

**From:** [Couch, V. Stuart \(EOIR\)](#)  
**To:** [McHenry, James \(EOIR\)](#)  
**Subject:** RE: A-R-C-G-  
**Date:** Friday, August 18, 2017 4:56:00 PM

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Will do and thanks.

Stu

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**From:** McHenry, James (EOIR)  
**Sent:** Friday, August 18, 2017 4:56 PM  
**To:** Couch, V. Stuart (EOIR) <(b) (6) @EOIR.USDOJ.GOV>  
**Subject:** RE: A-R-C-G-

Thanks. Let me know as soon as you hear from the BIA.

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**From:** Couch, V. Stuart (EOIR)  
**Sent:** Friday, August 18, 2017 2:56 PM  
**To:** McHenry, James (EOIR) <(b) (6) @EOIR.USDOJ.GOV>  
**Subject:** A-R-C-G-

James,

Wanted to give you a heads up on a *Matter of A-R-C-G-* remand from the Board that I recertified back up to them today.

Attached are my original decision with the Board decision and the certification order I issued today. As stated in my order, the DHS did not make the same concessions as to PSG that were made in *A-R-C-G-*. (b) (6)

(b) (6) I'll leave it to the Board to assess whether I'm right.

Best regards,

Stu

V. Stuart Couch  
U.S. Immigration Judge  
Charlotte, NC  
(b) (6)  
(b) (6) @usdoj.gov



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**Lopez, Andres  
The Lopez Law Firm, PLLC  
5701 Executive Center Rd., Suite 102  
Charlotte, NC 28212**

**DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212**

Name: E (b) (6), A (b) (6)

(b) (6)

**Date of this notice: 12/8/2016**

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  
Greer, Anne J.  
O'Herron, Margaret M

Userteam: Docket

*Handwritten initials*



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041

**B(b) (6)**, **A(b) (6)**  
**(b) (6)**

**DHS/ICE Office of Chief Counsel - CHL  
5701 Executive Ctr Dr., Ste 300  
Charlotte, NC 28212**

**Name: B(b) (6), A(b) (6)**

**(b) (6)**

**Date of this notice: 12/8/2016**

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of the decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Liebowitz, Ellen C  
Greer, Anne J.  
O'Herron, Margaret M

User team: [redacted]

Falls Church, Virginia 22041

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File: (b) (6) - Charlotte, NC

Date: DEC - 8 2016

In re: A(b)(6) E(b)(6), a.k.a. (b)(6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Andres Lopez, Esquire

ON BEHALF OF DHS: Cori White  
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(7)(A)(i)(I), I&N Act [8 U.S.C. § 1182(a)(7)(A)(i)(I)] -  
Immigrant - no valid immigrant visa or entry document

APPLICATION: Asylum; withholding of removal; (b)(6)

The respondent appeals from the Immigration Judge's December 1, 2015, decision denying her applications for asylum, withholding of removal, and (b)(6). Sections 208(b)(1)(A), 241(b)(3)(A) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(b)(1)(A), 1231(b)(3)(A); 8 C.F.R. §§ 1208.13, 1208.16- (b)(6). The Department of Homeland Security ("DHS") has filed a brief on appeal. We will sustain the appeal, and remand the record for completion of background checks.

We review for clear error the findings of fact, including determinations of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We find the Immigration Judge's adverse credibility finding to be clearly erroneous "[c]onsidering the totality of the circumstances" (I.J. at 4-5). Section 208(b)(1)(B)(iii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(iii). We agree that the inconsistencies identified by the Immigration Judge exist, but we find that the respondent's testimony and the corroborative evidence, particularly the (b)(6) and the affidavits of the respondent's (b)(6), reconcile the discrepancies and rehabilitate her credibility. Section 208(b)(1)(B)(ii) of the Act, 8 U.S.C. § 1158(b)(1)(B)(ii). While the respondent's written asylum statement was inconsistent with her credible fear interview in regard to when her (b)(6) (1999 vs. 2009), the (b)(6) and the affidavits

█ (b) █

of (b) (6) support a finding that (b)(6) occurred as early as the late 1990's or early 2000's (I.J. at 5; Exh. 3, Tabs H, J).<sup>1</sup>

Further, although the respondent's written statement, unlike her testimony, fails to allege that (b)(6) in 2014, the respondent's explanation that she forgot to mention it because she was focused on escaping sufficiently reconciles this discrepancy under the circumstances in this case (I.J. at 5; Tr. at 52, 62). We also do not find the discrepancy between the respondent's testimony and her written statement regarding whether (b)(6) called her after she changed her phone number to be clear enough to support an adverse credibility finding (I.J. at 5; Tr. at 55-56).

There is no genuine dispute that the respondent's (b)(6) for several years, and the Immigration Judge found that the respondent "may have experienced significant (b)(6) and that she "█ (b)(6) (I.J. at 14). Thus, the identified discrepancies regarding the dates and specific (b) (6) do not undermine the respondent's credibility with respect to her overall claim that she suffered years of significant (b)(6). Section 208(b)(1)(B)(iii) of the Act.<sup>2</sup>

We also disagree with the Immigration Judge's alternative finding that the respondent did not meet her burden of proof (I.J. at 7-15). We agree with the respondent that she set forth a cognizable particular social group and that she is a member of that group (Respondent's Brief at 10-14). The respondent's proposed group, "El Salvadoran women who are (b)(6) is (b) (6) to that which we addressed in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) (holding that under the facts and evidence in that case, "(b) (6) " was a cognizable particular social group). In this regard, we find that the totality of the evidence, including the 2014 El Salvador Human Rights Report, establishes that the group is sufficiently particular and socially distinct in El Salvadoran society (I.J. at 2, 10).<sup>3</sup>

We additionally conclude that the Immigration Judge's finding that the respondent was able to (b)(6) is clearly erroneous (I.J. at 10-11). The Immigration Judge's finding is

<sup>1</sup> The Immigration Judge gave the affidavits limited weight because they were not prepared contemporaneously with the incidents (b)(6) described therein, and the affiants were not made available for cross-examination (I.J. at 5-6). We point out that the affiants had no reason to document (b)(6) until requested to do so by the respondent, and the affidavits are worthy of some evidentiary weight.

<sup>2</sup> Although the Immigration Judge did not make a separate finding as to whether the (b)(6) rose to the level of past persecution, on this record, we find that it did (I.J. at 14; Tr. at 41-47, 50-51; Exh. 2, Tab C). 8 C.F.R. § 1208.13(b)(1).

<sup>3</sup> The Immigration Judge took administrative notice of the 2014 Human Rights Report for El Salvador issued by the United States Department of State (I.J. at 2).

(b) (6)

based on the fact that the respondent<sup>(b)(6)</sup> moved away from<sup>(b)(6)</sup> in 2008, and <sup>(b) (6)</sup> in 2013 (*Id.* at 11). However, the record reflects that the respondent's<sup>(b) (6)</sup>

<sup>(b)(6)</sup> (I.J. at 3; Tr. at 43-47, 50-51). Further, the<sup>(b) (6)</sup>, a local<sup>(b)(6)</sup> threatened the respondent in<sup>(b) (6)</sup> of 2013, referred to her as<sup>(b) (6)</sup>

(I.J. at 2; Tr. at 41-42).

Moreover, in<sup>(b) (6)</sup> of 2014, a<sup>(b) (6)</sup>

<sup>(b)(6)</sup> (I.J. at 3; Tr. at 47). Thus, under the circumstances presented in this case, the Immigration Judge's finding that the respondent<sup>(b) (6)</sup> is not supported by the record (I.J. at 10-11).

The Immigration Judge also found that even if the respondent's proposed group is cognizable under the Act, she did not establish a nexus between the harm and her group membership (I.J. at 13-15). However, the record indicates that the<sup>(b) (6)</sup>

<sup>(b)(6)</sup> confirmed as much (I.J. at 2-3; Tr. at 41-47, 51). See *Matter of N-M-*, 25 I&N Dec. 526, 532 (BIA 2011) ("A persecutor's actual motive is a finding of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error"). The record as a whole supports a finding that the respondent's membership in the particular social group of "El Salvadoran women<sup>(b)(6)</sup>" is at least one central reason that her<sup>(b)(6)</sup>

Finally, we disagree with the Immigration Judge's finding that the respondent has not demonstrated that the government of El Salvador is unable or unwilling to protect her from<sup>(b) (6)</sup> <sup>(b)(6)</sup> I.J. at 14-15). *Mulyani v. Holder*, 771 F.3d 190, 197-98 (4th Cir. 2014) (harm must be inflicted by the government or a private person that the government is unable or unwilling to control). We recognize that the respondent was able to obtain<sup>(b)(6)</sup> <sup>(b)(6)</sup> (in 2001 and 2008), that the police arrested and detained<sup>(b)(6)</sup> and that the respondent did not always report<sup>(b)(6)</sup> to the police because she did not want<sup>(b)(6)</sup> (I.J. at 14; Tr. at 56-59).

However, the neighbors' affidavits allege that they called the police during various episodes<sup>(b)(6)</sup> and that the police often would not intervene, and the respondent's written statement asserts that<sup>(b)(6)</sup> called the police at least 10 times over the course of several years, and that the police advised that they would not intervene unless they caught<sup>(b)(6)</sup> in the act or saw blood (I.J. at 14-15; Exh. 2, Tab C; Exh. 3, Tab J). Further, the respondent's<sup>(b)(6)</sup>, who warned her she would always be in a relationship with<sup>(b)(6)</sup> and that she would not know where the bullets came from, is a<sup>(b)(6)</sup> in El Salvador (I.J. at 2).

The 2014 El Salvador Human Rights Report does indicate some efforts have been made in the area of<sup>(b) (6)</sup> However, it also reflects that violence against women, including<sup>(b)(6)</sup>, is a "widespread and serious problem," and that the government's efforts to

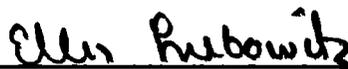
combat it were “minimally effective” (2014 El Salvador Human Rights Report at 16). *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 950-53 (4th Cir. 2015) (the respondent established that Salvadoran authorities were unwilling or unable to control gangs when her credible testimony and other record evidence reflected that the neighborhood police were subject to gang influence, and the country conditions evidence noted the existence of “widespread gang influence and corruption within the Salvadoran prisons and judicial system”). This information, when combined with the respondent’s experiences, supports the conclusion that the respondent established that the police were unable and unwilling to protect her.

On this record, the respondent has demonstrated past persecution on account of her membership in a cognizable particular social group. 8 C.F.R. § 1208.13(b)(1). As the DHS has not demonstrated a fundamental change in circumstances or the reasonableness of internal relocation, the lead respondent is also entitled to a presumption of a well-founded fear of future persecution on the same ground (Tr. at 52-53). 8 C.F.R. §§ 1208.13(b)(1)(i), (ii). Thus, the respondent has met her burden of proving her eligibility for asylum. 8 C.F.R. § 1208.13(a).

Accordingly, we will sustain the respondents’ appeal as to the denial of her asylum application, and we will remand the record for completion of background checks. As we are sustaining the respondent’s appeal as to her asylum claim, we will not address the Immigration Judge’s denial of the applications for withholding of removal or (b)(6) (I.J. at 15-16).

ORDER: The appeal is sustained.

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).

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
CHARLOTTE, NORTH CAROLINA

IN THE MATTER OF ) IN REMOVAL PROCEEDINGS  
)  
A(b)(6) E(b)(6) ) File No: (b) (6)  
)  
Respondent. ) December 1, 2015  
)

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CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act  
("INA" or "Act")

APPLICATIONS: Asylum, Withholding of Removal, and (b)(6)  
(b)(6)

ON BEHALF OF RESPONDENT:  
Andres Lopez, Esq.

ON BEHALF OF THE GOVERNMENT:  
Cori White, Esq.  
Office of the Chief Counsel  
U.S. Department of Homeland Security

**WRITTEN DECISION OF THE IMMIGRATION JUDGE**

**I. Procedural History**

The respondent is a 44 year-old female citizen of El Salvador who entered the United States on July 6, 2014 and was encountered by Customs and Border Protection agents. On August 19, 2014, the Department of Homeland Security ("DHS") served the respondent with a Notice to Appear ("NTA") charging her with removability pursuant to section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act ("INA" or "Act"). Exhibit 1. At a master calendar hearing on December 15, 2014, the respondent, through counsel, admitted the allegations set forth in the NTA, conceded the charge, and El Salvador was designated as the country of removal. The Court, therefore, finds by clear and convincing evidence that the respondent is removable as charged to the country of El Salvador. INA § 240(c)(3)(A).

On March 30, 2015, the respondent submitted an application for asylum, withholding of removal under the Act, and (b)(6). Exhibit 2. On September 1, 2015, the Court held an individual hearing on the respondent's applications for relief and reserved for entry of this written decision.

**II. Evidence Presented**

The court has reviewed and considered all evidence submitted by the parties, whether it is expressly referred to in this decision or not.

**A. Documentary Evidence**

- Exhibit 1: Notice to Appear
- Exhibit 2: Respondent's Application for Asylum, Withholding of Removal, and (b)(6) (Form I-589) with supporting documents (tabs A through C) filed March 30, 2015
- Exhibit 3: Respondent's supporting documents (with tabs D through J) filed August 4, 2015

The Court takes administrative notice of the country conditions as described in the 2014 U.S. Department of State Human Rights Practices Report for El Salvador, available at <http://www.state.gov/documents/organization/236900.pdf> (hereinafter "2014 El Salvador Country Report"). 8 C.F.R. § 1208.12(a); *Quitaniilla v. Holder*, 758 F.3d 570, 574 n. 6 (4th Cir. 2014); *Ai Hua Chen v. Holder*, 742 F.3d 171, 179 (4th Cir. 2014).

**B. Testimonial Evidence**

The testimony of the respondent is summarized as follows:

The respondent testified she was born in El Salvador on (b) (6) and has a high school diploma. Sometime in 1999 the respondent married (b) (6) (hereinafter (b)(6)).

At the beginning of her testimony, the respondent adopted her sworn statement submitted in support of her Form I-589 application. Exhibit 2, tab B at 12-14; see *Matter of E-F-H-L-*, 26 I&N Dec. 319, 322 n.3 (BIA 2014) (citing *Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989)).

In addition to her sworn statement, the respondent testified about a conversation she had in (b) (6) 2013 with (b) (6), who she claims is a (b) (6). On that occasion (b)(6), and he called the (b) (6). (b) (6) warned the respondent (b)(6) or words to that effect. The respondent interpreted these statements to be (b) (6) and tended to support (b)(6) (b)(6).

Between (b) (6) 2013 and (b) 2014 the respondent spoke (b)(6) approximately five times in person and six to seven times by telephone, mostly about (b)(6). Occasionally (b) (6) would threaten the respondent when (b)(6), and tell her (b) (6). The respondent testified her (b)(6) in (b) (6) 2014.

The respondent last saw (b)(6), 2014, at which time (b)(6)

The respondent was allowed to (b)(6)

The respondent claims she received anonymous telephone threats she believes came from (b)(6). The calls were made at night and threatened to kill the respondent, although she did not recognize the caller's voice. The respondent reported the calls to the local police who recommended she change the chip in her telephone to another number. The respondent received three more calls after she changed the telephone chip; (b)(6) were aware of her new telephone number.

The respondent testified she moved away to another colony in 2008 after she and (b)(6) but noted (b)(6). The respondent moved (b)(6) because she was tired of (b)(6). The respondent would stay with her (b)(6). The respondent contends she did not have anywhere else to go because El Salvador is a small place, and (b)(6). The respondent was tired of going to the police because "they don't do anything."

The respondent testified that in (b)(6) 2014 and (b)(6), told her (b)(6)

Other aspects of the respondent's testimony are reflected in the Court's analysis below. The remainder of the respondent's testimony is contained in the verbatim transcript of the individual hearing held on September 1, 2015.

### III. Asylum

#### A. Burden of Proof

Any individual who is physically present in the United States, irrespective of status, may receive asylum, in the exercise of discretion, provided she filed a timely application and qualifies as a refugee within the meaning of section 101(a)(42)(A) of the Act. INA § 208. An alien bears the burden of proving eligibility for asylum. *Naizgi v. Gonzales*, 455 F.3d 484, 486 (4th Cir. 2006); INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a). To establish asylum eligibility under the Act, the applicant must show that she was subjected to past persecution or that she has a "well-founded" fear of future persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.13(b)(1). An alien who establishes past persecution is entitled to a rebuttable presumption that she has a well-founded fear of future persecution. *Id.* Absent past persecution, an applicant may independently establish a well-founded fear of persecution. *Ngarurih v. Ashcroft*, 371 F.3d 182, 187 (4th Cir. 2004).

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<sup>1</sup> The Court notes this Spanish name translates as (b)(6) in English.

## B. One Year Time Bar

An alien applying for asylum must show “by clear and convincing evidence that the application has been filed within one year after the date of the alien’s arrival in the United States.” INA §208(a)(2)(B). The DHS concedes, and the Court finds, that the respondent entered the United States on July 6, 2014, and her asylum application was timely filed on March 30, 2015.

## C. Credibility

An alien requesting asylum bears the evidentiary burden of proof and persuasion in connection with any application under section 208 of the Act. *See* INA § 208(b)(1)(B)(i); 8 C.F.R. § 1208.13(a); *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010). For any application for asylum filed after May 11, 2005, certain provisions of the REAL ID Act of 2005 regarding corroboration and credibility are applicable. INA § 208(b)(1)(B)(iii). An applicant’s own testimony is sufficient to meet the burden of proving their asylum claim, if it is believable, consistent, and sufficiently detailed to provide a plausible and consistent account of the basis of their fear. 8 C.F.R. § 1208.13(a).

An immigration judge must provide specific, cogent reasons for making an adverse credibility determination. *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011). In evaluating an asylum applicant’s testimony, “omissions, inconsistencies, contradictory evidence and inherently improbable testimony are appropriate bases for making an adverse credibility determination.” *Id.* Even the existence of only a few such inconsistencies can support an adverse credibility determination. *Id.* Following passage of the REAL ID Act of 2005, an inconsistency can serve as a basis for an adverse credibility determination “without regard to whether [it] goes to the heart of the applicant’s claim. *Qing Hua Lin*, 736 F.3d 343, 352-53 (4th Cir. 2013) (citing INA § 208(b)(1)(B)(iii)).

Considering the totality of the circumstances and all relevant factors, the Court may base a credibility determination on any of the following: (1) the applicant’s demeanor, candor, or responsiveness; (2) the inherent plausibility of the applicant’s account; (3) the consistency between the applicant’s or witness’s written and oral statements, the internal inconsistencies of each statement, and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant’s claim; (4) consistency of the applicant’s statements with other evidence of record, including the reports of the Department of State on country conditions; or (5) any other relevant factor. INA §§ 208(b)(1)(B)(iii); 241(b)(3)(c); *see also Singh v. Holder*, 699 F.3d 321, 328 (4th Cir. 2012).

Where the Court determines that the applicant should provide evidence corroborating the alien’s testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain it. INA § 208(b)(1)(B)(ii); *see Jian Tao Lin v. Holder*, 611 F.3d 228, 237 (4th Cir. 2010) (even for credible testimony, “corroboration may be required when it is reasonable to expect such proof and there is no reasonable explanation for its absence”) (internal citation and quotation marks omitted). Lack of corroborative evidence is not necessarily fatal to an asylum application, however, as “[a]n individual can, without

corroboration, satisfy this standard simply by presenting credible testimony about specific facts that would cause a similarly situated person to likewise fear persecution.” *Jian Tao Lin*, 611 F.3d at 236 (internal citation omitted); see also 8 C.F.R. § 1208.13(a); 8 C.F.R. §1208.16(b)(2)(i).

Based on the respondent’s testimony and the documentary evidence provided, the Court finds that the respondent is not credible for several cogent and specific reasons. First, the respondent testified (by way of adoption of her written statement) that (b) (6) 1999. On cross-examination, the respondent was asked to explain why she told an asylum officer during her credible fear interview that the (b)(6) Exhibit 1, credible fear worksheet at 4. The respondent explained the omission on the fact she only gave summary statements to the asylum officer, and the (b)(6) 2014. The Court finds the respondent’s explanation to be unpersuasive, and notes she bears the burden of proof and corresponding risk of an inconclusive record. *Salem v. Holder*, 647 F.3d 111, 116 (4th Cir. 2011). The Court finds this inconsistency relates to a material fact that is central to the respondent’s claim, and therefore does not support her credibility.

Second, the respondent testified that she was (b)(6) in (b) (6) 2014 and preceded her decision to flee El Salvador. On cross-examination, the respondent was asked to explain why her sworn statement filed in support of her asylum application makes no reference her (b)(6) in (b) (6) 2014. Exhibit 2, tab C at 14. Again, the respondent failed to provide a persuasive explanation for this omission other than to say she did not report (b)(6) to the police and the incident “slipped her mind.” The omission in the respondent’s declaration is significant as it goes to the heart of her claim as one of the precipitating events that led her to flee El Salvador. The Court finds this inconsistency does not support her credibility.

Third, the respondent was asked on cross-examination why her sworn statement makes no reference to her claim she received anonymous threats by telephone after she changed her number. The respondent explained that (b)(6) would contact her through (b)(6) but conceded this fact was not in her sworn statement because she “forgot to mention it.” The respondent failed to provide an explanation for the absence of this important evidence, and the Court finds the omission does not support her credibility.

In light of these inconsistencies and omissions in her testimony, the Court finds that the respondent is not credible. Upon consideration of the record as a whole and the totality of the circumstances, the Court makes an adverse credibility determination and therefore denies the respondent’s application for asylum. *Ilunga v. Holder*, 777 F.3d. 199, 207 (4th Cir. 2015) (citations omitted); *Hui Pan v. Holder*, 737 F.3d 921, 930 (4th Cir. 2013) (citing *Rusu v. United States*, 296 F.3d 316, 323 (4th Cir. 2002) (“an unfavorable credibility determination is likely to be fatal to such a claim”)).

As an alternative finding, the Court will address whether the respondent has sufficiently corroborated her claim despite her lack of credibility. 208(b)(1)(B)(ii); *Hui Pan v. Holder*, 737 F.3d at 930; *Matter of L-A-C-*, 26 I&N Dec. 516, 518 (BIA 2015).

#### D. Corroboration

The REAL ID Act altered the INA's requirement regarding corroborating evidence. *Singh v. Holder*, 699 F.3d 321, 328 (4th Cir. 2012). Pursuant to the REAL ID Act, "when a trier of fact is not fully satisfied with the credibility of an applicant's testimony standing alone, the trier of fact may require the applicant to provide corroborating evidence 'unless the applicant does not have the evidence and cannot reasonably obtain the evidence.'" *Id.* at 329 (citing 8 U.S.C. § 1158(b)(1)(B)(ii) [INA § 208(b)(1)(B)(ii)] and *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007) ("The amendments to the [REAL ID] Act continue to allow an alien to establish eligibility for asylum through credible testimony alone, but they also make clear that where a trier of fact requires corroboration, the applicant bears the burden to provide corroborative evidence, or a compelling explanation for its absence.")). The method of authentication that the party submitting the evidence utilizes may affect the weight of the evidence, and the Court "retain[s] broad discretion to accept a document as authentic or not based on the particular factual showing presented." *See Lin v. Holder*, 771 F.3d 177, 186-87 (4th Cir. 2014); *Matter of D-R*, 25 I&N Dec. 445, 458 (BIA 2011).

The respondent produced several documents as corroborative evidence to establish her

(b) (6) 2001 and (b) (6) 2008. Exhibit 3, tab H at 46-63. The (b) (6), 2001 states at the time of (b) (6), and (b) (6) *Id.* at 46. By contrast, (b) (6), 1998 produced by the respondent reflects the respondent is only (b) (6) *Id.* at 69. To some extent, this discrepancy calls into question the veracity of the respondent's foreign documents to establish her (b) (6). As the (b) (6) of the respondent, the Court finds corroborating evidence establishing her (b) (6) (b) (6) is especially important.

The respondent produced a (b) (6)

(b) (6)

(b) (6)

Exhibit 2, tab C at 14 (emphasis in original).

The Court reviewed sworn statements from the (b) (6) generally attesting to (b) (6) Exhibit 3, tab J at 89-114. All of these documents were prepared in (b) (6) 2015 after the respondent was placed in removal proceedings, and a merits hearing scheduled to receive evidence on her application for asylum. These statements rely mainly on hearsay statements made by the respondent to the declarants, although some of them provided eyewitness accounts of (b) (6)

The Court finds these statements do not substantially corroborate the respondent's claim as they were not prepared contemporaneously with the incidents they recount. Moreover, the statements were prepared by witnesses not subject to cross-examination, such that the trustworthiness of the declarants cannot be adequately determined. *Djadjou v. Holder*, 662 F.3d 265, 276-77 (4th Cir. 2011); *Matter of H-L-H & Z-Y-Z*, 25 I&N Dec. 209, 214 n.5 (BIA 2010), *abrogated on other grounds by Huang v. Holder*, 677 F.3d 130 (2d Cir.2012); *accord Hui Pan v. Holder*, 737 F.3d 921, 930-31 (4th Cir. 2013). The Court affords these documents little probative weight.

The Court has reviewed a (b)(6) report which states the respondent (b)(6) Exhibit 3, tab G at 33. The report was prepared (b)(6) almost one year after she was caught by immigration officials and placed in removal proceedings. *Id.* at 30. The report provides no indication how long the respondent was interviewed by (b)(6) or what other sources of information were considered other than the respondent's own recollections. It appears (b)(6) interview was conducted in the English language which "made it difficult to understand any questions asked in English." *Id.* at 31. The Court gives this evidence limited probative weight and finds it does not sufficiently corroborate the respondent's claim of (b)(6)

The respondent did not submit any country condition evidence regarding El Salvador. The Court has considered the most recent Department of State country report regarding the (b)(6) and government response to (b)(6) 2014 El Salvador Country Report at 1, 15-18. The Court recognizes that El Salvador experiences significant societal problems (b)(6), public safety resources, and widespread criminal activity. This observation is clearly reflected in the country conditions report considered by administrative notice. Although this evidence indicates that (b)(6) ineffective law enforcement efforts, and human rights abuses exist in El Salvador, it does not corroborate the respondent's specific claim of mistreatment by (b)(6) (*Matter of L-A-C-*, 26 I&N Dec. at 524-25).

Upon consideration of all the evidence of record and the totality of the circumstances, the Court finds that the respondent has not provided sufficient evidence to corroborate her claim. INA § 208 (b)(1)(B)(ii); *Singh v. Holder*, 699 F.3d at 330; *Matter of L-A-C-*, 26 I&N Dec. at 522.

As an alternative holding, the Court will analyze the statutory basis of the respondent's asylum claim.

#### **E. Analysis**

To satisfy the statutory test for asylum, an applicant must make a two-fold showing. She must demonstrate the presence of a protected ground, and must link the feared persecution, at least in part, to it. *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005). An alien qualifies for asylum if they were persecuted "on account of ... membership in a particular

social group.” *Temu v. Holder*, 740 F.3d 887, 891 (4th Cir. 2014) (citing INA § 101(a)(42)(A)).

Under the REAL ID Act, an alien’s membership in a particular social group must be “at least one central reason for persecuting the applicant” to establish their eligibility for one of the five protected grounds for asylum. INA § 208(b)(1)(B)(i) (emphasis added); *Crespin-Valladares v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011). Incidents of harm that are consistent with acts of private violence, or merely show a person has been the victim of criminal activity, do not constitute evidence of persecution based on a statutorily protected ground. *Huaman-Cornelio v. BIA*, 979 F.2d 995, 1000 (4th Cir.1992).

Even if the Court found the respondent’s testimony was credible, which it does not, she has not established that her life or freedom would be threatened on account of a protected ground if she returns to El Salvador. The respondent seeks asylum due to her membership in a particular social group she defines as (b)(6)

An applicant seeking asylum based on her membership in a “particular social group” 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. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 210 (BIA 2014); *Martinez v. Holder*, 740 F.3d 902, 910 (4th Cir. 2014). “Any claim regarding the existence of a particular social group in a country must be evaluated in the context of the evidence presented regarding the particular circumstances in the country in question.” *Matter of A-R-C-G-*, 26 I&N Dec. 388, 392 (BIA 2014).

The Courts notes that in *Matter of A-R-C-G-*, the DHS conceded the particular social group defined as “married women in Guatemala who are unable to leave their relationship” met the statutory requirement for asylum relief. 26 I&N Dec. at 392-93. However, the Board’s particular social group analysis in *A-R-C-G-* lacks clarity as to exactly what “belief or characteristic” the alien victim possessed “that [her] persecutor seeks to overcome in others by means of punishment of some sort.” *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987) (citing *Matter of Acosta*, 19 I&N Dec. at 226); see also *Matter of N-M-*, Dec. 25 I&N Dec. 526, 532 (BIA 2011) (persecutor’s actual motive is a matter of fact to be determined by the Immigration Judge and reviewed for clear error).

The Court acknowledges the Fourth Circuit Court of Appeals has held “family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses” could form a cognizable particular social group. *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011); see also *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015). In

<sup>2</sup> While the respondent makes reference to a (b) (6), she has not presented sufficient facts to support a cognizable claim she fears persecution on account of (b) (6). Exhibit 2, tab C at 14; INA § 101(a)(42)(A). *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir.2005) (citing *Camara v. Ashcroft*, 378 F.3d 361, 364 (4th Cir.2004) (a political opinion may be shown “by evidence of verbal or openly expressive behavior by the applicant in furtherance of a particular cause”).

*Crespin-Valladares*, the Fourth Circuit remanded the alien's proceedings for further fact finding to determine whether the harm alleged by the alien was in fact on account of his family ties. *Id.* at 129.

Based upon the evidence of record, the Court finds that the respondent's (b)(6) (b)(6) is insufficient to meet the criteria to establish a cognizable particular social group as required under controlling case law, including *Matter of A-R-C-G-*, *Crespin-Valladares*, and their progeny.

#### a. Immutability

The Board's "interpretation of the phrase 'membership in a particular social group' incorporates the common immutable characteristic standard set forth in *Matter of Acosta*["*Matter of M-E-V-G-*, 26 I&N Dec. 227, 237-38 (BIA 2014). The shared characteristic of the particular social group 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 Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); accord *Martinez v. Holder*, 740 F.3d 902, 910-11 (4th Cir. 2014). The shared or immutable characteristic should be the characteristic that makes the group (1) generally recognizable in the community and (2) sufficiently particular to define the group's membership. *Matter of A-M-E & J-G-U*, 24 I&N Dec. 69, 74 (BIA 2007).

An asylum applicant's gender is clearly an immutable characteristic in a proposed group comprised of only women. *Matter of A-R-C-G-*, 26 I&N Dec. at 392. The Board has held that marital status can be an immutable characteristic where the individual is unable to leave the marital relationship. *Id.* at 392-93. Determination of this issue, however, is fact-dependent taking into account the applicant's own experiences, as well as more objective evidence such as background country information. *Id.* at 393.

The Court finds that the respondent has not met her burden to show a common immutable characteristic despite her female gender and Salvadoran nationality. *Matter of A-R-C-G-*. 26 I&N Dec. at 392-93.

Assuming without deciding the respondent was in fact (b)(6) (b)(6), her testimony and documentary evidence demonstrates she was able to (b)(6) (b)(6) in 2008 or 2009, and ultimately (b)(6) (b)(6). Exhibit 2, tab C at 13-14. The respondent left for the United States on June 16, 2014. *Id.* at 12.

The respondent's ability to leave (b)(6) (b)(6) home in 2008 or 2009 and travel to the United States five or six years later indicates (b)(6) (b)(6) was subject to change, and therefore not immutable. *Matter of A-R-C-G-*. 26 I&N Dec. at 393. Accordingly, the Court finds that the respondent's evidence does not support the immutability requirement for a cognizable social group. *Martinez v. Holder*, 740 F.3d at 910.

#### b. Particularity

The Board's requirement of particularity chiefly addresses the "group's boundaries" or "outer limits." *Matter of M-E-V-G-*, 26 I&N Dec. at 241. More specifically, a particular social

group must be defined by characteristics that provide a clear benchmark for determining who falls within the group. *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 76. In some circumstances, terms used to describe the group can combine to create a group with discrete and definable boundaries. *Matter of A-R-C-G-*, 26 I&N Dec. at 393. For example, (b) (6)

(b) (6) (emphasis added). “The group must also be discrete and have definable boundaries -- it must not be amorphous, overbroad, diffuse, or subjective.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (citation omitted); *see also Zelaya v. Holder*, 668 F.3d 159, 166 (4th Cir. 2012) (group must have “particular and well-established boundaries”). A social group does not have to be defined with strict homogeneity, but the group cannot be “too loosely defined.” *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. at 74; *Matter of C-A-*, 23 I&N Dec. at 957.

A cognizable particular social group is not defined with particularity by the fact that the applicant is subject to (b) (6). *Matter of A-R-C-G-*, 26 I&N Dec. at 393 n.14 (citing *Matter of W-G-R-*, 26 I&N Dec. at 215) (recognizing that a social group must have “defined boundaries” or a “limiting characteristic” other than the risk of persecution).

The Court finds the respondent has not met her burden to show particularity of her proposed social group that can be described with discrete or definable boundaries. First, the respondent’s proposed particular social group is overly broad. The respondent proposes that she belongs to a group consisting of “El Salvadoran women (b)(6)

(b) (6). Thus, the respondent defines her group by both a (b) (6). In *Matter of A-R-C-G-*, the Board noted that a cognizable particular social group is not defined with particularity by the fact that the applicant is subject to (b)(6). *Matter of A-R-C-G-*, 26 I&N Dec. at 393 n.14 (citing *Matter of W-G-R-*, 26 I&N Dec. at 215) (recognizing that a social group must have “defined boundaries” or a “limiting characteristic” other than the risk of persecution). The Court finds that the respondent’s proposed social group is impermissibly broad.

Second, El Salvador is inhabited by many women who suffer from (b)(6) (b) (6), and the country experiences widespread incidents including (b)(6) (b) (6). Although Salvadoran law affords protection to (b)(6) (b) (6) there were insufficient facilities for this purpose during the most recent reporting period. 2014 El Salvador Country Report at 21. Given the number of women who experience (b)(6) in El Salvador, the group lacks discrete boundaries.

Third, unlike the alien in *Matter of A-R-C-G-*, the respondent’s evidence does not support her claim that she (b) (6) (b) (6). In *Matter of A-R-C-G-*, the particular social group at issue incorporated the terms (b) (6) (b) (6). The Board stated, “[i]n some circumstances, the terms can combine to create a group with discrete and definable boundaries.” *Id.* The Board stated a (b) (6) (b) (6)

In this case, the Court finds the respondent has not provided sufficient evidence to show she was unable to leave (b)(6)

To the contrary, the respondent's evidence reflects (b) (6)

. Given the prevalence of (b)(6) in El Salvador, the respondent is unable to show that her fear of (b)(6) makes her particular.

Fourth, the Court finds that the respondent has not sufficiently narrowed her group as it was in *Crespin-Valladares v. Holder*. In *Crespin*, the social group was not comprised of every member in the alien's family, but rather centered on just two specific family members: "The family unit -- centered here around the relationship between an uncle and his nephew -- possesses boundaries that are at least as 'particular and well-defined' as other groups whose members have qualified for asylum." 632 F.3d at 125 (citations omitted). More specifically, the Fourth Circuit observed that the group consisted of family members who agreed to be prosecutorial witnesses:

For example, we have recently found that the "group consisting of family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses" qualifies as a particular social group. Each component of the group in *Crespin-Valladares* might not have particular boundaries. "Prosecutorial witnesses" might reach too broad a swath of individuals; "those who actively oppose gangs" might be too fuzzy a label for a group. Our case law is clear, however, that the group as a whole qualifies.

*Temu v. Holder*, 740 F.3d 887, 895-96 (4th Cir. 2014)(citations omitted).

The respondent's case is factually distinguishable from *Crespin-Valladares v. Holder*. The alien in *Crespin* was targeted for his familial relationship to his uncle who testified in court about the murder of his cousin. It was not the family relationship alone that made the alien a target for persecution, but the additional fact that Crespin and his uncle publically cooperated with the prosecution as witnesses to identify his cousin's murderers. *Crespin-Valladares v. Holder*, 632 F.3d at 125. They took public steps of cooperation when they described the gang members to the police by going to the police station to participate in an identification line-up, and when the uncle testified as a witness in court against two of the identified gang members. *Id.* at 120. Though Crespin himself did not testify at trial it was his familial relationship to his uncle, coupled with his own public cooperation with the El Salvadoran police investigators, which made the Crespin family a target for the MS-13 gang. Thus, it was Crespin's status as the relative of a witness, and not just his status as relative alone, that specifically made his kinship ties a cognizable particular social group. *Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Crespin-Valladares v. Holder*, 632 F.3d at 125.

By contrast, the respondent in this case has not shown that her group is defined by discrete boundaries beyond the (b)(6) *Matter of M-E-V-G-*, 26 I&N Dec. at 241. The particular social group proposed by the respondent

includes women who (b) (6). Again, the respondent's proposed group includes a wide swath of Salvadoran society which the Court determines is overbroad and diffuse.

The Court is simply unable to determine some specific characteristic of the respondent that would place her in a group with "particular and well-established boundaries" that is not "overbroad, diffuse, or subjective" given the prevalence of (b)(6) in El Salvador. *Temu v. Holder*, 740 F.3d at 895 (social group must have identifiable boundaries to meet the particularity element). Accordingly, the Court finds that the respondent's proposed social group fails the particularity requirement.

### c. Social Distinction

The proposed group must also be socially distinct within the society in question, based upon "evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group." *Matter of A-R-C-G-*, 26 I&N Dec. at 393-94 (citing *Matter of M-E-V-G-*, 26 I&N Dec. at 240, and *Matter of W-G-R-*, 26 I&N Dec. at 217). The group's recognition is determined by the perception of the society in question, rather than by the perception of the persecutor. *Id.* at 394 (citations and quotations omitted); *see also Temu v. Holder*, 740 F.3d at 894. Sociopolitical factors such as the existence of criminal laws designed to protect domestic abuse victims, and the effectiveness of governmental efforts at enforcement of those laws are relevant evidence to determine whether the applicant's country recognizes the need to (b)(6). *Id.* (citation omitted). "[E]ven within the (b) (6) context, the issue of social distinction will depend on the facts and evidence in each individual case, including documented country conditions; law enforcement statistics and expert witnesses, if proffered; the respondent's past experiences; and other reliable and credible sources of information." *Id.* at 394-95.

As noted in the particularity analysis *supra*, El Salvador has significant and troubling issues related to (b) (6). However, unlike the married alien in *Matter of A-R-C-G-*, the respondent lacks an identifiable trait like inability to seek assistance from authority that distinguishes her from other women in Salvadoran society. Thus, she fails to meet the very definition of her proposed social group of Salvadoran women (b)(6)."

Consistent with its immutability and particularity analysis *supra*, the Court finds the respondent is an unfortunate victim of (b)(6) like far too many in El Salvador, and thereby renders her past harm indistinct by comparison. For these reasons, the Court finds the respondent has not met her burden to show the requisite social distinction necessary for membership in a particular social group. *Zelaya v. Holder*, 668 F.3d at 165-66 (a particular social group can "not be defined exclusively by the fact that its members have been targeted for persecution") (citation omitted); *Matter of M-E-V-G-*, 26 I&N Dec. at 240; *Matter of C-A-*, 23 I&N Dec. at 960.

In sum, the Court finds the respondent's evidence does not demonstrate her membership in a particular social group that satisfies the Board's requirements of immutability, particularity, or social distinction. The Act does not extend protection to all individuals who

are victims of persecution. *Matter of M-E-V-G-*, 26 I&N Dec. at 234. “Asylum and refugee laws do not protect people from general conditions of strife, such as crime and other societal afflictions.” *Id.* The asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships. *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005) (citation omitted). Accordingly, the Court finds that the respondent’s asylum application must be denied.

## 2. Nexus/ “On Account of”

Assuming without deciding the respondent is able to establish membership in a particular social group, the respondent has not established such membership was “at least one central reason” for her persecution. *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014) (citing *Crespin-Valladares v. Holder*, 632 F.3d at 127). “A persecutor’s actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error.” *Matter of N-M-*, Dec. 25 I&N Dec. 526, 532 (BIA 2011) (citing *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007), 8 C F. R. § 1003.1(d)(3)(i)).

Seriousness of conduct is not dispositive of past persecution for purposes of determining asylum eligibility. “Instead, the critical issue is whether a reasonable inference may be drawn from the evidence to find that the motivation for the conduct was to persecute the asylum applicant on account of race, religion, nationality, membership in a particular social group, or political opinion.” *Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997); see INA § 101(a)(42)(A). While the applicant need not show conclusively what the motive for the persecution would be, or that the persecutor would be motivated solely by a protected ground, the applicant must produce evidence from which it is reasonable to conclude that the harm would be motivated, at least in part, by an actual or imputed ground. *INS v. Elias-Zacarias*, 502 U.S. at 483; *Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000); *Matter of S-V-*, 22 I&N Dec. 1306, 1309 (BIA 2000); *Matter of S-P-*, 21 I&N Dec. 486, 489-90 (BIA 1996).

The respondent’s evidence reflects that (b)(6)

(b)(6)  
l. The respondent testified that (b)(6) whose  
(b)(6)  
Exhibit 2, tab C at 12-13. Based upon the respondent’s testimony, it  
appears the (b)(6) was intended to  
(b)(6)

Thus, (b)(6) suffered by the respondent appears related to the violent and criminal tendencies of (b)(6), rather than conclusive evidence she was targeted on account of her membership in a particular social group. The evidence in this case is more consistent with acts of (b)(6) and therefore does not constitute evidence of persecution based on a statutorily protected ground. *Huaman-Cornelio v. BIA*, 979 F.2d at 1000; *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164-65 (4th Cir. 2009). The Court finds that the respondent has not established (b)(6) targeted her due to her membership in a particular social group, which is required to prove the requisite nexus for asylum relief. INA § 208(b)(1)(B)(i).

Accordingly, the Court finds that the respondent is not eligible for asylum based on past persecution because she has not established membership in a particular social group, or that a nexus exists between the harm she experienced and her membership in that group. *Saldarriaga v. Gonzales*, 402 F.3d at 466 (stating that, “quite apart from the question of petitioner’s apprehensions of reprisal, his asylum claim founders on more fundamental grounds” where an applicant was unable to demonstrate a protected ground or that the harm he feared would be *on account of* that protected ground).

Where an alien has not met his or her burden of establishing past persecution, he or she may establish a well-founded fear of future persecution on account of a statutorily protected ground if he or she demonstrates “that (1) a reasonable person in the circumstances would fear persecution; and (2) that the fear has some basis in the reality of the circumstances and is validated with specific, concrete facts.” *Mirisawo v. Holder*, 599 F.3d 391, 396 (4th Cir. 2010) (internal quotation marks and citation omitted). “In other words, an asylum applicant must demonstrate a subjectively genuine and objectively reasonable fear of future persecution on account of a statutorily protected ground.” *Id.* (internal quotation marks and citation omitted). An alien’s own speculations and conclusory statements, unsupported by independent corroborative evidence, will not suffice. *Yi Ni v. Holder*, 613 F.3d 415, 429 (4th Cir. 2010) (citing *Jian Xing Huang v. INS*, 421 F.3d 125, 129 (2d Cir. 2005)). An applicant is not required to show that he or she has been singled out individually for persecution if he or she establishes a pattern or practice in her country of persecution of groups of persons similarly situated to the applicant on account of the protected ground. 8 C.F.R. § 1208.13(b)(2)(i).

The respondent has not established past persecution on account of a protected ground. Thus, the Court finds she is not entitled to a rebuttable presumption of having a well-founded fear of future persecution.

The Court acknowledges the respondent’s fear of returning to El Salvador is subjectively reasonable. The Court acknowledges that the respondent may have experienced significant [REDACTED], and is sympathetic to her plight. The Court recognizes the respondent has suffered (b)(6) [REDACTED], and does not doubt her subjective fear of returning to El Salvador.

The Court, however, finds the respondent has not established that her fear of returning to El Salvador is objectively reasonable. The respondent was able to (b)(6) [REDACTED] in 2008 or 2009, (b)(6) [REDACTED] Exhibit 2, tab C at 13-14. The respondent has expressed a distrust of the police in El Salvador, a sentiment that does not appear to be unique to her. Her distrust is heightened because (b) (6) [REDACTED].

In *Matter of A-R-C-G-*, the alien “contacted the police several times but was told they would not interfere in a marital relationship.” 26 I&N Dec. at 389, 393. By contrast, the authorities in El Salvador did not refuse to help the respondent. The evidence of record reflects that in 2001 the respondent reported (b)(6) [REDACTED]s. Exhibit 2, tab C at 12. However, the respondent testified other times she did report (b)(6) [REDACTED] because she did not want (b)(6) [REDACTED]. *Id.* She claims that (b)(6) [REDACTED] called the police at least ten times over the

years, yet they “would not take [her] case” because they “wanted to see blood” or catch (b)(6) in the act (b)(6) *Id.*

The respondent’s evidence does suggest she was able to request help through the judicial process in her local neighborhood, and obtain various (b)(6) . Exhibit 3, tab H at 46-68.

The Court recognizes that police reports and court proceedings are not always effective in (b) (6) . However, the respondent’s evidence does not support a factual conclusion by the Court that local law enforcement authorities were unwilling or unable to protect her. *Mulyani v. Holder*, 771 F.3d 190, 199 (4th Cir. 2014). Despite these generalized reports, the Court is left to speculate if the respondent’s efforts to obtain law enforcement assistance in the future will be ignored or otherwise ineffective. Speculation does not satisfy the burden of establishing a well-founded fear of future persecution that is objectively reasonable. *Mirisawo v. Holder*, 599 F.3d at 396; *Jian Wen Wang v. BCIS*, 437 F.3d at 278; *see also Jian Xing Huang v. INS*, 421 F.3d at 129. After considering all the evidence of record, the Court finds the respondent has not established a well-founded fear of future persecution.

#### IV. Withholding of Removal

To establish eligibility for withholding of removal under INA § 241(b)(3), an applicant must “show[] that it is more likely than not that her life or freedom would be threatened in the country of removal because of her race, religion, nationality, membership in a particular social group, or political opinion.” *Gomis v. Holder*, 571 F.3d 353, 359 (4th Cir. 2009) (internal quotation marks and citations omitted). While withholding of removal has “a more stringent standard than that for asylum,” if an alien demonstrates eligibility for withholding of removal, such relief must be granted. *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353-54 (4th Cir. 2006) (internal citations omitted). “An applicant who has failed to establish the less stringent well-founded fear standard of proof required for asylum relief is necessarily also unable to establish an entitlement to withholding of removal.” *Anim v. Mukasey*, 535 F.3d 243, 253 (4th Cir. 2008) (internal quotation marks and citation omitted).

Since the respondent has not otherwise met the standard of proof for asylum, she has necessarily failed to meet the higher standard for withholding of removal under the Act. *Mulanyi v. Holder*, 771 F.3d 190, 198 (4th Cir. 2014). Accordingly, the Court finds the respondent has not demonstrated by a clear probability that her life or freedom would be threatened on account of a protected ground if she were returned to El Salvador.

#### IV. (b) (6)

To establish (b) (6)

(b) (6) an applicant must establish that “it is (b) (6) to the proposed country of removal. (b) (6) . For (b) (6) , it must

be (b) (6)

The respondent has presented no credible evidence of a clear probability that she would

(b) (6)

(4th Cir. 2013) (citations omitted); (b) (6)

The respondent has not alleged she was (b) (6). The Court does not attribute to the

(b) (6)

, who she claims is a (b) (6). Based upon the record before the Court, the Court finds that the respondent has not established (b) (6)

In this case, the evidence does not establish that the (b) (6)

The Court therefore finds the respondent has not met her burden to demonstrate eligibility for protection

(b) (6)

. The respondent's (b) (6) requires a chain of assumptions and speculations to reach any possibility of (b) (6) and thus she has not established (b) (6)

(BIA 2014) (citations omitted).

Accordingly, the Court enters the following:

### ORDERS

IT IS HEREBY ORDERED that Respondent's application for asylum is DENIED.

IT IS FURTHER ORDERED that Respondent's application for withholding of removal is DENIED.

IT IS FURTHER ORDERED that Respondent is not eligible for (b) (6)

IT IS FURTHER ORDERED that Respondent shall be REMOVED from the United States to El Salvador based on the charges contained in the Notice to Appear.

12/1/2015

Date



V. STUART COUCH

United States Immigration Judge  
Charlotte, North Carolina

**Matter of A-R-C-G- et al., Respondents**

*Decided August 26, 2014*

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

Depending on the facts and evidence in an individual case, “married women in Guatemala who are unable to leave their relationship” can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3) (2012).

FOR RESPONDENT: Roy Petty, Esquire, Rogers, Arkansas

FOR THE DEPARTMENT OF HOMELAND SECURITY: George R. Martin, Appellate Counsel

AMICI CURIAE: American Immigration Lawyers Association;<sup>1</sup> Center for Gender & Refugee Studies;<sup>2</sup> Federation for American Immigration Reform;<sup>3</sup> National Immigrant Justice Center;<sup>4</sup> United Nations High Commissioner for Refugees<sup>5</sup> and Williams & Connolly, LLP<sup>6</sup>

BEFORE: Board Panel: ADKINS-BLANCH, Vice-Chairman; MILLER and GREER, Board Members.

ADKINS-BLANCH, Vice Chairman:

In a decision dated October 14, 2009, an Immigration Judge found the respondents removable and denied their applications for asylum and withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. §§ 1158(a) and 1231(b)(3) (2006). The respondents have appealed from that decision, contesting only the denial of their applications for relief from removal. We find that the lead respondent, a victim of domestic violence in her native country, is a

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<sup>1</sup> Phillip L. Torrey, Deborah E. Anker, Sabrineh Ardalan, Benjamin Casper, and Fatma E. Marouf, Esquires

<sup>2</sup> Karen Musalo, Blaine Bookey, Lisa Frydman, and Christine Lin, Esquires

<sup>3</sup> Michael M. Hethmon, Esquire

<sup>4</sup> Lisa Koop, Ashley Huebner, and Charles Roth, Esquires

<sup>5</sup> Pamela Goldberg, Esquire

<sup>6</sup> Allison B. Jones and Ana C. Reyes, Esquires

member of a particular social group composed of “married women in Guatemala who are unable to leave their relationship.” The record will be remanded to the Immigration Judge for further proceedings.

## I. FACTUAL AND PROCEDURAL HISTORY

The lead respondent is the mother of the three minor respondents.<sup>7</sup> The respondents are natives and citizens of Guatemala who entered the United States without inspection on December 25, 2005. The respondent filed a timely application for asylum and withholding of removal under the Act.<sup>8</sup>

The Immigration Judge found the respondent to be a credible witness, which is not contested on appeal. It is undisputed that the respondent, who married at age 17, suffered repugnant abuse by her husband. This abuse included weekly beatings after the respondent had their first child.<sup>9</sup> On one occasion, the respondent’s husband broke her nose. Another time, he threw paint thinner on her, which burned her breast. He raped her.

The respondent contacted the police several times but was told that they would not interfere in a marital relationship. On one occasion, the police came to her home after her husband hit her on the head, but he was not arrested. Subsequently, he threatened the respondent with death if she called the police again. The respondent repeatedly tried to leave the relationship by staying with her father, but her husband found her and threatened to kill her if she did not return to him. Once she went to Guatemala City for about 3 months, but he followed her and convinced her to come home with promises that he would discontinue the abuse. The abuse continued when she returned. The respondent left Guatemala in December 2005, and she believes her husband will harm her if she returns.

The Immigration Judge found that the respondent did not demonstrate that she had suffered past persecution or has a well-founded fear of future persecution on account of a particular social group comprised of “married women in Guatemala who are unable to leave their relationship.” The Immigration Judge determined that there was inadequate evidence that the respondent’s spouse abused her “in order to overcome” the fact that she

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<sup>7</sup> We will refer to the lead respondent as “the respondent.” The minor respondents are derivatives of their mother’s asylum application.

<sup>8</sup> The respondent’s asylum application, which was filed after May 11, 2005, is governed by the amendments to the Act brought about by the REAL ID Act of 2005, Division B of Pub. L. No. 109-13, 119 Stat. 302. See *Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006).

<sup>9</sup> This child was born in 1994 and was residing in Guatemala at the time of the proceedings.

was a “married woman in Guatemala who was unable to leave the relationship.” He found that the respondent’s abuse was the result of “criminal acts, not persecution,” which were perpetrated “arbitrarily” and “without reason.” He accordingly found that the respondent did not meet her burden of demonstrating eligibility for asylum or withholding of removal under the Act.

On appeal, the respondent asserts that she has established eligibility for asylum as a victim of domestic violence. The Department of Homeland Security (“DHS”) initially responded that the Immigration Judge’s decision should be upheld. We subsequently requested supplemental briefing from both parties and amici curiae to address the issue whether domestic violence can, in some instances, form the basis for a claim of asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Act.<sup>10</sup> See *Matter of R-A-*, 22 I&N Dec. 906 (BIA 1999) (en banc), *vacated*, 22 I&N Dec. 906 (A.G. 2001), *remanded*, 23 I&N Dec. 694 (A.G. 2005), *remanded and stay lifted*, 24 I&N Dec. 629 (A.G. 2008).

In response to our request for supplemental briefing, the DHS now concedes the respondent established that she suffered past harm rising to the level of persecution and that the persecution was on account of a particular social group comprised of “married women in Guatemala who are unable to leave their relationship.” However, the DHS seeks remand, arguing that “further factual development of the record and related findings by the Immigration Judge are necessary on several issues” before the asylum claim can be properly resolved. The respondent opposes remand and maintains that she has met her burden of proof regarding all aspects of her asylum claim. We accept the parties’ position on the existence of harm rising to the level of past persecution, the existence of a valid particular social group, and the issue of nexus under the particular facts of this case. We will remand the record for further proceedings.

## II. ANALYSIS

### A. Particular Social Group

The question whether a group is a “particular social group” within the meaning of the Act is a question of law that we review de novo. 8 C.F.R. § 1003.1(d)(3)(ii) (2014); see *Malonga v. Mukasey*, 546 F.3d 546, 553 (8th

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<sup>10</sup> We acknowledge with appreciation the thoughtful arguments raised in the briefs submitted by amici curiae.

Cir. 2008). The question whether a person is a member of a particular social group is a finding of fact that we review for clear error. 8 C.F.R. § 1003.1(d)(3)(i).

We initially considered whether victims of domestic violence can establish membership in a particular social group in *Matter of R-A-*, 22 I&N Dec. at 907. We reversed an Immigration Judge's finding that the respondent in that case was eligible for asylum on account of her membership in a particular social group consisting of "Guatemalan women who have been involved intimately with Guatemalan male companions, who believe that women are to live under male domination." *Id.* at 911. The majority opinion reasoned that the proffered social group was "defined principally, if not exclusively, for purposes of" the asylum case and that it was unclear whether "anyone in Guatemala perceives this group to exist in any form whatsoever," including spousal abuse victims themselves or their male oppressors. *Id.* at 918. We further reasoned that even if the proffered social group was cognizable, the respondent did not establish that her husband harmed her on account of her membership in the group. *Id.* at 920–23.

The Acting Commissioner of the former Immigration and Naturalization Service ("INS") referred the decision to the Attorney General for review.<sup>11</sup> In 2001, Attorney General Janet Reno vacated our decision in *Matter of R-A-*, 22 I&N Dec. 906. She remanded the case for the Board's reconsideration following final publication of proposed regulations that addressed the meaning of various terms in asylum law, including "persecution," "membership in a particular social group," and "on account of" a protected characteristic. *See Asylum and Withholding Definitions*, 65 Fed. Reg. 76,588, 76,597–98 (proposed Dec. 7, 2000).

On February 21, 2003, Attorney General John Ashcroft certified *Matter of R-A-* for review and provided an opportunity for additional briefing. He remanded the case to the Board in 2005, directing us to reconsider our decision "in light of the final rule." *Matter of R-A-*, 23 I&N Dec. 694. The proposed regulations were not finalized. On September 25, 2008, Attorney General Michael Mukasey certified the case for his review and issued a decision ordering us to reconsider it, removing the requirement that we await the issuance of the final regulations. *Matter of R-A-*, 24 I&N Dec. 629. *Matter of R-A-* is no longer pending.<sup>12</sup>

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<sup>11</sup> The functions of the former INS were transferred to the DHS on March 1, 2003, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, § 402, 116 Stat. 2135, 2177–78 (Nov. 25, 2002).

<sup>12</sup> On December 4, 2008, we granted a joint motion filed by the parties, requesting remand to consider *Matter of R-A-* in light of recent jurisprudence. In remanded (continued . . .)

## B. Respondent's Claim

The DHS has conceded that the respondent established harm rising to the level of past persecution on account of a particular social group comprised of “married women in Guatemala who are unable to leave their relationship.” The DHS’s position regarding the existence of such a particular social group in Guatemala under the facts presented in this case comports with our recent precedents clarifying the meaning of the term “particular social group.” *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). In this regard, we point out that any claim regarding the existence of a particular social group in a country must be evaluated in the context of the evidence presented regarding the particular circumstances in the country in question.

In *Matter of W-G-R-* and *Matter of M-E-V-G-*, we held that an applicant seeking asylum based on his or her membership in a “particular social group” 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.<sup>13</sup> The “common immutable characteristic” requirement incorporates the standard set forth in *Matter of Acosta*, 19 I&N Dec. 211, 233–34 (BIA 1985). The “particularity” requirement addresses “the question of delineation.” *Matter of W-G-R-*, 26 I&N Dec. at 214. That is, it clarifies the point that “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239. The “social distinction” requirement renames the former concept of “social visibility” and clarifies “the importance of ‘perception’ or ‘recognition’ to the concept of the particular social group.” *Matter of W-G-R-*, 26 I&N Dec. at 216.

In this case, the group is composed of members who share the common immutable characteristic of gender. *See Matter of Acosta*, 19 I&N Dec. at 233 (finding that sex is an immutable characteristic); *see also Matter of W-G-R-*, 26 I&N Dec. at 213 (“The critical requirement is that the defining characteristic of the group must be something that either cannot be changed or that the group members should not be required to change in order to avoid persecution.”). Moreover, marital status can be an immutable

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proceedings, the parties stipulated that the respondent was eligible for asylum. Her application was granted on December 10, 2009.

<sup>13</sup> We explained that this three-part test is not a departure from the principles established in our prior case law regarding particular social groups. *See Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008); *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

characteristic where the individual is unable to leave the relationship. A determination of this issue will be dependent upon the particular facts and evidence in a case. A range of factors could be relevant, including whether dissolution of a marriage could be contrary to religious or other deeply held moral beliefs or if dissolution is possible when viewed in light of religious, cultural, or legal constraints. In evaluating such a claim, adjudicators must consider a respondent's own experiences, as well as more objective evidence, such as background country information.

The DHS concedes that the group in this case is defined with particularity. The terms used to describe the group—"married," "women," and "unable to leave the relationship"—have commonly accepted definitions within Guatemalan society based on the facts in this case, including the respondent's experience with the police. *See Matter of M-E-V-G-*, 26 I&N Dec. at 239; *Matter of W-G-R-*, 26 I&N Dec. at 214. In some circumstances, the terms can combine to create a group with discrete and definable boundaries. We point out that a married woman's inability to leave the relationship may be informed by societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation. *See Matter of W-G-R-*, 26 I&N Dec. at 214 (observing that in evaluating a group's particularity, it may be necessary to take into account the social and cultural context of the alien's country of citizenship or nationality); Committees on Foreign Relations and Foreign Affairs, 111th Cong., 2d Sess., *Country Reports on Human Rights Practices for 2008* 2598 (Joint Comm. Print 2010), available at <http://www.gpo.gov/fdsys/pkg/CPRT-111JPRT62931/pdf/CPRT-111JPRT62931.pdf> ("*Country Reports*") (discussing sexual offenses against women as a serious societal problem in Guatemala); Bureau of Human Rights, Democracy, and Labor, U.S. Dep't of State, *Guatemala Country Reports on Human Rights Practices—2008* (Feb. 25, 2009), <http://www.state.gov/j/drl/rls/hrrpt/2008/wha/119161.htm>.<sup>14</sup> In this case, it is significant that the respondent sought protection from her spouse's abuse and that the police refused to assist her because they would not interfere in a marital relationship.

The group is also socially distinct within the society in question. *Matter of M-E-V-G-*, 26 I&N Dec. at 240 ("To be socially distinct, a group need not be seen by society; rather it must be perceived as a group by society."). To have "social distinction," there must be "evidence showing that society

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<sup>14</sup> Notably, the group is not defined by the fact that the applicant is subject to domestic violence. *See Matter of W-G-R-*, 26 I&N Dec. at 215 (noting that circuit courts "have long recognized that a social group must have 'defined boundaries' or a 'limiting characteristic,' other than the risk of being persecuted").

in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” *Matter of W-G-R-*, 26 I&N Dec. at 217. The group’s recognition is “determined by the perception of the society in question, rather than by the perception of the persecutor.”<sup>15</sup> *Matter of M-E-V-G-*, 26 I&N Dec. at 242; *see also Matter of W-G-R-*, 26 I&N Dec. at 214 (noting that there is some degree of overlap between the particularity and social distinction requirements because both take societal context into account).

When evaluating the issue of social distinction, we look to the evidence to determine whether a society, such as Guatemalan society in this case, makes meaningful distinctions based on the common immutable characteristics of being a married woman in a domestic relationship that she cannot leave. Such evidence would include whether the society in question recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect domestic abuse victims, whether those laws are effectively enforced, and other sociopolitical factors. *Cf. Davila-Mejia v. Mukasey*, 531 F.3d 624, 629 (8th Cir. 2008) (finding that competing family business owners are not a particular social group because they are not perceived as a group by society).

Supporting the existence of social distinction, and in accord with the DHS’s concession that a particular social group exists, the record in this case includes un rebutted evidence that Guatemala has a culture of “machismo and family violence.” *See Guatemala Failing Its Murdered Women: Report*, Canadian Broad. Corp. (July 18, 2006), <http://www.cbc.ca/news/world/guatemala-failing-its-murdered-women-report-1.627240>. Sexual offenses, including spousal rape, remain a serious problem. *See Country Reports, supra*, at 2608. Further, although the record reflects that Guatemala has laws in place to prosecute domestic violence crimes, enforcement can be problematic because the National Civilian Police “often failed to respond to requests for assistance related to domestic violence.” *Id.* at 2609.

We point out that cases arising in the context of domestic violence generally involve unique and discrete issues not present in other particular social group determinations, which extends to the matter of social distinction. However, even within the domestic violence context, the issue of social distinction will depend on the facts and evidence in each

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<sup>15</sup> The perception of the persecutor, however, is critical to the question whether a person is persecuted “on account of” membership in a particular social group. *See Matter of M-E-V-G-*, 26 I&N Dec. at 242; *Matter of W-G-R-*, 26 I&N Dec. at 218.

individual case, including documented country conditions; law enforcement statistics and expert witnesses, if proffered; the respondent's past experiences; and other reliable and credible sources of information.<sup>16</sup>

### C. Remaining Issues

The DHS stipulates that the respondent suffered mistreatment rising to the level of past persecution. The DHS also concedes in this case that the mistreatment was, for at least one central reason, on account of her membership in a cognizable particular social group. We note that in cases where concessions are not made and accepted as binding, these issues will be decided based on the particular facts and evidence on a case-by-case basis as addressed by the Immigration Judge in the first instance. *See generally Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007). In particular, the issue of nexus will depend on the facts and circumstances of an individual claim.

We will remand the record for the Immigration Judge to address the respondent's statutory eligibility for asylum in light of this decision. Under controlling circuit law, in order for the respondent to prevail on an asylum claim based on past persecution, she must demonstrate that the Guatemalan Government was unwilling or unable to control the "private" actor. *See Gutierrez-Vidal v. Holder*, 709 F.3d 728, 732–33 (8th Cir. 2013); *Menjivar v. Gonzales*, 416 F.3d 918, 920–22 (8th Cir. 2005).

If the respondent succeeds in establishing that the Government was unwilling or unable to control her husband, the burden shifts to the DHS to demonstrate that there has been a fundamental change in circumstances such that the respondent no longer has a well-founded fear of persecution. 8 C.F.R. § 1208.13(b)(1)(i)(A), (ii) (2014). Alternatively, the DHS would bear the burden of showing that internal relocation is possible and is not unreasonable. 8 C.F.R. § 1208.13(b)(1)(i)(B), (ii); *see also Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012).<sup>17</sup> The Immigration Judge may also consider, if appropriate, whether the respondent is eligible for humanitarian asylum. *See* 8 C.F.R. § 1208.13(b)(1)(iii).

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<sup>16</sup> Amici for the American Immigration Lawyers Association, the United Nations High Commissioner for Refugees, and the Center for Gender & Refugee Studies argue that gender alone should be enough to constitute a particular social group in this matter. Since the respondent's membership in a particular social group is established under the aforementioned group, we need not reach this issue.

<sup>17</sup> On remand, the Immigration Judge should reevaluate this issue based on the entire evidentiary record, including any updated evidence.

### III. CONCLUSION

For the foregoing reasons, we will remand the record to the Immigration Judge for further proceedings and for the entry of a new decision. On remand, the Immigration Judge should afford the parties the opportunity to update the evidentiary record.

**ORDER:** The record is remanded to the Immigration Judge for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
CHARLOTTE, NORTH CAROLINA

IN THE MATTER OF: ) IN REMOVAL PROCEEDINGS  
)  
A (b) (6) B (b) (6), )  
A/K/A A (b) (6) B (b) (6), ) File No: (b) (6)  
)  
Respondent. ) ORDER OF CERTIFICATION  
)  
) August 18, 2017  
)

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NOW COMES the Court, upon the decision of the Board of Immigration Appeals issued on December 8, 2016 (“Board Dec.”), and remand order for the Court to grant Respondent’s application for asylum after the Department of Homeland Security (“DHS”) completes the required background checks. 8 C.F.R. §§ 1003.1(d)(6) and 1003.47(h).

The DHS has given notice that the lead respondent’s background checks are completed and clear. 8 C.F.R. § 1003.47(h).

The Court’s written decision of December 1, 2015 is adopted and incorporated herein by reference. In its decision, the Board found clear error in the Court’s credibility, corroboration, particular social group, nexus, and well-founding fear findings. Board Dec. at 2-4.<sup>1</sup>

As a general matter, final orders in removal proceedings come not from the immigration judge, but from the Board of Immigration Appeals. INA § 242(a)(1); *Mulyani v. Holder*, 771 F.3d 190, 196 (4th Cir. 2014). Only the Supreme Court, a Circuit Court of Appeals, and the Attorney General can overturn the Board’s findings and remand for further proceedings if the agency’s rationale is lacking. See *Wu Lin v. Lynch*, 813 F.3d 122, 131 (2d Cir. 2016) (holding that the BIA’s

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<sup>1</sup> Clear error exists in the absence of substantial evidence to support a finding “unless the evidence . . . was such that any reasonable adjudicator would have been compelled to conclude to the contrary.” *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011) (citing *Marynenka v. Holder*, 592 F.3d 594, 600 (4th Cir. 2010) (internal citation omitted)). In other words, “[e]ven if the record plausibly could support two results: the one the [immigration judge] chose and the one [the applicant] advances, reversal is only appropriate where the [Board] find[s] that the evidence not only supports [the opposite] conclusion, but *compels* it.” *Mulyani v. Holder*, 771 F.3d 190, 197 (4th Cir. 2014) (internal quotation marks omitted; emphasis in original).

After another review of this record, the Court is satisfied its earlier findings were supported by substantial evidence, and both factually and legally sufficient for the reasons stated in its prior decision. *Matter of L-A-C-*, 26 I&N Dec. 516, 522 (BIA 2015). The Board’s analysis appears to be an alternate view of the evidence than that of the trial court. See *Anderson v. City of Bessemer City, NC.*, 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.”); *Dankam v. Gonzales*, 495 F.3d 113, 123 (4th Cir. 2007) (clear error must be “so compelling that no reasonable factfinder could fail to find”); *Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007) (a factual finding is not “clearly erroneous” merely because there are two permissible views of the evidence); see also *Matter of D-R-*, 25 I&N Dec. 445, 458 (BIA 2011) (“[a]n Immigration Judge is not required to accept a respondent’s assertions, even if plausible, where there are other permissible views of the evidence based on the record.”).

“clear error” rejection of the IJ’s findings was not adequately supported and must itself be rejected and remanding for the BIA to either accept the IJ’s findings or, if it can, provide a supportable basis for rejecting them).

The Court respectfully declines to endorse the findings of the Board in this case, which should be considered in any subsequent judicial review. *Ngarurih v. Ashcroft*, 371 F.3d 182, 188 (4th Cir. 2004) (where the BIA does not adopt the opinion of the Immigration Judge but offers its own reasons for denying relief, the Court of Appeals reviews the BIA’s order rather than the IJ’s ruling).

To satisfy the statutory test for asylum, an applicant must make a two-fold showing. She must demonstrate the presence of a protected ground, and she must link the feared persecution, at least in part, to it. *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005); *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2013) (citation omitted). An applicant seeking asylum based on her membership in a “particular social group” 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. *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 210 (BIA 2014); *Martinez v. Holder*, 740 F.3d 902, 910 (4th Cir. 2014). “Any claim regarding the existence of a particular social group in a country must be evaluated in the context of the evidence presented regarding the particular circumstances in the country in question.” *Matter of A-R-C-G-*, 26 I&N Dec. 388, 392 (BIA 2014).

Under the REAL ID Act, an alien’s membership in a particular social group must be “at least one central reason for persecuting the applicant” to establish their eligibility for one of the five protected grounds for asylum. INA § 208(b)(1)(B)(i) (emphasis added); *Oliva v. Lynch*, 807 F.3d 53, 59 (4th Cir. 2015); *Cordova v. Holder*, 759 F.3d 332, 337 (4th Cir. 2014) (citing *Crespin-Valladares v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011)). “A persecutor’s actual motive is a matter of fact to be determined by the Immigration Judge and reviewed by [the Board] for clear error.” *Matter of N-M-*, Dec. 25 I&N Dec. 526, 532 (BIA 2011) (citing *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007), 8 C F. R. § 1003.1(d)(3)(i)).

“Evidence consistent with acts of private violence or that merely shows that an individual has been the victim of criminal activity does not constitute evidence of persecution on a statutorily protected ground.” *Velasquez v. Sessions*, No. 16-1669, 2017 WL 3221643, at \*3 (4th Cir. July 31, 2017) (citing *Sanchez v. U.S. Att’y General*, 392 F.3d 434, 438 (11th Cir. 2004)); see also *Huaman-Cornelio v. BIA*, 979 F.2d 995, 1000 (4th Cir. 1992).

In this case, the Board determined that the respondent met her burden for relief of asylum due to her membership in a particular social group defined as “El Salvadoran women (b) (6) Board Dec. at 2 (citing *Matter of A-R-C-G-*, 26 I&N Dec. 388; but see *Vega-Ayala v. Lynch*, 833 F.3d 34, 39 (1st Cir. 2016) (concluding that the proposed particular social group of “Salvadoran women in intimate relationships with partners who view them as property” lacked the requisite immutability and social distinction elements to be cognizable under the Act); see also *Fuentes-Erazo v. Sessions*, 848 F.3d 847, 853 (8th Cir. 2017) (holding that the applicant, a victim of domestic violence, “failed to demonstrate that she was a member of her proposed particular social group”); *Cardona v. Sessions*,

848 F.3d 519, 523 (1st Cir. 2017) (same); *Marikasi v. Lynch*, 840 F.3d 281, 291 (6th Cir. 2016) (same)).<sup>2</sup>

The Court notes that in *Matter of A-R-C-G-*, the DHS conceded the particular social group defined as “(b) (6)” met the statutory requirement for asylum relief. 26 I&N Dec. at 390, 392-95. The DHS has not made the same concession in this case. See *Velazquez v. Sessions*, No. 16-1669, 2017 WL 3221643, at \*10 n.5 (4th Cir. Jul. 31, 2017) (citing *Matter of A-R-C-G-*, 26 I&N Dec. at 395) (not reaching the legal validity of *A-R-C-G-* and declining to apply its nexus analysis in light of the DHS concession as to membership in a cognizable particular social group).

In *Velazquez v. Sessions*, the United States Court of Appeals for the Fourth Circuit evaluated intra-family disputes in the context of asylum proceedings. *Id.* at \*1. The Fourth Circuit reiterated “[e]vidence consistent with acts of private violence or that merely shows that an individual has been the victim of criminal activity does not constitute evidence of persecution on a statutorily protected ground.” *Id.* at \*3 (4th Cir. July 31, 2017) (citing *Sanchez v. U.S. Att’y General*, 392 F.3d 434, 438 (11th Cir. 2004)); see *Huaman-Cornelio v. BIA*, 979 F.2d 995, 1000 (4th Cir. 1992). Moreover, the circuit court held that not every intra-family dispute constitutes a valid claim for asylum if it fails to establish the statutorily-required nexus. *Id.* at \*4 (“the asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships.”) (quoting *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005))). Threats made by outside parties on the basis of an alien’s family relationship may meet the nexus requirement for asylum. *Id.* at \*12 (citing *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017) and *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948–49 (4th Cir. 2015)). However, the respondent must still meet her burden of proof to demonstrate such nexus exists. *Matter of L-E-A-*, 27 I&N Dec. 40, 43-44 (BIA 2017).

The Board determined that the respondent provided credible evidence, which it treats as a conclusive factual basis for her claim. Board Dec. at 1-2, 4. The respondent admits she (b) (6) in 2011, and (b) (6) on (b) (6) 2013. Exhibit 2, tab C at 12-14; Tr. at 40, 54.<sup>3</sup> The respondent does not claim that her fear of future harm is related to any other persecutor than (b) (6).

<sup>2</sup> The particular social group analysis must assess exactly what “belief or characteristic” the alien victim possessed “that [her] persecutor seeks to overcome in others by means of punishment of some sort.” *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987) (citing *Matter of Acosta*, 19 I&N Dec. at 226); see also *Matter of N-M-*, Dec. 25 I&N Dec. 526, 532 (BIA 2011) (persecutor’s actual motive is a matter of fact to be determined by the Immigration Judge and reviewed for clear error).

<sup>3</sup> In *A-R-C-G-*, the particular social group at issue incorporated (b) (6). In conjunction with the DHS’ legal concession, the Board held that marital status can be an immutable characteristic where the individual is unable to leave the marital relationship. *Id.* at 392-93. Determination of this issue, however, is fact-dependent taking into account the applicant’s own experiences, as well as more objective evidence such as background country information. *Id.* at 393. On the issue of particularity, the Board stated “[i]n some circumstances, the terms can combine to create a group with discrete and definable boundaries.” *Id.* (b) (6)

In the absence of a similar concession by the DHS as to the legal validity of the particular social group implicated in this case, and in light of the Fourth Circuit’s recent precedent and reservations expressed in *Velazquez v. Sessions*, the Court observes that *Matter of A-R-C-G-* may not be legally valid within this jurisdiction in a case involving a purely intra-familial dispute. *Velazquez v. Sessions, supra*, at \*4; *see also Matter of W-G-R-*, 26 I&N Dec. 208, 222 (BIA 2014) (fear of retribution over purely personal matters does not establish nexus required for asylum).

An Immigration Judge may certify to the Board of Immigration Appeals (“Board”) any case arising from a decision rendered in removal proceedings. 8 C.F.R. § 1003.1(c); *see also* 8 C.F.R. § 1003.1(b)(3). The Board may take any action consistent with an exercise of their independent judgment and discretion necessary for the disposition of the case, to include a final order. 8 C.F.R. §§ 1003.1(d)(1)(ii) and (d)(7).

Accordingly, the Court enters the following:

**ORDER**

IT IS HEREBY ORDERED that the above-captioned case is certified and administratively returned to the Board of Immigration Appeals.

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Date

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V. STUART COUCH  
United States Immigration Judge  
Charlotte, North Carolina

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 16-1669**

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MARIA SUYAPA VELASQUEZ; D.A.E.V., minor child,

Petitioners,

v.

JEFFERSON B. SESSIONS III, Attorney General,

Respondent.

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On Petition for Review of an Order of the Board of Immigration Appeals.

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Argued: May 9, 2017

Decided: July 31, 2017

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Before WILKINSON, TRAXLER, and AGEE, Circuit Judges.

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Petition denied by published opinion. Judge Agee wrote the opinion, in which Judge Wilkinson and Judge Traxler concurred. Judge Wilkinson filed a separate concurring opinion.

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**ARGUED:** David John Kline, Alexandria, Virginia, for Petitioners. Gregory Darrell Mack, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent. **ON BRIEF:** Bridget Cambria, Jacquelyn Kline, CAMBRIA & KLINE, Reading, Pennsylvania, for Petitioners. Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Terri J. Scadron, Assistant Director, Civil Division, Office of Immigration Litigation, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondent.

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AGEE, Circuit Judge:

Maria Suyapa Velasquez, a citizen and native of Honduras, entered the United States unlawfully in 2014 with her minor son D.A.E.V.; they were detained by U.S. Customs and Border Patrol at the time of entry. The Government issued a Notice to Appear, charging Velasquez and D.A.E.V. with removability under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the “INA”). *See generally* 8 U.S.C. § 1182(a)(7)(A)(i)(I). Velasquez conceded her removability, but applied for asylum and withholding of removal, and attached D.A.E.V. as a rider on her petition.<sup>1</sup> An Immigration Judge (“IJ”) rejected her claims, and a single-member panel of the Board of Immigration Appeals (the “BIA” or “Board”) dismissed her appeal. Velasquez now petitions this Court for review. For the reasons that follow, we deny the petition.

I.

A.

We recount the facts set out in the record, which are not disputed.

Velasquez and D.A.E.V. fled Honduras because the mother of D.A.E.V.’s late father, Maria Estrada, demanded custody of D.A.E.V. For nearly a decade, Estrada implored Velasquez to turn D.A.E.V. over to her, but each time Estrada made such a

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<sup>1</sup> Velasquez also applied for relief under the United Nations Convention Against Torture. An Immigration Judge denied that claim, and Velasquez does not pursue it in her petition for review. Accordingly, she has abandoned that claim. *See Karimi v. Holder*, 715 F.3d 561, 565 n.2 (4th Cir. 2013).

request Velasquez denied it. In 2013, Estrada's attempts to take custody of D.A.E.V. became more forceful. On more than one occasion, Estrada kidnapped D.A.E.V. from Velasquez' home while Velasquez was away. Each time, D.A.E.V. escaped and walked back home. Shortly before Velasquez fled Honduras, Estrada began threatening to kill Velasquez if she did not relinquish custody of D.A.E.V. to her.

The escalating tension between Velasquez and Estrada prompted Velasquez to relocate to the United States. In April 2014, Velasquez and D.A.E.V. unlawfully crossed the United States' border with Mexico and were detained shortly after. While detained, Velasquez' mother communicated to her that Estrada's son Oscar (D.A.E.V.'s uncle) murdered Velasquez' sister. The murder, according to Velasquez' mother, was a case of mistaken identity: Oscar believed his victim was Velasquez.

B.

The Government issued Velasquez a Notice to Appear and charged her with being removable under section 212 of the INA. Velasquez conceded her removability, but argued she was a "refugee," entitled to either asylum or withholding of removal under sections 208 and 241 of the INA. *See generally* 8 U.S.C. § 1158(b)(1)(A) (setting standard for asylum); *id.* § 1231(b)(3) (setting standard for withholding of removal); *see also generally id.* § 1101(a)(42)(A) (defining "refugee"). Velasquez based her petition for asylum and withholding of removal on alleged persecution "on account of" her membership in a "particular social group," which she contended was her nuclear family. *See* 8 U.S.C. §§ 1101(a)(42). She claimed D.A.E.V. as a derivative beneficiary on her

petition for asylum under INA section 208(b)(3)(A). *See generally* 8 U.S.C. § 1158(b)(3)(A); 8 C.F.R. § 208.21.<sup>2</sup>

Velasquez' petition for asylum and withholding of removal was heard by an IJ, who denied the petition on both bases. First, the IJ found that Velasquez was not entitled to asylum because the dispute between Velasquez and Estrada was not "on account of" Velasquez' membership in her claimed particular social group, her nuclear family, but rather was "an intra-family custody dispute over" D.A.E.V. A.R. 93. In particular, the IJ held that Velasquez "failed to proffer evidence that the motivation for the conduct of the Estrada family was to persecute [her] on account of her family membership." A.R. 93. It observed, for example, that Oscar had killed Velasquez' sister "in the presence of [her] mother, who remained untargeted and intact" and that Velasquez' "four other children [by a different father] remain in Honduras and are unharmed." A.R. 93. Because the IJ denied Velasquez' application for asylum, it necessarily also denied D.A.E.V.'s derivative claim. In addition, because withholding of removal employs a more stringent standard than asylum, it held Velasquez could not meet her burden of proof as to withholding of removal. *Camara v. Ashcroft*, 378 F.3d 361, 367 (4th Cir. 2004) ("[A]n applicant who is ineligible for asylum is necessarily ineligible for withholding of removal."). *Compare* 8 U.S.C. § 1231(b)(3)(A) (providing that an alien *cannot* be

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<sup>2</sup> Velasquez did not, and could not, claim D.A.E.V. as a derivative beneficiary on her withholding of removal petition. *See Niang v. Gonzales*, 492 F.3d 505, 513 (4th Cir. 2007) ("[T]he statute permitting withholding of removal does not encompass derivative withholding claims, that is, claims for withholding of removal based on persecution to another person; instead, an alien seeking withholding of removal must established that *they* will suffer harm if removed.").

removed if she demonstrates that her “life or freedom would be threatened” because of her “membership in a particular social group”), *with* 8 U.S.C. § 1158(b)(1) (stating that an alien *may* be granted asylum if she can demonstrate that membership in a particular social group “was or will be at least one central reason” for persecution in her native country).

Velasquez timely appealed the IJ’s adverse decision to the Board, which dismissed her appeal in a single-member decision. The Board adopted and supplemented the IJ’s reasoning, stating: “The [IJ’s] finding that the criminal acts committed by [Velasquez]’s deceased husband’s family against [her] d[id] not constitute persecution on account of a statutorily protected ground is not clearly erroneous inasmuch as the record supports the finding that [Velasquez] was targeted due to a personal dispute over who should have custody of [D.A.E.V.]” A.R. 437. The Board reiterated the IJ’s conclusion that “the current facts involve a dispute over a personal matter within the family.” A.R. 437.

Velasquez timely petitioned this Court for review of the Board’s decision. We have jurisdiction to consider her petition under section 242 of the INA. *See generally* 8 U.S.C. § 1252.

## II.

“The decisions of the BIA concerning asylum eligibility or withholding of removal are deemed conclusive if supported by reasonable, substantial and probative evidence on the record considered as a whole.” *Abdel-Rahman v. Gonzales*, 493 F.3d 444, 448 (4th Cir. 2007) (internal quotation marks omitted). “Where[, as here,] the BIA

has adopted and supplemented an IJ's decision, [the Court] review[s] both rulings and accord[s] them appropriate deference." *Cervantes v. Holder*, 597 F.3d 229, 232 (4th Cir. 2010). We review the IJ's findings of fact for substantial evidence; we must affirm unless the record would compel "any reasonable adjudicator . . . to conclude to the contrary." *Djadjou v. Holder*, 662 F.3d 265, 273 (4th Cir. 2011). We review legal issues de novo. *Id.*

### III.

In her petition for review, Velasquez<sup>3</sup> argues that the BIA erred as a matter of law in concluding that she was not a "refugee" entitled to asylum in light of Estrada's actions.

#### A.

Velasquez is entitled to asylum only if she is a "refugee," as the INA defines that term. *See* 8 U.S.C. § 1158(b)(1)(A). A "refugee" is an alien outside the country of her nationality "who is unable or unwilling to return to, and is unable or unwilling to avail . . . herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1101(a)(42)(A). The asylum-seeker bears the burden of demonstrating her refugee status. *Id.* § 1158(b)(1)(B)(i).

To do so, Velasquez must demonstrate: (1) she "has a well-founded fear of persecution"; (2) her fear arises "on account of" membership in a protected social group;

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<sup>3</sup> Because D.A.E.V. is a rider on Velasquez' petition for asylum, we need only examine her arguments.

and (3) the threat is made by an organization that the Honduran government “is unable or unwilling to control.” *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948–49 (4th Cir. 2015). The parties here address only the second prong: whether Estrada’s prosecution of Velasquez arose “on account of” Velasquez’ membership in a particular social group, her nuclear family.<sup>4</sup> We have recognized that an individual’s membership in her nuclear family is a particular social group. *Id.* at 949 (“[M]embership in a nuclear family qualifies as a protected ground for asylum purposes.”).

To satisfy the second prong, Velasquez must show that her membership in her nuclear family “was or will be at least one central reason for” her persecution. 8 U.S.C. § 1158(b)(1)(B)(i). She “need not show that h[er] family ties provide the central reason or even a dominant central reason for h[er] persecution.” *Hernandez-Avalos*, 784 F.3d at 949 (internal quotation marks omitted). Rather, she “must demonstrate [only] that these ties are more than an incidental, tangential, superficial, or subordinate reason for h[er] persecution.” *Id.*

## B.

Velasquez contends both the IJ and the Board erred in characterizing her dispute as a personal one that it is not protected rather than one “on account of” her membership in her nuclear family, which would be protected. “[A]liens with a well-founded fear of

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<sup>4</sup> The IJ did not address the third prong, but resolved the case under the protected social group aspect. Velasquez never pursued the third prong before the IJ or BIA, and we, therefore, lack jurisdiction to consider it at this juncture. *See Cordova v. Holder*, 759 F.3d 332, 336 n.2 (4th Cir. 2014) (noting that where a petitioner failed to press a claim before the BIA, we “lack jurisdiction to review” it).

persecution supported by concrete facts are not eligible for asylum if those facts indicate only that the alien fears retribution over purely personal matters . . . .” *Huaman-Cornelio v. Bd. of Immigration Appeals*, 979 F.2d 995, 1000 (4th Cir. 1992); accord *Jun Ying Wang v. Gonzales*, 445 F.3d 993, 998–99 (7th Cir. 2006) (stating “[t]his circuit and others, however, have repeatedly held that a personal dispute cannot give rise to a claim for asylum”; collecting cases). “[E]very threat that references a family member is [not] made on account of family ties.” *Hernandez-Avalos*, 784 F.3d at 950 n.7.

Substantial evidence in the record supports the IJ’s factual conclusion that this case is solely one of personal conflict among family members: Velasquez and her mother-in-law. Most pointedly, Velasquez’ trial testimony proves this point: no one besides Velasquez, her mother-in-law, and brother-in-law were involved. For example, upon cross examination Velasquez testified as follows:

[Q:] Is anybody else outside of these two families involved in this disagreement?

[A:] No

[Q:] Are you afraid of anybody else in Honduras taking your son, besides this family?

[A:] No.

A.R. 165–66. Upon redirect examination, she confirmed that “[t]he disagreement has been with her and me.” A.R. 167.

In that circumstance, “[e]vidence consistent with acts of private violence or that merely shows that an individual has been the victim of criminal activity does not constitute evidence of persecution on a statutorily protected ground.” *Sanchez v. U.S.*

*Att’y General*, 392 F.3d 434, 438 (11th Cir. 2004). We must view the facts “holistically, with an eye to the full factual context.” *Oliva v. Lynch*, 807 F.3d 53, 60 (4th Cir. 2015). Viewed through that lens, Estrada’s threats were motivated not by Velasquez’ family status but by a personal desire to obtain custody over D.A.E.V. Velasquez testified that “[t]he disagreement [between myself and Estrada] is that [Estrada] does not want me to have [D.A.E.V.]. She wants to have him.” A.R. 165.

Nevertheless, Velasquez contends that our decision in *Hernandez-Avalos* required the IJ to find that the dispute between herself and Estrada was “on account of” her status as a member of her nuclear family. We disagree. Were we to credit Velasquez’ understanding of *Hernandez-Avalos*, we would transform every intra-family dispute into a case for asylum.

In *Hernandez-Avalos* we held that threats made by a gang and directed at the petitioner were made “on account of” her membership in her nuclear family, where gang members tried to have her persuade her son to join the gang. Five members of the El Salvadorian gang “Mara 18” approached the petitioner and demanded that she allow her son to join the gang. 784 F.3d at 947. When the petitioner refused, one of the gang members “put a gun to her head and told her that if she opposed her son’s joining them” that she would die. *Id.* Later, the gang members returned, demanded the petitioner let her son join the gang, and gave her “one day to turn her son over to the gang or she would be killed.” *Id.* On those facts, the BIA concluded that the petitioner had not been persecuted “on account of” her family membership. We reversed and concluded that “Mara 18 threatened [the petitioner] in order to recruit her son into their ranks, but they

also threatened [her], rather than another person, because of her family connection to her son.” *Id.* at 950. Continuing, we noted the “threats that directed [the petitioner] to turn her son over to the gang were meaningful only because of her maternal authority over her son’s actions, and there is no evidence that she would have been selected as the recipient of those threats absent that familial connection.” *Id.* at 950 n.7.

Although the familial relationships at issue in *Hernandez-Avalos* and the present case involve a mother’s relationship with her son, this case is unlike *Hernandez-Avalos* in critical respects. In *Hernandez-Avalos*, a non-familial third party persecuted the petitioner because of her family association for the purpose of gang recruitment. In contrast, Velasquez had a long-standing personal disagreement with Estrada over a solely personal conflict regarding D.A.E.V. Estrada’s persecution of Velasquez was only between the two of them—that is, merely incidental to Estrada’s desire to obtain custody of D.A.E.V.<sup>5</sup> “[T]he asylum statute was not intended as a panacea for the numerous personal altercations that invariably characterize economic and social relationships.” *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005). Because Estrada was motivated out of her antipathy toward Velasquez and desire to obtain custody over D.A.E.V., and not by Velasquez’ family status, *Hernandez-Avalos* does not provide the rule here. The IJ and BIA appropriately concluded that Estrada’s motive was not

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<sup>5</sup> Nor, as Velasquez suggests, does *Matter of A-R-C-G-*, 26 I. & N. Dec. 388 (BIA 2014), control. There, the BIA considered whether “married women in Guatemala who are unable to leave their relationship” constituted a cognizable particular social group for asylum relief. *Id.* at 392. The legal validity of the social group identified by Velasquez is not at issue in this case. Moreover, *A-R-C-G* does not bear on our nexus analysis because, there, the Government “concede[d] . . . that the mistreatment [suffered by the alien] was, at for at least one central reason, on account of her membership in a cognizable particular social group.” *Id.* at 395.

Velasquez' familial status, but simply a personal conflict between two family members seeking custody of the same family member. That factual conclusion is fully supported by the record and not clearly erroneous. *Abdel-Rahman*, 493 F.3d at 448 (“The decision[] of the BIA concerning asylum . . . [is] deemed conclusive if supported by reasonable, substantial and probative evidence on the record considered as a whole.” (internal quotation marks omitted)). Thus, substantial evidence supports the IJ's conclusion that Velasquez simply failed to show that family status was a reason, central or otherwise, for her difficulties. *See Hernandez-Avalos*, 784 F.3d at 949.

For similar reasons, this case also is unlike the recent decision in *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017). In *Cruz*, the petitioner, a Honduran national, applied for asylum based on her membership in a “particular social group,” namely the “nuclear family of [her husband,] Johnny Martinez.” *Id.* at 124–25. Martinez had been killed by his boss, who worked closely with organized crime groups, ostensibly after Martinez had discovered his boss' illicit business and tried to go to authorities. *See id.* After Martinez' death, Cruz confronted Martinez' boss, who repeatedly threatened her and stationed his criminal associates outside of Cruz' home. *See id.* at 125–26. Cruz fled to the United States, where she was detained and issued a Notice to Appear. When Cruz later claimed asylum, an IJ denied her petition, observing that her dispute with Martinez' boss was a dispute with a “private actor for personal reasons.” *Id.* at 126–27. We reversed, relying on *Hernandez-Avalos* and concluding that the IJ, and subsequently the BIA, applied an “excessively narrow interpretation of the evidence relevant to the statutory nexus requirement” and that Cruz had satisfied her burden of proof by demonstrating that she

more likely than not was targeted “because of [her] relationship with her husband.” *Id.* at 129–30.

Velasquez’ case is inapposite. The dispute between Velasquez and Estrada was a private and purely personal dispute between grandmother and mother regarding D.A.E.V. Velasquez specifically testified to that fact. Unlike *Cruz* or *Hernandez-Avalos*, this case does not involve outside or non-familial actors engaged in persecution for non-personal reasons, such as gang recruitment or revenge. Rather, this case concerns solely a custody dispute between two relatives of the same child and necessarily invokes the type of personal dispute falling outside the scope of asylum protection. See *Huaman-Cornelio*, 979 F.2d at 1000; *Jun Ying Wang*, 445 F.3d at 998–99.

For all these reasons, Velasquez did not meet her burden of showing persecution “on account of” a protected ground.

### C.

Velasquez spends considerable time in her petition for review trying to shift the factual basis of her claim from that presented to the IJ and BIA in order to align more to the facts of *Hernandez-Avalos*. She speculates without proof that Estrada’s persecution was part of a larger scheme orchestrated by the gang Mara Salvatrucha, commonly known in the United States as MS-13. According to Velasquez, both Estrada and Oscar have some connection to MS-13, and Estrada’s effort to take custody over D.A.E.V. really was an effort to recruit him into the gang. As evidence of this recent theory, Velasquez contends that Oscar, who killed her sister, is an active member of MS-13; that after the murder, Oscar spray-painted a death threat on her home and signed it “M.S.,”

A.R. 150; and that Estrada “g[a]ve[] [MS-13 members] food,” A.R. 419. But none of these “facts” establishes a relevant nexus to a third party persecuting the victim on account of their particular social group. In particular, there is no evidence in the record that Estrada’s interest in her grandson had any connection of any kind to gang recruitment or any gang involvement. Instead, it is a late conjured theory devoid of record evidence of any connection to a particular social group.

As an initial matter, it is not clear that we have jurisdiction over Velasquez’ claim insofar as she asserts that MS-13, not Estrada, was the source of her persecution. “[A]n alien who does not raise a particular claim before the [Board] fails to exhaust [her] administrative remedies as to that claim,” leaving the federal courts without jurisdiction to consider it. *Tiscareno-Garcia v. Holder*, 780 F.3d 205, 210 (4th Cir. 2015). The record contains only passing references to gangs generally, and MS-13 particularly. In Velasquez’ application for asylum, she mentions as a matter-of-fact “Oscar is often with members of the MS gang.” A.R. 250. Yet she offered nothing else to tie Estrada’s actions to a gang, and stated that she did not “know if [Estrada] is associated with the MS.” *Id.* None of her arguments to the IJ or the Board asserted that she was being persecuted by a gang or that affected her or D.A.E.V. in any way.

But even if we do have jurisdiction, substantial evidence supports the IJ’s conclusion, affirmed by the Board, that Velasquez was persecuted by Estrada, not by MS-13, and that this persecution was solely personal. Velasquez’ petition confirms the deeply personal nature of her conflict with Estrada, attributing Estrada’s threats to the fact that that she “never liked [Velasquez] very much,” not to a gang-related motive.

A.R. 249. Again, when asked directly about the source of her persecution before the IJ, Velasquez explicitly confirmed that no one “outside of [the Velasquez and Estrada] families [were] involved in this disagreement.” A.R. 165. Accordingly, we hold that the IJ’s conclusion, adopted by the Board, that the dispute between Velasquez and Estrada was solely a personal dispute was supported by substantial evidence.

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In sum, the IJ did not err in concluding that the dispute between Velasquez and Estrada was not “on account of” Velasquez’ membership in a particular social group, but was simply a personal dispute. As such, Velasquez failed to meet her burden of proof as to an essential element of her asylum claim: that her persecution arose “on account of membership in a particular social group.” Therefore, we deny Velasquez’ petition for review.<sup>6</sup>

#### IV.

Based on the foregoing, Velasquez’ petition for review of the Board’s decision dismissing her petition for asylum and withholding of removal is denied.

*PETITION DENIED*

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<sup>6</sup> Velasquez also applied for withholding of removal under section 241(b)(3) of the INA. *See generally* 8 U.S.C. § 1231(b)(3). That statute provides that the Attorney General cannot “remove an alien to a country if [he] decides that the alien’s life or freedom would be threatened in that country because of the alien’s race, religion, nationality, membership in a particular social group, or political opinion.” *Id.* § 1231(b)(3)(A). “[A]n applicant who is ineligible for asylum is necessarily ineligible for withholding of removal.” *Camara*, 378 F.3d at 367. Given the above discussion, Velasquez necessarily did not meet the higher burden for withholding of removal. Accordingly, we also deny Velasquez’ petition for withholding of removal.

WILKINSON, Circuit Judge, concurring:

I am happy to concur in Judge Agee's fine opinion for the court. I write briefly to emphasize the need for some outer boundary in the interpretation of the "particular social group" prong of the asylum statute. 8 U.S.C § 1101(a)(42)(A).

In *Matter of L-E-A-*, the Board of Immigration Appeals ("BIA") emphasized that "the fact that a persecutor has threatened an applicant and members of his family does not necessarily mean that the threats were motivated by family ties." 27 I. & N. Dec. 40, 45 (BIA 2017). "[N]exus is not established simply because a particular social group of family members exists and the family members experience harm." *Id.* Moreover, "the fact that a persecutor targets a family member simply as a means to an end is not, by itself, sufficient to establish a claim, especially if the end is not connected to another protected ground." *Id.* If inflicting harm on family members is not an independent end, perpetuated "because of an animus against the family," then we must look to "the reasons that generate the dispute." *Id.* at 44–45. "[T]he scope of the motive inquiry necessarily encompasses the context in which a family member is identified for harm and how that relates to the interest in the applicant." *Id.* at 46 n.5.

The analysis of "particular social group" in the asylum statute is at risk of lacking rigor. I understand that many of the alleged persecutions present heart-rending situations, and I respect the impulse, shared by us all, simply to do something to help someone out. The protected characteristics, 8 U.S.C § 1101(a)(42)(A), however, are for the most part precisely defined. Had Congress intended "membership in a particular social group" to be some omnibus catch-all, it would be odd to find its placement not at the end of a series,

but sandwiched between more sharply etched criteria. I fear judicial interpretations of this statute may outstrip anything Congress intended.

To extend the concept of persecution on account of a “particular social group” to the kind of intra-familial disputes at issue here would, as Judge Agee notes, render the asylum statute unrecognizable. The concept of a “particular social group” must be understood in the context of the other statutory grounds for asylum protection. *Matter of M-E-V-G-*, 26 I. & N. Dec. at 230 (“Consistent with the interpretive canon ‘*ejusdem generis*,’ the proper interpretation of the phrase can only be achieved when it is compared with the other enumerated grounds of persecution (race, religion, nationality, and political opinion), and when it is considered within the overall framework of refugee protection.”). None of the other statutory grounds for asylum creates protected classes of only two or three people. To the contrary, asylum was intended to protect specific segments of the population who are marginalized or subjected to social stigma and prejudice. Families, of course, may suffer hardships, but they are less likely candidates for the kind of targeted racial, ethnic, religious, and political prejudice with which the asylum statute is chiefly concerned.

Moreover, particularity requires “a clear benchmark for determining who falls within the group,” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 239. In other words, a proposed social group must be “described in sufficiently distinct terms that it would be recognized, in the society in question, as a discrete class of persons.” *Matter of W-G-R-*, 26 I. & N. Dec. at 214 (internal quotation marks omitted). Particular social groups cannot

be “amorphous, overbroad, diffuse, or subjective.” *Matter of M-E-V-G-*, 26 I. & N. Dec. at 238.

Victims of general extortion and domestic violence that is not unique to any family but rather that “affects all segments of the population” are nonetheless seized upon the “particular social group” criterion in asylum applications. *Matter of S-E-G-*, 24 I. & N. Dec. 579, 587 (BIA 2008). The example of gang violence is illustrative. Petitioners are often not “exposed to more violence or human rights violations than other segments of society,” and “not in a substantially different situation from anyone who has crossed the gang, or who is perceived to be a threat to the gang’s interests.” *Id.* The BIA has previously explained that “victims of gang violence come from all segments of society, and it is difficult to conclude that any ‘group,’ as actually perceived by the criminal gangs, is much narrower than the general population.” *Id.* at 588; see *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 250 (BIA 2014) (“Against the backdrop of widespread gang violence affecting vast segments of the country's population, the applicant in *Matter of S-E-G-* could not establish that he had been targeted on a protected basis. Although he was subjected to one of the many different criminal activities that the gang used to sustain its criminal enterprise, he did not demonstrate that he was more likely to be persecuted by the gang on account of a protected ground than was any other member of the society.” (citations omitted)). It is difficult to establish the necessary causation when so many persons outside the particular social group experience identical persecution for the same overarching reasons. The pervasive nature of the persecution threatened in these cases suggests that family membership is often not a central reason for the threats

received, but rather is secondary to a grander pattern of criminal extortion that pervades petitioners' societies.

The asylum statute is not a general hardship statute. It was not at all drafted in that way. It is crucial to remember that the statute is but one provision in a larger web of immigration laws designed to address individuals in many different circumstances. To expand that statute beyond its obviously intended focus is to distort the entire immigration framework. There is often no evidence that "persecutors had any animus against the family or the [applicant] based on their biological ties, historical status, or other features unique to that family unit." *Matter of L-E-A-*, 27 I. & N. Dec. at 47. Persecutors are seeking money, power, and control. Alleged persecution on account of family membership, distressing though it may be, is often nothing more than a manifestation of the general extortion and gang violence that plagues El Salvador. I again do not attempt to minimize the magnitude of human suffering that these conditions cause. But to broaden the statutory grounds for relief from those conditions must by definition be a congressional rather than a judicial enterprise.

**From:** [Couch, V. Stuart \(EOIR\)](#)  
**To:** [McHenry, James \(EOIR\)](#)  
**Cc:** [Santoro, Christopher A \(EOIR\)](#)  
**Subject:** BIA REMAND (2D AWARD)  
**Date:** Monday, October 23, 2017 10:31:00 AM

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James,

(b) (5) I have now written two decisions on this domestic violence case and it is back for a third. (b) (5)

(b) (5) (April 2017)

(b) (5) (April 2015)

Thanks,

Stu