

The adult Respondent, [REDACTED] (“the Lead Respondent”), and her minor son, [REDACTED] or “the Rider Respondent” (collectively, “the Respondents”) are natives and citizens of El Salvador. They entered the United States at or near Hidalgo, Texas on [REDACTED] 2016. Exh. 1. On [REDACTED] 2016, the Department of Homeland Security (“DHS”) served the Respondents with Notices to Appear (“NTA”), charging them as inadmissible pursuant

In the Matters of [REDACTED] and [REDACTED],
A [REDACTED] and A [REDACTED]

to INA § 212(a)(7)(A)(i)(I). See id. DHS commenced proceedings by filing the NTAs with the Arlington Immigration Court on May 9, 2016. Id.

During a master calendar hearing on [REDACTED] 2016, the Respondents, through counsel, admitted the factual allegations contained in their NTAs and conceded inadmissibility as charged. Inadmissibility was therefore established by clear and convincing evidence. See 8 C.F.R. §§ 1240.8, 1240.10(c). Also on July 11, 2016, the Lead Respondent timely filed an Application for Asylum and Withholding of Removal (“Form I-589”), seeking asylum and withholding of removal under the Act and protection under the Convention Against Torture. Exh. 2; see INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). [REDACTED] is included in the asylum application as a derivative beneficiary. Id.

The Lead Respondent testified in support of her applications on [REDACTED] 2017. For the following reasons, her asylum application will be GRANTED.

II. SUMMARY OF THE EVIDENCE

A. Documentary Evidence

The Record of Proceedings contains the following documents relevant to the Respondents’ applications: the Lead Respondent’s NTA (Exhibit 1); the Lead Respondent’s Form I-589 (Exhibit 2); Notice of Hearing in Removal Proceedings, issued July 11, 2016 (Exhibit 3); the Respondents’ witness list and supporting documents, Tabs A-MM (Exhibits 4-6); and the March 8, 2017 Congressional Research Service report on El Salvador (Exhibit 7). All of these documents have been admitted into evidence and considered.

B. Testimonial Evidence

The Lead Respondent’s testimony and written declaration have been considered in their entirety and are summarized below to the extent relevant to the subsequent analysis.

The Lead Respondent was born on [REDACTED], 1984, in the department of Usulután, El Salvador. She spent her entire life in the municipality of [REDACTED]. Her father died when she was six years old, and as a result she was primarily raised by her mother, who instilled in her a belief in women’s rights and gender equality. The Lead Respondent strongly believes that women and men should be treated equally and that women deserve respect, which she testified is not a very common belief in El Salvador.

Prior to coming to the United States, the Lead Respondent lived in the neighborhood of [REDACTED] with her partner, [REDACTED], and their three children. She worked as a community promoter/social worker in different communities in Usulután. In this role, she conducted home visits in various neighborhoods in and around [REDACTED]. She used these visits to speak with her clients about, among other things, gender equality and the importance of healthy eating and hygiene habits. Thus, her work as a community promoter reinforced her belief in women’s rights. She often had to take long bus rides and/or walk a long way to reach her clients’

homes. She was required to wear a shirt and vest emblazoned with her organization's logo whenever she was working, including on her commute.

One day in early 2015, the Lead Respondent was walking from work to her mother's house in downtown [REDACTED]. To get there, she had to walk along the town's main street, a dangerous thoroughfare where MS-13 gang members routinely congregated. One of these men, a gang member she knew as "[REDACTED]," yelled a crude sexual advance at her.¹ She ignored him and walked away. She was wearing her work shirt and vest at the time.

Although the incident upset and offended her, the Lead Respondent believed this was a one-time encounter. However, [REDACTED] continued to harass her every time she walked down the street. She never responded to him, refusing even to look at him, in the hopes that he would move on. He did not do so. Rather, as she continued to disregard him, his behavior became more aggressive and menacing. He began following her down the street, often so closely that she could see him in her peripheral vision. His verbal statements also grew more threatening the longer she denied his advances. He began to tell her that he was going to make her "his woman" by force, whether she liked it or not. The Lead Respondent understood these statements to be implicit threats to rape her and force her to be his "girlfriend." She knew from stories she had heard in the community that being the "girlfriend" of a gang member meant being obligated to submit sexually not only to that person, but to other members of his gang as well.

[REDACTED] continued to follow and threaten to rape the Lead Respondent innumerable times over the course of the succeeding year, including when her partner was with her. As his threats continued and increased, she became more and more fearful that her defiance would result in him raping or killing her. Nevertheless, she did not report him to the police, because she knew from news reports that the local police cooperated with the MS-13 gang. She also had heard of people who were killed after reporting gang members.

In January 2016, [REDACTED] moved into an abandoned house three doors away from the Lead Respondent's home in [REDACTED]. He walked past her home multiple times per day, and he often made threatening comments to her when he saw her. When this happened, she went inside and prayed he would not try to break into her home. She was under immense stress due to the ongoing threats, and her health began to suffer; she developed recurrent eye infections, neck and back pain, nightmares, and a rash. She was afraid to leave the house.

After a year of repeated threats, and approximately one month after [REDACTED] moved into her neighborhood, the Lead Respondent decided that she had no choice but to flee. She did not believe that she could have relocated to another part of El Salvador, because she knew that the gang had nationwide contacts, and she was certain that [REDACTED] would have been able to find her anywhere in the country.

¹ The Lead Respondent knew that [REDACTED] was an MS-13 member because of the way he dressed, the fact that he spent time with gang members and engaged in gang "lookout" activities, and by his reputation in [REDACTED].

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A [REDACTED] and A [REDACTED]

The Lead Respondent and her son, [REDACTED], left El Salvador on February 15, 2016. [REDACTED] and their other two children remained in El Salvador. Due to ongoing safety concerns in [REDACTED], the children moved to the Lead Respondent's mother's house. The Lead Respondent believed that if she were to return to El Salvador, [REDACTED] will rape and kill her for defying him by escaping to the United States.

III. LAW, ANALYSIS, & FINDINGS

A. Credibility and Corroboration

The REAL ID Act of 2005 applies to this case because the lead Respondent's asylum application was filed on or after May 11, 2005. See Matter of S-B-, 24 I&N Dec. 42 (BIA 2006); INA § 240(c)(4)(A). A credibility determination may be based on the applicant's demeanor, candor, or responsiveness; the inherent plausibility of her account; the consistency between her written and oral statements; the internal consistency of each such statement; the consistency of each statement with other evidence of record; any inaccuracies or falsehoods in such statements; or any other factor, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii).

Considering the totality of the circumstances, I find that the Lead Respondent testified credibly. She provided candid, straightforward, and responsive testimony concerning the events leading to her departure from El Salvador, and her testimony was consistent with her written statement and record evidence. See generally Exhs. 4-7. Moreover, her demeanor was calm and appropriate given the circumstances and did not indicate any attempt to mislead or to embellish her claim. Therefore, I will credit her testimony in its entirety.

B. Asylum

An asylum applicant has the burden of demonstrating that she is a refugee within the meaning of section 101(a)(42)(A) of the Act. INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987); 8 C.F.R. § 1208.13(a). A refugee is a person who is unwilling or unable to return to her country of origin, and is unable or unwilling to avail herself of the protection of her government, due to past persecution or a well-founded fear of future persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). In addition to establishing eligibility for asylum, the applicant must demonstrate that a grant of asylum is warranted in the exercise of discretion. INA § 208(b)(1)(A); 8 C.F.R. § 1208.14(a).

i. Past persecution

An application claiming past persecution must show that she suffered (1) severe harm amount to persecution, (2) that was inflicted on account of a protected ground, (3) by the government or an agent the government is unwilling or unable to control. INA § 208(b)(1)(B)(i); Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015); Li v. Gonzales, 405 F.3d 171, 176-77 (4th Cir. 2005); Crespin-Valladares v. Holder, 632 F.3d 117, 128 (4th Cir. 2011); Matter of Acosta, 19 I&N Dec. 211, 222 (BIA 1985). As discussed below, the Lead Respondent has demonstrated past persecution on account of her imputed political opinion.

1. Harm rising to the level of persecution

“Persecution” entails harm or suffering inflicted upon an individual to punish her for possessing a belief or characteristic the persecutor seeks to overcome. See Matter of Acosta, 19 I&N Dec. at 222-23. Persecution is “an extreme concept that does not include every sort of treatment our society regards as offensive.” Li, 405 F.3d at 177. Rather, it requires actions above “mere harassment” and includes the “threat of death, torture, or injury to one’s person or freedom.” Id.; see also Hernandez-Avalos, 784 F.3d at 949. Threats alone may constitute persecution, but only when they are so menacing as to cause significant actual suffering or harm. See Matter of Z-Z-O-, 26 I&N Dec. 586, 589 (BIA 2015) (quoting Lim v. INS, 224 F.3d 929, 936 (9th Cir. 2000)).

I find that the lead Respondent experienced severe harm that could amount to past persecution if she could show that the government of El Salvador was not able to protect her at that time. For over a year, the Lead Respondent was stalked and threatened with rape by a man she knew to be a member of one of the world’s most violent criminal organizations. See, e.g., Exh. 4; Exh. 5, Tab T; Exh. 7 at 6. The year-long, continual, escalating threats she experienced went beyond mere harassment. See Matter of Z-Z-O-, 26 I&N Dec. at 589. [REDACTED] followed her down the street so closely that she could see his shadow overlapping hers; she was afraid to look directly at him, believing that he would attack her if she did so. He threatened to make her his “girlfriend” by force, which in the context of the society in question was commonly known to be a threat to rape her, force her into conditions tantamount to sexual slavery, and/or murder her. See, e.g., Exh. 4, Tab D ¶ 13 (“[W]hen a gang member demands that a woman become his ‘girlfriend,’ the demand connotes a significant threat to the life of the woman and her family.”), Tab E; Exh. 5, Tabs Q, S at 344 (“Failure to comply [with a demand to become a gang member’s sexual partner] is reportedly met with severe reprisals, including homicides . . . or the threat of such violence.”), T-U; Exh. 6, Tabs X, CC, EE, II-JJ, LL. When he eventually moved into her neighborhood, a mere three houses away from her own, his threats took on a more menacing tone and represented a significant risk of imminent danger. She was afraid to leave her house, and she developed numerous health problems due to the overwhelming stress and anxiety she experienced. Although she was never physically injured, the totality of the harm she suffered due to [REDACTED]’s imminent and menacing threats caused the Lead Respondent to experience significant actual suffering. See Matter of Z-Z-O-, 26 I&N Dec. at 589.

2. Source or agent of persecution

An applicant for asylum based on past persecution must show she was persecuted by the government or by an agent the government is unwilling or unable to control. See Orellana v. Barr, 925 F.3d 145, 151 (4th Cir. 2019); Hernandez-Avalos, 784 F.3d at 950-54; Matter of S-A-, 22 I&N Dec. 1328, 1335 (BIA 2000). “Whether a government is unable or unwilling to control private actors . . . is a factual question that must be resolved based on the record in each case.” Hernandez-Avalos, 784 F.3d at 951 (internal quotations omitted) (citing Crespin-Valladares, 632 F.3d at 128).

In the present case, the Lead Respondent established that the government of El Salvador was unwilling or unable to protect her from persecution. Although she never sought protection from police or other authorities in El Salvador, under Fourth Circuit law she was not required to seek government assistance when doing so (1) would have been futile or (2) would have subjected

her to further harm. Orellana, 925 F.3d at 153 (internal quotations and citations omitted). Country conditions in El Salvador in 2016 evidence shows that had the Lead Respondent reported [REDACTED] to the police, she likely would not have received the protection that she needed and she likely would have faced an increased risk of harm. First, although there were programs and laws in place that sought to combat gang violence and violence against women, such laws and programs were ineffectively enforced or poorly implemented. Exh. 4, Tab D ¶ 21-23 (citing Bureau of Democracy, Human Rights and Labor, U.S. Department of State, Country Reports on Human Rights Practices for El Salvador – 2016); Bureau of Democracy, Human Rights and Labor, U.S. Department of State, Country Reports on Human Rights Practices for El Salvador – 2018 (2018 Human Rights Report) at 1, 10, 16 (noting widespread government corruption and significant violent crime at the hands of organized criminal elements and stating that efforts by authorities to remedy situations where gangs targeted individuals were “generally ineffective”). “[A]ccess to a nominal or ineffectual remedy does not constitute meaningful recourse, for the foreign government must be both willing and able to offer an applicant protection.” Orellana, 925 F.3d at 152 (internal quotations omitted). Based on the totality of country conditions in El Salvador as of 2016, I find that it would have been futile for the Lead Respondent to seek protection from the government.

Second, even had the Lead Respondent reported [REDACTED] to the police, the widespread corruption and infiltration of police by the gangs in 2016 might have put her at greater risk of harm. “[A] woman choosing to report sexual advances or violence perpetrated by a gang member to the police is equivalent to signing her own death warrant, because police communicate with the gangs and the consequence for the woman is typically homicide.” Exh. 4, Tab D ¶ 22; see also Exh. 5, Tab T at 364 (“Those who have refused to help a gang or reported a crime a particularly vulnerable [to murder]”). Therefore, the evidence shows that the government of El Salvador was unable to protect the Lead Respondent from the harm that she suffered.

ii. Nexus to a protected ground

The Lead Respondent asserts that the harm she suffered in El Salvador was on account of her political opinion and/or her membership in a particular social group. For the reasons discussed below, I find that she demonstrated a nexus between the harm she suffered and her actual or imputed political opinion. As such, I need not address the additional protected grounds she raised.

To succeed on a claim of persecution on account of political opinion, an applicant must prove that: (1) she actually holds a political opinion or that a political opinion is imputed to her, and (2) she was targeted on account of that opinion. See Abdel-Rahman v. Gonzales, 493 F.3d 444, 450-51 (4th Cir. 2007). When evaluating whether an applicant was persecuted on account of an imputed opinion, “the relevant inquiry is not the political views sincerely held or expressed by the victim, but rather the persecutor’s subjective perception of the victim’s views.” Alvarez Lagos v. Barr, 927 F.3d 236, 254 (4th Cir. 2019). To establish that the harm was committed “on account of” a protected ground, an applicant must demonstrate that a protected ground was “at least one central reason” she was harmed. INA § 208(b)(1)(B)(i); Quinteros-Mendoza v. Holder, 556 F.3d 159 (4th Cir. 2009). The protected ground need not be the *only* reason for the persecution; however, it must be more than “incidental, tangential, superficial, or subordinate to another reason for the harm.” Quinteros-Mendoza, 556 F.3d at 164 (internal quotations and citation omitted). The persecutor’s motivation is an issue of fact. Matter of S-P-, 21 I&N Dec. 486, 490 (BIA 1996). The

adjudicator must consider not only the “articulated purpose” of a persecutor’s threats, but also the “intertwined reasons” for those threats. Cantillano Cruz v. Sessions, 853 F.3d 122, 129 (4th Cir. 2017); Oliva v. Lynch, 807 F.3d 53, 59-60 (4th Cir. 2015).

Here, the Lead Respondent’s belief in women’s rights and equality constitutes a political opinion. See, e.g., Fatin v. INS, 12 F.3d 1233, 1242-43 (3d Cir. 1993) (“[W]e have little doubt that feminism qualifies as a political opinion within the meaning of the [Act]”); Respondents’ Pre-Hearing Brief at 29 n.178 (citing United States Citizenship and Immigration Services, Asylum Officer Basic Training Course: Female Asylum Applicants and Gender-Related Claims, 27-28 (Mar. 12, 2009) (“Feminism is a political opinion”)); Oxford English Dictionary (3d ed. 2012) (“feminist, adj.”: “Of, relating to, or advocating the rights and equality of women”). Although she never explicitly expressed her views to or in the presence of [REDACTED], it is clear from the record that her actions were interpreted as an expression of a subversive belief regarding the role of women in gang-held territories in El Salvador. See Alvarez Lagos, 927 F.3d at 254. Given the totality of the circumstances presented here, I find that these ascribed beliefs constituted a political opinion that [REDACTED] imputed to the lead.

The record evidence establishes that Salvadoran gang members expect complete submission from women who reside in their territories. At the time the Respondents departed from El Salvador, that country had the highest concentration of gang members per capita in Central America. Exh. 7 at 6. Gangs exercise full territorial control in many neighborhoods throughout the country, including the area where the Lead Respondent lived. See Exh. 4, Tab D ¶ 7; Exh. 5, Tab V at 429. Specifically, “[g]angs consider women who reside in their sector to be a part of their territory and property, giving the gang the right to sexually exploit these women.” Exh. 4, Tab D ¶ 11. “When a woman refuses to comply with gang demands, the gang member will . . . seek to make clear that his authority and patriarchal power will not be challenged by a woman.” Exh. 4, Tab E ¶ 15. “Gangs target such women . . . to make clear that their authority and patriarchal power are not defied by those they perceive to be inferior to them.” Id. ¶ 16 (“A woman who refuses to comply with gang demands is especially endangered, as gangs have no respect for women and expect complete submission from them.”).

These country conditions support the conclusion that when the Lead Respondent refused to submit to [REDACTED]’s threats, he interpreted this defiance as a challenge to his and the gang’s authority, which in the context of El Salvador constitutes an imputed political opinion. See Exh. 5, Tab V at 429-30 (“The ground of political opinion needs to reflect the reality of the specific geographical, historical, political, legal, judicial, and sociocultural context of the country of origin.”); Alvarez Lagos, 927 F.3d at 255 (finding that refusal to comply with a gang’s demands might warrant a grant of asylum based on imputed political opinion, and remanding for the agency to address this issue). In addition to her actions defying his authority, the Lead Respondent was a community promoter who openly advocated ideas of gender equality among her clients throughout the gang’s territory. [REDACTED] was fully aware of this work, having seen her wearing her uniform around town, and this knowledge likely contributed his imputation of a political opinion. Accordingly, the Lead Respondent demonstrated both that she actually holds a political opinion and that a political opinion was imputed to her by her persecutor.

Moreover, the preponderance of the evidence establishes that the Lead Respondent was persecuted on account of imputed political opinion. I note, first, that there is insufficient evidence that [REDACTED] initially targeted her on account of any political opinion. However, while [REDACTED]'s original catcalls merely constituted harassment, his actions toward her became more threatening as she repeatedly ignored his advances. When the Lead Respondent refused to succumb to his threats or to even acknowledge his attempts to assert power over her, his behavior became more menacing, and his threats grew increasingly violent, ultimately rising to the level of persecution, as discussed above. Thus, regardless of his motivation for initiating contact with her, the reasons for his persecutory threats and menacing behavior quickly became intertwined with a desire to punish her for the imputed political opinion discussed above. See Cantillano Cruz, 853 F.3d at 129. In other words, the harm amounting to persecution was inflicted not because [REDACTED] was interested in pursuing a romantic or sexual relationship with the Lead Respondent, but rather to overcome political beliefs regarding women's rights in the gang's territory that he imputed to her. As such, the persecution the Lead Respondent experienced in El Salvador was carried out in retaliation for her resistance to [REDACTED]'s and the gang's authority, and that this persecution was inextricably linked to her imputed political opinion. See Oliva, 807 F.3d at 59-60. Therefore, the Lead Respondent has established past persecution on account of political opinion.

iii. Well-founded fear of future persecution on account of a protected ground

DHS can overcome the presumption that the Lead Respondent has a well-founded fear of future persecution based on past harm by showing that: (1) there has been a fundamental change in circumstances such that her fear of persecution is no longer well founded; or (2) she could avoid future persecution by relocating to another part of the country, and that it would be reasonable to expect her to do so under all the circumstances. See 8 C.F.R. § 1208.13(b)(1)(i). DHS did not offer any evidence to rebut the regulatory presumption of future persecution that is triggered by the finding of past persecution. While the government of El Salvador has made substantial strides over the last two years to combat gang violence, the totality of the country conditions evidence shows that there has not been a meaningful change in country conditions, or that the Lead Respondent will be able to relocate to another part of the country to avoid [REDACTED]'s and his gang's menacing threats. See Exh. 4, Tab D ¶¶ 21-22 (noting that government strategies to combat gang and gender-based violence are typically short-lived); Tab E ¶¶ 28-30; Tabs Y, KK. This conclusion is consistent with the Fourth Circuit's reasoning in Alvarez-Lagos, which was based on a consideration of both the applicant's political opinion and the fact that she lived in a violent, gang-controlled territory.

For the above-stated reasons, the Lead Respondent has demonstrated a presumed well-founded fear of future persecution based on imputed political opinion. She is therefore statutorily eligible for asylum.

iv. Discretion

An applicant must also demonstrate that, in the totality of the circumstances, she merits a favorable exercise of discretion. See Matter of Pula, 19 I&N Dec. 467, 473 (BIA 1987). A well-founded fear of persecution "should generally outweigh all but the most egregious adverse

In the Matters of [REDACTED] and [REDACTED],
A [REDACTED] and A [REDACTED]

factors.” *Id.* at 474; *Zuh v. Mukasey*, 547 F.3d 504, 507-14 (4th Cir. 2008) (noting that discretionary denials are “exceedingly rare” and require egregious negative activity by the applicant). The only negative factor in the Lead Respondent’s case is the unlawful manner in which she attempted to come into the United States. However, this negative factor is greatly outweighed by the demonstrated danger of future persecution that she would face if removed to El Salvador. See *Matter of Pula*, 19 I&N Dec. at 473. Accordingly, I will grant her asylum application in the exercise of discretion.

IV. CONCLUSION

The Lead Respondent has demonstrated past persecution and a presumed well-founded fear of future persecution on account of imputed political opinion. Her application for asylum under INA § 208(a) will be granted as a matter of discretion. [REDACTED]’s derivative application for asylum is also granted. Because the Respondents’ asylum applications are granted, it is not necessary to consider their applications for withholding of removal under the Act or for protection under the CAT.

The following order is entered:

ORDER

The Lead Respondent’s application for asylum under INA § 208(a) is **GRANTED**.

The Minor Respondent’s derivative application for asylum under INA § 208(b)(3) is **GRANTED**.

Date: July 29, 2019



Quynh V. Bain
Immigration Judge

APPEAL RIGHTS: Both parties have the right to appeal the decision in this case. Any appeal is due at the Board of Immigration Appeals on or before thirty (30) calendar days from the date of service of this decision, or by August 28, 2019.