

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
YORK, PENNSYLVANIA

IN THE MATTER OF:

) IN WITHHOLDING-ONLY

) PROCEEDINGS

██████████ M ██████████ (Lead)

) File # A ██████████

██████████, Y ██████████ (Rider)

) File # A ██████████

██████████ D ██████████ (Rider)

) File # A ██████████

ON BEHALF OF RESPONDENTS:

Jacquelyn, Kline, Esq.

) ON BEHALF OF THE DHS

Jon Staples, Esq.

Decision and Order

This lead respondent is an indigenous Guatemalan national, residing in the department of Huehuetenango, who testified that she is a single mother of two minor children whose father is absent from their lives; she has two years of schooling. She lives in a small provincial town where she purchased a small parcel of land in 2013 from a woman named Natalia Ramos upon which to build her home for her children. To do so she borrowed the money from her father. According to respondent, Natalia's family is known locally as wealthy and influential.

In October 2013, respondent testified, Ramos demanded the return of her land. Respondent agreed once Natalia refunded her money, but Ramos refused to do so, informing respondent that she had already spent the money. When respondent refused to give Ramos back the land, Ramos assaulted her and threatened to kill her unless the land was returned to her. Respondent admitted that she did not seek police intervention because the closest police force was several hours away, and because it is well known that the police are corrupt and easily bribed by those who could afford to buy them off.

Knowing that Ramos had the intent and the means to carry out her threat, respondent left Guatemala in November 2013 and entered the United States without admission or parole in early December 2013 where she was quickly intercepted by CBP. According to respondent, once she was informed that she would be quickly removed to Guatemala, she felt it useless to try to explain why she came to the United States.

Once she returned to Guatemala, respondent soon noticed a man walking near her house who was a known associate of Natalia. Respondent related that she knows of an individual who had problems with Natalia and was found dead in a field. Because she has no money to move elsewhere in Guatemala, and without her land she has no way to support her children, she fled again to the United States with help from a cousin who lent her money.

Withholding of Removal

To establish eligibility for withholding of removal in accordance with section 241(b)(3) of the Act, the applicant must establish a "clear probability" of persecution on "on account of" one of the statutorily-protected grounds set forth at section 101(a)(42)(A). Although an applicant need not show conclusively why persecution occurred or may occur in the future, Matter of S-P-, 21 I&N Dec. 486 (BIA 1996), she must present some evidence of motive on the part of the persecutor, either direct or circumstantial, to demonstrate her eligibility for the relief she is seeking.¹ INS v. Elias-Zacarias, 502 U.S. 478 (1992); Balasubramaniam v. INS, 143 F.3d 157 (3rd Cir. 1998); Amanfi v. Ashcroft, 328 F.3d 719 (3rd Cir. 2003).

In this regard, the applicant must produce sufficiently detailed evidence and testimony from which it is reasonable to believe that the harm she fears, or the harm already suffered, is encompassed within one of the statutorily-protected grounds as set forth above. An alien who meets this standard must be granted withholding of removal, which is mandatory unless the alien is statutorily precluded from such relief. It has been held that the burden of proof is higher to establish eligibility for withholding of removal than for asylum. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987).

Underlying such applications is the requirement that the applicant's testimony be credible, persuasive, and specific, rather than general or vague. Balasubramaniam v. INS, *supra*; Matter of Y-B-, 21 I&N Dec. 1136 (BIA 1998). In this regard, respondent's testimony is determined to be credible as it conforms to known country conditions as established through record evidence, the court could detect no effort by respondent to materially mislead, and her testimony, by and large, conforms to her written application.

Government counsel questioned respondent over certain of her answers given to the CBP officer who questioned her shortly after her interception near the border. See exhibit 2-D. A review of that document indicates that respondent informed the CBP officer that she came to the United States to work for three years and that she had no fear of returning to Guatemala. In her in-court testimony, respondent explained that she did not inform the CBP officer of why she fled from Guatemala after he made it clear that she would be returned.

The court gives exhibit 2-D little weight. It has come to this court's attention that a great many individuals, mainly from Central America, who are arrested along the southwest border ostensibly claim virtually the same thing: that they claimed no fear of return, but admitted coming to this country to find work for a set period of time. When queried about this, almost all aliens claim that they informed the CBP of their fear of returning, but were told they did not have valid claims. This is a phenomena of long standing and repeated by a substantial percentage of asylum claimants the vast majority of whom do not know each other and who arrive at different times and different locales along the border. This also pertains to many individuals who were removed and who returned shortly thereafter. In short, this court has

¹ In Matter of J-B-N- & S-M-, 24 I&N Dec. 208 (BIA 2007), the Board held that the REAL ID ACT of 2006 requires that one of the grounds at INA § 101(a)(42)(A) comprise "one central reason" for the claim.

entirely too many questions concerning the reliability of the record of sworn statement to give them anything but *de minimis* weight.²

Particular Social Group

Respondent's claim is understood as based on membership in a *particular social group*, which is defined as a group of individuals who share a common, immutable characteristic that cannot be changed or that they should not be required to change because it is fundamental to their individual identities or consciences. Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); Fatin v. INS, 12 F.3d 1233 (3d Cir. 1993). Immutable characteristics include innate characteristics such as "sex, color, or kinship ties" or shared past experiences. Acosta, 19 I&N Dec. at 233. Although past experience is an immutable characteristic, a social group "must exist independently of the persecution suffered" and "must have existed before the persecution began." Lukwago v. Att'y Gen., 329 F.3d 157, 172 (3d Cir. 2003).

Additionally, respondent will be required to show that the attributes of her particular social group are "recognizable" or "identifiable" by society. See Matter of Kasinga, 21 I&N Dec. 357, 365-66 (BIA 1996); Matter of H-, 21 I&N Dec. 337, 342-43 (BIA 1996). In addition to demonstrating that she is a member of a particular social group, respondent must also establish that she was targeted for persecution, at least in part, on account of her membership in that group. INA §208(b)(1)(B)(i). Ndayshimiye v. Att'y Gen., 557 F.3d 124, 130 (3d Cir. 2009).

Recently, in Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014), the Board clarified that societies use various means to distinguish individuals within society, including using race, religion, nationality, and political persuasion, characteristics which may or may not be visually evident but whose personal identities are shared in commonality with others similarly situated. In relation to membership in a particular social group, the Board adopted the requirement that an alien establish her group as "socially distinct" in order to avoid further confusion over the previous term "social visibility." To this end, the Board requires an alien to establish that she is a member of a group (1) composed of members who share an immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *Id.* at 237.

Respondent's social group can be understood as one of a *group of small landowners in Guatemala who are targeted for violence and murder*. In Matter of Acosta, *supra*, at 233, the Board recognized the potential for a social group's immutable characteristic consisting of a shared past experience of land ownership. Here, the background evidence supports respondent's claim. Of singular importance, and not refuted by other record evidence, is a report from the U.S. Agency for International Development ("USAID"), **exhibit 4-H**, which briefly discusses the history of rural poverty and distortional land distribution patterns in Guatemala. Of particular interest is the discussion of the pernicious problems facing indigenous populations, including an absence of laws which protect indigenous rights to land, the prevention of women from enjoying legal rights to land due to the patriarchal customs and societal attitudes, and the marginalization of indigenous women, particularly those single women head of households. Importantly, the report also emphasizes that Guatemala

² See Xie v. Ashcroft, 359 F.3d 239, 246 (3d Cir. 2004), where the court counseled against placing too much weight on an airport interview when too much information is lacking concerning the manner in which the interview was conducted.

continues to have an overwhelming number of land disputes, and that such disputes were at the core of the Guatemalan civil war during the 1980's.

It is against this backdrop that respondent's claim is scrutinized. As respondent credibly testified, she bought a small parcel of land upon which to build a home and support her children as a single parent. Shortly thereafter, the woman who sold respondent the land demanded it back, and refused to reimburse respondent the money she paid. When respondent refused, the woman, Natalia Ramos, assaulted her and threatened to have her killed unless she gave up her land. In another document, entitled "*In Guatemala, Land Reform is met with violence*," dated January 2007, exhibit 4-H, this progress report denotes that poor farmers are often killed after demanding small plots of land to sustain their families, and that private security forces consisting of paramilitaries and gunmen, hired by large landowners, are often behind the murders, with the national police implicated in certain murders.

This record contains overwhelming support for respondent's contention that small landowners are recognized within Guatemalan society as a social group due, in significant part, to being socially distinct, especially indigenous landowners. The group shares current and past immutable characteristics that they should not be required to change. Her testimony is consistent with known country conditions in Guatemala. So, too, respondent's testimony that she could not rely on the local police for help against Ramos's family whom respondent described as influential and wealthy. Respondent explained that it is well known throughout Guatemala that the local police are open to bribes from those wealthy enough to pay. The *Human Rights Report on Guatemala*, exhibit 4-E, charges Guatemala with "widespread institutional corruption, particularly in the police and judicial sectors...including often lethal violence against women," this on the first page of the report. Given this chilling report, respondent's feeling of helplessness when it comes to the police is well documented and understandable. In short, respondent has met her burden of proof of past persecution on account of a particular social group as described above.

Given that respondent has established past persecution, the regulatory presumption of future persecution is triggered, in accordance with 8 C.F.R. § 1208.16(b)(1). It has been held that the government has the burden of proof to establish that country conditions have fundamentally changed since the respondent's departure such that a reasonable person in the same or similar circumstances would no longer have a fear of persecution in returning. Lukwago v. Ashcroft, 329 F.3d 157 (3rd Cir. 2003); Matter of H, 21 I&N Dec. 337, 346 (BIA 1996); Matter of C-Y-Z, 21 I&N Dec. 915, 919 (BIA 1997). That burden is manifested under the present regulations which require the government to establish a "fundamental change in circumstances" in the applicant's country of nationality, 8 C.F.R. § 1208.16(b)(1)(A), or that the "applicant could avoid future persecution by relocating to another part of the applicant's country of nationality...and under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(B). The burden of proof held by the government in either regard is by a preponderance of evidence. 8 C.F.R. § 1208.16(b)(1)(B)(ii). See also Manzoor v. U.S. Dep't of Justice, 254 F.3d 342 (1st Cir. 2001).

In Berishaj v. Ashcroft, 378 F.3d 314, 327 (3d Cir. 2004), the Third Circuit held that "the [government] is obligated to introduce evidence that, on an individualized basis, rebuts well-founded fear of future persecution. Information about general changes in the country is not

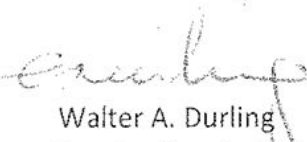
sufficient," quoting Rios v. Ashcroft, 287 F.3d 895, 901 (9th Cir. 2002). Of course, the government cannot meet its burden by any standard, given the current record. Moreover, as to successful internal relocation, the government, too, cannot meet its burden. According to the Third Circuit, the fact-finder must conclude that, first, the alien would be successful in escaping persecution internally, and second, must conclude whether relocation would be reasonable. Leia v. Ashcroft, 393 F.3d 427, 438 (3d Cir. 2005). Again, the government has offered nothing to rebut the record evidence to demonstrate that respondent could safely relocate, and should do so.

Given that the court must grant respondent mandatory withholding of removal, respondent's children, who are in Removal proceedings, meet the lower burden of proof of a well-founded fear of persecution for asylum. While respondent cannot directly confer any benefit to her children by being the recipient of withholding of removal, given the children are too young (age 4 and 5, respectively) to advocate their own fear of probable prospective persecution, their "fear" is the same as their mother's subjective fear. Finally, given the outcome of this claim, respondents' tandem claim under the CAT need not be considered, though such claim would likely be granted on account of Guatemalan government acquiescence to likely prospective torture. The following orders are hereby entered.

Order: The lead respondent is hereby ordered removed from the United States.

Further Order: Respondent's removal to Guatemala is hereby withheld pursuant to INA § 241(b)(3).

Further Order: Respondent's children, A #s [REDACTED] and [REDACTED], are granted asylum pursuant to INA § 208(a).


Walter A. Durling
Immigration Judge

December 2, 2014