

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201

University of Baltimore School of Law
Keyes, Elizabeth
School of Law Clinical Program
1420 N. Charles Street
Baltimore, MD 21201

In the matter of [REDACTED]

File [REDACTED]

DATE: [REDACTED]
[REDACTED]

- Unable to forward - No address provided.
- 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
31 HOPKINS PLAZA, ROOM 440
BALTIMORE, MD 21201
- 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: _____

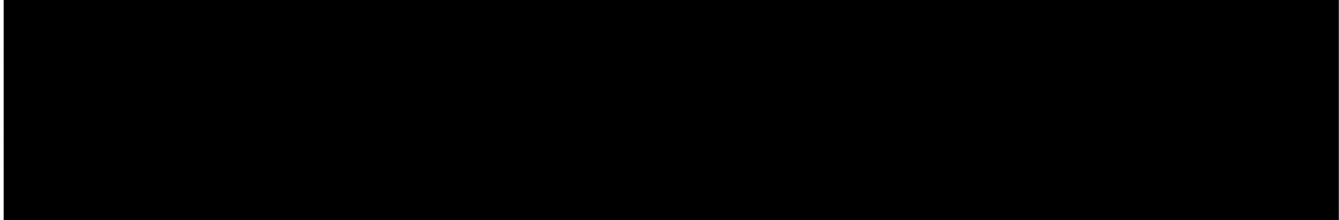
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IMMIGRATION COURT

FF

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF : IN REMOVAL PROCEEDINGS



RESPONDENT : :

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (Act), as amended, in that you are an alien present in the United States without being admitted or paroled, or who entered in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Asylum under Section 208 of the Act; Withholding of Removal under Section 241(b)(3) of the Act; and Relief under Article 3 of the Convention against Torture (Torture Convention), 8 C.F.R. Section 208.16 et seq.

APPEARANCES

ON BEHALF OF RESPONDENT:

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ON BEHALF OF THE DEPARTMENT:

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WRITTEN DECISION AND ORDER

I. Statement of the Case

On [REDACTED] the Department of Homeland Security (Department) placed the Respondent into removal proceedings through the filing of a Notice to Appear. Exh. 1. In the Notice to Appear, the Department alleged that the Respondent is a native and citizen of Honduras (and not the United States), who entered the United States at Eagle Pass, Texas on [REDACTED] and was not then admitted or paroled after inspection by an immigration officer.

Id. Based on the foregoing allegations, the Department charged the Respondent with removability pursuant to § 212(a)(6)(A)(i) of the Act. *Id.*

At a master calendar hearing on [REDACTED] 2016, the Respondent, through counsel, admitted all allegations contained in the Notice to Appear, claiming that allegation three was incorrect and her entry was on [REDACTED] 2014.¹ She also conceded the charge of removability. Therefore, removability is established by clear and convincing evidence. *See* § 240(c)(3) of the Act; *see also* *Woody v. INS*, 385 U.S. 276 (1966). As relief from removal, the Respondent filed an Application for Asylum and Withholding of Removal, Form I-589, with U.S. Citizenship and Immigration Services (USCIS), who had initial jurisdiction over her application since she entered as an unaccompanied child. *See* William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA), Public Law 110-457. On [REDACTED] 2015, the Respondent's asylum application was referred to the Court. Exhs. 3, 4, 5, and 6.

At an individual hearing on [REDACTED] 2018, both parties presented arguments, since the Respondent had been sworn to the application and it was conceded that there was no issue as to her credibility, and the only issue was whether Respondent was barred from receiving asylum or withholding of removal for having committed a serious nonpolitical crime. At the close of the hearing, the Court reserved decision to further review the evidence and testimony presented.

II. Documentary Evidence

- **Exhibit 1**, Notice to Appear, dated [REDACTED] 2014
- **Exhibit 2**, Record of Deportable/Inadmissible Alien, Form I-213

¹ The Notice to Appear is dated [REDACTED] so the Respondent could not have entered after that time. Exh. 1. However, the specific date has no bearing on her removability.

- **Exhibit 3**, Respondent's Application for Asylum, Withholding of Removal, and Relief under the Torture Convention, Form I-589
 - A. Respondent's Declaration (Submitted to Asylum Office in [REDACTED])
 - B. Respondent's Supplemental Declaration (Submitted to Asylum Office after [REDACTED])
 - C. Office of Refugee Resettlement (ORR), Admission Assessment/ History, dated [REDACTED]
 - D. [REDACTED] Discharge Instructions, dated [REDACTED]
 - E. [REDACTED] Treatment Center, Initial Staff Briefing and Preliminary Service Plan, dated [REDACTED] July 17, 2014
 - F. (No submission)
 - G. Psychiatric Assessment, dated [REDACTED]
 - H. [REDACTED] Treatment Center, Individual Counseling Goals and Objectives, dated July [REDACTED]
 - I. [REDACTED] Treatment Center, Psychiatric Treatment Plan, dated [REDACTED] 2014
 - J. [REDACTED] LCSW, Progress Note, dated [REDACTED] 2014
 - K. [REDACTED] Treatment Center, Medical Discharge Summary
 - L. Websites of "Hogar San Rafael" and "Street Children in Honduras"
 - M. Monica Ramirez and Anne K. Ream, *Migrant Children are Fleeing a Region Rife with Sexual Violence*, New Republic (July 2014)
 - N. Office of the United Nations High Commissioner for Human Rights (UNHCR), *Special Rapporteur on violence against women finalizes country mission to Honduras and calls for urgent action to address the culture of impunity for crimes against women and girls* (July 2014)
 - O. State Department, 2013 Report on Human Rights for Honduras (Excerpt)
 - P. Kyra Gurney, *Report Details How El Salvador Gangs Use Rape as Weapon*, InSight Crime (Nov. 2014)
 - Q. Inter-American Commission on Human Rights, *Annual Report on the Inter-American Commission on Human Rights 2011*, December 30, 2011 (Excerpt)
 - R. Annie Kelly, *Honduran Police Turn a Blind Eye to Soaring Number of 'Femicides'*, The Guardian, May 28, 2011
 - S. International Organization of Migration, *Fatal Journeys: Tracking Lives Lost during Migration*, 2014 (Excerpt)
 - T. Eline Gordts, *11 Numbers to Help You Understand the Violence Rocking Mexico*, Huffington Post (October 31, 2014)
 - U. John Burnett, *Migrants Say They're Unwilling Mules for Cartels*, NPR (Dec. 4, 2011)
 - V. Canada Immigration and Refugee Board, *Honduras: Information on the structure and hierarchy of main gangs; gang recruitment of children* (Dec. 2014)

- **Exhibit 4**, Respondent's Supporting Documents, filed [REDACTED]
 - W. Respondent's Revised Declaration

X. Statements from Employees of [REDACTED]

Y. Letter from [REDACTED]

Z. Respondent's Performance and Development Summary from the

AA. State Department, 2016 Report on Human Rights for Honduras

BB. Internal Crisis Group, *Mafia of the Poor: Gang Violence and Extortion in Central America* (2017)

CC. UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Honduras* (July 2016)

DD. Cardenas, Nina Lakanai, *Mexican kidnappers pile misery onto Central Americans fleeing violence*, The Guardian (Feb. 21, 2017)

EE. State Department, 2016 Trafficking in Persons Report – Honduras

FF. InSight Crime, *The Problem With Counting Gang Members in Honduras* (2016)

GG. Department Memo: *Exercising of Authority Under Sec. 212(d)(3)(B)(i) of the Immigration and Nationality Act*

- **Exhibit 5**, Resume and Letter from Psychotherapist [REDACTED]
- **Exhibit 6**, USCIS Assessment to Refer Respondent's Asylum Application and Record of Sworn Statement of Respondent [REDACTED]

III. Statement of the Case

A detailed account of Respondent's claim is provided in her sworn declaration. *See generally* Exh. 4, Tab W. Respondent was born on [REDACTED] *Id.* at 1. She was abandoned by her mother and father when she was just four years old and was raised by her sister [REDACTED] *Id.* Her father was an abusive alcoholic with whom she has no contact and that she only speaks to her mother about once or twice a year. *Id.* In her declaration, Respondent stated that [REDACTED] treated her like a maid and "physically abuse[d] her with her hands and electric cables," causing permanent scars. *Id.* at 1–2. According to the Respondent, [REDACTED] also tried to kill her by putting Clorox in her food. *Id.* at 2.

Respondent was raped by her two uncles and a cousin when she was just six years old. *Id.* She said that she was picking cacao leaves in a field when three hooded figures approached her, tied her up, and raped her in turn. *Id.* She recognized them as her relatives and later reported the assault to her mother, who beat her for suggesting it. *Id.*

² At the merits hearing on [REDACTED] this piece of evidence was marked for identification. Because it was relied on by both parties in making their arguments to the Court, it will now be admitted into evidence as Exh. 6.

Respondent was first approached by the Mara 18 gang when she was ten years old. *Id.* She initially resisted recruitment and they threatened to kill her family. *Id.* She tried to avoid going out in public for fear that they would approach her again. *Id.* About six months later, she went to Tegucigalpa to find work when she was approached by two men who offered to help her obtain employment. *Id.* at 2–3. She said that she followed them in the hopes of getting a job, but, instead, they took her to a remote area and raped her. *Id.* at 3. As soon as she could, Respondent ran to a nearby police station and informed a police officer there that she had been raped. He told her that he “could not help [her] without any evidence.” *Id.*

Respondent then returned to her hometown, where she was again approached by Mara 18 members who pushed her to join their gang. She explained that she gave in to their demands because she was tired and had no other family that was “willing to take care of” her. *Id.* She stated that they immediately threatened to kill her if she ever refused to follow instructions and forced her to have sex with gang members. *Id.* The Respondent noted that they also made her “hurt people” on behalf of the gang. *Id.* She said that gang members tortured her when she did not “comply with their orders.” *Id.*

The Respondent said that she saw one of the uncles who raped her again in early 2014 and he told her that she “looked pretty.” *Id.* Based on that interaction, she believed that he would rape her again if she remained in Honduras. *Id.* Later that year, her other sister, [REDACTED]

[REDACTED] suggested that the Respondent come with her to the United States and the Respondent jumped at the chance to leave the gang and establish a new life elsewhere. *Id.* The Respondent explained that she and [REDACTED] traveled through Mexico on their way to the United States and [REDACTED] absconded with a man they met on the journey, leaving the Respondent to fend for herself. *Id.* at 3–4. The Respondent stated that she tried to find her sister and was ultimately raped by a man who pretended to help her look for [REDACTED]. *Id.* at 4.

The Respondent continued to search for her sister and eventually got onto a train where she was detained by someone impersonating an immigration officer. *Id.* at 4–5. According to the Respondent, this man was actually a “sicario” (hitman), who locked her in a dark room for a long period of time before he forced her to sell “crystal rocks” to people waiting outside. *Id.* at 5. The Respondent stated that the “sicario” and his men raped her and threatened to kill her if she “did not continue having sexual relations with them.” *Id.* The Respondent attested that she was able to escape this situation with the help of one of the “sicario’s” men and was able to

locate her sister [REDACTED]. She stayed with [REDACTED] until she ultimately entered the United States in June [REDACTED]. *Id.* The Respondent recalled that she was detained by Immigration and Customs Enforcement officers after she entered the United States. *Id.*

The Respondent stated that she has a great life in the United States. *Id.* at 6. She explained that she has received necessary medical and psychiatric care since entering the United States and that she successfully completed the [REDACTED] *Id.* She noted that she currently works at [REDACTED] while also attending ESOL classes at the [REDACTED] *Id.* She plans to obtain her General Education Degree in the future. *Id.*

The Respondent fears returning to Honduras because she believes that the gangs will continue to torture her or kill her because she fled from them. *Id.* She noted that she cannot rely on her family for protection from gang violence. *Id.*

IV. Statement of the Law

A. Credibility and Corroboration

The REAL ID Act of 2005 amended various sections of the Act relating to relief from removal. Specifically, the Act was amended to include section 240(c)(4)(B), which provides that in order for an applicant for relief from removal to sustain her burden of establishing eligibility for such relief, she must “comply with the applicable requirements to submit information or documentation” in support of such application. Further, the Court must determine whether testimonial evidence “is credible, is persuasive, and refers to specific facts” sufficient to satisfy the applicant’s burden of proof, and weigh such evidence with other evidence in the record.

Uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof. *Cf.* § 208(b)(1)(B)(ii) of the Act; 8 C.F.R. § 1208.13(a). However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence should be provided as long as the applicant has the evidence or can reasonably obtain it. *Cf. Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 2000). The absence of such corroboration may lead to a finding that an applicant has failed to meet her burden of proof. *Matter of S-M-J-*, 21 I&N Dec. 722, 725–26 (BIA 2000). Nonetheless, the immigration judge must provide the applicant an opportunity to explain the lack of corroborating evidence and ensure that the applicant’s explanation is included in the record. *Id.*; *Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007).

The Board has made clear that applicants cannot meet their burden of proof by “general and vague” testimony, and “the weaker an [applicant’s] testimony, the greater the need for corroborative evidence.” *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

B. Asylum

To qualify for a grant of asylum, an applicant bears the burden of demonstrating that she meets the statutory definition of a refugee. Sections 101(a)(42)(A), 208(b)(1)(A) of the Act. The Act defines the term “refugee” as any person who is outside her country of nationality who is unable or unwilling to return to and is unable or unwilling to avail herself of the protection of that country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Section § 101(a)(42)(A) of the Act; 8 C.F.R. § 1208.13(b). When the alleged persecutor is a private actor, the applicant also bears the burden of showing that her “home government was ‘unable or unwilling to control’” her persecutors. *Matter of A-B-*, 27 I&N Dec. 316, 330 (A.G. 2018).

1. Persecution

In order to establish a claim for either asylum or withholding of removal, an applicant must demonstrate that the harm she fears constitutes persecution under the Act. Section 101(a)(42)(A) of the Act. The Board has interpreted “persecution” to include serious threats to an individual’s life or freedom, or the infliction of significant harm on the applicant, as a means of punishing that person for holding a characteristic that the persecutor seeks to overcome. *Matter of Acosta*, 19 I&N Dec. 211, 223 (BIA 1985).

To establish past persecution, the applicant must demonstrate that she suffered persecution in her country of nationality on account of an actual or imputed protected ground, and that she is unable or unwilling to return to, or avail herself of the protection of that country because of such persecution. 8 C.F.R. § 1208.13(b)(1). Not every act of discrimination or harassment rises to the level of persecution, as persecution is “an extreme concept that does not include every sort of treatment that our society regards as offensive.” *Li v. Gonzales*, 405 F.3d 171, 177 (4th Cir. 2005) (internal quotation marks omitted). However, cumulative incidents in the aggregate may rise to the level of persecution. See *Baharon v. Holder*, 588 F.3d 228, 232–33 (4th Cir. 2009); see also *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

If the applicant demonstrates past persecution on account of a protected ground, she will benefit from a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). The Department can rebut the presumption by showing that the applicant's fear is no longer well-founded due to a fundamental change in circumstances or that the applicant could avoid future persecution by relocating to another part of the country and that, under all the circumstances, it would be reasonable to require her to do so. 8 C.F.R. § 1208.13(b)(1)(i) – (ii).

If an applicant has not met her burden of demonstrating past persecution, the alien bears the burden to show a well-founded fear of future persecution by a preponderance of the evidence. *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 234 (4th Cir. 2004). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. *INS v. Cardoza-Fonseca*, 480 U.S. 480 U.S. 421, 430–31 (1987). To meet this standard, an applicant must possess a subjective fear and must also demonstrate that “a reasonable person in similar circumstances would fear persecution on account of” one or more of the protected grounds. *Blanco de Belbruno v. Ashcroft*, 362 F.3d 272, 284 (4th Cir. 2004) (citing *Cruz-Diaz v. INS*, 86 F.3d 330, 331 (4th Cir. 1996)); *see also* 8 C.F.R. § 1208.13(b)(1) – (2).

Credible testimony by an applicant may be enough to satisfy the subjective component, depending on the circumstances. Once a subjective fear of persecution is established, the applicant need only show that such fear is grounded in reality to meet the objective element of the test; that is, she must present credible, specific and detailed evidence that a reasonable person in her position would fear persecution. The applicant's fear may be well-founded even if there is only a slight, though discernible, chance of persecution. *INS v. Cardoza-Fonseca*, 480 U.S. at 431.

2. Nexus to a Protected Ground

An applicant for asylum must also demonstrate that the persecution she experienced or fears would be inflicted “on account of” her race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.13(b)(2)(i)(A). Even treatment that is regarded as “morally reprehensible” is not “persecution” within the meaning of the Act unless it occurs “on account of” one of the five enumerated grounds. *Matter of T-M-B-*, 21 I&N Dec. 775, 777 (BIA 1997). In essence, the applicant must demonstrate that her race, religion, nationality, particular social group, or political opinion would be “at least one central reason” for

the persecutor's actions against her. Section 208(b)(1)(B)(i) of the Act; *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

3. Particular Social Group

Membership in a particular social group is one of the five enumerated grounds upon which an applicant may base her claim for asylum or withholding of removal. 8 C.F.R. §§ 1208.13(b), 1208.16(b). To demonstrate persecution on account of membership in a particular social group, an applicant must establish that the group is (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. at 317; *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014); *see also Matter of Acosta*, 19 I&N Dec. at 212. The group must exist “independently of the alleged underlying harm.” *Matter of A-B-*, 27 I&N Dec. at 317. The shared characteristic “must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *See Matter of M-E-V-G-*, 26 I&N Dec. at 231 (internal quotation marks omitted). The common characteristic may be as innate as sex, color, or kinship ties, or as subtle as a shared past experience, and will be determined on a case-by-case basis. *See Matter of Acosta*, 19 I&N Dec. at 233; *see also Matter of M-E-V-G-*, 26 I&N Dec. at 251. The “particularity” requirement concerns the boundaries of the proposed social group, while the “social distinction” requirement demands that the members of the proposed social group are significantly set apart from others within the community in question. *See Matter of A-B-*, 27 I&N Dec. at 330; *Matter of M-E-V-G-*, 26 I&N Dec. at 238; *see also Matter of W-G-R-*, 26 I&N Dec. at 214, 216–17.

4. Serious Nonpolitical Crime Bar

An applicant is statutorily ineligible for asylum or withholding of removal under the Act if “there are serious reasons for believing that the alien committed a serious nonpolitical crime outside the United States prior to the arrival of the alien in the United States.” Section 208 (b)(2)(A)(iii) of the Act; *see also* 241(b)(3)(B)(iii) of the Act.

The initial burden falls on the Department to provide evidence that a ground for mandatory denial of the application for relief applies, after which the burden of proof shifts to the applicant seeking the relief to establish, by a preponderance of the evidence that such grounds “do not apply.” 8 C.F.R. § 1240.8(d); *cf. Matter of S-K-*, 23 I&N Dec. 936, 939 (BIA

2006) (explaining burdens of proof in the context of a different mandatory ground for denial). It need not be determined definitively whether an applicant actually committed a serious nonpolitical crime. Rather, it is “enough to find that there are serious reasons for considering that [s]he has committed such a crime.” *Matter of Ballester-Garcia*, 17 I&N Dec. 592, 595 (BIA 1980) (internal quotation marks omitted). “Serious reasons for believing” is equivalent to probable cause. *Matter of E-A-*, 21 I&N Dec. 1, 3 (BIA 2012).

In determining the seriousness of the offense, the Court must look to the “atrociousness” of the alleged criminal behavior. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 422 (1999). When the purported crime is not “obviously heinous,” the Court must consider additional factors in deciding whether or not the applicant’s actions constitute a serious nonpolitical crime. *Ballester-Garcia*, 17 I&N Dec. at 595. These factors include, “the alien’s description of the crime, the turpitidinous nature of the crime according to [Board] precedents, the value of any property involved, the length of sentence imposed and served, and the usual punishments imposed for comparable offenses in the United States.” *Id.*

Analyzing whether an applicant has committed a serious nonpolitical crime requires a determination as to whether the offense is political in nature. *Matter of McMullen*, 19 I&N Dec. 90 (BIA 1984). A crime is political if “the political aspects of the offense outweigh its common-law character.” *Id.* at 97-98; *see also Aguirre-Aguirre*, 526 U.S. at 425.

C. Withholding of Removal Pursuant to § 241(b)(3) of the Act

To establish eligibility for withholding of removal under the Act, an applicant must demonstrate that her “life or freedom would be threatened in that country because of the [applicant’s] race, religion, nationality, membership in a particular social group, or political opinion.” Section 241(b)(3)(A) of the Act. Specifically, the applicant must establish that it is more likely than not that she will be subjected to persecution if returned to the country from which she claims protection. 8 C.F.R. § 1208.16(b)(1)(i); *see also INS v. Stevic*, 467 U.S. 407, 429–30 (1984); *Cardoza-Fonseca*, 480 U.S. at 423. An applicant who fails to demonstrate the well-founded fear of persecution required for asylum will necessarily fail to meet the higher burden of proof required for withholding of removal. *See Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010); *Camara v. Ashcroft*, 378 F.3d 361, 367.

D. Protection under the Convention Against Torture

To be extended protection under Article 3 of the Torture Convention, an applicant must establish that it is “more likely than not that he or she would be tortured if removed to the proposed country of removal.” 8 C.F.R. §§ 1208.16(c)(2), 1208.17(a). “Torture” is defined, in part, as the intentional infliction of severe pain or suffering by a public official, at the instigation of a public official, or with the consent or acquiescence of a public official. 8 C.F.R. § 1208.18(a)(1). Only “extreme form[s] of cruel and inhuman treatment” rise to the level of torture. *Matter of J-E-*, 23 I&N Dec. 291, 297 (BIA 2002). Before an applicant will qualify for protection under the Torture Convention, “specific grounds must exist that indicate the individual would be personally at risk.” *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). The mere existence of a pattern of human rights violations in a country does not constitute a sufficient ground for finding that a particular person would more likely than not be tortured. *Id.*

V. Arguments

The Respondent, through counsel, asserts that the Respondent is eligible for asylum as she suffered persecution on account of her membership in four distinct particular social groups, namely (1) Honduran girls viewed as property by their families,” (2) “Honduran women viewed as gang property and unable to leave,” (2) “former gang members,” and (4) “Honduran females.”

Respondent’s counsel also argues that the acts she performed while she was under the control of the MS-13 gang were not serious nonpolitical crimes as they were committed “under duress and with enormous regret.” The Respondent’s counsel claims that the definition of a serious nonpolitical crime centers on the “atrociousness” of the act and the intent to commit the crime. Counsel contends that the Respondent lacked the requisite mindset that would make the actions “atrocious.” Counsel argues that the Respondent’s participation in the gang was “limited to a few things.” Counsel highlights the fact that the Respondent was under the gang’s control during most of her youth, as she was forcefully recruited when she was ten years old and did not escape until she entered the United States with her sister when she was seventeen years old. Counsel contends that the Respondent, as a victim of repeated rapes and abuse, had experienced a serious level of trauma that left her in a vulnerable position, and that this trauma factored into her participation in the gang’s activities.

Counsel also claims that, even if the Respondent had committed a serious nonpolitical crime, she did so under duress. Counsel argues that the serious nonpolitical crime bar is

analogous to the persecutor bar and, as such, the Court should apply the duress exception outlined in *Matter of Negusie*, 27 I&N Dec. 347 (BIA 2018). Respondent's counsel argues that under the *Negusie* test, the Respondent must demonstrate that she: (1) acted under imminent threat of death or serious bodily injury to herself or others; (2) believed that the threatened harm would be carried out; (3) had no reasonable opportunity to escape or otherwise frustrate the threat; (4) did not place herself in a situation in which she knew or should have known that she would likely be forced to act; and (5) knew or should have known that the harm she inflicted was not greater than the threatened harm. *Id.* Counsel argues that the Respondent meets all five prongs of this test.

The Department's attorney asserts that none of the Respondent's proposed particular social groups are cognizable under *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018) as the groups do not exist independently of the harm suffered.

The Department also claims that the Respondent has not met her burden to show that the serious nonpolitical bar does not apply to her asylum application. The Department argues that the acts that the Respondent perpetrated while she was in a gang were certainly serious nonpolitical crimes under *Matter of E-A-*, 21 I&N Dec. 1 (BIA 2012), and that there is no specific evil intent required for the bar.

The Department contests the Respondent's argument that there is a duress exception for the serious nonpolitical crime bar as *Negusie* applies to the persecutor bar and there is no case law that supports such a finding in this instance. Additionally, the Department alleges that, even if the Court were to apply the five factor test in *Negusie* to the case at hand, the Respondent could not establish that she committed the acts under duress. Specifically, the Department argues that the Respondent had a "reasonable opportunity" to escape, but chose to return to gang life. The Department also contends that the Respondent would perform some of the acts of her own volition and that gang members would stop her when she got "out of control."

VI. Findings

The Court has considered the arguments of both parties and the entire record carefully. All evidence and testimony has been considered, even if not specifically addressed in the decision.

A. Credibility

The parties agreed that the materials submitted by Respondent were credible and there was no reason for her to testify. These materials show that at her asylum interview she provided credible responses to the questions asked, including those answers that would place her in legal jeopardy. *See generally* Exh. 6. For this reason, the asylum officer explicitly found the Respondent credible, noting that her “testimony was detailed, consistent and plausible.” Exh. 6 at 2. After considering the totality of the evidence, the Court finds that the Respondent’s claim is credible.

B. Asylum

1. *Persecution On Account of a Protected Ground*³

The Respondent suffered persecution on account of her membership comprised of “Honduran females.” *Id.* The social group is composed of individuals who share common, immutable characteristics, namely sex and nationality. *See Matter of Acosta*, 19 I&N Dec. at 212. The Board in *Matter of Acosta* held that sex is an immutable characteristic as it is something that “members of the group either cannot change, or should not be required to change because it is fundamental to their identities.” 19 I&N Dec. at 233. Nor is it possible for someone to amend their nationality in order to avoid certain kinds of treatment. *Id.* Accordingly, the particular social group of Honduran women satisfies the immutability requirement.

The particular social group also is socially distinct as it is recognized as a group by the community at large. Country conditions reports and articles explain that Honduran society views “Honduran females” as a separate and distinct group in their community. By virtue of being “female,” Honduran women are more likely to experience certain kinds of harm, including rape and femicide. Exh. 3, Tab P at 54 (stating that “femicide is the leading cause of death for young women” in Honduras); Exh. 4, Tab CC at 145 (noting that “sexual and gender-based violence against women and girls is reportedly widespread, as is the forcible recruitment of girls to carry

³There is an argument that the Department should be held to its concession on September 28, 2017, that, notwithstanding the serious nonpolitical crime bar, the Respondent was eligible for asylum. Cf. *Matter of Velasquez*, 19 I&N Dec. 377, 382 (BIA 1986) (holding that respondents are bound by prior counsel’s concession of removability). While *Matter of A-B*, 27 I&N Dec. 316 (A.G. 2018) was issued after that concession, before the federal district court in *Grace et al. v. Whitaker*, No. 18-CV-01853 (U.S. District Court for D.C. Dec. 19, 2018), see, e.g., *slip op* at 60, the government took the position that nothing in that decision was new law. However, given the Attorney General’s express dislike for the concessions made in *Matter of A-B*, the Court will engage in a complete analysis of the evidence before it in this matter.

out tasks for the gangs”). Additionally, Honduran women face discrimination in the workforce based on their gender, as well as a significant disparity in pay between them and their male counterparts. Exh. 4, Tab AA at 52. Women in Honduras are also expected to be the primary caregivers for their children, whereas, men are the primary breadwinners. *Id.* at 50. In Honduran society, gender roles are narrowly defined and enforced. *Id.* Because the evidence in the record supports the fact that Honduran society views “Honduran females” as a group, the social distinction requirement is satisfied.

Similarly, the group is particular as it is “defined by characteristics that provide a clear benchmark for determining who falls within the group.” *Matter of A-B-*, 27 I&N Dec. at 335 (quoting *Matter of M-E-V-G-*, 26 I&N Dec. at 239). This is true of Honduran females — it is clear who falls within the group and who does not. Honduran women are members of the group, while Honduran men and women of other nationalities are not. This particular record confirms that the concept of “Honduran females” as a whole is specifically defined as well. Exh. 3, Tab M at 41 (noting that “gender-based violence is now the second highest cause of death for women of reproductive age in Honduras”); Exh. 4, Tab BB at 83 (“recognizing that “[m]ale control over female bodies, and determination of female activities within the group are integral to gang culture”). Moreover, the group is not “defined by [its] vulnerability to private criminal activity;” rather, it is characterized by the shared experiences that are unique to women in Honduras, including job discrimination and the expectation that they be the primary caregivers in the home. Exh. 4, Tab AA at 50, 52; *Cf. Matter of A-B-*, 27 I&N Dec. at 335. Therefore, the particular social group satisfies the particularity requirement. The particular social group comprised of “Honduran females” is cognizable because it is immutable, socially distinct, and defined with particularity.

The Respondent has also established that she suffered harm because of her membership in this particular social group. At the young age of six, she was raped by two of her uncles and her cousin while she was visiting her mother. Exh. 4, Tab W at 2. When the Respondent reported this incestuous rape to her mother, her mother did not believe her and beat her instead of reporting the incident to the authorities. *Id.* The Respondent was also the subject of a brutal gang rape by two men she met in Tegucigalpa when she was just ten years old. *Id.* She immediately reported the incident to the authorities who declined to help her. *Id.* She was raped daily and forced to act as a sex slave for the Mara 18 gang from the time she was ten years old

until her departure from Honduras when she was seventeen years old. *Id.* Prior to her entry in the U.S., the Respondent suffered extreme violence at the hands of men who targeted her because of her status as a “Honduran female.” Country conditions evidence supports this finding as “[g]irls are reportedly targeted from a young age by gangs with demands to become ‘wives’ or girlfriends of gang members.” Exh. 4, tab CC at 142–43. Additionally, it is evident that rape is “a serious and pervasive societal problem” and that “violence against women is widespread and systematic” in Honduras. Exh. 4, Tab AA at 29; Exh. 3, Tab N at 45 (citation omitted). Specifically, gang members generally use rape as a weapon and a tool to control the masses. *See generally* Exh. 3, Tab P; Exh. 4, Tab BB at 83 (noting that girls are often forced to engage in sexual relations with gang leaders). It is apparent that the Respondent’s uncles, cousin, gang members, and other men in Honduras preyed on the Respondent’s vulnerability as a “Honduran female” to obtain sexual gratification and there is every indication that the Respondent would be susceptible to the same abuse if she went back to Honduras. These reports support the determination that the Respondent suffered harm because of her status as a “Honduran female” and that it is likely that she would face similar harm if she were to return to Honduras.

The Respondent also has provided sufficient evidence to establish that the government in Honduras is unwilling and unable to protect her from harm. The Respondent reported the incestuous rape that she suffered at the hands of her uncles and cousin to her mother, who proceeded to beat her instead of calling the authorities. Exh. 4, Tab W at 2. As the Respondent was only six years old at the time of the attack, it is natural that she would first go to her mother for help and would not be expected to file a police report of her own accord. *Id.* The Respondent also explained that she went to the police after she was gang raped in Tegucigalpa and they informed her that they could not do anything to help her. *Id.* at 3. It is understandable that the Respondent would not seek the protection of the police again after she was summarily dismissed when she attempted to report a rape. Additionally, the Honduran government does little to alleviate the sexual violence which takes place within its walls as “[v]iolence against women and impunity for perpetrators continued to be a serious problem.” Exh. 4, Tab AA at 49. While the government seems to have enacted some laws to aid in the protection of females, these laws are rarely enforced and entirely ineffective. *See* Exh 4, Tab AA at 35, 49 (recognizing that the Honduran government has enacted laws criminalizing rape, but noting that “[c]orruption and impunity remained serious problems within the security forces.”). The Respondent’s own

account, coupled with the country conditions evidence in the record, establish that the Honduran government is either unable or unwilling to protect the Respondent from the harm she fears.

The Respondent has demonstrated that she suffered past persecution on account of her membership in the particular social group comprised of “Honduran females.” The Respondent thus benefits from a presumption of a well-founded fear of future persecution, and the Department has not rebutted that presumption. *See* 8 C.F.R. § 1208.16(b)(1)(i); *see also Matter of A-T*, 25 I&N Dec. 4 (BIA 2009).

2. Serious Nonpolitical Crime Bar

The Department argues that the Respondent is subject to the serious nonpolitical crime bar because she participated in the torture of fellow and rival gang members under the direction of the Mara 18. The Respondent claims, in turn, that the acts she committed on the gang’s behalf do not constitute serious nonpolitical crimes because she was forced to participate in this criminal activity and did not have the “wicked intent” required for the commission of a serious nonpolitical crime. She does not contend that her criminal behavior was nonpolitical in nature.

The Respondent’s participation in the torture of other gang members would generally be considered a serious nonpolitical crime. In her asylum interview, the Respondent was forthright about her participation in this torture. *See generally* Exh. 6. She specifically noted that she was told to “make them suffer” if they did not tell the truth. *Id.* According to the Respondent, this torture included “cutting them on some part of their body” and “electric shocks.” *Id.* She also admitted that she threatened their families with violence, if they refused to answer truthfully. *Id.*

The fact that the Respondent participated in the torture of other individuals is very concerning; however, the seriousness of the crime is mitigated by some outstanding factors. As noted by the asylum officer who reviewed the Respondent’s case at the USCIS, “in keeping with the language and structure of [] § 208(b)(2) [of the Act], additional factors” including “age, intent, knowledge and duress” should be “considered in determining if a crime is ‘serious.’” Exh. 6. In the case at hand, the Respondent was extremely young during the commission of the crime and was the subject of repeated sexual abuse at the hands of gang members. In her interview with the asylum office, she explained that she participated in the torture of other gang members to avoid violent rape and death. *Id.* Additionally, she explained that she did not want to hurt other people, but that she felt that she “had to” in order to evade substantial harm of her own. *Id.* The Respondent also was suffering from severe mental health issues at the time of the

torture, including hallucinations, suicidal ideations, and psychosis. Exh. 3, Tab C at 7. The Respondent's young age, lack of intent, mental health issues and the fact that she was acting under penalty of rape and death are mitigating factors that lessen the "seriousness" of the crime at issue in this case. As such, the Respondent has not committed a *serious* nonpolitical crime.

Even if the Respondent had committed a serious nonpolitical crime, she is eligible for a duress exception. There is no explicit duress exception for the serious nonpolitical crime bar, but duress is a common consideration when analyzing the consequences of criminal convictions. See *U.S. v. Bailey*, 444 U.S. 394, 409 (1980) (noting that duress is an affirmative defense that "excuse[s] criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of criminal law"). Indeed, the Board has considered coercion and duress in the context of serious nonpolitical crimes. In *Matter of E-A-*, the Board found that the respondent was subject to the serious nonpolitical crime bar because "generalized fear is not sufficient to show that he would have suffered any dire consequences, such as serious physical harm or economic persecution, if he had refused to participate in the group." 26 I&N Dec. 1, 8 (BIA 2012). While the Board ultimately determined that the bar applied in *Matter of E-A-*, it acknowledged that duress was a factor to be considered when applying the bar to the respondent's asylum application. *Id.*

Although the Sixth Circuit Court of Appeals upheld the Board's finding that a Respondent was barred from relief for commission of a serious nonpolitical crime in *Urbina-Mejia v. Holder*, 597 F. 3d 360, 2369-370 (6th Cir. 2010), the possibility of a duress exception was recognized. However, the Court upheld the finding that a fourteen-year-old young man had not been coerced into criminal acts as a gang member, based on the Judge's finding that he had "possessed a fair amount of autonomy in that he shared in the proceeds of his crimes and carried a firearm." This case at bar is easily distinguishable, since the Respondent was subject to the "slavery-like practices" that gangs inflict on young women (United Nations Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, on her mission to El Salvador* (Aug. 3, 2016) at 10) of sexual acts based on forced violence, and she did not have the level of autonomy described in *Urbina-Mejia*.

In *Matter of Negusie*, the Board explicitly stated that a duress exception exists for the persecutor bar. 27 I&N Dec. 347 (BIA 2018). In doing so, the Board compared Section 203(e)

of the Refugee Act to Article 1F of the Exclusion Clauses “provided in the Convention.” *Id.* at 354–55. Section 203(e) of the Refugee Act enumerated the bars to relief, including the persecutor bar and the serious nonpolitical crime bar. Article 1F of the Exclusion Clauses stated similar bars to protection under the Convention. When analyzing the two sections together, the Board noted that “the ‘serious nonpolitical crime’ provisions of sections 208(b)(2)(A)(iii) and 241(b)(3)(B)(iii) of the Act correspond to Article F1(b) of the Convention.” *Id.* at 355 (citation omitted). The Board went on to find that there is a duress exception to the persecutor bar because “Congress intended that the persecutor bar be interpreted in a way that not only comports with [its] obligations under Article 1F(a) of the Convention but also reflects the international understanding of those obligations.” *Id.* at 356. The Board believed that the Convention intended for the adjudicator to consider duress in determining whether to apply the persecutor bar to a respondent’s asylum application. *Id.*

Based on the Board’s reasoning in *Negusie* and its willingness to consider duress with respect to the serious nonpolitical crime bar in *E-A-*, it is appropriate to apply a duress exception in the case at hand. Given the similarities between the persecutor bar and the serious nonpolitical crime bar, the Court will apply the *Negusie* test to determine if the Respondent is eligible for a duress exception. Under this test, the Respondent must demonstrate that she “(1) acted under an imminent threat of death or serious bodily injury to [her]self or others; (2) reasonably believed that the threatened harm would be carried out unless [s]he acted or refrained from acting; (3) had no reasonable opportunity to escape or otherwise frustrate the threat; (4) did not place [her]self in a situation in which [s]he knew or reasonably should have known that [s]he would likely be forced to act or refrain from acting; and (5) knew or reasonably should have known that the harm [s]he inflicted was not greater than the threatened harm to [her]self or others.” *Id.* at 363.

The Respondent demonstrated that she “acted under imminent threat of death or serious bodily injury” when she participated in the torture of fellow and rival gang members. *Id.* The Respondent explained that she was subjected to brutal rape on a daily basis and was only able to get a reprieve from this sexual violence when she hurt other people on behalf of her abusers. Exh. 6. The Mara 18 gang members also threatened to torture if she did not comply with their orders. Exh. 4, Tab W at 3. The threatened harm was “imminent” as the gang members had already raped the Respondent and promised more sexual abuse if she refused to participate in the

torture. Exh. 4, Tab W at 3; Exh. 6. Accordingly, the Respondent “acted under imminent threat of death or serious bodily injury.” *Matter of Negusie*, 27 I&N Dec. at 363.

The Respondent also “reasonably believed that the threatened harm would be carried out” if she did not do as she was told. *Id.* Again, the Respondent already was the subject of repeated abuse and knew that the gang members would follow through on their threats because they had done so in the past. Exh. 4, Tab W at 3; Exh. 6. Additionally, she saw the way that members of the Mara 18 treated people who did not comply with their demands. Exh. 6. Country conditions reports also support the Respondent’s contention that gang members follow through on their threats as they are known to use rape and violence as tools to control people. *See generally* Exh.3, Tab P. Based on her own experiences, as well as widely-known information about the actions of gang members in Honduras, the Respondent was reasonable in her belief that “the threatened harm would be carried out.” *Matter of Negusie*, 27 I&N Dec. at 363.

The Respondent did not have a “reasonable opportunity to escape or otherwise frustrate the threat.” *Id.* The Department claims that the Respondent was able to escape the gang once before when she was ten years old and went to Tegucigalpa to look for work. Exh. 4, Tab W at 2 – 3; Exh. 6. However, the Respondent was brutally gang raped by two men in Tegucigalpa and returned to her hometown to seeking protection after this traumatic event. *Id.* Once she returned, she had no choice but to rejoin the gang, having been abandoned by her family. Exh. 4, Tab W at 2. This incident demonstrates that the Respondent tried and failed to get out from under the thumb of the Mara 18 gang, but was unable to strike out on her own without facing extreme sexual violence. *Id.* at 2 – 3. After returning to her hometown, she was again forcefully recruited by the Mara 18 gang and acquiesced to their demands under threat of death. *Id.* at 3. When she was actually able to escape again, she fled to the United States with her sister and sought asylum. *Id.* The Respondent took the first “reasonable opportunity” she had to leave the Mara 18 and escaped to the United States. *Matter of Negusie*, 27 I&N Dec. at 363.

The Respondent did not “place [herself] in a situation in which [s]he knew or reasonably should have known that [s]he would likely be forced to act.” *Id.* The Respondent was recruited into the Mara 18 gang at an extremely young age under threat of force. Exh. 4, Tab W at 2–3. At the time of the forceful recruitment, the Respondent had been abandoned by her family and suffered significant physical and sexual abuse. *Id.* She had nowhere else to turn and feared harm to herself and members of her family if she refused. *Id.* at 3. Her gang membership and

participation in torture was entirely involuntary and she did not willingly put herself into a situation that would require her to harm other people.

Finally, the Respondent also “knew... that the harm [s]he inflicted was not greater than the threatened harm” to herself. *Matter of Negusie*, 27 I&N Dec. at 363. Gang members threatened the Respondent with repeated rape and death if she did not follow their orders. Exh. 4, Tab W at 3; Exh. 6. In her asylum interview, she stated that gang members “would have done the same to her” if she refused to hurt people on their behalf. Exh. 6. She *did* suffer worse harm as she was raped daily and was sometimes forced to have sex with two to three gang members at the same time. Exh. 6. They also tortured her when “she did not comply with their orders.” Exh. 4, Tab W at 3. The fact that the Respondent hurt other gang members to escape even a bit of this daily abuse and potential death demonstrates that she knew that the harm to herself was the same as, if not greater than, the atrocities that the Mara 18 gang members committed and threatened to commit against her person.

The Respondent satisfied the five-factor *Negusie* test. Accordingly, she is eligible for a duress exception to the serious nonpolitical crime bar. As such, the Respondent’s application for asylum will be granted.

C. Withholding of Removal under § 241(b)(3) of the Act and Relief under the Convention Against Torture

Since the Respondent has established eligibility for asylum under Section 208 of the Act, it is not necessary to reach the merits of her claim for withholding under section 241(b)(3) of the Act or for relief pursuant to the Convention Against Torture, as asylum is a greater benefit which obviates the necessity of withholding of removal. *See INS v. Bagamashad*, 429 U.S. 24, 25 (noting that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

VII. Conclusion

The Respondent has also demonstrated that there is a reasonable possibility that she will face future persecution on account of her membership in a particular social group defined as “Honduran females.” She also has established that she is not subject to the serious nonpolitical crime bar. Therefore, the Respondent’s application for asylum is granted. As a grant of asylum confers a greater benefit upon the Respondent, the Court will not reach the merits of her applications for withholding of removal and relief under the Convention Against Torture.

In light of the foregoing, the following order is entered:

ORDER

It is hereby ordered that:

Respondent's application for asylum pursuant to § 208 of the Act is **GRANTED**.

