

12-1-18
12/18

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

IN THE MATTERS OF:)	IN REMOVAL PROCEEDINGS
)	
[REDACTED])	File No.: A [REDACTED]
Lead Respondent;)	
)	
[REDACTED])	File No.: A [REDACTED]
Rider Respondent;)	
)	
[REDACTED])	File No.: A [REDACTED]
Rider Respondent.)	
)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or "Act"), as amended, as an immigrant present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Asylum, 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 ("Convention Against Torture" or "CAT"), pursuant to 8 C.F.R. §§ 1208.16-.18 (2018).

APPEARANCES

ON BEHALF OF THE RESPONDENTS:
Mark Stevens, Esq.
Murray-Osorio-PLLC
4103 Chain Bridge Road, Suite 300
Fairfax, VA 22030

ON BEHALF OF THE DHS:
[REDACTED], 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 respondents are citizens and nationals of Honduras. Exhs. 1-1B. They entered the United States at or near [REDACTED], on or about [REDACTED]. Exhs. 1-1B. On

In the Matters of [REDACTED]

A [REDACTED]

[REDACTED], the Department of Homeland Security ("DHS") served the respondents with Notices to Appear ("NTA"), charging them with inadmissibility pursuant to section 212(a)(6)(A)(i) of the Act. *See* Exhs. 1-1B. At a master calendar hearing on [REDACTED], the respondents, through counsel, admitted the factual allegations in their respective NTAs and conceded inadmissibility as charged. Accordingly, the Court finds inadmissibility has been established. *See* 8 C.F.R. § 1240.10(c).

On [REDACTED], the respondent filed an Application for Asylum and for Withholding of Removal ("Form I-589"), seeking asylum and withholding of removal under the Act and protection under the CAT. *See* Exh. 2. The rider respondents were listed as a derivative applicants on the respondent's Form I-589. *See id.* The Court heard the merits of the respondent's applications for relief on [REDACTED]. For the following reasons, the Court grants the respondents' applications for asylum.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

- Exhibit 1: NTA for the respondent, served on [REDACTED], filed [REDACTED];
- Exhibit 1A: NTA for the rider respondent, [REDACTED], served on [REDACTED], filed [REDACTED];
- Exhibit 1B: NTA for the rider respondent, [REDACTED], served on [REDACTED], filed [REDACTED];
- Exhibit 2: Form I-589 for the respondent, including rider respondents as derivative applicants, filed [REDACTED];
- Exhibit 3: The respondent's exhibits in support of the respondent's Form I-589, including Tabs A-Q, filed [REDACTED].

B. Testimonial Evidence

The Court heard testimony from the respondent on [REDACTED]. The testimony provided in support of the respondent's applications, although considered by the Court in its entirety, is not fully repeated 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 subsequent analysis.

[REDACTED]

In the Matters of

A

A [REDACTED]

III. LAW, ANALYSIS, AND FINDINGS

A. Credibility and Corroboration

The provisions of the REAL ID Act of 2005 govern cases in which the applicant filed for relief on or after May 11, 2005. *See Matter of S-B-*, 24 I&N Dec. 42, 44 (BIA 2006). The applicant has the burden of proof in any application for relief. INA § 240(c)(4)(A). Her credibility is important and may be determinative. Generally, to be credible, testimony must be detailed, plausible, and consistent; it should satisfactorily explain any material discrepancies or omissions. INA § 240(c)(4)(C). In making a credibility determination, the Immigration Judge considers the totality of the circumstances and all relevant factors. *Id.*; *See also Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007). The Court may base a credibility determination on the witness' demeanor, candor, or responsiveness, and the inherent plausibility of her account. INA § 240(c)(4)(C). Other factors include the consistency between written and oral statements, without regard to whether an inconsistency goes to the heart of the applicant's claim. *Id.*; *J-Y-C-*, 24 I&N Dec. at 263-66. An applicant's own testimony, without corroborating evidence, may be sufficient proof to support a fear-based application if that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for her fear of persecution. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987); 8 C.F.R. § 1208.13(a).

Considering the totality of the circumstances and all relevant factors, the Court finds the respondent credible. Her testimony was candid, detailed, and internally consistent. Additionally,

her account of what happened in Honduras is plausible and consistent with record evidence. See Exh. 2 (Form I-589); 3, Tab D ([REDACTED]'s birth certificate listing [REDACTED] as the father), Tab E (police complaint filed by the respondent), Tab F (Honduran newspaper article documenting [REDACTED]'s escape from prison). Moreover, the DHS conceded that the respondent testified credibly. Accordingly, the Court finds the respondent credible.

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 Deadline

As a threshold issue, the respondent must show by clear and convincing evidence that she applied for asylum within one year of her last arrival to the United States or that she qualifies for an exception to the one-year deadline. 8 C.F.R. § 1208.4(a)(2). Here, the DHS conceded that the Respondent filed her application within one year of her last arrival to the United States. See Exhs. 1; 2. The Court therefore finds the respondent's application timely filed.

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 *Acosta*, 19 I&N Dec. at 222-23. 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); 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*, 632 F.3d at 126).

a. Past Harm

The DHS conceded that the respondent suffered harm rising to the level of persecution, and the Court finds that the respondent has demonstrated that she suffered past persecution. See *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) ("Persecution involves the threat of death,

torture, or injury to one's person or freedom.") (internal quotations omitted); *see also* *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 25-26 (BIA 1998) (noting that court must consider events cumulatively).

b. Government Unable or Unwilling to Control

The DHS also conceded that the Honduran police was unable or unwilling to protect the respondent from [REDACTED] and [REDACTED]. Accordingly, the Court finds that the respondent established she suffered harm at the hands of individuals from whom the Honduran government is unwilling or unable to protect her. *See A-B-*, 27 I&N Dec. at 330 (stating that the applicant "bears the burden of showing that . . . [her] home government was 'unable or unwilling to control' the persecutors") (quoting *Matter of W-G-R-*, 26 I&N Dec. 208, 224 & n.8 (BIA 2014)); *see also* *Acosta*, 19 I&N Dec. at 222; *Mulyani v. Holder*, 771 F.3d 190, 197-98 (4th Cir. 2014).

3. Nexus to a Protected Ground

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).

c. Women in Honduras

The Court finds that "women in Honduras" are members of 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; *W-G-R-*, 26 I&N Dec. 208; *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.

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 . . . 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 that "[t]he shared characteristic might be an innate one such as sex, color, [or] kinship ties").

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. 208, 217 (BIA 2014) (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 Honduran society perceives women as sufficiently distinct from society as a whole to qualify as a particular social group. The respondent submitted the 2016 State Department Human Rights Report on Honduras, which states that "[v]iolence against women and impunity for perpetrators continued to be a serious problem" and that "[r]ape was a serious and pervasive societal problem." Exh. 3, Tab G at 41. The report also states that the "UN special rapporteur on violence against women expressed concern that most women in [Honduras] remained marginalized, discriminated against, and at high risk of being subjected to human rights violations." *Id.* at 43. The report further states that the Honduran 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 Honduras, "many women did not fully enjoy such rights." *Id.* at 44.

The rest of the respondent's country conditions documentation are consistent with the State Department's report. For example, the respondent submitted a 2015 *Irish Times* article, which notes that "Honduras is rapidly becoming one of the most dangerous places on Earth for women" as "the number of violent deaths of women increased by 263.4 per cent" between 2005 and 2013. Exh. 3, Tab J at 134. The other news articles report similar statistics, documenting the pervasive violence against women in Honduras. *Id.*, Tab I (describing the endemic violence against women in Honduras), Tab K (noting that girlfriends and female relatives are considered "valuable possessions" and are targeted for revenge killings); Tab L ("In Honduras, 471 women were killed in 2015—one every 16 hours."). Taken as a whole, the respondent's evidence establishes that cultural and legal norms in Honduras permit widespread violence and discrimination against women. Through this evidence, the respondent has shown that women in Honduras "are set apart, or distinct, from other persons within [Honduras] in some significant way," and are therefore socially distinct. *M-E-V-G-*, 26 I&N Dec. at 238.

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 Honduras” 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 Honduras 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 Honduras” 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 Honduras” 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, “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.” 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 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*

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 Honduras" 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 Honduras—has well-defined boundaries. "[M]embers of society" in Honduras would "generally agree on who [are] included in the group"—women—and who are excluded—men. The boundaries of the group of "women in Honduras" 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 Honduras" 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”).

Additionally, the respondent’s particular social group exists independent 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. Honduran 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 Honduran 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.

d. 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).

A [REDACTED]

The respondent has demonstrated that her status as a woman was at least one central reason for the harm that [REDACTED] and [REDACTED] inflicted on her. She submitted sufficient circumstantial evidence of [REDACTED] and [REDACTED] 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”). [REDACTED]

[REDACTED] The Court therefore finds that the respondent’s membership in the particular social group of “women in Honduras” 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 established that she experienced past persecution on account of her membership in a protected class at the hands of actors the Honduran government was unable or unwilling to control, she benefits from a rebuttable presumption of future persecution. 8 C.F.R. § 1208.16(b)(1). To overcome this presumption, the DHS bears the burden of demonstrating, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her country of nationality on account of a protected ground; or (2) the applicant could avoid future persecution by relocating to another part of her country of nationality 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 past persecution is established, internal relocation is presumptively unreasonable); see also *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008) (remanding a case for failing to shift the burden of proof to the DHS that, by a preponderance of the evidence, relocation was reasonable). The DHS provided no evidence nor made any meaningful attempt to rebut this presumption. Accordingly, the Court finds that the presumption that the respondent has a well-founded fear of future persecution on account of her membership in a particular social group 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; *Pula*, 19 I&N Dec. at 473. 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

A [REDACTED]

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).

The Court finds that the respondent merits a favorable exercise of discretion. She suffered past persecution and has a well-founded fear of persecution in Honduras on account of a protected ground. She has no known criminal record in the United States or elsewhere. The only negative factor in the respondent's case is her entry without inspection. *See* Exh. 1. Thus, after considering the totality of the circumstances, the Court will grant her request for asylum in the exercise of discretion.

IV. CONCLUSION

The respondent established that she suffered past persecution on account of her membership in a legally-cognizable particular social group. Additionally, the DHS did not rebut the presumption of future persecution. Moreover, the respondent established that she warrants a favorable exercise of the Court's discretion. Accordingly, the Court grants her application for asylum. For the same reason, the Court grants the rider respondents' derivative applications for asylum. Therefore, the Court does not reach the respondent's applications for withholding of removal under the Act and protection under the CAT. Accordingly, the Court enters the following orders.

ORDERS

It Is Ordered that:

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

It Is Further Ordered that:

The rider respondents' derivative application for asylum pursuant to 8 C.F.R. § 1208.21 be **GRANTED**.

[REDACTED] 2018
Date

DMadkarni
Deepali Nadkarni¹
Immigration Judge

APPEAL RIGHTS: Both 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 (30) calendar days from the date of service of this decision.

¹ The Immigration Judge formerly assigned to this case has since retired and is unable to complete this case. Pursuant to 8 C.F.R. § 1240.1(b), the signing Immigration Judge has reviewed the record of proceeding and familiarized herself with the record.