Board's view, the respondent had not established that society in El Salvador would "generally agree on who is included" in the group of former gang members. *Id.* at 221. By contrast, the group in this case – women in El Salvador – has well-defined boundaries. "[M]embers of society" in El Salvador would, in all likelihood, "generally agree on who [are] included in the group": women. They would also, in all likelihood, generally agree on who are excluded: men. Regarding the First Circuit decision cited by the Board – *Mayorga-Vidal v. Holder*, 675 F.3d at 15 – the group of "women in El Salvador" contains no descriptive phrases that are "loose" or "open-ended," or that "invite subjective interpretation." The boundaries of the group of "women in El Salvador" are precise as opposed to loose, finite as opposed to open-ended, and objective as opposed to subjective. Finally, the group proposed by the lead respondent in this case is not based on "former association" with a gang or other organization, as was the proposed group in *Matter of*

W-G-R-. Instead, it is based on one's biological identity. As the lead respondent's proposed group is not based on "former association" with a gang or other organization, the Board's final instruction – that groups based on such association "will often need to be further defined with respect to the duration or strength of the members' active participation in the activity and the recency of their active participation" to be defined with particularity – does not apply. *Matter of W-G-R-*, 26 I&N Dec. at 221-22.

It could be argued that the Board's decision in *Matter of W-G-R-* stands for the proposition that a group cannot be defined with particularity if it is internally diverse. After all, in ruling that the proposed group of "former members of the Mara 18 gang in El Salvador who have renounced their gang membership" is not defined with particularity, the Board, as noted above, stated that the group "could include persons of any age, sex, or background." *Id.* at 221. In the Board's words, the group could include "a person who joined the gang many years ago at a young age but disavowed his membership shortly after initiation without having engaged in any criminal or other gang-related activities" as well as "a long-term, hardened gang member with an extensive criminal record who only recently left the gang." *Id.* If one accepts the premise that a group cannot be defined with particularity if it is internally diverse, then it could be further argued that the group of "women in El Salvador" is not defined with particularity. That group is highly diverse, as it encompasses, for example, women of different ages, races, and levels of education.

However, imposing a requirement that a group cannot be internally diverse to be defined with particularity would run counter to other Board precedent decisions, and would preclude the recognition of particular social groups that are currently commonly accepted. *See Reyes*, 842 F.3d at 1135 (stating that the particularity requirement is not "contrary to the principle that diversity within a proposed particular social group may not serve as the *sine qua non* of the particularity analysis"). In *Matter of C-A-*, 23 I&N Dec. 951, 957 (BIA 2006), the Board stated that it did not "require an element of 'cohesiveness' or homogeneity among group members." *See also Matter of S-E-G-*, 24 I&N Dec. at 586 n. 3. A policy that an internally diverse group cannot be defined with particularity would preclude particular social groups based on sexual orientation. As noted above, the Board has long recognized, and continues to recognize, particular social groups of gay and lesbian people in various countries. *See Matter of Toboso-Alfonso*, 20 I&N Dec. at 822-23; *see also Matter of M-E-V-G-*, 26 I&N Dec. at 245, (affirming that "homosexuals in Cuba" are members of a cognizable particular social group because, among other things, the group is defined with particularity); *Matter of W-G-R-*, 26 I&N Dec. at 219 (affirming that "homosexuals in Cuba" "had sufficient particularity because it was discrete and readily definable"). Groups composed of gay and lesbian people in particular countries are extremely diverse; such a group would include young people and old people, rich people and poor people, people in same-sex romantic relationships and people not in such relationships, people living in cities and people living in rural areas, and so on.

Finally, though the case law on gender-based particular social groups may not be particularly well-developed, the concept that women in a given country can form such a group is not novel. As noted above, the Board stated in 1985 in *Matter of Acosta*, 19 I&N Dec. at 233, that one's "sex" is a "shared characteristic" on which particular social group membership can be

based. In *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005), the Ninth Circuit stated that "the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law." In its 2010 decision in *Perdomo*, 611 F.3d at 667, the Ninth Circuit interpreted its *Mohammed* decision as "clearly acknowledg[ing] that women in a particular country, regardless of ethnicity or clan membership, could form a particular social group."[12] In *Hassan v. Gonzales*, 484 F.3d 513, 518 (8th Cir. 2007), the Eighth Circuit found that "Somali females" are members of a particular social group. In *Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993), the Third Circuit stated that, under *Matter of Acosta*, "to the extent that the petitioner in this case suggests that she would be persecuted or has a well-founded fear that she would be persecuted in Iran simply because she is a woman," she has articulated a cognizable particular social group. To my knowledge, neither the Board nor any circuit court has ever stated in a precedent decision that a group made up of all the women in a given country cannot be a particular social group.

ii. On Account Of

The lead respondent has established that the persecution she suffered was on account of her particular social group membership. In order to do this, she must show that her status as a woman in El Salvador was "at least one central reason" for the persecution. Section 208(b)(1)(B)(i) of the Act. The lead respondent was not a random victim of Mr. the harm began after she, as a woman, began a domestic relationship with him. Some of the persecution was sexual; he forced her to have sex at least three times. Attitudes that men can control and even physically harm women in domestic relationships are common in El Salvador. The lead respondent writes in her statement that "[a] husband can beat his wife [in El Salvador] and do what he wants with her." Ex. 4, Tab F at 37. Again, the State Department's Human

[12] It is true that the Ninth Circuit's decision in *Sanchez-Trujillo v. INS*, 801 F.3d 1571, 1577 (9th Cir. 1986), contains language that could be cited to argue that a group made up of all the women in a given country cannot be a cognizable particular social group. Specifically, the Ninth Circuit stated "the term 'particular social group' was intended to apply" to "cohesive, homogeneous group[s]." The court further stated that:

> Major segments of an embattled nation, even though undoubtedly at some risk from general political violence, will rarely, if ever, constitute a distinct 'social group' for the purposes of establishing refugee status. To hold otherwise would be tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country.

Id. However, as noted above, the Board subsequently stated in *Matter of C-A-*, 23 I&N Dec. at 957, that it did not "require an element of 'cohesiveness' or homogeneity among group members." Further, to respond to the Ninth Circuit's concerns, the simple fact that a person is a member of a cognizable particular social group does not mean that he or she will necessarily qualify for asylum. To qualify, it is not enough for an applicant to show that he or she is a member of a particular social group; he or she must also show that he or she has suffered past persecution or has a well-founded fear of future persecution, and that the persecution was or would be on account of his or her group membership. To reference one of the other protected grounds, everyone has a racial identity, but no one would likely argue that the possibility that an applicant can receive asylum or related protection based on persecution on account of his or her race is, to use the Ninth Circuit's words in *Sanchez-Trujillo*, 801 F.3d at 1577, "tantamount to extending refugee status to every alien displaced by general conditions of unrest or violence in his or her home country." Finally, as noted above, in *Perdomo*, 611 F.3d at 667, issued after *Sanchez-Trujillo*, the Ninth Circuit interpreted its case law as "clearly acknowledg[ing] that women in a particular country . . . could form a particular social group."

Rights Report on El Salvador for 2016, the year after the lead respondent fled, states that "[a] large portion of the population considered domestic violence socially acceptable." 2016 State Department Human Rights Report on El Salvador at 17.[13] According to the State Department's Human Rights Report on El Salvador for 2017, although rape is criminalized in El Salvador, "[l]aws against rape were not effectively enforced." Ex. 4, Tab N at 116. Although domestic violence is prohibited, "[l]aws against domestic violence remained poorly enforced, and violence against women, including domestic violence, remained a widespread and serious problem." *Id.*

It may be that the lead respondent's status as a woman was not the only reason Mr. persecuted her. For example, it may be that Mr. was an alcoholic and that his alcoholism played a role in the persecution. But the lead respondent is not required to show that her status as a woman was "the sole or dominant motivation for her persecution." *Cruz v. Sessions*, 853 F3d. 122, 127-28 (4th Cir. 2017). Under the applicable standard, there can be more than one central reason for persecution, and the lead respondent must merely show that her status as a woman was one such reason. *See id.* at 128 (stating that "more than one central reason may, and often does, motivate a persecutor's actions"); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007) (stating that "Congress purposely did not require that the protected ground be the central reason for the actions of the persecutors"). It may also be that the lead respondent has submitted little direct evidence of why Mr. persecuted her. But none is required; circumstantial evidence can suffice. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (stating that "the [asylum] statute makes motive critical," and that an applicant "must [therefore] provide *some* evidence of it, direct or circumstantial"). The lead respondent's status as a woman was at the heart of why Mr. harmed her; he harmed her entirely in the context of a domestic relationship and some of the harm was sexual. He had relative impunity to harm her given that she was a woman and was therefore, in some ways, a second class citizen in El Salvador. Indeed, the harm Mr. inflicted on the lead respondent was of a type widely seen as socially acceptable given that she was a woman. Taking these considerations into account, the lead respondent has made an adequate circumstantial case that her status as a woman in El Salvador was one central reason Mr. persecuted her. Therefore, she has established that the persecution was on account of a protected ground. *See* section 208(b)(1)(B)(i) of the Act.

iii. Presumption of Future Persecution

DHS has not rebutted the presumption of "a well-founded fear of persecution on the basis of the original claim." 8 CFR § 1208.13(b)(1). DHS counsel made no meaningful attempt to rebut this presumption, whether by arguing that there has been "a fundamental change in circumstances" under the standard in 8 CFR § 1208.13(b)(1)(i)(A), or that the lead respondent "could avoid future persecution by relocating" in El Salvador under the standard in 8 CFR § 1208.13(b)(1)(i)(B).

[13] Again, I am taking administrative notice of this report.

iv. Discretion

As the lead respondent has established that her application was timely filed and that she was persecuted on account of a protected ground, and as DHS has not rebutted the presumption of future persecution, the lead respondent has established that she qualifies for asylum. *See* sections 101(a)(42), 208 of the Act; 8 CFR § 1208.13. She has further established that she merits asylum in the exercise of discretion. The Fourth Circuit has stated that discretionary denials of asylum applications "are exceedingly rare . . . and are generally based on egregious conduct by the applicant." *Zuh v. Mukasey*, 547 F.3d 504, 507 (4th Cir. 2008) (quotation omitted). In the lead respondent's case, the discretionary factors are solely positive; I know of no negative factors. Therefore, she has established that she merits asylum in the exercise of discretion. *See Zuh v. Mukasey*, 547 F.3d at 507.

v. Matter of A-B-

The Attorney General's decision in *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), does not preclude my concluding that the lead respondent qualifies for asylum and merits this relief in the exercise of discretion. In that decision, the Attorney General overruled the Board's decision in *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014). *Matter of A-R-C-G-* involved a woman from Guatemala who fled to the United States seeking protection from domestic violence. The Board in *Matter of A-R-C-G-* found that the respondent had met some of the requirements for asylum: she had suffered harm rising to the level of persecution, and the harm was on account of her membership in a particular social group of "married women in Guatemala women who are unable to leave their relationship." *See Matter of A-R-C-G-*, 26 I&N Dec. at 392-95. Notably, there was no dispute; DHS agreed that the respondent had met these requirements. *See id.* The Board remanded the case to the immigration judge for consideration of whether the respondent met the remaining requirements for asylum. *Id.* at 395.

In *Matter of A-B-*, in overruling *Matter of A-R-C-G-*, the Attorney General found, among other things, that the Board had erred in deeming the respondent's proposed group to be a cognizable particular social group. *See Matter of A-B-*, 27 I&N Dec. at 334. But this finding of the Attorney General's does not affect the lead respondent's case. The particular social group in her case, "women in El Salvador," is not modeled on the group in *Matter of A-R-C-G-*, "married women in Guatemala women who are unable to leave their relationship." Given *Matter of A-B-*, I would likely not be justified in citing to *Matter of A-R-C-G-* to support my decision in the lead respondent's case. But I have not cited to *Matter of A-R-C-G-* in my decision. Nothing in *Matter of A-B-* changed the standards for analyzing whether harm constitutes persecution, whether a group is a cognizable particular social group, whether harm was on account of group membership, and whether an applicant merits asylum in the exercise of discretion. These are the issues on which the lead respondent's case hinges, and nothing in *Matter of A-B-* affects the analyses I have engaged in above. It is true that, in *Matter of A-B-*, the Attorney General stated broadly that he believed certain types of claims for asylum and related protection should routinely be denied. But these statements are simply dicta, or non-binding commentary; I cannot deny the lead respondent's application based on them. This position – that, other than overruling *Matter of A-R-C-G-*, the Attorney General's decision in *Matter of A-B-* did not actually change

the law governing the main elements of asylum – is not just mine, it is the position that the government has taken in Federal district court litigation addressing *Matter of A-B-*'s impact. *See Grace v. Whitaker*, 344 F.Supp.3d 96, 138 n. 22 (D.C. Cir. 2018) (stating that, "[a]ccording to the government, the only legal effect of *Matter of A-B-* is to overrule *Matter of A-R-C-G-*," and that "the government[] characteriz[es] . . . most of the decision as dicta").

IV. Conclusion

As I find that the lead respondent qualifies for asylum and merits asylum in the exercise of discretion, I am granting her application. *See* sections 101(a)(42), 208 of the Act; 8 CFR § 1208.13. As the rider respondents are derivative asylum applicants on the lead respondent's application, they receive asylum as well.[14] As I am granting the lead respondent's asylum application based on membership in the particular social group of "women in El Salvador," I am making no findings, whether factual or legal, concerning her eligibility for asylum based on membership in her other proposed particular social groups. I am also making no findings, whether factual or legal, concerning her eligibility for withholding of removal under the Convention Against Torture.

ORDER

IT IS ORDERED THAT. The respondents' applications for asylum under section 208 of the Act be **granted**.

October 28, 2019
Date

Emmett Soper
Immigration Judge

APPEALS

Both parties have the right to appeal this decision. Any appeal is due at the Board of Immigration Appeals thirty calendar days from the date of service of this decision.

[14] As with the lead respondent, the discretionary factors in the rider respondents' cases are solely positive. Accordingly, the rider respondents have established that they merit asylum in the exercise of discretion. *See Zuh v. Mukasey*, 547 F.3d at 507.