

I. Procedural History

The respondent is a native and citizen of El Salvador. On July 11, 2016, the Department of Homeland Security (DHS) personally served the respondent with a Notice to Appear (NTA), Exhibit (Exh.) 1, that alleged: (1) he is not a citizen or national of the United States; (2) he is a native and citizen of El Salvador; (3) he arrived at or near the Hidalgo, Texas, port of entry on or about May 6, 2016; (4) he did not possess or present a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document; and (5) he was not then admitted or paroled after inspection by an immigration officer. *Id.* The NTA charged respondent with being removable under INA § 212(a)(7)(A)(i)(I). *Id.* Based on the respondent's admission to the facts and concession to the charge, the Court found removability was established by clear and convincing evidence. *See* INA § 240(c)(3); *Woodby v. INS*, 385 U.S. 276 (1966).

The respondent filed an application for asylum under INA § 208, for withholding of removal under INA § 241(b)(3), and for protection from removal under the regulations implementing Article 3 of the Convention Against Torture. Exh. 2.

The court's decision and order are based on a review of all the evidence, testimony, and the applicable law.

II. Evidence Presented

a. Documents

- Exhibit 1: Notice to Appear, filed July 12, 2016
- Exhibit 2: Respondent's I-589 Application for Asylum and for Withholding of Removal and Supporting Exhibits with Tabs A through C, filed June 18, 2017
 - A. I-589 Asylum Application
 - B. Respondent's El Salvador Passport
 - C. Record of Determination/Credible Fear Worksheet
- Exhibit 3. Respondent's Summary of Legal Arguments in Support of I-589 Application for Asylum and Withholding of Removal with Tabs D through Q, filed February 28, 2022

- D. Sworn Declaration of _____ in Support of I-589 Application
- E. Translation of Marriage Certification of _____ and _____
- F. Certificate of Translation
- G. Form I-797
- H. El Salvador 2020 Human Rights Report
- I. El Salvador Key Developments in 2020
- J. El Salvador Events of 2021
- K. El Salvador Events of 2020
- L. Immigration Briefings: Family as a Social Construct in El Salvador, Honduras, and Guatemala: Visibility and Vulnerability of Family Members of Individuals Targeted by Organized Criminal Groups
- M. UNHCR: Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers from El Salvador
- N. Insight Crime – Report: Soaring Disappearances in El Salvador Linked to Gang Pacts
- O. El Salvador orders army into the streets after spike in killings
- P. US accuses El Salvador of secretly negotiating truce with gang leaders
- Q. InSight Crime – El Salvador’s Gangs Send Message in Blood

b. Testimony

The respondent testified that he was born _____, and on the date of his hearing was twenty-seven years old. He had never married and had no children. He completed eighth grade in El Salvador, where he lived with his mother, sister, and his brother _____.

. The respondent left El Salvador on April 26, 2016, traveled through Guatemala and Mexico, and arrived in the United States on May 6, 2016.

The respondent left El Salvador because members of the Barrio 18 gang threatened to use a machete to torture and murder him on numerous occasions because his brother _____ had crossed into their territory to visit a girlfriend. The respondent knew that his younger brother, _____, had a girlfriend, _____ who lived in a territory controlled by the Barrio 18 gang, and that _____ frequently visited her. The respondent became aware that when the

gang discovered [redacted] was breaking its boundaries it threatened to torture and kill [redacted] and his family for slighting its authority.

Despite the threats, [redacted] continued to visit [redacted]. When the gang could not reach [redacted], who stopped answering his phone, it turned its attention to the respondent. In March 2016, one of the Barrio 18 contacted the respondent by phone and demanded he atone for his brother's betrayal of its boundaries and, if he refused, threatened to use a machete to torture and then to kill him and his family. That day they called him ten times within fifteen minutes. The caller said he knew him, knew he is [redacted]'s brother, and he would be responsible for paying [redacted]'s debt. The gang knew he and [redacted] are brothers because they saw them together. The respondent and [redacted] lived together, worked together, traveled to and from work together, and played soccer together every day.

When the calls came in no number showed, it only said a private number. The respondent was frightened so he asked no questions and only listened. When they told him he would have to join them as payment for [redacted], he refused; he told them he was opposed to gangs. The respondent never had trouble, never associated with gangs, and was never threatened before his brother started seeing [redacted] and the gang caught him crossing into their territory. After the respondent refused the gang's demand, he saw a fifteen-year-old boy surveilling his house. A friend told him he heard that the Barrio 18 gang had sent someone to watch him. The respondent never saw anyone other than the young boy watching him.

The respondent continued to receive multiple calls. In the last call the respondent answered, the gang member threatened to kill him at his workplace. On April 23, 2016, three men showed up at the farm where the respondent was employed. The respondent's boss put them off by telling them the respondent was not at work. The boss warned the respondent he was in

danger and told him to leave. The respondent was afraid to return home and hid at the farm for three days. The respondent knew that the men who sought him at his workplace were Barrio 18 gang members because they had threatened in their last phone call to show up at his job. His boss told him the men were armed with guns and long weapons. Even though the boss lied about the respondent's whereabouts, the men stood around for an hour before leaving. The respondent did not know what they did after that because he remained hidden. He subsequently received a call from a private number, which he did not answer. He did not return home and decided to leave the country.

The respondent never reported the threats to the authorities because in that area the police are corrupt. Shortly before he left El Salvador, the respondent witnessed a gang member threatening a police officer. The respondent did not know what problem the police officer had with the gang member, but he saw the gang member signal the police officer with his hand. The respondent knew that the one person was a police officer because he was wearing a uniform, and the other person looked like a gang member. The respondent also read news reports that the police cooperate with the gangs.

The respondent's friend and neighbor, _____, was murdered by Barrio 18 gang members in February 2014. _____'s family reported his murder, but the police never investigated and the murder was never solved. Four months before the respondent left El Salvador, Barrio 18, using machetes, murdered eleven rival gang members. The respondent did not know if that crime was ever investigated or if anyone was ever held accountable.

The respondent is afraid to go to another part of El Salvador because he believes and is afraid Barrio 18 will find and kill him. He testified that the gangs don't forget and, if he returns, they will find and murder him. He does not believe there is any place in El Salvador where he

would be safe from the gang and does not believe that the police would help him. He watches the news and sees reports of people that are killed and sees that nothing happens.

The respondent's mother and sister are still in El Salvador, but his mother sold the land that they farmed because she found a dead body on it and was afraid. The respondent's brother has been in hiding moving from place to place. The respondent does not know where he is now and believes he has been killed. used to keep in touch with their mother, but it has been one year since anyone has heard from and the respondent believes his failure to contact his mother means he is dead. The respondent testified that he had no trouble with the gangs before starting visiting in the Barrio 18 territory, and he believed he would not have had problems if not for his brother. If not for his brother and the threats, he would have remained in El Salvador because he was content, he had no problems, and he supported his mother and sister.

III. Statement of Law

a. Asylum

An applicant for asylum bears the burden of establishing that he is a refugee as that term is defined in INA § 101(a)(42)(A). A refugee is an individual who is unable or unwilling to return to his country of origin because he was persecuted, or he has a well-founded fear of persecution, on account of his race, religion, nationality, membership in a particular social group, or political opinion.¹ *Matter of S-P-*, 21 I. & N. Dec. 486, 489 (BIA 1996); 8 C.F.R. § 1208.13(a); INA § 208(b)(1)(B). An applicant for relief under the INA must show that he is unable or unwilling to avail himself of the protection of his country of nationality. INA § 101(a)(42)(A). An applicant who establishes statutory eligibility for asylum still bears the burden

¹ The applicant's fear of persecution must be country wide. *Matter of Acosta*, 19 I. & N. Dec. 211, 235 (BIA 1985).

of demonstrating that he merits a grant of asylum as a matter of discretion. INA § 208(b)(1); *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

b. Credibility

The REAL ID Act of 2005 amended various sections of the INA relating to the adjudication of asylum applications. Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005). For asylum applications initially filed on or after May 11, 2005, the court assesses an applicant's credibility based on the "totality of the circumstances and all relevant factors," including: (1) his demeanor, candor, or responsiveness; (2) the inherent plausibility of his testimony; (3) consistency between his oral and written statements; (4) the internal consistency of his testimony; (5) consistency of his testimony with country conditions and other evidence of record; and (6) any other inaccuracies or falsehoods in his testimony. *See* INA § 208(b)(1)(B)(iii). The court may consider any inconsistencies, inaccuracies, and falsehoods, regardless of whether they go to the "heart of the applicant's claim." *Id.* The court may give an applicant the "benefit of the doubt" if there is some ambiguity regarding an aspect of his asylum claim where credibility is not specifically called into question. *Matter of Y-B-*, 21 I&N Dec. at 1139; *Matter of S-M-J-*, 21 I&N Dec. at 724-25 (noting that the benefit of the doubt may be extended to an asylum applicant who may be unable to substantiate statements, but whose testimony is generally credible and does not counter generally known facts). Testimony is not considered credible when it is inconsistent, contradictory with current country conditions, or inherently improbable or implausible. *Matter of S-M-J-*, 21 I. & N. Dec. at 730; *Matter of A-S-*, 21 I. & N. Dec. 1106 (BIA 1998).

c. Past Persecution

To establish past persecution, an applicant must show the harm he experienced was sufficiently egregious to amount to persecution. The INA does not define persecution, but the Board of Immigration Appeals has interpreted the term to include serious threats to an individual's life or freedom or the infliction of significant harm as a means of punishing the person for holding a characteristic that the persecutor seeks to overcome.² *Matter of Acosta*, 19 I. & N. Dec. at 222. An applicant must also show that the perpetrator inflicted the harm on account of the applicant's race, religion, nationality, political opinion, or membership in a particular social group, and that he is unwilling or unable to avail himself of the protection of his country of origin due to the persecution. 8 C.F.R. § 1208.13(b)(1).

d. Well-Founded Fear of Future Persecution

If the applicant demonstrates past persecution on account of a protected ground, he benefits from a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The DHS may rebut that presumption by showing the applicant's fear is no longer well-founded due to a fundamental change in circumstances, or that the applicant may avoid future persecution by relocating to another part of the country and that, under all the circumstances, it would be reasonable to require him to do so, *see* 8 C.F.R. § 1208.13(b)(1)(i)–(ii).

² Not every act of discrimination or harassment rises to the level of persecution, as persecution is “an extreme concept that does not include every sort of treatment that our society regards as offensive.” *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotation marks omitted). However, considering the aggregate effect of all the incidents to which a respondent has been subjected, the cumulative treatment may rise to the level of persecution. *Baharon v. Holder*, 588 F.3d 228, 232–33 (4th Cir. 2009); *Matter of O-Z- & I-Z-*, 22 I. & N. Dec. 23, 26 (BIA 1998).

If an applicant fails to prove past persecution, he may establish a well-founded fear of future persecution by proving a subjectively genuine and objectively reasonable fear of persecution. *Cardoza-Fonseca*, 480 U.S. at 430–31. The applicant must show he possesses a subjective fear and that “a reasonable person in similar circumstances would fear persecution on account of” one or more of the protected grounds. *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 284 (4th Cir. 2004) (citing *Cruz-Diaz v. INS*, 86 F.3d 330, 331 (4th Cir. 1996)); 8 C.F.R. § 1208.13(b)(1)–(2).

c. Nexus

The applicant must show that his race, religion, nationality, particular social group, or political opinion was or would be “at least one central reason” for the persecutor’s actions against him. INA § 208(b)(1)(B)(i); *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); 8 C.F.R. § 1208.13(b)(2)(i)(A). Even treatment that is “morally reprehensible” is not “persecution” within the meaning of the INA unless it occurs “on account of” one of the five grounds in the INA. *Matter of T-M-B-*, 21 I. & N. Dec. 775, 777 (BIA 1997).

The phrase “membership in a particular social group” is not meant as a “‘catch all’ that applies to all persons fearing persecution.” See *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 INA 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. *Matter of E-A-G-*, 24 I. & N. Dec. 591 (BIA 2008)). The immigration court determines whether a proposed particular social group is legally cognizable on a case-by-case basis. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 231; *Matter of 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 Matter of M-E-V-G-*, 26 I. & N. Dec. at 231 (internal quotation marks omitted); *see also Matter of Acosta*, 19 I. & N. Dec. at 233. 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.” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 239. In analyzing particularity, the size of the proposed group is relevant but not dispositive. *Alvarez-Lagos v. Barr*, 927 F.3d 236, 253 (4th Cir. 2019). A group is socially distinct if the society in question perceives or recognizes the proposed group as a group. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 238. Additionally, the group cannot be circular, in that it must exist “independently of the alleged underlying harm.” *Amaya-De Sicaran v. Barr*, 979 F.3d 210 (4th Cir. 2020).

IV. Findings of Fact and Conclusion of Law

The Court has considered the arguments of both parties and the entire record carefully. The court has considered all the evidence and the testimony, even if it is not specifically addressed in the text of the decision.

a. Asylum

i. Credibility

The court finds the respondent was credible. His demeanor was straight forward, he answered questions without hesitation, and he honestly admitted when he did not know the answer. The respondent’s account was plausible, his testimony was internally consistent, it was consistent with his written statement and with his prior statements, and it consistent with country conditions. *See* Exh. 2 Tabs A, C; Exh. 3 Tabs D, E, H, I, I., M, N, O. Having found the respondent to be credible, the court has given full weight to his testimony.

ii. Past Persecution

The respondent credibly testified that gang members repeatedly threatened to torture and to kill him and his family after his brother repeatedly slighted the gang's authority by ignoring their territorial boundaries. When the gang was unable to force the respondent's brother to "pay his debt," it insisted that the respondent be responsible for his brother's actions. The gang threatened him on multiple occasions and appeared at his workplace armed with guns and long weapons. The disappearance of the respondent's brother strongly suggested that the gang members intended, and had already successfully carried out in part, their threats for their perceived injuries.

The Fourth Circuit has consistently held that death threats are a form of persecution. *See Portillo-Flores v. Garland*, 3 F. 4th 615, 628 (4th Cir. 2021); *Tairou v. Whitaker*, 909 F.3d 702, 704 (4th Cir. 2018); *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 951 (4th Cir. 2015). The court finds that the respondent, who credibly testified that the Barrio 18 gang threatened on numerous occasions to use a machete to torture and murder him, proved he was persecuted.

iii. Nexus

The respondent claimed he was persecuted, and fears being persecuted, on account of his membership in a particular social group, which he defined as the family of

³ The Fourth Circuit has recognized that family ties can provide the basis for a cognizable particular social group under the Act. *See Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) ("[M]embership in a nuclear family qualifies as a protected ground for asylum purposes."); *see also Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) ("*Acosta* itself identifies

³ The respondent also claimed past persecution and a well-founded fear of future persecution on account of a political opinion, which he defined as his anti-gang position. Because the court found that the respondent prove he was persecuted on account of his membership in a particular social group, it did not address his alternative ground of political opinion.

“kinship ties” as paradigmatically immutable . . . and the BIA has since affirmed that family bonds are innate and unchangeable.”) (internal citations omitted). The group the respondent proposed is composed of members who share a common immutable characteristic and is defined with particularity. The group was also socially distinct within the respondent’s society. The respondent testified that his neighbors and other residents in his village knew him and his brother because they worked together, traveled together, and played soccer today most days. The court finds that the group as proposed meets the requirements of immutability, particularity, and social distinction.

When a respondent relies on a family-based claim, the nexus requirement is met if the family connection was at least one central reason for the persecution. *See Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018); *but see Hernandez-Avalos*, 784 F.3d at 949 n.7 (noting not “every threat that references a family member is made on account of family ties”). In this case the respondent credibly testified that he never had problems before his brother met and visited in the Barrio 18 territory, that the phone calls started after his brother refused to answer his phone, that the callers specifically demanded that the respondent account for his brother’s insult, and that, after the gang threatened to appear at the respondent’s workplace, they did appear armed with guns and long weapons. *See generally Hernandez-Cartagena v. Barr*, 977 F.3d 316 (4th Cir. 2020).

Because the respondent proved he was persecuted on account of his membership in a particular social group, he benefitted from a presumption that his fear of future persecution is well-founded. The DHS did not rebut that presumption. Rather the country conditions supported the respondent’s belief that the gangs would not forget the debt they claimed he owed them for his brother ignoring the boundaries of the gang’s territory. The documentary evidence demonstrates that gangs control much of the country. *See* Exh. 3 Tab J at 93 (“Approximately

60,000 gang members operate in El Salvador, media report. They exert control over parts of the territory and commit serious abuses, including killings and rape.”).

iv. Private Actors Against Whom the Government Is Unable or Unwilling to Protect

In this case, the perpetrators were private actors and, therefore, the respondent had to show that the government was either unwilling or unable to protect him. Under the circumstances of this case, the court finds that the respondent met his burden to show that the authorities in his area were unable or unwilling to protect him. The respondent testified that he was afraid to report to the police because he had observed a gang member threatening a police officer, he knew that the police often collaborated with gang members, provided them with favors in prison, and did not investigate crimes. Documentary evidence supported the respondent’s testimony. *See, e.g.*, Exh. 3 Tab J at 93 (“According to media reports, numerous security and elected officials have collaborated with gangs in criminal operations, and many political parties have negotiated with the groups, including in exchange for gang members’ support during elections.”); Exh. 3 Tab O at 133 (“[V]ictims do not report these crimes to the police for fear of retribution and due to a lack of confidence in the authorities.”); Exh. 3 Tab N at 171 (“A new report by an El Salvador watchdog group warns that pacts between gangs and public officials to lower homicides in El Salvador are promoting the wide use of forced disappearances showing how gangs are still using violence to maintain political and territorial control.”).

The court has found the respondent statutorily eligible for asylum and will also exercise its discretion to grant the respondent asylum. The court has found no negative factors in the respondent's history that weigh against a grant of asylum in this case.⁴


V. Conclusion

The Respondent has demonstrated past persecution and a well-founded fear of future persecution on account of membership in a particular social group defined as the family members of [REDACTED]. The court, therefore, grants the respondent's application for asylum. An appropriate order is attached.

ORDER

It is hereby ordered that: The Respondent's application for asylum pursuant to INA § 208 is **GRANTED**.

March 14, 2022
Date



Alison Marie Igoe
United States Immigration Judge
Hyattsville, Maryland

⁴ Because the court has granted the respondent's application for asylum, it has not addressed his applications for withholding of removal or for protection from removal under the Convention Against Torture.

APPEAL RIGHTS: Both parties have the right to appeal this decision. A notice of appeal must be filed with the BIA within 30 calendar days of the issuance date of this decision. *See* 8 C.F.R. § 1003.38(b). If the final date for filing the notice of appeal occurs on a Saturday, Sunday, or legal holiday, the time period for filing will be extended to the next business day. *See id.* If the time period expires and no appeal has been filed, this decision becomes final. *See* 8 C.F.R. § 1003.38(d).

CC: Respondent's Counsel
Assistant Chief Counsel