

frequently a single parent. Respondent posits that her social group is recognized in Guatemalan society with particularity, and is socially distinct. In this latter regard, respondent argues that her Guatemalan culture is male-dominated, that domestic and sexual violence against women, especially single women, is widespread, and that the government fails to provide adequate protection to her class members. The court concurs.

The overall record evidence, including the documentary evidence respondent submitted with her post-trial brief, shows a Guatemalan government mostly detached from providing adequate protection to women. Although the Guatemalan government has established a Special Unit for Sex Crimes, the Office of Attention to Women, and the Office of the Special Prosecutor for Crimes against Women, *Human Rights Report*, page 30, the U.S. Department of State is not very impressed. It goes on to inform that the Guatemalan police receive little training or capacity to investigate sexual or domestic crimes, that the government fails to effectively enforce the laws against domestic violence, and that perpetrators enjoy a high degree of impunity from punishment.

Moreover, the fact of these special government agencies and offices prove that the Guatemalan government recognizes respondent's particular social group since they have been established to address the high incidence of domestic and sexual violence against women.

Past Persecution

Given that respondent has established past persecution, the regulatory presumption of likely future persecution is triggered, in accordance with 8 C.F.R. § 1208.16(b)(1), on the basis of the original claim. 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).

Given the recent events which befell respondent at the hands of her abusive uncle, and the near constant sexual harassment from ██████, the government is unable to meet its burden of establishing changed country conditions, or that respondent could safely relocate. See *Berishaj v. Att'y Gen.*, 378 F.3d 314 (3^d Cir. 2004). Moreover, given the widespread problem of sexual assaults and domestic violence against women, respondent's fear of not being able to elude her uncle or ██████ is well-founded. Even though the police told ██████ to cease harassing respondent, he did not do so. Given the high degree of impunity for perpetrators of sexual violence, this is hardly surprising.

Unable or Unwilling to Protect from Persecution

Furthermore, the applicant must also establish that her government is unable or unwilling to protect her. To this end, it is a well-settled maxim of asylum law that in order to establish past or prospective persecution and thus qualify for asylum, the alien must establish that the government in question is "unable or unwilling to control" the persecutors. This flows from the historical record that asylum may not be granted based in substantial part from the fear that harm may be inflicted solely between private actors or groups. Thus, as pertaining to this claim, respondent must establish that Honduras is "unable or unwilling to control" the infliction of harm to members of her group.

The Board has viewed the definition of "refugee" (at least in part) under the aegis of the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status*, and as authoritative commentators have defined it. Thus, the Board observes that a "refugee [is] an individual in whose case the bonds of trust, loyalty, protection, and assistance existing between a citizen and his country have been broken and have been replaced by the relation of an oppressor to the victim. Thus, inherent in refugee status is the concept that an individual requires international protection because his country of origin or of habitual residence is no longer safe for him." *Matter of Acosta*, *supra*, at 235 (inner citations omitted).

In *Menjivar v. Gonzalez*, 416 F.3d 918 (9th Cir. 2005), it was held that an alien claiming persecution by private individuals must show more than the government's difficulty in controlling private behavior; the alien must show a government which condones or is unwilling to control that behavior. *See also Matter of Acosta*, *supra*, at 222, *citing et al Matter of Pierre*, 15 I&N Dec. 461, 462 (BIA 1975). This is in conformity with the UNHCR's *Handbook*, which provides, *inter alia*, that persecution is normally related to action by the authorities of a country, "but it may also include actions by sections of the population that do not respect the standards established by the law of the country...if they are knowingly tolerated by the authorities, or if the authorities refuse or prove unable, to offer effective protection." UNHCR *Handbook*, ¶ 65.

To demonstrate that a government is "unable or unwilling to control" private groups (or individuals), it is incumbent upon the applicant to show that the government is aware of the persecution to the individual unless the evidence established futility in doing so, or potential harm in doing so. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000). In *Fiadjoe v. A.G.*, 411 F.3d 135 (3d Cir. 2005), the Third Circuit found that the Ghanaian government was *unable or unwilling* to control the persecution of women subjected to the practice of Trokosi fetish sexual abuses, observing that even though that 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 Trokosi.

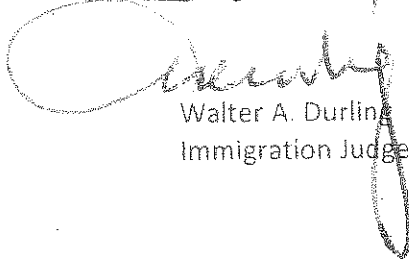
The overall record establishes a Guatemalan government unable and unwilling to provide adequate protection to its women, particularly those single women without male protection. The *Human Rights Report* informs that the situation extends to many victims who simply refuse to report being sexually or domestically assaulted because of their lack of confidence in the police and local government. Respondent's application for withholding of removal to Guatemala will be granted.

██████████

Respondent's child, age 4, was, according to respondent, threatened by ██████████ with physical violence unless respondent relented to his sexual advances. Such threat constitutes persecution under INA § 101(a)(42)(A) based on both family-based (respondent's child) persecution, and as counsel argues, persecution based on her mother's persecution on account of membership in her own social group. ██████████ only has her mother for protection. Any act of persecution against her mother naturally flows to ██████████. See Jorge-Tzoc v. Gonzalez, 435 F.3d 146 (2nd Cir. 2006). Asylum will be granted this child based on past persecution, and a well-founded fear of future persecution. The following orders are hereby entered.

Order: The lead respondent is ordered removed. Her removal to Guatemala is withheld in accordance with INA § 241(b)(3).

Further Order: The minor child, ██████████ is granted asylum pursuant to INA § 208(a).


Walter A. Durling
Immigration Judge

October 9, 2015