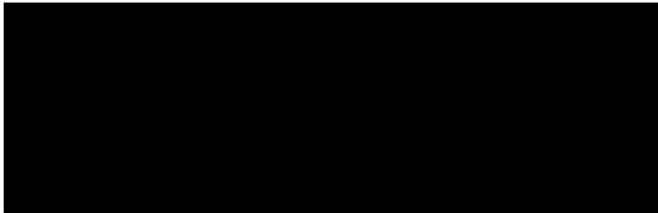


**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
MIAMI, FLORIDA**

IN THE MATTER OF:



RESPONDENTS

A
A
A

IN REMOVAL PROCEEDINGS

CHARGE: Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (INA or Act): An alien who, at the time of application for admission, is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing card, or other valid entry document required by the Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality as required under the regulations issued by the Attorney General under section 211(a) of the Act.

APPLICATIONS: Section 208 of the INA: Asylum.

Section 241(b)(3) of the INA: Withholding of Removal.

Sections 1208.16 and 1208.17 of Title 8 of the Code of Federal Regulations (C.F.R.): Withholding or Deferral of Removal under Article 3 of the Convention Against Torture (CAT).

ON BEHALF OF RESPONDENT:

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ON BEHALF OF THE GOVERNMENT:

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WRITTEN DECISION AND ORDERS OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

[REDACTED] ("Respondent") and her two sons [REDACTED]
[REDACTED] and [REDACTED] (collectively
"Respondents") are natives and citizens of Honduras. See Exhs. 1; 1.a; 1.b. Respondents entered

the United States near Hidalgo, Texas on December 27, 2015. *See id.* Customs and Border Patrol detained Respondents on January 4, 2016, and an asylum officer conducted a credible fear interview on January 7, 2016. On January 11, 2016, the Department of Homeland Security ("DHS") personally served Respondents with Notices to Appear ("NTA"), charging them with inadmissibility under section 212(a)(7)(A)(i)(I) of the INA. *See id.* DHS filed Respondents' NTAs with the Court on March 31, 2016, thereby initiating these removal proceedings. *See id.*; *see also Perez-Sanchez v. U.S. Att'y Gen.*, 935 F.3d 1148, 1156 (11th Cir. 2019).

On April 14, 2016, Respondent appeared before this Court for her initial master hearing, and admitted, through counsel, to the factual allegations and conceded the charge of removability contained in her NTA. Based upon Respondent's admissions and concession, the Court sustained the charge of removability by clear and convincing evidence. *See* INA § 240(c)(1)(A); 8 C.F.R. § 1240.10(c). On December 22, 2016, Respondent lodged her application for asylum, withholding of removal, and protection under CAT ("Form I-589"). *See* Exh. 2, Tab A. On September 24, 2021, Respondent submitted an amended Form I-589 with the Court. *See* Exh. 4. That same day Respondent testified before this Court in support of her amended Form I-589. At the conclusion of this hearing, the Court announced its intention to issue a written decision, and allowed each party 30 days to submit a brief if they so choose. Respondent filed her brief on October 25, 2021, DHS has not filed a response. *See* Exh. 7. The Court has familiarized itself with the record of proceedings and hereby issues the instant decision regarding Respondent's eligibility for relief. *See* 8 C.F.R. § 1240.1(b).

II. SUMMARY OF THE EVIDENCE

The record of proceedings includes exhibits one through seven and Respondent's testimony. The Court has reviewed the record and considered all of the admitted evidence in its entirety, regardless of whether specifically mentioned in the text of this decision. *See* 8 C.F.R. § 1240.1(b).

A. Exhibit List

- Exhibit 1: Respondent's NTA (Mar. 31, 2016)
- Exhibit 1.a: ████████'s NTA (Mar. 31, 2016)
- Exhibit 1.b: ████████'s NTA (Mar. 31, 2016)
- Exhibit 2: Respondent's Notice of Filing I-589, Tabs A-F (June 8, 2017)
- Exhibit 3: Respondent's Notice of Supplemental Filing I-589, Tabs G-N (Feb. 22, 2018)
- Exhibit 4: Respondent's Amended Form I-589 (Sep. 24, 2021)
- Exhibit 5: Respondent's Notice of Supplemental Filing I-589, Tabs O-Q (March 15, 2018)
- Exhibit 6: 2020 Honduras Human Rights Report
- Exhibit 7: Respondent's Brief (Oct. 25, 2021)

B. Summary of the Testimony

Respondent testified that she was born [REDACTED] in, Azacualpa, Santa Barbara, Honduras. Respondent has three children, [REDACTED], and [REDACTED]. Respondent has six siblings, four of which live in the United States, and two currently living in Honduras. Respondent fled Honduras with [REDACTED] and [REDACTED] on December 12, 2015, due to her fear that she and/or her children would be killed by the same men responsible for killing her father, [REDACTED] ("[REDACTED]"). Respondent also feared that if she stayed in Honduras she would continue to be raped by her brother in law, [REDACTED] ("[REDACTED]"), and/or the father of her first two children, [REDACTED].

i. Sexual Assaults Committed by [REDACTED]

In approximately January 2001, at 18 years of age, Respondent began living with her sister [REDACTED] and [REDACTED]'s husband [REDACTED]. Respondent testified that [REDACTED] began raping her shortly after she moved in with them, often times using the threat of lethal force, and resulting in injuries to Respondent. Respondent could not recall an exact number of times [REDACTED] raped her, but stated that it happened very many times over a six month period, until [REDACTED] fled Honduras to the United States in 2001. [REDACTED] was ultimately deported from the United States in 2006, and currently lives in Honduras.

Respondent became pregnant as a result of [REDACTED] raping her. [REDACTED] took Respondent, against her will, to an underground abortion clinic, where Respondent alleged that the abortion doctor raped her after sedating her. Respondent testified that [REDACTED] raped her eight days after her abortion.

Beginning in 2007, [REDACTED] began harassing and threatening Respondent over the phone, calling her numerous times, expressing his vulgar and criminal desires to continue raping her. Respondent never reported [REDACTED] to the police because she did not want her sister [REDACTED] to know what her now ex-husband had done to her. More importantly, Respondent never reported [REDACTED] to the police because [REDACTED] was a police officer in Honduras, and Respondent feared she would not be believed and would be attacked and harassed by Honduran police if she reported a rape committed by a Honduran police officer. Further, Respondent feared that [REDACTED] would carry out his threat to Respondent to harm her sister, [REDACTED] if anyone ever found out that he was raping her.

ii. Sexual and Physical Assaults Committed by [REDACTED]

Respondent testified that she was also raped and physically battered in Honduras by [REDACTED] the father of her first two children, [REDACTED] and [REDACTED]. Respondent met [REDACTED] in 2002, after [REDACTED] left to the United States. Respondent alleged that their relationship started off normally, but he eventually became possessive and abusive towards her. Respondent listed several of the attacks before the Court.

The first time [REDACTED] attacked Respondent was when he threw a cell phone at her because she did not answer his phone call that day. Later, in May 2006, Respondent recounted a night where [REDACTED] came home drunk, and started threatening Respondent, [REDACTED], and [REDACTED] with

¹ [REDACTED] is a United States Citizen, born on [REDACTED]. He is not party to these proceedings.

a machete. He attempted to hit Respondent with the machete, and began banging the machete on the door frames of Respondent's house, while threatening to kill Respondent. Respondent quoted [REDACTED] as saying to her "bitch I'm going to kill you." See Exh. 3, Tab G, at p.7. The Respondents fled the house before [REDACTED] could reach them, and hid in a church for two hours. Approximately two to three months later, Respondent stated that [REDACTED] whipped her with his belt multiple times, leaving bruises on her backside, while she was pregnant with their second child.

Respondent recounted another of [REDACTED]'s drunken tirades, when he returned home late at night and began throwing and breaking their possessions all throughout the houses. During the process, [REDACTED] hit Respondent with glasses and plates. Respondent stated that these drunken episodes happened on a weekly basis between 2005 to 2007. [REDACTED]'s abuse of Respondent escalated to rape when Respondent started to refuse his sexual advances. Respondent testified that in the years prior to [REDACTED] leaving Honduras for the United States he would force Respondent to have sex with him under the threat of physical force. Respondent stated that this happened "many times."

Respondent never reported any of [REDACTED]'s physical or sexual assaults to Honduran police because she claimed that [REDACTED]'s father is a very powerful man in Honduras, and that he could hire lawyers while she could not. Respondent's relationship with [REDACTED] ended in 2007 when [REDACTED] fled to the United States. They have not seen each other since 2007, however [REDACTED] has continued to harass Respondent by calling her from the United States and threatening to "burn her" if he found out she was sleeping with another man.

iii. Murder of [REDACTED] and Ensuing Threats to Respondent

Respondent's father, [REDACTED], was murdered on April 22, 2007. Respondent alleged that [REDACTED] (son of [REDACTED]) shot [REDACTED] in the chest, and [REDACTED]'s son, [REDACTED], stabbed [REDACTED] in the stomach. Respondent testified that [REDACTED] and [REDACTED] killed her father due to a domestic dispute over a woman that both [REDACTED] and [REDACTED] were romantically involved with. Respondent's brother, [REDACTED], called the police after their father was murdered, but the police were never dispatched to the scene. Approximately one week later Respondent was contacted by Honduran law enforcement to identify her father's body. According to Respondent, the coroner's report revealed that her father was shot twice in the chest and stabbed in the stomach.

Respondent attempted to bring the documentation regarding her father's murder to her local prosecutor's office, including witness statements, and the documentation identifying her father's body and cause of death. Respondent also presented the eyewitness testimony of two Honduran individuals. However, Honduran law enforcement did not act on this case for many months, and no charges were ever brought against [REDACTED] and [REDACTED]. Respondent testified that [REDACTED] was charged with murder but was released after only six days in jail due to the power and influence of his daughter, [REDACTED]. Respondent testified that [REDACTED] frequently threatened to harm Respondent if she continued reporting [REDACTED] to the police.

Respondent testified that since she reported [REDACTED] to the police she has faced numerous threats and attacks by [REDACTED] and his family members, all designed to intimidate her and thwart her efforts to communicate with Honduran police regarding the murder of her father. According

to Respondent, [REDACTED] and some of his family members invaded Respondent's house one night in 2008 and began searching for evidence Respondent had gathered that implicated him in her father's murder. Specifically, [REDACTED] demanded that Respondent give him the police report she filled out for law enforcement, along with the statements and affidavits of eyewitnesses to the crime. Fearing that [REDACTED] would attempt to destroy evidence and obstruct the investigation, Respondent previously hid all the documentation regarding her father's murder, and [REDACTED] left empty-handed unable to recover what he was searching for.

Respondent now believes that it would be unsafe for her to return to Honduras due to her fear of reprisals from the family of [REDACTED] and [REDACTED]. Respondent explained to the Court that in 2020, [REDACTED]'s son, Respondent's nephew, was shot and killed by a family member of [REDACTED]. Respondent alleged that [REDACTED]'s cousin, [REDACTED], was responsible for the shooting and killing of her nephew, and that [REDACTED] was motivated to do so in order to enact revenge on [REDACTED] and Respondent's family for reporting [REDACTED] to the police.

Respondent concluded her testimony, stating that it would be unsafe for her to return to Honduras due to the ongoing threat she would face from [REDACTED] and his family, in response to her reporting [REDACTED] to police for the murder of her father. In addition, she fears that she would continue to face physical and sexual abuse from her previous abuser, [REDACTED].

In her brief filed with the Court on October 25, 2021, Respondent argued that she merits relief in the form of asylum, withholding, or CAT, due to her past persecution, and well-founded fear of future persecution on account of her membership in two particular social groups ("PSG"). (1) Honduran women, and (2) Immediate Family Member of [REDACTED] (Respondent's father).

III. Burden of Proof and Credibility

An applicant bears the burden of proving statutorily eligibility for relief and, where applicable, that he merits a favorable exercise of the Court's discretion. *See* INA § 240(c)(4)(A); 8 C.F.R. § 1240.8(d). The Court considers whether the testimony offered is credible, persuasive, and fact-specific when determining whether the applicant has satisfied his burden of proof. *See* INA § 240(c)(4)(B). Credibility is an "individualized assessment" that requires the Court to consider all evidence and testimony set forth by the applicant. *See Wu v. U.S. Att'y Gen.*, 712 F.3d 486, 497 (11th Cir. 2013). In applying the "totality of the circumstances" approach, the Court assesses the demeanor, candor, or responsiveness of the applicant; the account's plausibility; and the consistency between the applicant's written and oral statements and with other evidence. *See* INA § 240(c)(4)(C). Overall, the Court takes a "commonsense approach to determining credibility, considering the totality of the circumstances, including the [applicant's] demeanor and any inconsistencies in testimony or instances of implausibility." *Matter of R-K-K-*, 26 I&N Dec. 658, 659 (BIA 2015) (citations omitted).

Here, after having considered the record of evidence, the Court finds Respondent credible. She testified candidly, was responsive to questions, and provided a plausible, coherent, and consistent account of events. *See* INA § 240(c)(4)(B), (C); *see also Wu*, 712 F.3d at 497. Her testimony was internally consistent and consistent with the evidence as a whole. *See* INA

§ 240(c)(4)(C); *see also* *R-K-K-*, 26 I&N Dec. at 659. Upon cross-examination, DHS tried to highlight some inconsistencies between Respondent's live testimony and the answers she gave to the asylum officer at her January 7, 2016 credible fear interview. However, the Court finds these minor inconsistencies insufficient to warrant an adverse credibility finding when considered against her general responsiveness to the questions posed, and her overall candor with the Court. Accordingly, considering the totality of the circumstances, the Court finds Respondent credible. *See* INA § 240(c)(4)(C); *Xiu Ying Wu*, 712 F.3d at 497.

IV. Respondent's Eligibility for Relief

A. Asylum

To establish eligibility for asylum, an applicant must prove that she is a refugee and that she merits relief in the exercise of discretion. *See* INA § 208(b)(1)(A). A "refugee" is a person who is outside her country of nationality or last residence, unable or unwilling to return to that country, and unable or unwilling to avail herself of that country's protection, because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a PSG, or political opinion. *See* INA § 101(a)(42)(A). Here, Respondent asserts that her claim of persecution is on account of her membership in a PSG comprised of "Domestic Partner of [REDACTED]" or in the alternative, "Family member of [REDACTED]" *See* Exh. 5.

i. Past Persecution

Determining what constitutes persecution is a "highly fact-intensive inquiry" which requires a "totality of the circumstances" approach. *Shi v. U.S. Att'y Gen.*, 707 F.3d 1231, 1235-36 (11th Cir. 2013). Persecution does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. *See Matter of V-T-S-*, 21 I&N Dec. 792, 798 (BIA 1997). Mere harassment is not persecution. *Rodriguez v. U.S. Att'y Gen.*, 735 F.3d 1302, 1308 (11th Cir. 2013). Rather, persecution is an "extreme concept" requiring more than a few isolated incidents of verbal harassment or intimidation that is unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty. *Shi*, 707 F.3d at 1235.

Here, the Court finds that Respondent has demonstrated that she suffered past persecution. Respondent credibly testified that she was raped dozens of times by [REDACTED], who was a Honduran police officer at the time. Respondent was also raped by an underground abortion clinician, who performed the abortion against Respondent's will per [REDACTED]'s demand. Respondent was later sexually and physically assaulted by [REDACTED], the father of her first two children. Lastly, after Respondent's father was killed, his murderers harassed and threatened Respondent, including breaking into her home in an attempt to destroy the evidence she had collected implicating the men responsible, [REDACTED] and [REDACTED].

Combining the physical and sexual attacks on Respondent with the series of threatening surveillance, home invasions, and harassment, the Court finds that Respondent has established that she faced persecution while living in Honduras. Accordingly, Respondent has met his burden of showing past persecution.

ii. Well Founded Fear of Future Persecution

Respondent's past persecution creates a rebuttable presumption of a well-founded fear of future persecution. *See* 8 C.F.R. § 1208.13(b)(1). DHS can rebut the presumption if it shows, by a preponderance of the evidence, either (1) a fundamental change in circumstances undercutting Respondent's well-founded fear of persecution or (2) the possibility of reasonable relocation elsewhere within Honduras. *See* 8 C.F.R. § 1208.13(b)(1)(i). However, in cases where the persecutor is a government actor, it is presumed that internal relocation is not reasonable. *See* 8 C.F.R. § 1208.13(b)(3)(ii). A determination of whether the presumption is rebutted requires "individualized analysis" and cannot be determined by general country conditions alone. *See Imelda v. U.S. Att'y Gen.*, 611 F.3d 724, 728–34 (11th Cir. 2010).

The Court finds that DHS failed to rebut Respondent's presumption of a well-founded fear. First, one of Respondent's primary persecutors, [REDACTED] was, and to this Court's knowledge still may be, a government actor. Thus, internal relocation is presumed to be unreasonable. Second, Respondent's nephew, the son of her brother [REDACTED], was shot and killed as recently as two years ago by a close confidant and family member of [REDACTED]. Thus, it is fair to presume that dangerous conditions still exist for Respondent and members of her family in Honduras. DHS failed to present evidence to show that circumstances have changed in Honduras such that Respondent's fear of persecution is no longer well-founded, nor that Respondent could reasonably relocate within Honduras. Therefore, the Court finds that Respondent has an objective and subjective well-founded fear of future persecution if removed to Honduras.

iii. Based on a Protected Ground

A noncitizen seeking relief based on "membership in a particular social group" must establish that the group (1) is comprised of individuals who share a common immutable characteristic, (2) is defined with particularity, and (3) is socially distinct within the society in question. *See Matter of M-E-V-G-*, 26 I&N Dec. 227, 237 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208, 212–18 (BIA 2014).

In determining whether a proposed PSG based on familial relationships is cognizable, the Court must conduct a fact-based inquiry, on a case-by-case basis. *See Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017), *accord Matter of L-E-A-*, 28 I&N Dec. 304, 304 (A.G. 2021) (*L-E-A- I*) (vacating *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) (*L-E-A- II*) in its entirety). The Board of Immigration Appeals (BIA) recognized that familial relationships could form a cognizable PSG, so long as the nature and degree of the relationships are sufficiently close and specific. *L-E-A- I*, 27 I&N Dec. at 43. The BIA also determined that a persecution claim cannot be established in the absence of proof that the noncitizen or their family members were targeted because of the family relationship. *Id.*

a. Immutable Characteristic

An immutable characteristic refers to 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); see *W-G-R-*, 26 I&N Dec. at 208 (holding that “taxi drivers in San Salvador who refused to participate in guerrilla-sponsored work stoppages—were not immutable [because] ‘the members of the group could avoid the threats of the guerrillas by either changing jobs or by cooperating in work stoppages.’”). “The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership.” *Acosta*, 19 I&N Dec. at 233. “Kinship ties” is a common, immutable characteristic.” *L-E-A- I*, 27 I&N Dec. at 42 quoting *Acosta*, 19 I&N Dec. at 233.

The Court finds that Respondent’s PSG “Immediate Family Member of [REDACTED]” is comprised of individuals who share a common immutable characteristic, specifically, their familial relationship. The Court applies the BIA’s recent recognition that familial relationships could form a cognizable PSG, so long as the nature and degree of the relationships are sufficiently close and specific. *L-E-A- I*, 27 I&N Dec. at 43. Here, Respondent’s familial relationship to [REDACTED] her deceased father is sufficiently close and specific to warrant a finding of a common immutable characteristic.

b. Particularity

Particularity requires that the group be defined by characteristics that provide a clear benchmark for determining who falls within the group. See *W-G-R-*, 26 I&N Dec. at 214. A purported social group lacks particularity if it makes up a potentially large and diffuse segment of society. See *Matter of S-E-G-*, 24 I&N Dec. 579, 585 (BIA 2008). Particularity sets the “outer limits” on the definition of particular social group. See *W-G-R-*, 26 I&N Dec. at 214 (citing *Castellano-Chacon v. INS*, 341 F.3d 533, 549 (6th Cir. 2003)). The group must be discrete, have clearly delineated boundaries, and must not be “amorphous, overbroad, diffuse, or subjective.” See *W-G-R-*, 26 I&N Dec. at 214 (citing *Ochoa v. Gonzales*, 406 F.3d 1166, 1170–71 (9th Cir. 2005) (finding that a proposed group of “tattooed youth” falls outside the “outer limit” of the particular social group definition)). Moreover, the term particularity “is consistent with the specificity by which race, religion, nationality, and political opinion are commonly defined.” *W-G-R-*, 26 I&N Dec. at 213.

Regarding a familial relationship, the BIA explained that not all social groups involving family will meet the particularity requirement and exemplified that “some attenuated family links will not *per se* suffice to confer ‘particular social group’ membership.” See *L-E-A- I*, 27 I&N Dec. at 42–43 (citing *Jie Lin v. Ashcroft*, 377 F.3d 1014, 1028 (9th Cir. 2004)). However, the Court finds that in this instance, Respondent’s family-based PSG is comprised of a narrow and particularly defined group of individuals, primarily consisting of Respondent, her children, and her brother, [REDACTED] whose nephew was murdered by [REDACTED]. The group is discrete, has clearly delineated boundaries, and is easily defined.

c. Social Distinction

Members of a social group must also be socially distinct in that they share a “‘fundamental characteristic’ that is ‘recognizable and discrete’ such that it ‘distinguish[es] them in the eyes’ of others.” *W-G-R-*, 26 I&N Dec. at 208 (citing *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991)).

Ocular visibility of the proposed social group is not required; rather, “[t]o have ‘social distinction’ necessary to establish a particular social group, there must be evidence showing that society perceives, considers, or recognizes persons sharing the particular characteristic to be a group.” *Id.* at 216–17. The noncitizen must show that the familial relationship of their proposed PSG is distinct in the society in question. *L-E-A- I*, 27 I&N Dec. at 43.

The Court agrees with Respondent, and finds that “Immediate Family Member of [REDACTED]” is a PSG comprised of members who are socially distinct and readily distinguishable in the eyes of Honduran society. This finding is supported by the fact that Respondent was targeted in the immediate aftermath of her father’s death, continued to be threatened and harassed years after, and her nephew being murdered by the same group of individuals responsible for killing her father, all in an effort to threaten and harass members of Respondent’s PSG for reporting [REDACTED] and [REDACTED] to the police. Based on the above, the Court finds that Respondent’s PSG is clearly distinguishable in Honduras, particularly from the perspective of the individuals who persecuted and continue to persecute members of Respondent’s PSG. Thus, Respondent has provided ample evidence supporting her assertion that her society perceives, considers, or recognizes her as a family member of her father, [REDACTED].

Therefore, the Court finds that Respondent’s proffered PSG, “Immediate Family Member of [REDACTED]” is a cognizable PSG.

iv. Nexus

A noncitizen must demonstrate that the past persecution or future persecution was or will be “on account of” a protected ground. INA § 101(a)(42)(A). The “on account of” language requires that the noncitizen show a “nexus” between the persecution and the protected ground. *Rodriguez Morales v. U.S. Att’y Gen.*, 488 F.3d 884, 890 (11th Cir. 2007); *Matter of W-G-R-*, 26 I&N Dec. at 223. If and when a noncitizen establishes a cognizable PSG, the issue becomes whether the noncitizen’s membership in this PSG was “at least one central reason” for the persecution they suffered. *Perez-Sanchez*, 935 F.3d at 1158; INA § 208(b)(1)(B)(i); *Rodriguez Morales*, 488 F.3d at 890. The persecutory motive cannot be general; rather, the motive must arise “because of” a protected trait. *Matter of N-M-*, 25 I&N Dec. 526, 529 (BIA 2011) (citing *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992)). To meet their burden of proof, the noncitizen must provide some evidence, direct or circumstantial, that the persecutor’s motive to persecute arises from the asserted protected ground and that such motivation is not incidental, tangential, superficial, or subordinate, to another reason for the harm. *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007). Evidence that either is consistent with private acts of violence or the noncitizen’s failure to cooperate with the persecutor, or that merely shows that they have been the victim of criminal activity, does not constitute evidence of persecution based on a statutorily protected ground. *Ruiz v. U.S. Att’y Gen.*, 440 F.3d 1247, 1258 (11th Cir. 2006).

In *Perez-Sanchez*, the Eleventh Circuit Court of Appeals (Eleventh Circuit), the jurisdiction in which this case arises, considered a case where a prominent drug cartel specifically targeted and extorted the respondent because his father-in-law owed the cartel a large debt. *See id.* Significantly, the Eleventh Circuit “reject[ed] the BIA’s conclusion that Mr. Perez-Sanchez’s relationship to his father-in-law played only an ‘incidental’ role in the cartel’s decision to persecute

him” and held that “[i]t is abundantly clear to us that the family relationship was one central reason, if not the central reason, for the harm visited upon Mr. Perez-Sanchez.” *Id.* at 1158–59. In so holding, the Eleventh Circuit stated that it was “impossible to disentangle his relationship to his father-in-law from the Gulf Cartel’s pecuniary motives: they are two sides of the same coin.” *Id.* at 1158. The *Perez-Sanchez* court also noted that the record was “replete with evidence that the Gulf Cartel sought out and continuously extorted Mr. Perez-Sanchez because of his father-in-law’s past history with the cartel.” *Id.* at 1158.

When taking all of the evidence of record into account the Court finds that Respondent’s membership in her proffered PSG was at least one central reason for the persecution she suffered and is likely to continue suffering if removed to Honduras. [REDACTED] and his family have made it clear that they will persecute, threaten, or kill, anyone they believe was responsible for reporting him and [REDACTED] to the police for the murder of [REDACTED]. As recently as two years ago Respondent’s nephew, someone who was more remotely responsible for reporting [REDACTED] to the police than Respondent, was shot and killed by [REDACTED]’s cousin, [REDACTED], because his father, [REDACTED], helped Respondent report [REDACTED] to the police. Respondent testified that [REDACTED] still lives in Honduras, but lives in constant hiding and fears for his life. It stands to reason that removing Respondent to Honduras would make her a target for persecution or death, due to her relationship to her deceased father as well as being the primary complainant to the police.

v. Discretion

Statutory eligibility for asylum, whether based on past persecution or a well-founded fear of future persecution, does not necessarily compel a grant of asylum. *Cardoza-Fonseca*, 480 U.S. at 441. The noncitizen also bears the burden of establishing that they warrant a favorable exercise of discretion. See § 240(c)(4)(A)(ii) of the Act; *Cardoza-Fonseca*, 480 U.S. at 428 n.5; *Mogharrabi*, 19 I&N Dec. at 447. In exercising discretion, the Court examines the totality of the circumstances. *Matter of Pula*, 19 I&N Dec. 467, 473 (BIA 1987). In *Pula*, the BIA described certain factors to be considered such as the presence of a respondent’s family members in the U.S., a respondent’s manner of entry, length of time a respondent remained in a third country if any, and humanitarian considerations. *Id.* at 473-74. Given the severe consequences that may come upon the noncitizen who has established a well-founded fear of persecution, each discretionary factor must be carefully examined and “the danger of persecution should generally outweigh all but the most egregious adverse factors.” *Id.* at 474.

Respondent has no criminal record in the United States, has lived here for nearly seven years with her children, and has multiple family members currently living in the United States. Respondent did not enter the United States illegally, and has complied with immigration authorities consistently and in a timely manner. Regardless of the positive equities balanced in Respondent’s favor, the danger of persecution she could potentially face if she returned to Honduras compels the Court to find that she merits a favorable exercise of discretion.

V. Conclusion

The Court finds that Respondent is credible, has established her statutory eligibility for asylum, and merits relief as a matter of discretion. Because the Court is granting asylum, it will

not address her concurrent applications for withholding of removal pursuant to INA § 241(b)(3) and protection under CAT. *See Mogharrabi*, 19 I&N Dec. at 449; *see also INS v. Bagamashad*, 429 U.S. 24, 250 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach.").

In light of the foregoing, the Court enters the following orders:

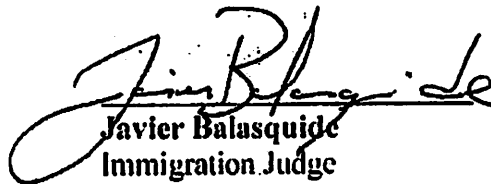
ORDERS OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondents' application for asylum pursuant to INA § 208 is **GRANTED**.

IT IS FURTHER ORDERED that Respondents' application for withholding of removal pursuant to INA § 241(b)(3)(A) is **DENIED AS MOOT**.

IT IS FURTHER ORDERED that Respondents' application for protection under the CAT pursuant to 8 C.F.R. §§ 1208.16 and 1208.18 be **DENIED AS MOOT**.

Dated this 28 day of January, 2022.


Javier Balasquide
Immigration Judge

APPEAL RIGHTS: A notice of appeal must be filed with the Board of Immigration Appeals within 30 calendar days of the issuance date of this decision. *See* 8 C.F.R. § 1003.38(b). If the final date for filing the notice of appeal occurs on a Saturday, Sunday, or federal holiday, the time period for filing will be extended to the next business day. *See id.* If the time period expires and no appeal has been filed, this decision becomes final. *See* 8 C.F.R. § 1003.38(d).

APPEAL DUE: 2/28/2022