

10-28-19
10/19

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
Arlington Immigration Court
1901 South Bell Street, Suite 200
Arlington, VA 22202

IN THE MATTER OF:)
)
 Respondent.) IN REMOVAL PROCEEDINGS
)
) File No.: A
)

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA" or "Act"), as amended, as an alien who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS: Asylum, pursuant to INA § 208; withholding of removal, pursuant to INA § 241(b)(3); and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT"), pursuant to 8 C.F.R. §§ 1208.16-18 (2018).

APPEARANCES

ON BEHALF OF THE RESPONDENT:
Ashley Ham Pong, Esq.
Montagut & Sobral, PC
5693 Columbia Pike, Suite 201
Falls Church, VA 22041

ON BEHALF OF THE DHS:
Ann Atalla, Esq.
Assistant Chief Counsel
U.S. Department of Homeland Security
1901 South Bell Street, Suite 900
Arlington, VA 22202

DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The respondent is a native and citizen of El Salvador. *See* Exh. I. She entered the United States at or near Hidalgo, Texas on , 2012. *See id.* On , 2012, the Department of Homeland Security ("DHS") served the respondent with the Notice to Appear ("NTA"), charging her with inadmissibility pursuant to section 212(a)(7)(A)(i)(I) of the Act. *Id.* At a master calendar hearing on , 2017, the respondent admitted the factual allegations contained in the NTA and conceded inadmissibility as charged. Accordingly, the Court conclude inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On October 9, 2018, the respondent filed an updated Application for Asylum and Withholding of Removal (Form I-589), seeking asylum and withholding of removal under the Act and protection under the CAT. Exh. 6, Tab E. For the following reasons, the Court grants the respondent's application for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

- Exhibit 1: NTA for the respondent, served [redacted], 2012, filed [redacted], 2013;
- Exhibit 2: Credible Fear Notes for the respondent, completed on [redacted], 2012;¹
- Exhibit 3: Motion to Change Venue, filed [redacted], 2015, granted [redacted], 2015;
- Exhibit 4: Form I-589 for the respondent, including Tabs A-B, lodged December 11, 2014, filed September 29, 2016;
- Exhibit 5: Documents in support of the respondent's Form I-589, including Tabs C1-D8, filed May 18, 2017;
- Exhibit 6: The respondent's updated Form I-589, including Tabs E-N, filed October 9, 2018;²
- Exhibit 7: Witness list, filed October 9, 2018;
- Exhibit 8: The respondent's Notice of *Mendez Rojas* Class Membership, filed October 9, 2018;
- Exhibit 9: Frivolous Asylum Warning given October 22, 2018; and
- Exhibit 10: Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, submitted by the DHS, October 22, 2018.

B. Testimonial Evidence

The Court heard testimony from the respondent on [redacted], 2018.³ The testimony provided in support of the respondent's applications, although considered by the Court in its entirety, is not repeated fully herein as it is part of the record. Rather, the claims raised during the testimony are summarized below to the extent they are relevant to the Court's analysis.

The respondent was born in San Vicente in 1989, and moved to San Martin, about thirty minutes by bus, in 1999. Her mother and sister live in San Martin and are her only remaining family in El Salvador. In February 2009, the respondent began dating [redacted] ("Mr. [redacted]"). She moved into the house he shared with his family in San Martin, in April 2010. The two never married, but were considered as such by the community.

¹ The DHS acknowledged they incorrectly filed the credible fear paperwork for the respondent in this case and attached the credible fear notes for a different respondent. See Exh. 2. Accordingly, the DHS stated they would not use the respondent's credible fear worksheet for impeachment purposes and believe she has a credible fear of return to El Salvador.

² The DHS objected to legal statements made by Dr. [redacted] M.A., L.C.P.C. in her clinical evaluation. See Exh. 6, Tab G at 194. While the Court admitted the evaluation into evidence, it gave no weight to the legal conclusions made by the psychotherapist.

³ The Court excused the respondent's witnesses from testifying on her behalf as the DHS conceded the respondent was credible. See Exh. 7.

In the Matter of
A

Shortly after moving in together, Mr. [redacted] started verbally abusing the respondent, calling her derogatory names and threatening to kill her. The respondent thinks he verbally abused her because she did not do things as quickly as he wanted. Mr. [redacted] also sexually assaulted the respondent on March 21, 2011; October 2011; and November 17, 2011. Each time, Mr. [redacted] returned home drunk or high and demanded to have sex with the respondent, but she refused because she was menstruating. In response, Mr. [redacted] would strike the respondent, either with a punch or kick or both, and then rape her. During the rape, Mr. [redacted] told the respondent that if she told anyone, "it would be worse for her" and he would kill her. Also in November 2011, in addition to the sequence of events, Mr. [redacted] threw an iron at the respondent and left burn scars on her stomach and arms. The respondent believes Mr. [redacted] raped her because he wanted to punish her for menstruating and being unable to have children. At the time, she had a cyst on her ovary, but had it removed in the United States.

In July 2011, Mr. [redacted] invited friends over to watch a soccer game. He thought the respondent was flirting with one of his friends, so he grabbed the respondent, dragged her into the bedroom, and punched her in the face. Mr. [redacted]'s friends did not try to intervene in the dispute. Mr. [redacted] then told the respondent to stay home or he would kill her. He then left with his friends.

In November 2011, the respondent reported the rapes to the police in San Vicente. She chose San Vicente because Mr. [redacted] had friends in San Martin and she needed time to flee El Salvador before Mr. [redacted] learned of her report. The police did not arrest Mr. [redacted], visit their house when called, or provide any follow-up regarding the respondent's report. In addition, the respondent tried to leave Mr. [redacted] and went to her mother's house, located seven houses away from Mr. [redacted]. She stayed there for three hours before Mr. [redacted] picked her up and took her to their house. The respondent went with Mr. [redacted] because she knew he would not let her stay at her mother's house.

The respondent has not spoken to Mr. [redacted] since she fled El Salvador in March 2012. She does not know where he lives or if he is in another relationship. In 2014, Mr. [redacted] told the respondent's sister, [redacted], that he is "waiting for the respondent." In 2016, the respondent's brother, [redacted], visited El Salvador and saw Mr. [redacted] but did not speak to him. The respondent is still recovering from Mr. [redacted]'s abuse and is seeing a psychologist to help address her nightmares and fear of being alone.

The respondent believes that if she were removed to El Salvador, Mr. [redacted] would find and kill her. She testified that Mr. [redacted] is friends with members of the Mara Salvatrucha gang ("MS-13"), and would use them to find the respondent. She also believes the police are unable to protect her from Mr. [redacted]. She does not believe that she can relocate within El Salvador because it is a very small country. Her only remaining family in El Salvador, her mother and sister, still live in San Martin and remain unharmed.

III. LAW, FINDINGS, AND ANALYSIS

A. Credibility and Corroboration

When an applicant offers testimonial evidence to support an application for relief, the Court must determine whether such testimony is credible. See INA § 240(c)(4)(B). The REAL ID Act of 2005 governs the credibility analysis for cases in which the applicant filed for relief on or after May 11, 2005. *Matter of S-B-*, 24 I&N Dec. 42, 42-43 (BIA 2006). In making a credibility determination, the Court considers the totality of the circumstances and all relevant factors. INA § 240(c)(4)(C); see *Matter of J-Y-C-*, 24 I&N Dec. 260, 266 (BIA 2007). Generally, a witness must provide detailed, plausible, and consistent testimony. INA § 240(c)(4)(B). To be credible, the witness's testimony should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). The Court may also base a credibility determination on a witness's demeanor, candor, or responsiveness, and the inherent plausibility of the witness's account. *Id.* The Court may consider the consistency between a witness's written and oral statements; the internal consistency of each such statement; the consistency of such statements with other evidence of record; and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. *Id.* The Court may also consider "any other relevant factor." *Id.*

"The testimony of [an] applicant, if credible, may be sufficient to sustain the burden of proof without corroboration." 8 C.F.R. § 1208.13(a). However, an applicant "bears the burden to provide reasonably available supporting evidence for material facts that are central to [her] claim," and the absence of "corroborating evidence [may] lead to a finding that the applicant did not meet [his] burden of proof." *Matter of L-A-C-*, 26 I&N Dec. 516, 519 (BIA 2015) (citing *Matter of S-M-J-*, 21 I&N Dec. 722, 725-26 (BIA 1997)). An applicant should provide documentary support for material facts central to her claim and easily subject to verification, such as evidence of her place of birth, evidence of publicly held office, or documentation of medical treatment. *Id.*; see also *S-M-J-*, 21 I&N Dec. at 725.

The DHS does not contest credibility, and under the totality of the circumstances, the Court finds the respondent credible. She testified plausibly, responsively, and in sufficient detail. Her demeanor during her testimony, which was emotional at times, supports a finding of credibility. Her testimony was also substantially consistent with her Form I-589, her affidavit, and other evidence of record. See generally Exh. 2, Tab C; Exh. 4; Exh. 6. Although at times her statements were inconsistent with respect to when she moved in with Mr. _____, the Court finds this understandable in light of the psychological trauma she has endured, and makes no adverse credibility inference from those inconsistencies. See Exh. 6, Tab G at 195 ("[The respondent's] memory seemed intact except for the memory of some dates."). Any uncertainty regarding the dates of events does not warrant an inference that the events themselves did not occur. Finally, the Court finds the respondent's testimony adequately corroborated by the other affidavits in the record and the country conditions evidence. See Exh. 4, Tabs C9, D1-D8; Exh. 6, Tabs I-N. The Court credits the respondent's testimony.

B. Asylum

An applicant for asylum must demonstrate that she is a “refugee” within the meaning of INA § 101(a)(42). See INA § 208(a). To satisfy the “refugee” definition, the applicant must demonstrate a reasonable probability either that she suffered past persecution or that she has a well-founded fear of future persecution in her country of origin on account of one of the five statutory grounds—race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987); 8 C.F.R. § 1208.13(a). The applicant must show that she fears persecution by the government or an agent that the government is unwilling or unable to control. See *Matter of A-B-*, 27 I&N Dec. 316, 317 (A.G. 2018); *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000). The applicant also must demonstrate that one of the five statutory asylum grounds was or will be at least one central reason for her persecution. INA § 208(b)(1)(B)(i); *A-B-*, 27 I&N Dec. at 317. Finally, in addition to establishing statutory eligibility, the applicant must demonstrate that a grant of asylum is warranted in the exercise of discretion. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

1. One-Year Bar

Ordinarily, an applicant for asylum must file her application within one year of her most recent entry into the United States, or show that she qualifies for an exception to that deadline. See INA § 208(a)(2)(B), (D); 8 C.F.R. § 1208.4(a)(2), (4)-(5); *Lizama v. Holder*, 629 F.3d 440, 444-45 (4th Cir. 2011). Here, the DHS conceded the respondent is a member of the class certified in *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176, 1179 (W.D. Wa. 2018)—specifically, a member of Subclass A.II. See Exh. 8.⁴ The Court therefore finds the respondent’s application timely.

2. Past Persecution

To establish a claim for asylum, the applicant must show the harm she suffered or fears she will suffer rises to the level of persecution. Persecution entails harm or suffering inflicted upon an individual to punish her for possessing a belief or characteristic the persecutor seeks to overcome. See *Matter of Acosta*, 19 I&N Dec. 211, 222-23 (BIA 1985). Persecution is “an extreme concept that does not include every sort of treatment our society regards as offensive.” *Id.* “Violence or threats to [an applicant’s] close relatives is an important factor” when determining whether mistreatment constitutes persecution, particularly when that harm “adds immediacy and severity” to threats against the applicant. See *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009); see also *Matter of A-M-*, 23 I&N Dec. 737, 740 (BIA 2005) (citing with approval *Hoxha v. Ashcroft*, 319 F.3d 1179 (9th Cir. 2003)). Persecution includes the “threat of death, torture, or injury to one’s person or freedom.” *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014) (quoting *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005)); see also *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (“[W]e have expressly held that ‘the threat of death qualifies as persecution.’”) (quoting *Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011)).

⁴ To be a Class A.II member, an individual: (1) must have been released or will be released from DHS custody; (2) must have been found to have a credible fear of persecution; (3) did not receive notice from DHS of the one-year asylum filing deadline; and (4) must have not yet applied for asylum or applied for asylum after one year of their last arrival. See *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176, 1179 (W.D. Wa. 2018).

The respondent established that she suffered persecution in El Salvador. The harm she suffered, including being punched in the face, kicked in the side, burned with an iron, and raped several times, rises far above the level of “mere harassment,” and is serious enough to constitute persecution. *See Li*, 405 F.3d at 177 (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)); *see generally* Exh. 5, Tabs C2, C6. In addition, Mr. [redacted] repeatedly threatened to kill the respondent and warned he would make things worse for her if she told anyone about his abuse. *See* Exh. 4, Tab A at 5. These threats were credible given the severe mistreatment the respondent had suffered, and thus provide another basis to conclude that the harm to her was serious enough to be persecution. *See Baharon*, 588 F.3d at 232; *see also Matter of A-M-*, 23 I&N Dec. 740.

Furthermore, the respondent has met her burden to establish that the government of El Salvador is unable or unwilling to protect her from Mr. [redacted]. It is well-documented that El Salvador is “one of the most dangerous countries [in which] to be a woman.” Exh. 6, Tab J at 257. Although domestic violence and rape are illegal in El Salvador, the laws prohibiting them are not effectively enforced, and “violence against women, including domestic violence, remain[s] a widespread and serious problem.” *Id.*, Tab J at 245; *see also id.*, Tab M at 287 (“Domestic violence is reportedly considered the leading form of violence against women and girls in El Salvador, followed closely by violence perpetrated by gang members.”). “Fear, shame[,] and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence.” Exh. 6, Tab M at 314. With up to ninety percent of crimes against women going unpunished, many perpetrators believe—often correctly—that they can commit domestic and sexual violence with impunity. Exh. 5, Tab D4 at 152; Exh. 5, Tab D3 at 145 (describing an estimated seventy-seven percent impunity rate for femicide in El Salvador). The respondent received no help from the San Vicente police after she reported her abuse. *See* Exh. 5, Tab C8. The officers wrote down her information, but did not arrest Mr. [redacted], or even follow up on the respondent’s allegations. *See id.*, Tab C2 at 4. Mr. [redacted]’s behavior demonstrates that he was not concerned about possible prosecution either: he was brazen in abusing the respondent in front of his friends. *See id.* (“He took me to the bedroom . . . [and] punched me badly while insulting me while his friends were in the next room.”). In addition to lax enforcement of criminal laws against domestic violence, El Salvador is also unable or unwilling to provide adequate protection to survivors of domestic violence. At the end of 2014, there was just one government-run domestic violence shelter in El Salvador; it could accommodate up to thirty-five women and children. *Id.*, Tab D3 at 146.

In light of the foregoing, the Court finds the respondent has met her burden of proving the government of El Salvador is unable or unwilling to protect her from Mr. [redacted]. Thus, she has established that she suffered past persecution at the hands of an agent the government is unable or unwilling to control.

3. *Nexus to a Protected Ground*

a. Women in El Salvador

The respondent must, through direct or circumstantial evidence, prove that a protected ground was or would be “at least one central reason” for the persecution. *Matter of C-T-L-*, 25 I&N Dec. 341, 348 (BIA 2010); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 213 (BIA 2007). The protected ground need not be the sole reason for persecution, but it must have been more than an “incidental, tangential, superficial, or subordinate” reason. *Zavaleta-Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017).

The Court finds that “women in El Salvador” is a cognizable particular social group. The Board of Immigration Appeals (“Board” or “BIA”) has instructed that the phrase “membership in a particular social group” is “not meant to be a ‘catch all’ that applies to all persons fearing persecution.” *Matter of M-E-V-G-*, 26 I&N Dec. 227, 234-35 (BIA 2014). For a particular social group to be legally cognizable under the Act and thus constitute a protected ground, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See A-B-*, 27 I&N Dec. at 317; *Matter of W-G-R-*, 26 I&N Dec. 208, 208 (BIA 2014); *Matter of C-A-*, 23 I&N Dec. 951, 959-61 (BIA 2006); *Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008)). The Court determines whether a proposed particular social group is legally cognizable on a case-by-case basis. *M-E-V-G-*, 26 I&N Dec. at 231; *Acosta*, 19 I&N Dec. at 233. The shared characteristic “must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *See M-E-V-G-*, 26 I&N Dec. at 231; *see also Acosta*, 19 I&N Dec. at 233. A group is socially distinct if the society in question perceives or recognizes the proposed group as a group. *M-E-V-G-*, 26 I&N Dec. at 238. A group is particularly defined if it is “discrete,” has “definable boundaries,” and is not “amorphous, overbroad, diffuse, or subjective,” and “provide[s] a clear benchmark for determining who falls within the group.” *Id.* at 239. Additionally, the group must exist “independently of the alleged underlying harm.” *A-B-*, 27 I&N Dec. at 317.

i. *Immutability*

First, the respondent’s particular social group is comprised of members sharing a common immutable characteristic. Members of the group all share “a characteristic that is . . . so fundamental to individual identity or conscience that it ought not to be required to be changed”—their sex. *Acosta*, 19 I&N Dec. at 233. A person’s sex is fundamental to his or her identity, making it an immutable characteristic as it is generally unchangeable, and is certainly a characteristic that one should not be required to change. The Board went so far as to state as much in *Acosta*, concluding that one’s “sex” is a “shared characteristic” on which particular social group membership can be based. *Id.* (stating, “[t]he shared characteristic might be an innate one such as sex, color, [or] kinship ties”).

ii. Social Distinction

Second, the respondent's particular social group is socially distinct within the society in question. In *M-E-V-G-*, 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." 26 I&N Dec. 227, 238; *see also W-G-R-*, 26 I&N Dec. at 217 (stating that "social distinction exists where the relevant society perceives, considers, or recognizes the group as a distinct social group"). Through her testimony and documentary evidence, the respondent has established that Salvadoran society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group. The respondent submitted the 2017 State Department Human Rights Report on El Salvador, which states that "[v]iolence against women, including domestic violence, remained a widespread and serious problem." Exh. 6, Tab I at 245. The report further states that the Salvadoran government did not effectively enforce laws governing sexual harassment. *Id.* Finally, the report states that, although women and men have the same legal rights in many respects in El Salvador, women do not enjoy equal treatment. *Id.*

The rest of the respondent's country conditions documentation are consistent with the State Department's report. For example, the respondent submitted a 2016 article regarding the relationship between machismo and violence against women in Central America, which notes that "[i]f women wander from acceptable constructions of femininity, the popular belief in El Salvador is that men have the right to punish them." Exh. 5, Tab D6 at 169. The other news articles report similar statistics, documenting the pervasive violence against women in El Salvador. *Id.*, Tab D8 (noting El Salvador has the highest murder rate of women in the world); Tab D4 (In 2017, a woman was murdered every 18.7 hours in El Salvador). Taken as a whole, the respondent's evidence establishes that cultural and legal norms in El Salvador permit widespread violence and discrimination against women. Through this evidence, the 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. *M-E-V-G-*, 26 I&N Dec. at 238.

iii. Particularity

Third, the respondent's particular social group is defined with particularity. The Board has explained a group is particularly defined if it has "definable boundaries," and is not "amorphous, overbroad, diffuse, or subjective." *M-E-V-G-*, 26 I&N Dec. at 238-39. Further, "[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." *Id.* at 239; *see also W-G-R-*, 26 I&N Dec. at 214. The particularity requirement "clarifies the point . . . that not every 'immutable characteristic' is sufficiently precise enough to define a particular social group." *M-E-V-G-*, 26 I&N Dec. at 239; *see also W-G-R-*, 26 I&N Dec. at 213. The Fourth Circuit similarly explained particularity as the need for a particular social group to "have identifiable boundaries." *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 particular social group of “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 *M-E-V-G-*, 26 I&N Dec. at 239; *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 *M-E-V-G-*, 26 I&N Dec. at 238-39; *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, as, 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 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 particular social group of “women in El Salvador” is defined with particularity even though it is large. In *Matter of S-E-G-*, the Board stated, “[w]hile 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.” 24 I&N Dec. 579, 585 (BIA 2008) (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. In the respondent’s case, as discussed above, the group’s definition provides such an adequate benchmarks: women are members and men are not.

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 Taboso-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 *M-E-V-G-*, 26 I&N Dec. at 245; *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. Likewise, the Board has 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 *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”).

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 by finding “[t]he group as defined lacks particularity because it is too diffuse, as well as being too broad and subjective. As described, the group could include persons of any age, sex, or background.” *Id.* 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” because 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 “generally agree on who [are] included in the group”—women—and who are excluded—men. The boundaries of the group of “women in El Salvador” are precise, finite, and objective. Further, the group is not based on some “former association” with an organization, as was the proposed group in *W-G-R*. Instead, it is based on one’s biological identity, which has a clear and well-defined boundary.

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. In *Matter of C-A*, 23 I&N Dec. at 957, the Board stated that it did not “require an element of ‘cohesiveness’ or homogeneity among group members.” See also *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 *Toboso-Alfonso*, 20 I&N Dec. at 822-23; see also *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); *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. Such a policy would also likely preclude

particular social groups based on clan membership, as a clan would, in all likelihood, include people from a variety of backgrounds and walks of life. *See H-*, 21 I&N Dec. at 343 (finding that members of the Marehan subclan in Somalia are members of a particular social group); *see also W-G-R-*, 26 I&N Dec. at 219 (affirming that the group in *Matter of H-* is defined with particularity as it is “easily definable”). For the same reason, such a policy would also likely preclude particular social groups based on ethnicity, such as “Filipino[s] of mixed Filipino-Chinese ancestry,” recognized by the Board as a particular social group in *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997). *See also W-G-R-*, 26 I&N Dec. at 219 (stating that the group of “Filipino[s] of mixed Filipino-Chinese ancestry” is defined with particularity as it “ha[s] clear boundaries, and its characteristics ha[ve] commonly accepted definitions”).

iv. *Independent of Harm*

Additionally, the respondent’s particular social group exists independently of the harm its members suffer. *See A-B-*, 316 at 334 (“To be cognizable, a particular social group *must* ‘exist independently’ of the harm asserted in an application for asylum or statutory withholding of removal.”) (emphasis in the original) (citing *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). The harm the members suffer does not create any of the characteristics they share; rather, very clearly, as discussed below, the characteristics of the members give rise to the harm. Salvadoran society treats women separately from the rest of society apart from any abuse the women suffer on account of their membership in this particular social group. Finally, the respondent is a member of her particular social group. She is a Salvadoran woman. For the foregoing reasons, the respondent has established her membership in a cognizable particular social group. The Court must now analyze if the persecution she suffered was on account of her membership in this group.

b. On account of

For the respondent to establish that her persecution was on account of a protected ground, she must show the protected ground was “at least one central reason” she was persecuted. *J-B-N- & S-M-*, 24 I&N Dec. at 214; INA § 208(b)(1). The protected ground, however, need not be “the central reason or even a dominant central reason” for [the] persecution.” *Crespin-Valladares*, 632 F.3d at 127; *see also Oliva v. Lynch*, 807 F.3d 53, 59 (4th Cir. 2015) (“[A] protected ground must be ‘at least one central reason for the feared persecution’ but need not be the only reason.”). Nevertheless, the protected ground cannot be incidental, tangential, superficial, or subordinate to a non-protected reason for harm. *Oliva*, 807 F.3d at 59 (quoting *J-B-N- & S-M-*, 24 I&N Dec. at 214). The persecutors’ motivations are a question of fact, and may be established through testimonial evidence. *Matter of S-P-*, 21 I&N Dec. 486, 490 (BIA 1996).

The respondent has demonstrated that her status as a woman was at least one central reason for the harm that Mr. [redacted] inflicted on her. She submitted sufficient circumstantial evidence of Mr. [redacted]’s motives to establish that her status as a woman was one central reason for the harm she suffered. *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”) (stating that “we do not require” “direct proof of [a] persecutor’s motives”). The respondent credibly testified that Mr. [redacted] told her that she was “good for nothing” because she was unable to get pregnant and often punished her because she was

menstruating. *See* Exh. 5, Tab C2 at 3 (“He blamed me for not getting pregnant to give him a child . . .”). She also testified that, when she tried to separate from Mr. [redacted] he was only able to flee for three hours before he took her home by force. *See* Exh. 6, Tab E at 86. That the attacks were generally sexual in nature, that her attacker was a man, and he sought to punish her for menstruating, all support a finding he was motivated to harm her because of her status as a woman. The Court therefore finds that the respondent’s membership in the particular social group of “women in El Salvador” is “at least one central reason” for the persecution she suffered. *J-B-N & S-M*, 24 I&N Dec. at 214.

4. *Presumption of Future Persecution*

Because the respondent has demonstrated that she suffered past persecution on account of membership in a particular social group, she benefits from a rebuttable presumption that she has a well-founded fear of future persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1). The DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that either: (1) there has been a fundamental change in circumstances such that she no longer has a well-founded fear of persecution in El Salvador on account of one of the enumerated grounds; or (2) she could avoid future persecution by relocating to another part of El Salvador and under the circumstances, it would be reasonable to expect her to do so. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B); *see also* 8 C.F.R. § 1208.13(b)(3)(ii) (where the government is the persecutor, or where past persecution is established, internal relocation is presumptively unreasonable).

The DHS has not shown a fundamental change in circumstances in El Salvador that rebuts the presumption of a well-founded fear of future persecution. As previously discussed, the Salvadoran government’s efforts to address violence against women has not fundamentally changed since the respondent left El Salvador seven years ago and if anything, has actually gotten worse. *See* Exh. 5, Tab D4 at 152 (“In El Salvador, 155 murders of women were registered in the first four months of 2018—a 20% increase from the same period in 2017.”). Violence against women, including domestic violence, remains “a widespread and serious problem” across El Salvador. Exh. 6, Tab I, at 245; *see also* Exh. 5, Tab D4 at 152 (“El Salvador has recently been found to have the highest rate of femicide in Latin America, with a rate of 10.2 women killed for every 100,000 women.”).

For example, in 2011, the Salvadoran legislature passed the Special Comprehensive Law for a Violence-free Life for Women to address the issue; however, the law has been practically ineffective at decreasing violence against women in El Salvador. *See* Exh. 5, Tab D3 at 144. Although women report instances of violence, few are actually prosecuted. *See id.* (“[D]espite some welcome progress in the implementation” of the Special Comprehensive Law for a Violence-free Life for Women, “few cases of killings were prosecuted as the gender-based crime of femicide”). Moreover, even if a woman files a report and the police arrest the perpetrator, many judges refuse to apply the law in their court. *See id.* (“[S]everal senior judges have denounced the Special Comprehensive Law for a Violence-free Life for Women as ‘unconstitutional,’ insisting they would not implement it in their courts.”). Regardless of the laws passed to address violence against women, the high rates of femicide in El Salvador show little signs of abating and remain a fundamental problem for women in El Salvador. Thus, the Court concludes country conditions

have not fundamentally changed such that the respondent's life or freedom would not be threatened.

In addition, it would be unreasonable to expect the respondent to relocate in El Salvador. The record evidence reveals police corruption is rampant and the problems with violence against women exists throughout the country. *See, e.g.*, Exh. 6, Tab I at 245. The State Department report indicating the treatment of women does not reflect such treatment is confined to one geographic area; indeed, the harm appears to be nationwide. *See id.* Additionally, the Court acknowledges that the size of El Salvador, comparable to the state of New Jersey, is very small and leaves little room for the respondent to reasonably relocate.⁵ Thus, the Court concludes the respondent would be at risk for harm throughout El Salvador and internal relocation would not be reasonable.

Having considered all the evidence, the Court finds the DHS has not met its burden to prove a reasonable internal relocation alternative. Thus, the presumption that the respondent has a well-founded fear of persecution on account of a protected ground remains un rebutted.

5. Discretion

After an applicant establishes her statutory eligibility for asylum, the Court may exercise its discretion to grant or deny asylum. 8 C.F.R. § 1208.14(a); *see also* INA § 208(b)(1)(A); *Cardoza-Fonseca*, 480 U.S. at 427-28; *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987). A decision to deny asylum as a matter of discretion should be based on the totality of the circumstances. *See Pula*, 19 I&N Dec. at 473. The Fourth Circuit has recognized that discretionary denials of asylum are "exceedingly rare" and require "egregious negative activity by the applicant." *Zuh v. Mukasey*, 547 F.3d 504, 507 (4th Cir. 2008). The Court is not required to "analyze or even list every factor," but must demonstrate it has "reviewed the record and balanced the *relevant* factors and must discuss the positive or adverse factors" supporting the decision. *Id.* at 511 (citing *Casalena v. INS*, 984 F.2d 105, 107 (4th Cir. 1993) and *Matter of Marin*, 16 I&N Dec. 581, 585 (BIA 1978)) (emphasis in original).

Having considered the totality of the circumstances and all relevant factors, the Court will grant the respondent's application for asylum in its discretion. She has a well-founded fear of persecution on account of membership in a particular social group in El Salvador, as discussed above. Granting her application will ensure family unity by allowing her to stay in the United States where her father and brother reside. *See* Exh. 6, Tab E at 185. The respondent filed taxes in the United States and has no known criminal history. *See id.*, Tab H at 216-22; Tab E at 187. Her former co-worker attests that she is "loving, caring individual . . . [and] cherished friend." Exh. 6, Tab H, at 208; *accord* Exh. 6, Tab H, at 210 (affidavit of [redacted] also praising the respondent's character). The only negative consideration is her entry without inspection, but this factor does not outweigh her many positive equities. In short, this is not the exceedingly rare case

⁵ Pursuant to 8 C.F.R. § 1003.1(d)(3)(iv), the Court takes administrative notice of the Central Intelligence Agency information, describing El Salvador, at 21,041 square miles, as the size of New Jersey. Cent. Intelligence Agency, *The World Factbook*, available at <http://www.cia.gov/cia/publications/factbook/geos/gk.html> (last updated Apr. 22, 2019).

In the Matter of
A

in which a discretionary denial is warranted. The Court grants the respondent's asylum application in its discretion.

6. Humanitarian Asylum

In the alternative, even if DHS had met its burden of rebutting the presumption of a well-founded fear of future persecution, the Court would find that the facts of this case warrant humanitarian asylum. Where an applicant has established past persecution, but the presumption of a well-founded fear has been rebutted, an Immigration Judge should consider the applicant's eligibility for humanitarian asylum. *Matter of L-S-*, 25 I&N Dec. 705, 710 (BIA 2012); *see also* 8 C.F.R. § 1208.13(b)(1)(iii). Humanitarian asylum is a discretionary form of relief that may be granted if an applicant demonstrates either (1) "compelling reasons for being unwilling or unable to return to the country [from which she seeks protection] arising out of the severity of the past persecution," or (2) "a reasonable possibility that she may suffer other serious harm upon removal to that country." 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B).

The Court finds the abuse suffered by the respondent at the hands of Mr. [redacted] constitutes severe past persecution. Eligibility based on severity of persecution alone is reserved for the most atrocious abuse. *See Gonahasa v. INS*, 181 F.3d 538, 543 (4th Cir. 2014). In *Matter of Chen*, 20 I&N Dec. 16, 19-21 (BIA 1989), the BIA granted Chen humanitarian asylum even though the regime had changed such that Chen could not demonstrate a well-founded fear of persecution. The persecution experienced by Chen and his family included: the ransacking of their house, imprisoning his family, dragging Chen's father through the streets, pushing Chen's father into a bonfire, placing his family on house arrest, kicking and biting Chen, depriving Chen of food, and pelting Chen with rocks. *Chen*, 20 I&N Dec. at 19-21.

The respondent experienced similar persecution in this case. She testified Mr. [redacted] often kicked her in her side and punched her in the face. *See* Exh. 5, Tab C2. He also raped her on three occasions and burned her with an iron, leaving scars on her arms and stomach. *See id.*, Tabs C2, C6. On one instance, Mr. [redacted] drug her down the hall to their bedroom where he proceeded to beat her for "flirting" with his friend. *See* Exh. 5, Tab C2. On multiple occasions, he threatened the respondent with death if she left the house or told anyone about the abuse. *See id.* Additionally, despite the seven years that have passed since the respondent fled El Salvador, she continues to suffer from Mr. [redacted]'s abuse and often experiences nightmares, reliving his abuse. *See id.*, Tab C3 at 8 ("[I]mages that kept coming to her mind were those of [Mr. [redacted]] beating and insulting her."). She also seeks treatment for the mental effects of the abuse, including post-traumatic stressed disorder and severe major depressive disorder. *See id.*, Tab C3 at 10.

In addition, the Court finds the respondent demonstrated she would suffer other serious harm upon her return to El Salvador. "Other serious harm" need not be inflicted on account of a protected ground, and it may be wholly unrelated to the past harm. *L-S-*, 25 I&N Dec. at 714. However, the harm must be equivalent in severity to persecution. *Id.* In analyzing such claims, the finder of fact should focus on "current conditions and the potential for new physical or psychological harm that the applicant might suffer" if removed. *Id.* Appropriate considerations include "major problems that large segments of the population face" as well as "conditions that might not significantly harm others but that could severely affect the applicant." *Id.* Examples of

In the Matter of
A

such conditions include civil strife, extreme economic disadvantage, and situations that could cause the applicant to experience "severe mental or emotional harm or physical injury." *Id.* Finally, the asylum applicant need only establish a "reasonable possibility" of "other serious harm"; a showing of "compelling reasons" is not required under 8 C.F.R. § 1208.13(b)(1)(iii)(B). *Id.*

For the reasons previously stated, the Court finds it is reasonably possible the respondent will face other serious harm in El Salvador. Violence against women serious problem in El Salvador and affects nearly two thirds of the female population. *See* Exh. 5, Tab D4 at 152 (estimating 67.4 percent of women and girls in El Salvador report having experienced gender-based violence at some point); *see also* Exh. 6, Tab M at 287 ("Domestic violence is reportedly considered the leading form of violence against women and girls in El Salvador, followed closely by violence perpetrated by gang members."). Additionally, given the lack of resources available to women and the inability of law enforcement to persecute these crimes, the Court finds it is reasonably possible the respondent could experience severe mental or emotional harm or physical injury if she were to return to El Salvador. *See* Exh. 6, Tab M at 314 ("Fear, shame[,] and lack of confidence in what is generally considered an ineffective and unsupportive justice system reportedly come together to prevent many women from reporting domestic or gang violence."); Exh. 5, Tab D3 at 145 (describing an estimated seventy-seven percent impunity rate for femicide in El Salvador). Accordingly, the Court finds the respondent and warrants an exercise of humanitarian asylum, in the alternative.

IV. CONCLUSION

The respondent has shown she suffered past persecution on account of her membership in a particular social group, and she thus benefits from a presumption that she has a well-founded fear of persecution on the same basis. The DHS has not rebutted that presumption. Because she merits a favorable exercise of discretion, the Court grants her application for asylum. In the alternative, the Court also grants the respondent relief under humanitarian asylum. The Court need not address the respondent's alternative theories of relief, nor does it reach any other applications for relief.

Accordingly, the Court enters the following orders:

In the Matter of
A

ORDERS


It is Ordered That:

The respondent's application for asylum under INA § 208 is **GRANTED**.

It is Further Ordered That:

The respondent's request for humanitarian asylum pursuant to 8 C.F.R. § 1208.13(b)(1)(iii)(B) is **GRANTED**, in the alternative.

10/29/2019
Date



J. Traci Hong
Immigration Judge

APPEAL RIGHTS: All parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals on or before thirty calendar days from the date of service of this decision.