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

Dorsey & Whitney LLP
Al Taqatqa, Briana
50 S 6th Street
Suite 1500
Minneapolis, MN 55402

In the matter of [redacted], [redacted] File [redacted] DATE: Sep 9, 2020

__ Unable to forward - No address provided.

X 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.

X Other: D written decision

M Robertson
COURT CLERK
IMMIGRATION COURT FF

cc: OFFICE OF THE PRINCIPAL LEGAL ADVISOR
1 FEDERAL DR., SUITE 1800
FORT SNELLING, MN, 55111

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MINNESOTA

File Number: [redacted]	)	**Date: 9-9-20**
In the Matter of:	)	**In Removal Proceedings**
[redacted]	)	**Non-Detained**
Respondents.	)	

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

Applications: Asylum under INA § 208, Withholding of Removal under INA § 241(b)(3); Protection under the Convention Against Torture.

ON BEHALF OF RESPONDENT:
Briana Al Taqatqa
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ON BEHALF OF THE DHS:
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DECISION OF THE IMMIGRATION JUDGE

I. Background

Respondent, [redacted]), is a native and citizen of Guatemala. Exhibit (Ex) 1A. [redacted] is [redacted] and a native and citizen of Guatemala. Ex. 1B. Throughout this decision, [redacted] will be referred to as "Respondent" and [redacted] will be referred to as [redacted]; they will collectively be referred to as "Respondents." On December 16,

2015, the Department of Homeland Security (DHS) commenced removal proceedings by filing the Notices to Appear with the Immigration Court, charging Respondents as removable from the United States pursuant to section 212(a)(7)(A)(i) of the Immigration and Nationality Act (INA or Act). Respondents conceded proper service of the Notices to Appear, the Court finds the Notices were properly served. On July 12, 2016, Respondents admitted the allegations and conceded the charges of removability. Guatemala was designated as the country of removal.

Respondents are seeking the above captioned relief and protection from removal.[1] [redacted] is a derivative on [redacted] asylum application and did not file for separate relief from removal. See Ex. 5B at 3.

II. Summary of the Evidentiary Record

[redacted] Record of Proceeding (ROP) is comprised of nineteen (19) documentary exhibits. The Court admitted all evidence and exhibits.[2] [redacted] ROP is comprised of six (6) documentary exhibits. The Court admitted all evidence and exhibits. The Court considers all exhibits and evidence regardless of whether specifically referred to in this decision.

A. [redacted] Documentary Evidence

Ex. 1A: Notice to Appear (Form I-862), filed December 16, 2015;
Ex. 2A: Record of Deportable Inadmissible Alien (Form I-213), received January 7, 2016;
Ex. 3A: Notice of Referral to Immigration Judge (Form I-863), received January 7, 2016;
Ex. 4A: Respondent's Table of Contents of Supporting Documents and Supporting Documents, 39 pages, received July 12, 2016;
Ex. 5A: Respondent's Application for Asylum and Withholding of Removal (Form I-589), received July 12, 2016;
Ex. 6A: Group Exhibit: Respondent's Memorandum of Law in Support, Table of Contents of Supporting Documents, and Supporting Documents, 582 pages, filed June 6, 2017;
Ex. 7A: Respondent's Supplement to Previously Submitted Motion to Appear by Video Telephone Conference, filed March 8, 2019;

[1] Respondents are not requesting post-conclusion voluntary departure under section 240B(b) of the Act as they are ineligible. They entered the United States on [redacted] and were served with the Notices to Appear on [redacted]; therefore, they cannot establish the required one year physical presence in the United States before service of the Notices to Appear.

[2] By and through this order, the Court marks and admits Exhibit 19A, Respondent's Closing Statement. In preparing this decision all exhibits were reviewed and remarked (if needed) on 9-9-20.

Ex. 8A: Respondent's Documents in Support, 1,508 pages, filed November 13, 2019;[3]
Ex. 9A: Redlined Application for Asylum (Form I-589), filed November 13, 2019;
Ex. 10A: Respondent's Prehearing Brief, filed November 13, 2019;
Ex. 11A: Respondent's Proposed Witness List, filed November 13, 2019;
Ex. 12A: Respondent's Unopposed Motion to Request the Admission of Telephonic Testimony of Dr. Lisa Maya Knauer, filed November 12, 2019;
Ex. 13A: November 21, 2019 Order Granting Wavier of Appearance of [redacted];
Ex. 14A: Respondent's Unopposed Motion to File Late the Original Signatures for Declarations and Affidavits, filed December 5, 2019;
Ex. 15A: December 10, 2019 Order Granting Motion to File Late;
Ex. 16A: Respondent's Motion to Appear by Telephone, filed December 20, 2019;
Ex. 17A: January 3, 2020 Order Granting Telephonic Appearance;
Ex. 18A: DHS Exhibit, filed December 18, 2019; and
Ex. 19A: Respondent's Closing Statement, filed January 24, 2020.

B. [redacted] Documentary Evidence

Ex. 1B: Notice to Appear (Form I-862), filed December 16, 2015;
Ex. 2B: Record of Deportable Inadmissible Alien (Form I-213), received January 7, 2016;
Ex. 3B: Copy of [redacted] Application for Asylum and Withholding of Removal (Form I-589), received July 12, 2016;
Ex. 4B: Copy of [redacted] Redlined Application for Asylum and Withholding of Removal (Form I-589), filed June 6, 2017;
Ex. 5B: Respondent's Unopposed Motion to Waive Appearance of Respondent [redacted], filed November 12, 2019; and
Ex. 6B: November 21, 2019 Order Granting Telephonic Testimony of Dr. Lisa Maya Knauer.

C. Testimony

On December 13, 2019, Respondent testified in support of her application. On January 8, 2020, Dr. Lisa Maya Knauer testified in support of Respondent's application. Dr. Knauer is an expert on country conditions in Guatemala. DHS stipulated to Dr. Knauer's qualification as an expert and the Court finds that Dr. Knauer's "knowledge, skill, experience, training or education" is helpful to the Court in understanding the evidence. See Matter of D-R-, 25 I&N Dec. 445, 459 (BIA 2011).

[3] Respondent filed a number of the same country conditions articles in exhibits 6 and 8. For clarity, the Court will cite to one or the other of these exhibits, but not both, when citing to one of these doubly filed articles.

III. Credibility and Corroboration

Respondent filed her application for relief after May 11, 2005, thus the REAL ID Act credibility standards apply. INA § 208(b)(1)(B). Under this standard, there is no presumption of credibility and the Court considers the totality of the circumstances in making its determination. Id.; Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). Relevant factors include:

> 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 . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , 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. . . .

INA § 208(b)(1)(B)(iii); Matter of J-Y-C-, 24 I&N Dec. 260, 262–63 (BIA 2007).

An applicant's testimony is sufficient to meet her burden of proof if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for her fear. 8 C.F.R. § 1208.13(a). Where it is reasonable to expect corroborating evidence for specific elements of an applicant's claim, such evidence should be provided. See Matter of S-M-J-, 21 I&N Dec. 722, 725–26 (BIA 1997). If the Court encounters inconsistencies in the testimony, contradictory evidence, or inherently improbable testimony, the absence of corroboration can lead to a finding that an applicant has failed to meet her burden of proof. See Ruca-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (indicating that when an applicant makes implausible allegations and fails to present corroborating evidence, an adverse credibility determination may be warranted); Zewdie v. Ashcroft, 381 F.3d 804 (8th Cir. 2004); Matter of J-Y-C-, 24 I&N Dec. at 266; Matter of S-M-J-, 21 I&N Dec. at 725–26.

Even where the applicant testifies credibly, the Court may determine that the applicant must provide further corroborative evidence to meet their burden of proof. INA § 208(b)(1)(B)(ii). When corroborative evidence is requested, the applicant must be given an opportunity to provide the evidence or explain why the evidence is not readily available. Khrystotodorov v. Mukasey, 551 F.3d 775, 782 (8th Cir. 2008).

The Court finds Respondent credible. The record, including Respondent's testimony and documentary evidence, is consistent. Respondent's testimony was internally consistent and inherently plausible. Respondent was responsive and candid.

The Court finds Dr. Knauer credible. Dr. Knauer consistent, responsive, and candid. Dr. Knauer explained the details of her arrangement with Respondent, including the financial arrangement and her time spent reviewing Respondent's records.

IV. Findings of Fact

Respondent is a native and citizen of Guatemala. Respondent is indigenous and belongs to the [redacted] ethnic group. Respondent is married to [redacted] and they have two children, [redacted]). [redacted] was born in the United States.

Guatemala entered an internal armed conflict in 1962. In 1996, the government of Guatemala and the guerrillas signed peace accords. Throughout conflict, the State committed atrocities against the indigenous Mayan population. Over 200,000 people, mostly indigenous persons, were killed by State actors; there were over 600 massacres. At least 45,000 people were disappeared. It is widely believed these numbers are underreported. In the early 1980s, the government imposed a "scorched earth" policy in which the principal victims were Mayan. While the most violent time in the conflict was the early 1980s, killings by the government continued until the peace agreement.

In 1982, Respondent's parents were residing in [redacted] The community of [redacted] governed itself via the "Junta Directiva." In 1982, Respondent's uncle, [redacted], was a member of the Junta Directiva. On March 14, 1982, the Guatemalan army attacked [redacted]. Government forces killed members of the local governing body, including Respondent's uncle. More than 400 people died, including women and children, and the village was razed. Some residents of the village were able to run into the jungle, including Respondent's parents. Respondent was born in the jungle in 1987. The family continued to reside in the jungle until Respondent was five years old. The family did not have enough food, did not have shelter, and was constantly moving as the army continued to pursue non-combatant indigenous persons living in the jungle. Respondent's mother gave birth to other children in the jungle, two of which did not survive—one died during birth, and the other shortly after due to malnutrition. Around the time Respondent was five years old, the family went to a refugee camp operated by international organizations—this camp was still in the jungle. The camp was required to move regularly, as the Guatemalan government was still pursing those residing in the jungle. Respondent's memories from childhood include extreme hunger, airplanes and helicopters dropping bombs in the jungle, and her parents fearing family separation as they fled government forces.

After the peace accords were signed in 1996, Respondent, and her family, returned to [redacted]. Because the town had been destroyed, residents lived in camps, but in [redacted] instead of the jungle. Eventually, the Guatemalan government provided Respondent's family with land and supplies to build a house.

In April 2009, Respondent had her first child. Respondent and [redacted] were married in December 2009. Respondent, her husband, and their child lived with Respondent's mother-in-law and her husband's grandmother; they were subsistence farmers. In May 2011, Respondent's husband traveled to the United States.

Respondent and her family had multiple run-ins with the drug traffickers who moved into the [redacted] area. Respondent's father, [redacted] now a member of the Junta Directiva, owns a vehicle and was told by the traffickers that he could not drive through property the traffickers claimed as their own. Respondent's father did not defer to the traffickers. About a week later, when there was a large family gathering at Respondent's father's home, a truckload of traffickers with firearms arrived at the house, they sat outside for hours, yelling threats and brandishing their firearms. For about a week, for hours at a time, the traffickers would sit outside the house. Around the same time, Respondent's aunt was elected mayor of [redacted] on an anti-trafficker platform. After being elected, traffickers shot up the roof the aunt's house. In June 2015, Respondent herself was attacked. While home alone with her son, two men knocked on the door and pushed into the house. They were wearing balaclavas and one had a rifle-type gun. One of the men pushed Respondent to the floor and threatened to rape her if she did not cooperate. She gave them her lifesavings and they left.

On [redacted] Respondent and her son left for the United States. On [redacted] Respondent and [redacted] entered the United States.

These findings will be further developed *infra*, particularly as to applicable country conditions.

V. Relief

Respondent applied for the following relief: asylum under the Act, withholding of removal under the Act, and withholding and deferral of removal under the Convention Against Torture. The Court finds Respondent met her burden to establish past persecution on account of her race; DHS rebutted the presumption of a well-founded fear of future persecution; and Respondent has not met her burden to establish eligibility for humanitarian asylum. Further, Respondent has not established past persecution on other protected grounds or a well-founded fear of future persecution on account of a protected ground. Therefore, Respondent is denied asylum. As Respondent cannot meet her burden under the asylum standard, she cannot met the burden of proof under the withholding of removal standard. Finally, Respondent cannot establish eligibility for withholding or deferral of removal under the Convention Against Torture.

A. Asylum

The Act places the burden of proof on the applicant to establish his or her eligibility for relief from removal. INA § 240(c)(4); 8 C.F.R. §§ 1208.13(a), 1208.16(b). To qualify for asylum, an applicant must show that he or she is a "refugee" as defined in section 101(a)(42)(A) of the Act. INA § 208(b)(1)(A), (B)(i); 8 C.F.R. § 1208.13(a). The applicant may qualify as a refugee if he or she has suffered past persecution in his or her country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to return to, or avail

him/herself of the protection of, the country owing to such persecution. 8 C.F.R. § 1208.13(b)(1).

If an asylum applicant presents specific facts establishing that he or she has been the victim of past persecution based on one of the five enumerated grounds, then the applicant is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13. Absent this presumption, the applicant must demonstrate a well-founded fear of future persecution, on account of one of the enumerated grounds, by establishing the fear is subjectively genuine and objectively reasonable, meaning that a reasonable person in the applicant's circumstances would fear future persecution. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Kratchmarov v. Heston, 172 F.3d 551, 553 (8th Cir. 1999) (citation omitted). Finally, the applicant must demonstrate that he or she does not fall into any of the mandatory denial categories, see INA § 208(b)(2); 8 C.F.R. § 1208.13(c), and that he or she is eligible for asylum as a matter of discretion. See INA § 208(b)(1)(A); 8 C.F.R. § 1208.14; see also Cardoza-Fonseca, 480 U.S. at 423.

1. Past Persecution—Law

Past persecution is "'the infliction or threat of death, torture, or injury to one's person or freedom 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)).

a. Persecution – Level of Harm

Persecution within the meaning of the Act "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). Rather, "persecution is an extreme concept." Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004). 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. Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Rape and severe beatings do rise to the level of persecution. See Matter of D-V-, 21 I&N Dec. 77, 78 (BIA 1993).

Further, persecution does not normally include unfulfilled threats of physical injury, Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006), and threats that "are exaggerated, nonspecific, or lacking in immediacy" may be insufficient to establish persecution. La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012). But "numerous and credible threats" combined with attempts to fulfill those threats may establish past persecution, as the asylum standard does not require the applicant "to wait for [his or her] persecutors to finally carry out their death threats before [he or she] could seek refuge here." Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 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).

b. Protected Ground

An applicant seeking asylum based on membership in a particular social group must demonstrate: (1) membership in a group that is comprised of members who share an immutable characteristic, is defined with particularity, and is socially distinct within the society in question. Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018) (holding that Matter of A-R-C-G-, 26 I&N Dec. 338 (BIA 2014) was wrongly decided and a thorough analysis of particular social group elements and nexus must be made in accordance with Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014)).

When requesting asylum on account of membership in a particular social group, applicants must "clearly indicate, on the record and before the immigration judge, the exact delineation of any proposed particular social group." Id. at 344. A proposed particular social group must "exist independently of the harm asserted." See id. at 334–35 (If a particular social group is "defined by the persecution of its members, then the definition of the group moots the need to establish actual persecution."). Thus, a proposed particular social group is not cognizable unless its members "share a narrowing characteristic other than their risk of being persecuted." Id. (internal citations omitted).

A cognizable particular social group must include members who share a common immutable characteristic; it should be defined with particularity; and the group must be socially distinct within the society in question. Ngugi v. Lynch, 826 F.3d 1132, 1137–38 (8th Cir. 2016). First, a particular social group requires members to share an immutable characteristic. Matter of W-G-R-, 26 I&N Dec. 208, 210 (BIA 2014). An immutable characteristic is one "that the members of the group either cannot change, or should not be required to change because it's fundamental to their individual identities or consciences." Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Second, the group must be particular. Matter of W-G-R-, 26 I&N Dec. at 212. To satisfy the particularity requirement, a group must be discrete and have definable boundaries. Id. at 214. Third, the group must be socially distinct. Id. at 212. Social distinction means that the group must be perceived as a group by society, regardless of whether society can identify the group's members by sight. Id. at 216–17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. Id. at 217. This social distinction inquiry may require looking into the culture and society of an applicant's home country to determine if the class is discrete and not amorphous. Id. at 214. Social distinction does not require "ocular" visibility. Id. at 216.

c. Nexus

An asylum applicant must demonstrate that the persecution he or she fears was or would

be "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); see INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992) (explaining that an asylum claim fails unless the applicant establishes the requisite nexus between the alleged harm and a statutorily protected ground). For an applicant to show that he or she has been targeted on account of a protected ground, the applicant must demonstrate that his or her claimed ground was at least "one central reason" for the claimed harm. INA § 208(b)(1)(B)(i); Matter of N-M-, 25 I&N Dec. 526 (BIA 2011). The protected ground cannot be "incidental, tangential, superficial, or subordinate to another reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–14 (BIA 2007). Harm arising from general "conditions such as anarchy, civil war, or mob violence," will likely not be sufficient, "'the harm suffered must be particularized to the individual rather than suffered by the entire population.'" Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014) (citing Mohamed v. Ashcroft, 396 F.3d 999, 1033 (8th Cir. 2005)).

An applicant may show a persecutor's motives through direct or circumstantial evidence. Elias-Zacarias, 502 U.S. at 483. Such evidence may include statements by persecutors, or treatment of other similarly situated people. See Matter of S-P-, 21 I&N Dec. 486, 494 (BIA 1996). "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).

d. Government Infliction of Harm or 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 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) (internal quotations omitted); but see Galloso v. Barr, 954 F.3d 1189, 1192 (8th Cir. 2020) (finding that "To the extent that the condone-or-completely-helpless standard conflicts with the unable-or-unwilling standards, the latter standard controls.") (internal citation omitted). When determining whether this burden is met, the immigration judge "must consider both the reason for the harm inflicted on the asylum applicant and the government's role in sponsoring or enabling such actions." Matter of A-B-, 27 I&N Dec. 316, 318 (BIA 2018). But evidence of "ineffectiveness and corruption do not, alone, require a finding that the government is 'unable or unwilling'" to control the alleged persecutor where evidence indicates to the contrary. Khilan v. Holder, 557 F.3d 583, 586 (8th Cir. 2009) (per curiam).

2. Rebuttal of Past Persecution—Law

Where an applicant establishes she suffered past persecution, she is entitled to a rebuttable presumption that her fear of future persecution is "well-founded." 8 C.F.R. § 1208.16(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 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. § 1208.16(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).

3. Well-Founded Fear of Future Persecution—Law

If an applicant is unable to establish past persecution, or if past persecution is rebutted, they are not entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). To establish a well-founded fear of future persecution an applicant must establish (1) they have a fear of persecution in his or her country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if the applicant were to return to that county; and (3) they are unable or unwilling to return to, or avail themselves of the protection of, that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant's fear of persecution must be countrywide. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

To establish a well-founded fear of persecution, an applicant must present credible evidence that demonstrates that the feared harm is of a level that amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or already is aware of the characteristic, and that the persecutor has the means and inclination to persecute. Matter of Y-B-, 21 I&N Dec. 1136, 1149 (BIA 1998). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014). To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Matter of Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant's subjective fear must be supported by "'credible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country.'" Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010) (quoting Mamana v. Gonzales, 436 F.3d 966, 968 (8th Cir. 2006)). A ten percent chance of future persecution can be sufficient to meet the asylum requirements. Cardoza-Fonseca, 480 U.S. at 431; Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

In evaluating whether the applicant has sustained his or her burden of proving a well-founded fear of persecution, the applicant is not required to provide evidence that he or she would be singled out individually for persecution if the applicant establishes that there is a pattern or practice of persecution of persons similarly situated to the applicant on account of one of the enumerated grounds and that the applicant is a member of and identified with that group. 8 C.F.R. § 1208.13(b)(2)(iii); see also Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997). However, to constitute a "pattern or practice," the persecution of the group must be "systemic, pervasive, or organized." Ngure v. Ashcroft, 367 F.3d 975, 991 (8th Cir. 2004).

4. Humanitarian Asylum—Law

When an asylum applicant establishes past persecution, but the presumption of future persecution is rebutted, he or she may request a humanitarian grant of asylum based on either the severity of past persecution or the reasonable possibility of other serious harm. 8 C.F.R. § 1208.13(b)(1)(iii)(A); Kangu v. Holder, 781 F.3d 912 (8th Cir. 2015). To qualify as "severe," the persecution must have been "particularly atrocious." See Mambwe v. Holder, 572 F.3d 540, 547 (8th Cir. 2009) (citation and internal quotation marks omitted); see also Abraha v. Gonzales, 433 F.3d 1072, 1076 (8th Cir. 2006). Severe past harm arises from persecution on a protected ground that was "atrocious" and produced "long-lasting effects." See Mambwe, 572 F.3d at 547; Matter of N-M-A-, 22 I&N Dec. 312 (BIA 1998). Courts may consider "the degree of harm suffered, the length of time over which the harm was inflicted, and evidence of psychological trauma resulting from the harm." Mambwe, 572 F.3d at 550 (citation and internal quotation marks omitted).

Even if an applicant cannot meet the first prong, he or she may still merit humanitarian asylum if there is a "reasonable possibility" that he or she may suffer "other serious harm" upon removal to their home country. 8 C.F.R. 108.13(b)(1)(iii)(B). The applicant bears the burden of proving that he or she would suffer other serious harm if removed. Matter of L-S-, 25 I&N Dec. 705, 710 (BIA 2012). When considering the possibility of "other serious harm," the focus should be on current conditions and the potential for new physical or psychological harm that the applicant might suffer. Id. at 714. While "other serious harm" must equal the severity of persecution, it may be wholly unrelated to the past harm. Id. The applicant need only establish a "reasonable possibility" of such "other serious harm"; a showing of "compelling reasons" is not required. Id. Moreover, an applicant does not need to demonstrate a nexus between the "other serious harm" and a protected ground under the Act. Id.

5. Past Persecution—Analysis

Respondent claims past persecution on a number of grounds: (1) race, (2) imputed political opinion, and (3) particular social group identified as (i) rural indigenous Guatemalan women; (ii) indigenous Guatemalan women; and (iii) nuclear family member of [redacted]

[redacted]

a. Race[4]

The Court finds Respondent suffered past persecution on account of her race, as an indigenous person, as demonstrated by her ethnic group, [redacted].[5] The massacre at [redacted] occurred in 1982, before Respondent's birth in 1987. However, the massacre forced her parents into the jungle, where Respondent was born and remained until the 1996 peace accords. Respondent suffered harm raising to the level of persecution. Respondent's family was forced to live in the jungle, where she was born. Respondent never had enough food, which contributed to two of Respondent's siblings dying at or shortly after birth. Respondent, with her family, was constantly moving—running from the army on the ground and from airplanes and helicopters dropping bombs. Respondent was not physically injured as a direct result of army's actions. This was not from want of the army trying. Respondent was constantly on the move as a result of the army's persistence of those individuals living in the jungle. The constant fleeing from harm at the hands of the army is sufficient to find harm rising to the level of persecution. The Court finds this harm rises to the level of persecution.

Further, the Court finds this harm was on account of a protected ground, race, which was perpetrated by the government. Respondent established the harm she suffered was particularized and did not arise out of general conditions of civil war. Cf. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005) (explaining "[h]arm arising from general conditions such as anarchy, civil war, or mob violence will not ordinarily support a claim of persecution."). It is well documented that the Guatemalan government intentionally exaggerated the connection between the indigenous population and the guerrillas, using this as an articulable excuse to act on traditional racist prejudices to commit substantial and systematic aggression against non-combatants. Ex. 6A at 75; Ex. 8A at 358; Ex. 18A at 9. Further, "the undeniable existence of racism expressed repeatedly by the State as a doctrine of superiority, is a basic explanatory factor for the indiscriminate nature and particular brutality with which military operations were carried out against hundreds of Mayan communities." Ex. 6A at 76. The Guatemalan Commission for Historical Clarification

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[4] The Court finds Respondent's claim of past persecution on account of imputed political opinion arising from her childhood during the civil war is subsumed by her claim on account of race. Therefore, the Court does not analyze Respondent imputed political opinion claim in the context of harm suffered when she was a child. In any event, for the same reasons discussed in this opinion as to race, the Court would also deny the Respondent's claims based on imputed political opinion. Namely, rebutting any presumption of a well-founded fear of harm based on past persecution. Lastly, to the extent that the Respondent has made any claims based on Gender, the Court finds that Gender is not a separately enumerated protected ground and must be analyzed as a particular social group. See *infra* n.7. Additionally, the Respondent has not meet their burden to establish persecution on account of Gender. There is insufficient evidence to support any claim based on Gender in this particular case.

[5] During testimony, Respondent's counsel used [redacted]" as the spelling for Respondent's ethnic group. In the documentary evidence [redacted] is also used. Ex. 6A at 164. The Court uses [redacted] for consistency. [redacted] is one of 22 indigenous groups that are part of the larger description of Mayan indigenous persons. Id.

concluded "that the reiteration of destructive acts, directed systematically against groups of the Mayan populations, within which can be mentioned the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific ethnic group and makes it evident that these acts were committed 'with intent to destroy, in whole or in part' these groups." Id. at 91 (citing the Convention Against Torture, Article II). This evidence establishes that Respondent was targeted because of her status as an indigenous Mayan and was not a victim of general conditions of civil war. Cf. Agha v. Holder, 743 F.3d 609 (8th Cir. 2014) (applicant fled Lebanon after war broke out and lived "comfortably" in United Arab Emirates and travelled for his education). Respondent's life was far from comfortable during the conflict—she was exposed to bombings, significant malnutrition, and death of others, including that of more than one sibling. During the armed conflict over 600 indigenous villages were massacred—the international community agrees the actions of the Guatemalan government were genocide. The widespread nature of the harm suffered by indigenous persons during the armed conflict does not undercut the particularized harm Respondent suffered. The harm was perpetrated by the Guatemalan government. "The majority of human rights violations occurred with the knowledge or by the order of the highest authorities of the State." Ex. 6A at 90. This report finds further that "[i]n general, the State of Guatemala holds undeniable responsibility for human rights violations and infringements of international humanitarian law." Id. at 93. Therefore, the Court finds Respondent has established past persecution on account of race perpetrated by the Guatemalan government.

To the extent Respondent argues she suffered past persecution on account of race at the hands of drug trafficking organizations, the Court finds the evidence does not support a finding that harm suffered was on account her race. Respondent's evidence, including expert testimony, establishes that drug trafficking organizations permeate the border region with Mexico and that indigenous communities are also located in this area. The drug trafficking organizations seek to control their areas through threats, extortion and killings. But the actions of the drug trafficking organizations are not because of the race of the victims, but because the drug trafficking organizations are exerting control in a geographic area. Therefore, the Court finds Respondent has not established past persecution on account of race perpetrated by drug trafficking organizations.

b. Rebutting Past Persecution On Account of Race

The Court finds DHS has met its burden to establish changed country conditions in Guatemala, thereby rebutting the presumption of a well-founded fear of future persecution where a finding of past persecution has been made. The armed conflict in Guatemala ended in 1996 with the signing of the peace accords. Respondent and her family returned to their hometown. The government provided the family with building supplies to rebuild a home. The government has acknowledged the genocidal behavior and prosecuted former military personnel See Ex. 6A at 57–237; Ex. 18A. The armed conflict ended over twenty years

ago. In fact, as will be discussed further below, the Respondent's current concerns seem to be primarily related to private actors, not the Government. Specifically, drug traffickers operating in Guatemala. As such, the Court finds DHS has met its burden to rebut a finding of a well-founded fear of future persecution.

c. Particular Social Groups – Rural Indigenous Guatemalan Women and Indigenous Guatemalan Women

Respondent argues she suffered past persecution on account of particular social groups, articulated as rural indigenous Guatemalan women and indigenous Guatemalan women. The Court finds, assuming arguendo that the particular socials groups are cognizable, that Respondent has not established harm she suffered rises to the level of persecution, nor was it on account of her membership in the articulated particular social groups. Further, Respondent has not established the government inflicted the harm or was unwilling or unable to protect Respondent from her persecutors.

When the drug traffickers threatened her father and then sat outside his house, Respondent's evidence does not establish these actions were because Respondent is a rural indigenous Guatemalan woman or, more broadly, an indigenous Guatemalan woman. These incidents stemmed from Respondent's father failing to submit to the traffickers demands to stay of off land over which the traffickers were claiming control.

Respondent was also the victim of a home invasion. The perpetrators forced their way into her house, with a gun, and pushed and shoved her. They told her if she did not cooperate, they would rape her. Respondent fought back, and eventually gave them her savings—after which they left. The Court finds this single incident of physical assault does not rise to the level of harm to be persecution.

Dr. Knauer described that indigenous women are vulnerable because of historical marginalization and perpetrators are unlikely to be held accountable. The evidence does not establish that the criminal incident against Respondent occurred because of her status as a member of one of the aforementioned particular social groups. The demand was for money, something wholly untied to Respondent's status as a women. Respondent's potential vulnerability as a woman does not mean that she was attacked *because of her status* as a rural indigenous woman. Being part of a vulnerable population that is then subjected to criminal behavior because the perpetrators are less likely to be caught, does not equate to suffering harm because of membership in the particular social groups. As such, Respondent has not met her burden to establish that she suffered harm rising to the level of persecution on account of her particular social groups, rural indigenous Guatemalan women or indigenous Guatemalan women.

d. Particular Social Group – Nuclear Family Member of [redacted]

Respondent argues she suffered past persecution on account of the particular social group, the nuclear family of [redacted], her father. Assuming without deciding that the particular social group is cognizable, the Court finds Respondent has not met her burden to establish harm rising to the level of persecution, or having suffered harm on account of her membership in this group. Respondent described that [redacted] has a car, and as drug traffickers moved into the area, they took control of lands [redacted] traversed to get to work. The drug traffickers demanded he not use this route and [redacted] did not comply with these demands. Several weeks later, a group of drug traffickers parked outside [redacted] home while he was hosting extended family at his home. The traffickers stayed several hours at a time for about a week; they yelled threats at the family, and shot their firearms into the air. The family remained in the house throughout the duration of this week. Eventually, the traffickers left and the family also left. The traffickers returned about a week later, at another family gathering, and stayed for several hours. The Court finds this harm does not rise to the level of harm to be persecution. There was no physical harm and the threats were not so specific and imminent as to meet the definition of persecution. The traffickers showed up at the house when [redacted] was hosting family events. Respondent described the events as having extended family in attendance; therefore, Respondent's evidence does not establish that she was targeted because of her status as a nuclear family member of [redacted]. Nor did Respondent present evidence that the home invasion occurred because of her status as a nuclear family member of [redacted] the perpetrators did not mention her family during the attack. As such, Respondent has not established past persecution on account a particular social group, the nuclear family of [redacted].

e. Imputed Political Opinion – Anti-gang

The Eighth Circuit has repeatedly held that opposing gangs is not sufficient to establish a political opinion for the purposes of asylum. See Gomez-Rivera v. Sessions, 897 F.3d 995, 999 (8th Cir. 2018) (holding that evidence can establish a gang is politically minded, but evidence must also establish that the gang is imputing a political opinion on the applicant); Garcia v. Holder, 746 F.3d 869, 873 (8th Cir. 2014) (finding evidence established gang attack was because of applicant resisting extortion demands, not because of an imputed political opinion); Ortiz-Puentes v. Holder, 662 F.3d 481 (8th Cir. 2011) (holding applicants did not present evidence that gang violence they suffered was on account of their political opinion); Marroquin-Ochoma v. Holder, 574 F.3d 574 (8th Cir. 2009) (holding that opposition to a gang "does not compel a finding that the gang's threats were on account of an imputed political opinion"). Respondent's evidence is not sufficient to establish that the attacks by the drug traffickers, either at her home or the home of her father, were on account of a political opinion the traffickers imputed on Respondent. The fact that Respondent's father is involved in the Junta Directiva, and that Respondent's aunt was elected mayor, do not establish the traffickers were imputing a political opinion on

Respondent. Respondent presented evidence that the traffickers remained outside her father's house and that someone, they presume a trafficking organization, shot firearms at the roof of her aunt's home when the aunt was elected mayor. Respondent did not present evidence that other family members in similar situations were attacked because of her father's or aunt's political positions. The evidence is insufficient to establish to establish that when the traffickers were outside Respondent's father's house, the traffickers' purpose was rooted in the family's involvement in politics, as opposed to Respondent's father's direct refusal to not drive across property the traffickers controlled. Respondent did not present evidence that during the attack at her home the assailants made any mention of political opinions or actions of Respondent or Respondent's family. As such, the Court finds Respondent has not met her burden to establish past persecution on account of imputed political opinion.[6]

6. Well-Founded Fear of Future Persecution—Analysis

Respondent argues she has a well-founded fear of future persecution on account of the aforementioned basis: race, imputed political opinion (perceived anti-gang in a small village controlled partly by gangs), and particular social groups articulated as: indigenous Guatemalan women, rural indigenous Guatemalan women, and nuclear family of [redacted]. Ex. 19A at 1.[7] Respondent fears harm at the hands of drug traffickers. The Court finds Respondent has not met her burden to establish a reasonable possibility of suffering harm rising to the level of persecution, or that the government is unable to unwilling to protect her from the persecutors.

Respondent has a general fear of the drug traffickers in [redacted]. She testified that family remaining in [redacted] describe that the traffickers scare the women, make fun of those speaking the indigenous language, and fear the traffickers kidnapping children. The evidence is insufficient to establish that Respondent's generalized fear of the gangs amounts to persecution. Respondent did not present evidence that her remaining family in [redacted] have suffered more than generalized gang violence. Generalized gang violence does not amount to persecution under the act. See De Guevara v. Barr, 919 F.3d 538, 540 (8th Cir. 2019) ("A generalized fear of gang violence is not a basis for asylum.")

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[6] The Court need not address the remaining elements of past persecution. See INA v. Bagamasbad, 429 U.S. 24, 25–26 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the result they reach." (internal citation omitted)); Matter of A-B-, 27 I&N Dec. 316, 340 (A.G. 2018) ("Of course, if an alien's asylum application is fatally flawed in one respect—for example, for failure to show membership in a proposed social group—an immigration judge or the Board need not examine the remaining elements of the asylum claim." (internal citation omitted)).

[7] Previously, Respondent articulated the basis for her well-founded fear as (1) indigenous Guatemalan women whose husband lives outside the country and sends her money, and (2) a member of a family who has been vocal against the presence of a violent gang in a small community. Ex. 6A at 24–25. Respondent orally articulated basing persecution on Gender. As noted *supra*, Gender must be articulated as a particular social group. See *supra* n.4. The Court reviews Respondent's most recently articulated basis from the written closing argument. Ex. 19A.

(citing Constanza v. Holder, 647 F.3d 749, 754 (8th Cir. 2011)).

Respondent has not established the government would be unwilling or unable to help protect her from those she fears will cause her harm. Respondent testified about an incident in which a community member went to the capital city to obtain help from law enforcement regarding the traffickers. Law enforcement came to the community; however, the traffickers heard law enforcement was coming and left the area before law enforcement arrived. After law enforcement left, the drug traffickers returned and assaulted the man who made the report and his family. Respondent did not present evidence as to whether the victims reported the assault. That incident alone does not establish that the Guatemalan government is unable or unwilling to assist victims of the traffickers.

Criminal organizations have perpetrated violence and extortion throughout Guatemala. Ex. 8A at 1153. Criminal proceedings against powerful actors often suffer long delays. Id. at 1153. "Corruption and inadequate investigations made prosecution difficult, and impunity continued to be widespread." Id. at 699. But evidence establishes that in the recent past the government has made progress against impunity, id. at 371–72, and has enacted laws against corruption. Id. at 384. The government "develop[ed] laws and institutions to provide protection and justice for women in general and for indigenous women in particular," id. at 386, although a shortage in available resources existed. Id. at 387. There are specific bodies to deal with prosecution of crimes against women. Id. at 390. "Indigenous people have low rate of access to justice, but state is providing training" and is in the process of making constitutional reforms. Id. at 390. Further, "indigenous peoples have increasingly turned to the judicial system for the protection of their rights." Id. at 911. The government has cooperated with the International Commission against Impunity in Guatemala, and while its mandate was not renewed, its powers were being transferred to the Public Ministry. Id. at 699. The Office of the Attorney General investigated and prosecuted members of criminal networks that infiltrated the government. Id. at 908, 912 (arresting a military chief in connection with drug trafficking). This evidence does not show that the government is unwilling or unable to protect Respondent. Dr. Knauer testified that she believes police hold stereotypical and prejudiced views against indigenous women. Dr. Knauer also testified that there have been efforts to remove law enforcement from the payrolls of drug trafficking organizations, although they have been inconsistent. Dr. Knauer also testified about discrimination suffered generally by indigenous peoples in Guatemala. General prejudice and discrimination does not rise to the level of persecution. Respondent's evidence does not establish the Guatemalan government is unwilling or unable to protect Respondent.

Because Respondent cannot establish a reasonable probability of persecution or that the government is unwilling or unable to protect her, she cannot meet her burden to establish a well-founded fear of future persecution warranting a grant of asylum.[8]

[8] See *supra* n.6.

7. Humanitarian Asylum—Analysis

Respondent argues that she is eligible for humanitarian asylum based on the severity of her past persecution, or alternatively because she is likely to suffer other serious harm. As the Court finds Respondent only established past persecution on account of her race, Respondent cannot rely on harm that is not related to this finding of past persecution for the first prong of humanitarian asylum. See Mambwe v. Holder, 572 F.3d 540, 549 (8th Cir. 2009) (holding that "Since humanitarian asylum may only be granted to 'an alien found to be a refugee on the basis of past persecution,' it follows that [the applicant] cannot establish her eligibility for humanitarian asylum based on" harm arising on account of other grounds) (citation omitted).

As stated above, the Court finds the harm Respondent suffered amounts to past persecution on account of her race. However, the Court finds it is not severe or "particularly atrocious" so as to warrant a grant of humanitarian asylum. The pursuit of the Guatemalan military forced Respondent to live in the jungle with her family for some number of years during her childhood, moving often so as to avoid physical harm at the hands of the Guatemalan military. Respondent was without proper nutrition or adequate housing. Respondent was not subject to physical injury. Respondent did not present evidence of having received medical treatment for any physical harm, such as malnutrition, that she suffered. Respondent presented evidence that there were air attacks perpetrated by the Guatemalan military. Respondent is still afraid when aircraft fly over. Respondent testified that she saw people die and saw dead bodies. Respondent did not present evidence that she has sought treatment for psychological trauma. See Mambwe v. Holder, 572 F.3d at 550. The persecution did not last into Respondent's adulthood. At 9 years old, Respondent was able to move out of the jungle. Given the degree of harm, which ended in childhood, "and the lack of evidence of severe psychological trauma stemming from the harm," the Court finds Respondent has not met her burden to establish severe harm warranting a grant of humanitarian asylum. See Matter of N-M-A-, 22 I&N Dec. 312 (BIA 1998).

The Court finds Respondent has not established a reasonable possibility that she will suffer other serious harm if she is removed to Guatemala. As described *supra* in Part V.A.6, Respondent has a generalized fear of drug traffickers in [redacted] and Guatemala as a whole. Respondent's evidence establishes drug trafficking and other criminal organizations are active in Guatemala and the region in which her family resides. But Respondent has not established reasonable possibility she will be subject to any harm that rises to the severity of persecution. Her family continues to reside in [redacted]; her mother was on the Junta Directiva and her father is presently on the Junta Directiva. Respondent's mother's describes fearing "masked men" and leaves the Court to speculate as to whether she means traffickers. Her only interaction with "masked men" occurred when six masked men approached a group of women washing at the creek, threatened them with violence, and chased the women away. Ex. 8A at 46. The other threats being made by "the masked men" are leaving drawings that "threaten to rape women" by drawing

"obscene images on the ground." Id. at 47. Respondent did not describe either of her parents having other recent interactions with the traffickers. Respondent's aunt was elected mayor on a platform opposing the traffickers in their community; upon her election, the roof of her home was damaged by being shot at; Respondent did not describe her aunt having other interactions with the traffickers. Respondent testified that her siblings continue to reside in [redacted], she did not describe any of them have suffered harm at the hands of the traffickers. Respondent's mother-in-law describes traffickers going to single women's homes, demanding money, and beating the women if they have none. Id. at 54. While these physical assaults are troubling, they are not harm rising to the level of persecution. Nor is traffickers offering to buy children and then beating the family if they refuse. See id. at 54. The evidence is insufficient to establish the harm Respondent fears is a reasonable possibility of harm rising to the level of persecution. See Matter of L-S-, 25 I&N Dec. 705, 714 (BIA 2012) (holding "'other serious harm' must equal the severity of persecution").

Respondent established past persecution on account of race. DHS met its burden to establish changed country conditions rebutting the finding of past persecution. Respondent did not establish past persecution on account of any other protected grounds. Respondent did not establish a well-founded fear of future persecution. Respondent did not establish eligibility for humanitarian asylum. Accordingly, Respondent is ineligible for asylum under the Act.

B. Withholding of Removal under the Act

"An applicant who fails to establish a well founded fear of persecution [under the asylum standard] also fails under the more stringent standard of proof required for withholding of removal." Prokopenko v. Ashcroft, 372 F.3d 941, 944 (8th Cir. 2004) (internal citation omitted). As Respondent failed to establish a well-founded fear of persecution on account of a protected ground for asylum, she also fails to establish eligibility for withholding of removal. Therefore, Respondent's application for withholding of removal under section 241(b)(3) of the Act is denied.

C. Convention Against Torture[9]

Respondent has applied for protection under the Convention Against Torture. See 8 C.F.R. § 1208.13(c)(1). The burden of proof is on the applicant to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. Id.

An independent analysis of a claim under the Convention Against Torture is required only where there is evidence that the applicant would face torture for reasons unrelated to her

[9] Article 3 of the United Nations Convention Against Torture, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988).

claims for asylum and withholding of removal. See Guled v. Mukasey, 515 F.3d 872, 882 (8th Cir. 2008). The Court finds Respondent has not presented evidence of a claim for protection under the Convention Against Torture for reasons unrelated to her underlying claim for asylum and withholding of removal. Therefore, the Court need not conduct an independent analysis of Respondent's Convention Against Torture claim. The Court finds Respondent has not met her burden to establish eligibility for protection under the Convention Against Torture.

ORDERS

IT IS HEREBY ORDERED: [redacted] application for asylum under section 208 of the Act is **DENIED.**

IT IS HEREBY ORDERED: [redacted] derivative application for asylum under section 208 of the Act is **DENIED.**

IT IS FURTHER ORDERED: [redacted] application for withholding of removal under section 241(b)(3) of the Act is **DENIED.**

IT IS FURTHER ORDERED: [redacted] application for withholding or deferral of removal under the Convention Against Torture is **DENIED.**

IT IS FURTHER ORDERED: [redacted] is ordered **REMOVED** from the United States to **GUATEMALA.**

IT IS FURTHER ORDERED: [redacted] is ordered **REMOVED** from the United States to **GUATEMALA.**

NOTICES

If either party elects to appeal this decision, the 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).

The Court has ordered you removed from the United States. If you fail to apply for travel documents required to depart the United States, fail to present yourself for removal as instructed, fail to depart the United States as instructed, or take any action to hamper your departure, you could be subject to civil or criminal penalties, including fines over $700 per day and up to 10 years imprisonment.

Brian Sardelli
United States Immigration Judge

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

Dorsey & Whitney LLP
Al Taqatqa, Briana
50 S 6th Street
Suite 1500
Minneapolis, MN 55402

In the matter of [redacted] File [redacted] DATE: Sep 9, 2020

__ Unable to forward - No address provided.

X 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.

X Other: IJ written decision

M Robertson
COURT CLERK
IMMIGRATION COURT FF

cc: OFFICE OF THE PRINCIPAL LEGAL ADVISOR
1 FEDERAL DR., SUITE 1800
FORT SNELLING, MN, 55111

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
FORT SNELLING, MINNESOTA

File Number: [redacted]	)	**Date: 9-9-20**
In the Matter of:	)	**In Removal Proceedings**
[redacted]	)	**Non-Detained**
Respondents.	)	

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

Applications: Asylum under INA § 208, Withholding of Removal under INA § 241(b)(3); Protection under the Convention Against Torture.

ON BEHALF OF RESPONDENT:
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ON BEHALF OF THE DHS:
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Fort Snelling, MN 55111

DECISION OF THE IMMIGRATION JUDGE

I. Background

Respondent, [redacted] is a native and citizen of Guatemala. Exhibit (Ex) 1A. [redacted] is Ms. [redacted] son and a native and citizen of Guatemala. Ex. 1B. Throughout this decision, [redacted] will be referred to as "Respondent" and [redacted] will be referred to as "[redacted]"; they will collectively be referred to as "Respondents." On December 16,

2015, the Department of Homeland Security (DHS) commenced removal proceedings by filing the Notices to Appear with the Immigration Court, charging Respondents as removable from the United States pursuant to section 212(a)(7)(A)(i) of the Immigration and Nationality Act (INA or Act). Respondents conceded proper service of the Notices to Appear, the Court finds the Notices were properly served. On July 12, 2016, Respondents admitted the allegations and conceded the charges of removability. Guatemala was designated as the country of removal.

Respondents are seeking the above captioned relief and protection from removal.[1] [redacted] is a derivative on [redacted] asylum application and did not file for separate relief from removal. See Ex. 5B at 3.

II. Summary of the Evidentiary Record

[redacted] Record of Proceeding (ROP) is comprised of nineteen (19) documentary exhibits. The Court admitted all evidence and exhibits.[2] [redacted] ROP is comprised of six (6) documentary exhibits. The Court admitted all evidence and exhibits. The Court considers all exhibits and evidence regardless of whether specifically referred to in this decision.

A. [redacted]

Ex. 1A: Notice to Appear (Form I-862), filed December 16, 2015;
Ex. 2A: Record of Deportable Inadmissible Alien (Form I-213), received January 7, 2016;
Ex. 3A: Notice of Referral to Immigration Judge (Form I-863), received January 7, 2016;
Ex. 4A: Respondent's Table of Contents of Supporting Documents and Supporting Documents, 39 pages, received July 12, 2016;
Ex. 5A: Respondent's Application for Asylum and Withholding of Removal (Form I-589), received July 12, 2016;
Ex. 6A: Group Exhibit: Respondent's Memorandum of Law in Support, Table of Contents of Supporting Documents, and Supporting Documents, 582 pages, filed June 6, 2017;
Ex. 7A: Respondent's Supplement to Previously Submitted Motion to Appear by Video Telephone Conference, filed March 8, 2019;

[1] Respondents are not requesting post-conclusion voluntary departure under section 240B(b) of the Act as they are ineligible. They entered the United States on [redacted] and were served with the Notices to Appear on September 17, 2015; therefore, they cannot establish the required one year physical presence in the United States before service of the Notices to Appear.

[2] By and through this order, the Court marks and admits Exhibit 19A, Respondent's Closing Statement. In preparing this decision all exhibits were reviewed and remarked (if needed) on 9-9-20.

Ex. 8A: Respondent's Documents in Support, 1,508 pages, filed November 13, 2019;[3]
Ex. 9A: Redlined Application for Asylum (Form I-589), filed November 13, 2019;
Ex. 10A: Respondent's Prehearing Brief, filed November 13, 2019;
Ex. 11A: Respondent's Proposed Witness List, filed November 13, 2019;
Ex. 12A: Respondent's Unopposed Motion to Request the Admission of Telephonic Testimony of Dr. Lisa Maya Knauer, filed November 12, 2019;
Ex. 13A: November 21, 2019 Order Granting Wavier of Appearance of [redacted]
Ex. 14A: Respondent's Unopposed Motion to File Late the Original Signatures for Declarations and Affidavits, filed December 5, 2019;
Ex. 15A: December 10, 2019 Order Granting Motion to File Late;
Ex. 16A: Respondent's Motion to Appear by Telephone, filed December 20, 2019;
Ex. 17A: January 3, 2020 Order Granting Telephonic Appearance;
Ex. 18A: DHS Exhibit, filed December 18, 2019; and
Ex. 19A: Respondent's Closing Statement, filed January 24, 2020.

B. [redacted]

Ex. 1B: Notice to Appear (Form I-862), filed December 16, 2015;
Ex. 2B: Record of Deportable Inadmissible Alien (Form I-213), received January 7, 2016;
Ex. 3B: Copy of [redacted] Application for Asylum and Withholding of Removal (Form I-589), received July 12, 2016;
Ex. 4B: Copy of [redacted] Redlined Application for Asylum and Withholding of Removal (Form I-589), filed June 6, 2017;
Ex. 5B: Respondent's Unopposed Motion to Waive Appearance of Respondent [redacted], filed November 12, 2019; and
Ex. 6B: November 21, 2019 Order Granting Telephonic Testimony of Dr. Lisa Maya Knauer.

C. Testimony

On December 13, 2019, Respondent testified in support of her application. On January 8, 2020, Dr. Lisa Maya Knauer testified in support of Respondent's application. Dr. Knauer is an expert on country conditions in Guatemala. DHS stipulated to Dr. Knauer's qualification as an expert and the Court finds that Dr. Knauer's "knowledge, skill, experience, training or education" is helpful to the Court in understanding the evidence. See Matter of D-R-, 25 I&N Dec. 445, 459 (BIA 2011).

[3] Respondent filed a number of the same country conditions articles in exhibits 6 and 8. For clarity, the Court will cite to one or the other of these exhibits, but not both, when citing to one of these doubly filed articles.

III. Credibility and Corroboration

Respondent filed her application for relief after May 11, 2005, thus the REAL ID Act credibility standards apply. INA § 208(b)(1)(B). Under this standard, there is no presumption of credibility and the Court considers the totality of the circumstances in making its determination. Id.; Fesehaye v. Holder, 607 F.3d 523, 526 (8th Cir. 2010). Relevant factors include:

> 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 . . . , the internal consistency of each such statement, the consistency of such statements with other evidence of record . . . , 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. . . .

INA § 208(b)(1)(B)(iii); Matter of J-Y-C-, 24 I&N Dec. 260, 262–63 (BIA 2007).

An applicant's testimony is sufficient to meet her burden of proof if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for her fear. 8 C.F.R. § 1208.13(a). Where it is reasonable to expect corroborating evidence for specific elements of an applicant's claim, such evidence should be provided. See Matter of S-M-J-, 21 I&N Dec. 722, 725–26 (BIA 1997). If the Court encounters inconsistencies in the testimony, contradictory evidence, or inherently improbable testimony, the absence of corroboration can lead to a finding that an applicant has failed to meet her burden of proof. See Ruca-Roberti v. INS, 177 F.3d 669, 670 (8th Cir. 1999) (indicating that when an applicant makes implausible allegations and fails to present corroborating evidence, an adverse credibility determination may be warranted); Zewdie v. Ashcroft, 381 F.3d 804 (8th Cir. 2004); Matter of J-Y-C-, 24 I&N Dec. at 266; Matter of S-M-J-, 21 I&N Dec. at 725–26.

Even where the applicant testifies credibly, the Court may determine that the applicant must provide further corroborative evidence to meet their burden of proof. INA § 208(b)(1)(B)(ii). When corroborative evidence is requested, the applicant must be given an opportunity to provide the evidence or explain why the evidence is not readily available. Khrystotodorov v. Mukasey, 551 F.3d 775, 782 (8th Cir. 2008).

The Court finds Respondent credible. The record, including Respondent's testimony and documentary evidence, is consistent. Respondent's testimony was internally consistent and inherently plausible. Respondent was responsive and candid.

The Court finds Dr. Knauer credible. Dr. Knauer consistent, responsive, and candid. Dr. Knauer explained the details of her arrangement with Respondent, including the financial arrangement and her time spent reviewing Respondent's records.

IV. Findings of Fact

Respondent is a native and citizen of Guatemala. Respondent is indigenous and belongs to the [redacted] ethnic group. Respondent is married to [redacted] and they have two children, [redacted] was born in the United States.

Guatemala entered an internal armed conflict in 1962. In 1996, the government of Guatemala and the guerrillas signed peace accords. Throughout conflict, the State committed atrocities against the indigenous Mayan population. Over 200,000 people, mostly indigenous persons, were killed by State actors; there were over 600 massacres. At least 45,000 people were disappeared. It is widely believed these numbers are underreported. In the early 1980s, the government imposed a "scorched earth" policy in which the principal victims were Mayan. While the most violent time in the conflict was the early 1980s, killings by the government continued until the peace agreement.

In 1982, Respondent's parents were residing in [redacted]. The community of [redacted] governed itself via the "Junta Directiva." In 1982, Respondent's uncle, [redacted], was a member of the Junta Directiva. On March 14, 1982, the Guatemalan army attacked [redacted]. Government forces killed members of the local governing body, including Respondent's uncle. More than 400 people died, including women and children, and the village was razed. Some residents of the village were able to run into the jungle, including Respondent's parents. Respondent was born in the jungle in 1987. The family continued to reside in the jungle until Respondent was five years old. The family did not have enough food, did not have shelter, and was constantly moving as the army continued to pursue non-combatant indigenous persons living in the jungle. Respondent's mother gave birth to other children in the jungle, two of which did not survive—one died during birth, and the other shortly after due to malnutrition. Around the time Respondent was five years old, the family went to a refugee camp operated by international organizations—this camp was still in the jungle. The camp was required to move regularly, as the Guatemalan government was still pursing those residing in the jungle. Respondent's memories from childhood include extreme hunger, airplanes and helicopters dropping bombs in the jungle, and her parents fearing family separation as they fled government forces.

After the peace accords were signed in 1996, Respondent, and her family, returned to [redacted]. Because the town had been destroyed, residents lived in camps, but in [redacted] instead of the jungle. Eventually, the Guatemalan government provided Respondent's family with land and supplies to build a house.

In April 2009, Respondent had her first child. Respondent and [redacted] were married in December 2009. Respondent, her husband, and their child lived with Respondent's mother-in-law and her husband's grandmother; they were subsistence farmers. In May 2011, Respondent's husband traveled to the United States.

Respondent and her family had multiple run-ins with the drug traffickers who moved into the [redacted] area. Respondent's father, [redacted], now a member of the Junta Directiva, owns a vehicle and was told by the traffickers that he could not drive through property the traffickers claimed as their own. Respondent's father did not defer to the traffickers. About a week later, when there was a large family gathering at Respondent's father's home, a truckload of traffickers with firearms arrived at the house, they sat outside for hours, yelling threats and brandishing their firearms. For about a week, for hours at a time, the traffickers would sit outside the house. Around the same time, Respondent's aunt was elected mayor of [redacted] on an anti-trafficker platform. After being elected, traffickers shot up the roof the aunt's house. In June 2015, Respondent herself was attacked. While home alone with her son, two men knocked on the door and pushed into the house. They were wearing balaclavas and one had a rifle-type gun. One of the men pushed Respondent to the floor and threatened to rape her if she did not cooperate. She gave them her lifesavings and they left.

On [redacted] Respondent and her son left for the United States. On [redacted], Respondent and [redacted] entered the United States.

These findings will be further developed *infra*, particularly as to applicable country conditions.

V. Relief

Respondent applied for the following relief: asylum under the Act, withholding of removal under the Act, and withholding and deferral of removal under the Convention Against Torture. The Court finds Respondent met her burden to establish past persecution on account of her race; DHS rebutted the presumption of a well-founded fear of future persecution; and Respondent has not met her burden to establish eligibility for humanitarian asylum. Further, Respondent has not established past persecution on other protected grounds or a well-founded fear of future persecution on account of a protected ground. Therefore, Respondent is denied asylum. As Respondent cannot meet her burden under the asylum standard, she cannot met the burden of proof under the withholding of removal standard. Finally, Respondent cannot establish eligibility for withholding or deferral of removal under the Convention Against Torture.

A. Asylum

The Act places the burden of proof on the applicant to establish his or her eligibility for relief from removal. INA § 240(c)(4); 8 C.F.R. §§ 1208.13(a), 1208.16(b). To qualify for asylum, an applicant must show that he or she is a "refugee" as defined in section 101(a)(42)(A) of the Act. INA § 208(b)(1)(A), (B)(i); 8 C.F.R. § 1208.13(a). The applicant may qualify as a refugee if he or she has suffered past persecution in his or her country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; and is unable or unwilling to return to, or avail

him/herself of the protection of, the country owing to such persecution. 8 C.F.R. § 1208.13(b)(1).

If an asylum applicant presents specific facts establishing that he or she has been the victim of past persecution based on one of the five enumerated grounds, then the applicant is entitled to a rebuttable presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13. Absent this presumption, the applicant must demonstrate a well-founded fear of future persecution, on account of one of the enumerated grounds, by establishing the fear is subjectively genuine and objectively reasonable, meaning that a reasonable person in the applicant's circumstances would fear future persecution. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987); Kratchmarov v. Heston, 172 F.3d 551, 553 (8th Cir. 1999) (citation omitted). Finally, the applicant must demonstrate that he or she does not fall into any of the mandatory denial categories, see INA § 208(b)(2); 8 C.F.R. § 1208.13(c), and that he or she is eligible for asylum as a matter of discretion. See INA § 208(b)(1)(A); 8 C.F.R. § 1208.14; see also Cardoza-Fonseca, 480 U.S. at 423.

1. Past Persecution—Law

Past persecution is "'the infliction or threat of death, torture, or injury to one's person or freedom 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)).

a. Persecution – Level of Harm

Persecution within the meaning of the Act "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). Rather, "persecution is an extreme concept." Eusebio v. Ashcroft, 361 F.3d 1088, 1090 (8th Cir. 2004). 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. Bhosale v. Mukasey, 549 F.3d 732, 735 (8th Cir. 2008); Kondakova v. Ashcroft, 383 F.3d 792, 797 (8th Cir. 2004). Rape and severe beatings do rise to the level of persecution. See Matter of D-V-, 21 I&N Dec. 77, 78 (BIA 1993).

Further, persecution does not normally include unfulfilled threats of physical injury, Setiadi v. Gonzales, 437 F.3d 710, 713 (8th Cir. 2006), and threats that "are exaggerated, nonspecific, or lacking in immediacy" may be insufficient to establish persecution. La v. Holder, 701 F.3d 566, 571 (8th Cir. 2012). But "numerous and credible threats" combined with attempts to fulfill those threats may establish past persecution, as the asylum standard does not require the applicant "to wait for [his or her] persecutors to finally carry out their death threats before [he or she] could seek refuge here." Sholla v. Gonzales, 492 F.3d 946, 952 (8th Cir. 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).

b. Protected Ground

An applicant seeking asylum based on membership in a particular social group must demonstrate: (1) membership in a group that is comprised of members who share an immutable characteristic, is defined with particularity, and is socially distinct within the society in question. Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018) (holding that Matter of A-R-C-G-, 26 I&N Dec. 338 (BIA 2014) was wrongly decided and a thorough analysis of particular social group elements and nexus must be made in accordance with Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) and Matter of W-G-R-, 26 I&N Dec. 208 (BIA 2014)).

When requesting asylum on account of membership in a particular social group, applicants must "clearly indicate, on the record and before the immigration judge, the exact delineation of any proposed particular social group." Id. at 344. A proposed particular social group must "exist independently of the harm asserted." See id. at 334–35 (If a particular social group is "defined by the persecution of its members, then the definition of the group moots the need to establish actual persecution."). Thus, a proposed particular social group is not cognizable unless its members "share a narrowing characteristic other than their risk of being persecuted." Id. (internal citations omitted).

A cognizable particular social group must include members who share a common immutable characteristic; it should be defined with particularity; and the group must be socially distinct within the society in question. Ngugi v. Lynch, 826 F.3d 1132, 1137–38 (8th Cir. 2016). First, a particular social group requires members to share an immutable characteristic. Matter of W-G-R-, 26 I&N Dec. 208, 210 (BIA 2014). An immutable characteristic is one "that the members of the group either cannot change, or should not be required to change because it's fundamental to their individual identities or consciences." Matter of Acosta, 19 I&N Dec. 211, 233 (BIA 1985). Second, the group must be particular. Matter of W-G-R-, 26 I&N Dec. at 212. To satisfy the particularity requirement, a group must be discrete and have definable boundaries. Id. at 214. Third, the group must be socially distinct. Id. at 212. Social distinction means that the group must be perceived as a group by society, regardless of whether society can identify the group's members by sight. Id. at 216–17. To demonstrate social distinction, an applicant must provide evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group. Id. at 217. This social distinction inquiry may require looking into the culture and society of an applicant's home country to determine if the class is discrete and not amorphous. Id. at 214. Social distinction does not require "ocular" visibility. Id. at 216.

c. Nexus

An asylum applicant must demonstrate that the persecution he or she fears was or would

be "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); see INS v. Elias-Zacarias, 502 U.S. 478, 483 (1992) (explaining that an asylum claim fails unless the applicant establishes the requisite nexus between the alleged harm and a statutorily protected ground). For an applicant to show that he or she has been targeted on account of a protected ground, the applicant must demonstrate that his or her claimed ground was at least "one central reason" for the claimed harm. INA § 208(b)(1)(B)(i); Matter of N-M-, 25 I&N Dec. 526 (BIA 2011). The protected ground cannot be "incidental, tangential, superficial, or subordinate to another reason." Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 212–14 (BIA 2007). Harm arising from general "conditions such as anarchy, civil war, or mob violence," will likely not be sufficient, "'the harm suffered must be particularized to the individual rather than suffered by the entire population.'" Agha v. Holder, 743 F.3d 609, 617 (8th Cir. 2014) (citing Mohamed v. Ashcroft, 396 F.3d 999, 1033 (8th Cir. 2005)).

An applicant may show a persecutor's motives through direct or circumstantial evidence. Elias-Zacarias, 502 U.S. at 483. Such evidence may include statements by persecutors, or treatment of other similarly situated people. See Matter of S-P-, 21 I&N Dec. 486, 494 (BIA 1996). "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).

d. Government Infliction of Harm or 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 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) (internal quotations omitted); but see Galloso v. Barr, 954 F.3d 1189, 1192 (8th Cir. 2020) (finding that "To the extent that the condone-or-completely-helpless standard conflicts with the unable-or-unwilling standards, the latter standard controls.") (internal citation omitted). When determining whether this burden is met, the immigration judge "must consider both the reason for the harm inflicted on the asylum applicant and the government's role in sponsoring or enabling such actions." Matter of A-B-, 27 I&N Dec. 316, 318 (BIA 2018). But evidence of "ineffectiveness and corruption do not, alone, require a finding that the government is 'unable or unwilling'" to control the alleged persecutor where evidence indicates to the contrary. Khilan v. Holder, 557 F.3d 583, 586 (8th Cir. 2009) (per curiam).

2. Rebuttal of Past Persecution—Law

Where an applicant establishes she suffered past persecution, she is entitled to a rebuttable presumption that her fear of future persecution is "well-founded." 8 C.F.R. § 1208.16(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 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. § 1208.16(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).

3. Well-Founded Fear of Future Persecution—Law

If an applicant is unable to establish past persecution, or if past persecution is rebutted, they are not entitled to a presumption of a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). To establish a well-founded fear of future persecution an applicant must establish (1) they have a fear of persecution in his or her country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if the applicant were to return to that county; and (3) they are unable or unwilling to return to, or avail themselves of the protection of, that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). A well-founded fear of persecution does not exist where the applicant could avoid persecution by relocating to another part of the country and such relocation would be reasonable. 8 C.F.R. § 1208.13(b)(2)(ii). In other words, the applicant's fear of persecution must be countrywide. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005); Matter of Acosta, 19 I&N Dec. 211, 235 (BIA 1985).

To establish a well-founded fear of persecution, an applicant must present credible evidence that demonstrates that the feared harm is of a level that amounts to persecution, that the harm is on account of a protected characteristic, that the persecutor could become aware or already is aware of the characteristic, and that the persecutor has the means and inclination to persecute. Matter of Y-B-, 21 I&N Dec. 1136, 1149 (BIA 1998). A well-founded fear of persecution must be both subjectively genuine and objectively reasonable. Yu An Li v. Holder, 745 F.3d 336, 340 (8th Cir. 2014). To demonstrate a subjective fear of persecution, an applicant must demonstrate a genuine apprehension or awareness of the risk of persecution. Matter of Acosta, 19 I&N Dec. at 221. To satisfy the objective element, the applicant's subjective fear must be supported by "'credible, direct, and specific evidence that a reasonable person in the alien's position would fear persecution if returned to the alien's country.'" Damkan v. Holder, 592 F.3d 846, 850 (8th Cir. 2010) (quoting Mamana v. Gonzales, 436 F.3d 966, 968 (8th Cir. 2006)). A ten percent chance of future persecution can be sufficient to meet the asylum requirements. Cardoza-Fonseca, 480 U.S. at 431; Bellido v. Ashcroft, 367 F.3d 840, 845 n.7 (8th Cir. 2004).

In evaluating whether the applicant has sustained his or her burden of proving a well-founded fear of persecution, the applicant is not required to provide evidence that he or she would be singled out individually for persecution if the applicant establishes that there is a pattern or practice of persecution of persons similarly situated to the applicant on account of one of the enumerated grounds and that the applicant is a member of and identified with that group. 8 C.F.R. § 1208.13(b)(2)(iii); see also Matter of S-M-J-, 21 I&N Dec. 722, 731 (BIA 1997). However, to constitute a "pattern or practice," the persecution of the group must be "systemic, pervasive, or organized." Ngure v. Ashcroft, 367 F.3d 975, 991 (8th Cir. 2004).

4. Humanitarian Asylum—Law

When an asylum applicant establishes past persecution, but the presumption of future persecution is rebutted, he or she may request a humanitarian grant of asylum based on either the severity of past persecution or the reasonable possibility of other serious harm. 8 C.F.R. § 1208.13(b)(1)(iii)(A); Kangu v. Holder, 781 F.3d 912 (8th Cir. 2015). To qualify as "severe," the persecution must have been "particularly atrocious." See Mambwe v. Holder, 572 F.3d 540, 547 (8th Cir. 2009) (citation and internal quotation marks omitted); see also Abraha v. Gonzales, 433 F.3d 1072, 1076 (8th Cir. 2006). Severe past harm arises from persecution on a protected ground that was "atrocious" and produced "long-lasting effects." See Mambwe, 572 F.3d at 547; Matter of N-M-A-, 22 I&N Dec. 312 (BIA 1998). Courts may consider "the degree of harm suffered, the length of time over which the harm was inflicted, and evidence of psychological trauma resulting from the harm." Mambwe, 572 F.3d at 550 (citation and internal quotation marks omitted).

Even if an applicant cannot meet the first prong, he or she may still merit humanitarian asylum if there is a "reasonable possibility" that he or she may suffer "other serious harm" upon removal to their home country. 8 C.F.R. 108.13(b)(1)(iii)(B). The applicant bears the burden of proving that he or she would suffer other serious harm if removed. Matter of L-S-, 25 I&N Dec. 705, 710 (BIA 2012). When considering the possibility of "other serious harm," the focus should be on current conditions and the potential for new physical or psychological harm that the applicant might suffer. Id. at 714. While "other serious harm" must equal the severity of persecution, it may be wholly unrelated to the past harm. Id. The applicant need only establish a "reasonable possibility" of such "other serious harm"; a showing of "compelling reasons" is not required. Id. Moreover, an applicant does not need to demonstrate a nexus between the "other serious harm" and a protected ground under the Act. Id.

5. Past Persecution—Analysis

Respondent claims past persecution on a number of grounds: (1) race, (2) imputed political opinion, and (3) particular social group identified as (i) rural indigenous Guatemalan women; (ii) indigenous Guatemalan women; and (iii) nuclear family member of [redacted]

[redacted]

a. Race[4]

The Court finds Respondent suffered past persecution on account of her race, as an indigenous person, as demonstrated by her ethnic group, [redacted].[5] The massacre at [redacted] occurred in 1982, before Respondent's birth in 1987. However, the massacre forced her parents into the jungle, where Respondent was born and remained until the 1996 peace accords. Respondent suffered harm raising to the level of persecution. Respondent's family was forced to live in the jungle, where she was born. Respondent never had enough food, which contributed to two of Respondent's siblings dying at or shortly after birth. Respondent, with her family, was constantly moving—running from the army on the ground and from airplanes and helicopters dropping bombs. Respondent was not physically injured as a direct result of army's actions. This was not from want of the army trying. Respondent was constantly on the move as a result of the army's persistence of those individuals living in the jungle. The constant fleeing from harm at the hands of the army is sufficient to find harm rising to the level of persecution. The Court finds this harm rises to the level of persecution.

Further, the Court finds this harm was on account of a protected ground, race, which was perpetrated by the government. Respondent established the harm she suffered was particularized and did not arise out of general conditions of civil war. Cf. Mohamed v. Ashcroft, 396 F.3d 999, 1003 (8th Cir. 2005) (explaining "[h]arm arising from general conditions such as anarchy, civil war, or mob violence will not ordinarily support a claim of persecution."). It is well documented that the Guatemalan government intentionally exaggerated the connection between the indigenous population and the guerrillas, using this as an articulable excuse to act on traditional racist prejudices to commit substantial and systematic aggression against non-combatants. Ex. 6A at 75; Ex. 8A at 358; Ex. 18A at 9. Further, "the undeniable existence of racism expressed repeatedly by the State as a doctrine of superiority, is a basic explanatory factor for the indiscriminate nature and particular brutality with which military operations were carried out against hundreds of Mayan communities." Ex. 6A at 76. The Guatemalan Commission for Historical Clarification

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[4] The Court finds Respondent's claim of past persecution on account of imputed political opinion arising from her childhood during the civil war is subsumed by her claim on account of race. Therefore, the Court does not analyze Respondent imputed political opinion claim in the context of harm suffered when she was a child. In any event, for the same reasons discussed in this opinion as to race, the Court would also deny the Respondent's claims based on imputed political opinion. Namely, rebutting any presumption of a well-founded fear of harm based on past persecution. Lastly, to the extent that the Respondent has made any claims based on Gender, the Court finds that Gender is not a separately enumerated protected ground and must be analyzed as a particular social group. See *infra* n.7. Additionally, the Respondent has not meet their burden to establish persecution on account of Gender. There is insufficient evidence to support any claim based on Gender in this particular case.

[5] During testimony, Respondent's counsel used [redacted] as the spelling for Respondent's ethnic group. In the documentary evidence [redacted]" is also used. Ex. 6A at 164. The Court uses [redacted] for consistency. [redacted] is one of 22 indigenous groups that are part of the larger description of Mayan indigenous persons. Id.

concluded "that the reiteration of destructive acts, directed systematically against groups of the Mayan populations, within which can be mentioned the elimination of leaders and criminal acts against minors who could not possibly have been military targets, demonstrates that the only common denominator for all the victims was the fact that they belonged to a specific ethnic group and makes it evident that these acts were committed 'with intent to destroy, in whole or in part' these groups." Id. at 91 (citing the Convention Against Torture, Article II). This evidence establishes that Respondent was targeted because of her status as an indigenous Mayan and was not a victim of general conditions of civil war. Cf. Agha v. Holder, 743 F.3d 609 (8th Cir. 2014) (applicant fled Lebanon after war broke out and lived "comfortably" in United Arab Emirates and travelled for his education). Respondent's life was far from comfortable during the conflict—she was exposed to bombings, significant malnutrition, and death of others, including that of more than one sibling. During the armed conflict over 600 indigenous villages were massacred—the international community agrees the actions of the Guatemalan government were genocide. The widespread nature of the harm suffered by indigenous persons during the armed conflict does not undercut the particularized harm Respondent suffered. The harm was perpetrated by the Guatemalan government. "The majority of human rights violations occurred with the knowledge or by the order of the highest authorities of the State." Ex. 6A at 90. This report finds further that "[i]n general, the State of Guatemala holds undeniable responsibility for human rights violations and infringements of international humanitarian law." Id. at 93. Therefore, the Court finds Respondent has established past persecution on account of race perpetrated by the Guatemalan government.

To the extent Respondent argues she suffered past persecution on account of race at the hands of drug trafficking organizations, the Court finds the evidence does not support a finding that harm suffered was on account her race. Respondent's evidence, including expert testimony, establishes that drug trafficking organizations permeate the border region with Mexico and that indigenous communities are also located in this area. The drug trafficking organizations seek to control their areas through threats, extortion and killings. But the actions of the drug trafficking organizations are not because of the race of the victims, but because the drug trafficking organizations are exerting control in a geographic area. Therefore, the Court finds Respondent has not established past persecution on account of race perpetrated by drug trafficking organizations.

b. Rebutting Past Persecution On Account of Race

The Court finds DHS has met its burden to establish changed country conditions in Guatemala, thereby rebutting the presumption of a well-founded fear of future persecution where a finding of past persecution has been made. The armed conflict in Guatemala ended in 1996 with the signing of the peace accords. Respondent and her family returned to their hometown. The government provided the family with building supplies to rebuild a home. The government has acknowledged the genocidal behavior and prosecuted former military personnel See Ex. 6A at 57–237; Ex. 18A. The armed conflict ended over twenty years

ago. In fact, as will be discussed further below, the Respondent's current concerns seem to be primarily related to private actors, not the Government. Specifically, drug traffickers operating in Guatemala. As such, the Court finds DHS has met its burden to rebut a finding of a well-founded fear of future persecution.

c. Particular Social Groups – Rural Indigenous Guatemalan Women and Indigenous Guatemalan Women

Respondent argues she suffered past persecution on account of particular social groups, articulated as rural indigenous Guatemalan women and indigenous Guatemalan women. The Court finds, assuming arguendo that the particular socials groups are cognizable, that Respondent has not established harm she suffered rises to the level of persecution, nor was it on account of her membership in the articulated particular social groups. Further, Respondent has not established the government inflicted the harm or was unwilling or unable to protect Respondent from her persecutors.

When the drug traffickers threatened her father and then sat outside his house, Respondent's evidence does not establish these actions were because Respondent is a rural indigenous Guatemalan woman or, more broadly, an indigenous Guatemalan woman. These incidents stemmed from Respondent's father failing to submit to the traffickers demands to stay of off land over which the traffickers were claiming control.

Respondent was also the victim of a home invasion. The perpetrators forced their way into her house, with a gun, and pushed and shoved her. They told her if she did not cooperate, they would rape her. Respondent fought back, and eventually gave them her savings—after which they left. The Court finds this single incident of physical assault does not rise to the level of harm to be persecution.

Dr. Knauer described that indigenous women are vulnerable because of historical marginalization and perpetrators are unlikely to be held accountable. The evidence does not establish that the criminal incident against Respondent occurred because of her status as a member of one of the aforementioned particular social groups. The demand was for money, something wholly untied to Respondent's status as a women. Respondent's potential vulnerability as a woman does not mean that she was attacked *because of her status* as a rural indigenous woman. Being part of a vulnerable population that is then subjected to criminal behavior because the perpetrators are less likely to be caught, does not equate to suffering harm because of membership in the particular social groups. As such, Respondent has not met her burden to establish that she suffered harm rising to the level of persecution on account of her particular social groups, rural indigenous Guatemalan women or indigenous Guatemalan women.

d. Particular Social Group – Nuclear Family Member of [redacted]

Respondent argues she suffered past persecution on account of the particular social group, the nuclear family of [redacted], her father. Assuming without deciding that the particular social group is cognizable, the Court finds Respondent has not met her burden to establish harm rising to the level of persecution, or having suffered harm on account of her membership in this group. Respondent described that [redacted] has a car, and as drug traffickers moved into the area, they took control of lands [redacted] traversed to get to work. The drug traffickers demanded he not use this route and [redacted] did not comply with these demands. Several weeks later, a group of drug traffickers parked outside [redacted] home while he was hosting extended family at his home. The traffickers stayed several hours at a time for about a week; they yelled threats at the family, and shot their firearms into the air. The family remained in the house throughout the duration of this week. Eventually, the traffickers left and the family also left. The traffickers returned about a week later, at another family gathering, and stayed for several hours. The Court finds this harm does not rise to the level of harm to be persecution. There was no physical harm and the threats were not so specific and imminent as to meet the definition of persecution. The traffickers showed up at the house when [redacted] was hosting family events. Respondent described the events as having extended family in attendance; therefore, Respondent's evidence does not establish that she was targeted because of her status as a nuclear family member of [redacted]. Nor did Respondent present evidence that the home invasion occurred because of her status as a nuclear family member of [redacted]; the perpetrators did not mention her family during the attack. As such, Respondent has not established past persecution on account a particular social group, the nuclear family of [redacted].

e. Imputed Political Opinion – Anti-gang

The Eighth Circuit has repeatedly held that opposing gangs is not sufficient to establish a political opinion for the purposes of asylum. See Gomez-Rivera v. Sessions, 897 F.3d 995, 999 (8th Cir. 2018) (holding that evidence can establish a gang is politically minded, but evidence must also establish that the gang is imputing a political opinion on the applicant); Garcia v. Holder, 746 F.3d 869, 873 (8th Cir. 2014) (finding evidence established gang attack was because of applicant resisting extortion demands, not because of an imputed political opinion); Ortiz-Puentes v. Holder, 662 F.3d 481 (8th Cir. 2011) (holding applicants did not present evidence that gang violence they suffered was on account of their political opinion); Marroquin-Ochoma v. Holder, 574 F.3d 574 (8th Cir. 2009) (holding that opposition to a gang "does not compel a finding that the gang's threats were on account of an imputed political opinion"). Respondent's evidence is not sufficient to establish that the attacks by the drug traffickers, either at her home or the home of her father, were on account of a political opinion the traffickers imputed on Respondent. The fact that Respondent's father is involved in the Junta Directiva, and that Respondent's aunt was elected mayor, do not establish the traffickers were imputing a political opinion on

Respondent. Respondent presented evidence that the traffickers remained outside her father's house and that someone, they presume a trafficking organization, shot firearms at the roof of her aunt's home when the aunt was elected mayor. Respondent did not present evidence that other family members in similar situations were attacked because of her father's or aunt's political positions. The evidence is insufficient to establish to establish that when the traffickers were outside Respondent's father's house, the traffickers' purpose was rooted in the family's involvement in politics, as opposed to Respondent's father's direct refusal to not drive across property the traffickers controlled. Respondent did not present evidence that during the attack at her home the assailants made any mention of political opinions or actions of Respondent or Respondent's family. As such, the Court finds Respondent has not met her burden to establish past persecution on account of imputed political opinion.[6]

6. Well-Founded Fear of Future Persecution—Analysis

Respondent argues she has a well-founded fear of future persecution on account of the aforementioned basis: race, imputed political opinion (perceived anti-gang in a small village controlled partly by gangs), and particular social groups articulated as: indigenous Guatemalan women, rural indigenous Guatemalan women, and nuclear family of [redacted]. Ex. 19A at 1.[7] Respondent fears harm at the hands of drug traffickers. The Court finds Respondent has not met her burden to establish a reasonable possibility of suffering harm rising to the level of persecution, or that the government is unable to unwilling to protect her from the persecutors.

Respondent has a general fear of the drug traffickers in [redacted]. She testified that family remaining in [redacted] describe that the traffickers scare the women, make fun of those speaking the indigenous language, and fear the traffickers kidnapping children. The evidence is insufficient to establish that Respondent's generalized fear of the gangs amounts to persecution. Respondent did not present evidence that her remaining family in [redacted] have suffered more than generalized gang violence. Generalized gang violence does not amount to persecution under the act. See De Guevara v. Barr, 919 F.3d 538, 540 (8th Cir. 2019) ("A generalized fear of gang violence is not a basis for asylum.")

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[6] The Court need not address the remaining elements of past persecution. See INA v. Bagamasbad, 429 U.S. 24, 25–26 (1976) ("As a general rule courts and agencies are not required to make findings on issues the decision of which is unnecessary to the result they reach." (internal citation omitted)); Matter of A-B-, 27 I&N Dec. 316, 340 (A.G. 2018) ("Of course, if an alien's asylum application is fatally flawed in one respect—for example, for failure to show membership in a proposed social group—an immigration judge or the Board need not examine the remaining elements of the asylum claim." (internal citation omitted)).

[7] Previously, Respondent articulated the basis for her well-founded fear as (1) indigenous Guatemalan women whose husband lives outside the country and sends her money, and (2) a member of a family who has been vocal against the presence of a violent gang in a small community. Ex. 6A at 24–25. Respondent orally articulated basing persecution on Gender. As noted *supra*, Gender must be articulated as a particular social group. See *supra* n.4. The Court reviews Respondent's most recently articulated basis from the written closing argument. Ex. 19A.

(citing Constanza v. Holder, 647 F.3d 749, 754 (8th Cir. 2011)).

Respondent has not established the government would be unwilling or unable to help protect her from those she fears will cause her harm. Respondent testified about an incident in which a community member went to the capital city to obtain help from law enforcement regarding the traffickers. Law enforcement came to the community; however, the traffickers heard law enforcement was coming and left the area before law enforcement arrived. After law enforcement left, the drug traffickers returned and assaulted the man who made the report and his family. Respondent did not present evidence as to whether the victims reported the assault. That incident alone does not establish that the Guatemalan government is unable or unwilling to assist victims of the traffickers.

Criminal organizations have perpetrated violence and extortion throughout Guatemala. Ex. 8A at 1153. Criminal proceedings against powerful actors often suffer long delays. Id. at 1153. "Corruption and inadequate investigations made prosecution difficult, and impunity continued to be widespread." Id. at 699. But evidence establishes that in the recent past the government has made progress against impunity, id. at 371–72, and has enacted laws against corruption. Id. at 384. The government "develop[ed] laws and institutions to provide protection and justice for women in general and for indigenous women in particular," id. at 386, although a shortage in available resources existed. Id. at 387. There are specific bodies to deal with prosecution of crimes against women. Id. at 390. "Indigenous people have low rate of access to justice, but state is providing training" and is in the process of making constitutional reforms. Id. at 390. Further, "indigenous peoples have increasingly turned to the judicial system for the protection of their rights." Id. at 911. The government has cooperated with the International Commission against Impunity in Guatemala, and while its mandate was not renewed, its powers were being transferred to the Public Ministry. Id. at 699. The Office of the Attorney General investigated and prosecuted members of criminal networks that infiltrated the government. Id. at 908, 912 (arresting a military chief in connection with drug trafficking). This evidence does not show that the government is unwilling or unable to protect Respondent. Dr. Knauer testified that she believes police hold stereotypical and prejudiced views against indigenous women. Dr. Knauer also testified that there have been efforts to remove law enforcement from the payrolls of drug trafficking organizations, although they have been inconsistent. Dr. Knauer also testified about discrimination suffered generally by indigenous peoples in Guatemala. General prejudice and discrimination does not rise to the level of persecution. Respondent's evidence does not establish the Guatemalan government is unwilling or unable to protect Respondent.

Because Respondent cannot establish a reasonable probability of persecution or that the government is unwilling or unable to protect her, she cannot meet her burden to establish a well-founded fear of future persecution warranting a grant of asylum.[8]

[8] See *supra* n.6.

7. Humanitarian Asylum—Analysis

Respondent argues that she is eligible for humanitarian asylum based on the severity of her past persecution, or alternatively because she is likely to suffer other serious harm. As the Court finds Respondent only established past persecution on account of her race, Respondent cannot rely on harm that is not related to this finding of past persecution for the first prong of humanitarian asylum. See Mambwe v. Holder, 572 F.3d 540, 549 (8th Cir. 2009) (holding that "Since humanitarian asylum may only be granted to 'an alien found to be a refugee on the basis of past persecution,' it follows that [the applicant] cannot establish her eligibility for humanitarian asylum based on" harm arising on account of other grounds) (citation omitted).

As stated above, the Court finds the harm Respondent suffered amounts to past persecution on account of her race. However, the Court finds it is not severe or "particularly atrocious" so as to warrant a grant of humanitarian asylum. The pursuit of the Guatemalan military forced Respondent to live in the jungle with her family for some number of years during her childhood, moving often so as to avoid physical harm at the hands of the Guatemalan military. Respondent was without proper nutrition or adequate housing. Respondent was not subject to physical injury. Respondent did not present evidence of having received medical treatment for any physical harm, such as malnutrition, that she suffered. Respondent presented evidence that there were air attacks perpetrated by the Guatemalan military. Respondent is still afraid when aircraft fly over. Respondent testified that she saw people die and saw dead bodies. Respondent did not present evidence that she has sought treatment for psychological trauma. See Mambwe v. Holder, 572 F.3d at 550. The persecution did not last into Respondent's adulthood. At 9 years old, Respondent was able to move out of the jungle. Given the degree of harm, which ended in childhood, "and the lack of evidence of severe psychological trauma stemming from the harm," the Court finds Respondent has not met her burden to establish severe harm warranting a grant of humanitarian asylum. See Matter of N-M-A-, 22 I&N Dec. 312 (BIA 1998).

The Court finds Respondent has not established a reasonable possibility that she will suffer other serious harm if she is removed to Guatemala. As described *supra* in Part V.A.6, Respondent has a generalized fear of drug traffickers in [redacted] and Guatemala as a whole. Respondent's evidence establishes drug trafficking and other criminal organizations are active in Guatemala and the region in which her family resides. But Respondent has not established reasonable possibility she will be subject to any harm that rises to the severity of persecution. Her family continues to reside in [redacted]; her mother was on the Junta Directiva and her father is presently on the Junta Directiva. Respondent's mother's describes fearing "masked men" and leaves the Court to speculate as to whether she means traffickers. Her only interaction with "masked men" occurred when six masked men approached a group of women washing at the creek, threatened them with violence, and chased the women away. Ex. 8A at 46. The other threats being made by "the masked men" are leaving drawings that "threaten to rape women" by drawing

"obscene images on the ground." Id. at 47. Respondent did not describe either of her parents having other recent interactions with the traffickers. Respondent's aunt was elected mayor on a platform opposing the traffickers in their community; upon her election, the roof of her home was damaged by being shot at; Respondent did not describe her aunt having other interactions with the traffickers. Respondent testified that her siblings continue to reside in [redacted], she did not describe any of them have suffered harm at the hands of the traffickers. Respondent's mother-in-law describes traffickers going to single women's homes, demanding money, and beating the women if they have none. Id. at 54. While these physical assaults are troubling, they are not harm rising to the level of persecution. Nor is traffickers offering to buy children and then beating the family if they refuse. See id. at 54. The evidence is insufficient to establish the harm Respondent fears is a reasonable possibility of harm rising to the level of persecution. See Matter of L-S-, 25 I&N Dec. 705, 714 (BIA 2012) (holding "'other serious harm' must equal the severity of persecution").

Respondent established past persecution on account of race. DHS met its burden to establish changed country conditions rebutting the finding of past persecution. Respondent did not establish past persecution on account of any other protected grounds. Respondent did not establish a well-founded fear of future persecution. Respondent did not establish eligibility for humanitarian asylum. Accordingly, Respondent is ineligible for asylum under the Act.

B. Withholding of Removal under the Act

"An applicant who fails to establish a well founded fear of persecution [under the asylum standard] also fails under the more stringent standard of proof required for withholding of removal." Prokopenko v. Ashcroft, 372 F.3d 941, 944 (8th Cir. 2004) (internal citation omitted). As Respondent failed to establish a well-founded fear of persecution on account of a protected ground for asylum, she also fails to establish eligibility for withholding of removal. Therefore, Respondent's application for withholding of removal under section 241(b)(3) of the Act is denied.

C. Convention Against Torture[9]

Respondent has applied for protection under the Convention Against Torture. See 8 C.F.R. § 1208.13(c)(1). The burden of proof is on the applicant to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. Id.

An independent analysis of a claim under the Convention Against Torture is required only where there is evidence that the applicant would face torture for reasons unrelated to her

[9] Article 3 of the United Nations Convention Against Torture, Dec. 10, 1984, S. Treaty Doc. No. 100-20 (1988).

claims for asylum and withholding of removal. See Guled v. Mukasey, 515 F.3d 872, 882 (8th Cir. 2008). The Court finds Respondent has not presented evidence of a claim for protection under the Convention Against Torture for reasons unrelated to her underlying claim for asylum and withholding of removal. Therefore, the Court need not conduct an independent analysis of Respondent's Convention Against Torture claim. The Court finds Respondent has not met her burden to establish eligibility for protection under the Convention Against Torture.

ORDERS

IT IS HEREBY ORDERED: [redacted] application for asylum under section 208 of the Act is **DENIED.**

IT IS HEREBY ORDERED: [redacted] derivative application for asylum under section 208 of the Act is **DENIED.**

IT IS FURTHER ORDERED: [redacted] application for withholding of removal under section 241(b)(3) of the Act is **DENIED.**

IT IS FURTHER ORDERED: [redacted] application for withholding or deferral of removal under the Convention Against Torture is **DENIED.**

IT IS FURTHER ORDERED: [redacted] is ordered **REMOVED** from the United States to **GUATEMALA.**

IT IS FURTHER ORDERED: [redacted] is ordered **REMOVED** from the United States to **GUATEMALA.**

NOTICES

If either party elects to appeal this decision, the 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).

The Court has ordered you removed from the United States. If you fail to apply for travel documents required to depart the United States, fail to present yourself for removal as instructed, fail to depart the United States as instructed, or take any action to hamper your departure, you could be subject to civil or criminal penalties, including fines over $700 per day and up to 10 years imprisonment.

Brian Sardelli
United States Immigration Judge