

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
Los Angeles, California

Files A [REDACTED]  
A [REDACTED]

January 14, 2009

In the Matters of

[REDACTED], [REDACTED] )  
[REDACTED], [REDACTED] )  
[REDACTED] )  
Respondents )  
IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended - alien present in the United States without being admitted or paroled or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: Asylum; Withholding of Removal under Section 241(b)(3); Withholding of Removal under the Convention Against Torture.

ON BEHALF OF THE RESPONDENTS:

ON BEHALF OF THE DEPARTMENT OF  
HOMELAND SECURITY:

[REDACTED]

[REDACTED]

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

INTRODUCTION AND JURISDICTIONAL STATEMENT

The respondents are 19-year-old single female natives and citizens of El Salvador who entered the United States on or about July 30, 2006. They have admitted before the Court that they entered without inspection and were not either admitted or paroled after inspection by an Immigration officer on that date.

The Department of Homeland Security brought charges against the above-named respondents by issuing them Notices to Appear, dated July 30, 2006 and contained in the record of proceedings as Exhibits 1-A and 1-B. These documents were filed with the Immigration Court on November 6, 2006. At a hearing before this Court, the respondents admitted the factual allegations contained in the Notices to Appear and conceded the charge of removability.

They have filed for relief in the form of asylum, withholding of removal under Section 241(b)(3) of the Immigration and Nationality Act, and withholding of removal under the Convention Against Torture.

BURDEN OF PROVING ELIGIBILITY FOR RELIEF

The respondents shall have the burden of establishing that they are eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. If the evidence indicates that one or more of the grounds for mandatory denial of the application for relief apply, the alien shall have the burden of proving by a preponderance of the evidence that such grounds do not apply. See 8 C.F.R. Section 1240.8(d).

STATUTORY ELIGIBILITY

It appears that the respondents may qualify statutorily for the relief requested. It is therefore their discretionary eligibility that is currently before this Court.

SUMMARY OF EVIDENTIARY RECORD ON RELIEF

The evidentiary record of this proceeding consists of



documentary Exhibits 1 through 16. These exhibits are as follows. Exhibits 1-A and 1-B, Notices to Appear. Exhibits 2-A and 2-B, motions for change of venue. Exhibits 3-A and 3-B, Office of Refugee Resettlement Division of Unaccompanied Children Services, U.S. Department of Health and Human Services Office of Refugee Resettlement Verification of Release Form. Exhibits 4-A and 4-B, Forms I-589, application for asylum and for withholding of removal. Exhibit 5, Notice of Privilege of Counsel and Consequences of Knowingly Filing a Frivolous Application for Asylum. Exhibit 6, Alien's Change of Address Form/Immigration Court. Exhibits 7-A and 7-B, letter from the Immigration Court to the Department of State requesting Advisory Opinions in the cases. Exhibit 8, Declaration of [REDACTED] in Support of Applications submitted by [REDACTED], [REDACTED], and attachments submitted in support of that statement, contained in the record of proceeding as Sub-exhibits 1 through 6. Exhibit 9, Declarations of [REDACTED] and supplemental material attached thereto, reflected as Sub-exhibits 1 and 2. Exhibit 10, brief submitted in support of the respondents' applications for asylum, paginated as pages 1 through 18. Exhibit 11, supplemental documentation submitted in support of the I-589 applications for asylum and for withholding and supplemental material attached thereto, reflected as sub-tabs A and B. Exhibit 12, witness lists of respondents in [REDACTED]

support of their applications for relief. Exhibit 13, proposed order granting motion to request the admission of telephonic testimony. Exhibit 14, respondents' motion for the admission of telephonic testimony and supplemental material attached thereto, containing the curriculum vitae of [REDACTED] contained in that exhibit at Sub-exhibit A. Exhibit 15, respondents' addendum to motion for the admission of telephonic testimony. Exhibit 16, copy of passport.

There was no objection raised regarding the documentary exhibits submitted by the respondents in support of the application, except to the extent that the Department of Homeland Security objected to the submission of telephonic testimony. However, the Court granted the respondents' motion for telephonic testimony of the expert witness in that pro bono counsel made a compelling argument that it was financially not feasible to present that witness in court.

The Government also raised objections regarding Exhibit 9, sub-tabs 1 and 2, which contain the letter of [REDACTED] and the letter of [REDACTED] on the grounds that these individuals were not available in court to testify. Government also objected to the letter contained at Exhibit 9, Sub-exhibit 2 from [REDACTED] (phonetic sp.), Chief of the National Civil Police of El Salvador, on the grounds that that individual was not available in court to testify. The Court has noted those

objections and will attribute the proper weight to these documents, given the Government's objections. The Court notes that all documents have been deemed admitted. There are no documents that have been excluded from the evidentiary record.

The testimonial evidence in this case consisted of the testimony of the two respondents and the expert witness, [REDACTED] who is a purported expert on gang activity in El Salvador. The Court had an opportunity to observe the demeanor of the two respondents while testifying. The Court considered the totality of the testimony presented along with the documentary evidence submitted into the record, and upon careful consideration of all the facts of record individually and cumulatively, the Court makes a firm finding that the two respondents were credible witnesses. The Court found that the statements that they made in court were the same as those presented in the documents submitted in support of their case. Their demeanor was appropriate to the subject matter being discussed. They were responsive to the questions being asked and exhibited no evasiveness that was apparent to the Court.

With respect to the testimony of [REDACTED] the Court accepted telephonic testimony and because of that was unable to observe demeanor in the testimony from a visual standpoint. However, the Court noted that the testimony tracked the documentary evidence submitted in support of the expert testimony and the witness appeared to testify with responsiveness

[REDACTED]

to the questions being asked, and no evasiveness. And considering the plausibility of the statements as well as the consistency between the written and oral statements, I find that that witness was a credible witness as well.

All admitted evidence identified above has been considered in its entirety regardless of whether specifically mentioned in the text of this decision.

STATEMENT OF THE LAW ON ELIGIBILITY FOR RELIEF

The Attorney General may in his discretion grant asylum to an applicant determined to be a refugee within the meaning of Section 101(a)(42)(A) of the Immigration and Nationality Act. An alien establishes refugee status if he is unable or unwilling to return to his country of nationality either because: (1) he was persecuted in the past; or (2) he has well-founded fear of future persecution "on account of race, religion, nationality, membership in a particular social group, or political opinion." Id. See also INS v. Cardoza-Fonseca, 480 U.S. 421, 423 (1987); Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998). The Attorney General must withhold deportation of any asylum applicant who establishes a clear probability of persecution, which is a stricter standard than the well-founded fear standard for asylum. See INS v. Stevic, 467 U.S. 407, 430 (1984). The applicant has the burden of proving eligibility with credible, direct and specific evidence.

To qualify for protection under the Convention Against




Torture, the applicant must establish that he or she suffered torture, i.e., severe pain or suffering intentionally inflicted for discriminatory purposes "by or at the instigation of or with the consent or acquiescence of a public official of other person acting in an official capacity." See 8 C.F.R. Section 208.18(a)(1). Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.

In order for a respondent to establish eligibility for relief based on membership in a particular social group, the respondent must establish that the group is cognizable as a particular social group under the Act, and that the respondent qualifies as a group member. See Sanchez-Trujillo v. INS, 801 F.2d 1571, 1574-75 (9th Cir. 1986). This restriction was created with the intent to "preserve the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required, to avoid persecution." Matter of Acosta, 19 I&N Dec. 211, 233-34 (BIA 1985), modified on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439, 441 (BIA 1987). For an individual to be a member of a particular social group, he must be a member of a group of persons all of whom share a common, immutable characteristic. Id. at 233. The shared characteristic may be innate, such as sex, color, or kinship ties, or in some circumstances it might be

a shared past experience, such as former military leadership or land ownership. Id. In other cases, it must be something that cannot be changed or should not be required to be changed because it is fundamental to the members' individual identities or consciences. Id.

The Ninth Circuit has identified two types of qualifying social groups: (1) groups with a voluntary associational relationship among their members, described as "a collection of people closely affiliated with each other, who are actuated by some common impulse or interest" (Sanchez-Trujillo v. INS, 801 F.2d 1571, 1576 {9th Cir. 1986}); or (2) groups whose members share an innate characteristic that is so fundamental to their identities or consciences that members either cannot or should not be required to change it (Hernandez-Montiel v. INS, 225 F.3d 1084, 1093 {9th Cir. 2000}).

With respect to voluntary association, the Ninth Circuit has held that a social group must be defined by more than the fact that individuals in that group all suffer persecution or face a common danger. Id. at 1576. A mere demographic division of the population, unlike a cohesive homogenous group, is insufficient to constitute a particular social group. Id. at 1576-77. Rather, of central concern is the existence of a voluntary associational relationship among the purported members which imparts some characteristic that is fundamental to their identity as a member of that discrete group. Id. In Sanchez-



Trujillo, the Ninth Circuit held that a class of young urban working class males of military age who had maintained political neutrality is not a social group because the group is too broad and encompasses so many variables that recognition of such a class would render the definition of refugee meaningless.

There is a second branch, however, based on innate characteristics, which parallels the analysis set forth in Matter of Acosta. The Ninth Circuit in Hernandez-Montiel, 225 F.3d, at 1092, recognized that their voluntary association requirement conflicts with Matter of Acosta's immutability requirement because not all characteristics that should be recognized as defining a particular social group, such as family relationships, can be considered voluntary. The Ninth Circuit therefore formally adopted its bifurcated approach that a social group can be defined by a voluntary association or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot or should not be required to change it. Id. at 1093.

In its decision, the Court explained that this formulation recognizes the holding of Sanchez-Trujillo and harmonizes it with Acosta's immutability requirement. Id. at 1093 footnote 6. In following that new approach, the Court found that sexual orientation and sexual identity are immutable and are so fundamental to one's identity that a person should not be required to abandon them.

The Board of Immigration Appeals has identified additional factors to consider in cases such as these. In Matter of C-A-, 23 I&N Dec. 951 (BIA 2006), the Board reexamined the definition of particular social group and held that one factor that ought to be considered in the Matter of Acosta analysis is the extent to which members of a society perceive those with the characteristic in question as members of a group. See C-A-, 23 I&N Dec. at 956. After examining the Ninth Circuit voluntary association type of group, the Board determined that it would continue to adhere to the Acosta formulation, wherein the adjudicator is not required to find a voluntary association relationship or an element of cohesiveness. See C-A-, 23 I&N Dec. at 956-57.

And the recent guidelines issued by the United Nations confirm that visibility is an important element in identifying the existence of a particular social group. See Guidelines on International Protection: "Membership of a Particular Social Group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees(2), available at <http://www.unhcr.org/publ/publ/3d58de2da.pdf>. The Board explained in Matter of C-A- that all of its previous decisions recognizing particular social groups involved characteristics that were highly visible and recognized by others in the country in question. Id. at 960. In determining whether a particular social group is socially visible, an Immigration

Judge may examine the appropriate context by looking at the background evidence in the record.

In addition to social visibility, a factor to be considered in determining whether a particular social group exists is whether the group can be defined with sufficient particularity to delimit its membership. See Matters of A-M-E- and J-G-U-, 24 I&N Dec. 69, 76. In those cases, the Court found that terms such as wealthy and affluent standing alone are too amorphous to provide an adequate benchmark for determining group membership. It also held that particularity is a problem when a proposed social group is too "subjective, inchoate and variable" to be identified, as opposed to merely indeterminate at the margins, which is often the case in describing group membership. See Id. It held that the concept of wealth, for example, is too subjective because "the proposed group could vary from as little as one percent to as much as 20 percent of the population or more."

In 2007, the Ninth Circuit discussed particular social group in the case of Arteaga v. Mukasey, No. 05-70368, 2007 WL4531961 at page 3 (9th Cir. Dec. December 27, 2007). That case involved the consideration of whether a petitioner's shared experience of being a current or former gang member qualifies as an innate characteristic, and the Ninth Circuit held in that case that the petitioner in that case's unique and shared experience as a gang member is materially at war with those that are innate

for purposes of membership in a particular social group. The Court held that in that case the category of non-associated or disaffiliated persons in the context of that case is far too unspecific and amorphous to be called a social group whether that person is tattooed or not. Id. at page 5.

FURTHER ANALYSIS AND FINDINGS

DEPARTMENT OF STATE REQUEST FOR COMMENT

The asylum applications provided by the respondents were forwarded to the Department of State for comment on July 27, 2007. No response was received from the Department of State.

APPLICABILITY OF THE REAL ID ACT

In that the respondents filed their applications for relief after May 11, 2005, the provisions of the REAL ID Act apply to this case. In its opening statements before this Court and as reiterated in the closing statements at the conclusion of the testimony, the respondents' counsel argued that present in this case are two twin sisters who have fled their home country because they were targeted by gang members for rape and murder. Government counsel has objected to the social group that has been defined by respondents' counsel as arguing that it does not meet the standards set forth in the Immigration and Nationality Act such that this Court can find that respondents have met their burden of establishing membership in a particular social group. That is what is at issue before this Court.

FACTUAL FINDINGS



In her testimony before this Court, [REDACTED] testified that she is a citizen of El Salvador who was born on [REDACTED]. She testified that she is currently living with her grandmother in Los Angeles and that she arrived in the United States on August 9, 2006 through Phoenix, Arizona. She stated that she had no prior entries and no departures after entry. She has also stated she has no arrests or detentions and has never committed a crime.

Regarding her circumstances and living conditions in El Salvador, she testified that she lived in a barrio in San Jacinto Colonia de Tepeyac. This is a small town in El Salvador where she lived with her mother and father. Her mother worked selling food on the street and her father worked as a tailor. She said that she was young and did not work. She testified that her father was a drug addict and his addiction affected the family because when he "takes drugs he gets mad." Under cross-examination, she stated that she lived with her mother, father, and sister, as well as [REDACTED], who is 16 years of age; and [REDACTED], who is 13 years of age.

None of her family members are gang members and none of them have been asked to join a gang. She was asked do you know why they were never asked to join a gang, and her response was because they hardly ever go out into the street. Government counsel stated but these individuals are over the age of 13, and pressed her to see if she knew why they had not been asked even

though they were over that age. Her response was because we would help our mother with our work, and after she saw what had happened to us she would not let these younger girls go out. There were always guys hanging around outside their home.

The respondent testified that she came to the United States because maras and gangs were "persecuting us." Every time we would go to school or the stores they would follow us, and surround us and threaten us. Ten to 12 individuals would do this, coming as close as two feet in the process of addressing them. She said that she was about 13 when this started happening, and she would be going to school and to the store and she would be approached on a daily basis. She also said there was always one male gang member standing outside of her home, and she identified him as a gang member because he had a lot of tattoos that were visible on him as well as the MS tattoo on his forehead. Although she did not have windows from her home through which she could observe this individual, she knew that someone was waiting outside because their neighbors would notify them that the same gang members were always waiting outside. The gang members would say to her and her sister ~~if we did not join~~ them or get into the gang we would be killed. They said if we did not get in they would kill the family or rape us. By stating family, they were referring to her parents and her siblings. Because we were of age, the boys in the gang wanted to rape us. And we were old enough to get into the gang, which was 13 years

old for membership according to her understanding.

It was also her understanding that gang members carried knives and pistols. And when they would try to get her to join the gang they would threaten her with these weapons. They would say that if they did not join they would be killed with the weapons. Regarding her opinion of gangs, she stated that she never considered joining the gangs because she does not like violence and she does not like that other girls would be raped. She told them that she did not want to join the gang and said, "I don't want to get in because I'm afraid and I don't like that." She is also fearful that "they would rape or kill them, us, me." These individuals who were asking her to join the gang would then get angry. They also said they would kill their mother if she and her sister did not join, and that if they failed to participate and join the gangs, they would be forced to join by force.

She stated that they did make efforts to gain assistance and protection in the following manner. Her mother went to the police and reported these incidents. But the police did not want to do anything because they too were afraid of the gangs. She told the police that the gang members are following us so that we could join, and trying to force us to join the gang. The police told them that they would see what they could do, but they never did anything according to respondent's understanding. Also their father never did anything to protect

them. Their mother paid for taxis to assist them in going to and from school because she perceived this as a manner of protection for them. And they started using the taxis to go to school at the age of 14. It was very difficult financially for them to afford taxis, but they considered this mandatory from a safety standpoint. They took taxis to the store as well. And ultimately they found they could not go out at all because gang members were always waiting outside for them.

[REDACTED] also testified that she is aware of incidents in which gang members have approached schoolmates, and she knows of two girls who were caught, taken by car, raped, decapitated and killed. She is fearful of this gang violence that she has witnessed because she knows that the individuals that took these schoolmates are members of the same gang that had asked them to join. The two girls' names are [REDACTED] and [REDACTED]

[REDACTED] She also said that on one occasion she witnessed the stabbing of a gang member of a young male person walking along the street. She described the circumstances under which she witnessed this as observing the man walking down the street and him observing that gang members were following him. And so one of the two boys ran away; however, the other was caught by a gang member. When he was caught he was stabbed by those that had caught him. This incident was reported to the police, but there was no action taken according to respondent's understanding. She also witnessed a person being shot in the head because he refused

to hand over money to gang members.

She knows of several friends that have joined gangs. She testified that [REDACTED] had joined, and [REDACTED] had joined. But ultimately, [REDACTED] was killed; she was also raped and killed by the gang members. She knows of other females that have been raped and killed as well, and she knows these individuals that engage in this activity are gang members because they leave markings on their victims' bodies, such as MS carvings in their bodies. When she was asked why she left, she stated, "because I didn't want to die and I didn't want to be raped." She thinks this would happen because all of this has been done to her female friends. She said that if she had stayed most likely she would be raped. She fears returning because she thinks she would be killed since she escaped from the gangs and this is what has happened to other girls who have returned to El Salvador. She says that all of these incidents have taken a toll on her physically and emotionally. She stated that there were times in El Salvador that she felt that gang members were arriving and she would quickly go under her bed, and she still feels fear here in the United States.

She testified that she presented some documents that her mother was able to obtain from the mayor in their town as well as the chief of police stating that they do not believe that they can protect these young twins. Here in the United States she has started studying at the [REDACTED] and [REDACTED]

is studying English.

Under cross-examination, the Government asked respondent regarding her siblings still at home in El Salvador as to whether or not they were being approached by gangs, and she stated that they were not approached by gangs. But she believes that this is because they hardly ever go out and they are under close watch and protection by their mother, who limits their physical activity severely. Furthermore, under cross-examination respondent stated that her sister [REDACTED] was kidnapped for a day once in mid-2007. But she was kidnapped in connection with an individual that is unrelated to the gangs and who had previously assisted the family in moving furniture. However, after paying the ransom, this sister was released.

She said that when she was 14 there were some incidents when gang members surrounded her, but that she was careful to stay away from those gang members and would always take taxis whenever she went anywhere in El Salvador. She testified that she moved to the [REDACTED] because of the gang activity at her high school, [REDACTED] High School. She stated that MS-13, the gang that had been harassing her and persecuting her in El Salvador, was present at [REDACTED] High School and they asked her to join, but she refused.

On redirect, she was asked, "did the gangs threaten you up until the time you left for the U.S." and she said no. She was asked when did they stop threatening you, and she said when [REDACTED]

we came here. She was asked did you come here because the gangs were continuing to threaten you, and she said yes. She was asked what was the last incident with the gangs before you left for the U.S. She said she did not recall. She was asked when you testified that you were not harmed by the gangs did you mean no physical harm, and she said yes, but there was fear. She was asked when you took taxis did your mother accompany you, and she said yes and that her mother still accompanies her sisters by a taxi.

The testimony of [REDACTED] mirrored that of her sister's. She adopted her sister's testimony and stated that her sister's testimony also accurately reflected her experience in El Salvador. She testified that she started receiving threats from gangs when she was 13. Gang members showed her weapons, such as a pistol, when they were threatening her. She saw a gang member kill an individual when a man was shot by a gang member, and she also saw that knives were used. She saw a gang member stab someone as well. But all of these incidents were the same as those already testified to by her sister.

When asked why she left, she said she left El Salvador because the gang members were following them. If she stayed she could be killed, raped, or there would be harm to her parents. She said, "they always do this to those who don't join the gangs." She said that if she returned she would be killed,

raped, or beaten if returned, because the gang members would know that we left fleeing and now we are returning. She is also currently enrolled in school studying English and has the hope of becoming a nurse.

Under cross-examination she was asked do you know if the crimes that you witnessed in El Salvador were ever prosecuted, and she said she does not know.

Respondents put forth the telephonic testimony of expert witness [REDACTED] who purports to be an expert on gang activity in El Salvador and in support of his expertise offers that he bases this expertise on his experience living and working in El Salvador and through working in [REDACTED] through which he conducted studies of gang activity. He stated that he has offered to talk to gangs generally and he is very knowledgeable about the country conditions in El Salvador. He also submitted his resume in which he sets forth that he founded [REDACTED] in El Salvador, which worked with gang youths to diminish violence and drug use. He has worked with MS-18 and Mara Salvatrucha gangs in that country and he is regarded as an expert in the field of gang activity in El Salvador. He is noted for having produced the first demographic study on gangs in El Salvador, which was the product of a three-month study in which he studied the gangs himself. He is an adviser on this issue and speaks regularly with directors of various agencies on anti-violence work.

The Government objected to his qualifications, stating that he was not qualified as an expert. In his arguments to the contrary, he testified that he has been to gang meetings in El Salvador, he knows their modus operandus, and their actions of violence and how they respond to recruitment tactics. He stated that their manner is very aggressive in trying to recruit young people and that they have acted in a violent and repressive manner in the past. He also testified that he has interviewed several women who have been beaten and harmed by these gangs in El Salvador and is fully aware of the actions of reprisal against family members for those who oppose the requests of the gangs in El Salvador. He stated that the police are more concerned with addressing the harms to the wealthy people and that they are not very effective in addressing problems of gang recruitment, harassment and threats to young women.

In preparation for his testimony before the Court, he stated that [REDACTED] reviewed the declarations of the respondents, the letter submitted by the mayor, and the information about school systems in that country. He also called his contacts who work with gangs trying to ameliorate their actions and effects in El Salvador and spoke specifically to the head of [REDACTED] who is currently working in El Salvador, working with gangs with an effort to try to stop gang activity. And the result of that conversation revealed that since more people from the United States are being deported, [REDACTED] who is the head of [REDACTED]

[REDACTED] reports that he has been seeing an increase in gang activity. He was asked are the twins' fears in line with general country conditions, and his response was yes, it would be a disaster if they went back. He stated that people in El Salvador become a target when nothing is done to protect them.

Under cross-examination, the Government questioned respondent further regarding his expertise in this field, and he stated that his expertise also is based on his 40 years of work working in nonviolence with Cesar Chavez. He has never seen, according to him, academics who have hands on experience except for a priest in East Los Angeles who does work that he finds exemplary. He stated that he lived in El Salvador and worked with El Salvadoran refugees, and he knows no one who has done that who is an expert in this particular field. Most experts on gangs have worked with gangs in Los Angeles, but he argues that he has done groundbreaking work in studying gangs because he has done so on the ground in El Salvador. He also points to the fact that others have used his study as a starting off point. When asked when he was last in El Salvador, he stated that he was last there three years ago but he planned to go back next month.

He knows that he has had employees that have been killed by the gangs in El Salvador and he is concerned that the young women who are present in this case are very vulnerable. He says that, "if you've been targeted already then you're even more vulnerable." He also said that there are some areas that are

even more targeted with gangs.

ASYLUM

8 C.F.R. SECTION 208.4

The respondents filed their applications within one year of arrival in the United States and thus satisfied the requirements of 8 C.F.R. Section 208.4.

BURDEN OF PROOF ISSUES

An asylum applicant does not meet his or her burden of proof by general and meager testimony. Rather, specific, detailed, and credible testimony or a combination of detailed testimony and corroborative background evidence is necessary to prove a case for asylum. In this case, the respondents have submitted three letters from individuals in Mexico who are intimately aware of the circumstances of gang violence in that country. While these individuals were not able to testify before this Court, the Court does give weight to their declarations as they are outside of the United States and it might have been impractical for them to appear.

In the letter contained at Exhibit 9 sub-tab 1, [REDACTED] [REDACTED] states that she has known the two respondents for more than 15 years and has known them to be honest, studious and responsible people who are respectful of the rules and laws of El Salvador. She testified that the two respondents were "constantly besieged by members of street gangs, specifically the so-called Mara Salvatrucha, with the objective [REDACTED]

that they join the Mara Salvatrucha to form part of their rank by way of the initiation process that is frequently carried out." She stated that these twins found themselves in danger and their lives were threatened by the gangs because they refused to join.

In a letter provided by [REDACTED] who serves a director of the [REDACTED], he sets forth that the respondents studied at that academic center during 1995 and through 1996. However, due to fear for their safety from local area gangs such as the Maras, they were forced to interrupt their studies in order to emigrate the United States so that they could save themselves from physical harm or injury and to save their lives.

The Court also notes that there is a third letter from the National Civil Police of El Salvador in the city of [REDACTED] in the department of [REDACTED] that states as follows. "I know the young ladies, [REDACTED] and [REDACTED], each 17 years of age and residents of [REDACTED] [REDACTED] who are generally known as honest and respected persons of humble origins. As such, I have knowledge that the aforementioned young ladies were constantly harassed by members of the gang known as the Mara Salvatrucha ('MS'), who constantly pressured the young ladies to join the gang and made threats that if the girls did not join the gang would cause physical harm to them or to their family. It is for these reasons that the

aforementioned minors felt obligated to emigrate to the United States of America to save their lives."

As the Court notes, respondents also set forth the testimony of an individual that purports to be an expert witness. While the Court notes that this individual testified as an expert, even if the Court were not to find that meets the standards of an expert witness, the Court could find that his information presented did meet the qualifications of a lay witness. Of course, there are no rules in the rules governing these proceedings regarding lay witnesses, but looking at the Federal Rules of Evidence, and specifically Rule 701, entitled Opinion Testimony by Lay Witnesses, this Court notes that that rule states that if the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are "rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." This Court does find that at a minimum this witness was a knowledgeable resource with significant experience in the respondents' home country, and I will give significant weight to his testimony even as a lay witness.

#### NEXUS

At issue in this case is whether the respondents have

established that they demonstrate a nexus between the past or anticipated persecution and one or more of the five grounds. See INS v. Elias-Zacarias, 502 U.S. 478, 481-82 (1992). An applicant must provide some evidence, direct or circumstantial, that the persecutor was or would be motivated to persecute him or her because of his actual or imputed status or belief. For applications subject to the REAL ID Act of 2005, of which these case are subject, the nexus standard requires that an applicant establish that "race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant." The respondents argue that they are eligible for relief based on their nexus as young female members of a vulnerable family that cannot protect themselves, and who are targets of male gang members who are targeted for rape and murder. Furthermore, as attractive twins, they are specifically targets since they are young attractive twins that upon reaching the age of puberty were clearly visible to the public as attractive twins who were members of a family, and as such carried a very unique situation of attraction to those male gang members that targeted them for rape and murder.

Now the Court has set forth that social visibility is a factor to be considered in determining whether a particular social group exists and whether the group can be defined with sufficient particularity to delimit its membership.

In this case, these two young women can be defined by their familial relationship as well as the fact that they are identical twins. While direct proof of motivation may consist of evidence concerning statements made by the persecutor to the victim or by the victim to the persecutor, the Court notes that circumstantial proof of motivation may consist of severe or disproportionate punishment for violations of laws, or other evidence that the persecutor generally regards those who resist as political enemies. See Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996). The Court also notes that circumstantial evidence of motive may include the timing of the persecution and the signs or emblems left at the site of the persecution. See Deloso v. Ashcroft, 393 F.3d 858, 865-66 (9th Cir. 2005). Furthermore, statements made by the persecutor may constitute circumstantial evidence of motive. See Gafoor v. INS, 231 F.3d 645, 651-52 (9th Cir. 2000).

In some circumstances, a family constitutes a social group for purposes of asylum and for withholding of removal statutes. See Molina-Estrada v. INS, 293 F.3d 1089, 1095 (9th Cir. 2002). And the Court is also aware that gender specific harm may take many forms, including sexual violence, domestic or family violence, female genital mutilation, persecution of gays and lesbians, and repressive social norms. In Lazo-Majano v. INS, 813 F.2d 1432 (9th Cir. 1987), the Ninth Circuit held that rape and other forms of sexual or gender based violence can

constitute persecution on account of political opinion or other enumerated grounds. In the cases of In re A-M-E- and J-G-U-, 24 I&N Dec. 69 (BIA 2007), the Board examined the circumstances of those cases and held that factors to be considered in determining whether a particular social group exists include whether the group's shared characteristics give the members the requisite social visibility to make them readily identifiable in society and whether the group can be defined with sufficient particularity to delimit its membership.

In this case, this group of two can be defined with sufficient particularity. They are family members who are identical twins. The Court notes that they are young females and that they, in this Court's view, meet the requisite social visibility to make them readily identifiable in society. The Court also notes that they have expressed on several occasions their desire not to participate in gang activity. Whether this meets the standards for a statement of political opinion the Court will not determine. Rather, the Court will state that respondents have met their burden of establishing membership in a particular social group since they meet the social visibility requirements through family and the identical nature of their features. Their status as twins does present them in a unique circumstance such that they are more highly visible in their community. And the fact was that they were subject to greater scrutiny by the gangs because of, in part, their post puberty

age, as well as the nature of their twinship.

#### FINDINGS AS TO NEXUS

Thus, this Court finds that the respondents have met their burden of establishing that the persecution that they fear is on account of one of the five enumerated grounds.

#### PERSECUTOR

The Court will not address the issue of the identity of the persecutor. In order to qualify for asylum, the source of the persecution must be the government, a quasi-official group, or persons or groups that the government is unwilling or unable to control. See Avetova-Elisseva v. INS, 213 F.3d 1192, 1196 (9th Cir. 2000). In cases of nongovernmental persecution, we consider whether an applicant reported the incidents to police, because in such cases a report of this nature may show governmental inability to control the actors. See Baballah v. Ashcroft, 367 F.3d 1067, 1078 (9th Cir. 2004). The general background material submitted in support of this case conveys that the maras are ruthless international gangs who perpetuate their power through fear, intimidation, rape and murder. That problem is widespread throughout many Latin American countries, including Guatemala, El Salvador, and Mexico. There is evidence that individual national governments are trying to address the problems that these gangs present, although in most instances the governments lack resources or successful comprehensive strategies to address this burgeoning and widespread problem. It is also

problematic that prosecution of these gang related criminal activities is very limited.

The spread of gang violence, coupled with the inability and ineffectiveness of the El Salvadoran national government to dispense justice in gang-related cases leads this Court to find that the persecutor in this case is an entity that the government is either unable or unwilling to control. In addition, respondent has presented evidence that the local officials are not able to protect innocent citizens from these gangs. There is evidence contained at Exhibit 9, as well as the testimonial evidence of the respondents for this proposition. Furthermore, there is country conditions information in the file contained at Exhibit 11 in the form of a U.S. Department of State Country Report on Human Rights Practices for the year 2007 for the country of El Salvador that states that although the government generally respected the rights of its citizens, protection of human rights was undermined by widespread violent crime, including gang-related violence, impunity, and corruption. That report reveals a serious problem in El Salvador of burgeoning prisons, overcrowding that constitutes a threat to prisoners' health and lives, and a prison population that is increasing every year, partially due to the increased prosecutions of gang members. See Exhibit 11, Sub-exhibit B, page 2. But it also shows that there is inadequate training, insufficient government funding, and isolated incidences of corruption and outright

criminality that makes the public security systems inadequate for addressing the task of gang problems in [REDACTED], Id. at page 3.

#### FINDINGS AS TO PERSECUTOR

Thus, the respondents have met their burden of establishing that the agent of the persecution is either the government or an entity that the government is either unable or unwilling to control.

#### PAST PERSECUTION

Respondents claim that they were never physically harmed in the past, although they did suffer severe restrictions on their physical activities and constant fear which created emotional problems for them. And this Court must determine whether they meet the standards for protected harm. The Court notes that persecution can cover a range of acts and harms, and that the determination that actions rise to the level of persecution is very fact dependent. Moreover, the cumulative effect of harms and abuses that might not individually rise to the level of persecution may support an asylum claim. See Korablina v. INS, 158 F.3d 1038, 1044 (9th Cir. 1998). Thus, the Court must look at the totality of the circumstances in deciding whether a finding of persecution is compelled. See Guo v. Ashcroft, 361 F.3d 1194 (9th Cir. 2004). The Court is, of course, mindful of the Ninth Circuit's decision in Hernandez-Ortiz v. Gonzales, 2007 WL2263878 (9th Cir. August 8, 2007) in [REDACTED]

which the Court held that an Immigration Judge must consider the impact of the persecutory events on children of the age the applicants were at the time that that act occurred. Injuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child. That is the case in this case.

The respondents have not stated that they suffered physical harm, but they do state that they suffered prolonged and intense aggressiveness on the part of the gangs and this deprived them of a normal childhood. Beginning at the age of 13 they were forced to take special measures such that they would not incur the wrath of the gangs. They were placed in circumstances under which they had to deal with the aggressive nature of these gang members who were targeting them and trying to get them to join the gangs. And they were forced to change schools, and in going to school had to attend by use of taxicabs, which were quite expensive for this family that had some financial difficulties as well. Thus, this Court does find that the respondents have met their burden of establishing eligibility for relief based on past persecution.

#### FINDINGS AS TO PAST PERSECUTION

The Court finds that the respondents have established past persecution within the meaning of the Immigration and Nationality Act. This Court then must determine whether the Government has met its burden of introducing evidence that on an

individualized basis rebuts a particular applicant's specific grounds for their well-founded fear of future persecution. See Popova v. INS, 273 F.3d 1251 (9th Cir. 2001). Of course, information about general changes in a country are not sufficient. Rather, Ninth Circuit precedent establishes that the Government must provide an individualized analysis of how changed conditions will affect the specific petitioner's situation. See Lopez v. Ashcroft, 366 F.3d 799 (9th Cir. 2004).

There are Department of State Country Reports in the record of proceedings as well as some additional information regarding country conditions in [REDACTED]. Specifically, this is the submission by [REDACTED], who set forth his views and opinions regarding country conditions in [REDACTED]. These are set forth in the record of proceeding at Exhibit 12, sub-tab B, pages 1 through 3. The Court notes that the Government has not submitted documentary evidence to counter the country conditions information that has been submitted by the respondents. And, in fact, in its closing statements before the Court, the Government does not negate the existence of extreme gang activity in [REDACTED]. Rather, the Government argues that these respondents are victims of a criminal element and that because they are victims of criminal activity that the case does not fall into the category of fears that fall into the category of persecution. Thus, the Court finds that the Government has not met its burden of establishing that there has been a change

in country conditions in [REDACTED]

The Court must also consider whether relocation is a reasonable alternative for these respondents. In doing so, the Court must determine whether the respondents would face other serious harms in the place of suggested relocation and whether there is any ongoing civil strife within the country. The Court can also consider the administrative, economic, or judicial infrastructure, geographical limitations, and social and cultural constraints, such as age, gender, health, and social and familial ties. See Matter of D-I-M-, 24 I&N Dec. 448 (BIA 2008). The respondents are young women, they are currently 19 years of age, and they report that their family members all live in one area in [REDACTED]. There is no indication that they would be safe by moving to another area within [REDACTED] because the country conditions in that country, according to the documentary evidence and the testimony of the expert witness, indicate that the problem of gang violence is widespread throughout [REDACTED]. While the expert witness did indicate that there is some reduced gang violence in some other areas of [REDACTED], the Court has no specific evidence before it of an area within [REDACTED] that the Court can find that by a preponderance of the evidence these respondents could reasonably relocate, and which would present the safety that is required as set forth in Melkonian v. Ashcroft, 320 F.3d 1061, 1070 (9th Cir. 2003).

I am swayed by the fact that these women are young

women, that the way that they survived previously in their home country was through the concerted efforts of their mother, who used the funds that she did have to pay for constant transportation for them to go to any areas within their country, such as school and shopping, and that they previously have had to have a very limited interaction with the community of [REDACTED] due to the severe limitations on their ability to be mobile. I take those factors into consideration when I consider their internal relocation. I also take into consideration that there is no evidence in the record that the government of [REDACTED] has been able to adequately address the problem of gang violence in that country to such an extent that this Court can find that the respondents could easily relocate or reasonably relocate.

#### FINDING AS TO PRESUMPTION

Thus, the Court finds that the Government has not successfully rebutted the presumption of a well-founded fear of future persecution.

#### WELL-FOUNDED FEAR OF FUTURE PERSECUTION ANALYSIS

While the Court has held that the respondents have established past persecution, the Court will also analyze the case assuming that a higher court should find that these respondents did not establish that they had met the past persecution requirement. And thus, the entire discussion regarding past persecution above is incorporated by reference herein.

In order to demonstrate eligibility for asylum based on a well-founded fear of future persecution, the respondent must meet the following requirements. With respect to nexus, the respondent must meet the standard that the anticipated persecution is on account of one or more of the five enumerated grounds. In this case, it is this Court's view that the respondents, for the reasons set forth in the prior discussion of nexus, have established their membership in a particular social group. It is this Court's view that the respondents have provided evidence, both direct and circumstantial, that the persecutors would be motivated to persecute them because of their actual or imputed status or belief. As previously stated, these respondents are young females who are twins, and who are members of their small family group that have been targeted for gang violence and activity.

With respect to reasonableness, a respondent must have a fear of persecution in his or her country that is both subjectively genuine objectively reasonable. The subjective prong of the well-founded fear test is satisfied by an applicant's credible testimony that he or she genuinely fears harm.

In this case, the respondents both testified credibly that they fear future persecution and that they fear that they will be harmed by gang members in [REDACTED]. Their credible testimony this Court finds to be persuasive, and I do believe

[REDACTED]

that they possess the subjective fear as is required by this part of the test. In addition, they have presented documentary evidence to support the finding that their fears are objectively reasonable. They have submitted documentary evidence regarding country conditions that the Court addressed previously, and they have also submitted the testimony of the expert witness that this Court deems to be either an expert or a lay witness, and finds that the specific and extensive background of working with gang members in [REDACTED] renders the testimony of that witness to be very probative on the issue of country conditions regarding gang violence in [REDACTED].

Moreover, these respondents, through their testimony, have suffered harassment in the past. And while past persecution claims such as harassment, violence against friends, and other such actions that do not rise to the level of persecution, this Court notes they can support a well-founded fear argument. See Avetova-Elisseva v. INS, 213 F.3d 1192, 1198 (9th Cir. 2000). Now the Court does note that claims based on widespread random violence will not meet the requirements to prove reasonableness. See Rostomian v. INS, 210 F.3d 1088, 1089 (9th Cir. 2000). However, these respondents have had a number of incidents occur to them and the actions of gang violence against friends as well further support the reasonableness of their fears. Thus, the Court finds that they have met their burden of establishing that their fears are reasonable.

Of course the continued presence of their family in [REDACTED] does not necessarily rebut an applicant's well-founded fear unless there is evidence that the family was similarly situated or subject to similar risk. In this case, the respondents' sisters are now similarly situated. However, there is evidence that their mother has kept them under the same close scrutiny and is employing the same protective measures such that these young women have been able thus far to avoid gang recruitment and harm. There is no suggestion, however, that there is not a cost to the measures that their mother has to take in that they are unable to participate and function in society in a normal capacity by feeling comfortable to walk along the streets and go to school by means other than protected taxis with their mother in attendance at all times, even after the age of 13.

Third, a respondent must demonstrate that there is a reasonable possibility of suffering such persecution. A respondent can satisfy this requirement by showing that he or she was singled out for persecution. There is evidence in the record, testimonial and documentary evidence that support that these respondents have been singled out for persecution. And there is also evidence that their family has been singled out for persecution, as set forth previously. The Court is not clear whether there is a pattern or practice of persecution against twins in [REDACTED] as there has been no documentary evidence to [REDACTED]

support such a statement. However, the Court does note that acts of violence against an applicant's family members may establish a well-founded fear of persecution. See Korablina v. INS. And the violence must create a pattern of persecution which is closely tied to the petitioner. See Arriaga-Barrientos v. INS, 937 F.2d 411, 414 (9th Cir. 1991). Pursuant to Navas v. INS, 217 F.3d 646, 659 footnote 18 (9th Cir. 2000), the Ninth Circuit held that the death of one family member does not automatically trigger a sweeping entitlement to asylum eligibility for all members of her extended family. Rather, when evidence regarding a family history of persecution is considered, the relationship that exists between the persecution of family members and the circumstances of the applicant must be examined. In this case, the Court has gone through in detail the factors which make this relationship unique, and those factors being their nature as identical twins who are very clearly visible with a unique identity as twins in [REDACTED]

Finally, the respondents in order to be eligible must demonstrate that they are unwilling or unable to return to their country because of their fear. And according to the their testimony, this Court finds they have met that standard.

The issue of internal relocation should this Court be examining the case as a well-founded fear of future persecution, lays the burden of establishing that it would be either unsafe or unreasonable for either of the respondents to relocate unless the [REDACTED]

persecution is by a government or is government-sponsored. See Kaiser v. Ashcroft, 390 F.3d 653, 659 (9th Cir. 2004). In this case, the respondent has presented evidence to demonstrate that internal relocation is not viable. That evidence has been presented in the form of their testimony, as well as the letters set forth at Exhibit 9, and through the country conditions information that the Court read into the record regarding general conditions of inadequacy in combating gang violence in [REDACTED] [REDACTED] by the [REDACTED] government, and finally, by the statements of the witness who purports to have significant experience working with gangs specifically in [REDACTED]. There has been no indication that there is a place that these young women can go to in [REDACTED] to find circumstances under which they would no longer be subject to potential persecution. And for that reason, the Court finds that they have met their burden of establishing eligibility for asylum based on a well-founded fear of future persecution.

WITHHOLDING OF REMOVAL UNDER SECTION 241(b) (3)

After considering the evidence presented, and this Court finding that the Court will be granting asylum to these two respondents, the Court finds that I will not address the issue of whether the respondents are eligible for relief under withholding of removal.

CONVENTION AGAINST TORTURE

In that the Court will be granting the respondents the [REDACTED]

relief of asylum, the Court will not address whether they are also eligible for relief under the Convention Against Torture.

RULINGS ON MOTIONS AND OTHER REQUESTS

The Government raised an objection as to the telephonic testimony of the expert witness in this case. However, as the Court stated previously, the Court did permit the testimony of the expert witness via telephone, given the fact that this case is being handled on a pro bono basis and that the respondents are young and did not have sufficient funds in order to pay for this witness to testify and appear in court. And for those reasons, the Court granted the motion for telephonic testimony in spite of the valid arguments on the part of the Government. Upon a weighing of the value of that testimony, given the fact that the individual would be unlikely to be able to testify should the individual not be able to testify telephonically, the Court believed that that was the proper procedure in this case and that that decision could be supported.

Accordingly, the following orders are entered.

ORDERS

IT IS HEREBY ORDERED that the respondents' applications for asylum be granted.

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MIMI E. TSANKOV  
Immigration Judge

Appeal Date: February 13, 2009



CERTIFICATE PAGE

I hereby certify that the attached proceeding  
before MIMI E. TSANKOV in the matter of:

[REDACTED]  
[REDACTED]

Los Angeles, California

was held as herein appears, and that this is the original  
transcript thereof for the file of the Executive Office for  
Immigration Review.

J. K. Buckley  
J. K. Buckley (Transcriber)

Deposition Services, Inc.  
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March 17, 2009  
(Completion Date)