

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

IN THE MATTER OF:

) IN WITHHOLDING PROCEEDINGS

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ON BEHALF OF RESPONDENTS:
Bridget Cambria, Esq.

) ON BEHALF OF THE DHS
Maureen Gaffney, Esq.

On Remand from the Board of Immigration Appeals²

The Board has remanded this record for further consideration under Matter of A-R-C-G- 26 I&N Dec. 388 (BIA 2014). The Board instructs the court to consider whether the lead respondent's proposed social groups are set forth with particularity and are socially distinct. Should the court find her social groups meet the A-R-C-G- test, it is then to address whether the Honduran government is unable or unwilling to control respondent's abuser. Finally, the Board directs the court to determine whether the minor respondent suffered past persecution from his father.

On April 16, 2015, the parties agreed that a further hearing was unnecessary, though the parties were permitted to augment the record; neither did so. Respondents submitted a memorandum in support of their persecution claims.

Two important aspects of this case are settled. First, the Board found the lead respondent's testimony to be credible, thus disagreeing with the prior judge's adverse credibility determination. And second, the Board determined from the record evidence that the Honduran government inadequately protects women and children from domestic violence. Again, the Board's finding in this regard rejects the prior judge's findings to the contrary.

With these two aspects in mind, we now turn to respondent's claim. Since the parties are familiar with the testimony and other record evidence, only that portion of the evidence critical to this court's further findings of fact and law will be discussed. In her recent memorandum, the lead respondent repeats the abuse she received over a 6-year marriage, including frequent incidents which a reasonable person would recognize as domestic violence, including physical and sexual violence, and humiliation as a disabled woman. Furthermore, respondent's abuser, her husband, threatened to kill her should she try to leave him. Given the Board's conclusion that respondent was credible, her testimony covering the abuses she and her child received over six years living with her husband is accepted as fact.

¹ ██████ is a juvenile respondent in Removal Proceedings per INA § 240.

² The immigration judge who adjudicated this case is no longer on the bench.

Lead Respondent's Particular Social Group

In Matter of A-R-C-G-, 26 I&N Dec. 388 (BIA 2014), the Board for the first time found a cognizable social group of "Guatemalan married women who are unable to leave their relationship," cautioning that a "range of factors" could be relevant in determining whether a particular case would be legally recognized. *Id.* at 393. Here, as respondent aptly stresses, her case is little different from the alien in A-R-C-G-. That is, she shares the same characteristics of "married," "women," who are "unable to leave their marital or domestic relationship." She argues, and this court agrees, these characteristics adequately single out her social group with "particularity."

As for "social distinction," the record evidence demonstrates that Honduran society recognizes, or at least perceives, persons sharing the particular characteristics of the group. As was the case in Matter of A-R-C-G-, *supra*, Honduras has laws protecting victims of domestic violence, and like Guatemala, Honduras is rightly accused by the international community of grossly ineffectual protection of victims of domestic violence. Indeed, as to the latter, the Board in its remand order essentially recognizes the ineffectual actions of the Honduran government in either protecting victims or punishing those guilty of domestic violence.

Given that respondent has successfully set forth a particular social group recognized under Matter of A-R-C-G-, *supra*, her membership in said social group, and her abuser's motivation in attacking her as a member of such group, respondent has met her burden of proof in establishing past persecution. That is, her persecution is on account of her membership in a particular social group in accordance with INA § 101(a)(42)(A).

Given that respondent has met her burden of proof in establishing past persecution, the regulatory presumption that "it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim," in accordance with 8 C.F.R. § 1208.16(b)(1), is triggered. Therefore, the government shoulders 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). 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. § 1208.13(b)(1)(B)(ii). *See also* Manzoor v. U.S. Dep't of Justice, 254 F.3d 342 (1st Cir. 2001).

Given the Board's acknowledgement in the remand order that domestic abuse remains a serious and widespread problem in Honduras, the government is unable to meet its burden of proof. Moreover, under this court's review, nothing in the current record alters the overwhelming evidence of the persistence of domestic violence to women and children exacerbated by the Honduran government's woefully inadequate response to domestic violence by the law enforcement and judicial sectors of the Honduran government, which views

such violence as a family conflict. Given that violence against women affects the entire society, the government has not established that safe internal relocation is reasonable. Respondent's removal to Honduras must be withheld in accordance with INA § 241(b)(3).

Minor Applicant's Particular Social Group

Turning to the minor applicant, [REDACTED], his proposed particular social group is recognized, applying the same standards for "married women" in *Matter of A-R-C-G*, *supra*. That is, [REDACTED] particular social group is described as "Honduran children unable to leave their nuclear family or domestic environment." The "particularity" requirement is contained within the social group itself. The "socially distinct requirement" is met, at a minimum, through Honduras' laws protecting children from domestic and other violence.

[REDACTED] is presently 5 years old. While his mother cannot confer any benefit under Withholding-Only Proceedings, he is dependent upon her testimony. [REDACTED] mother credibly testified that her son was neglected by his father, including refusing to provide adequate food, and abusing his mother in his presence. While there's no evidence that [REDACTED] suffered physical or sexual abuse from his father, his membership in his particular social group includes children abused in such atrocious manner. [REDACTED] is not required to establish that he suffered the most extreme form of violence which other members of his social group might endure, only that he is a member of the group and was targeted on account of his group membership. The record evidence establishes that frequent patterns of domestic violence to women applies with equal force to children within the domestic setting, with similar or even worse consequences. One need look no farther than the Department of State's *Human Rights Report* for 2013. On its front page, the *Report* points out the serious problem of societal violence, including child sexual exploitation and abuse

Under the *Report's* section on "Children," it repeats that child abuse remains a serious problem, including sexual exploitation of children. As with domestic violence against women, nothing in the record refutes that children in Honduras are inadequately protected from a pattern of domestic violence; to the contrary, the overall record points to the abuse of children, including children within the nuclear family or domestic setting, as a serious human rights problem. As counsel correctly points out, [REDACTED] was victimized by routinely depriving him of adequate nutrition, and subjecting him to witnessing the abuse of his mother. Being a child of such tender years amounts to persecution on account of his social group membership.

In accordance with 8 C.F.R. § 1208.16(b)(1), [REDACTED] has met his burden of proof of past persecution and therefore he is "presumed to have a well-founded fear of persecution on the basis of the original claim." Since the government has presented nothing to refute the current country conditions, including the persistence of serious human rights problems of child abuse, the presumption prevails. Given that his mother is unable to safely relocate, [REDACTED] too, is unable to safely relocate.

Government Unable or Unwilling to Protect

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 their respective groups.

To this end 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, 19 I&N Dec. 211, 235 (BIA1985)(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 *Handbook*, which provides, *inter alia*, that persecution is normally related to action by the authorities of a country. UNHCR *Handbook*, ¶ 65.

To prove that a government is “unable or unwilling to control” private groups, it is incumbent upon the applicant for asylum 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. Baballah v. Ashcroft, 367 F.3d 1067, 1078 (9th Cir. 2004); Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000). In Matter of V-T-S-, 21 I&N Dec. 792, 799 (BIA 1997), the Board, in part, rejected a claim of membership in a particular social group comprised of “Filipinos of Chinese Ancestry” who were targeted for kidnaping motivated by their perceived wealth. The Board cited to record evidence that the government had expended a “massive rescue effort” to secure the release of the claimant’s kidnaped brother and sister on separate occasions.

In Fiadjoe v. A.G., 411 F.3d 135 (3^d Cir. 2005), the court found that the Ghanaian government was unable or unwilling to control the persecution of women subjected to the practice of Trokosi fetish sexual abuses. The circuit court found 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 Trokosi. The court also noted that domestic violence against women was widespread with little police intervention.

While Honduran law criminalizes domestic violence, the law rings hollow for a great many women and children, particularly poor women and children. The Honduran police all too often refuse to intervene in domestic violence. That’s not to say that the police completely takes a hands-off attitude to domestic violence, but it happens with such frequency that Honduran society largely views the police with fear or hopelessness. It’s no small wonder that

so many women simply elect not to seek police protection, knowing it would likely be futile, particularly where their abusers threaten to further harm or even kill them.

Conclusion

Within the context of the social, political, and historical conditions, Honduras has a pattern or practice of treating domestic violence as a private affair within the family. While Honduras criminalizes domestic violence, the enforcement of its laws is abysmal. Knowing that the local police are unlikely to intervene, many women choose not to report domestic violence against them or their children, particularly where, as here, the abuser threatens bodily harm or death to the victim if she contacts the police. Respondents have met their burden of proof that Honduras is unable or unwilling to protect them from persecution.

The lead respondent has established her membership in a particular social group comprised of "Honduran women unable to leave their relationships," thereby meeting the "particularity" and "social distinction" requirements. Respondent further established that her abuser singled her out for domestic violence on account of her membership in that group, *i.e.*, knowing full well that the chances of being arrested and prosecuted were minimal, particularly since he carried on his abusive and violent behavior for six years. Respondent's alternate social group of "disabled Honduran women unable to leave a relationship," need not be addressed.

As for [REDACTED] he has met his burden of proof of past persecution on account of his membership in a particular social group comprised of "Honduran children unable to leave their nuclear family or domestic environment." His father's abuses and violence did not stop with his mother, but were carried to him in the form of abusive neglect, and enduring a volatile family environment. While this young respondent might have had difficulty in meeting the higher standard for withholding of removal, he meets the lower threshold for asylum. His past persecution meets the regulatory "presumptiveness" trigger for a well-founded fear of future persecution, 8 C.F.R. § 1208.13(b)(1), a presumption the government has not overcome. He will be granted asylum in the exercise of discretion.

Order: The lead respondent is ordered removed. Her removal to Honduras is withheld in accordance with 8 INA § 241(b)(3).

Further Order: The juvenile respondent is granted asylum in the United States pursuant to INA § 208(a).

Walter A. Durling
Immigration Judge

April 24, 2015