

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1 FEDERAL DRIVE, SUITE 1850
FORT SNELLING, MN 55111

Briggs and Morgan, P.A.
Supalla, Daniel John
2200 IDS Center
80 South Eighth Street
Minneapolis, MN 55422

In the matter of _____

File _____

DATE: Dec _____

Unable to forward - No address provided.

✓ Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to:

Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

— Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:

IMMIGRATION COURT
1 FEDERAL DRIVE, SUITE 1850
FORT SNELLING, MN 55111

— Attached is a copy of the decision of the immigration judge relating to a Reasonable Fear Review. This is a final order. Pursuant to 8 C.F.R. § 1208.31(g)(1), no administrative appeal is available. However, you may file a petition for review within 30 days with the appropriate Circuit Court of Appeals to appeal this decision pursuant to 8 U.S.C. § 1252; INA §242.

— Attached is a copy of the decision of the immigration judge relating to a Credible Fear Review. This is a final order. No appeal is available.

— Other: _____

BB

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5, 2016. Id. Respondent was alleged to have remained in the United States for a period beyond April 5, 2016 without authorization from the Immigration and Naturalization Service or its successor the Department of Homeland Security. Id. Respondent was alleged to have been employed for wages or other compensation on or about May [REDACTED] at BCS, Inc. without authorization of the Immigration and Naturalization Service or its successor the Department of Homeland Security. Id. On July [REDACTED] the DHS commenced removal proceedings against Respondent with the filing of a Notice to Appear (NTA), charging Respondent with being removable pursuant to the above-captioned charge of the Immigration and Nationality Act (the Act or INA). Id.

At his master calendar hearing on July [REDACTED] Respondent conceded service of the NTA and admitted allegations 1, 2, 3, 4. Id. He denied allegation 5. He conceded the charge of removability under INA § 237(a)(1)(C)(i), as pertaining to allegations 1-4, and the Court sustained it. He conceded the charge of removability under INA § 237(a)(1)(B), and the Court sustained it. The Court designated Cameroon as the country of removal if removal became necessary. Respondent subsequently filed the above listed applications for relief. (Ex. 5). For the reasons below, the Court now grants Respondent's application for asylum.

II. Evidence Presented

a. Testimony¹

i. *Respondent*

Respondent testified about his life in Cameroon, his life in the United States, and his fears of returning to Cameroon.

b. Documentation

Ex. 1: I-862 dated June 29, 2016 with a certificate of service for personal service on Jun 29, 2016, filed July 5, 2016, marked July 14, 2016.

Ex. 2: I-213, dated June 29, 2016, marked July 14, 2016.

Ex. 3: DHS Exhibit: 5 pages, marked July 14, 2016.

Ex. 4: Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum, received July 28, 2016, marked July 28, 2016.

Ex. 5: I-589, received July 28, 2016, marked July 28, 2016.

Ex. 6: Biometrics Notice, received July 28, 2016, marked July 28, 2016.

Ex. 7: Respondent's Exhibit, Tabbed A-Z and AA-VV, 416 pages, filed September 18, 2019.

Ex. 8: Respondent's Redlined I-589, filed September 18, 2019.

Ex. 9: Respondent's Prehearing Brief, filed September 18, 2019.

¹ This section is a summary of testimony and does not constitute a finding of fact.

Ex. 10: Respondent's Witness List, filed September 18, 2019.

Ex. 11: Respondent's Motion to Accept late-filed documents and Documents, filed September 20, 2019.

Ex. 12: October 1, 2019 IJ Order to granting Motion to Accept.

Ex. 13: October 2, 2019 IJ Order to Note and Mark Exhibits.

All evidence has been considered in this decision, regardless of whether specifically mentioned.

III. Credibility

It is the applicant's burden to satisfy the Immigration Judge (IJ) that his or her testimony is credible. See Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). As Respondent's application was filed after May 11, 2005, the credibility provisions of the REAL ID Act govern. INA § 208(b)(1)(B); INA § 241(b)(3)(C). Consistent with the REAL ID Act, the following factors may be considered in assessing an applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); see also Matter of J-Y-C-, 24 I&N Dec. 260, 262-63 (BIA 2007). The testimony of the applicant, if credible, is sufficient to sustain the burden of proof without corroboration. 8 C.F.R. § 1208.13(a). To be credible, an applicant's testimony must be believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of his or her fear. 8 C.F.R. § 1208.13(a). In determining whether the applicant has met his or her burden, the IJ may weigh credible testimony along with other evidence of record. Where the IJ determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence. INA § 208(b)(1)(B)(ii).²

Respondent's testimony was largely consistent with his prior written statements and applications. See Exs. 5; 8. Respondent gave an account that was inherently plausible and largely internally consistent. Respondent was also responsive and candid. In addition, Respondent's account was corroborated by evidence in the record. See Exs. 2; 3; 7.

² The Court notes the DHS, like Respondent, waived closing argument. The Court recognizes that inconsistencies need not be material to cause the Court to find a witness to be incredible. Even minor inconsistencies can impact credibility under the REAL ID Act's "totality of the circumstances" approach. See Ali v. Holder, 776 F.3d 522 (8th Cir. 2015) (holding inconsistencies about facts which "may seem like minutiae" are appropriate factors to consider and rejecting the argument that the cited inconsistencies related only to insignificant matters). See also Matter of J-Y-C-, 24 I&N Dec. 260, 262-63 (BIA 2007). The Court finds the Respondent credible.

IV. Relief

a. Asylum

i. One Year Filing Limitation

An applicant must demonstrate by clear and convincing evidence that his asylum application has been filed within one year of arrival in the United States. INA § 208(a)(2)(B).

Respondent entered the United States on October 6, 2015. Ex. 1. Respondent's I-589 was filed July 28, 2016. Ex. 5. Respondent's asylum application is timely filed.

ii. Analysis

Legal Standard

The applicant carries the initial burdens of proof and persuasion for establishing his or her eligibility for asylum. INA § 208(b)(1)(B); 8 C.F.R. § 1208.13(a). To establish eligibility, an applicant must meet the definition of a "refugee," defined as an individual who is unwilling or unable to return to his or her country of nationality because of past persecution or because he or she has a well-founded fear of future persecution on account of his or her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(a).

If the applicant can establish that he or she suffered past persecution, then the applicant is entitled to a rebuttable presumption that his or her fear of future persecution is "well-founded." 8 C.F.R. § 1208.13(b)(1). The government can rebut this presumption if a preponderance of the evidence shows either: (1) that there has been a "fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution" in his or her native country; or (2) that he or she "could avoid persecution by relocating to another part" of the country and that "it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(i)-(ii); see also *Bushira v. Gonzales*, 442 F.3d 626, 631 (8th Cir. 2006); *Matter of D-I-M-*, 24 I&N Dec. 448, 450-51 (BIA 2008).

Asylum, unlike withholding of removal, may be denied in the exercise of discretion to an alien who establishes statutory eligibility for relief. See *INS v. Cardoza-Fonseca*, 480 U.S. 421, 441 (1987); *Matter of Mogharrabi*, 19 I&N Dec. 439, 447 (BIA 1987).

Past Persecution

1. Level of persecution

The Eighth Circuit has defined past persecution as “the infliction or threat of death, torture, or injury to one’s person or freedom on account of on account of race, religion, nationality, membership in a particular social group, or political opinion.” Litvinov v. Holder, 605 F.3d 548, 553 (8th Cir. 2010) (quoting Davila-Mejia v. Mukasey, 531 F.3d 624, 628 (8th Cir. 2008)). Persecution within the meaning of the INA “does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional.” Matter of V-T-S-, 21 I&N Dec. 792, 798 (BIA 1997). Low-level intimidation and harassment alone do not rise to the level of persecution. Matul-Hernandez v. Holder, 685 F.3d 707, 711 (8th Cir. 2012). Even minor beatings or limited detentions do not usually rise to the level of past persecution. Nanic v. Lynch, 793 F.3d 945, 948 (8th Cir. 2015); Barillas-Mendez v. Lynch, 790 F.3d 787, 789 (8th Cir. 2015); Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Persecution does not normally include unfulfilled threats of physical injury, Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006); see also La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012) (stating threats that “are exaggerated, nonspecific, or lacking in immediacy” may be insufficient to establish persecution). Additionally, “persecution is an extreme concept.” Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004), and may be found based on cumulative events. Ngengwe v. Mukasey, 543 F.3d 1029, 1036 (8th Cir. 2008).

Under certain circumstances, even a single threat of death could be enough to qualify as persecution. See Corado v. Ashcroft, 384 F.3d 945, 947 (8th Cir. 2004). In that case, the respondent was beaten and threatened by government officials almost immediately after the murder of her uncle, who referenced the murder as they threatened her. Id. at 946-47. The Eighth Circuit has also stated that the definition of persecution does not require that a person wait for persecutors to finally carry out their death threats. Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 2007) (finding past persecution where “persecutors made numerous and credible threats to kill [the respondent] and his family because of their political activities, punctuated by savage beatings, imprisonment, bombings, and high-caliber gunfire directed at his home”). See Corado, 384 F.3d at 947 (“[N]ot all alleged threats of death necessarily amount to persecution.”).

Respondent claims he suffered past persecution based on his political opinions and his membership in a particular social group: Gay, Lesbian, and Transgender Persons who lived in Cameroon. See Ex. 13 at 1; 18. The Court finds the harm Respondent suffered rises to the level of persecution.

Respondent completed high school in [REDACTED] Cameroon. After Respondent graduated high school in 2006, Respondent was accepted to study at the Douala University (University). He attended University from September 2006 to August 2009. As a young man living with his grandparents who were farmers, Respondent loved agriculture. Consequently, Respondent studied agriculture and mathematics at University. After graduating University, Respondent continued his education and training for eleven months in Spain from September 2009 to August 2010, where he learned additional skills,

including the artificial insemination of cattle. He returned to Cameroon to put his education to use in Cameroon when his brief study in Spain concluded.

Respondent is a gay man. He first recognized that he was gay when he was about age ten, when his father made comments to him. Respondent's first relationship with another male began when he was [REDACTED] years of age,³ with a friend from his high school. [REDACTED] They studied together, and spent a great deal of time together. Their relationship's dynamic changed when Respondent was [REDACTED] years of age, and the relationship became sexual. Because of Article 347 of the Cameroonian Penal Code,⁴ the two kept their relationship a secret, letting on only that they were studying.⁵ The relationship lasted two years. Respondent next had a relationship with a male name [REDACTED]. Respondent had met [REDACTED] met in 2014, in an organization for fighting for gay rights in Cameroon, Association for the Defense of the Homosexual (ADEHO). Respondent's relationship with [REDACTED] lasted 8-9 months, in 2014.

On November [REDACTED], Respondent married a female, [REDACTED].⁶ Because Respondent's brother and his wife were not taking care of their children [REDACTED] [their daughter, born July [REDACTED]]⁷ and [REDACTED] [their son born April [REDACTED]], the children came to live with Respondent in 2009. Respondent was busy with his studies and with his agricultural business. Respondent's mother had many friends, and many of the friends wanted their daughter to be married to Respondent, who was seen as a good marriage prospect. Respondent married [REDACTED] because she accepted to take care of his niece and nephew (who he would formally adopt as his own children).¹⁰ Respondent saw the marriage as a way to hide his gay activities and to keep others from knowing that he was gay.¹¹ Respondent also considered that [REDACTED] was the daughter of a friend of his mother's. Respondent hired a servant to help his wife with the children.

Respondent is uncertain how his wife learned that he was a gay man. However, when she learned that he was attracted to men, it began "getting bad" for Respondent. Respondent specifically recalled an instance in 2014 when they were arguing and she accused Respondent of having "gay leanings." Respondent denied the allegation, but she continued to speak of it. She claimed he had a "gay way" of doing things. Respondent also noted that in 2014, his wife went through his phone and text messages. She and her family

³ Respondent was born October [REDACTED].

⁴ Ex. 7 at 414-15.

⁵ Respondent noted that in addition to the legal ramifications, there would be societal consequences if they had told anyone. They would face "big shame," and people would reject them. The two would have been expelled from their high school, and no other high school would admit either of them as students.

⁶ Ex. 7 at 402.

⁷ Ex. 7 at 337.

⁸ Ex. 7 at 338.

⁹ Ex. 7 at 348-57 (Divorce Decree ending the marriage to [REDACTED]).

¹⁰ Ex. 7 at 348-57.

¹¹ Ex. 7 at 402.

threatened to kill him (including killing him with witchcraft),¹² and threatened to poison him after she found messages he had sent to [REDACTED]. They told him that they all hated him and wanted bad things for him.

[REDACTED] and her family said that homosexuality is akin to witchcraft. Because Respondent would be sleeping with men, it would increase his wealth, and decrease their wealth. Respondent's brothers-in-law said that since 2013, Respondent had stolen their sister's (Respondent's wife's) luck – as evidenced that she had no children and no wealth. Respondent, they alleged, had destroyed her life. [REDACTED] told her brothers that Respondent was involved in ADEHO and that no "normal man" would do so, unless he was a homosexual.

Respondent was actively involved with ADEHO. He attended meetings and seminars. He helped organize parades. He spoke at the seminars, sharing the message of the anti-viral medication. Respondent also distributed anti-viral medication which European Union (EU) organizations had sent to Cameroon. Respondent met with sick gay men in hospitals and distributed the anti-viral medication. Because of police actions, Respondent ceased the medication distribution in June 2013. Additionally, a female lawyer who founded the organization, Barrister Alice Kom, received threats. The store where ADEHO met was burned. Respondent feared he would get exposed as a gay man.

Because of the threats, Respondent ceased participating in ADEHO. Respondent's brothers-in-law went to witch doctors.

Respondent felt unsafe. In September 2014 Respondent went to a lawyer to start the divorce process from his wife. At the time, Respondent was still in the relationship with [REDACTED].

In January 2015, Respondent applied for a visa to visit the United States to participate in an agricultural event at Tulare, California in February, 2015.¹³ Respondent's visa was approved.¹⁴ He was to travel via Air France on February 8, 2015 at 10:00 p.m. Cameroonian time. Respondent spent the day of February 8, 2015 from 9:00 am to 4:00 pm, in a meeting with the MDJJ a/k/a SOS Free Youth Campaign Care.¹⁵ This political organization had been founded in 1999, and Respondent joined in 2006 when he arrived at University. The organization fights for youth rights, both on the campus and in the whole of Cameroonian society. Respondent remained an active member. Respondent gave

¹² Respondent indicated that he believes that 80 per cent of the Cameroonian population believes that gay and lesbian people are witches. Respondent specifically denied he was a witch, or that he believes that gay and lesbian people are witches and have witchcraft powers. The record reflects that "[b]elief in witchcraft is widespread in Cameroon. Even though it is illegal to practice black magic, authorities do little to stop families consulting sorcerers who perform ritual sacrifices to 'cure' their relatives of homosexuality." See Ex. 7 at 193.

¹³ Ex. 7 at 416-20.

¹⁴ Ex. 7 at 344.

¹⁵ Ex. 7 at 344, 345.

speeches during conferences on the topic of youth rights, avoiding corruption, and avoiding bribery. The conferences spoke about the social and political situation in Cameroon. He estimates during the course of his membership, he gave eighteen speeches. Respondent actively raised money for the organization to go into the countryside to build bridges, dig wells, and assist those living there. On February 8, the organization was continuing planning for National Youth Day on February 11, 2015.

Respondent wanted to rest before his travel, but when he arrived at his car, he found it had been broken into, and the items in the trunk of the vehicle were stolen. These items included a briefcase, information on projects for his agricultural business, tax papers, and employee payroll information.¹⁶ Respondent's boarding pass, ticket, and money for the travel to buy items for his business were also missing. Respondent called his lawyer, and together they went the next day ([REDACTED], 2015) to the police to report the incident. The police said they would look into it, but they did nothing other than open an investigation. When he was finished at the police station, Respondent went to the farm.

On [REDACTED] 2015 Respondent learned that he was to be at the central police station on March 6.¹⁷ Respondent surmised that the police had found his documents and he would be able to retrieve the documents. On March 6, Respondent arrived at the central police station at 9:00 a.m., and presented the notice that he had received the day before.

Respondent was taken to a room and left for four hours. When police officers entered the room, they asked him, "Are you Foko Talla?" Respondent said he was, and the police informed him that he was accused of being a homosexual and promoting homosexual activities in town. Respondent told them that he did not see himself in what they were saying. The police told him that they had many complaints. The officer asked him, Are you a homosexual? With all these women in [REDACTED] why are you attracted to men? Respondent was informed that there was provision in the law that condemns this and that "you will go to prison." Respondent asked repeatedly who had made the complaints, but the officer never provided an answer. That night the police detained him in a crowded room which had no toilets.

In total, Respondent was held for five days.¹⁸ On March 7, two policemen took him to another room and beat him. They beat his feet until they were sore, and they beat Respondent with a machete. The police did the same to him on March 8 and on March 9. During these days, Respondent was not fed. Respondent did not have access to a toilet. Respondent did not have all of his clothing as it had been taken by the officers. Respondent had no visitors. Respondent continued to deny the questions, and denied that he was a homosexual. On March 10, the last day in custody, different police officers came for Respondent. They took Respondent to a different room. Respondent was instructed to put

¹⁶ Respondent employed 14 people on his 10 acres of land. Ex. 7 at 401-02.

¹⁷ Ex. 7 at 368-69.

¹⁸ Ex. 7 at 404-05.

his hands on the table, and the officers tied electric metal wires to two of Respondent's fingers with tape. They asked Respondent questions and raised the electrical voltage with each question. They asked Respondent, "Are you a homosexual? Did Respondent know something about homosexuality? Respondent denied the questions, and the officers raised the voltage. Finally, Respondent acknowledged that he was gay. The officers responded, "Why did you not say so on the first day?" Respondent was informed he would be taken to a judge. The officers told him, "You will go to prison."

Respondent later learned his mother and his lawyer had been working on getting Respondent out of custody.¹⁹ Respondent believes now that his lawyer had friends who had connections with the police commissioner. On March 10 a high-ranking officer at the station told Respondent that his parents were working hard to get him out, and that Respondent should cease making them work so hard. At 4:00 p.m. on the last day, the high-ranking police officer took Respondent to get his clothes back, and told Respondent, "Disappear! Next time, I won't be here."

Respondent left.

Respondent fled to the west side of the country, to his grandparents' home. He hoped to find traditional medicine to heal, but his grandparents rejected him. Respondent was asked if he could pronounce "gay" in his native tongue. Respondent was told that because such a word does not exist, homosexuality was not natural, and therefore he was a witch. Respondent was told that he could not stay. A curse was placed on Respondent and he was banned.

Respondent went to a friend's brother's house in Yaoundé. He lived there until August. One night, as he was lying in bed, the door was broken in and five masked people burst in.²⁰ They told Respondent, "Run! Run again! You think you are hiding; You cannot in this country! Make your last prayer!"

The five men tore the bedsheet and tied Respondent's legs and feet. They beat him everywhere with a wooden stick and with an iron stick. One strike hit the back of Respondent's head and caused it to bleed. Respondent tried to protect his head, but blood streamed all over. An iron machine was connected to electricity and the men "ironed" Respondent's right side.²¹ One man took a knife from the kitchen and stabbed Respondent's shoulder.²² Another man took a machete, and cut Respondent. Respondent passed out.²³ When he awoke Respondent determined also that two teeth had been broken,

¹⁹ Ex. 7 at 405.

²⁰ Respondent does not know the identity of any of the five men. Respondent does know that only the police can track cellular phone service. Respondent knows that he gave his cellular phone number to the police. Respondent does know that the high-ranking police officer who released him told him not to stay.

²¹ Ex. 7 at 340-41.

²² Ex. 7 at 340-41.

²³ Ex. 7 at 406 ("They had left me for dead.").

and his upper lip was cut.²⁴ When he awoke, Respondent was in a hospital in Douala, about 250 kilometers from Yaoundé.²⁵ It was three days later.

Respondent believes that when his friend's brother came home at 8:00 am the day of the attack, he found Respondent. The man called Respondent's mother, and she arranged for a taxi to take Respondent to the hospital. Respondent was hospitalized for 42-44 days, and was moved from room to room in an effort to not be found while he recovered.²⁶

When Respondent was released from the hospital, Respondent went to the north side of the country to live with a friend, but he learned that the friend was dead. Respondent went to his family home on September 25.

On September 30, Respondent received another notice to appear at the same police station to which he had been previously summoned.²⁷ He was to appear on October 1. Respondent was still weak. Respondent talked with his lawyer and with Lionel Hervé Waffo Wagne, the president of the youth movement organization.²⁸ Respondent had no money. His assets were frozen, and he owed his employees money. They told Respondent to get a visa to Gabon or to another neighboring country. Respondent recalled he had a visa to the United States, but did not know if it was valid, as his mother had his passport. After Respondent learned the U.S. visa was valid, the others fundraised money to pay for an airline ticket. Respondent hid until the departure day. The president of the youth movement assisted Respondent's uneventful arrival to and departure from the airport. Respondent arrived [REDACTED], 2015 at Dulles Airport.²⁹ Respondent stayed briefly in Maryland, then went to Chicago for six days, before going to North Dakota. An arrest warrant was issued in Cameroon for Respondent on [REDACTED], 2015.³⁰ Respondent was arrested by United States immigration officials when he was found working without authorization. By the time of his arrest by U. S. immigration officials on June 30, 2016, Respondent had been working with individuals at the Advocates for Human Rights, to file an asylum application.³¹ He did not know that he could file for asylum at his entry at Dulles.

When he was arrested in the United States by immigration officials, many people in Cameroon learned of it. Some of the people went to Respondent's mother, and told her to

²⁴ Ex. 7 at 339.

²⁵ Ex. 7 at 343, 346-47.

²⁶ Ex. 7 at 406.

²⁷ Ex. 7 at 370-71.

²⁸ Ex. 7 at 407.

²⁹ Ex. 7 at 344.

³⁰ Ex. 7 at 372-73.

³¹ Respondent explained that he began gathering paperwork in January 2016. To get documents from Cameroon, he could not use DHL because Cameroon requires the scanning of the contents of a DHL package. Respondent's mother was using anyone leaving Cameroon to carry paperwork out to get it to Respondent. The Advocates for Human Rights (www.theadvocatesforhumanrights.org) had accepted him as a client in May 2016.

make Respondent return to Cameroon. Respondent reported that his mother told them that she cannot make him do that since he is an adult.

Respondent has been actively involved with a group in Washington DC trying to change Cameroon, by organizing marches, showing pictures, and raising awareness in the United States of the situation in Cameroon: Sardina Brigade Against (BAS), an organization he learned of through his friends and social media.³² There was a BAS-organized march in late December 2018 which was shown on Facebook. On January [REDACTED] Respondent's mother was arrested. She was held for seven days, tortured, and required medical care afterwards.³³ Respondent believes that if he were to return to Cameroon, he would be taken directly to the police, and then to prison. Respondent's children remain in Cameroon, living with Respondent's mother.

The Court finds the events, taken in the aggregate, are enough to show Respondent suffered an extreme level of harm in the past. The Court finds Respondent suffered harm that rose to the level of persecution.

2. On account of a statutorily protected ground

In order to qualify for asylum, the persecution in question must be on account of at least one of five specially protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Although the protected ground does not need to be the sole reason for the persecution, it must be "at least one central reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212-14 (BIA 2007). "It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute." Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004).

1. On account of a statutorily protected ground – Political Opinion

In order to qualify for asylum, the persecution in question must be on account of at least one of five specially protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Although the protected ground does not need to be the sole reason for the persecution, it must be "at least one central reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212-14 (BIA 2007). "It is also important to consider whether an act of violence is an isolated occurrence, or part of a continuing effort to persecute on the basis of a factor enumerated in the statute." Ngure v. Ashcroft, 367 F.3d 975, 990 (8th Cir. 2004).

³² Ex. 7 at 375-77.

³³ Ex. 7 at 378, 379, 381-86.

One qualifying type of persecution is persecution on account of the applicant's political opinion. Respondent articulated his political opinion as involved with SOS for Youth Cameroon, which advocated against corruption, torture, and police bribery, and was against the President Paul Biya/Cameroon People's Democratic Movement (CPDM) regime; that as an advocate for Human Rights, he was against human rights violations against gay and lesbian people in Cameroon; and that through his activities with BAS, an organization with similar philosophy to SOS for Youth Campaign, he continues to advocate against the government, led by President Paul Biya.

The Court is mindful that, "Where there has been persecution on account of political opinion, it does not matter if the applicant actually holds the political opinion that the persecutor attributes to her. Rather, we consider the political views the persecutor rightly or in error attributes to a victim." De Brenner v. Ashcroft, 388 F.3d 629, 635 (8th Cir.2004) (internal quotation and alteration omitted). It is the political opinion attributed to the victim, not the political opinion of the persecutor, that is ultimately relevant. Turay v. Ashcroft, 405 F.3d 663, 668 (8th Cir.2005) (citing INS v. Elias-Zacarias, 502 U.S. 478, 482, 112 S.Ct. 812, 117 L.Ed.2d 38 (1992)). The political opinion must be "at least one central reason" for [the] persecution." Carmenatte-Lopez v. Mukasey, 518 F.3d 540, 541 (8th Cir.2008) (quoting 8 U.S.C. § 1158(b)(1)(B)(I)). But the persecution need not be solely, or even predominantly, on account of the imputed political opinion. Parussimova v. Mukasey, 555 F.3d 734, 739-41 (9th Cir.2009); cf. De Brenner, 388 F.3d at 636.

Here, Respondent's persecution began when Respondent was attributed to be a gay male. The Court cannot determine who was responsible for the break-in of Respondent's car on February 2015. The Court however does determine that after Respondent went to report the break-in of the vehicle and the theft of items in the vehicle, that Respondent came to the attention of the police in Cameroon. Respondent was directed to come to the police station, and when he willingly arrived at the police station, he was held for five days. Respondent was beaten by the police. During these days in detention, Respondent was not fed. Respondent did not have access to a toilet. Respondent did not have all of his clothing until he was released, as it had been taken by the officers. Respondent was interrogated regarding his sexual orientation. Respondent's fingers were tied to electric metal wires during police questioning, and the electrical voltage was raised with each question. Respondent was released after the high-ranking official was compensated to do so.

Respondent left the area, and was attacked in the home in which he was staying. The injuries from that attack caused him to be hospitalized for more than forty days. As Respondent indicated, he cannot identify those who perpetrated the attack, however, he knows that the police track cellular service and he knows that the police have his phone number. Further, Respondent knows that his release from the previous five-day police custody happened because financial arrangements were made, that his mother provided money which was used to bribe the police.

The Court finds that the policemen's actions are on account of political opinion attributed to Respondent by the government.

2. On account of a statutorily protected ground – Particular Social Group

In order to qualify for asylum, the persecution in question must be on account of at least one of five specially protected grounds: race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Respondent claims he was persecuted because of his membership in one particular social group.

Because the Court finds the harm Respondent suffered to be persecution and grants the application in political opinion the Court does not reach an analysis under the statutorily protected ground of race. See INS v. Bagamasbad, 429 U.S. 24, 25-26 (1976).

3. Government unwilling or unable to protect Respondent

To constitute persecution, the alleged harm must also be inflicted by the government or actors the government is "unwilling or unable to control." Cubillos v. Holder, 565 F.3d 1054, 1057 (8th Cir. 2009) (citing Flores-Calderon v. Gonzalez, 472 F.3d 1040, 1043 (8th Cir. 2007)). To establish persecution by private actors, the applicant must show more than just that the government has difficulty controlling private behavior, rather he or she must demonstrate that the government condoned the private behavior or at least demonstrated a complete helplessness to protect the victims. Salman v. Holder, 687 F.3d 991, 995 (8th Cir. 2012).

Respondent claimed harmed by a government officials, namely policemen. Respondent was also harmed by unidentified individual(s) who broke into his vehicle and stole items. Respondent was also harmed by five unidentified individuals in the home where he was staying after being harmed by the police. Respondents did attempt to contact the local police on one occasion, after the vehicle break-in and theft. He went willingly when summoned following that event. Respondent's willing appearance at the police station resulted in his release by the police five days later, after having been interrogated, stripped of most of his clothing, beaten, not fed, and subjected to electric shocks. Respondent did not attempt to contact the police regarding the attack which caused his lengthy hospital stay, because he "feared that they would arrest [him] like they had done in March 2015 when [he] was accused of being gay and confessed to the police that [he] was. Because homosexuality is a crime in Cameroon, there was just no way [he] could report it and get help from the police." Ex. 7 at 407. While an applicant need not report abuse to the police if doing so is futile, see Gathungu v. Holder, 725 F.3d 900, 906-09 (8th Cir. 2013), failure to report abuse to the police can be significant. See Shaghil v. Holder, 638 F.3d 828, 834 (8th Cir. 2011). Respondent has shown that reporting the attack of the five men would have been futile.

The evidence, therefore, establishes that the Cameroonian government was completely helpless to protect Respondent. See Salman, 687 F.3d at 995. As such, Respondent has met his burden in demonstrating that the Cameroonian government is completely helpless to protect him. The Court notes that the persecutors in one event in this matter were policemen; they were the government. The Court finds that it would have been futile to report the event causing his 40-plus day hospitalization, whether it was perpetrated by policemen or otherwise. Therefore, the Court finds the harm Respondent suffered was inflicted by the government or actors the government is unwilling or unable to control.

Because the harm Respondent suffered rose to the level of persecution and that Respondent met the burden to show that the government was the persecutor and that the government was unable or unwilling to control the actors in the second event, the Court concludes that Respondent has met his burden to establish past persecution. Respondent therefore, is entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1).

4. *Well-Founded Fear of Future Persecution*

As Respondent has shown that he suffered past persecution, he is entitled to a rebuttable presumption that his fear of future persecution is “well-founded.” 8 C.F.R. § 1208.13(b)(1). The government can rebut this presumption if a preponderance of the evidence shows either: (1) that there has been a “fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution” in her native country; or (2) that he “could avoid persecution by relocating to another part” of the country and that “it would be reasonable to expect the applicant to do so.” 8 C.F.R. § 1208.13(b)(1)(i)-(ii). See also Bushira, 442 F.3d at 631; D-I-M-, 24 I&N Dec. at 450-51.

Respondent has met his burden to show he has a well-founded fear of future persecution on account of a protected ground: political opinion. He claims he will be killed if returned to Cameroon.

In evaluating whether an applicant has a well-founded fear, the Court must also consider the ability of the Respondent to internally relocate if returned to Cameroon. 8 C.F.R. § 1208.16(b)(3); Mohamed, 396 F.3d at 1003. When reviewing if internal relocation is reasonable, the Court looks at whether another area of the country is “practically, safely, and legally accessible.” Matter of M-Z-M-R-, 26 I&N Dec. 28, 33-34 (BIA 2012). The location must also “present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim. Id. Further, the law provides that: “In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a

preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.” See 8 C.F.R. § 1028.16(b)(3)(ii).

DHS did inquire of Respondent whether he believed he could relocate in Cameroon, or that it would be reasonable for him to do so.³⁴ See 8 C.F.R. § 1208.13(b)(3)(ii). After Respondent answered “no” and explained that he would have to go through an airport to enter Cameroon, the DHS had no other questions regarding relocation. DHS offered no rebuttal evidence.

The government has failed to rebut the presumption that Respondent’s fear of future persecution is well-founded. First, the DHS has failed to show that there was a fundamental change in circumstances such that Respondent would no longer have a well-founded fear of persecution. Respondent fears that upon return, he will be arrested and further harmed because of his political opinions and for being gay. Respondent believes that if he were to step foot into Cameroon, he would be taken straight to the police, and then to a prison. Respondent’s belief is well-founded, as the President of Cameroon remains Paul Biya, who has held office since 1982. See Ex. 7 at 110.³⁵ Evidence in the record from the Bertelsmann Stiftung’s Transformation Index (BTI) of 2018³⁶ reflects that, the centralized government is “authoritarian and repressive.” *Id.* at 162. Further “consensual same-sex activity, including between adults, is illegal and punishable by a prison sentence lasting between six months and five years, and a fine ranging from 20,000 to 200,000 CFA francs (\$34 to \$340). *Id.* at 144. At times the civilian authorities “did not maintain effective control over the security forces, including police and gendarmerie.” *Id.* at 110. The 2018 United States Department of State Human Rights report also reflects that there “were several reports that the government or its agents committed arbitrary and unlawful killings through excessive use of force in the execution of official duties.” *Id.* at 111. Even lawyers who represent gay and lesbian clients, who receive threats because of their clients’ sexual orientation, do not generally receive protection from police. *Id.* at 144.³⁷ Additionally, “[p]olice and gendarmes often did not comply with [the provisions regarding obtaining warrants before searching private citizens’ homes] and entered private homes without warrant *whenever* they wished.” *Id.* at 122. (emphasis added). Further, “[g]overnment officials penalized individuals or organizations that criticized or expressed views at odds with government policy. Individuals who criticized the government publicly or privately frequently faced reprisals. *Id.* at 125-26.

³⁴ The Court remains mindful that the parties waived closing argument.

³⁵ At least one report suggests that President Biya is unlikely to leave office before his death. See Ex. 7 at 162 (“most likely his death in office”).

³⁶ See <http://www.bti-project.org>

³⁷ This is despite that Cameroon has ratified the International Covenant on Civil and Political Rights (ICCPR) in 1984, thereby being obligated to “protect the rights of human rights defenders, especially defenders of LGBTI rights, under the specific watch of the United Nations Special Rapporteurs on the situation of human rights defenders and on the rights to freedom of peaceful assembly and of association.” See Ex. 7 at 301.

Additionally, it is unlikely that Respondent could turn to the judiciary in Cameroon for relief from any action of the police, as “it is practically unheard of that the [legislative or judicial] branch would challenge the government.” Id. at 163. While the “constitution and law ostensibly provide for an independent judiciary, ...the judiciary is under and often controlled by the president and, by proxy, the ruling party.” Id. at 119. Judges may be dismissed at-will. Id. at 128. In addition to lacking independence, the judiciary is “plagued by corruption and arbitrary decisions.” Id. at 164.

Furthermore, the country conditions have not changed such that Respondent would have a reasonable expectation of protection or support from the government. According to Human Rights Watch, there is no other country in sub-Saharan African where more gay people are prosecuted than in Cameroon. Id. at 165.

Second, the government has failed to show by a preponderance of evidence that Respondents could avoid persecution by relocating to another part of the country, “that under all the circumstances it would be reasonable for the applicant to relocate.” See 8 C.F.R. § 1028.16(b)(3)(ii).

Respondent offers an indication why as an adult he could not relocate and live safely: as soon as he would arrive at an airport, he would be taken to the police, and then to prison. Being gay in Cameroon is illegal. Respondent’s fear that he would be sought out is well-placed. Not only has the government continued to look for Respondent, but Respondent’s mother was arrested on January 2019, held for seven days, tortured, and required medical care afterwards.³⁸ Given the strong authoritarian government in Cameroon, it is reasonable to believe that law enforcement authorities would have knowledge of the warrant issued for Respondent when he presented his travel document upon arrival to Cameroon.

In plain language, the DHS has not demonstrated that under all the circumstances it would be reasonable for the applicant to relocate.

As a result, Respondent has established that he risks persecution at the hands of the police, the government of Cameroon, and that complaints to the government anywhere in Cameroon will go unheeded.

For the reasons above, the Court concludes Respondent has met his burden to show a well-founded fear of persecution on account of a protected ground. For the reasons stated above, the DHS has failed to meet its burden and failed to rebut the presumption that Respondent has a well-founded fear of future persecution.

Further, the Court finds Respondent merits asylum as a matter of discretion. He has no criminal history or other negative factors. See Matter of Pula, 19 I&N Dec. 467, 474 (BIA

³⁸ See Ex. 7 at 378, 379, 381-86.

1987). (“The danger of persecution should generally outweigh all but the most egregious adverse factors.”)

This Court, therefore, grants his asylum application.

A. Withholding of Removal

The Court need not address Respondent’s claim for withholding of removal under INA § 241(b)(3) because it is granting Respondent’s application for asylum. See INS v. Bagamasbad, 429 U.S. 24 (1976).

A: Convention Against Torture

The Court need not address Respondent’s claim for withholding of removal under the Convention Against Torture because it is granting Respondent’s application for asylum. See INS v. Bagamasbad, 429 U.S. 24 (1976).

Accordingly, the Court enters the following orders:

ORDERS

IT IS HEREBY ORDERED that Respondent’s application for asylum under INA § 208 of the Act be **GRANTED**.

If either party elects to appeal this decision, Notice of Appeal must be received by the Board of Immigration Appeals within thirty (30) days of this decision.
8 C.F.R. § 1003.38(a)–(b).



Katherine L. Hansen
United States Immigration Judge