U.S. Department of Justice

Executive Office for Immigration Review

Board of Immigration Appeals
Office of the Clerk

5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

Laner, Jehan Marie
Pangea Legal Services
350 Sansome Street
Suite 650
San Francisco, CA 94104

DHS/ICE Office of Chief Counsel - SFR
P.O. Box 26449
San Francisco, CA 94126-6449

Name: A[redacted]-A[redacted], A[redacted] C[redacted]... **A[redacted]-222**

Date of this notice: 11/6/2019

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

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Liebowitz, Ellen C

Userteam: Docket

File: A[redacted]-222 – San Francisco, CA

Date: NOV - 6 2019

In re: A[redacted] C[redacted] A[redacted]-A[redacted]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jehan Marie Laner, Esquire

ON BEHALF OF DHS: Vincent D. Pellegrini
Assistant Chief Counsel

APPLICATION: Asylum

The Department of Homeland Security (DHS) appeals from the Immigration Judge's decision dated May 20, 2019, granting the respondent's application for asylum under section 208(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(A).[1] The appeal will be dismissed.

We review findings of fact determined by an Immigration Judge, including credibility findings, under a "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals from decisions of Immigration Judges de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

The DHS's appeal of the Immigration Judge's decision is limited to the Immigration Judge's positive credibility finding and determination that the respondent established the requisite nexus to a ground enumerated in the definition of refugee. *See* section 208(b)(1)(B)(i) of the Act; *Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) ("[t]he REAL ID Act requires that a protected ground represent 'one central reason' for an asylum applicant's persecution"); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). We review these findings for clear error, and do not conclude that there is clear error in either determination. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) (observing that the motive of a persecutor is a finding of fact to be determined by the Immigration Judge and reviewed by the Board for clear error).

Specifically, we acknowledge the DHS's arguments regarding the respondent's credibility. While we may have reached a different result if we were the factfinders, we discern no clear error in the Immigration Judge's findings of fact supporting her positive credibility finding. *See Matter of A-B-*, 27 I&N Dec. 316, 341 (A.G. 2018) (the Board may find an Immigration Judge's factual findings to be clearly erroneous only if they are "illogical and implausible") (internal citations omitted); *see also Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 574 (1985) ("Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous.").

[1] The Immigration Judge did not reach the respondent's withholding of removal and Convention Against Torture claims.

Similarly, we discern no clear error in the Immigration Judge's determination that the respondent established persecution on account of her membership in a particular social group. *See Matter of A-B-*, 27 I&N Dec. at 341; *N-M-*, 25 I&N Dec. at 532.

Based on the foregoing, we will dismiss the DHS's appeal. Accordingly, the following orders will be entered.

ORDER: The DHS's appeal is dismissed.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).

Ellen Kelbowich
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

In the matter of

A[redacted] C[redacted] A[redacted]-A[redacted],

Respondent

Date: May 20, 2019

File Number: A[redacted]-222

In Removal Proceedings

Charge: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("Act"), as amended, as an immigrant who at the time of application for admission is not in possession of a valid entry document

Applications: Asylum, Withholding of Removal, Protection under the Convention Against Torture

On Behalf of the Respondent:
Jehan M. Laner
Pangea Legal Services
350 Sansome Street, Suite 650
San Francisco, California 94104

On Behalf of the Department:
Vincent D. Pellegrini
Office of the Chief Counsel
630 Sansome Street, Room 1155
San Francisco, California 94104

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

These proceedings commenced on December 5, 2013, when the Department of Homeland Security ("the Department") filed a Notice to Appear, thereby placing the respondent, A[redacted] C[redacted] A[redacted]-A[redacted], in removal proceedings and vesting jurisdiction with this Court. Exh. 1; 8 CFR § 1003.14(a). The Department alleges that the respondent is a native and citizen of El Salvador who entered the United States at or near Hidalgo, Texas, on November 16, 2012, who did not then possess a valid entry document, and who was not then admitted or paroled after inspection by an immigration officer. Exh. 1.

On April 24, 2018, the respondent admitted all factual allegations, conceded the charge of removability, and declined to designate a country of removal. Based on the respondent's admissions and concession, the Court sustained the charge of removability and directed El Salvador as the country of removal, should it become necessary. *See* 8 C.F.R. § 1240.10(f). On the same date, the respondent submitted a Form I-589, Application for Asylum and for Withholding of Removal ("Form I-589"), seeking asylum, withholding of removal, and protection under the Convention Against Torture. *See* Exh. 2. She asserts she will be harmed or tortured by her former partner, [redacted] ("Mr. [redacted] gang members, or the

Salvadoran police.[1]

II. EVIDENCE PRESENTED

The evidence of record consists of the testimony of the respondent; nurse practitioner Suzzane Portnoy ("Ms. Portnoy"); Assistant Professor of Political Science, Dr. Mneesha Gellman ("Dr. Gellman"); Associate Professor of Cultural Anthropology, Dr. Miranda Hallett ("Dr. Hallett"); Margaret Thatcher Research Fellow, Dr. Theodore Bromund ("Dr. Bromund"); and the following exhibits:

Exhibit 1:	NTA;
Exhibit 2:	Form I-589;
Exhibit 3:	The respondent's notice of *Mendez Rojas* class membership and motion for order finding her asylum application timely filed;
Exhibit 4:	The respondent's renewed motion;
Exhibit 5:	Form I-213, Record of Deportable/Inadmissible Alien;
Exhibit 6:	The Department's submission of documents, including an Interpol Red Notice ("Red Notice") and arrest warrant for the respondent;
Exhibit 7:	The Department's submission of additional documents, including Form I-867A, Record of Sworn Statement in proceedings under Section 235(b)(1) of the Act, and Form I-870, Record of Determination/Credible Fear Worksheet;
Exhibit 8:	The respondent's motion for extension of time to file supporting documents;
Exhibit 8A:	IJ Order (Feb. 14, 2019) (granting the respondent's motion);
Exhibit 9:	The respondent's declaration;
Exhibit 10:	The respondent's motion for continuance;
Exhibit 10A:	IJ Order (Feb. 27, 2019) (denying the respondent's motion);
Exhibit 11:	The respondent's pre-hearing brief and statement of particular social groups;
Exhibit 12:	The respondent's amended Form I-589;
Exhibit 13:	The respondent's motion to permit telephonic testimony of expert witnesses;
Exhibit 13A:	IJ Order (Mar. 5, 2019) (denying the respondent's motion);
Exhibit 14:	The respondent's documents, Tabs A–EEE, in support of her Form I-589;
Exhibit 15:	The respondent's witness list;
Exhibit 16:	The Department's notice of previously filed documents with amended certificate of translation;
Exhibit 17:	2018 U.S. Department of State Human Rights Report for El Salvador; and
Exhibit 18:	The respondent's additional documents in support of her Form I-589.[2]

The Court has thoroughly reviewed the entire record, whether or not summarized in its decision. The Court incorporates relevant facts into the analysis below.

[1] For clarity, the Court refers to the respondent's former partner as "Mr. [redacted] notwithstanding his subsequent name change to Victor Salvador Corrales Benavides. *See* Exh. 9 at 11.

[2] Exhibit 18 was marked for identification purposes only.

III. CREDIBILITY

A respondent bears the burden of establishing her eligibility for relief from removal and may satisfy this burden through credible testimony. *See* INA § 240(c)(4). In making a credibility finding under the REAL ID Act, the Court may base its credibility determination on the demeanor, candor, or responsiveness of the applicant, the inherent plausibility of her account, the consistency between her written and oral statements, the internal consistency of each such statement, the internal consistency of such statements with other evidence of record, any inaccuracies or falsehoods in such statements, or any other relevant factor. *See* INA § 240(c)(4)(C).

The Court may make a credibility determination without regard to whether any inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. *See id.* However, a credibility determination "must be assessed under a rule of reason," and the Court may not base an adverse credibility finding on mere trivial inconsistencies. *Shrestha v. Holder*, 590 F.3d 1034, 1043–44 (9th Cir. 2010). The Court must give the respondent an opportunity to explain any discrepancies and assess whether the applicant's explanation is reasonable. *Campos-Sanchez v. INS*, 164 F.3d 448, 450 (9th Cir. 1999) *superseded on other grounds as stated in Padilla-Martinez v. Holder*, 770 F.3d 825, 830 (9th Cir. 2014). If the respondent provides a reasonable and plausible explanation for the discrepancy, the Court must provide "a specific and cogent reason for rejecting it." *Rizk v. Holder*, 629 F.3d 1083, 1088 (9th Cir. 2011) (quoting *Soto-Olarte v. Holder*, 555 F.3d 1089, 1091–92 (9th Cir. 2009)). As set forth below, the Court has numerous concerns with various inconsistencies that bear directly on the heart of the respondent's claim.

First, the Court is troubled by pervasive inconsistencies between the respondent's testimony and the evidentiary record regarding the Salvadoran government's efforts to protect her from Mr. [redacted]. The respondent's testimony became increasingly inconsistent when the Department confronted her with the asylum officer's notes from her Credible Fear Interview ("CFI") in December 2012. As one example, the respondent testified that Mr. [redacted] had never been arrested in connection to his abuse. However, in her CFI, she indicated that he had been arrested on August 28, 2012, due to his abuse. When confronted with her CFI testimony, she replied that she could not remember his arrest or perhaps she or the asylum officer were confused. The Court does not find this explanation sufficiently persuasive because the respondent did not otherwise assert encountering any communication difficulties with the asylum officer.

Second, the Court is concerned by the respondent's numerous inconsistencies and omissions on her applications regarding her criminal history in El Salvador. During direct examination, the respondent testified that she was arrested on two occasions in El Salvador. On the first occasion, her sister called the police after the respondent scolded her niece. The police held her for a few hours then released her. On the second occasion, police arrested the respondent after calling to report Mr. [redacted] abuse. The police detained her then released her later that day. When asked to explain why she told the asylum officer that she had never been arrested or detained, the respondent answered that she thought the arrests were not "official

arrests" because she was only detained for a few hours and no formal charges were filed. On redirect, the respondent added that she did not believe she was arrested because she was not handcuffed or detained in a cell; rather, the police required her to wait in the police station until they released her. The Court is troubled by the respondent's willingness to withhold information detrimental to her case. However, in the totality, the Court finds this explanation minimally sufficient.

In sum, the Court observed troubling inconsistencies between the respondent's testimony and documentary evidence, specifically with regard to the assistance rendered by the Salvadoran government and the respondent's criminal history. Nevertheless, the Court must consider these credibility concerns in light of the respondent's illiteracy, lack of education, and diagnoses of neurocognitive disorder due to traumatic brain injury and Post-traumatic Stress Disorder. *See* Exh. 14 at 15. Although the respondent appeared to consistently try to minimize or omit facts that she perceived as detrimental to her claim, in light of the totality of the circumstances, including the respondent's attempted explanations for her misrepresentations and inconsistencies, the Court finds that the respondent is marginally credible. Therefore, the Court declines to make an adverse credibility finding. *See* INA § 240(c)(4).

The Court also carefully listened to the telephonic testimony of Ms. Portnoy, Dr. Gellman, Dr. Hallett, and Dr. Bromund, assessing their testimony for consistency, detail, specificity, and persuasiveness. Considering the same factors, the Court finds that all four expert witnesses testified credibly and accords their testimony full evidentiary weight.

IV. APPLICATIONS FOR RELIEF

The respondent bears the burden of establishing that she is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. *See* INA § 240(c)(4)(A). If the evidence indicates that one or more grounds for mandatory denial of the application for relief apply, the applicant has the burden of proving by a preponderance of the evidence that such grounds do not apply. *See* 8 C.F.R. § 1240.8(d).

A. Bars to Relief

1. One-Year Bar to Asylum

In order to qualify for asylum, a respondent must first demonstrate by clear and convincing evidence that she filed her application within one year after the date of her arrival in the United States. INA § 208(a)(2)(B). A joint stay agreement in *Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. Mar. 29, 2018), provides an exception to the one-year bar for certain class members. Under *Rojas*, Class A members are individuals who have been or will be released from the Department's custody after having been found to have a credible fear of persecution within the meaning of INA § 235(b)(1)(B)(v) and did not receive notice from the Department of the one-year deadline to file an asylum application. *See* 305 F. Supp. 3d at 1179. Additionally, Class A.II members are individuals who are in removal proceedings and who either have not applied for asylum, or applied for asylum one year after their last arrival. *See id.*

The Court finds that the respondent meets the definition of a *Rojas* Class A.II member. The respondent entered the United States on November 16, 2012. *See* Exh. 1. On December 17, 2012, she was interviewed by an asylum officer and was found to have a credible fear of persecution in El Salvador. Form I-870, Record of Determination/Credible Fear Worksheet. The respondent was released from the Department's custody but the Department did not notify her of the one-year filing deadline. The respondent filed a Form I-589 on April 24, 2018, while in removal proceedings and more than one year after her arrival to the United States. Accordingly, the Court finds that the respondent is a *Rojas* class member and, as such, accepts her asylum application as timely filed. 305 F. Supp. 3d at 1179.

2. Serious Nonpolitical Crime

A respondent found to have committed a serious non-political crime is statutorily ineligible for asylum, withholding of removal under the Act, and withholding of removal under the CAT. INA §§ 208(b)(2)(A)(iii), 241(b)(3)(B)(iii). A serious nonpolitical crime "is a crime that was not committed out of genuine political motives, was not directed toward the modification of the political organization or . . . structure of the state, and in which there is no direct, causal link between the crime committed and its alleged political purpose and object." *McMullen v. INS*, 788 F.2d 591, 595 (9th Cir. 1986) (internal punctuation and citation omitted), *overruled on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n.7 (9th Cir. 2005) (en banc).

The Court must determine whether (1) the offense is a serious nonpolitical crime, and (2) there are serious reasons for believing that the applicant committed the crime. *See Go v. Holder*, 640 F.3d 1047, 1052–53 (9th Cir. 2011). The Ninth Circuit has interpreted the "serious reasons to believe" standard as "tantamount to probable cause." *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1188 (9th Cir. 2016). "[A] serious crime must be a capital crime or a very grave punishable act. Minor offenses punishable by moderate sentences are not within the serious nonpolitical crime ground of exclusion." *Matter of Frentescu*, 18 I&N Dec. 244, 246 (BIA 1982) (internal quotations omitted).

In *Matter of E-A-*, the Board clarified that offenses it considered serious were "not simply minor property offenses, but instead, involve a substantial risk of violence and harm to persons." 26 I&N Dec. 1, 5 n.3 (BIA 2012). The Court considers factors such as the applicant's description of the crime, the turpitudinous nature of the conduct, 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. *See Matter of Ballester-Garcia*, 17 I&N Dec. 592, 595–96 (BIA 1980).

Here, a Red Notice alleges that the respondent committed three crimes in 2012. *See* Exh. 6 at 3. They include an aggravated burglary in July 2012, in which the respondent and two gang members allegedly broke into a school in Caserío Papalambre and stole seven bags of basic grains and eight bottles of oil; an aggravated robbery in August 2012, in which the respondent allegedly was involved in depriving individuals of cash, cell phones, and other valuables at gunpoint; and a second aggravated burglary "around the middle of the year" in 2012, in which an unspecified amount of bags of rice and beans were taken from a school in Cantón Mojones de

Santa Rosa de Lima. *See* Exh. 6 at 3. The Red Notice also asserts generally, without describing a specific offense, that the respondent collaborated "in the trafficking of weapons and drugs" and provided "support to the criminal activities" of the MS-13 gang. *See id.* The underlying Salvadoran arrest warrant, on which the Red Notice relies, states that respondent is an active member of the MS-13 gang who committed an aggravated robbery and two aggravated burglaries. *See id.* at 14. The arrest warrant does not contain any information regarding the date of the alleged crimes nor the extent of the respondent's alleged involvement in the crimes. *See id.*

After reviewing all documents, the Court does not find that the serious nonpolitical crime bar applies to the respondent. *See Silva-Pereira*, 827 F.3d at 1188. The respondent denied participating in any MS-13 activities, being a member of the gang, or committing any crimes. Further, the respondent presented the testimony of Dr. Bromund, who testified regarding his opinion that the Red Notice in this specific case is unreliable and invalid. *See* Exh. 14 at 782–785. However, Dr. Bromund admitted he had not reviewed the El Salvadoran arrest warrant, which the Court finds to be the more reliable representation as to why the respondent may be wanted in connection to certain crimes in El Salvador. Even without the Red Notice, the arrest warrant alone appears to be a reliable and official document issued by a court of law in El Salvador, indicating the respondent may be sought for criminal prosecution.

However, even assuming *arguendo* that the arrest warrant accurately describes crimes the respondent participated in, the Court finds that these crimes do not rise to the level of "serious." *See Frentescu*, 18 I&N Dec. at 246. To the contrary, the charges describe minor property offenses in which provisions and an unspecified amount of cash and valuables were taken. *See Ballester-Garcia*, 17 I&N Dec. at 595–96. While the aggravated robbery charge generally describes an offense where the victim was held at gunpoint, the charge does not indicate that any individuals were harmed or that the respondent personally held the victims at gunpoint. *See* Exh. 6 at 3. Further, the allegation that the respondent collaborated in drug and weapons trafficking is too generally defined to satisfy the probable cause standard. *See Silva-Pereira*, 827 F.3d at 1188. The respondent has not yet been arrested for these alleged offenses or been found guilty. Therefore, based on the foregoing, the Court finds that the respondent did not commit a serious nonpolitical crime. INA § 241(b)(3)(B)(iii). Therefore, the Court finds that the respondent is statutorily eligible to apply for asylum.

B. Asylum

To qualify for asylum, the applicant bears the burden of demonstrating that she meets the statutory definition of a "refugee." INA § 208(b)(1)(A). The Act defines a "refugee" as any person who is outside her country of nationality and who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of, that country because of "persecution" or a "well-founded fear of future persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b). Here, the respondent asserts that she suffered past persecution on account of her membership in a particular social group.

1. Past Persecution

In order to establish past persecution, the applicant must show "(1) an incident, or incidents, that rise to the level of persecution; (2) that is 'on account of' one of the statutorily-protected grounds; and (3) is committed by the government or by forces the government is either 'unable or unwilling' to control." *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000).

a. Harm Rising to the Level Necessary to Establish Persecution

Persecution is the infliction of suffering or harm upon those who differ in a way regarded as offensive. *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). Physical harm, including assaults, beatings, and torture, "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Persecution may also include psychological, emotional, or economic abuse. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1120 (9th Cir. 2004). The Court notes that "age can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted[.]" *Hernandez-Ortiz v. Gonzales*, 496 F.3d 1042, 1045 (9th Cir. 2007) (internal citation omitted). The Court must assess the alleged persecution from the child's perspective, as the "harm a child fears or has suffered . . . may be relatively less than that of an adult and still qualify as persecution." *Id.* The Court may not consider incidents of harm in isolation but instead must evaluate the cumulative effect of the harms the applicant suffered. *See Krotova v. Gonzales*, 416 F.3d 1080, 1084 (9th Cir. 2005).

The Court finds that the severe physical and psychological harm the respondent's parents inflicted on her rises to the level of persecution. For approximately nine years, the respondent suffered countless beatings in which the respondent's parents hit her repeatedly with their hands, branches, broomsticks, and whips, and threw objects, including plates, at her. During one of the most intense beatings, the respondent's father threw her on the floor and kicked her with his heavy work boots, resulting in bruising all over the respondent's legs. *See Chand*, 222 F.3d at 1073. In addition to physical abuse, her parents inflicted verbal and psychological abuse by frequently calling her derogatory names, forcing her to work from the age of six, and forbidding her to attend school. Considering this severe physical, verbal, and psychological abuse cumulatively, the Court finds that the respondent suffered harm rising to the level of past persecution. *See Hernandez-Ortiz*, 496 F.3d at 1045; *see also Krotova*, 416 F.3d at 1084.

b. On Account of a Protected Ground: Particular Social Group

In addition to showing harm rising to the level of persecution, a respondent must show that the persecution she suffered was on account of one or more of the protected grounds enumerated in the Act. INA § 101(a)(42)(A). A "particular social group" must be (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. 316, 319 (AG 2018) (citing *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014)). "To be cognizable, a particular social group *must* 'exist independently' of the harm asserted in an application for asylum or statutory withholding of removal." *Id.* at 334 (quoting *M-E-V-G-*, 26 I&N Dec. at 236 n.11, 243). Here, the respondent asserts that she was persecuted on account of her membership in numerous particular social groups relating to the respondent's status as a Salvadoran female. *See* Exh. 11. In light of the record evidence, the Court understands the essence of the

respondent's proposed groups as comprising the particular social group of "Salvadoran females."

i. Immutability

First, common and immutable characteristics are those attributes that 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 Acosta*, 19 I&N Dec. 211, 233 (BIA 1985) (listing sex, color, kinship, and shared past experiences as prototypical examples of an immutable characteristic). The Ninth Circuit has expressed that females in general may constitute a social group. *See Mohammad v. Gonzales*, 400 F.3d 785, 797 (9th Cir. 2005) ("[a]lthough we have not previously expressly recognized females as a social group, the recognition that girls or women of a particular clan or nationality (or even in some circumstances females in general) may constitute a social group is simply a logical application of our law."). Here, the respondent's social group, "Salvadoran females," satisfies the immutability requirement because it is defined by gender and nationality, innate characteristics that are fundamental to an individual's identity. *See id.*; *see also Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010) (reiterating that "women in a particular country, regardless of ethnicity or clan membership, could form a particular social group").

ii. Particularity

Second, to be cognizable, the proposed social group must be sufficiently particular. *M-E-V-G-*, 26 I&N Dec. at 239 (citation omitted). The "particularity" requirement addresses the outer limits of the group's boundaries and requires a determination as to whether the group is sufficiently discrete without being "amorphous, overbroad, diffuse, or subjective." *Id.* However, "not every 'immutable characteristic' is sufficiently precise to define a particular social group." *Id.* In the instant case, the group is sufficiently particular because the membership is limited to a discrete section of Salvadoran society—only female citizens of El Salvador—and is thus distinguishable from the rest of society. *See Perdomo*, 611 F.3d at 667, 669 (rejecting the notion that a persecuted group could represent too large a portion of the population to constitute a particular social group).

iii. Social Distinction

Finally, the respondent must demonstrate that the group is socially distinct within El Salvador. To establish social distinction, a respondent must show that members of the social group are "set apart, or distinct, from other persons within the society in some significant way," *M-E-V-G-*, 26 I&N Dec. at 238, and that they are "*perceived* as a group by society." *Matter of W-G-R-*, 26 I&N Dec. 208, 216 (BIA 2014). A "group's recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor." *A-B-*, 27 I&N Dec. at 330 (quoting *M-E-V-G-*, 26 I&N Dec. at 242). Legislation passed to protect a specific group can be evidence that the society in question views members of the particular group as distinct. *See Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1092 (9th Cir. 2013). Yet, "a social group may not be defined exclusively by the fact that its members have been subjected to harm." *A-B-*, 27 I&N Dec. at 330–31 (citing *M-E-V-G-*, 26 I&N Dec. at 238). "[S]ocial groups must be classes recognizable by society at large" rather than "a victim of a

particular abuser in highly individualized circumstances." *Id.* at 336 (citing *W-G-R-*, 26 I&N Dec. at 217).

The evidence of record establishes that Salvadoran society views members of the particular social group of "Salvadoran females" as socially distinct. *Id.* at 319. Indeed, country conditions evidence describes females as one of the most vulnerable and marginalized groups in El Salvador. *See* Exh. 17 at 1. The acceptance of gender-based violence is deeply entrenched in Salvadoran society. *See, e.g.*, Exh. 14 at 126. Salvadoran women are discriminated against throughout all sectors of society, including in educational and employment settings, political representation, religious organizations, law enforcement and the judiciary, and most notably, the home. *See, e.g.*, Exhs. 17 at 17; 14 at 126, 321. In particular, the social perception that men are superior to women is "reinforced at every stage" as boys transition to manhood, such that males are socialized to display "total control over one's household, especially its women and girls." Exh. 14 at 125.

Violence committed against Salvadoran females is pandemic and cuts across boundaries of class, age, and ethnicity. *See generally* Exh. 14 at 117–755. Gender-based violence against Salvadoran females takes many brutal forms, including gang violence, domestic violence, sexual violence, incest, human trafficking, and femicide. *See id.* In 2017, 469 women were reported killed in El Salvador, an estimated rate of one female killed every 16 hours. *See* Exh. 17; *see also* Exh. 14 at 201. Acknowledging the unique vulnerability of Salvadoran females, the Salvadoran government enacted the 2011 Special Comprehensive Law for a Violence-free Life for Women. *See* Exh. 17 at 209–210. Although this law has not effectively reduced rates of violence or impunity, it demonstrates the government's recognition of the need to provide additional protection to this specific group. *See id.*; *see also Henriquez-Rivas*, 707 F.3d at 1092.

In light of this evidence, the Court finds that Salvadoran society views Salvadoran females as a distinct group from the general population in El Salvador. *See Henriquez-Rivas*, 707 F.3d at 1092. Accordingly, the Court finds that the respondent's particular social group of "Salvadoran females" is cognizable under the Act. *A-B-*, 27 I&N Dec. at 319. Finally, the Court finds that the respondent, as a female of Salvadoran nationality, is a member of this particular social group.

c. Nexus

The respondent must also establish that her membership in the particular social group was "at least one central reason for [her] persecution." INA § 208(b)(1)(B)(i). "A 'central reason' is a reason of primary importance to the persecutors, one that is essential to their decision to act." *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2008). "In other words, a motive is a 'central reason' if the persecutor would not have harmed the applicant if such motive did not exist." *Id.* While the respondent need not show which reason was dominant, the protected ground "cannot be incidental, tangential, superficial, or subordinate" to another reason for harm; it need only be one central reason. *Id.* The applicant may provide either direct or circumstantial evidence to establish that the persecutor was motivated by the applicant's actual or imputed status or belief. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). Proof of motivation may consist of statements made by the persecutor to the victim. *See Sinha v. Holder*, 564 F. 3d 1015,

1021–22 (9th Cir. 2009) (providing that attackers' abusive language showed they were motivated at least in part by a protected ground).

The record is replete with indications that the respondent's parents inflicted physical, verbal, and psychological harm on the respondent because she was a Salvadoran female. Throughout her upbringing, her parents repeatedly made derogatory statements indicating that they believed they could treat the respondent however they wished because, as a female, the respondent must obey them. *See, e.g.*, Exh. 9 at 4–5 ("You're not the one who decides what to do. I am the man of this house, and I am in charge. You're my daughter and you have to do what I say!"); *see also id.* at 2 (describing how the respondent's mother forbid her from attending school because, as a female, she should clean and take care of the house). In the context of Salvadoran society, the respondent's parents' statements and actions are strong evidence that if the respondent were not a Salvadoran female, they would not have harmed her in this manner. *See Sinha*, 564 F. 3d at 1021–22; *Parussimova*, 555 F.3d at 741.

Moreover, the record indicates that the respondent's parents' violence against her is precisely the type of gender-based violence perpetrated in El Salvador due to the widely-shared belief that women are inferior to men. *See* Exh. 14 at 132 (observing that in El Salvador, "girls and women are viewed as the property of first their parents and then their husbands in an macho culture of male domination that is premised on the inferiority of women"). Considering the evidence in its totality, the Court finds that the respondent's membership in the particular social group of "Salvadoran females" was "at least one central reason" for her persecution by her parents. INA § 208(b)(1)(B)(i); *Parussimova*, 555 F.3d at 741.

d. Government Unable or Unwilling to Control Persecutor

Finally, a respondent must demonstrate that the persecution she experienced was inflicted by the government or forces the government was unable or unwilling to control. *Navas*, 217 F.3d at 655–56. Prior unheeded requests for authorities' assistance or showing that a country's laws or customs deprive victims of meaningful recourse to protection may establish governmental inability or unwillingness to protect. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073–74 (9th Cir. 2017) (en banc) (providing that where "ample evidence demonstrates that reporting [persecution to police] would have been futile and dangerous," applicants are not required to report their persecutors"); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that "the authorities' response (or lack thereof)" to reports of persecution provides "powerful evidence with respect to the government's willingness or ability to protect" the applicant and noting that authorities' willingness to take a report does not establish they can provide protection). However, the fact that the local police have not acted on a particular report of an individual crime does not necessarily mean that the government is unwilling or unable to control crime." *A-B-*, 27 I&N Dec. at 337. Rather, applicants "must show not just that the crime has gone unpunished, but that the government is unwilling or unable to prevent it." *Id.* at 338.

In the present matter, the record indicates that the Salvadoran government is unable or unwilling to control the respondent's persecutors. After one particularly violent beating when the respondent was approximately twelve years old, neighbors called the police to report her mother's abuse. *See* Exh. 9 at 3–4. Notably, the police did not make any attempt to stop the

abuse. *See Afriyie*, 613 F.3d at 931. They talked briefly to the respondent's mother; however, they made no effort to ascertain the status of the respondent or to take any other measures to protect the respondent. *See id.* In addition, country conditions documents indicate that human rights abuses against children and females are pervasive throughout El Salvador. Child abuse in El Salvador remains a "serious and widespread problem[,]" and "more than half of households punished their children physically and psychologically." Exh. 17 at 17–18. Despite laws prohibiting child labor, such laws were not effectively enforced in the informal sector and many children frequently worked "despite the presence of law enforcement officials." *Id.* at 23–24. Furthermore, country conditions evidence overwhelmingly establishes that the Salvadoran government does not adequately protect females from gender-based violence, *see generally* Exh. 14 at 117–755, and that laws prohibiting gender-based violence "remained poorly enforced." Exh. 17 at 16. Indeed, in 2016 and 2017, "only 5 percent of the 6,326 reported crimes against women went to trial." *Id.*

In sum, the Court finds that the respondent suffered persecution by forces the government was unable or unwilling to control on account of her particular social group membership. *Navas*, 217 F.3d at 655–56. Therefore, the Court finds that the respondent suffered past persecution. *See* INA § 101(a)(42)(A).

2. Well-Founded Fear of Future Persecution

Because the respondent has demonstrated that she suffered past persecution in El Salvador, she is entitled to a presumption that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). The Department may overcome this presumption by showing, by a preponderance of the evidence, that (1) there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution in El Salvador, or (2) the respondent could avoid future persecution by relocating to another part of the country. *See* 8 C.F.R. § 1208.13(b)(1)(i). Generalized information about country conditions is not sufficient to rebut the presumption of a well-founded fear of future persecution. *Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Rather, the Department must introduce evidence that rebuts the applicant's specific grounds for fearing future persecution on an individualized basis. *Id.*

Here, the Court finds that there has been a fundamental change in the respondent's circumstances. Notably, her mother passed away in October 2018. Even though the respondent claims she still fears her father, she is now a 29-year-old woman and it is unclear whether the respondent's father would harm her if she returned. As the respondent testified, she was able to leave his household even while in El Salvador to avoid further harm, and there is no indication she would reside with him in the future. Accordingly, the Court finds that the respondent's circumstances have changed such that she no longer has a well-founded fear of persecution in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(ii).

3. Humanitarian Asylum

The Court may grant humanitarian asylum to a victim of past persecution, even where the Department has rebutted the applicant's fear of future persecution, "if the asylum seeker

establishes (1) 'compelling reasons for being unwilling or unable to return to the country arising out of the severity of past persecution,' or (2) 'a reasonable possibility that he or she may suffer other serious harm upon removal to that country.'" *See Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004) (citing 8 C.F.R. § 1208.13(b)(1)(iii)(A)–(B)). In the instant matter, the respondent seeks humanitarian asylum on two separate bases. First, she requests protection due to the severe gender-based violence she suffered in El Salvador. Second, she asserts that she will face "other serious" harm from the Salvadoran police, Mr. [redacted] or the MS-13 gang up on her return to El Salvador.

a. Severity of Past Persecution

The Court finds that the respondent is not eligible for humanitarian asylum based on "compelling reasons" for being unable or unwilling to return to El Salvador out of the severity of past persecution. *See* 8 C.F.R. §1208.13(b)(1)(iii)(A). The Court does not diminish the abuse the respondent suffered as a child. Indeed, it is apparent that this abuse significantly affected her childhood and has had a lasting impact on her life. *See generally* Exh. 14 at 6–20. Nevertheless, the Court concludes that the abuse the respondent suffered as a child does not rise to the level of "atrocious past persecution" such that it would warrant a grant of humanitarian asylum. *Compare Hanna v. Keisler*, 506 F.3d 933, 939 (9th Cir. 2007) (finding past persecution insufficient for humanitarian asylum where applicant was detained and tortured for more than one month); *with Lal v. INS*, 255 F.3d 998, 1009–10 (9th Cir. 2001) (severe past persecution found where applicant was arrested, detained, tortured, urine forced into mouth, cut with knives, burned with cigarettes, and forced to watch sexual assault of wife). For these reasons, the Court finds that the respondent is not eligible for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(A).

b. Other Serious Harm

Humanitarian asylum may be granted where a victim of past persecution has established that there is a reasonable possibility she will suffer "other serious harm" in the country of removal. 8 C.F.R. § 1208.13(b)(1)(iii)(B). Although "other serious harm" may be wholly unrelated to the applicant's past harm, it "must be so serious that it equals the severity of past persecution." *Matter of L-S-*, 25 I&N Dec. 705, 714 (BIA 2012). Eligibility for humanitarian asylum under 8 C.F.R. § 1208.13(b)(1)(iii)(B) is not based on past persecution but on the potential for physical or psychological harm the applicant may suffer in the future. *See id.* Here, the Court finds that the respondent has established that she faces "other serious harm" in El Salvador.

First, the respondent faces a risk of harm from her former partner, Mr. [redacted] The respondent suffered more than seven years of severe physical, sexual, and psychological abuse from Mr. [redacted]. He inflicted knife wounds, machete wounds, broke her wrist, and threatened to kill her on multiple occasions. Even after fleeing El Salvador in 2012, the respondent received threats from Mr. [redacted] in 2016 and January 2018, in which Mr. [redacted] told her that he was going to do everything possible to make her return to El Salvador.

The Court also finds there is a reasonable possibility that the Salvadoran government will

harm her upon her return. In May 2018, approximately six years after the respondent left El Salvador, the Salvadoran government issued an arrest warrant alleging that she was an active member of the MS-13 gang and that she had participated in two aggravated burglaries and one aggravated robbery. *See* Exh. 6 at 14. Additionally, in August 2018, the Salvadoran government issued an Interpol Red Notice requesting that the respondent be detained and extradited to El Salvador. *See id.* at 1–3. The Court finds these documents indicate that the Salvadoran government is interested in locating and detaining the respondent. The existence of the Red Notice also increases the likelihood that the Salvadoran government would identify her upon re-entry to El Salvador and subject her to detention, harm, or torture. Indeed, Dr. Hallett explained that due to increasing governmental pressure to show results in the "war on gangs," deportees designated as gang-affiliated face a high risk of being detained upon entry and suffering human rights abuses by officials acting under color of law. *See id.* at 644–47.

Finally, the respondent also faces potential harm from MS-13 gang members. The gang has multiple reasons to personally target and harm the respondent, including to carry out Mr. [redacted] wishes to punish the respondent and to determine whether the respondent divulged any information about the gang to authorities. *See* Exh. 9 at 21. In addition, country conditions documents indicate that women are uniquely vulnerable to gang violence and are often punished by gangs seeking revenge and retaliation. *See, e.g.*, Exh. 14 at 690 ("Women's bodies are a territory for revenge and control. Not one person interviewed denied the harsh reality for women in gang-controlled areas. . . Women are also killed or otherwise punished by gangs in revenge.").

For these reasons, the Court finds that the respondent has established a reasonable possibility of suffering "other serious harm" in El Salvador. *See* 8 C.F.R. § 1208.13(b)(1)(iii)(B). Therefore, the respondent has established her statutory eligibility for a grant of humanitarian asylum.

4. Discretion

Once an applicant has established statutory eligibility for a grant of asylum, she must further show that she merits such relief as a matter of discretion. INA § 240(c)(4). This determination requires weighing both the positive and negative factors in the respondent's case. *Kalubi v. Ashcroft*, 364 F.3d 1134, 1139–40 (9th Cir. 2004).

The most significant negative factors presented in this matter include the respondent's Red Notice, Salvadoran arrest warrant for aggravated robbery and aggravated burglary, arrest after calling the police regarding Mr. [redacted] abuse in 2011, and arrest after scolding her niece in 2011. The Court notes that the respondent was not convicted of any of these offenses. Moreover, the respondent's case presents numerous positive factors. The respondent has resided in the United States for seven years, she has two United States citizen children, and she has never been convicted of a crime. Accordingly, the Court finds that the respondent merits a favorable exercise of its discretion. *See* INA § 240(c)(4).

Because the Court has granted asylum on a humanitarian basis, the Court will not address the respondent's accompanying applications for withholding of removal or protection under the Convention Against Torture, as they are now moot.

V. ORDERS

In light of the foregoing findings of the Court, the following orders will enter:

IT IS HEREBY ORDERED that the respondent's application for asylum under INA § 208 is **GRANTED**.

Julie L. Nelson
Immigration Judge

***Appeal is Reserved for Both Parties**
Appeal Due: June 19, 2019