

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS**

File #:



Date: November 27, 2018

In the Matters of:



Respondents.

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IN REMOVAL PROCEEDINGS

CHARGE:

Immigration Nationality Act ("INA") § 212(a)(7)(A)(i)(I) – Alien who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS:

INA § 208, 8 U.S.C. § 1158 – Asylum.

INA § 241(b)(3), 8 U.S.C. § 1231(b)(3) – Withholding of Removal.

8 C.F.R. § 1208.16(c) – Withholding of Removal under the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment.

ON BEHALF OF RESPONDENTS:

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ON BEHALF OF THE GOVERNMENT:

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DECISION OF THE IMMIGRATION JUDGE

The lead respondent requests asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). For the following reasons, the court grants the lead respondent's application for asylum.

I. BACKGROUND

The lead respondent is a twenty-five year old native and citizen of Honduras. *See* Exh. 1. Her son [REDACTED] age nine, is a rider on her asylum application. *See* Exh. 2. On or about September 27, 2015, the respondents entered the United States without inspection by immigration officers. *See* Exhs. 1, 1A.

On December 22, 2015, the Department of Homeland Security ("DHS") initiated removal proceedings against the respondents by filing Notices to Appear ("NTAs") with the Chicago Immigration Court. *Id.* The NTAs allege the above facts and charge the respondents with inadmissibility under INA § 212(a)(7)(A)(i)(I) (alien not in possession of a valid entry document). *See id.*

At a master calendar hearing held on July 14, 2016, the respondents, through counsel, admitted the factual allegations contained in the NTAs. Based on these admissions, the court found that alienage and removability had been established by clear and convincing evidence. *See* INA § 240(c)(3). The court therefore designated Honduras as the country of removal pursuant to INA § 241(b)(2)(D).

The lead respondent timely filed her Form I-589, Application for Asylum and for Withholding of Removal, with the court. On May 3, 2018, the court held an individual merits hearing on her applications for asylum, withholding of removal, and protection under the CAT.

II. CLAIM AND EVIDENCE PRESENTED

The lead respondent requests relief from removal because she fears harm by her husband, [REDACTED] who abused her in the past. In the alternative, the respondent requests humanitarian asylum. For the reasons that follow, the court grants the lead respondent's application for asylum as it relates to the harm she suffered from her husband.¹

A. Documentary Evidence

In addition to the lead respondent's testimony, the court has considered the documents in the record, including:

Exhibit 1: Lead Respondent's Notice to Appear, filed December 22, 2015;

Exhibit 1A: Rider Respondent's Notice to Appear, filed December 22, 2015;

¹ Because the court grants the lead respondent's application for asylum, it need not address her applications for withholding of removal or CAT protection.

Exhibit 2: Respondent's Form I-589, Application for Asylum and for Withholding of Removal, filed July 14, 2016; and

Exhibit 3: Respondent's Supplemental Documentation for her Individual Hearing, filed April 18, 2018, Tabs A-O.^{2,3}

B. Testimonial Evidence

The testimony at the May 3, 2018, hearing is summarized as follows, supplemented with information from the record for clarity.

The lead respondent testified that when she was fifteen years old, around 2008, she met [REDACTED]. They lived together for a few months, and in February 2009, the lead respondent's son [REDACTED] was born. The lead respondent left Mr. [REDACTED] when she found out that he was involved with other women. She was also concerned because he drank a lot and he had friends who always had firearms. The lead respondent believes that he was involved in narcotrafficking. When [REDACTED] was about one year old, Mr. [REDACTED] was awarded custody because the respondent was a minor and Mr. [REDACTED] had the means to support [REDACTED]. At the time, Mr. [REDACTED] threatened the lead respondent that if she ever tried to take [REDACTED] from him, he would kill her.

After the lead respondent and Mr. [REDACTED] separated, the respondent met and married [REDACTED]. The lead respondent testified that the relationship was initially good. However, as time went by, he started drinking and taking drugs. He would physically abuse her and not allow her to leave the house. She lived with [REDACTED], his mother, a nephew, and a woman that helped in the family's store. The lead respondent would help his mother at her store. [REDACTED] did not work. At home, the lead respondent was responsible for the cleaning, laundry, and cooking.

During the second year of the relationship, the lead respondent became pregnant. When she was four months pregnant, she lost the baby due to physical abuse by [REDACTED]. She did not report the abuse to anyone because [REDACTED] threatened to kill her if she left him or went to the police. After she lost the baby, [REDACTED] apologized and said that he would be better. The lead respondent testified that things were better for a short time but after a while, he started drinking and abusing her again. The lead respondent testified that he also forced her to have sex with him.

Although [REDACTED]'s mother was aware of the abuse, she never tried to stop the abuse. The lead respondent frequently had bruises on her body due to the abuse. [REDACTED] would not allow the respondent to leave the home until the bruises had faded. The lead respondent testified that she did not call the police because she did not have a phone. She also testified that she tried to leave him, but he always found her and forced her to return with him.

² DHS objected to tabs J and K because the authors of the declarations were not made available for cross examination. The court admitted the documents because they are probative but gave them appropriate weight. *See Doumbia v. Gonzales*, 472 F.3d 957, 962 (7th Cir. 2007).

³ DHS asked the court to take judicial notice of the recently released 2017 U.S. Department of State Honduras Human Rights Report. The court took notice of the report without objection from either party.

In 2012, the lead respondent became pregnant again. [REDACTED] continued to abuse her throughout the pregnancy. He would throw her on the floor and hit her on the back. The lead respondent went to the hospital due to the abuse and she was advised that she was in danger of miscarrying. In November 2012, she gave birth to a daughter who only lived for sixteen hours. The baby had bruises all over her body and the doctors questioned whether the lead respondent had been abused during the pregnancy.

After the death of their daughter, [REDACTED] apologized to the lead respondent and promised that he would change. However, eventually the abuse began again. In June 2013, the lead respondent reported [REDACTED] to the police. She testified in court about the abuse perpetrated by [REDACTED]. He was found guilty, sentenced to community service, and she was given a restraining order against him. However, [REDACTED] did not complete the community service as he told the lead respondent that he paid the police to get out of it. After the trial, the lead respondent stayed with a friend but [REDACTED] continued to follow her ignoring the protective order.

Eventually, the lead respondent went back to live with [REDACTED] because he continued to threaten her and the people with whom she was living. When the lead respondent's cousin had a baby, she asked [REDACTED] if she could go visit her cousin. He refused to allow her but she went anyway. When she returned, he yelled at her and beat her worse than ever before. After this, the lead respondent's aunt and cousin took her back to her aunt's house. [REDACTED] went to her aunt's house and threatened them. The respondent contacted a friend who suggested that the lead respondent go to Guatemala to work. The respondent lived in Guatemala for two months but she did not feel safe there and she did not have legal status there. She returned to Honduras to get her son and then she came to the United States.

The lead respondent testified that her son was in danger in Honduras due to threats made by [REDACTED] and because of the criminal business his father, Mr. [REDACTED] was involved in. The respondent did not tell her son's father that she was going to the United States.

The lead respondent does not believe that she could live in Honduras safely. The respondent has two aunts who still live in Honduras but [REDACTED] has threatened them, demanding they tell him where the lead respondent is. The lead respondent does not believe that the police would help her.

III. FINDINGS AND ANALYSIS

The court finds the lead respondent has met her burden under the REAL ID Act. It further finds that she has met her burden to demonstrate eligibility for asylum, and it thus grants her application.

A. Credibility

Based on both the testimony and the information in the record, the court finds the lead respondent credible. Because her applications were filed after May 11, 2005, the credibility and

corroboration provisions of the REAL ID Act govern the respondent's applications.⁴ A respondent's testimony alone is sufficient to satisfy her burden of proof only if the court determines that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate she has satisfied her burden of proof. INA § 240(c)(4). In the absence of documentary proof, the REAL ID Act requires that an Immigration Judge use the details of an alien's story to make an evaluation of its truth. *Mitondo v. Mukasey*, 523 F.3d 784, 789 (7th Cir. 2008).

Having reviewed the testimony, and the documentary evidence in the record, the court finds that her testimony was generally consistent both internally and when compared to other evidence in the record. Accordingly, the court finds the respondent met her burden under the REAL ID Act and therefore turns to the merits of her claim.

B. Asylum

Under INA § 208(b), asylum may be granted to a person who is physically present in the United States if the person meets the statutory definition of a "refugee." A "refugee" is defined as an individual who is unable or unwilling to return to his or her native country "because of persecution or a 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)(A). The protected ground must be "one central reason" for the persecution, but need not be the only motive behind the persecution. INA § 208(b)(1)(B)(i); *Gjerazi v. Gonzales*, 435 F.3d 800, 812-13 (7th Cir. 2006) (describing the "mixed motives doctrine"). The respondent ultimately carries the burden of establishing statutory eligibility for asylum. *See* 8 C.F.R. § 1208.13(a); *Torres v. Mukasey*, 551 F.3d 616, 625 (7th Cir. 2008). If the respondent establishes past persecution, she is entitled to a rebuttable presumption of a well-founded fear of persecution on the basis of the original claim. 8 C.F.R. § 1208.13(b)(1).

1. Past Persecution

The court finds that the respondent experienced past persecution on account of a particular social group and that the Honduran government was unable or unwilling to protect her.

a. Level of Harm

The term "persecution" denotes a high standard, requiring "powerful and moving evidence" that the harm suffered rises above mere harassment. *Dandan v. Ashcroft*, 339 F.3d 567, 573-74 (7th Cir. 2003). It "involves the use of significant physical force against a person's body, or the infliction of comparable physical harm without direct application of force . . . or nonphysical harm of equal gravity." *Stanojkova v. Holder*, 645 F.3d 943, 948 (7th Cir. 2011); *see also Yasinskyy v. Holder*, 724 F.3d 983, 989 (7th Cir. 2013). Credible threats of imminent death or grave bodily harm can rise to the level of persecution. *N.L.A. v. Holder*, 744 F.3d 425, 431 (7th Cir. 2014). Rape can rise to the level of persecution. *See Sankoh v. Mukasey*, 539 F.3d 456, 471 (7th Cir. 2008).

⁴ The REAL ID Act's credibility and corroboration provisions govern applications for relief and protection made on or after May 11, 2005. *See* INA §§ 208(b)(1)(B) n.65.2, 240(C)(4) n.29.3, 241(b)(3)(C) n.39.1.

In this case, [REDACTED] regularly raped the respondent and beat her so badly that she miscarried once and caused the death of a second child. The court finds that this abuse involved significant physical force and therefore the respondent established that she suffered harm rising to the level of persecution. *See Stanojkova*, 645 F.3d at 948; *Sankoh*, 539 F.3d at 471.

b. Nexus

The lead respondent has also demonstrated the persecution she experienced in Honduras was inflicted because of her membership in the cognizable particular social group “married Honduran women who are viewed as property due to patriarchal society norms.”⁵ For claims based on membership in a particular social group, a respondent must: (1) identify a particular social group, (2) establish that she is a member of that group, and (3) demonstrate that her group membership was one central reason for her harm amounting to persecution. *Escobar v. Holder*, 657 F.3d 537, 545 (7th Cir. 2011). A social group is legally cognizable when it is composed of members who share a common immutable characteristic, defined with particularity, and socially distinct within the society in question. *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018).⁶ When the alleged persecutor is someone unaffiliated with the government, the application must also show that her home government is unwilling or unable to protect her. *Id.*; *Tarraf v. Gonzales*, 495 F.3d 525, 527 n.2 (7th Cir. 2007).

As an initial matter, the court finds the respondent belongs to a cognizable social group of “married Honduran women who are viewed as property due to patriarchal society norms.” The court acknowledges that the Attorney General has rejected social groups defined solely by violent domestic relationships which people are unable to leave. *Matter of A-B-*, 27 I&N Dec. at 333-36. The respondent’s group, as developed through her testimony, however, presents characteristics distinct from those at issue in *Matter of A-B-*. Specifically, it involves the authorities accepting payment to allow [REDACTED] to evade his court imposed punishment and thus approving such violent means as acceptable. This is a far cry from the strictly private violence that the Attorney General was concerned about in *Matter of A-B-* and therefore the respondent’s group deviates from typical domestic violence cases.

Under Seventh Circuit jurisprudence, the lead respondent’s proposed particular social group, “married Honduran women who are viewed as property due to patriarchal society norms,” is legally cognizable. *See generally Cece v. Holder*, 733 F.3d 662, 669-72 (7th Cir. 2013). The Seventh Circuit has recognized the analogous social groups of “single women in Albania who live alone,” *Cece*, 733 F.3d at 671; “women in Jordan who have (allegedly) flouted repressive moral

⁵ The court has defined the contours of the respondent’s particular social group in this case pursuant to the respondent’s detailed testimony and submissions and the Seventh Circuit’s opinion in *Cece v. Holder*, and any inconsistencies in the various iterations before the immigration court do not upset the respondent’s claim. 733 F.3d 662, 670-71 (7th Cir. 2013); *see also W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018) (emphasizing the importance of including the specific group being analyzed in the immigration judge’s opinion for appellate review).

⁶ The 7th Circuit has not yet accorded *Chevron* deference to the BIA’s particular social group requirements of social distinction and particularity. *See W.G.A. v. Sessions*, 900 F.3d 957, 964 (7th Cir. 2018). Indeed, the Seventh Circuit recently noted that a petitioner’s arguments had “some force” that the social distinction and particularity parts of the Board’s interpretation of the ambiguous statutory phrase, when required together, are unreasonable interpretations. *Id.* at 964, n.4.

norms” *Sarhan v. Holder*, 658 F.3d 649, 655 (7th Cir. 2011); “women who fear they will be victims of female genital mutilation,” *Agbor v. Gonzales*, 487 F.3d 499, 502 (7th Cir. 2007); and “Christian women in Iran who do not wish to adhere to the Islamic female dress code,” *Yadegar-Sargis v. INS*, 297 F.3d 596, 603 (7th Cir. 2002).

Of particular relevance is the *Sarhan* court’s reasoning for recognizing group status for Jordanian women who have flouted repressive moral norms. There, the Seventh Circuit concluded that women whose families are targeting them for death because they allegedly violated pre-existing moral and social norms in Jordan, collectively, form a group that shares immutable characteristics. *Sarhan*, 658 F.3d at 654-56. It explained that these women are unable to “shed the stigmatizing characteristics that render them victims.” *Id.* at 655. The Seventh Circuit also rejected the Board of Immigration Appeals’ (“Board”) conclusion that this group had little or nothing in common besides being targets. *Id.* To the contrary, the Seventh Circuit stressed that this social group “is a function of a pre-existing moral code in Jordanian society.” *Id.* It also explained that these women form a cohesive group, suggesting that the group is defined with particularity. *Sarhan*, 658 F.3d at 655.

The lead respondent’s characteristics here are similar to those considered and approved in *Sarhan*. The lead respondent’s testimony and the reports in the record indicate that the patriarchal society in Honduras labels women as property. In its report on human rights in Honduras, the Inter-American Commission on Human Rights (“IACHR”) states that a female magistrate of the Supreme Court of Justice indicated that “violence against women is considered as something natural.” Exh. 3, Tab N at 235. According to Claudia Herrmannsdorfer, “the culture of machismo pervades Honduras. Machismo teaches that women are property of their intimate partners.” Exh. 3, Tab J at 99. As with Jordanian women considered in *Sarhan*, the lead respondent has the immutable characteristic of gender, nationality, and inability to alter society’s perception of her. The lead respondent’s social group is a function of the patriarchal norms in Honduran society, just as the pre-existing moral code in Jordan defined the social group in *Sarhan* and the dress code for women defined the social group in *Yadegar-Sargis*.

Additionally, the court finds that the lead respondent suffered persecution on account of her membership in the particular social group. [REDACTED] treated the lead respondent like his property by refusing to let her leave the house and forcing her to do the cleaning, laundry, and cooking for the household. [REDACTED]’s mother was also aware of the abuse but she did nothing to prevent it or to help the lead respondent. This circumstantial evidence shows that [REDACTED], and other members of Honduran society, were aware of the lead respondent’s membership in the asserted particular social group, and that [REDACTED] targeted her because of this group membership. See *Elias-Zacarias*, 502 U.S. at 483; *Martinez-Buendia v. Holder*, 616 F.3d 711, 715 (7th Cir. 2010); *Gjerazi v. Gonzales*, 435 F.3d 800, 812-13 (7th Cir. 2006).

c. Unable or Unwilling to Protect

To demonstrate that she was persecuted within the meaning of the law, a respondent must show that the harm she faced was either at the hands of the government or that the government was unable or unwilling to protect her from the responsible parties. *Tarraf v. Gonzales*, 495 F.3d 525, 527 n.2 (7th Cir. 2007). Where an alleged persecutor is a private actor, a respondent bears the

burden of showing that the government of the country of removal was either unable or unwilling to protect her. *Jonaitiene v. Holder*, 660 F.3d 267, 270 (7th Cir. 2011).

Here, the respondent demonstrated that the Honduran government was unwilling or unable to protect her from domestic violence. After several years of abuse and the loss of two babies, the respondent did file a complaint against [REDACTED]. She received a restraining order against him and he was given six months of community service. However, [REDACTED] told the respondent that he was able to pay the authorities so that he did not have to complete his court imposed punishment. And despite the restraining order, he continued to follow her and harass her, eventually making her live with him again. In this case, the lead respondent established that the government condoned the private actions of her husband by not requiring [REDACTED] to complete his sentence that he was giving for harming the lead respondent. See *Matter of A-B-*, 27 I&N at 337.

Country conditions evidence in the record confirms that reporting instances of domestic violence is often ineffective and there are high rates of impunity for perpetrators of violence against women. See Exh. 3, Tabs N-O. In its report on human rights in Honduras, the IACHR states that “judicial ineffectiveness in cases involving violence against women creates a climate conducive to violence and discrimination against women ‘since society sees no evidence of willingness by the State, as the representative of the society, to take effective action to sanction such acts.’” Exh. 3, Tab N at 240.

In sum, the lead respondent has demonstrated that she experienced past harm that rose to the level of persecution on account of her membership in a particular social group and that the Honduran government was unable or unwilling to protect her. As such, she has established that she experienced past persecution.

2. Well-Founded Fear of Future Persecution

Because the respondent established past persecution, she is entitled to a rebuttable presumption that her fear of future persecution is “well-founded.” 8 C.F.R. § 1208.13(b)(1). DHS can rebut this presumption if a preponderance of the evidence shows either: (1) that there has been a “fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution” in her native country; or (2) that she “could avoid persecution by relocating to another part” of the country and that “it would be reasonable to expect [her] to do so.” 8 C.F.R. § 1208.13(b)(1)(i)-(ii); see also *Matter of D-I-M-*, 24 I&N Dec. 448, 450-51 (BIA 2008).

First, the court finds that DHS has not demonstrated a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution. DHS has not established any change in Honduras that would indicate that sexual and gender-based violence significantly decreased or that the Honduran government now effectively protects victims of such violence. See Exh. 3, Tabs M-O. Likewise, DHS did not demonstrate that [REDACTED] would no longer be interested in the respondent if she returned to Honduras, particularly given that he continued to look for her after she left.

Second, DHS did not demonstrate that the respondent could reasonably relocate within Honduras to avoid harm from [REDACTED]. The respondent testified that she did attempt to relocate at

two different aunts' houses; however, [REDACTED] found her at both locations. As such, DHS has not rebutted the presumption that the respondent has a well-founded fear of persecution on account of her membership in a particular social group. Thus, the court will grant her asylum application.

IV. CONCLUSION

The court concludes that the respondent has met her burden to show eligibility for asylum under INA § 208. Because the respondent's minor child is a rider to her asylum application, her child is granted asylum as well. Accordingly, the following order will be entered:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the lead respondent's application for asylum be GRANTED.


ELIZABETH G. LANG
IMMIGRATION JUDGE

APPEAL INFORMATION

Any appeal of this decision is due at the Board of Immigration Appeals no later than December 27, 2018.