

(Names have been redacted and changed for reasons of confidentiality.)

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
BOSTON, MASSACHUSETTS

IN THE MATTER OF:

G-R-, Ana
A XXXXXXXX
Lead Respondent

DEC 05 2017
In Removal Proceedings

R-G-, Maria A XXXXXXXX

Respondents

CHARGE: Immigration and Nationality Act ("INA" or "Act") § 212(a)(6)(A)(i): Alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General

APPLICATIONS: Asylum, pursuant to INA § 208
Withholding of removal, pursuant to INA § 241(b)(3)
Protection Under Article III of the Convention Against Torture

ON BEHALF OF RESPONDENT

John Wiltshire, Esq.
Evelyn Zheng
Harvard Immigration and Refugee Clinic
Greater Boston Legal Services
197 Friend Street
Boston, Massachusetts 02114

ON BEHALF OF DHS

Assistant Chief Counsel
Office of the Chief Counsel
JFK Federal Building, Room 425
Boston, Massachusetts 02203

DECISION OF THE IMMIGRATION COURT

The Boston Immigration Court grants the Respondents' applications for asylum, pursuant to section 208 of the Act. In accordance with the REAL ID Act, the Lead Respondent testified credibly and consistently. Based on the Respondent's testimony and the documentary evidence, the Court finds that the Respondents have met their burden to show that they have been subject to past persecution and have a well-founded fear of future persecution based on the particular social group: Honduran women without a male family member. Furthermore, the evidence indicates that the Honduran government is unwilling or unable to protect the Respondents. Finally, because no adverse factors have been presented, as a matter of discretion, the Court grants the Respondents' applications for asylum.

I. PROCEDURAL HISTORY

On May 19, 2014, the Department of Homeland Security ("DHS") initiated removal proceedings against the Respondents, Ana G-R- ("Respondent" or "Lead Respondent") and Maria R-G- ("Rider Respondent" or "Maria") by a filing Notices to Appear ("NTA") with the Hartford Immigration Court. Exh. 1. On October 6, 2014, venue was changed to the Boston Immigration Court ("Court"). The NTAs alleged that the Respondents: (1) are not citizens or nationals of the United States; (2) are natives and citizens of Honduras; (3) entered the United States at or near Hidalgo, Texas on April 13, 2014; (4) were not admitted or paroled after inspection by an immigration officer. *Id.* Based on these allegations, DHS charged the Respondents as removable pursuant to section 212(a)(6)(A)(i) of the Act. *Id.*

At a hearing convened on February 25, 2015, the Respondent, through counsel, submitted a written pleading to the Court in which she admitted all factual allegations and conceded the charge of removability set forth in the NTA and indicated that she would seek relief from removal in the forms of asylum, withholding of removal, and protection under the Convention Against Torture ("CAT"). Exh. 2. On June 15, 2016, the Respondents submitted a Form 1-589, Application for Asylum and for Withholding of Removal ("asylum application") with supporting documents. Gr. Exh. 3.

At the merits hearing convened on April 4, 2017, the Court designated Honduras as the country of removal upon DHS' suggestion. The Court heard testimony in support of the Respondent's asylum application on the same day.

II. DOCUMENTARY EVIDENCE

Exhibit 1	Notice to Appear of the Lead Respondent (May 19, 2014)
Exhibit 1A	Notice to Appear of the Rider Respondent (May 19, 2014)
Exhibit 2	Respondents' Written Pleading (Feb. 25, 2015)
Group Exhibit 3	Form 1-589, Application for Asylum and for Withholding of Removal (Apr. 1, 2015)
	Packet I of Supporting Documents (June 15, 2016)
<i>Tab A</i>	Declaration of the Respondent, pp. 1-17
<i>Tab B</i>	Birth Certificate of the Respondent, pp. 18-20
<i>Tab C</i>	Birth Certificate of the Rider Respondent, pp. 21-23'
<i>Tab D</i>	TeleSur, " <i>Femicides in Honduras Reach Epidemic Levels</i> (June 25, 2015), pp. 30-32
<i>Tab E</i>	Naharnet, Violent Female .Deaths 'Epidemic' in Honduras (June 25, 2015), p. 33

The Court notes that group exhibit 3 does not include pages 24-29.

- Tab G*² United Nations Human Rights Council, UN Special Rapporteur on Violence Against Women, Its Causes and Consequences, *Addendum to Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences* (Mar. 31, 2015), pp. 34-54
- Tab H* Mujeres, Fronteras, y Sus Historias, (Women, Border and Their Stories), *Las voces que no se pueden callar — Una revista bilingue ("Femicides in Latin America: 21 Countries Face Alarming Violence* (Aug. 21, 2013), pp. 55-68
- Tab I* Oxfam, *Femicide in Honduras: This Machista Society Breeds a Growing and Tangible Hated Towards Women* (Nov. 23, 2012), pp. 69-70
- Tab J* Mail Online, *The Country that Hates Women: Just Why Have 1,000 Females Been Slaughtered in Honduras in the Last Two Years* (July 30, 2012), pp. 71-75
- Tab K* Annie Kelley, *Honduran Police Turn a Blind Eye to Soaring Number of Femicides* (May 28, 2011), pp. 76-77
- Tab L* Latin American Working Group, *San Pedro Sula: Nearly a War Zone* (Feb. 13, 2015), pp. 78-81
- Tab M* InSight Crime, *A Snapshot of Honduras' Most Powerful Street Gangs* (Feb. 2, 2015), pp. 82-84
- Tab N* InSight Crime, *Honduras Prosecutors 'Killed by Barrio 18 Gangs'* (Oct. 13, 2014), pp. 85-88
- Tab O* Congressional Research Service, Clare Ribando Seelke, *Gangs in Central America* (Feb. 20, 2014), p. 89-112
- Tab P* Huffington Post *Gangs are in Forty Percent of Honduras, Officials Say* (Aug. 1, 2013), p. 113
- Tab Q* InSight Crime, *1,400 Honduras Police Suspended for Links to Organized Crime* (June 6, 2013), pp. 114-15
- Tab R* Law Library of Congress, *Honduras Gang Violence* (2013), pp. 116-20
- Tab S* InSight Crime, *Crime in the Americas, Mara in Guatemala Increasing in Sophistication* (Jan. 3, 2013), pp. 121-23
- Tab T* UNHCR, *1 Family Forced to Flee: Driven Out of Honduras by Gang Persecution* (June 14, 2011), pp. 124-25

²The Court notes that no evidence was included under Tab F.

- Tab U* UNHCR, *Guidance Note on Refugee Claims Relating to Victims of Organized Gangs* (Mar. 31, 2010), pp. 126-49
- Tab V* UNHCR, *Honduras: The presence and activities of the gangs, Mara Salvatrucha (MS) and Mara 18 in Honduras, including their Structure, the Role of Women, and the Effectiveness of Anti-Mara Government Measures* (Jan. 28, 2010), pp. 150-53
- Tab W* Lieutenant Colonel Howard L. Gray, United States Army War College, *Gangs and Transnational Criminals Threaten Central American Stability*, (Oct. 3, 2009), pp. 154-202
- Tab r* Max G. Manwaring, *A Contemporary Challenge to State Sovereignty: Gangs and Other Illicit Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica, and Brazil*, (Dec. 2007) , pp. 203-69

Packet II of Supporting Documents (Sept. 15, 2016)

- Tab X* Hospital Records of Ellen R-G-, p. 270
- Tab Y* Marriage Certificate of the Respondent and Alfred, p. 271
- Tab Z* School Pictures, Corpse Certification, Report Card, and Certificate for "Growing Great Kids," pp. 27280
- Tab AA* Death Certificate of Isidro G, pp. 281-82
- Tab BB* Untranslated Spanish Document, p. 283
- Tab CC* Death Certificate of Alfred, pp. 28486
- Tab DD* Declaration of Nancy K. D. Lemon of University of California, School of Law, pp. 287-301
- Tab EE* Declaration of Claudia Hermannsdorfer, pp. 302-37
- Tab FF* UNHCR, *Women on the Run: First-Hand Accounts of Refugees Fleeing El Salvador, Guatemala, Honduras, and Mexico* (2014), pp. 338-97
- Tab GG* *Amnesty International*, *Amnesty International Report 2014/15 — Honduras* (Feb. 25, 2015), pp. 398401
- Tab HH* Pollack, Sorcha, *Anyone Can Murder a Woman in Honduras and Nothing Will Happen*, *Irish Times* (May 11, 2015), pp. 402-03

³ The Court notes that this group exhibit does not include a Tab X.

Tab II Thomson Reuters Foundation, *Deported Central American Child Migrant Face Threats, Death at Home* — UN (Feb. 3, 2015), pp. 404-06

Tab JJ UNHCR, Washington, *Deported Children Face Deadly New Dangers on Return to Honduras*, (Jan. 29, 2015), pp. 407-09

Tab KK Thomson Reuters Foundation, *Is Human Smuggling "Marketing Strategy" Behind Exodus of Child Migrants to the US?* (July 19, 2014), pp. 410-13

Tab LL UNHCR, *Guidelines on International Protection NO. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees* (Dec. 22, 2009), pp. 414-41

Tab MM Washington Office on Latin America, *Central American Gang-Related Asylum: A Resource Guide* (May 29, 2008), pp. 442-65

Tab NN UNHCR, *Children on the Run* (2014), pp. 466-590

Packet III of Supporting Documents, (Feb. 17, 2017), pp. 413-26

Tab KK Supplemental Declaration of the Respondent, pp. 413-24

Tab LL Birth Certificate of Ellen R-G-, p. 425

Tab MM Certificate of Marriage of the Respondent and Alfred, pp. 426

Exhibit 4 Statement from the Respondent (Apr. 4, 2017)

Exhibit 5 Motion for Untimely Filing and Psychiatric Evaluation (Mar. 20, 2017)

III. TESTIMONIAL EVIDENCE

Note: Names Have Been Changed

The Court considered all of the Respondent's testimony, whether or not specifically summarized below.

A. Direct Examination

1. Biographic Information and Entry into the United States

The Respondent was born in Honduras. Before coming to the United States, she lived in XXXX. Her father, Tom G, is deceased, and her mother, Fran R-S is alive. Her husband's name is Alfred . She has two children named Maria R-G- and Ellen R-G- ("Ellen"). Maria was born in Honduras and Ellen was born

in Boston.

The Respondent came to the United States on April 2014, through the Mexico border. She had never entered the United States before. The Respondent came to the United States because she feared for her life and her daughter's life.

When the Respondent was a young girl, people would mistreat her mother, who is a single mother. Men would come to her house and try and take control of her mother. When she was young, there was a man named Ted, who was his mother's boyfriend, and he would touch the Respondent's private parts. She would cry out for her mother and he would pinch her when she cried out. He insisted that she should not say anything to her mother. But she always did, and her mother would not believe her. She would say that she should not talk about it because that was bad. One day, her father came to visit, and she told him what was happening. He told her to tell her mother what was happening and she told his father that she already did. Her father told her to become closer to her older sister because then her sister may see it happen and then the sister would be a witness. Afterwards, the man stopped touching her.

After Ted left, other men would come from the community. They treated her mother as if she belonged to them and they wanted to have control over her. They wanted her to do everything that they said because she was alone. That always displeased her and she asked her mother why did she allowed them to do that. Her mother would not say anything, and the Respondent believed that she allowed them to do that, because she was alone. After that, men in her community dug a ditch in her yard, without asking her. They always did things without her permission, they tried to control her. They yelled at her and acted as if they were her husband, and she would obey them. The Respondent did not like it.

When the Respondent reached adolescence, she did not have a father or a brother to protect her, so men would also exert control over her. She could not go out. She could not play soccer because women were not allowed to play soccer. People would talk about her and say that she was not a virgin and she was a "woman of the streets" and call her a "whore."

There was a man named Joe, who was looking for young people to come work for him. He wanted people under twenty years old. The Respondent went to work for the man. During lunch, he would come and would tell everyone to leave, but he would tell the Respondent to stay. He would take her hand and then kiss her by force. She would talk to him loudly so that other people would hear her. She told him to stop and let go of her. He would yell at her to "shut up." He stopped paying her because he wanted control over her life. After he stopped paying her, she stopped working there because he wanted to abuse her. Afterwards, he came to her mother's house and said that he needed her to come back to work. She made a sign to her mother behind his back, saying that she did not want to go. Her mother ignored her. He said he was going to take care of her and take responsibility for her.

The Respondent then went back to work for him, but she worked in a different office. A week later, Joe came to the office. The office had two doors and he came in. He closed the doors. He threw himself on top of her, and he started to take off her clothes. He hurled her to the floor and touched her. He kissed her by force. She told him to let go of her and leave her alone, and to

not do anything to her. He was about to penetrate the Respondent when one of his friends arrived and knocked on the door and his friend saw what Joe was doing through the window. He asked what was he doing and why was he doing that. He told him not to do that and he was tired of telling him not to do that. His friend told Joe that one day, he was going to pay for continuing to do that. At that point, the Respondent was fifteen or sixteen years old and Joe was forty-eight years old. She left immediately. She was ashamed and scared. She wondered how this could happen to her. She felt humiliated and a lot of fear. She felt horrible because she felt like she did not have anyone to help her because she did not have a father and he was never there for her. There was no one to take care of her.

The Respondent was also assaulted by a group of men. There were a group of twenty men. One of them was her brother's friend. He would claim that he was like a brother to her brother. Her brother had left and gone to the United States. The man asked the Respondent why his brother was not around and why he was not talking to him. She told him that her brother was in the United States, but if he wanted to talk to him, he should ask for the phone number of his brother from their mother. He told her to come closer and she said no. She likes to maintain a certain distance from men, and they were drinking. He approached her and took her hand. He pulled her hand and put her in the middle of the group. He started to touch her. Then the whole group started to touch her private parts, and she cried and told them to stop what they were doing. She felt humiliated. Then her friend saw what was happening and he came and grabbed her hand and took her away. She was humiliated because she never thought that would happen because she was in a public space.

The Respondent had two neighbors, Frank and Pete. Frank would tell her that he loved her and that she was going to be his. He told her this after Alfred had left the United States. She was living with her mother and her daughter, and he would come and tell her that he was going to come at eleven, twelve, or one o'clock at the night. He would then come and stand in front of the house. She feared that he would break into the house.

Pete would also tell the Respondent that he loved her and that she would be his. She stopped leaving the house and would only go to church because anytime that she left that house, Pete would come and bother her. She could not go outside or have ice cream or soda with her daughter because Pete would stalk her everywhere she went. He would ask her daughter, what is the name of your father? Her daughter would answer Alfred. Pete would then tell her that Alfred was not her father and that other men were her father, or he would say that he was her father. This made the Respondent feel bad because other men would say the same thing to her when she was young.

On March 2014, the Respondent decided to leave Honduras because gang members began coming to the neighborhood. They came at one o'clock in the morning and they wanted to take over the whole neighborhood. They sold drugs all day and night. One afternoon, the Respondent and her daughter were out, and her daughter asked if they could go buy what they were selling. The Respondent told her daughter that they were selling bad things. She is against gangs and was afraid that these gangs would come to her house and do something to them. Her child was at school. There was a meeting. The police asked the community to help to figure out who was selling drugs. The Respondent did not cooperate with the police, but she intended to.

Her mother advised her against it because there were always one or two gang members who are in the police.

The Respondent does not believe that the police would have helped her in the other matters because the gang members work with the police and the gangs will know about the police reports right away. If they learn that people are reporting things to the police, then if the person is a woman, they will go to scare the woman. They will scare the children of other relatives. If she persists, then "it will be her turn." The first time, she did not go to the police because her mother advised her against it because her mother already lost her son and did not want to lose her daughter or granddaughter. If she goes the police, the gang members will kidnap her or her daughter, or kill her, or set the house on fire with the three of them inside.

She did not report Frank and Pete to the police because the police are "machista" and will not do anything because they believe that they should not get involved. She knew another woman who went to the police because her partner beat her up and they told her that they do not get involved in that. There is another example, there is a tax. If you do not pay the tax at a certain date, then they will take all of your belongings. Another woman went to the police over this, and the gangs killed one of her sons. One month later, they killed her and her other son.

After the Respondent's mother warned her, she talked to Alfred and told Alfred that she should not stay there and that she was afraid that something was going to happen to the Respondent. Her mother told her that she was elderly and that she had lived for long enough, but she wanted the Respondent and Maria to have a better life. She wanted the Respondent to come to the United States with Maria.

Pete became a gang member. The day that the Respondent left, they left discretely because they were afraid that someone would do something. They acted like they were going to go on a trip. They were afraid that Pete would prevent them from leaving or do something to them. So she talked to her mother and left at nine in the morning and did not tell anyone where they were going. Frank did not know they were leaving. She did not want anything to stop them or detain them because she was afraid that they would try and treat her like she belonged to them.

When she first arrived in the United States, she had a lot of dreams that she was still in Honduras and that people wanted to kidnap her, kidnap her daughter, or kill her. When she was at home, she was very afraid of noises and she would get up in the middle of the night to see what was going on. She would say, everything is fine, nothing is happening here because she feared that she was going crazy. In Honduras, they cannot sleep because of noise outside and she would worry that something would happen to her. She had a dream that she was in Honduras and she was looking at her "brother's husband." She was with her two little girls and he took her to a big house. He locked them in a room and killed them. In the same dream, she would see herself as a ghost, and people would say do not enter the room because it is very "nasty." She then saw how her death occurred. The three of their bodies were naked. The little girls were next to her body and the older girl was a little farther away. The man had raped all three of them and killed them. He then cut up their bodies in little pieces. She thought, why did he do that? Why did he do that to those girls? Why did he rape and kill the girls. Why did he not just hurt her and not the little girls. She has many dreams where they kill her little girls and kidnap the Respondent, and the

Respondent runs. In her dream, it was her husband's brother.

The Respondent's mother told her that the leader of the gangs told the elder that he was no longer in charge, and that gang leader was in charge. She does not know the gang leader's name, but he is called "the silence." Pete also has killed two people. He went away for a while and then he returned. After he killed the next person, he did the same thing again. Her mother told her that Pete has been coming to the house and asking where the Respondent is. Her mother also told her that Frank is a drug trafficker.

She does not believe that she could be safe anywhere in Honduras. There are gangs and drug traffickers everywhere in Honduras. If she had to return, she would be a "perfect target" for those men because she is a single woman and there is no one to protect her in Honduras. She will live in fear. She told her husband about how she is feeling, but he told her that there is no reason to feel afraid because they are in a different country where things are not that way, and they are together. She cannot return to Honduras. The gangs and Frank will attempt to take her life and her daughters' lives, especially because Maria is older now. Her youngest daughter is a United States citizen.

The Respondent asked the Court to please give her asylum. She does not want to go to Honduras ever again or bring her daughters there. She also thanked the Court for listening and allowing her to be there.

B. Cross Examination

The Respondent does stay in contact with her mother. She has not provided the Court with a letter or affidavit from her mother. There is no way to bring a letter from her mother to the United States. She lives with her husband. She met him in 2005. He is from a place called "the Paradise." It was about fifteen minutes away from where she was. He left in 2008 to come to the United States. He left in December 2007, and arrived in January 2008.

He left because he was working at a place called San Pedro Sula, and then they sent him to work at a place called Chamelecon. When he arrived, there were gangs. If he wanted to continue to work, he would have to become involved in the gangs. That is why he came to United States. He does not have any status. He did not come to court.

Before coming to United States, she lived with her mother. She also has two sisters in Honduras. One sister lives ten minutes away and the other sister lives thirty minutes away. Her husband's family lives between ten and fifteen minutes away. She is not afraid of her mother's former boyfriend because he left and never came back. She would be afraid of Joe if he came back, but he has not come back. She has not seen him, and he has not attempted to hurt her since the attempted rape. He also attempted to hurt other women who worked for him. She never reported what happened to the police. When she was attacked by the group of men, she did not report the attack to the police.

Frank began to bother her after her husband came to the United States in 2011. Frank began to follow the Respondent and Pete began to follow her too. Frank did not stop harassing her until

she came to the United States in 2014. Frank never physically harmed her or her daughter during that time. He never forced her to be in a relationship. She never reported Frank to the police. He is not a member of the police. He also harassed one other woman.

Pete began to pursue her in 2011. He continued to bother her until 2014. During that three year time period, he never harmed the Respondent or her daughter. During that time, he never forced the Respondent to be in a relationship. She did not report it to the police, and he is not a police officer. He did not harass anyone else because she was the only woman who lived alone.

There were no police in her community. The police did have a meeting at the school, which is in a different area. It is close, but the police there do not have jurisdiction over her area. There is a town, where the market is, and the police officers spend time at the market, and they are responsible for the area where she lived. The police in Honduras do not take action against gang members. Sometimes the police arrest people, but then they release them the same day. The gangs came to her town in 2014. If the gangs had not come to her town, she does not know if she would have come to the United States. She was still afraid. But once she knew that Pete was part of the gangs, it made her more afraid and she knew she need to leave Honduras sooner. When the gangs came, he was the first one to get involved with the gangs. After he joined the gangs, he did not harm her because she left to come to the United States. Neither Frank nor Pete have contacted the Respondent directly since she came to the United States, but Pete has asked about her at her mother's house.

C. Redirect Examination

The Respondent is concerned about the police because they never show up if you call the police. They only show up when someone has died, even then they only show up three to six hours later. The police do not want to get involved because they are afraid of the gang members. She wanted to go to police because she is the kind of woman who likes to express what she is feeling. She is afraid because she believes that the police are machista and they will not listen if you a lone woman, without a man with you.

Frank has more men and weapons and there is more of a likelihood that he would want to do something to the Respondent. The gangs are in communication with themselves and the police and they can find out information. This would make it easy for the gangs to find the Respondent.

D. Recross Examination

Pete did not bother the Respondent because she was the only woman without a partner to protect her. She believes that women who do not have their husbands with them are targets of gangs. She would feel safer with her husband.

IV. STANDARDS OF LAW

A. Removability

DHS bears the burden of proving by clear and convincing evidence that an individual previously admitted to the United States is removable. INA § 240(c)(3)(A) (2017). An Immigration Judge's determination regarding removability, which must be included in the Immigration Judge's decision in the case, shall be based only on evidence produced at a hearing. INA § 240(c)(1)(A); 8 C.F.R. § 1240.12(a) (2017).

B. Credibility and Corroboration

In all applications for asylum and withholding of removal, the Court must make a threshold determination of the alien's credibility. *See Matter of O-D-*, 21 I&N Dec. 1079 (BIA 1998); *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). The provisions of the REAL ID Act of 2005 apply to the Court's credibility analysis in asylum applications filed on or after May 11, 2005. Pub. L. No. 109-13, 119 Stat. 302 (2005), codified at INA § 208(b)(1)(B)(iii). Considering the totality of the circumstances and all relevant factors, the Court may base a credibility determination on:

the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), 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, or any other relevant factor.

REAL ID Act § 101(d)(2); INA § 208(b)(1)(B)(iii). Accordingly, inconsistencies between statements in an asylum application and testimony during the asylum proceedings may lead to a finding that the applicant is not credible. *Phal v. Mukasey*, 524 F.3d 85, 89 (1st Cir. 2008).

An applicant's testimony alone will only be sufficient to sustain the applicant's burden of proving eligibility for asylum without corroboration if the Court is satisfied that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *see also Guta-Tolossa v. Holder*, 674 F.3d 57, 62 (1st Cir. 2012). Credibility determinations must be "reasonable" and "take into consideration the individual circumstances of the applicant." *Lin v. Mukasey*, 521 F.3d 22, 28 n.3 (1st Cir. 2008). The Court must provide "specific and cogent reasons why an inconsistency, or a series of inconsistencies, renders the alien's testimony not credible." *Jabri v. Holder*, 675 F.3d 20, 24 (1st Cir. 2012) (quoting *Kartasheva v. Holder*, 582 F.3d 96, 105 (1st Cir. 2009)).

Unreasonable demands are not placed on an applicant to present evidence to corroborate particular experiences. *Soeung v. Holder*, 677 F.3d 484, 488 (1st Cir. 2012). However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence should be provided *Id.* at 487-88; *see also* INA § 208(b)(1)(B)(ii). If such evidence is unavailable, the applicant must explain its unavailability, and the Court must ensure that the applicant's explanation is included in the record. *Soeung*, 677 F.3d at 488. The absence of such corroboration can lead to a finding that an applicant has failed to meet his or her burden of proof. *Id.*; *Guta-Tolossa*, 674 F.3d at 62 ("[A]n IJ can require corroboration whether or not she makes an explicit credibility finding . . ."); *see also Matter of S-M-J-*, 21 I&N Dec. 722, 725 (BIA 1997).

C. Asylum Pursuant to INA § 208

The Court may grant asylum to an alien who timely files an application and meets the definition of a refugee. INA § 208(b)(1)(A). An alien is a "refugee" within the meaning of INA § 101(a)(42)(A) if she or he is unwilling or unable to return to his country of nationality because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The asylum applicant bears the burden of establishing that she or he is a refugee within the meaning of section 101(a)(42)(A) of the Act and that she or he merits a favorable exercise of discretion. 8 C.F.R. § 1208.13(a); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

1. Statutory Eligibility

a. Timeliness of Application

An asylum applicant must prove by clear and convincing evidence that she or he filed the application within one year of her or his most recent arrival in the United States or that she or he qualifies for an exception to the one-year deadline. INA § 208(a)(2)(B), (D); 8 C.F.R. § 1208.4(a)(2)(i)-(ii). To qualify for an exception to the filing deadline, the applicant must demonstrate either (1) changed circumstances that materially affect her or his eligibility for asylum, or (2) extraordinary circumstances relating to the delay in filing the application. INA § 208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4)-(5). In either case, the applicant must apply for asylum within a reasonable period following the changed or extraordinary circumstances. 8 C.F.R. § 1208.4(a)(4)(ii).

b. Past Persecution

Persecution is "a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive." *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). Persecution does not encompass general conditions of violence shared by many others in a country or the harm an individual may experience as a result of civil strife. *See Tay-Chan v. Holder*, 699 F.3d 107, 112-13 (1st Cir. 2012). Rather, to qualify as persecution, a person's experience must "rise above unpleasantness, harassment, and even basic suffering" and consist of systemic mistreatment rather than a series of isolated events. *See Rebenko v. Holder*, 693 F.3d 87, 92 (1st Cir. 2012) (quoting *Nelson v. INS*, 232 F.3d 258, 263 (1st Cir. 2000)).

The "severity, duration, and frequency of physical abuse" are relevant factors to this determination. *Topalli v. Gonzales*, 417 F.3d 128, 133 (1st Cir. 2005); *see also Vasili v. Holder*, 732 F.3d 83, 89 (1st Cir. 2013) ("Infrequent beatings, threats, or periodic detention ... do not rise to the level of persecution, and the nature and extent of an applicant's injuries are relevant to the ultimate determination.") Sporadic detention for brief periods, even involving minor abuse, may not constitute past persecution, but lengthy or regular detentions involving abuse that requires medical attention may meet the Respondent's burden of proving persecution. *See Ruiz v. Mukasey*, 526 F.3d 31, 36 (1st Cir. 2008).

c. Basis and Nexus

The applicant must establish that a statutorily protected ground—race, religion, nationality, membership in a particular social group, or political opinion—is "at least one central reason" for the applicant's past persecution or the future persecution he fears. INA §§ 101(a)(42)(A), 208(b)(i); *see also Sugiarto*, 586 F.3d at 95; *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212-215 (BIA 2007). Persecution on account of any of the statutorily protected grounds refers to persecution motivated by the victim's traits, not the persecutor's. *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

An applicant for asylum or withholding of removal based on membership in a particular social group must establish that the proposed group: (1) is composed of members who share a common immutable characteristic; (2) is defined with particularity; and (3) is socially distinct within the society in question. *Matter of W-G-R-*, 26 I&N Dec. 208, 212-18 (BIA 2014); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014). The shared characteristic may be innate or it may be a shared past experience. *Acosta*, 19 I&N Dec. at 233. However, it must be a characteristic that the members of the group cannot change or should not be required to change as a matter of conscience. *Id.* at 233-34. Particularity requires that the proposed group be "discrete and have definable boundaries—it must not be amorphous, overbroad, diffuse or subjective." *M-E-V-G-*, 26 I&N Dec. at 239. Social distinction (formerly known as social visibility) means that society perceives, considers, or recognizes the group as persons sharing the particular characteristic to be a group. *W-G-R-*, 26 I&N Dec. at 216-17 ("Although the society in question need not be able to easily identify who is a member of the group, it must be commonly recognized that the shared characteristic is one that defines the group.")

d. Well-founded Fear of Future Persecution

An applicant who has suffered past persecution on account of a protected ground is presumed to have a well-founded fear of future persecution on account of that same protected ground. 8 C.F.R. § 1208.13(b)(1). This presumption may only be rebutted if the government establishes, by a preponderance of the evidence, that (1) the applicant can reasonably relocate within his country of origin or (2) there has been a "fundamental change in circumstances" in the country at issue, such that the applicant's fear is no longer well-founded. *Id.*

An individual who has not suffered past persecution may be granted asylum if she or he demonstrates 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)(2). An applicant's fear is well-founded if it is both subjectively genuine and objectively reasonable. *Tolozá-Jimenez v. Gonzales*, 457 F.3d 155, 161 (1st Cir. 2006).

Generally, the subjective component of this inquiry is satisfied by the individual's credible testimony that she or he fears persecution. *See Cordero-Trejo v. INS*, 40 F.3d 482, 491 (1st Cir. 1994). An applicant may satisfy the objective prong if he demonstrates a "reasonable possibility" that she or he will be "singled out individually for persecution," or alternatively, if she or he establishes a widespread "pattern or practice" in her or his country of persecuting "a group of persons similarly situated to the applicant on account of a protected ground." *Cardoza-Fonseca*, 480 U.S. at 440; *Sugiarto v. Holder*, 586 F.3d 90, 97 (1st Cir. 2009); 8 C.F.R. § 1208.13(b)(2)(i)(B), (iii). Evidence concerning treatment of the applicant's family or similarly situated friends or colleagues may be probative of such a pattern or practice. *See Sugiarto*, 586 F.3d at 97-98; *Matter of Villalta*, 20 I&N Dec. 142, 147 (BIA 1990); *see also Meguenine v. INS*, 139 F.3d 25, 28 (1st Cir. 1998).

An individual generally cannot establish a well-founded fear of persecution if the individual could avoid a future threat by relocating to another part of the proposed country of removal. 8 C.F.R. § 1208.13(b)(2)(ii). Where the persecutor is a government or a government-sponsored actor, however, there is a presumption that relocation is not reasonable. *Id.* at § 1208.13 (b)(3)(ii).

e. Government Action

Additionally, the persecution that the applicant experienced or fears must be the direct result of government action, government-supported action, or the government's unwillingness or inability to control private conduct. *Joeon v. Holder*, 736 F.3d 5, 12 (quoting *Sok v. Mukasey*, 526 F.3d 48, 54 (1st Cir. 2008)). "Action by non-governmental actors can undergird a claim of persecution only if there is some showing that the alleged persecutors are in league with the government or are not controllable by the government." *Da Silva v. Ashcroft*, 394 F.3d 1, 7 (1st Cir. 2005).

2. Discretion

Statutory and regulatory eligibility for asylum does not compel a grant of asylum. 8 C.F.R. § 1208.14(a). An applicant for asylum has the burden of establishing that a favorable exercise of discretion is warranted. INA § 208(b)(1)(B); *Pula*, 19 I&N Dec. at 473-74 (superseded by regulation on other grounds). In exercising discretion, the Court must examine the totality of the circumstances. *Pula*, 19 I&N Dec. at 473-74.

D. Withholding of Removal Pursuant to INA § 241(b)(3)

Section 241(b)(3) of the Act is a non-discretionary provision requiring the Court to withhold removal of an individual if her or his life or freedom would be threatened in that country on account of one of the five protected grounds. 8 C.F.R. § 1208.16(b). To be eligible for withholding of removal, an applicant must establish either (1) that she or he has experienced past

persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, or (2) that it is "more likely than not" that the applicant's life or freedom would be threatened in the future on account of a protected ground. INA § 241(b)(3); 8 C.F.R. § 1208.16(b)(1)-(2).

E. Withholding of Removal Under the Convention Against Torture

The Convention Against Torture and implementing regulations provide that no person shall be removed to a country where it is "more likely than not" that such person will be subject to torture. *See* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (Dec. 10, 1984); Pub. L. 105-277 (1998); 8 C.F.R. §§ 1208.16, 1208.17, 1208.18; *see also* *Matter of M-B-A-*, 23 I&N Dec. 474, 47778 (BIA 2002).

In order to establish a *prima facie* claim under CAT, the applicant must offer specific objective evidence showing that she or he will be subject to torture, defined as:

- (1) an act causing severe physical or mental pain or suffering;
- (2) intentionally inflicted;
- (3) for a proscribed purpose;
- (4) by or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim; and
- (5) not arising from lawful sanctions.

Rashad v. Mukasey, 554 F.3d 1, 6 (1st Cir. 2009) (citing *Romilus v. Ashcroft*, 385 F.3d 1, 8 (1st Cir. 2004)); *see* 8 C.F.R. § 1208.18(a)(1). For CAT relief, the Respondent must prove that she or he is more likely than not to suffer torture with government acquiescence. To determine whether it is more likely than not that an applicant will be tortured in the proposed country of removal, the Court takes into account the following relevant considerations: (1) evidence of past torture; (2) evidence of the likelihood that the applicant can safely relocate to another part of the country of removal; (3) evidence of gross, flagrant, or mass violations of human rights within the country of removal, and (4) any other relevant country conditions. *See* 8 C.F.R. § 1208.16(c)(3). The applicant for CAT relief bears the burden of proof. *Id.* at § 1208.16(c)(2). As with withholding of removal under section 241(b)(3) of the Act, the applicant's testimony, if credible, may be sufficient to sustain her or his burden of proof without corroboration. *Id.*

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Removability

On February 25, 2015, the Respondents filed written pleadings, conceding to the charge of removability. Exh. 2. Based on that concession, the Court finds that, by clear and convincing evidence, the Respondent is removable as charged. INA § 240(c)(1)(A); 8 C.F.R. § 1240.12(a).

B. Credibility and Corroboration

Because the Respondent filed her asylum application after May 11, 2005, the REAL ID Act applies to her case. *See* Gr. Exh. 3; *see also* INA § 208(b)(1)(B)(iii). Applying those standards

and considering the totality of the circumstances, the Court finds that the Respondent testified credibly. Her testimony was internally consistent and consistent with her declaration and supporting documents. A comparison of her testimony and declaration do not show any meaningful discrepancies. *See* Gr. Exh. 3 at 1-17. Her claims are corroborated numerous country conditions reports, showing the violence against women. Gr. Exh. 3. Her statements are further corroborated by her own psychological evaluation. *See* Exh. 5. The Respondent answered questions on direct and cross examination directly, forthrightly, and consistently with the other evidence in the Record.

C. Asylum Pursuant to INA § 208

1. Statutory Eligibility

a. Timeliness of Application

The Respondent entered the United States on April 13, 2014, and filed her asylum application more than one year later, on XXX 2016. Exh 1; Gr. Exh. 3. The Respondent's application is untimely unless an exception applies. INA § 208(a)(2)(B), (D); 8 C.F.R. § 1208.4(a)(2)(i)-(ii). However, the Court finds that an extraordinary circumstance excuses her late filing. Prior to the one year deadline, on XXX 1, 2015, the Respondent lodged her asylum application at the filing window of the Court. *See* Office of the Chief Immigration Judge, Revised Operating Policy and Procedures Memorandum No. 13-03: Guidelines for Implementation of the ABT Settlement Agreement, at 6 (Dec. 2, 2013) ("Legal determinations regarding the effect of lodging an asylum application are within the province of the presiding Immigration Judge. For example, judges may consider the legal effect of lodging an asylum application when considering whether an exception to the one-year bar applies."); *see also* Gr. Exh. 3. As the Respondent lodged her asylum application prior to the one-year deadline, and then filed it at the earliest subsequent hearing, the Court finds that an extraordinary circumstance excuses her failure to timely file and that she filed the application within a reasonable period following the extraordinary circumstance. *See* INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)-(5).

b. Past Persecution

The harm that the Respondent suffered rises to the level of past persecution. *See* 8 C.F.R. § 1208.13(b)(1). The Respondent was repeatedly molested, assaulted, and harassed, from the time that she was a young girl until she fled to the United States. As a child, she was molested by an adult man. She was subsequently the victim of an attempted rape at the hands of Joe, where he attacked her and attempted to penetrate her. She was assaulted on the street by a group of approximately twenty men. After the birth of her daughter, she was stalked and followed by two neighbors, Pete and Frank. Their treatment of the Respondent became so severe that she eventually stopped leaving her home. The Court declines to treat these incidents as sporadic acts of crime that occur within a vacuum; rather, it considers these assaults as part of systemic persecution of women in Honduras, as discussed below. As a result, the Court finds that the severity and persistence of this abuse far exceeds mere unpleasantness or harassment, instead reaching the level of systemic mistreatment qualifying as persecution. *See Nelson*, 232 F.3d at 263.

c. Particular Social Group and Nexus

The Respondent has established that she is a member of the particular social group: Honduran women without a male family member. *See* INA § 101(a)(42)(A). The Respondent has also demonstrated to the Court's satisfaction that the persecution she would face would be exacted "on account" of her membership in the particular social group. *See* INA §§ 101(a)(42)(A); 208(b)(1)(B). A particular social group must be "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *M-E-V-G-*, 26 I&N Dec. at 237; *see also W-G-R-*, 26 I&N Dec. at 212-18.

The Respondent's group is composed of members who share the common immutable characteristic of gender. *See Matter of A-R-C-G-*, 26 I&N Dec. 388, 392 (BIA 2014); *Acosta*, 19 I&N Dec. at 233; *see also W-G-R-*, 26 I&N Dec. at 214. Furthermore, familial make-up, can also be considered an immutable characteristic. *A-R-C-G-*, 26 I&N Dec. at 393 (determining that being married is an immutable characteristic). The Respondent cannot change her gender, nor is she able to change the make-up of her family. Although she is married now, she testified that her husband fled Honduras due to threats of gang violence. Thus, if she were removed, her husband would not be able to accompany her. Where the Respondent is subject to violence, harassment, and stalking on account of her gender and familial make-up, the Court finds her particular social group to have sufficient immutability.

Moreover, this group is defined with particularity, akin to the recognized particular social group of married Guatemalan women who are unable to leave their relationships. *See A-R-C-G-*, 26 I&N Dec. at 393. The terms "women" and "without a male family member" have commonly accepted definitions within Honduran society. *See id.* (finding that a group is sufficiently particular because the words used to describe the group "have commonly accepted definitions within [the] society" and they "combine to create a group with discrete boundaries"). The evidence in this case demonstrates that Honduran society views women without a male family member to be a group with discrete and definable boundaries. In Honduran society, women are viewed and treated as the property of their fathers or husbands. Gr. Exh. 3 at 312-13. When women live alone, without a male family member, they are viewed as being sexually deviant, and become targets for violence. *Id.* at 320.

Finally, the group is also socially distinct within the society in question. *M-E-V-G-*, 26 I&N Dec. at 240. When evaluating the issue of social distinction, the Court looks to whether Honduras recognizes the need to offer protection to victims of gender-based violence, including whether the country has criminal laws designed to protect gender-based violence victims, whether those laws are efficiently enforced, and other sociopolitical factors. *See A-R-C-G-*, 26 I&N Dec. at 394. The evidence indicates that women who live alone in Honduras, are "thought to be sexually immoral, and are more likely to be targeted for future sexual violence." Gr. Exh. 3 at 320. The country conditions evidence indicates that the Honduran government recognizes the need to protect victims of gender-based violence. Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Honduras Country Reports on Human Rights Practices — 2016*. Although Honduras has laws criminalizing rape and sexual assault, "Nape was a serious and pervasive societal problem." *Id.* In addition, in Honduras, legislation has been proposed to criminalize

"femicides" because homicide laws were so ineffective at protecting women from violent killings. Gr. Exh. 3 at 308. Furthermore, the Respondent testified that married women, or women with a male family member to protect them, did not suffer from the same kind of sexual violence that she faced. Thus, the Court is persuaded that the Respondent's social group is socially distinct within Honduran society.

The evidence indicates that the Respondent because of her membership in this group. The Respondent testified that other women in Honduras were not victims of attacks and violence, because they had male family members to protect them. Moreover, many of these sexual assaults occurred were triggered by the departure of her male family members. A group of twenty men molested the Respondent immediately after learning that her brother had fled to the United States. Furthermore, Frank and Pete began stalking the Respondent immediately after Alfred left for the United States. Additionally, the Respondent stated that the attacks were sexual in nature, where she was touched and molested on her private parts. Such assaults are inherently gender-based. Based on this evidence, the Respondent has demonstrated that her membership in the particular social group of Honduran women without a male family member was at least "one central reason" motivating the persecution she suffered. *See* INA §§ 101(a)(42)(A), 208(b)(1)(B).

d. Well-Founded Fear of Future Persecution

Because the Respondent has established that she is a victim of past persecution, she is presumed to have a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). DHS has not rebutted this presumption by demonstrating by a preponderance of the evidence that country conditions have changed, or that it would be reasonable for the Respondent to avoid persecution by relocating to another part of Honduras. *See* 8 C.F.R. §§ 1208.13(b)(1)(i)(B), (ii), (b)(3)(i). As discussed above, gender-based violence continues to be a problem in Honduras. The evidence indicates that violence against women is a problem throughout Honduras. Gr. Exh. 3 at 402 ("Honduras is rapidly becoming one of the most dangerous places on Earth for women . . . the nation . . . has witnessed a sharp increase in domestic and sexual violence and gender-based murder, a phenomenon known as femicide."). As a result, "it is not possible for a woman to secure protection by trying to relocate within the country." *Id.* at 319.

e. Government Action

The Respondent has established that the government of Honduras was unable or unwilling to control the men, who have attacked and sexually assaulting her, by prosecuting or punishing them, and in turn, protecting her from persecution. *See Joeov*, 736 F.3d at 13 (finding a nexus to government inaction where government failed to investigate or punish skinheads who kidnapped and tortured the respondent). Although Honduras criminalizes rape, domestic, intimate partner abuse, and femicide, the Honduran government does not effectively enforce these laws. Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *Honduras Country Reports on Human Rights Practices — 2016* (explaining that although there has been a legislative effort to protect women, most women are at a high risk for human rights violations); Gr. Exh. 3 at 362 (describing how reporting gender-based violence to the police resulted in no help or increased harm directly from law enforcement); Gr. Exh. 3 at 329-37 (depicting the poor implementation of the criminal justice systems, in cases of femicide and sexual assault). Where government officials

fail to investigate, prosecute, or adjudicate gender-based crimes, the Court finds that the Honduran government has been unable or unwilling to control the persecution of the Respondent and other women without a male family figure.

2. Discretion

The Respondents have demonstrated statutory eligibility for asylum pursuant to section 208 of the Act. No adverse discretionary factors were presented. *Pula*, 19 I&N at 473-74. The Court therefore finds that the Respondents merits a favorable exercise of the Court's discretion.

D. Withholding of Removal Pursuant to INA § 241(b)(3)

Because the Respondents meets the requirements for asylum, pursuant to INA section 208, the Court does not reach their application for withholding of removal, pursuant to INA section 241(b)(3).

E. Convention Against Torture

Because the Respondents meet the requirements for asylum, pursuant to INA section 208, the Court does not reach their applications for protection under the CAT.

Based on the foregoing, the following orders shall enter:

ORDERS

IT IS ORDERED that the Respondents' Application for Asylum, pursuant to INA § 208, be GRANTED.

IT IS FURTHER ORDERED that the Respondents' Application for Withholding of Removal, pursuant to INA § 241(b)(3), be NOT REACHED.

IT IS FURTHER ORDERED that the Respondents' Application for Protection Under the Convention Against Torture be NOT REACHED.

If either party elects to appeal this decision, the Notice of Appeal must be received by the Board of Immigration Appeals within thirty days of this decision. 8 C.F.R. § 1003.38(a)-(b).

DEC 05 2017

Date

MATTHEW D'ANGELO
Immigration Judge