

Respondent

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202

Immigrant Rights Clinic
Baluarte, David Carlos
270 Sydney Lewis Hall
Washington and Lee University School of Law
Lexington, VA 24450



In the matter of

File A

[REDACTED] ET AL

DATE: Dec 17, 2019

- Unable to forward - No address provided. *DHS RIGHT TO APPEAL*
- X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041
- Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
1901 S. BELL STREET, SUITE 200
ARLINGTON, VA 22202
- Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.
- Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.
- Other: _____



COURT CLERK
IMMIGRATION COURT

FF

cc: OFFICE OF CHIEF COUNSEL
1901 SOUTH BELL STREET, 9TH FL
ARLINGTON, VA, 22202

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
ARLINGTON, VIRGINIA**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED],)
[REDACTED]) A [REDACTED]
[REDACTED]) A [REDACTED]
[REDACTED]) A [REDACTED]

Respondents.

) **IN REMOVAL PROCEEDINGS**
)

Counsel for Respondent:

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Lexington, Virginia 24450

Counsel for DHS:

Audra Lynette Lowe, Esq.
Assistant Chief Counsel
DHS/ICE/ Office of the Chief Counsel
1901 South Bell Street, Suite 900
Arlington, Virginia 22202

CHARGE:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (“INA” or “Act”), as amended, as an immigrant who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification 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 if such document is required under the regulations issued by the Attorney General under section 211(a).

APPLICATIONS:

Asylum, pursuant to INA § 208; Withholding of Removal, pursuant to INA § 241(b)(3); and protection under the United – a Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”), pursuant to 8 C.F.R. §§ 1208.16-18 (2018).

DECISION AND ORDER OF THE IMMIGRATION JUDGE

The three named Respondents are natives and citizens of El Salvador. They arrived in the United States on April 30, 2016, at or near Hidalgo, Texas. They were thereafter placed in removal proceedings under Section 240 of the Act. Exhibit 1.

The Respondents, through counsel, acknowledged proper service of their Notices to Appear. Further, they have admitted to the factual allegations and the charge of removability

contained therein. See Exhibit 1. Based on their admissions and concessions, this Court sustains the charge of removability.

On September 20, 2016, the Lead Respondent submitted a Form I-589, Application for Asylum and for Withholding of Removal and listed [REDACTED] and [REDACTED] as derivatives. Exhibit 4.

On November 27, 2018, the Court heard testimony from the Lead Respondent, the sole witness. On that date, the Immigration Judge raised concerns over the Lead Respondent's competency and asked the parties whether they wished the Court to make a competency determination in line with Matter of M-A-M-, 25 I&N Dec. 474 (BIA 2011). The Respondents' counsel stated that they believed the Lead Respondent was competent to testify but requested certain safeguards. The Court deferred to counsel's judgment of his client's competency, and the parties stipulated that (1) the Lead Respondent's written declaration, as amended, would supplement her testimony for the purposes determining her credibility, see Exhibit 9, Tab A; and (2) the Respondent would not be asked to testify to the details of the four specifically-alleged incidents of rape. Further, during the individual hearing, the parties asked direct, simple questions of the Lead Respondent, and the Court permitted leading questions as necessary to aid the Lead Respondent in developing the record. The Court finds that the parties' stipulations, as well as the Respondents' representation by highly competent and responsible counsel, were sufficient safeguards to ensure that the Respondent could meaningfully participate in her removal proceedings. See M-A-M-, 25 I&N Dec. at 479.

For the reasons stated below, the Respondents' application for Asylum, under Section 208(a), is GRANTED. Accordingly, the Lead Respondent's applications for Withholding of Removal, under Section 241(b)(3), and protection under the CAT are NOT REACHED.

EVIDENCE PRESENTED

I. Documentary Evidence

The Court considered all documentary evidence submitted by the parties contained in the record of proceedings. See 8 C.F.R. § 1240.9. The evidentiary record contains the following documentary exhibits:

- Exhibit 1: Form I-862, Notice to Appear, filed July 12, 2016;
- Exhibit 2: Notice of Hearing, dated July 14, 2016;
- Exhibit 3: Notice of Hearing, dated August 4, 2016;
- Exhibit 4: Respondent's I-589, Application for Asylum and for Withholding of Removal, and supporting documents, including Tabs A – D, filed September 20, 2016;
- Exhibit 5: Notice of Hearing, dated September 20, 2016;
- Exhibit 6: Notice of Hearing, dated September 6, 2017;
- Exhibit 7A: Respondent's Motion for Continuance, filed February 16, 2018;
- Exhibit 7B: Order Granting Continuance, dated March 9, 2018;

- Exhibit 8: Respondent's Brief and supporting documents, including Tabs A – X, filed November 13, 2018;
- Exhibit 9: Respondent's additional supporting documents, including Respondent's Updated Sworn Statement, Tab A, filed November 21, 2018;
- Exhibit 10: Respondent's Credible Fear Worksheet and Interview, dated May 11, 2016;
- Exhibit 11: Respondent's Order of Protection from the First Peace Court, dated August 18, 2009;
- Exhibit 12: Abstract: Dominique J.-F. de Quervain, et al., "Glucocorticoids and the regulation of memory in health and disease," *Frontiers in Neuroendocrinology*, Volume 30, Issue 3, August 2009.

The Court has considered all of these documents in their entirety, regardless of whether specifically mentioned in the text of this decision.

The representative for the Department of Homeland Security ("DHS") objected to the admission of Exhibit 8, Tabs C – F and H – J.

The Court admitted Tab F, a mental health evaluation of the Lead Respondent, over the objection of DHS. The Court reasoned that the document corroborated the Lead Respondent's claims of harm in El Salvador. However, insofar as the document contains legal conclusions, those conclusion will be not considered.

Tabs H – J contain redacted decisions from Immigration Courts in other jurisdictions and will be admitted as non-binding, persuasive authorities. The Court notes that these decisions predate the Attorney General's decision in Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018), and the Court will weigh their persuasive value accordingly.

Tabs C – D contain country conditions reports from experts in gender-motivated violence in El Salvador, and Tab E contains a report from a psychiatrist concerning the effect of trauma on a person's ability to recall specific facts. After the individual hearing on November 27, 2018, the Respondents filed supplemental supporting documents for Tabs C – E, containing CVs and publications of the authors of each of the reports. The Respondents have sufficiently demonstrated each author's expertise in their respective fields of study, and accordingly the Court will admit their opinions into evidence as the opinions of consulting, non-testifying experts.

II. Summary of Testimonial Evidence

On November 27, 2018, the Court heard testimony the Lead Respondent ("the Respondent"). Although the Court has considered the testimony in its entirety, the testimony is not fully repeated herein, as it is part of the record. Instead, the claims raised during testimony are presented below to the extent that they are relevant to the Court's analysis.

The Respondent testified that she was born in San Salvador, El Salvador. The Respondent recalled that her childhood was very sad, and she felt very alone. She met Carlos

[REDACTED] ("Carlos") while he was playing soccer. They began dating when she was 15 or 16, and the couple moved in together when the Respondent was 16. At the beginning of their relationship, Carlos was kind to the Respondent and treated her the way a partner should. After the Respondent became pregnant with their first child, Carlos began assaulting her. He would verbally abuse her by calling her "useless," "lazy-ass," "good-for-nothing," and "stupid." He would verbally abuse her for various reasons, including if she did not have his food ready when he came home.

Carlos then began sexually abusing the Respondent. The Respondent recalled one day when Carlos came home drunk and demanded that she have sex with him. Carlos told her he wanted to have anal sex. The Respondent told him no, that she did not want to. Carlos told her she was his property and that she had to obey him and do whatever he wanted. He became very angry when she refused him, they struggled, and Carlos stripped her and took her outside naked. He locked her outside for approximately 30 minutes. She was humiliated and ashamed that her neighbors could see her naked. Carlos then raped her.

Carlos would force the Respondent to have sex with him five or more times per week. The Respondent decided that she wanted to leave Carlos around this time. One night, when Carlos again came home drunk, the Respondent decided to confront him and tell him she was going to leave. They started to argue, and Carlos became furious, started to insult her, and kicked her in the leg.

The Respondent left the house when her son was about seven years old, and went to stay with her father in San Salvador, about a three hour drive from where she lived with Carlos. About a month and a half after she left, Carlos convinced her to come back to their house. He told her he would change and that he would not treat her the same way anymore. The Respondent said that this was not true: Carlos became more angry and violent because she had left him.

On one occasion, Carlos came home around four in the afternoon, and the Respondent was washing clothes. He became angry and asked why she was washing clothes at that time of day, as clothes should be washed in the morning. He told her she was supposed to obey him and do what he told her to do. He continued to yell and insult her, and then began beating her. Carlos punched the Respondent, breaking her nose and leaving bruises all over her body.

The Respondent began having nightmares as a result of this abuse. She would wake up in the middle of the night feeling like she was suffocating. This happened frequently during this time.

The Respondent described Carlos' character as *machista*. According to the Respondent, *machismo* is the belief that a man can impose his will on a woman, who has to obey everything he says. This view is very prevalent in El Salvador. Men look down on women and feel superior. The Respondent disagrees with the *machismo* belief. She believes women are equal to men and have the same rights as men. The Respondent would express this view to Carlos, that women deserved equal treatment to men and have the same rights as men. He would become furious and declare that she was his property and that she would always be "his." He would often become

physically abusive when the Respondent would express her views that men and women are equal.

The Respondent left Carlos again when her daughter Genesis was about a year and a half old. She attempted to come to the United States, but she was apprehended in Mexico and deported from that country. The Respondent then went to her father's house. The Respondent never told her father about the abuses she suffered from Carlos. Carlos had threatened her and told her not to tell anyone. She was very afraid of Carlos at this time. When she told him that she intended to come to the United States, he beat her. Carlos found her at her father's house and raped her. He was angry and told the Respondent that she had to come back with him. The Respondent obeyed and returned to their house.

When she returned with Carlos, the verbal, physical, and sexual abuse continued. The Respondent decided she wanted him out of her house, so she went to court to get an order against him. The court ordered him out of the house, but Carlos was able to ignore the court order and remain in the house. The Respondent decided to put Carlos' things outside of the house and lock him out. Carlos began to harass her: he would follow her, would stay around the house, and try to get in whenever he could.

At some point, the Respondent called the police to report Carlos' harassment and trespassing. The police would often take one or two hours to arrive, and they would not investigate what was happening.

On one occasion, the Respondent's daughter was sick, so she took her two youngest children to the doctor. When they returned, the Respondent was carrying her sick daughter and tried to open the door to their house. Carlos was able to force his way into the house, and he told their daughters to stay by the door. He pushed the Respondent into the bedroom, and she knew he was going to rape her. She began to scream for help, and a neighbor, hearing her screams, came over. Carlos threatened the neighbor, saying she should not get involved in things that were not her business. He also said bad things would happen to her too. The neighbor left the house. Carlos and the Respondent struggled. The Respondent tried to fight back and scream, but Carlos put a pillow over her face. Carlos then raped her.

The Respondent called the police, but they said they could not do anything because they did not know who he was. The Respondent's neighbor told her that she did not want to be involved if the Respondent called the police. The Respondent provided the police with a picture of Carlos, but because they were not able to arrest him within 72 hours, nothing came of the investigation.

On one occasion, Carlos managed to sneak into the house when the Respondent was trying to leave. She tried to grab a phone so that she could call the police, but Carlos threatened her with a 12-inch knife that he found lying on the table. He made her give him the phone and threatened her by making gestures as if he would stab her in the chest.

On another occasion, Carlos stole a gas tank from the Respondent's house, which the Respondent used for cooking. The Respondent called the police, and they said they would

retrieve the gas tank if she found out where it was. The Respondent found out where Carlos had the gas tank, called the police, and the police managed to get the gas tank back. Carlos was not arrested for this theft.

Carlos raped the Respondent again. She filed a criminal complaint. At this point, the Respondent had called the police over 10 times to report Carlos' various crimes. The Respondent had to tell the police where to find Carlos in order for them to arrest him. Carlos was arrested and charged with rape. He was sentenced to eight years in prison, although he only served three of those years. After his release from prison, Carlos did not leave the Respondent alone. He would continue to follow her and spy on her.

On one occasion, Carlos' mother had asked the Respondent if she could take her grandchildren and give them a chance to see their father. Carlos' mother told the Respondent that she would pick up the kids and drop them off later. Instead, Carlos brought the kids back to the house. He went through the house and made gestures like he was going to kill her.

Carlos would also come to the Respondent's work and act like he was trying to court her. When she ignored him, he would become angry. He would accuse her of being with another man and call her a prostitute. On the street, Carlos would come up to the Respondent and threaten to kill her. One time, the Respondent was with her son, and Carlos threatened to kill them both, stuff them in black bags, and dump their bodies in a place called *El Coco*. The Respondent knew of a mother and daughter who were killed in *El Coco*. The Respondent stated that the man who killed the two women was *machista*, and he killed them because the daughter, with whom the man had a romantic relationship, slapped him for beating her in front of her mother. The man shot the mother and daughter several times, and the daughter was pregnant at the time. *El Coco* had a reputation in the community for violent crime, especially gang violence.

The Respondent went to court again to seek protection from Carlos. The court asked Carlos if he would like to serve the remainder of his prison sentence and told him this would happen if he kept bothering the Respondent. The Respondent characterized this as an empty threat. This warning from the court did not work, as Carlos threatened her again in person about 30 minutes after the court hearing. After that, the Respondent did not go back to the courts for protection. She did not believe they would protect her, but rather "it would be like every other time."

The Respondent decided to leave El Salvador again for the United States. She knew she could not relocate within El Salvador because Carlos would find her, just as he did twice before.

Since the Respondent left El Salvador, Carlos has approached their son several times. Carlos has told their son that he wants to kill the Respondent and that he still considers the Respondent his property. Carlos is now seeing another woman in El Salvador.

The Respondent stated that, if she returned to El Salvador, Carlos would likely follow through on his threats to kill her. She is also afraid he would again physically abuse her or rape her if she returned. The Respondent feared for her daughters in El Salvador as well, although she did not believe that Carlos would seriously harm them or kill them.

ANALYSIS, FINDINGS, AND CONCLUSIONS

I. Asylum pursuant to INA § 208

Generally, for the Court to consider an asylum application, the respondent must demonstrate by clear and convincing evidence that she or he filed an I-589, Application for Asylum, within one year of their arrival in the United States. INA § 208(a)(2)(B).

Respondent bears the burden of establishing her eligibility for asylum. INA § 208(b)(1)(B)(i). A respondent's testimony alone may meet their burden of proof if it is credible, persuasive, and refers to specific facts. INA § 208(b)(1)(B)(ii); Matter of J-Y-C-, 24 I&N Dec. 260, 263 (BIA 2007). In determining credibility, the Court must consider "the totality of the circumstances and all relevant factors." INA § 240(c)(4)(C). Nevertheless, the Court may find that corroborating evidence is necessary for a respondent to meet their burden of proof. INA § 208(b)(1)(B)(ii). When the Court determines corroborating evidence is necessary, "such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." Id.

To be statutorily eligible for asylum, a respondent must show that she or he is a refugee as defined by INA § 101(a)(42)(A). INA § 208(b)(1)(A). A refugee is a person, outside their country of nationality, who is unable or unwilling to return to or to avail himself or herself of the protection of that country because of past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Finally, the Court may grant asylum in the exercise of discretion if an applicant demonstrates statutory eligibility. INA § 208(b)(1)(A).

Here, the Court finds that the Respondent has timely filed her application for asylum. INA § 208(a)(2)(B); see Exhibit 1 (demonstrating Respondents entered United States on April 30, 2016); Exhibit 4 (demonstrating asylum application filed September 20, 2016). Further, after considering the totality of the circumstances and all relevant factors, the Court finds the Respondent's testimony was credible. Although she was not able to recall many dates nor present events in perfect chronological order, the Respondent has demonstrated that her inability to recall specific dates and the order of events could likely be attributed to her PTSD diagnosis. Exhibit 8, Tabs E-F; See also Exhibit 12. Further, her testimony in court was generally consistent with her written statement, see Exhibit 9, Tab A, and that statement will be used to supplement her testimony in the Court's analysis. The Respondent has also provided sufficient corroborating evidence. See Exhibits 4, 8-12.

The remaining issues present in this case are whether the Respondent has established: (1) past persecution (2) on account of a protected ground, (3) which the government of El Salvador is unable or unwilling to protect her from, and (4) despite changes in country conditions, she has a well-founded fear of persecution in El Salvador. For the reasons discussed in detail below, the Court finds the Respondent has demonstrated statutory eligibility for asylum and will grant asylum in the exercise of discretion.

A. Persecution

An applicant for asylum must demonstrate either that he or she has suffered past persecution or has a well-founded fear of persecution in their country of nationality or last habitual residence. INA §§ 101(a)(42)(A); 208(b)(1)(A). There is no universally accepted definition of “persecution.” *See Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, ¶ 51 (Geneva, January 1992) (“UNHCR Handbook”). Nevertheless, persecution has generally been interpreted to involve “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Persecution within the meaning of the Act is harm of a degree surpassing “mere harassment[.]” *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (quoting *Dandan v. Ashcroft*, 339 F.3d 567, 573 (7th Cir. 2003)); *see also Acosta*, 19 I&N Dec. at 222. In determining whether mistreatment constitutes persecution, the Fourth Circuit has observed that persecution is systematic, whereas less-severe mistreatment is generally limited to isolated incidents. *Baharon v. Holder*, 588 F.3d 228, 232 (4th Cir. 2009). The Fourth Circuit has expressly held ““the threat of death qualifies as persecution.”” *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949 (4th Cir. 2015) (quoting *Crespin-Valladares*, 632 F.3d at 126).

Here, the Respondent suffered **severe and systematic mistreatment** from Carlos. Carlos raped the Respondent many times, from about 2001 until 2009. *See Exhibit 9, Tab A*. He would force her to have vaginal or anal sex whenever he wanted, both when they were living together and after she had a restraining order against him. *See id.* The first time Carlos raped her, he locked her out of the house naked before raping her in their backyard. *Id.* On another occasion, Carlos placed a pillow over the Respondent’s face while he raped her, which left her feeling as if she were going to die because she could not breathe. *See id.* Carlos **verbally abused** the Respondent from about 1995 until she left the country in 2016. *See id.* He would compare her to an animal, call her trash, call her a prostitute, and various other names directed at her value as a person. *See id.* Carlos **physically abused** the Respondent beginning in 2001. *Id.* He would kick her and punch her, often leaving her with bruises and once breaking her nose. *See id.* Carlos threatened her repeatedly. On one occasion, he threatened to kill her and her son, and dump their bodies in *El Coco*, an infamous area for gang murders and other violent killings. *See id.* On another occasion, he threatened her with a large knife. *See id.* He **threatened to kill her** in words and gestures on several occasions. *See id.* Carlos also harassed the Respondent by lingering around the house, visiting her at work, and approaching her on the street after she had received a restraining order against him and after he had been imprisoned for her rape. *See id.* During these incidents, he would **threaten her, physically assault her, or verbally abuse** her in public spaces. *See id.* The Respondent characterized Carlos’ treatment, and the Court agrees that his conduct can only be described, as dehumanizing. *See id.* Here, there can be little doubt that the harm the Respondent suffered in El Salvador from Carlos rose to the level of persecution.

B. On Account of a Protected Ground

An applicant for asylum must establish that the persecution he or she suffered occurred “on account of” one of the five protected grounds – race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). This requires a two-fold showing: first, that the applicant has an actual or imputed characteristic falling within one of the

five protected grounds; and second, that the persecution the applicant suffered or fears was on account of such a characteristic. See Saldarriaga v. Gonzales, 402 F.3d 461, 466 (4th Cir. 2005); see also INS v. Elias-Zacarias, 502 U.S. 478, 482-83 (1992).

First, to establish eligibility for asylum based on political opinion, the applicant must demonstrate that he or she holds a political opinion as contemplated by the Act. In order to do so, he or she must generally show some expressive behavior in support of a particular cause. Saldarriaga, 402 F.3d at 466. Eligibility for asylum based upon an applicant's political opinion presupposes that the applicant holds opinions critical of and not tolerated by the persecutor, and such opinions have come to the attention of the persecutor or are attributed by the persecutor to the applicant. See UNHCR Handbook, ¶ 80 (discussing political opinion in context of government-sponsored persecution). For an opinion to be deemed political, the actions taken in furtherance of that opinion must be "motivated by an ideal or conviction" and not motivated by personal benefit, including fear of retribution or an employment benefit. Saldarriaga, 402 F.3d at 466.

Here, the Respondent stated that she disagrees with the *machismo* belief and culture, which perpetuates the idea that men are superior to women and are therefore justified in controlling and imposing their will on women. She stated that she believes men and women are equal and enjoy equal rights. The Court finds that the belief that women are the equal of men is a political opinion as contemplated by the Act. See Matter of R-A-, 22 I&N Dec. 906, 940 (BIA 1999) (Board Member Guendelsberger, dissenting) ("Opposition to male domination and violence against women, and support for gender equality, constitutes a political opinion."); see also Fatin v. INS, 12 F.3d 1233, 1242 (3d Cir. 1993) ("[W]e have little doubt that feminism qualifies as a political opinion within the meaning of the relevant statutes.").

Accordingly, the remaining issue is whether the Respondent was persecuted *on account of* her political opinion. To demonstrate the nexus requirement, an applicant must show through direct or circumstantial evidence that a protected ground was "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i); see also Matter of C-T-L-, 25 I&N Dec. 341, 344 (BIA 2010); Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 214 (BIA 2007). The applicant need not prove that the protected ground was the central reason or even a dominant central reason for the persecution; he or she "need only show that the protected ground was more than an incidental, tangential, superficial, or subordinate reason underlying the persecution." Zavaleta-Policiano v. Sessions, 873 F.3d 241, 247 (4th Cir. 2017) (quoting Quinteros-Mendoza v. Holder, 556 F.3d 159, 164 (4th Cir. 2009)) (internal quotations omitted). Persecution on account of the statutorily protected grounds refers to persecution motivated by the victim's traits, not the persecutor's. Elias-Zacarias, 502 U.S. at 482.

The Court finds the Board of Immigration Appeals' (BIA) decision in Matter of R-A-, 22 I&N Dec. 906 (BIA 1999; A.G. 2001)¹, particularly instructive. In that case, the respondent alleged facts strikingly similar to the Respondent in this case. The respondent in R-A- was

¹ remanded for reconsideration in Matter of R-A-, 24 I. & N. Dec. 629 (A.G. 2008). The Court notes that the procedural history of this case after the 1999 BIA decision, although lengthy, dealt primarily with the BIA's analysis of the alleged particular social group in the case. As such, this Court understands that the BIA's discussion of political opinion has been left undisturbed by the subsequent procedural history and remains instructive.

physically, verbally, and sexually abused by her husband in Guatemala over the course of many years, and she feared he would kill her if she returned to the country. 22 I&N Dec. at 908-09. Her husband would often tell her that she was his property, that she had to obey him, and that he could do anything to her that he liked. Id. The respondent disagreed with these statements and would often resist his abuses. Id. The BIA ultimately found that the respondent had not demonstrated that the abuse she suffered was on account of her political beliefs. Id. at 914-17. Although the Board did not articulate a test for determining whether the respondent's political opinion was one central reason for her husband's abuse, the Board did consider the following factors in its analysis: (1) whether the abuse began when the respondent expressed a political opinion; (2) whether and to what extent the specific instances of abuse appeared to be in response to the respondent's objections or acts of resistance; (3) whether the abuses were more fairly attributed to the abuser's views of woman, rather than the respondent's; (4) whether the respondent, during the abuse or in her testimony, ever expressed an opinion, apart from the common human desire to avoid physical harm; (5) whether the abuser ever targeted other women for such treatment, who would presumably share the respondent's beliefs; and (6) whether the respondent could have avoided harm by harboring a different political opinion. Id. at 914-25. In R-A-, the Board concluded that the respondent's persecutor harmed her regardless of her political beliefs, and his behavior was wholly independent of her beliefs. Id. at 914-15.

The facts of this case, although facially similar to the facts alleged in R-A-, are distinguishable from R-A- in crucial respects. First, unlike the respondent in R-A-, here, the Respondent's abuse escalated when she resisted her partner's advances, and his abuses became more violent in response to her objections and acts of resistance. Although the Respondent testified that Carlos began abusing her verbally early in their relationship, the sexual abuse only began after the Respondent expressed her opinion that she was not his property and did not have to obey him. See Exhibit 9, Tab A. Sometime in 2001, Carlos insisted that the Respondent have anal sex with him. Id. When she refused, Carlos told the Respondent that she was his property and he could do whatever he wanted. Id. The Respondent countered that she was not his property and continued to refuse him. Id. This was the first time Carlos raped the Respondent. See id. The physical abuse also only began after this exchange between Carlos and the Respondent over whether she belonged to him and had to do whatever he asked. See id. The Respondent also testified that Carlos' abuses would become more violent in response to her resistance to his authority and her expression of the belief that men and women are equal. For instance, after the Respondent left Carlos the first time, he became more violent to "punish [her] for leaving him." Id. Whenever the Respondent would tell Carlos that she was not his property, he would hit her and yell at her that she would always be his. Id. The second time the Respondent tried to leave Carlos, Carlos found her and raped her in her father's house. Id. The Respondent stated that she sought help from the courts because she did not want her children to think it was acceptable for a man to treat a woman the way Carlos treated her. Id. After the Respondent received a restraining order against Carlos, he continued to harass her, threaten her, and rape her. Id. The Respondent's acts of resistance – including refusing to have sex with Carlos whenever and in whatever manner he demanded, leaving him repeatedly, getting a restraining order against him, calling the police on him, and moving his things out of their house – can be properly interpreted as political expressions, in light of her statements to him that she was not his property and her statements to Carlos and this Court that she believes woman are equal to men.

Second, while Carlos' view of women undoubtedly contributed to his abuses, this does not preclude a finding that the Respondent's beliefs were nevertheless one central reason for the abuse. The Respondent stated that Carlos was *machista* and believed that women were inferior to men and had to obey them. See Exhibit 9, Tab A. Although Carlos' view of women contributed to his abuse of the Respondent, it was her resistance to this belief that often instigated and escalated his abuses. Some of Carlos' abuse, primarily the verbal abuse, began early in the relationship, before the Respondent actively resisted his abuse or expressed her view of women. However, the first instance of rape occurred in direct response to the Respondent's assertion of her right to her body. Read in that context, Carlos' actions appear to be taken in order to punish the Respondent for her belief, to prove to her that only he controlled her body. Carlos did not just want to have sex with the Respondent against her will, he wanted to humiliate her, subjugate her, and show her that she was wrong: he could do whatever he wanted with her body. See Angoucheva v. INS, 106 F.3d 781, 793 n.2 (7th Cir. 1997) (Rovner, J., concurring) (stating that “[r]ape and sexual assault are generally understood today not as sexual acts borne of attraction, but as acts of violent aggression that stem from the perpetrator's power over and desire to harm his victim[.]”). Further, the abuses Carlos inflicted on the Respondent in direct response to her assertion that women are equal to men and that she was not his property can be fairly attributed, not only to Carlos' belief in the opposite, but also to his desire to overcome her belief, punish her for holding it, and prove her that she was wrong. See Matter of L-E-A-, 27 I&N Dec. 40, 44 n.2 (BIA 2017) (citing Acosta, 19 I&N Dec. at 222 (“[P]ersecution” ... clearly contemplates that harm or suffering must be inflicted upon an individual in order to punish him for possessing a belief or characteristic a persecutor seeks to overcome.”)) (citing Matter of Kasinga, 21 I&N Dec. 357, 365 (BIA 1996) (clarifying punitive intent not required, rather persecutor must intend to “overcome” protected characteristic of victim)).

Third, in direct contrast to the respondent in R-A-, and as discussed above in some detail, the Respondent actually expressed her belief that women are equal to men, both to Carlos during his acts of violence and in her testimony before this Court. Fourth, the Respondent and her son have stated that Carlos now has another girlfriend, whom he also abuses. See Exhibit 9, Tab A; Exhibit 8, Tab B. Apparently, this woman also tried to call the police to report Carlos' abuse, which suggests to the Court that she does not share his *machismo* beliefs. See Exhibit 8, Tab B. This suggests that Carlos' abuse of this woman may also be perpetrated in order to overcome her belief and demonstrate his superiority over her.

Finally, there is evidence in the record that the Respondent could have avoided persecution by holding and expressing a different political opinion. If the Respondent adopted Carlos' belief that women are inferior to men and have to obey them, or even if she were completely ambivalent to such an idea, she would have likely avoided much of the harm she suffered. As discussed above, Carlos' sexual abuse and physical abuse of the Respondent only occurred after she challenged his authority over her body and expressed her view that she was not subservient to his will. See Exhibit 9, Tab A. In fact, the Respondent stated that she would occasionally be submissive to Carlos in order to avoid his abuses, and although this worked, she was left feeling “humiliated by this submission.” Id.

Applying the same factors relied upon by the Board in R-A-, the Court finds that the Respondent has demonstrated that the abuses she suffered from Carlos were perpetrated on account of her belief that women are equal to men.

As the Court has found the Respondent's political beliefs were one central reason for her persecution, the Court need not determine whether the Respondent's alleged particular social groups were also central reasons for the abuse.²

C. State Action

To be eligible for asylum, the persecution suffered by the applicant must have been perpetrated by the applicant's government, an agent the government, or by a private person or group whom the government is unwilling or unable to control. See Crespin-Valladares, 632 F.3d at 128; Acosta, 19 I&N Dec. at 222. An applicant seeking to establish persecution based upon the violent conduct of a private actor must show more than difficulty controlling private behavior, but rather "must show that the government condoned the private actions or at least demonstrated a complete helplessness to protect the victims." Matter of A-B-, 27 I&N Dec. 316, 337 (A.G. 2018) (internal quotations omitted); see also Matter of O-Z- & I-Z-, 22 I&N Dec. 23, 25-26 (BIA 1998) (reiterating standard is whether government is unable *or* unwilling to protect respondent, not merely whether the persecution was government-directed or condoned). Although different language has been used to describe this standard, the Court understands that the Respondent need only show *either* that the government is unable to protect her from Carlos (i.e. cannot offer effective protection or is helpless to protect her) *or* is unwilling to protect her from the same (i.e. the government directed, condoned, or otherwise acquiesced to her persecution). See A-B-, 27 I&N Dec. at 337; O-Z- & I-Z-, 22 I&N Dec. at 26; Acosta, 19 I&N Dec. at 222.

Here, the Court finds that the government of El Salvador was unable to control Carlos and protect the Respondent from his abuses. The state intervened in the Respondent's relationship with Carlos several times, but each intervention was grossly ineffective.

The Respondent gave the government of El Salvador every opportunity to protect her from Carlos, and the government was ultimately unable to provide adequate protection. The Respondent called the police over 10 times to report Carlos' abuses and seek protection for her family, and she resorted to the courts to get and enforce a restraining order against him on at least two occasions. Exhibit 9, Tab A. In 2009, the Respondent was issued a protective order against Carlos. See id.; Exhibit 11. The court urged Carlos to refrain from future acts of violence and threatened that he would be prosecuted for domestic violence if he repeated his previous acts of violence. Exhibit 11. After this warning, Carlos entered the Respondent's home and raped her. Exhibit 9, Tab A. When the Respondent reported the incident to the police, she provided a picture of Carlos to the police, but he was never arrested. Id. The police later helped the Respondent retrieve a gas tank that the Respondent has stolen, but only after she told them where to find the gas tank. Id. Carlos was not arrested on this occasion either. Id. Carlos walked through the protection order a second time to rape the Respondent. Id. Carlos was only arrested

² The Respondent articulated the following two social groups: "Salvadoran women" and "Salvadoran women viewed as property by a former domestic partner with whom she shares common children."

once, and only after the Respondent informed the police where they could find him. Id. Carlos was sentenced to eight years in prison for the rape, although, for reasons unknown to the Court, he only served three of those years. Id. Once he was released, he went back to harassing and abusing the Respondent. Id. The Respondent continued to go to the police for protection, but they failed to enforce the protective order or arrest the Respondent. Id. Only after Carlos threatened the Respondent and her son with death and dismemberment did the police get involved and bring Carlos to court. Id. The court warned Carlos that he would have to serve the remainder of his prison sentence if he continued to threaten and harm the Respondent. Id. Within an hour of leaving the courtroom, Carlos repeated his threat to kill the Respondent. Id.

The Court finds that the government of El Salvador was, at times, willing to protect the Respondent from Carlos, but on each occasion, the government failed to deliver adequate protection to prevent her further persecution by Carlos. In 1996, El Salvador enacted the Law Against Intrafamilial Violence (“LAIIV”), which provided the primary legal regime for prosecuting and combating domestic violence. Exhibit 8, Tab C. This was the same law under which Carlos was charged in 2009, when the court issued an order of protection over the Respondent. See Exhibit 11. In 2011 and 2012, two laws went into effect that targeted violence against women and discrimination based on gender. Exhibit 8, Tab C. However, even several years after the 2011 and 2012 laws went into effect, there has not been a decline in violence or discrimination against women nor a decline in impunity for perpetrators. Id. The non-testifying experts who provided statements in this case each expressed that this legal regime provided ineffective protections for victims of domestic violence. See Exhibit 8, Tabs C – D. One such expert posited that the pervasive cultural attitudes toward women lead “law enforcement officials, prosecutors, and judges [to] discriminate against women, reduce the priority of women’s claims and otherwise prevent women from accessing legal protections and justice.” Exhibit 8, Tab C. The facts of this case demonstrate this reality in El Salvador. The Respondent sought help from the police many times. The police often arrived several hours after they received her call, allowing Carlos an opportunity to evade them every time. Exhibit 9, Tab A. The police arrested Carlos once, but only after the Respondent told them where they could find him – effectively doing their investigatory work for them. Id. The police also confiscated the Respondent’s stolen gas tank from Carlos, but once again only after she informed them where it was, and they did not arrest Carlos for the theft or harassment. Id. The police demonstrated a total lack of concern for the Respondent’s safety in their responses to her pleas for help. Similarly, after the Court had issued the Respondent an order of protection and Carlos had been incarcerated for raping the Respondent, the Respondent once again sought help from the courts. See id. The court warned Carlos not to harm her and threatened to have him serve the remainder of his eight-year sentence. See id. It is unimaginable to this Court why – after the history of abuse perpetrated by Carlos against the Respondent, even after an order of protect was granted – the court in El Salvador would simply provide a warning to Carlos on this occasion. It is clear from the record that Carlos did not respect orders from the court, and the warnings from the court were, as the Respondent accurately stated, empty threats.

The Respondent has demonstrated that the government of El Salvador was completely helpless in protecting her against Carlos. Even when the law provided protections for the Respondent, the Respondent exercised her rights, and the court gave her an order of protection, law enforcement officials and the courts failed to enforce that order and the Respondent’s rights

on numerous occasions. The only effective protection the government provided the Respondent was in Carlos' incarceration, and for reasons unknown to the Court, his sentence was never fully enforced. Under these circumstances, it is clear the government of El Salvador was unable to control Carlos and prevent further harm to the Respondent.

D. Well-Founded Fear

If an applicant for asylum demonstrates past persecution, there is a rebuttable presumption that he or she also has a well-founded fear of future persecution. 8 CFR § 1208.13(b)(1). DHS bears the burden of rebutting this presumption by proving by a preponderance of the evidence that either: (1) there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in his or her country of nationality on account of one of the enumerated grounds; or (2) the applicant could avoid future persecution by relocating to another part of his or her country of nationality and under the circumstances, it would be reasonable to expect them to do so. 8 C.F.R. § 1208.13(b)(1)(i)(A)-(B); see also 8 C.F.R. § 1208.13(b)(3)(ii) (where the government is the persecutor, or where past persecution is established, internal relocation is presumptively unreasonable).

Here, as the Respondent has demonstrated past persecution, there is a rebuttable presumption that she also has a well-founded fear of persecution in El Salvador. Further, DHS has not met its burden of demonstrating that either changed country conditions or an internal relocation alternative exists so as to negate the Respondent's well-founded fear of persecution in El Salvador. As the Court requested supplemental briefing on the issue of well-founded fear and DHS failed to file such a brief, the Court will limit its analysis to the arguments put forward by DHS during the Respondent's individual hearing. DHS never attempted to demonstrate that changed country conditions rendered the Respondent's fear of future persecution unreasonable. DHS attempted to show that an internal relocation alternative existed for the Respondent in El Salvador. The Court finds that such a relocation is unreasonable under the circumstances. First, the Court notes that the Respondent was not able to avoid Carlos' abuse by relocating within the country. The Respondent went to live with her father twice, each time to a different location, to avoid Carlos' abuse. See Exhibit 9, Tab A. On both occasions, Carlos was able to find her, despite the fact that the Respondent's father lived in San Salvador, about three hours away from Carlos by car. Id. Second, the Respondent alleged in her written statement that Carlos was affiliated with the 18th Street Gang in the country, which suggests that she would not be able to hide from him anywhere in El Salvador if he truly wanted to find her. See id; see also Exhibit 8, Tab D ("If a woman is in a violent relationship with a gang member, her chance of escaping safely is virtually nonexistent due to the ubiquitous networks gangs maintain throughout the country."). Third, the opinion of an expert in domestic violence in El Salvador and the Respondent's experience suggest she would not be able to avoid Carlos by relocating within El Salvador. The expert in domestic violence in El Salvador found that several factors – including the small size of the country, the little respect given to women's privacy, women's financial constraints, and the cultural importance of family unity – contributed to the fact that it is very hard for a woman to extricate herself from an abusive relationship. Exhibit 8, Tab D. The expert stated that abusive men "will pressure relatives with information [of the victim's whereabouts] by explaining that he wants to reunite his family." Id. (explaining this tactic is often successful with police, schools, and hospitals as well). Indeed, such was the case here. On one occasion,

Carlos was able to find the Respondent at her father's home because he asked the Respondent's uncle where she was, and he gave Carlos the address. Based on these facts, the Court finds the Respondent cannot relocate to another part of El Salvador to avoid persecution by Carlos.

However, even if the Court were to consider the presumption of well-founded fear rebutted, the Respondent would still warrant protection in the form of humanitarian asylum. Where the applicant has established past persecution but no longer has a well-founded fear of future persecution, an Immigration Judge should consider an applicant's eligibility for humanitarian asylum. 8 C.F.R. § 1208.13(b)(1)(iii); Matter of S-A-K- & H-A-H-, 24 I&N Dec. 464, 465-66 (BIA 2008). Humanitarian asylum may be granted if the applicant either (1) demonstrates that he or she has "compelling reasons," arising out of the severity of the past persecution, for being unable or unwilling to return to his or her country; or (2) establishes that there is a reasonable possibility that he or she may suffer "other serious harm" upon removal to that country. 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B); Matter of L-S-, 25 I&N Dec. 705, 710-15 (BIA 2012). In determining eligibility for humanitarian asylum, the Court must consider the "totality of the circumstances" on a case-by-case basis. Id. at 715. Humanitarian asylum based on "compelling reasons" is warranted if the applicant demonstrates that in the past he or she or his or her family "suffered under atrocious forms of persecution." Matter of N-M-A-, 22 I&N Dec. 312, 325 (BIA 1998) (considering the degree of harm suffered, the length of time over which the harm was inflicted, and evidence of severe psychological trauma stemming from the harm); see also Matter of Chen, 20 I&N Dec. 16 (BIA 1989) (granting humanitarian asylum to an applicant who suffered severe persecution in the past, leaving him physically debilitated, anxious and fearful, and often suicidal).

Here, the Respondent has demonstrated that she has compelling reasons for being unwilling to return to El Salvador. The Respondent testified that she suffered from recurring nightmares in El Salvador as a result of the abuses she suffered from Carlos. According to her psychological evaluation, the Respondent exhibited severe levels of anxiety and met the full criteria for Posttraumatic Stress Disorder ("PTSD"). Exhibit 8, Tab F. Indeed, this Court witnessed some of the lingering effects of her severe trauma in her inability to recall dates or the chronology of events during her testimony. See Exhibit 8, Tab E, Exhibit 12. The Court finds that the Respondent endured heinous abuses over an extended period of time, which have caused lasting trauma. The Court believes that the Respondent's current anxiety and PTSD would only be worsened if she were returned to El Salvador. The Respondent expressed to her counselor that she feels constantly "on-guard," always fearful that Carlos will be able to find her, even in the United States. Exhibit 8, Tab E. Based on the Respondent's experience in the past and her reasonable belief that Carlos would be able to find her anywhere in the country, it is clear that the Respondent would not be able to cope with or successfully treat her anxiety or PTSD if she returned to El Salvador. The Court finds that the heinous abuses suffered by the Respondent in the past coupled with her current mental health concerns are sufficiently compelling reasons for her to be unwilling to return to El Salvador and for this Court to grant humanitarian asylum.

E. Discretion

Once an applicant demonstrates his or her statutory eligibility for asylum, the applicant then has the burden of establishing that asylum is merited in the exercise of discretion. Matter of Pula, 19 I&N Dec. 467, 474 (BIA 1987). In exercising discretion, the Court must examine the

totality of the circumstances. *Id.* at 473. The danger of persecution will outweigh all but the most egregious adverse factors. Kasinga, 21 I&N Dec. at 367.

Here, the Court finds there are no adverse factors weighing against a grant of asylum in this case. After considering the totality of the circumstances and all relevant factors, the Court will grant the Respondents' application for asylum in the exercise of discretion.

II. Withholding of Removal pursuant to INA § 241(b)(3) and under the CAT

Here, as the Court has granted the Respondents discretionary relief in the form of asylum, the Court need not consider whether the Respondent warrants the mandatory relief in the form of withholding of removal pursuant to INA § 241(b)(3) or protection under the CAT.

Accordingly, the Court issues the following:

III. ORDERS

IT IS ORDERED that the Respondent's Application for Asylum pursuant to INA § 208 is **GRANTED**.

IT IS FURTHER ORDERED that the Respondent's Application for Withholding of Removal pursuant to INA § 241(b)(3) is **NOT REACHED**.

IT IS FURTHER ORDERED that the Respondent's Application for relief pursuant to the CAT is **NOT REACHED**.

12/6/2019

Date



Print Maggard³
United States Immigration Judge

APPEAL RIGHTS: All 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. *Id.*

³ All testimony in this case was originally heard by Immigration Judge Quynh V. Bain. However, Judge Bain is not available to complete the decision, and I, Immigration Judge Print Maggard, am completing the case. See 8 C.F.R. § 1240.1(b). As required by the regulations, I have familiarized myself with the complete record of proceeding prior to entering this decision. *Id.*