

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

Naima Said & Assoc.
Said, Naima
5513 Twin Knolls Rd.
Ste. 219
Columbia, MD 21045

In the matter of

File A

DATE: Mar 21, 2019

- ____ 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

____ Other: _____

hcd _____
COURT CLERK
IMMIGRATION COURT

FF

cc: DHS, ICE, OFFICE OF THE CHIEF COUNSEL
31 HOPKINS PLAZA 16TH FLOOR
BALTIMORE, MD, 212010000

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

IN THE MATTERS OF:

[REDACTED]

IN REMOVAL PROCEEDINGS

Case A# [REDACTED] (Lead)

RESPONDENTS

CHARGE:

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act, as amended (Act), removable 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 card, or other valid entry document required by the Act, and a valid unexpired passport, or other document of identity and nationality as required under the regulations issued 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 RESPONDENTS:

Naima Said, Attorney at Law
Naima Said & Associates
5513 Twin Knolls Road, Suite 219
Columbia, MD 21045

ON BEHALF OF THE DEPARTMENT:

Jennifer Hastings, Assistant Chief Counsel
31 Hopkins Plaza, Suite 1600
Baltimore, MD 21201

WRITTEN DECISION AND ORDER

I. Statement of the Case

On August 24, 2016, the Department of Homeland Security (the Department) placed the Respondents into removal proceedings through the filing of Notices to Appear.¹ Exhs. 1. The Department alleged that the Respondents are natives and citizens of Honduras (not the United States) who entered the United States on May 24, 2016 without a valid entry document and was not then inspected by an Immigration Officer. *Id.* Based on the foregoing allegations, the Department charged the Respondents with removability pursuant to Section 212(a)(7)(A)(i)(I) of the Act. *Id.* In Written Pleadings, filed on August 31, 2017, the Respondents admitted the allegations contained in the Notices to Appear and conceded the charges of removability. Exh. 2. Therefore, removability is established by clear and convincing evidence. *See* § 240(c)(3) of the Act; *see also* *Woodby v. INS*, 385 U.S. 276 (1966).

As relief from removal, the Lead Respondent filed an application for asylum, withholding of removal, and relief under the Torture Convention with the Baltimore Immigration Court on May 23, 2017, with her son, the Minor Respondent, as a derivative. Exh. 3, Tab A. At an individual hearing on July 26, 2018, the Lead Respondent testified in support of the application. Both parties gave brief closing arguments. At the close of the hearing, the Court reserved the matter for the issuance of a written decision.

II. Documentary Evidence

- **Exhibits 1**, Notices to Appear, filed August 24, 2016.
- **Exhibit 2**, Respondents' Written Pleadings, filed August 31, 2017.
- **Exhibit 3**, Respondents' Applications for Asylum, Withholding of Removal, and Relief under the Torture Convention, Form I-589, with Supporting Evidence, Tabbed A-C, filed May 23, 2017.

A. Applications:

Lead Respondent's Application for Asylum, Withholding of Removal, and Relief under the Torture Convention, Form I-589, filed May 23, 2017; and

¹ The Lead Respondent, [REDACTED] (A- [REDACTED] 703) is the mother of the Minor Respondent, [REDACTED], age five.

- Minor Respondent's Copy of the Lead Respondent's Application for Asylum, Withholding of Removal, and Relief under the Torture Convention, Form I-589, filed May 23, 2017;
- B. Biographic Information:
Lead Respondent's Birth Certificate with Translation;
Minor Respondent's Birth Certificate with Translation; and
- C. Country Condition Documents:
U.S. Dep't of State, *Honduras 2016 Human Rights Report*; and
United Nations High Commissioner for Refugees, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (Oct. 2015).

• **Exhibit 4**, Respondents' Supporting Evidence, Tabbed A-D8, filed January 23, 2019

- A. Lead Respondent's Statement;
- B. Lead Respondent's Passport;
- C1. WhatsApp Messages between Lead Respondent and Ex-Partner, [REDACTED];
[REDACTED];
- C2. Statement by Lead Respondent's Mother [REDACTED], with Identification Card dated December 7, 2019;
- C3. Statement by Lead Respondent's Friend, [REDACTED];
- C4. Statement by Lead Respondent's Neighbor, [REDACTED];
- C5. Statement by Lead Respondent's Neighbor, [REDACTED];
- C6. Lead Respondent's Psychological Evaluation, dated September 17, 2018;
- D1. Sorcha Pollak, *Anyone can Murder a Woman in Honduras and Nothing will Happen*, Irish Times (May 11, 2015), <https://www.irishtimes.com/news/world/anyone-can-murder-a-woman-in-honduras-and-nothing-will-happen-1.2207043>;
- D2. Cecilia Menjivar et al., *The Architecture of Femicide: The State, Inequalities, and Everyday Gender Violence in Honduras*, Latin American Research Review (Aug. 16, 2017);
- D3. Nadine Jawad et. al., *Being Beaten is Not Enough*, Amnesty International USA (Aug. 13), <https://medium.com/@amnestyusa/being-beaten-is-not-enough-b792826edf09>;
- D4. *Honduras' Compliance with the Convention Against Torture Parallel Report Relating to Violence Against Women*, The Advocates for Human Rights (July 1, 2016);
- D5. Stephen Piggott, *Jeff Sessions: Champion of Anti-Muslim and Anti-Immigrant Extremists*, Southern Poverty Law Center (Nov. 18, 2016), <https://www.splcenter.org/hatewatch/2016/11/18/jeff-sessions-champion-anti-muslim-and-anti-immigrant-extremists>;
- D6. Amber Phillips, *10 Things to Know about Sen. Jeff Sessions, Donald Trump's Pick for Attorney General*, The Washington Post (Jan. 10, 2017), https://www.washingtonpost.com/...out-sen-jeff-sessions-donald-trumps-pick-for-attorney-general/?noredirect=on&utm_term=.86f716dce987;
- D7. U.S. Dep't of State, *Honduras 2016 Human Rights Report*; and

III. Testimony

The Lead Respondent testified that she entered the United States because she feared that her partner, [REDACTED], wanted to harm her and kill her. She lived with her partner from 2008 until 2016. Her family did not approve of the relationship, but she lived with him anyway.

During the entirety of her relationship with her partner, he treated her “very bad” and called her names, such as “stupid,” “idiot,” and “son of a bitch.” She said that he always hit her. She recalled the first instance of abuse occurred when they were living together and her partner was angry that she was not home when he arrived. She was at her mother’s house and subsequently, her partner followed her and yelled at her. He asked her if the people at her mother’s house were her lovers and questioned why she had gone there without his permission. Whenever she left the house, she was required to ask her partner for permission to do so. When they returned home, he called her stupid, grabbed her by the neck, threw her against the door, and hit her. She noted that this caused her to have many bruises and she was unable to see her family for two weeks.

The Lead Respondent’s partner was bothered by minor things. For example, he would get angry if he disliked the food that she cooked, if she did not clean his shoes correctly, or if she did not properly clean the floors. He also was very possessive. Although the Lead Respondent and her partner each had cellphones, he would use her cellphone because he wanted to control her. She added that he would search her phone and if he found something that he did not like that he would insult her and hit her. He often called her “an idiot,” “trash,” or “bitch.”

The Lead Respondent’s partner was violent during her pregnancy. She testified that he would always push her. She recalled that when she was approximately six or seven months pregnant he grabbed her hands, pushed her against the door, and caused her to fall. Another instance of abuse occurred soon after she had a cesarean and was in recovery. The Lead Respondent said that she asked her partner to help her with their son because he was very little and she was still recovering. However, her partner got very upset that she was complaining. As a result, he yelled at her, grabbed her hands, and pushed her. He, again, called her “stupid” and “son of a bitch.” She explained that it was during this time that she realized that her partner was cheating on her with her cousin.

The Lead Respondent's partner forced her to have sex with him even when she refused. She explained that he raped her. She believed that he abused her because she was a woman. She did not leave him after the rape or earlier because he had threatened to kill her. He would take their son away and lock her in a room. She was unable to leave because he would take the keys with him.

The Lead Respondent testified that she did not call the police about the abuse she experienced because partner abuse is normal in Honduras. Specifically, it is normal for men to hit their female partners. She added that the police tell victims of domestic abuse that it is a family problem and that they cannot do anything about it.

The Lead Respondent testified that she was not the only woman in Honduras who was mistreated or abused. She noted that her mother, sisters, female cousins, and female neighbors experienced similar abuse by their partners. She heard her father call her mother names. Her father's abuse against her mother did not stop until he died. She also heard her sister's husband and her cousins' husbands call them names. She knew this because she overheard the abuse and lived with her sister for some time. In particular, the Lead Respondent recalled that her cousin, [REDACTED], was physically abused by her partner. Her cousin called the police, but they did not do anything. Her cousin had to flee to the United States to avoid further abuse. The Lead Respondent's sister, [REDACTED] was also hit by her husband, but she did not call the police because she knew that the police did not help her cousin in a similar situation.

The Lead Respondent said that her partner also abused his ex-partner, [REDACTED]. His ex-partner called the police and reported that he had hit her, but they did not help her. He was detained, but then released within twenty-four hours. After he was released, he hit his ex-partner again. When the Lead Respondent asked his ex-partner to provide a statement, she refused to do so because she was fearful that he would kill her as she still lives in Honduras. The Lead Respondent is unaware if her partner continued to hit his ex-partner after the Lead Respondent began a relationship with him.

Prior to departing from Honduras, the Lead Respondent did not try to obtain a protective order because she knew that his ex-partner had previously requested one with no avail. After she left Honduras, her partner attempted to contact her by calling her cellphone. She thinks that either a friend or relative gave him her phone number. She testified that in October 2017, he sent

her text messages asking about her location and questioning why he could not see her location. She believed that he still wanted to control her, so she blocked his phone number.

The Lead Respondent does not believe that she could live elsewhere in Honduras and feel safe. She noted that Honduras is a small country and that the police cannot protect her. The Lead Respondent fears that if she returns to Honduras that her partner will look for her and kill her.

In regards to her asylum interview on May 24, 2016, at the Karnes Detention Center, the Lead Respondent did not know what to say. She remembers stating that she equally feared gangs and her partner. However, the reason why she left Honduras was because of her partner's mistreatment. She confirmed that she said that her partner had emotionally harmed her. She noted that she was very emotional during the interview because it was not easy for her to talk about the abuse. She does not remember saying that her partner did not harm her. The Lead Respondent reiterated that she was unsure what she said because she was very emotional, as it was her first time out of her country and she had been separated from her son, but whatever she said during the interview she knows that she came to the United States because her partner physically abused her. She also testified that the asylum officer at the border mistreated her and cursed at her.

IV. Statement of the Law

A. Credibility

The REAL ID Act of 2005 amended various sections of the Act relating to relief from removal. Pub. L. No. 109-13, Div. B, 119 Stat. 231 (2005). Specifically, the Act was amended to include § 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. *Id.*

Uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof. See § 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 1997). The absence of such corroboration may lead to a finding that an applicant has failed to meet her burden of proof. *Id.* at 725-26. 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. See *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

An applicant for asylum bears the burden of establishing that she meets the definition of a refugee under Section 101(a)(42)(A) of the Act. Under this Section, a refugee is defined, in part, as an individual who is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996); 8 C.F.R. § 1208.13(a); § 208(b)(1)(B) of the Act. The applicant's fear of persecution must be country-wide. *Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985); see also 8 C.F.R. § 1208.13(b)(3). Additionally, the applicant must establish that she is unable or unwilling to avail herself of the protection of her country of nationality or last habitual residence. § 101(a)(42)(A) of the Act. An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. § 208(b)(1) of the Act; see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

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. § 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. at 222- 23; but see *Matter of A-E-M-*, 21 I&N Dec. 1157, 1159 (BIA 1998) (harassment in the form of a painted threat on the respondent's house is insufficient to establish persecution); see also *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015) (serious death threats constitute persecution).

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- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

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) (quoting *Matter of W-G-R-*, 26 I&N Dec. 208, 224 & n.8 (BIA 2014)); *see also Hernandez-Avalos*, 784 F.3d at 953 (holding that applicant’s credible belief that police would not have taken action on her reports against gang members, paired with country conditions reflecting police ineffectiveness and corruption, established that Salvadoran authorities were unable or unwilling to protect her).

If an 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). This presumption can be rebutted only if “[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” or the applicant could avoid future persecution by relocating to a different region of that country and it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(i); *see also Naizgi v. Gonzales*, 455 F.3d 484 (4th Cir. 2006). An applicant who fails to present a credible basis for a claim of past persecution may nevertheless prevail on a theory of future persecution.

To establish a well-founded fear of future persecution, the applicant must establish both a subjective and an objective component. *See Crespin-Valladares v. Holder*, 632 F.3d 117, 126 (4th Cir. 2011). Credible testimony by an applicant may be enough to satisfy the subjective component. Once a subjective fear of persecution is established, the applicant need only show that such fear is objectively reasonable; that is, she must present credible, specific, and detailed evidence that a reasonable person in her position would fear persecution. *See Matter of Acosta*, 19 I&N Dec. at 224-25. The applicant’s fear may be well-founded even if there is only a one in

ten chance of persecution. *Crespin-Valladares*, 632 F.3d at 126 (citing *Cardoza-Fonseca*, 480 U.S. at 431).

An applicant for asylum must also demonstrate that the persecution she 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. § 208(b)(1)(B)(i) of the Act; *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

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 320, 330-31 (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014) and *Matter of W-G-R-*, 26 I&N Dec. at 208); 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.” *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 *id.* at 251; see also *Matter of Acosta*, 19 I&N Dec. at 233. 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.

The Attorney General recently issued a decision providing a framework for analysis for asylum claims for victims of domestic violence by private actors.² *Matter of A-B-*, 27 I&N Dec. at 316. In that matter, the Attorney General stated that “there may be exceptional circumstances when victims of private criminal activity could” establish eligibility for asylum. *Id.* at 317. The Attorney General in particular decried the fact that in that case, the parties and the Board had not performed the necessary legal and factual analysis.” *Id.* at 319. He also decried the “insufficient deference to the factual findings of the immigration judge,” because the particular social group in that case based on *Matter of A-R-C-G-* had largely been uncontested by the parties. *Id.* at 319-20, 340; *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014). The Attorney General reiterated the requirements for showing a particular social group, and emphasized that the particular social group must exist independently of the harm asserted for the asylum application. *Id.* at 327-331, 334. In addition, the Attorney General noted that the mere fact that a country has problems policing certain crimes or that certain populations are more vulnerable to crimes cannot establish an asylum claim. *Id.* at 320.

The Court is bound by the Attorney General’s decision, except to the extent that it is superseded or supplemented by Fourth Circuit case law. The Fourth Circuit has a particularly rich body of jurisprudence on the issue of particular social groups and other areas of asylum law. See, e.g., *Crespin-Valladares*, 632 F.3d. at 117 (family is the “prototypical example” of a particular social group); *Hernandez-Avalos*, 784 F.3d at 944 (nuclear family as a particular social group); *Cordova v. Holder*, 759 F.3d 332 (4th Cir. 2014); *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017).

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

To establish eligibility for withholding of removal, an applicant must demonstrate that her “life or freedom would be threatened in that country because of [her] race, religion, nationality, membership in a particular social group, or political opinion.” § 241(b)(3)(A) of the Act. Specifically, the applicant must establish that it is more likely than not that she will be subject to persecution if returned to the country from which she seeks 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

² While *Matter of A-B-* provides analytical framework, there is nothing in the decision that appears to be new law. In fact, this is the position that the government took 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.

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*, 378 F.3d 361, 367 (4th Cir. 2004).

D. Relief under the Torture Convention

To be protected under Article 3 of the Torture Convention, an applicant must establish that it is “more likely than not that [she] would be tortured if removed to the proposed country of removal.” 8 C.F.R. § 1208.16(c)(2). “Torture” is defined, in part, as the intentional infliction of severe physical or mental 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). The severe pain or suffering must be inflicted on the applicant or a third person for such purposes as: (1) “obtaining... information or a confession,” (2) “punishing... for an act... committed or... suspected of having committed,” (3) intimidation or coercion, or (4) “for any reason based on discrimination of any kind.” *Id.* The Board has specified that only “extreme form[s] of cruel and inhuman treatment” rise to the level of torture. *Matter of J-E-*, 23 I&N Dec. 291, 297-99 (BIA 2002) (noting that mental pain or suffering may also constitute torture if it falls within the regulatory definition at 8 C.F.R. § 208.18(a)(4)).

In order to constitute torture, mental pain or suffering must be prolonged. 8 C.F.R. § 1208.18(a)(4). It also must be caused by or resulting from intentional pain or suffering, threatened or actual administration or application of mind altering substances or similar procedures, or threatened imminent death. *Id.* These causes or results can be directed towards the applicant or another person. *Id.*

In addition, before an applicant will qualify for protection under the Torture Convention, “specific grounds must exist that indicate [she] would be personally at risk.” *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). Where an applicant fears torture from multiple entities, she must show that the cumulative probability of torture exceeds fifty percent. *Rodriguez-Arias v. Whitaker*, No. 17-211, 2019 WL 542996, at *3 (4th Cir. Feb. 12, 2019).

V. 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 addressed in the decision.

A. Credibility

The Lead Respondent's testimony was credible overall. Her testimony generally was internally consistent and consistent with her asylum application and affidavit. Exh. 3, Tab A; Exh. 4, Tab A. She also submitted statements from her mother, friend, and neighbors to corroborate her claim. *See* Exh. 4, Tabs C2-C5. She testified clearly and consistently about when her partner emotionally and physically abused her. Her demeanor was appropriate to her testimony. She became very tearful when discussing the sexual and physical abuse. Further, a psychological evaluation conducted of the Lead Respondent determined that "it is highly unlikely that she is malingering or exaggerating symptoms." Exh. 4, Tab C6 at 31.

The Department confronted the Lead Respondent regarding some minor inconsistencies between her testimony and her Credible Fear interview, but these were not harmful to her credibility. The Department's attorney asked the Lead Respondent if she remembered stating to an asylum officer that she feared gangs in Honduras. The Lead Respondent affirmed that she did fear gangs. She added that she also told the asylum officer that she feared her partner. The Department alleged that the Lead Respondent told the asylum officer that her partner *did not* physically harm her. The Lead Respondent said that she did not remember that. She further explained that she was very emotional when she entered the United States and was unsure what she said because it was difficult for her to speak about the abuse. She also was confused and disoriented because it was her first time out of her country and she had been separated from her child. Regardless, the Department has not introduced the Credible Fear form into evidence for the Court to properly determine whether there were actually inconsistencies that would be harmful to the Lead Respondent's credibility. Thus, while the Court certainly would give the Credible Fear interview weight under the appropriate circumstances since it is designed to elicit the basics of an asylum claim, since the Department did not submit it into evidence the Court cannot give it any weight.

The Lead Respondent did not embellish about the extent of the harm caused by her partner nor the injuries that resulted from those incidents of abuse. For example, when asked whether her partner abused her, the Lead Respondent, without hesitation, stated that he repeatedly called her derogatory names and hit her. Additionally, she was honest and straightforward when discussing whether she reported her partner's abuse to the police. All of

these factors and the Lead Respondent's candid demeanor throughout her testimony supports a finding that she is credible.

B. Asylum

1. Persecution

The Lead Respondent was subjected to harm sufficiently severe to constitute persecution. The Lead Respondent testified that her partner sexually abused her. Due to the control that he exerted over the Lead Respondent, he was able to rape her. The sexual abuse that the Lead Respondent experienced alone qualifies as persecution. *Matter of Kasinga*, 21 I&N Dec. 357, 362 (BIA 1996) (indicating that rape, sexual abuse, and domestic violence may serve as evidence of past persecution); *Angoucheva v. INS*, 106 F.3d 781 (7th Cir. 1997); *Shoafra v. INS*, 228 F.3d 1070 (9th Cir. 2000); *Zubeda v. Ashcroft*, 333 F.3d 463 (3d. Cir. 2003) (recognizing that “rape and sexual violence may constitute sufficient persecution”); *Uwais v. United States Att'y Gen.*, 478 F.3d 513, 518 (2d. Cir. 2007) (finding that sexual assault and rape may constitute past persecution).

The Lead Respondent's partner also physically and verbally abused her on numerous occasions when he hit her and called her “daughter of sixty thousand bitches,” “son of a bitch,” “bitch,” and “stupid.” Exh. 4, Tab A at 1-3, Exh. 4, Tab C1. Consequently, while in Honduras, the Lead Respondent experienced “sufficient symptoms to warrant a diagnosis of PTSD” resulting from the abuse by her partner. Exh. 4, Tab C6 at 31. Her partner repeatedly threatened to kill her if she left him. Exh. 4, Tab A at 1-3. The death threats to the Lead Respondent's life also qualifies as persecution. See *Crespin-Valladares*, 632 F.3d at 126 (citing *Li*, 405 F.3d at 177). In the aggregate, the sexual abuse, the death threats, and other serious abuse the Lead Respondent has suffered undoubtedly rise to the level of persecution. *Li*, 405 F.3d at 177; *Hernandez-Avalos*, 784 F.3d at 944.

2. Protected Ground - Particular Social Group

The Lead Respondent purports that she suffered past persecution on account of her membership in a particular social groups defined as “women in Honduras,” “women in Honduras who are unable to leave their relationship,” and “Honduran woman viewed as property because of their position in a familial relationship.” The Lead Respondent's particular social group of “women in Honduras” lacks particularity because the group as defined is too amorphous as it would include *all* women in Honduras. *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (noting that “a

particular social group must be narrowly defined"). The two remaining groups as articulated are circular as it is defined by the harm an applicant suffered or fears. *See Matter of A-B-*, 27 I&N at 335; *see also Lukwago v. Ashcroft*, 329 F.3d 157, 172 (3d Cir. 2003); *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991); *Matter of R-A-*, 22 I&N Dec. 906, 919 (BIA 1999) (vacated on other grounds).

Nevertheless, there is sufficient evidence in the record to demonstrate that the Lead Respondent suffered past persecution on account of her membership in a particular social group composed of "women in domestic relationships in Honduras." Although the Attorney General overruled *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014) and held that the particular social group of "married women in Guatemala who are unable to leave their relationship" was not cognizable, "social group determinations are made on a case-by-case basis." *Matter of M-E-V-G-*, 26 I&N Dec. at 251(citing *Matter of Acosta*, 19 I&N Dec. at 233). The Attorney General overruled *Matter of A-R-C-G-*, in part, because the particular social group did not exist independently of the harm suffered by its members. *Matter of A-B-*, 27 I&N Dec. at 334-35. In this case, however, the particular social group composed of "women in domestic relationships in Honduras" exists independently of the harm asserted. *Id.* The group also shares "a narrowing characteristic other than their risk of being persecuted." *Id.* Not all women in domestic relationships in Honduras are automatically harmed; they are a group of women who share common experiences due to their relationship status and their location. Thus, unlike *Matter of A-R-C-G-*, the particular group in this matter is not defined by the harm alleged. Cf. *Matter of A-B-*, 27 I&N Dec. at 335.

Based on this particular record, the Lead Respondent has demonstrated that "women in domestic relationships in Honduras" is a viable particular social group. The particular social group is composed of members who share a common immutable characteristic, specifically their gender. *Matter of M-E-V-G-*, 26 I&N Dec. at 237. The Board in *Matter of Acosta* held that sex is an immutable characteristic as it is a common characteristic that "members of the group either cannot change, or should not be required to change because it is fundamental to their identities of consciences." 19 I&N Dec. at 233.

The record also establishes that Honduran society perceives the Lead Respondent's particular social group of "women in domestic relationships in Honduras" as a socially distinct group. *Matter of M-E-V-G-*, 26 I&N Dec. at 238. The Board held in *Matter of C-A-* that

“[s]ocial groups based on innate characteristics such as sex or family relationships are generally easily recognizable and understood by others to constitute social groups.” 23 I&N Dec. 951, 959 (BIA 2006). Nevertheless, the record demonstrates that Honduran society recognizes “women in domestic relationships” as a distinct group by its creation of laws to protect and prevent women from the consequences of being in *abusive* domestic relationships. Exh. 4, Tab D2 at 41 (the government of Honduras “ratified regional and international conventions and has laws on the books criminalizing intrafamilial violence, rape, and killings of women”). The government of Honduras enacted the Law Against Domestic Violence in 1997 and the Law of Equal Opportunities for Women in 2000. *Id.* at 45. The government also ratified the Convention on the Elimination of All Forms of Discrimination against Women in 2004 and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women in 2005. *Id.* In 2006 and 2013, the Law against Domestic Violence was amended. Exh. 4, Tab D4 at 67. Specifically, the Law against Domestic Violence aimed to protect women in domestic relationships from domestic violence and unequal exercise of power by “establish[ing] a mechanism for abused women to obtain a protective order against their abuser.” Exh. 4, Tab D2 at 48. It does not protect all women who are subjected to violence, rather the law protects women who are harmed by their partner. The Lead Respondent clearly falls within this group. The government of Honduras also passed a law in 2013 criminalizing femicide, defined as “a crime for ‘men who kill women for reasons of gender, with hatred and disdain toward them as women,’” punishable with 30-40 years imprisonment. *Id.* at 45, 48. Specifically, the law requires that “one of the following four circumstances must also be met: ‘sentimental relationship, history of acts of violence, persecution of any kind, or commission with malice.’” *Id.* at 48. The fact that the government of Honduras established these laws targeting women in domestic relationships demonstrates that society views these women as a distinct group who share commonalities and are in need of special protection.

Further demonstrating that Honduran society recognizes women in domestic relationships as a distinct social group is the fact that government institutions and non-profit organizations were established in Honduras to address the specific needs of women in general and those in domestic relationships. *Id.* (establishing the Interagency Commission on the Law against Domestic Violence); *Id.* (establishing of the National Women’s Institute as the “government agency responsible for the protection and advancement of Honduran Women”); Exh. 4, Tab D1

at 38 (although now abolished, the police had an emergency telephone line for female victims of violence); Exh. 4, Tab D3 at 60 (the center of Women’s Rights tracked violent deaths of women); Exh. 4, Tab D8 at 150 (the Honduran government operated reporting centers in Tegucigalpa and San Pedro Sula enabling women to report crimes and providing other services focusing on “prevention of gender-based violence”); Exh. 4, Tab D4 at 67 (the Femicide Unit within the Directorate-General of Criminal Investigation and Domestic Violence Offices at all departmental headquarters were created to protect women from violence); *Id.* (“The Honduran Supreme Court established specialized court on domestic violence and the Gender Unit.”); Exh. 4, Tab D7 at 109 (the government of Honduras “provide[s] to victims of domestic violence in hospitals and health centers”). Further demonstrating that Honduran society recognizes the Lead Respondent’s particular social group as socially distinct, the government of Honduras created a “Special Women’s Public Prosecutors Office” within the Public Ministry to enforce the Domestic Violence law. Exh. 4, Tab D2 at 48. The record shows that Honduran “society at large” has recognized women in domestic relationships as a distinct group through the enactment of these laws and the creation of programs for women who, as a result of being in a domestic relationship, are victimized. *Cf. Matter of A-B-*, 27 I&N Dec. at 336 (citing *Matter of W-G-R-*, 26 I&N Dec. at 217).

Next the particular social group composed of “women in domestic relationships in Honduras” is defined with particularity as the group 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). Members of the group must be women and must be in domestic relationships.³ The Attorney General held in *Matter of A-B-* that, standing alone, commonly accepted definitions within Guatemalan society, such as “married,” “women,” and “unable to leave the relationship,” are insufficient to establish particularity. *Matter of A-B-*, 27 I&N Dec. at 335. Yet, the Attorney General did *not* bar that certain terms, standing alone and grouped together, which have commonly accepted definitions in society, are sufficient to establish particularity. The Board held in *Matter of M-E-V-G-* that “it is critical that

³ While the proposed particular social group encompasses a large group of members, particular social groups are not automatically not viable because the group represents large portions of society. *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010). “Although the category of protected persons [within a particular group] may be large, the number of those who can demonstrate the required nexus likely is not.” *Matter of A-B-*, 27 I&N Dec. at 318 (quoting *Cece v. Holder*, 733 F.3d 662, 673 (7th Cir. 2013)).

the terms used to describe the group have commonly accepted definitions in the society of which the group is part.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). This particular record confirms that “women” and “domestic relationships” each have commonly accepted definitions in Honduran society and that the concept of “women in domestic relationships” as a whole has a commonly accepted definition as well. Exh. 4, Tab D8 at 150 (only *female* victims of *domestic* violence are entitled to certain protective measures); Exh. 4, Tab D7 at 109 (noting that “violence between *domestic* and intimate partners continued to be widespread” in Honduras); *Id.* (In 2015, 18,070 *women* filed complaints of violence against their *domestic partners* in the special *domestic* violence courts); Exh. 4, Tab D4 at 72 (domestic violence is viewed differently by the justice system and is treated leniently as provisions are not generally enforced).

Additionally, the social group composed of women in domestic relationships in Honduras is not “defined by their vulnerability to private criminal activity;” rather, the group is defined by the common experiences that the members share together. *Cf. Matter of A-B-*, 27 I&N Dec. at 335. The group shares experiences that are unique to women in domestic relationships, such as having a partner and not being single. While some members of the group *may* be subject to violence by their partners, known as domestic violence, the group is not defined by their vulnerability. Instead, domestic violence is a *possible* consequence that arises from being a member of the group and a member is not automatically vulnerable to private criminal activity as a member of the group.

In addition, a domestic relationship as defined in Honduran law is similar to the particular social group of nuclear family, which has been recognized by the Fourth Circuit as the “prototypical example” of a particular social group. *Crespin-Valladares*, 632 F.3d. at 117. Accordingly, based on the evidence in this particular record “women in domestic relationships in Honduras” is a cognizable particular social group.

3. *Nexus*

Next, there is both objective and subjective evidence to support a finding that the Lead Respondent was persecuted on account of her membership in the group of “women in domestic relationships in Honduras.” See § 208(b)(1)(B)(i) of the Act; *INS v. Elias-Zacarias*, 502 U.S. 478 (1992). This finding is supported by credible testimony of the Lead Respondent and corroborated by country conditions.

The Lead Respondent indicated in her testimony that she was specifically persecuted on account of her domestic relationship with her partner. The Lead Respondent testified credibly that her partner threatened her and harmed her in order to force her to obey his orders. Exh. 4, Tab A at 1 (when the Lead Respondent visited her mother without her partner's permission, he grabbed her by the neck, pushed her against the door, and insulted her); *Id.* at 2 ("He told me he would never let me leave and if I left him, he would kill me."). She also stated that her partner locked her in the house and took the keys in order to prevent her from leaving their house. *Id.* ("Hector refused to let me work... he would not allow me to leave... Hector told me that I belonged in the house and that our son was his and I could not leave him. He told me he would never let me leave."). During another incident, her partner beat her, told her that she had to say with him because she would never be free. *Id.* at 1. She testified that her partner raped her when she refused to have sex with him. During various incidents, he would verbally insult her, degrade her as a woman, and beat her because she did not clean to his liking, was not home when he arrived, and did not wash his clothes and shoes correctly. *Id.* at 1-2. ("Hector called me names like 'stupid' 'son of a bitch' 'a piece of trash.'"). The Lead Respondent described that whenever her partner got upset with her, he became aggressive causing him to emotionally and physically abuse her. *Id.* at 1-2. These statements indicate that at least one central reason for the Lead Respondent's persecution was her status as a woman in a domestic relationship. This is why her partner targeted her rather than some other person. *Zavaleta-Policiano*, 873 F.3d 241, 249-50 (4th Cir. 2017) (citing *Hernandez-Avalos*, 784 F.3d at 949-50); *Cruz v. Sessions*, 853 F.3d at 129-30.

In addition, the Lead Respondent has submitted a wealth of information on country conditions that confirms that private actors are persecuting "women in domestic relationships." Exh. 4, Tab D1 at 34 (woman feels like a prisoner in her own home because her partner nearly killed her and sends her threatening messages); *Id.* at 35 (in the past decade there has been "a sharp increase in domestic and sexual violence and gender based murder, a phenomenon known as femicide"); *Id.* at 37 (women are raped by their uncles and fathers. Miss Honduras Beauty Queen was murdered by her boyfriend.); Exh. 4, Tab D2 at 45 (the Honduran government "passed a series of laws that offered measures protecting women from violence and discrimination, including a law against domestic violence (1997) and a law of equal opportunities for women (2000)."); *Id.* at 47 ("[M]urders of women are disproportionately

committed by intimate partners and have become increasingly brutal and sexualized.”); *Id.* at 48 (Congress added Article 118A to the Honduran Penal Code criminalizing femicide, defined as men who kill women for reasons of gender who had shared a sentimental relationship); Exh. 4, Tab D1 at 38 (the violent machismo culture “has become a natural, accepted part of Honduran society”); Exh. 4, Tab D4 at 62 (“Violence against women is widespread and systematic in Honduras.”); Exh. 4, Tab D7 at 108 (“Prosecutors treat accusations of spousal rape somewhat differently, however, and evaluate such charges on a case-by-case basis.”); *Id.* at 109 (“Violence between domestic and intimate partners continued to be widespread”); Exh. 4, Tab D4 at 69 (“[M]any women reported being repeatedly raped and sexually abused by their intimate partners.”). Such evidence indicates that private actors are targeting women because of their status as a woman in a domestic relationship. It does not appear that such evidence was submitted in *Matter of A-B-*. Based on the evidence above, the Lead Respondent’s partner did not harm her based on their personal relationship, but because of her status as a member of this group.

The Attorney General cautioned in *Matter of A-B-*, 27 I&N Dec. at 338-39 that “[w]hen private actors inflict violence based on a personal relationship with a victim, then the victim’s membership in a larger group may well not be ‘one central reason’ for the abuse.” However, the Fourth Circuit has found in similar situations that the familial relationship is one central reason for the persecution. For example, in *Hernandez-Avalos*, 784 F.3d at 944, the Fourth Circuit reasoned that the respondent’s “maternal authority to control her son’s activities” was at least one central reason she was targeted. Similarly here, the Lead Respondent’s partner’s belief that he could control her because they were in a domestic relationship was at least one central reason that the abuse occurred. *See also Cruz v. Sessions*, 853 F.3d at 122 (overruling Board decision that threats were by a “private actor for personal reasons or on general levels of crime or violence” when the threats were by the suspected murderer of the domestic partner of a Honduran woman). In this case under Fourth Circuit law the Lead Respondent’s testimony and country conditions in the record indicate that her partner harmed her due to her status as a woman in a domestic relationship.

Considering the extensive evidence of machismo culture in Honduras and the persecutor’s various attempts to harm the Lead Respondent, it is clear that the Lead Respondent’s membership in the particular social group of “women in domestic relationships in

Honduras” was at least one central reason for the persecutor’s actions against her. Consequently, the Lead Respondent successfully established a nexus between the harm she suffered and a protected ground for purposes of asylum.

4. Government Unwilling or Unable to Protect from Private Actor

In addition to meeting her burden of proof for the statutory requirements for asylum above, the Lead Respondent has also shown that the government of Honduras is *either* unwilling *or* unable to control the private conduct she suffered and fears. 8 C.F.R. § 1208.13(b)(1); *Matter of A-B-*, 27 I&N Dec. at 337; *Mulyani v. Holder*, 771 F.3d 190, 198 n.8 (4th Cir. 2014); *Justo v. Sessions*, 895 F.3d 154, 163 (1st Cir. 2018) (citations omitted). Since the government’s “unwillingness and inability are two distinct issues... an applicant may be able to prove inability without proving unwillingness where the government’s willing efforts to protect its citizens fall short.” *Justo*, 895 F.3d at 163 (affirming *Khattak v. Holder*, 704 F.3d 197, 206 (1st Cir. 2013)). In the present matter, the record depicts many instances where the government of Honduras has been *willing* to address domestic violence and violence against women, in general. Exh. 4, Tabs D1-D4, D7-D8. However, this does not reflect its ability to do so. *Justo*, 895 F.3d at 163 (affirming *Khattak v. Holder*, 704 F.3d 197, 206 (1st Cir. 2013)); *Madrigal v. Holder*, 716 F.3d 499, 506-07 (9th Cir. 2012); *Garcia v. U.S. Att'y Gen.*, 665 F.3d 496, 503 (3d Cir. 2011). The record also evidences the Honduran government’s numerous failed attempts and ineffective laws and policies to prevent domestic violence and control the perpetrators. *See generally* Exh. 4, Tabs D1-D4, D7-D8.

Specifically, the Lead Respondent’s credible testimony in corroboration with the country conditions demonstrate that the government of Honduras is unable to protect her. 8 C.F.R. § 1208.13(b)(1); *Hernandez-Avalos*, 784 F.3d at 953 (holding that an applicant’s testimony with corroborating country conditions was sufficient to establish that the government was unable or unwilling to protect the applicant); *Id.* at 951 (quoting *Cordova*, 759 F.3d at 340). In *Hernandez-Avalos*, the respondent testified that going to the police was not an option because, while the police arrested gang members, they were then released and retaliated against those who report them. The Fourth Circuit found that she was able to show the government could not protect her based on country conditions, even though she had never filed a police report. In the case at bar, the Lead Respondent’s failure to go to police for fear that her partner would retaliate against her also is corroborated by country conditions.

The Lead Respondent’s failure to report her partner’s abuse to the police is not fatal to showing that the government of Honduras is unwilling or unable to protect as she has demonstrated that reporting the abuse to the police would have been futile. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (holding that failure to report persecution is not essential to showing that a government is unable or unwilling to control private conduct); *see also Justo*, 895 F.3d at 165 (quoting *Morales-Morales v. Sessions*, 857 F.3d 130, 135 (1st Cir. 2017)); *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1069 (9th Cir. 2017); *Lopez v. U.S. Att’y Gen.*, 504 F.3d 1341, 1345 (11th Cir. 2007). The Lead Respondent testified credibly that she did not report the abuse to the police because the police did not protect other women who had reported the abuse. Exh. 4, Tab A at 3 (Karina, her partner’s ex-partner, and her cousin, Yodani, both reported the abuse to the police, but the police did not protect them). She added that the police discourage women from reporting abusive husbands as the machismo culture in Honduras views domestic violence as not a serious crime. *Id.* at 1. Further, women who report domestic violence are labeled as “scandalized” since they make their family problems public and as such the police do not protect them. *Id.* at 2. Country Expert, Claudia Hermannsdorfer, confirms the legitimacy of the Lead Respondent’s fear of reporting her partner’s abuse to the police and the lack of protection that these women receive from police officers. Exh. 4, Tab D2 at 49 (“Women who seek help from the police are often told that the issue is a matter for her husband to decide, and that she should go home, be intimate with him, and he will forgive her. Other times, police simply tell the women to stop disobeying their husbands... Honduran police ignore threats made against women, treating them as nothing more than the product of over-excited emotions.”); *Id.* at 40 (“In contexts of impunity such as Honduras, the brutal killings of women denote the complicity of the state through its unwillingness or inability to provide prevention and response mechanisms.”).

Other country condition articles also verify the Lead Respondent’s claim. *Id.* at 51 (noting that women “rarely reported for fear of retaliation and due to the rampant impunity in situations of violence against women throughout the county”); Exh. 4, Tab D4 at 70 (women do not report domestic abuse to the police out of fear of retaliation and believed that the police will not help them as the police do not get involved in domestic affairs). One report notes that rape and domestic violence “continued to be underreported, however, due to fear of stigma,

retribution, and further violence.” Exh. 4, Tab D7 at 108; Exh. 4, Tab D2 at 50 (“[W]omen are afraid to report their cases to the police for fear of retaliation.”).

Even if the Lead Respondent had reported the abuse, only two and a half percent of cases of domestic violence were settled in 2014. Exh. 4, Tab D1 at 36. Although victims of domestic violence have various avenues to report the abuse, domestic violence occurs with impunity. Exh. 4, Tab D4 at 72 (“The failure of authorities to exercise due diligence in investigating, prosecuting and punishing perpetrators of violence against women contributes to an environment of impunity within the country.”); Exh. 4, Tab D8 at 136; Exh. 4, Tab D2 at 41 (“acts of commission and omission [by the government] create conditions that promote impunity and increase risks of victimization by normalizing the targeting of women for violence.”). According to a report from the United Nations, “Honduras has a 95% impunity rate for sexual violence and femicide crimes.” Exh. 4, Tab D4 at 72. Ninety-six percent of femicides remain unpunished. Exh. 4, Tab D2 at 46. Additionally, 94% of sexual violence goes unpunished. Exh. 4, Tab D4 at 71. In reported cases of sexual violence against women in 2014, only 276 out of 2,621 cases were resolved. *Id.* at 73. In cases involving domestic violence, few are “investigated or reach the courts.” Exh. 4, Tab D2 at 47.

Notwithstanding the Lead Respondent’s failure to report the domestic violence, the police and judicial system in Honduras are ineffective when responding to incidents of domestic violence. *Id.* at 49 (“[W]hen investigators encounter a woman who has obviously been killed by domestic violence, they often reason, ‘well, the prosecutor will not fully prosecute this case because this is a crime of passion, so there is no need to conduct an in-depth forensic examination’”). Victims of violence are also blamed for the harm. *Id.* at 50-51 (“[J]udges often blame female victims, assuming that the woman may have instigated the murder, and use this as an additional reason not to consider the murder or to dismiss the case”). According to Country Conditions Expert, Claudia Hermannsdorfer, the authorities lack sufficient resources to conduct sensitive forensic examinations, making it impossible to make accurate determinations of the extent of sexual violence in femicide victims. *Id.* at 49-50. Further, the police divert their resources towards investigations of crimes that they consider to be “more serious,” such as drug trafficking. *Id.* at 49. Moreover, the judiciary is ineffective, poorly funded, and inadequately equipped. Exh. 4, Tab D8 at 138.

The mere existence of a legal regime or government policy to combat private persecution is not necessarily evidence of a government's ability or willingness to control persecutors.

Sarhan v. Holder, 658 F.3d 649 (7th Cir. 2011); *Fiadjoe v. Att'y Gen. of U.S.*, 411 F.3d 135, 160-61 (3d Cir. 2005). Although the Honduran government passed a domestic violence law, the Law Against Domestic Violence, which provides women with certain provisional and security measures, the law does not criminalize domestic violence as the law's focus is preventive. Exh. 4, Tab D8 at 150; Exh. 4, Tab D2 at 48. Rather, it criminalizes serious incidents of domestic violence and dictates imprisonment only when the injuries are severe. Exh. 4, Tab D8 at 150. Otherwise, domestic violence is not criminalized and the only legal penalties for a first time domestic violence offense is a sentence of community service, or if caught in the act, twenty-four hour preventive detention. Exh. 4, Tab D2 at 48. A victim of domestic violence may also obtain a restraining order, but if the perpetrator violates the restraining order, Honduran law only imposes a prison sentence for up to three years if it was "connected with the crime of intrafamilial violence," but not including an act of domestic violence. *Id.*; Exh. 4, Tab D8 at 150. Further, they "insist on reconciliation or mediation as a first step in legal proceedings... where women are often pressured to tolerate or cope with violent situations rather than obtain help to escape them." Exh. 4, Tab D2 at 48. In regards to rape, while Honduran law criminalizes rape as a public crime, spousal rape is not given the same status and "is evaluated on a case-by-case basis." *Id.* at 48. As such, laws regarding violence against women, specifically domestic violence, rape, and femicide, were not effectively implemented and have serious limitations. *Id.* at 45-46, 48.

The Honduran government has not taken effective steps to prevent or combat violence against women, including incidents of domestic violence. Exh. 4, Tab D2 at 44. For example, Honduran law mandates equal legal rights and status to women and men, however, the U.S. Department of State Honduras Country Report acknowledges that "many women did not fully enjoy such rights." Exh. 4, Tab D8 at 151. Honduras lacks specialized services for women in the police and courts that would prevent violence, protect women, or prosecute individuals for harming women. Exh. 4, Tab D2 at 41-42. Before and after the Honduran coup in 2009, the Honduran government passed laws protecting women from violence, including the first law against domestic violence in 1997 and a femicide law in 2013. *Id.* at 45-46. However, these laws were not effectively implemented and rates of violence against women continued to rise.

Id. at 46. Additionally, while the anti-femicide law intends to punish those who kill women “with hatred and disdain toward them as women” because of their gender, it is “almost impossible” to meet the heavy burden as it is difficult to provide evidence of hatred and disdain. *Id.* at 48.

The institutional mechanisms and bureaucratic units that were created to implement these laws aimed at curving domestic violence were “generally underfunded and understaffed.” *Id.* For example, upon the passing of the Law Against Domestic Violence, the Honduran government created the Special Women’s Public Office to enforce it, but the office had limited ability to prosecute perpetrators of domestic violence. *Id.* This pattern has continued since the coup, resulting in the dismantling and weakening of these agencies. *Id.* Exh. 4, Tab D1 at 35. Similarly, in 2008, the Honduran Congress created specialized policing units for the purpose of investigating the murders of women, but within one year, the police units were relocated to investigate general street crime. Exh. 4, Tab D2 at 46. Again, a Gender Unit was created within the Honduran police that was aimed at institutionalizing the police’s responsiveness to violence again women, but it was later dismantled. *Id.* at 50. Yet again, in 2006, the Law Against Domestic Violence was amended and created the “specialized domestic violence courts, but in 2012, the court system had not yet been set up. *Id.* Even after the domestic violence courts were established, the amended domestic violence law has not been effectively implemented and has been undermined by the police and the courts. *Id.* at 41. The government of Honduras in 2014 downgraded the status of the National Institute for Women, “cut funding to women’s rights groups, and abolished the police emergency telephone line for female victims of violence.” Exh. 4, D1 at 38. The government of Honduras’ implementation of these laws and responsiveness to the violence against women has been “lagging, nonexistent, or even unenforced by state institutions.” Exh. 4, Tab D2 at 48.

Thus, based on this particular record, while the government of Honduras has been *willing* to make efforts control the private actors to combat domestic violence, the Lead Respondent has demonstrated that that the government of Honduras has had “more than ‘difficulty... controlling’ private behavior,” the record established the government’s “*inability* to protect the victims” and *inability* to implement those efforts to combat domestic violence and violence against women in Honduras. *Matter of A-B-*, 27 I&N Dec. at 337 (internal quotations omitted); *Crespin-Valladares*, 632 F.3d at 128 (quoting *Menjivar v. Gonzales*, 416 F.3d 918, 921 (8th Cir. 2005)).

Having shown that she was persecuted on a protected ground, the Lead Respondent benefits from a rebuttable presumption that her life or freedom would be threatened in the future. 8 C.F.R. § 1208.16(b)(1)(i).

5. Internal Relocation is not a Reasonable Alternative

The regulations state that, for purposes of determining whether relocation is reasonable, the burden is on the Lead Respondent to show it is not reasonable if past persecution has not been established. 8 C.F.R. Section 208.13(b)(3)(i). However, in this case the Lead Respondent has suffered from past persecution and there is insufficient evidence to rebut the presumption that the Lead Respondent's life or freedom would be threatened in the future by showing that relocation would be reasonable. The Lead Respondent has demonstrated that she is unable to relocate within Honduras, as noted above, through her credible testimony and country conditions that evidence the inadequate protections and lack of resources for women fleeing harm. In addition, in considering whether relocation is unreasonable the factors to be considered are "whether the applicant would face other serious harm in the place of suggested relocation, any ongoing civil strife within the country, administrative, economic or judicial infrastructure, geographical limitations, and social and cultural constraints, such as age, gender health, and social and familial ties." In this case, Lead Respondent has a child at the tender age of five. It would be unreasonable to ask to her relocate for this reason. In addition, "because the purpose of the relocation rule is not to require an applicant to stay one step ahead of persecution in the proposed area, that location must present circumstances that are *substantially better* than those giving rise to a well-founded fear of persecution on the basis of the original claim." *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33 (BIA 2012). Based on the country conditions nation-wide discussed above, there does not appear to be such a place in Honduras at this time. Therefore, the Lead Respondent could not avoid future persecution by relocating to another part of Honduras, nor is it reasonable to expect her to do so. *Matter of A-B-*, 27 I&N Dec. at 344-45.

6. Discretion

The Lead Respondent merits relief as a matter of discretion. Although she came to the United States illegally, and circumvented procedures for orderly processing of refugees, she did not commit the fraud that was committed by the respondent in *Matter of Pula*, 19 I&N Dec. 467. She did pass through other countries but her stays there were short. It is true that she made no attempt to seek asylum or other residency in the countries though which she passed. However,

most importantly, the Board noted in *Pula*, that “the danger of persecution should generally outweigh all but the most egregious of adverse factors.” *Matter of Pula*, 19 I&N Dec. 467, 474. This is a very strong positive discretionary factor in the Lead Respondent’s case. In this matter, the strong positive discretionary factors of the danger of persecution if she were to return to Honduras outweigh the negative factors in her migration and immigration history.

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

Since the Lead Respondent has established eligibility for asylum, it is not necessary to reach the merits of her claim for relief of withholding under section 241(b)(3) of the Act or pursuant to the Torture Convention, as asylum is a greater benefit which obviates the necessity of relief pursuant to the Torture Convention. *See INS v. Bagamashad*, 429 U.S. 24, 25 (1976) (noting that “courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”).

VI. Conclusion

The Lead Respondent’s testimony is credible. Based on her testimony and extensive information about country conditions, the Lead Respondent has established that she suffered past persecution *on account of* a protected ground of Honduran women in domestic relationships.

Accordingly, the Respondent has met her burden for purposes of asylum under the Act.

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

ORDER

It is hereby ordered that:

Lead Respondent's application for Asylum under Section 208 of the Act is **GRANTED**.

Minor Respondent is also **GRANTED** asylum as a derivative.

3-21-19

Date



Denise Noonan Slavin
United States Immigration Judge
Baltimore, Maryland

Appeal Due: 4-22-19