



**U.S. Department of Justice**

Executive Office for Immigration Review

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**Name: S [REDACTED] -M [REDACTED], T [REDACTED] A [REDACTED]-911  
Riders: [REDACTED]**

**Date of this notice: 4/16/2019**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
O'Connor, Blair

User team: Docket

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Falls Church, Virginia 22041

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Files: A [REDACTED]-911 – Los Angeles, CA  
A [REDACTED]

Date:

**APR 16 2019**

In re: T [REDACTED] S [REDACTED] -M [REDACTED]  
[REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Violeta Delgado, Esquire

APPLICATION: Asylum; withholding of removal

This matter was last before the Board on May 29, 2015, when we dismissed the lead respondent's <sup>1</sup> appeal from an Immigration Judge's decision denying her application for asylum and withholding of removal under sections 208 and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158, 1231(b)(3). <sup>2</sup> On July 3, 2018, the United States Court of Appeals for the Ninth Circuit remanded proceedings for the Board to consider in the first instance whether "Guatemalan women" constitutes a particular social group. <sup>3</sup>

To establish that a group defined as "Guatemalan women" is cognizable under the asylum and withholding of removal statutes, the respondent must prove that the group is: "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within [Guatemalan] society . . . ." *Matter of A-B-*, 27 I&N Dec. 316, 319 (A.G. 2018) (quoting *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)); see also *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014), *aff'd in pertinent part and vacated and remanded in part on other grounds sub nom. by Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016), *cert. denied sub nom. Reyes v. Sessions*, 138 S. Ct. 736 (2018).

We agree with the respondent's position on remand<sup>4</sup> that being a woman is an immutable characteristic (Respondent's Br. at 2, 4), as gender is fundamental to one's individual identity or conscience. See *Matter of A-B-*, 27 I&N Dec. at 316, 318. However, we are unable to determine

<sup>1</sup> The lead respondent's son is a derivative of her asylum application. Hereafter, references to "the respondent" will refer to the lead respondent.

<sup>2</sup> The respondent did not challenge on appeal the denial of her request for protection under the Convention Against Torture and it is not implicated in the Ninth Circuit's remand.

<sup>3</sup> The court agreed with our determination that "young Guatemalan females who have suffered violence due to female gender" is not a particular social group.

<sup>4</sup> The Department of Homeland Security did not submit a brief on remand.

from the record before us whether the social group of “Guatemalan women” satisfies the foregoing “particularity” and “social distinction” requirements. As the requirements of particularity and social distinction involve fact-finding that we cannot do in the first instance, remand to the Immigration Judge is necessary. See 8 C.F.R. § 1003.1(d)(3)(iv); *Matter of D-I-M-*, 24 I&N Dec. 448, 451 (BIA 2008); see also *Matter of A-B-*, 27 I&N Dec. at 340-41 (emphasizing the importance of Immigration Judges as fact-finders). In evaluating the particularity and social distinction of the claimed group of “Guatemalan women,” the Immigration Judge should consider the Ninth Circuit’s decision in *Perdomo v. Holder* 611 F.3d 662, 669 (9th Cir. 2010), and its rejection of the “notion that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum.” See also *Mohammed v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) (“[T]he recognition that girls or women of a particular clan or nationality[,] or even in some circumstances females in general[,] may constitute a social group is simply a logical application of our law.”) (internal parentheses omitted); accord *Ticas-Guillen v. Whitaker*, 744 F. App’x 410 (9th Cir. Nov. 30, 2018).

Remand will allow the Immigration Judge to conduct additional fact-finding that may be necessary for the required “evidence-based inquiry” as to whether the social group of “Guatemalan women” meets the requirements of particularity and whether that group is perceived as “distinct” in Guatemalan society. See *Matter of M-E-V-G-*, 26 I&N Dec. at 241-44; *Matter of W-G-R-*, 26 I&N Dec. at 221; *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014). If the social group is found to be cognizable under the Act, the Immigration Judge should consider whether the respondent has demonstrated a nexus between the social group of “Guatemalan women” and the past harm she suffered or future harm she fears. Additionally, per the Ninth Circuit’s order, the Immigration Judge should reevaluate whether the respondent’s failure to report her abuse to the Guatemalan police precludes her from showing that the Guatemalan government is unwilling or unable to protect her. See *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069-70 (9th Cir. 2017) (en banc); see also *Matter of A-B-*, 27 I&N Dec. at 337-38 (an applicant seeking to establish persecution based on violent conduct of a private actor must show the government condoned the private actions or demonstrated an inability to protect the victims). We express no opinion regarding the ultimate outcome of the respondent’s case.

ORDER: The record is remanded for further proceedings consistent with this decision.



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