

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
290 BROADWAY
NEW YORK, NEW YORK

File Number: [REDACTED]

In the Matter of:

M [REDACTED] A [REDACTED], T [REDACTED]

Respondent.

IN REMOVAL PROCEEDINGS

CHARGE:	INA § 212(a)(7)(A)(i)(I)	Alien Present Without Valid Entry Document
APPLICATIONS:	INA § 208	Asylum
	INA § 241(b)(3)	Withholding of Removal
	8 C.F.R. § 1208.16(c)	Convention Against Torture

ON BEHALF OF RESPONDENT:

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ON BEHALF OF DHS:

Ginnine Fried, Esq
DHS/ICE, Office of the Chief Counsel

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

[REDACTED] ("Respondent") is an adult female, native and citizen of Honduras. Exhibit ("Ex.") 1. Respondent entered the United States ("U.S.") at or near Brownsville, Texas, on or about December 4, 2012, *Id.* On February 22, 2013, the U.S. Department of Homeland Security ("DHS" or "the Department") served Respondent with a Notice to Appear ("NTA"), charging Respondent with removability under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA"), as an alien who entered the U.S. without a valid entry document. *Id.*

These removal proceedings commenced when the Department filed the NTA with the San Antonio Immigration Court. *See* 8 C.F.R. § 1003.14(a). On June 10, 2014, venue was changed to the New York Immigration Court. In her motion for change of venue, Respondent, through

counsel, admitted the factual allegations in her NTA and conceded the charge of removability. *See* Ex 2. Thus, removability was established by Respondent's admissions. *See* INA § 240(c)(2); 8 C.F.R. §§ 1240.8, 1240.10(c). After Respondent declined to designate a country for removal, the Court designated Honduras for that purpose. INA § 241(b)(2); 8 C.F.R. § 1240.10(f).

On April 6, 2015, Respondent filed a Form I-589 Application for Asylum and for Withholding of Removal with the Immigration Court Ex. 4. Respondent also sought protection under the Convention Against Torture ("the Convention" or "CAT").

At an individual hearing on July 8, 2019, Respondent testified in support of her applications for relief. The Respondent's partner, [REDACTED], and her brother, [REDACTED], also testified in support of the applications for relief. For the reasons that follow, Respondent's applications for asylum will be granted.

II. EXHIBITS

- Exhibit 1: Respondent's Notice to Appear, served on February 22, 2013;
- Exhibit 2: Motion for change of venue
- Exhibit 3: Order changing venue to New York
- Exhibit 4: Form I-589, Application for Asylum and for Withholding of Removal, filed with the Court;
- Exhibit 5: Respondent's evidentiary submission regarding country conditions, Exhibit D-L;
- Exhibit 6: Memorandum from USCIS dated February 7, 2013;
- Exhibit 7: Superseding application for asylum, witness list and evidentiary submission M-II;
- Exhibit 8: Notice of Mendez Rojas class membership
- Exhibit 9: Respondent's evidentiary submission Exhibit JJ-KK.

III. SUMMARY OF CLAIM

Respondent testified that she is a native and citizen of Honduras. She came to the United States escaping the father of her children who was going to kill her. She also testified that she left Honduras due to the discrimination she experienced due to her race and Garifuna ethnicity. The Respondent is a member of the Garifuna community, which is a community of African descent in Honduras. She testified that in Honduras people who are ethnically Garifuna face constant discrimination and racism.

Respondent testified that as a Garifuna she has no vote or say about what happens in her country. She stated that Garifunas are marginalized and live far away from other people. They do not have a police station in her community of [REDACTED]. She stated that there is a police station in another community but it is not run by Garifunas. According to the Respondent, the police have no regard for people of her race. She testified as an example that when she was abused by the father of her children, she had to travel to a different town to file a complaint with the police. The police initially did not take her complaint.

The respondent testified that there is no employment in her locality. The Respondent has to travel long distances in order to find employment. She indicated that the government does not help create jobs in her area. The Respondent testified that potential employers shut the door on their face and tell Garifunas that they do not want to hire black people. Respondent testified that she had left her hometown two or three times to find employment. She quoted potential employers as having said to her: "Get out of here, Get away from here, we are not going to give Black faces like you jobs."

The respondent also testified that the government of Honduras has not provided schools in the Garifuna communities. In her community, the schools are supported and funded by the Garifuna community. The schools are not open every day. She testified that there are only three to four teachers in the community trying to do their best.

The Respondent testified that the government of Honduras wants to take the land away from the Garifuna people. She believes that the government does not want them around because of their skin color.

The Respondent testified that she has seen individuals of her community being hit by non Garifunas while trying to get on the bus. She also recounted how her daughter had to travel to La Ceiba which is outside of their community in order to attend school. On one occasion while her daughter was travelling on a bus filled with other Garifuna students, their bus was shot at by non-Garifuna people. She stated that many students were killed. Her daughter returned home very scared. According to the Respondent the perpetrators were not held accountable.

The Respondent also testified on cross-examination that her community also has no hospital. Whenever her ex-partner injured her, she had to go see a nurse who works in a house where people in the community can go for treatment. Respondent described the nurse as a healer and a leader in her community.

The Respondent testified that if she were to return to Honduras she would experience further mistreatment because of her race and the father of her children would also mistreat her.

LEGAL STANDARDS AND ANALYSIS

A. Credibility

Having considered the totality of circumstances, the Court finds that Respondent's testimony was credible. *See* INA §§ 208(b)(1)(B)(iii), 240(c)(4)(C). Her testimony was detailed, plausible, internally consistent, and consistent with her documentary evidence. Respondent also corroborated her testimony. INA § 208(b)(1)(B)(ii). She presented two witnesses, her boyfriend,

██████████ and her brother, ██████████. These two credible witnesses corroborated the Respondent's claim.

Asylum

An asylum applicant may demonstrate that she is a "refugee" in either of two ways. First, she may demonstrate that she suffered past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA §§ 101(a)(42)(A), 208(b)(1)(A); 8 C.F.R. § 1208.13(b)(1). Second, she may demonstrate a well-founded fear of future persecution on account of a protected ground by demonstrating that she subjectively fears persecution and that her fear is objectively reasonable. INA § 101(a)(42)(A); *Ramsameachire v. Ashcroft*, 357 F.3d 169, 178 (2d Cir. 2004).

Respondent claims that she has suffered past persecution and has a well-founded fear of future persecution on account of her Garifuna race and ethnicity.

1. Garifuna race and ethnicity

Past persecution

Economic Persecution

Courts have long recognized that certain economic sanctions can rise to the level of persecution. See, e.g., *Dunat v. Hurney*, 297 F.2d 744, 746 (3d Cir.1961) (interpreting former version of withholding-of-removal provision requiring "physical persecution" and holding that economic persecution can suffice because "[t]he denial of an opportunity to earn a livelihood in a country such as the one involved here is the equivalent of a sentence to death by means of slow starvation and none the less final because it is gradual"); accord *Diminich v. Esperdy*, 299 F.2d 244, 247 (2d Cir.1961) (noting "full [] agree[ment]" with *Dunat*'s holding on economic persecution).

"Persecution requires a showing of more than mere economic discrimination. *Ahmed v. Ashcroft*, 341 F.3d 214 (3d Cir. 2003). The economic difficulties must be above and beyond those generally shared by others in the country of origin and involve noticeably more than mere loss of social advantages or physical comforts. *Cheng Kai Fu v. INS*, 386 F.2d 750, 753 (2d Cir. 1967). Rather, the harm must be "of a deliberate and severe nature and such that is condemned by civilized governments." H.R. Rep. No. 95-1452, at 7, as reprinted in 1978 U.S.C.C.A.N. at 4706". *Matter of T-Z-*, 24 I & N Dec. 163, 173 (BIA 2014)

Matter of T-Z-, 24 I & N Dec. 163 (BIA 2007), instructs that an economic sanction constitutes persecution if it (1) " 'depriv[es] [the victim] of liberty, food, housing, employment or other essentials of life,' " or (2) deliberately imposes a " 'severe economic disadvantage.' " 24 I. & N. Dec. at 171 (emphasis omitted) (quoting H.R.Rep. No. 95-1452, at 5 (1978), reprinted in 1978 U.S.C.C.A.N. 4700, 4704). The first prong of this standard is intended to reference "deliberate deprivation of basic necessities such that life or freedom is threatened." *Id.* at 171.

The second prong references sanctions that, while not actually threatening life or freedom, nonetheless "reduce an applicant to an impoverished existence." *Id.* at 174.

Economic sanctions that might manifest persecution include "particularly onerous fine[s]," "large-scale confiscation[s] of property," and "sweeping limitation[s] of opportunities to continue to work in an established profession or business." *Id.* There is, however, no fixed threshold for the economic harms that will manifest persecution. Instead, whether a given economic sanction constitutes persecution turns on its "impact" on the victim. *Id.*; accord Matter of J-H S-, 24 I. & N. Dec. 196, 200-01 (B.I.A.2007), petition for review denied sub nom. Jian Hui Shao v. Mukasey, 546 F.3d 138 (2d Cir.2008). Thus, a sanction that impoverishes a poor victim would constitute persecution, while the same sanction imposed on a wealthier individual without such effect would not. See Matter of T-Z-, 24 I. & N. Dec. at 173 n.10, 174-75; see also Guan Shan Liao v. U.S. Dep't of Justice, 293 F.3d at 70 (holding that whether fine constitutes persecution turns on victim's financial circumstances and fine's effect). In sum, an economic sanction is persecution only if its impact is an "infliction of suffering or harm" that on its own would be sufficient to constitute persecution. Mei Fun Wong v. Holder, 633 F.3d at 72 (internal quotation marks omitted).

Respondent testified credibly that she and her family have experienced past persecution on account of their race. The Respondent described the efforts made by the government of Honduras to take the land where the Garifuna live, fish, and farm away from them. The Respondent also described how it has been impossible for her to find employment and how potential employers have slammed their doors on her face and told her that they do not hire "black faces" like hers. She also spoke about how the government provides no law enforcement in her locality and no schools for Garifuna children. The Respondent also described an incident in which the bus her daughter was travelling in to go to school outside her locality was shot at by non-Garifuna people. She also testified that she has no vote or say about what happens in her country.

The Respondent's claim for asylum is corroborated by the Department of State Honduras 2018 Human Rights Report. The Report indicates at page one that human rights issues in Honduras include threats and violence against indigenous and Afro-descendent communities. The Report further corroborates the Respondent's claim regarding the government's role in the eviction of the Garifuna from their land. The Report states "Ethnic minority rights leaders, international NGOs, and farmworker organizations continued to claim that the government failed to redress actions taken by security forces, government agencies, and private individuals and businesses to dislodge farmers and indigenous persons from lands over which they claimed ownership based on land reform law or ancestral land titles. The Report further states at page twenty that indigenous communities which include the Garifuna have limited representation in the national government and consequently little direct input into decisions affecting their lands, cultures, traditions, and the allocation of natural resources. Persons from indigenous and Afro-descendent communities continued to experience discrimination in employment, education, housing, and health services. Tab LL

The respondent also complained regarding the lack of education in her community and the fact that her daughter faced danger as she had to travel outside of her community to attend school in La Ceiba. The challenges the Garifuna face in the realm of education are detailed in the

Background Report on The Garifuna of Honduras at Tab Y of Ex. 7 which is in part sponsored by the U. S. AID, Virginia Tech and Penn State etc. At page 13 the report states as follows: "[m]ultiple authors describe the Honduran education system as marred with a lack of valuation and understanding of the Garifuna culture and language as well as bias and discrimination (Alvarez, 2008; Anderson, 2000; Craven, 2006; Feanny, 2010; Kleyn 2010; Lara, 2002). The vast majority of teachers in Garifuna communities are mestizo and Spanish is the language of instruction from pre-school through university in all communities, including Garifuna speaking communities (Alvarez, 2008; Kleyn, 2010). "Therefore, learning Spanish is not much of a choice but an obligatory means to receive the benefit of the formal education system in the country" (Alvarez, 2008, p.117). Schools are described as hostile for culturally and linguistically diverse students, particularly those of indigenous and Afro-descendent origin (Craven, 2006; Anderson, 2000; Alvarez, 2008; Feanny, 2006). There is a prevailing perception that the school system is unsupportive of the Garifuna and other indigenous cultures. "The school system has led teachers and students to the conclusion that Garifuna and indigenous languages are for primitive, non-educated, and ignorant people, and the use of these languages on school campuses has been totally prohibited" (Alvarez, 2008, p. 140). Anderson (2000) notes in his research on Garifuna children, that stereotypes and racial biases are present in the school system, giving multiple examples of educators in both public and private schools including that: "The principal of the largest public Colegio in La Ceiba stated bluntly that '*negros* are slow [*lentos*], in the sense of learning. In general, their level of learning is below ours [*mestizos*]. There are few *negros* who are brilliant'" (p. 274).

The evidence shows that indigenous and Afro-descendant people suffer from higher levels of poverty than the rest of the country's population. Intra-American Commission on Human Rights, *Situation of Human Rights in Honduras*, (December 31, 2015) at Paragraph 417 at 159. The evidence also shows that the government of Honduras is an active participant in the eviction of the Garifuna from the lands that they depend on for their survival.¹ This court finds that the Respondent has established that as a Garifuna she and her family have been deprived of

¹ The Minority Rights Report-Garifuna states that Tourism-related issues pose the greatest danger on the mainland and at least four Garifuna communities on the north coast of Honduras are under unprecedented threat of disappearance. In 2001 the Honduran Tourism Secretary claimed publicly that hundreds of kilometers of pristine sun-drenched North Coast beaches were being wasted and should be 'developed for strong tourism.' In the years that followed many Garifuna have been evicted from their land in the Tela Bay region in northern Honduras, such as in Tornabé by government designation of a National Park and an environmental protected area. This property was later transferred to the Honduran Tourism Institute (IHT) which engaged in joint ventures with private sector interests. In addition, in Tela Bay in September 2014, armed police evicted approximately 400 Garifuna individuals from land that was later illegally sold to San Pedro Sula businessmen.

Repression has occurred against Garifuna leaders and communities working to defend communal territory, resources and culture from the mega-project. They have faced arson attacks, trumped up criminal charges, as well as abduction and threats at gunpoint by paramilitaries hired by real estate companies seeking to pressure Garifuna to sell their land.

employment, housing, education, health services and the protection of law enforcement, which are all essentials of life. The above in the aggregate rises to the level of persecution.

The Respondent also alleges that she has a well-founded fear of future persecution on account of her Garifuna ethnic and racial identity. If an applicant has not demonstrated past persecution, she may nonetheless demonstrate statutory eligibility for asylum by establishing that she has a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(2). An applicant is not required to provide evidence that she would be “singled out individually” for persecution in the country of removal if she establishes that, in the country from which she is seeking asylum, “there is a pattern or practice . . . of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion,” and that the applicant is included in and identifies with that group, such that his “fear of persecution upon return is reasonable.” 8 C.F.R. § 1208.13(b)(2)(iii); *see also Shao v. Mukasey*, 546 F.3d 138, 150 n.6 (2d Cir. 2008) (“Pattern-and-practice analysis affords a petitioner who cannot credibly demonstrate a reasonable possibility that he will be targeted as an individual for future persecution an alternative means to demonstrate that his fear of persecution is objectively reasonable.”). To establish his eligibility for asylum based upon a pattern or practice of persecution, an applicant must demonstrate that the persecution against the group in which he is included is “systemic or pervasive.” *Matter of A-M-*, 23 I&N Dec. 737, 741 (BIA 2005).

Respondent also alleges that there is a pattern or practice of persecution against similarly situated individuals in Honduras. The Court finds that the country conditions evidence indicates discrimination against the Garifuna community that is so “systemic or pervasive” that it constitutes a threat to life or freedom. *See Acosta*, 19 I&N Dec. at 222.

In light of all the above, this Court finds that the Respondent has met her burden of proof and has established her eligibility for political asylum in the United States.

IV. CONCLUSION

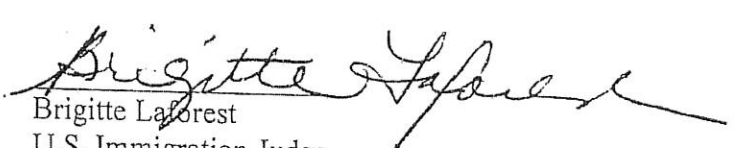
Accordingly, after a careful review of the record, the following orders are entered:

ORDERS

IT IS HEREBY ORDERED that Respondent’s application for asylum under INA § 208 is **GRANTED**.

Date:

October 9, 2019


Brigitte Laforest

U.S. Immigration Judge