

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

IN THE MATTER OF:

) IN WITHHOLDING-ONLY

) PROCEEDINGS

██████████, A ██████████ (Lead)

) File # A ██████████

██████████, J ██████████ (Rider)

) File # A ██████████

ON BEHALF OF RESPONDENTS:

Jacquelyn, Kline, Esq.

) ON BEHALF OF THE DHS

Maureen Gaffney, Esq.

Decision and Order

Respondent testified that she is a high school graduate who married her husband, Oscar, in 2002, but had dated him since she was 15 years old. Born to their marriage are four children, ages 17 to 8. In 2008 she separated after Oscar took up with another woman. Later that year she met Carlos, a coffee field worker, and they began living together. While the relationship was good at first, it began to deteriorate during their first year.

According to respondent, Carlos was gone days at a time and when he returned he brought home large sums of money which he told her derived from selling cell phones and watches in the city. Soon thereafter respondent discovered that Carlos actually was selling marijuana, and when she complained, he beat her. From then on Carlos was frequently abusive, particularly when he returned drunk after being away for several days. Respondent described her abuse as including being called vulgar names, being beaten with fists and a belt, being burned on the leg with a cigarette, and being raped. Respondent described one incident in October 2013 when Oscar brought home some of his friends and forced her to have sex with each one. Oscar warned her that if she reported him to the police he would kill her.¹

Having had enough abuse from Carlos, respondent left her children with her mother and illegally entered the United States in late December 2013. After being quickly apprehended by CBP, she informed that she was fearful of returning to Honduras, but accepted removal in February 2014 after learning that her mother had been threatened by Carlos and her daughter, J ██████████, was ill. Upon her return she initially went to San Pedro Sula to stay with a female cousin, but in May Oscar found out and forced her back to her village; respondent elected to

¹ Respondent informed that her small village had no police officers, she had no transportation to get her to the closest police station, and that her attempt to report the domestic abuse would have fallen on deaf ears since it is well-known that the police undertake little action to protect women from abusive husbands or partners.

bring J [REDACTED] with her with Oscar's permission. True to form, Oscar became abusive once again whenever he returned from selling drugs.

Respondent testified that on May 10, 2014, Oscar arrived home drunk and assaulted her. After she went to bed, she heard Carlos go to J [REDACTED]'s room. When she entered the room she found Carlos in his underwear and touching her daughter. She screamed at Oscar who told her he intended to rape J [REDACTED] whereupon respondent sprayed Oscar in his eyes with hair spray, struck him in the head with a broom handle, and fled the house with J [REDACTED] going to a neighbor's house and then on to her cousin's house in San Pedro Sula. She again illegally entered the United States on June 8, 2014, seeking protection.

Withholding of Removal

To establish eligibility for withholding of removal in accordance with section 241(b)(3) of the Act, the applicant must establish a "clear probability" of persecution on "on account of" one of the statutorily-protected grounds set forth at section 101(a)(42)(A). Although an applicant need not show conclusively why persecution occurred or may occur in the future, Matter of S-P-, 21 I&N Dec. 486 (BIA 1996), she must present some evidence of motive on the part of the persecutor, either direct or circumstantial, to demonstrate her eligibility for the relief she is seeking.² INS v. Elias-Zacarias, 502 U.S. 478 (1992); Balasubramanrim v. INS, 143 F3d 157 (3rd Cir. 1998); Amanfi v. Ashcroft, 328 F.3d 719 (3rd Cir. 2003).

In this regard, the applicant must produce sufficiently detailed evidence and testimony from which it is reasonable to believe that the harm she fears, or the harm already suffered, is encompassed within one of the statutorily-protected grounds as set forth above. An alien who meets this standard must be granted withholding of removal, which is mandatory unless the alien is statutorily precluded from such relief. It has been held that the burden of proof is higher to establish eligibility for withholding of removal than for asylum. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

Underlying such applications is the requirement that the applicant's testimony be credible, persuasive, and specific, rather than general or vague. Balasubramanrim v. INS, *supra*; Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998). In this regard, respondent's testimony is determined to be credible as it conforms to known country conditions as established through record evidence, the court could detect no effort by respondent to mislead, and her testimony, by and large, conforms to her written application.

Particular Social Group

Respondent's claim is understood as based on membership in a *particular social group*, which is defined as a group of individuals who share a common, immutable characteristic that cannot be changed or that they should not be required to change because it is fundamental to their individual identities or consciences. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); Fatin v. INS, 12 F.3d 1233 (3^d Cir. 1993). Immutable characteristics include innate characteristics such as "sex, color, or kinship ties" or shared past experiences. Acosta, 19 I&N Dec. at 233. Although

² In Matter of J-B-N- & S-M-, 24 I&N Dec. 208 (BIA 2007), the Board held that the REAL ID ACT of 2006 requires that one of the grounds at INA § 101(a)(42)(A) comprise "one central reason" for the claim.

past experience is an immutable characteristic, a social group “must exist independently of the persecution suffered” and “must have existed before the persecution began.” Lukwago v. Att’y Gen., 329 F.3d 157, 172 (3d Cir. 2003).

Additionally, respondent will be required to show that the attributes of her particular social group are “recognizable” or “identifiable” by society. See Matter of Kasinga, 21 I&N Dec. 357, 365-66 (BIA 1996); Matter of H-, 21 I&N Dec. 337, 342-43 (BIA 1996). In addition to demonstrating that she is a member of a particular social group, respondent must also establish that she was targeted for persecution, at least in part, on account of her membership in that group. INA §208(b)(1)(B)(i). Ndayshimiye v. Att’y Gen., 557 F.3d 124 (3d Cir. 2009).

Recently, in Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014), the Board clarified that societies use various means to distinguish individuals within society, including using race, religion, nationality, and political persuasion, characteristics which may or may not be visually evident but whose personal identities are shared in commonality with others similarly situated. In relation to membership in a particular social group, the Board adopted the requirement that an alien establish her group as “socially distinct” in order to avoid further confusion over the previous term “social visibility.” To this end, the Board requires an alien to establish that she is a member of a group (1) composed of members who share an immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *Id.* at 237.

Respondent’s social group is described as *Honduran women who are unable to safely leave an abusive domestic relationship*, along the lines of the Board’s decision in Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014). There, the Board held that *married Guatemalan women who are unable to leave their relationship* could constitute a particular social group.

Credibility

Government counsel expressed concerns over respondent’s credibility. Her concerns are of record and need not be repeated. What this court found particularly helpful are the medical records of the lead respondent and her daughter which revealed both are undergoing psychological counseling while under DHS custody. The court observed respondent frequently crying during her testimony, and being so upset that she vomited, particularly when she recounted her gang rape and Carlos’s attempted rape of her daughter. Further, respondent’s explanation about not informing the CBP officer who arrested her at the border about being raped, is plausible and understandable. In short, there’s nothing in respondent’s testimony or claim which causes this court any concern about her credibility.

Discussion

The initial questions to be resolved are whether respondent’s group is described with particularity, and if so, whether it is socially distinct in Honduras. In A-R-C-G-, *supra*, the Board readily accepted the terms “married,” “women,” and “unable to leave relationship,” they having commonly accepted definitions within Guatemalan society, and can combine to create a group with discrete and definable boundaries. The Board further found that the alien also demonstrated that Guatemalan society recognized clear distinctions based on common immutable characteristics of being a married woman in a domestic relationship she cannot leave.

With the exception of “married,” respondent argues, she meets all other criteria of particularity as pertaining to Honduras. This court agrees. The fact that the female alien in Matter of A-R-C-G- was married seems almost beside the point. As the Board pointed out, women in general in Guatemalan society are particularly susceptible to domestic violence, a situation exacerbated by a largely apathetic and unresponsive police force. So, too, societal distinction.

This record, too, supports respondent’s complaint that the Honduran police have a reputation for refusing to help battered women. The *Human Rights Report*, **exhibit 4-E**, addresses the pernicious problem of domestic violence against women and children. Under Section 6 of the *Report*, the Department of State reports that “[v]iolence against women and impunity for perpetrators continued to be a problem. The National Observatory of Violence reported that violent deaths of women increased by 246% between 2005 and 2012.” It goes on to report that “[r]ape was a serious and pervasive societal problem that permeated all facets of society...Rape continued to be underreported due to fear of stigma, retribution, and further violence.” Finally, the *Report* confirms child abuse, including the sexual exploitation of children, as a serious problem in spite of a permanent government commission which coordinates public and private efforts to combat the problem. Other background documents and reports submitted by respondent provide more discussion of the significant and increasing problems of domestic violence against women and children. In accordance with Matter of A-R-C-G-, *supra*, respondent has met her burden of establishing that she and her child suffered past persecution.

Past Persecution

Given that respondent has established past persecution, the regulatory presumption of future persecution is triggered, in accordance with 8 C.F.R. § 1208.16(b)(1). It has been held that the government has the burden of proof to establish that country conditions have fundamentally changed since the respondent’s departure such that a reasonable person in the same or similar circumstances would no longer have a fear of persecution in returning. Lukwago v. Ashcroft, 329 F.3d 157 (3rd Cir. 2003); Matter of H, 21 I&N Dec. 337, 346 (BIA 1996); Matter of C-Y-Z, 21 I&N Dec. 915, 919 (BIA 1997). That burden is manifested under the present regulations which require the government to establish a “fundamental change in circumstances” in the applicant’s country of nationality, 8 C.F.R. § 1208.16(b)(1)(A), or that the “applicant could avoid future persecution by relocating to another part of the applicant’s country of nationality...and under all the circumstances, it would be reasonable to expect the applicant to do so.” 8 C.F.R. § 1208.16(b)(1)(B). The burden of proof held by the government in either regard is by a preponderance of evidence. 8 C.F.R. § 1208.16(b)(1)(B)(ii). *See also* Manzoor v. U.S. Dep’t of Justice, 254 F.3d 342 (1st Cir. 2001).

In Berishaj v. Ashcroft, 378 F.3d 314, 327 (3d Cir. 2004), the Third Circuit held that “the [government] is obligated to introduce evidence that, on an individualized basis, rebuts well-founded fear of future persecution. Information about general changes in the country is not sufficient,” *quoting* Rios v. Ashcroft, 287 F.3d 895, 901 (9th Cir. 2002). Of course, the government cannot meet its burden by any standard, given the current record. Moreover, as to successful internal relocation, the government, too, cannot meet its burden. According to the Third Circuit, the fact-finder must conclude that, first, the alien would be successful in escaping persecution internally, and second, must conclude whether relocation would be

reasonable. Leia v. Ashcroft, 393 F.3d 427, 438 (3d Cir. 2005). Again, the government has offered nothing to rebut the record evidence to demonstrate that respondent could safely relocate, and should do so.

Conclusion

As the Board stressed in Matter of A-R-C-G-, *supra*, a claim of domestic violence requires an examination of the society in question, whether it makes meaningful distinctions based on common immutable characteristics within a domestic relationship that the alien is unable to leave.³ Such evidence, the Board stressed, includes whether the foreign society recognizes the need to offer protection to victims of domestic violence, whether there are laws protecting women from such violence, and whether they are effectively enforced. *Id* at 394.

This record supports respondent's claim that women generally in a domestic relationship from which she cannot safely leave is recognized by Honduran society, that the international community charges Honduras with failing to adequately protect women and children from domestic abusers, and that the police, in fact, are largely apathetic when it comes to domestic violence-related crimes. It matters not that respondent, unlike the alien in Matter of A-R-C-G-, *supra*, was not married. She was in a domestic relationship with Carlos for several years.

The country evidence of record portrays women in Honduran society as the frequent victims of domestic violence, which continues to dramatically escalate year by year, victims who are especially vulnerable, along with their children, since the police very often refuse to act. While this respondent did not report the abuse, even after several years of enduring it,⁴ her testimony that she was ashamed of doing so, and fearful that Carlos would carry out his threat to kill her if she did, are persuasive. Given the high level of impunity to domestic abusers, respondent cannot be blamed for not notifying the police. See Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000); see also Fiadjoe v. A.G., 411 F.3d 135 (3d Cir. 2005) (that even though the government's national policy was against such abuses, and even though the claimant had not undertaken to make a police report, any reporting in this regard would have been futile since the evidence established that the police refused to arrest, and the government refused to prosecute, violators who engaged in female sexual rituals).

Given that the court must grant respondent mandatory withholding of removal, respondent's minor daughter, who is in Removal proceedings, meets the lower burden of proof of a well-founded fear of persecution for asylum. While respondent cannot directly confer any benefit to her child by being the recipient of withholding of removal, given the child is too young (age 8) to advocate her own fear of probable prospective persecution, her "fear" is the same as her mother's subjective fear. Moreover, but for her mother's timely intervention, J [REDACTED] would have, too, been raped by Carlos, an act of persecution based on Honduran society's recognition that child abuse is a serious problem within the domestic relationship, that

³ Of course every alien making such claim has physically "left" the relationship; perhaps it's more accurate to determine whether the female is able to safely leave the relationship, without incurring likely violent retribution from the domestic partner.

⁴ One must be careful not to be critical of abused women who remain long in an abusive relationship before fleeing; to do otherwise might be interpreted as laying partial "blame" on the victim for enduring the abuse.

children deserve government protection which is woefully lacking, and that their abusers be adequately punished. Hence, J [REDACTED]'s social group of battered Honduran children within the household, is a fully cognizable social group. Finally, given the outcome of this claim, respondents' tandem claim under the CAT need not be considered, though such claim would likely be granted on account of Guatemalan government acquiescence to likely prospective torture. The following orders are hereby entered.

Order: The lead respondent is hereby ordered removed from the United States.

Further Order: The lead respondent's removal to Guatemala is hereby withheld pursuant to INA § 241(b)(3).

Further Order: Respondent's child, J [REDACTED], A #s [REDACTED] is granted asylum pursuant to INA § 208(a).


Walter A. Durling
Immigration Judge

December 3, 2014