

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1961 STOUT STREET, SUITE 3101
DENVER, CO 80294

In the Matters of:

Date: January 24, 2023

Respondents.

IN REMOVAL
PROCEEDINGS

File Nos.

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or the Act), as amended, as aliens present in the United States without being admitted or paroled, or who have 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); Relief under the United Nations Convention Against Torture (CAT) pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.

ON BEHALF OF RESPONDENTS:
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ON BEHALF OF DHS:
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WRITTEN DECISION

I. Procedural History

(the respondent or lead respondent) is a native and citizen of El Salvador. Her daughter, (also party to these proceedings and collectively referred to as "the respondents"), arrived in the United States at or near Hidalgo, Texas, on or about December 30, 2016, without being admitted or paroled after inspection by an Immigration Officer. Based on the foregoing allegations, the Department of Homeland Security (DHS or the Department) served the respondents with Notices to Appear (NTAs) on December 21, 2016, charging them as inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Act. The Department filed the NTAs with the Court on January 18, 2017, thereby initiating removal proceedings. *See* 8 C.F.R. § 1003.14.

On October 12, 2017, the respondents admitted allegations 1-3 contained in their NTAs, but denied allegation 4 and the charge of inadmissibility. The Court thereafter sustained the charge and order El Salvador as the country of removal should removal become necessary. The respondents each filed a Form I-589, Application for Asylum and for Withholding of Removal (I-589) on the same day. The respondents also requested protection under the CAT. The lead respondent appeared for an individual hearing on September 30, 2022, at which time she testified in support of their applications for relief. The Department did not call any additional witnesses.

For the reasons set forth below, the Court grants the lead respondent's application for asylum and derivative relief to her daughter under section 208(b)(3) of the Act.

II. Evidence

The evidence within Respondent's Record of Proceedings (Record) includes eleven exhibits, the testimony of the lead respondent, and the testimony of Dr. Breny Mendoza, the respondents' expert witness. The Court has given thorough consideration to all admitted evidence, regardless of whether that evidence is specifically named in this decision.

III. Summary of the Lead Respondent's Testimony

The respondent was born on November 12, 1996, in Guatajiagua, El Salvador. The respondent's father was an alcoholic and regularly beat her mother, causing her to abandon the family when the respondent was fifteen months old. The respondent's father then left her to the care of her paternal grandmother, along with the respondent's two half brothers, Luis Alfredo and Uber. They lived with the respondent's aunt and her son, Herson. The respondent described her grandmother as very religious and strict with the respondent, and she treated the respondent and her brothers and male cousin differently. While the boys were allowed to go outside to play, her grandmother did not permit the respondent to do the same because she was a girl. Instead, her grandmother required her to stay inside doing household chores. The respondent was required to cook and clean for her brothers, and she was not permitted to ride a bicycle or play soccer, activities that her brothers and cousin were permitted to do.

When the respondent was ten years old, her grandmother started renting a room in their home to the respondent's teacher, Milton Maravilla Martinez. He began to enter the respondent's room and sexually abuse her, culminating in him raping the respondent. This abuse occurred over the period of about a year. The respondent did not tell anyone immediately what happened because she feared that if anyone found out that she was not a virgin, no one would marry her. About four years after the rape, the respondent finally told an aunt, who told her grandmother. Despite learning of the abuse, her grandmother did not report Maravilla to the police. She told the respondent that she would, but she did not in fact report him.

The respondent moved out of her grandmother's house to live with her uncle, Mori, when she was fifteen years old to attend high school, which was located about an hour and a half from where her grandmother lived. While living with him for approximately a year

and a half, _____ sexually abused the respondent. She did not report him to the police because she stated that no one in El Salvador believes women when they report sexual abuse.

The respondent moved out of _____'s house and lived with her cousin, Elisa Vasquez Parada, around 2013-14. She was not harmed while living there, and during this time she met her daughter's father, Herson _____. Their daughter was born in 2015. While they were not legally married, they lived together in _____'s mother's home. However, his mother did not like the respondent, would tell her that she was not good enough for her son, and would treat her badly. When _____ came to the United States in 2015, the respondent felt abandoned and unsafe. She decided to leave the country, arriving in the U.S. in 2016.

The respondent has been diagnosed with Post Traumatic Stress Disorder (PTSD). She suffers from depression and anxiety attacks, which sometimes cause her to not be able to leave the house. She stated that she cannot have a relationship with a man after the abuse that she suffered in El Salvador. Further, she discovered that she was bisexual after coming to this country, a fact with which she continues to struggle. She stated that she could not date women in El Salvador because individuals with non-heterosexual identities are treated badly there. She saw instances of these people being laughed at, treated badly, or even killed. At minimum, she would be discriminated against and would not have access to employment or housing. _____ would also face mistreatment due to her mother's sexuality. The respondent fears that if she was openly bisexual in El Salvador, people would harm _____ and her psychologically and physically. Specifically, she testified that people would mock them, discriminate against them, and physically harm them by coming to the house, beating, and raping them.

Further, the respondent stated that she cannot return to El Salvador because she and _____ would not be safe without a male protector. She fears that Alison would end up suffering the same kind of sexual abuse that she suffered as a child.

IV. Summary of Dr. Breny Mendoza's Testimony

The Court qualified Dr. Mendoza as an expert on the social and cultural conditions of women and gender in the northern triangle countries (El Salvador, Honduras, and Guatemala) of Central America.

Dr. Mendoza testified that El Salvador has among the highest rate of gender violence, and specifically femicide, in the world. In that society, women are treated as secondary citizens, subordinate to men, and violence against women is tolerated. They are seen as the property of the men in their lives, whether that be their husbands, fathers, or sons. This puts them at great risk for gender-based violence.

While the government in El Salvador has put in place some measures to try to mitigate violence against women, the vast majority of its time and resources is spent on fighting the gangs present in the country. There are laws and institutions that assist women, but they are underfunded and understaffed, which defeats their purported aims. Therefore, even though there are laws for the protection of women, the issue is in their implementation. Dr. Mendoza stated that there are high levels of impunity, the statistics that are available on gender violence in El

Salvador are unreliable, and most cases go unreported. The best estimate is that two-thirds of all women ages fifteen and above have experienced sexual violence.

Regarding the respondent's specific case, Dr. Mendoza stated that the respondent and her daughter are at risk of further gender-based violence if they return to El Salvador. The lead respondent has already suffered abuse at the hands of family members and a trusted member of her community. She did have protection from her daughter's father, but he came to the US, leaving her vulnerable and unprotected.

The respondent would be unlikely to be able to continue to receive psychological services to assist her with her PTSD, depression, and anxiety in El Salvador. She would be unable to afford the high cost of such services if she returned, and the women's agencies that are tasked with providing it are underfunded and overwhelmed. It would be very unlikely that she would receive assistance when the few agencies in the country do not have the capacity to serve the thousands of women who need such services.

The respondent would be at greater risk because of her identity as a bisexual female. Dr. Mendoza stated that the Northern Triangle countries have the highest levels of homophobia in the region. Having a sexual relationship with someone of one's own gender is considered a serious transgression and is punished by society with violence. These individuals' families often reject them and the police engage in systematic abuse of LBGTO populations. While the highest levels of violence are perpetrated against transgender people, followed by gay men, lesbians also run a higher risk of violence based on their sexuality. Further, there are high levels of discrimination, including in housing, employment, law enforcement, and the courts. Gangs target lesbians, which the respondent would be considered if she was in a relationship with a woman. Overall, the respondents would be at risk of being killed, raped, or beaten by police, their own family, or by people in Salvadoran society in general.

Finally, Dr. Mendoza opined that it would be very difficult if not impossible for the respondents to relocate within El Salvador. It is one of the smallest countries in Latin America and the prejudice and violence described above are present country-wide. Further, LGBTQ individuals run the risk of violence from the police nationally.

V. Credibility

In all applications for asylum and withholding of removal, the Court must make a threshold determination of the noncitizen's credibility. INA §§ 208(b)(1)(B)(ii)-(iii), 241(b)(3)(C); *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). An applicant's testimony, standing alone, may be sufficient to meet her burden of proof if it is credible, persuasive, and probative of facts sufficient to demonstrate that the applicant is a refugee. INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). The Court may afford an applicant the "benefit of the doubt" if there is some ambiguity regarding an aspect of her asylum claim. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998). In some cases, an applicant may be found credible even if she has trouble remembering specific facts. *See, e.g., Matter of B-*, 21 I&N Dec. 66, 70-71 (BIA 1995).

Upon careful consideration of the facts of record, individually and cumulatively, including the respondent's testimony, the Court finds the respondent credible. The Court observed the respondent's demeanor and other nonverbal indicators, and her testimony appeared authentic and genuinely based in fact. Moreover, the Department does not challenge the respondent's credibility. Thus, the Court finds the respondent credible.

VI. Asylum

Asylum is a discretionary form of relief available to noncitizens physically present or arriving in the United States, who apply for relief in accordance with sections 208 or 235(b) of the Act. INA § 208(a)(1); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 444 (1987). An applicant is eligible for asylum under INA § 208 if: (1) her application was filed within one year of her last arrival in the United States; (2) she is not statutorily barred from relief; (3) she is a refugee within the meaning of INA § 101(a)(42)(A); and (4) she merits asylum in the exercise of discretion. *See* INA § 208(a)(2)(B), (b)(1)(A), (b)(2).

A. Timeliness – One Year Deadline

To be eligible for asylum, an applicant must present clear and convincing evidence that she filed an asylum application within one year after the date of her last entry into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i). Here, the respondents entered the United States on December 20, 2016, and filed their I-589 on October 12, 2017, within the one-year filing deadline. Thus, the respondents' asylum applications are timely filed.

B. Refugee Status

An asylum applicant bears the burden to prove that she is a "refugee" as defined in section 101(a)(42) of the Act. INA § 208(b)(1); 8 C.F.R. § 1208.13(a). This requires the applicant to establish that she is outside her country of nationality and is unable or unwilling to return to or avail herself of that country's protection because she suffered past persecution or has an independent well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 230 (BIA 2014).

1. Past Persecution

An asylum applicant who demonstrates that she suffered past persecution on account of a protected ground is entitled to the presumption that she has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1).

a. Severity of Harm

Persecution is a threat to life or freedom or the infliction of suffering or harm upon those who differ, in a way that is regarded as offensive. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). For such acts to rise to the level of persecution, they must be "more than just restrictions or threats to life and liberty."

Woldemeskel, 257 F.3d at 1188; *see also Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). In determining whether an applicant suffered harm rising to the level of persecution, the Court considers incidents in the aggregate. *See id.* at 1337-38; *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

As an initial matter, the respondent suffered serious and long term sexual abuse during her childhood. *See Liu v. Ashcroft*, 380 F.3d 307, 314 (7th Cir. 2004) (finding that age “may bear heavily on the question of whether an applicant was persecuted”). When she was ten years old, the respondent was sexually abused for over a year at the hands of Milton Maravilla Martinez, culminating in him raping her. To compound this, Maravilla Martinez was a person in a position of trust: someone who both lived in her household and was her teacher. Another adult in a position of trust then sexually abused her, her uncle, Mori for a year-and-a-half when she was a teenager. *See Matter of D-V-*, 21 I&N Dec. 77 (BIA 1993) (finding rape as a form of “grievous harm” that substantiates a fear of persecution when perpetrated on account of a protected ground); *see also* U.S. Dep’t of Justice, *Considerations for Asylum Officers Adjudicating Claims from Women* (1995) (DOS Report) (identifying rape, sexual abuse, and domestic violence as “evidence of past persecution” and emphasizing that “[s]evere sexual abuse does not differ analytically from beatings, torture, or other forms of physical violence that are commonly held to amount to persecution”). Not only did she endure this long-term abuse from two men in positions of trust and authority in her life, she was unable to turn to her other family members or the authorities for help, as Salvadoran culture makes it difficult if not impossible for women to report sexual abuse. First, the respondent testified that she did not want to tell anyone that she had been raped, because if she did she would have been considered “un-marriable.” This would have placed her in an untenable situation in a highly patriarchal society. When she did finally tell someone in her family about it, her family took no steps to protect her or seek accountability from the rapist. She also believed she could not tell anyone that her uncle was molesting her, as the police would have discounted her and her family had already proven their disinclination to protect her from such abuse. The respondent suffered psychological trauma, as well, testifying that she was experiencing depression and anxiety, as well as suicidal ideation, when she met her daughter’s father in 2014. She is currently receiving therapy for post traumatic stress disorder, stemming from her traumatic experiences in El Salvador. Ex. 10 at 93.

Viewing the abuse that the respondent suffered in the cumulative, and particularly viewing it in light of her tender age, the Court finds that respondent has suffered past persecution. *See Hayrapetyan*, 534 F.3d at 1330 (finding an asylum applicant’s cumulative harm constituted past persecution).

b. Nexus to a Protected Ground

An asylum applicant must also demonstrate that the harm she suffered was “on account of” race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b); *see INS v. Elias-Zacaraias*, 502 U.S. 478 (1992). Here, the respondent argues that she suffered persecution on account of her membership in a particular social group: i.e., Salvadoran women; Salvadoran women without a male protector, and bisexual Salvadoran women.

i. *Protected Ground*

To establish past persecution on account of membership in a particular social group, the respondent must demonstrate the existence of a cognizable particular social group, her membership therein, and a nexus between the harm she suffered and her membership in that group. *Matter of W-G-R-*, 26 I&N Dec. 208, 223 (BIA 2014). Here, the respondent argues that she suffered persecution on account of her status as a Salvadoran woman.¹

The respondent's membership in a particular social group—"Salvadoran women"—must be cognizable to constitute a protected ground. To be cognizable, a particular social 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 M-E-V-G-*, 26 I&N Dec. at 237. Gender and nationality both constitute immutable characteristics that individuals cannot and should not be required to change. See INA § 101(a)(42) (listing nationality as a protected ground); *Matter of Acosta*, 19 I&N Dec. at 233 (listing sex as a paradigmatic example of a common, immutable characteristic). The Court also finds that this proposed social group is particular, because it provides a "clear benchmark for determining who falls within the group." *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). Furthermore, Respondent's proposed social group is socially distinct. See *Matter of W-G-R-*, 26 I&N Dec. at 217 (recognizing social distinction as evidence "that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group"). Country conditions evidence demonstrates how Salvadoran society recognizes women as a distinct group. See, e.g., Ex. 10 at 79-80, Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *El Salvador Country Report on Human Rights Practices—2020* (2021) (describing gender-based discrimination specifically against Salvadoran women); *id.* at 42, *Beyond the Bubble: Normalized Violence Against Salvadorian Women and the Military Controlled Government in Myanmar*, whitmanwire.com (Nov. 11, 2021) (recounting the myriad ways that women are targeted for violence on account of their gender). Further, the Tenth Circuit has recognized gender as a social group. *Niang v. Gonzalez*, 422 F.3d 1187, 1199-200 (10th Cir. 2005). See also *Matter of Kasinga*, 21 I&N Dec. 357, 376 (BIA 1996) (stating that "consideration of gender-based . . . asylum claims within the "membership in a particular social group" construct that exists within the Act is entirely appropriate and consistent with the developing trend of jurisprudence in the United States"); *Matter of Acosta*, 19 I&N Dec. at 233 (a shared characteristic might be an innate one such as sex, color, or kinship ties).

Therefore, because the social group "Salvadoran women" is immutable, cognizable, and socially distinct, the Court finds it is cognizable under the Act. As such, the Court concludes that the respondent is a member of a cognizable particular social group.

¹ Because the Court finds that the respondent's particular social group of Salvadoran women is cognizable and that she has established a nexus to the harm she suffered, the Court declines to analyze the other proposed particular social groups here.

ii. *Nexus*

The Court also finds that there was a nexus between the harm the respondent suffered in El Salvador and her status as a Salvadoran woman. To be eligible for asylum based on past persecution, an applicant must establish that there was a nexus between the persecution she experienced and the protected ground. 8 C.F.R. § 1208.13(b)(2). The Court examines the persecutors' motives and will find a nexus if a protected ground was at least one central reason that motivated her persecution. *See* INA § 208(b)(2); *see also* *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). The protected ground cannot play a minor role in the persecution, nor can it be "incidental, tangential, superficial, or subordinate to another reason for harm." *Karki v. Holder*, 715 F.3d 792, 800-01 (10th Cir. 2013) (citations omitted).

As the Tenth Circuit noted in *Niang*, the question is not whether gender constitutes a social group, it is whether the respondent was persecuted on account of her gender. 422 F.3d at 1199. Here, circumstantial evidence and country conditions demonstrate that the respondent was persecuted on account of her gender. The respondent suffered long-term sexual violence in El Salvador from two different men. She testified that she was treated differently by her family than her male contemporary family members, and that neither her brothers nor her male cousin were sexually abused by Maravilla Martinez. *See Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (noting that a nexus can be established if an asylum applicant shows that the persecutor would not have harmed the applicant if the protected characteristic did not exist).

This gender-based abuse was not a matter of a domestic or private dispute, or merely because the respondent was vulnerable to these predators as a child. *See Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). Rather, the treatment the respondent endured was indicative of systemic abuse perpetrated against Salvadoran women as a group. According to the respondent's country conditions expert, Dr. Mendoza, women are treated like second-class citizens in El Salvador *because* they are women. Other country conditions reveal El Salvador's machismo culture that condones and even facilitates violence against women and girls. *See* Ex. 4 at 161, 176 (DOS Report) ("Laws against domestic violence remain poorly enforced and violence against women, including domestic violence, remained a widespread and serious problem."). Gender-based violence is not the result of isolated criminal activity; it is a pervasive form of harm that Salvadoran women frequently face for no other reason than their status as a woman. As a horrifying example, in El Salvador in 2018, one woman became a victim of femicide every twenty-four hours on average. Femicide is defined as "the targeted murder of a woman *based on her gender.*" *Id.* at 37, *The Northern Triangle: The World's Epicenter for Gender-Based Violence*, New Atlanticist (March 3, 2021) (emphasis added). Further, Dr. Mendoza testified that two-thirds of all women in El Salvador experience sexual violence, and that it would be unusual in Salvadoran culture to not have some form of gender-based abuse happening in any given household.

The harm the respondent experienced is paradigmatic of such gender-motivated abuse and indicative of El Salvador's patriarchal culture. The fact that the respondent suffered abuse from a more than one persecutor undercuts the argument that this was a personal or familial matter. While the respondent's persecutors may have had more than one motive, such as her age or vulnerability, that does not undercut the Court's conclusion that the respondent's gender was

one central reason for the abuse. See *Matter of S-P-*, 21 I&N Dec. 486 (BIA 1996) (explaining that mixed motives can motivate persecution, and an asylum applicant “is not obliged to show conclusively why persecution has occurred or may occur”); Ex. 10 at 48, *How Violence Affects Women in El Salvador*, lawg.org (February 22, 2016) (“The prevalence of sexual violence against women in El Salvador is staggering And victims are often the most vulnerable—more than half of these assaults were carried out against girls, adolescents, and the disabled”). Here, the Court’s fact-based inquiry into the respondent’s persecution, combined with country conditions evidence illustrating systemic gender-based violence in El Salvador, establishes that there was a nexus between the respondent’s persecution and her status as a Salvadoran woman.

c. Government Involvement

To be considered a refugee, an asylum applicant must demonstrate that she is unable or unwilling to return to, or avail herself of the protection of the government of her country. 8 C.F.R. § 1208.13(b)(2)(i)(C). Thus, an applicant must establish persecution by the government or by groups the government is unwilling or unable to control. *Niang v. Gonzalez*, 422 F.3d 1187, 1193 (10th Cir. 2005) (quoting *Vatulev v. Ashcroft*, 354 F.3d 1207, 1209 (10th Cir. 2003)). Here, the respondent argues that the Salvadoran government was unwilling or unable to control her persecutors. The respondent did not report her abuse to the police; however, she was a child when the abuse occurred. Moreover, the respondent testified that reporting it would have been futile or even placed her in further danger of harm. An applicant is not required to report third party persecution to the government if she can demonstrate that she could not rely on authorities to protect her. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000).

The Court recognizes that the Salvadoran government has made some efforts to attempt to address the problem of gender-based violence, including passing legislation and creating some institutions to assist victims. However, consistent with the respondent’s recollection of events, country conditions describe Salvadoran police as unable to protect Salvadoran women, especially when it comes to matters of sexual and gender-based violence. See *Gonzalez Aguilar v. Garland*, 29 F.4d 1208, 1216 (noting that when considering the existence of laws designed to protect a certain population in a country, the court must consider the effectiveness of the measures). “The Salvadoran government has begun to implement some programs and legislation to combat violence against women. But progress has been slow, in part because the violence is perceived as a social problem outside of the government’s realm of responsibility.” Ex. 10 at 48. Further, “[w]omen receive little to no guarantees of protection from the state. Due to ineffective governmental institutions, corruption, and social acceptance, impunity reigns in nearly all cases of violence against women.” *Id.* at 44. Impunity thus breeds further abuse. *Id.* at 37 (also noting that gang members or police officers are frequent perpetrators of such violence). The State Department supports this in the passage cited above, noting that “[l]aws against domestic violence remained poorly enforced, and violence against women, including domestic violence, remained a widespread problem.” *Id.* at 80. This is substantiated by noting that only five percent of reported crimes against women went to trial. *Id.*

Accordingly, while the Salvadoran government has demonstrated minimal efforts to combat the sexual abuse and other gender-based crimes against women, the respondent’s

testimony, when viewed in light of current country conditions, establishes that the Salvadoran government is unable to protect Salvadoran women from persecution.

Accordingly, based on the Record as a whole, the respondent met her burden to establish that she suffered past persecution on account of a protected ground such that she meets the definition of a “refugee” under the Act.

2. Presumption of a Well-Founded Fear of Future Persecution

As explained above, the Court finds that the respondent suffered past persecution in El Salvador on account of a protected ground, and that the Salvadoran government was unwilling or unable to protect her from the violence. As such, the Court presumes that the respondent has a well-founded fear of future persecution in her home country. 8 C.F.R. § 1208.13(b)(1). The Department, nevertheless, may rebut this presumption by demonstrating either that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her home country, or that the applicant could relocate to another part of the country to avoid future harm and it would be reasonable to expect her to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). The Department bears the burden to rebut this presumption by a preponderance of the evidence. 8 C.F.R. 1208.13(b)(3)(ii); *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008).

Here, the Department argues that the respondent is now an adult and so her circumstances have changed such that she no longer has a well-founded fear of future persecution. The Court disagrees. While the respondent is no longer a child and thus may be able to protect herself from the specific type of sexual abuse that she suffered at the hands of her teacher and uncle, the record does not support a conclusion that she no longer is in danger of suffering sexual and other gender-based violence in El Salvador. Numerous country conditions reports note that El Salvador is one of, if not the, most dangerous country for women in Latin America. Ex. 10 at 41 (“An international rights watchdog named El Salvador the most unsafe country for women in Latin America and the Caribbean”); and at 42 (“The Inter-American Commission on Human Rights (IACHR) reported El Salvador as the most dangerous Latin American country for women.”). Additionally, many of the reports noted increased levels of violence against women following the pandemic. *Id.* Further, as noted above, the Salvadoran government may have passed additional laws and created institutions to address this issue, but those laws and institutions are ineffective and would not offer the respondent adequate protection were she to return to the country.

Accordingly, the Department failed to show that Respondent no longer has a fear of persecution in El Salvador based on changed circumstances. Moreover, DHS has failed to establish that she can reasonably relocate within El Salvador to avoid harm, given the high levels of violence pervasive throughout the country, the fact that the respondent has suffered life-long, severe trauma, and the limited protections for women throughout the country. Her status as a bisexual woman would also make it dangerous for her to live anywhere in El Salvador if she were to openly identify as bisexual. Ex. 10 at 23-36. Therefore, the Department failed to rebut the presumption that the respondent has a well-founded fear of persecution based on the harm she suffered in El Salvador.

3. Humanitarian Asylum

Even if the Department met its burden to rebut the presumption that the respondent has a well-founded fear of future persecution, the Court finds that the respondent is entitled to humanitarian asylum in the alternative. In cases where an applicant has established past persecution on account of a protected ground but is not found to have a well-founded fear of future persecution, the applicant can show she merits relief in the form of humanitarian asylum by demonstrating either (1) compelling reasons for being unwilling or unable to return to her country of nationality arising out of the severity of past persecution, or (2) a reasonable possibility that she may suffer other serious harm upon removal to that country. *See* 8 C.F.R. § 1208.13(b)(1)(iii); *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012).

Here, the Court finds that the respondent has established compelling reasons for being unwilling or unable to return to El Salvador because of the nature of her past persecution. *See Matter of Chen*, 20 I&N Dec. 16 (BIA 1999). As a young child in El Salvador, the respondent suffered from long-term sexual abuse at the hands of two people in positions of trust in her life. She has been diagnosed with post-traumatic stress disorder stemming from the abuse, and described feeling depressed and anxious to the point where she has trouble leaving her home some days. Ex. 10 at 93. Further, the respondent is at risk of other serious harm, as she now identifies as bisexual. This would place her at risk of severe harassment, discrimination, violence, or even death if she were to return to her country. *See generally*, Ex. 10 at 28-36. Dr. Mendoza testified that El Salvador is one of the countries with the highest rates of homophobia in Latin America, and the respondent would be at grave risk of being beaten, raped, or murdered if she returned to El Salvador and people in her community learned that she is bisexual. This is compounded by the fact that gangs frequently target lesbians (which the respondent would be considered if she was in a relationship with a woman) for sexual violence or death, and the respondent could face high levels of violence and discrimination by the police, her family, and/or society in general. Therefore, taking into account the abuse the respondent suffered as a child, combined with the risk she faces returning to El Salvador as a bisexual woman, the Court concludes that humanitarian asylum is appropriate in her case. Notably, the widespread general violence in El Salvador would likely compound the trauma from Respondent's history of abuse. *See generally* Ex. 10 at 28-92 (country conditions). *See Matter of Chen*, 20 I&N Dec. at 19 ("That victims of past persecution should in some cases be treated as refugees or asylees even when the likelihood of future persecution may not be great has been recognized by the Office of the United Nations High Commissioner for Refugees It is frequently recognized that a person who . . . has suffered under atrocious forms of persecution should not be expected to repatriate.").

4. Conclusion

As outlined above, the Court finds that the persecution the respondent experienced was on account of her membership in a particular social group, that the Salvadoran government was unable to protect her, and that the Department failed to rebut the presumption that the respondent has a well-founded fear of persecution in El Salvador and/or that she has met the requirements for a grant of humanitarian asylum. 8 C.F.R. § 1208.13(b)(1)(iii)(A). The Court further finds that

the respondent is entitled to a positive exercise of the Court's discretion and will grant her application for asylum. The Court will further grant derivative relief to her daughter, the minor respondent.

VI. Other Requested Relief

As the Court finds Respondent eligible for asylum under section 208 of the Act, the Court declines to analyze Respondent's eligibility for withholding of removal under section 241(b)(3) of the Act and protection under the CAT pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.

Accordingly, the Court enters the following orders:


ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum pursuant to section 208 of the Act be GRANTED.

IT IS FURTHER ORDERED that Respondent's daughter, be GRANTED derivative relief from removal under section 208(b)(3) of the Act.

IT IS FURTHER ORDERED that appeal is RESERVED on behalf of both parties.

1/24/23
Date



Brea C. Burgie
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED VIA:

MAIL (M) PERSONAL SERVICE (P) ELECTRONIC SERVICE (E)

TO: () ALIEN () ALIEN C/O CUSTODIAL OFFICER (X) ALIEN'S ATTY/REP (X) DHS

DATE: 1/25/23 BY: COURT STAFF AS

ATTACHMENTS: () EOIR-33 () EOIR-28 () LEGAL SERVICES LIST () OTHER