

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
901 NORTH STUART ST., STE.1300
ARLINGTON, VA 22203

BENITEZ, ALBERTO M.
2000 G ST., NW, SUITE 200
WASHINGTON, DC 20052

Date: May 3, 2007

File 

In the Matter of:


____ Attached is a copy of the written decision of the Immigration Judge. This decision is final unless an appeal is taken to the Board of Immigration Appeals. The enclosed copies of FORM EOIR 26, Notice of Appeal, and FORM EOIR 27, Notice of Entry as Attorney or Representative, properly executed, must be filed with the Board of Immigration Appeals on or before _____. The appeal must be accompanied by proof of paid fee (\$110.00).

____ Enclosed is a copy of the oral decision.

____ Enclosed is a transcript of the testimony of record.


____ You are granted until _____ to submit a brief to this office in support of your appeal.

____ Opposing counsel is granted until _____ to submit a brief in opposition to the appeal.

✓
____ Enclosed is a copy of the order/decision of the Immigration Judge.

All papers filed with the Court shall be accompanied by proof of service upon opposing counsel.

Sincerely,


Immigration Court Clerk

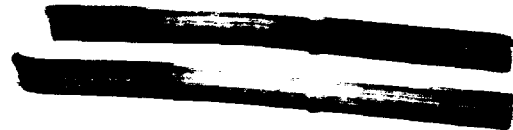
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cc:

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
United States Immigration Court
901 North Stuart Street, Suite 1300
Arlington, Virginia 22203**

IN THE MATTER OF:

IN ASYLUM ONLY PROCEEDINGS



File Nos.: 

Respondents

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

APPLICATIONS: Asylum, pursuant to INA § 208(a);
Withholding of Removal to El Salvador, pursuant to INA § 241(b)(3);
Withholding of Removal, under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), pursuant to 8 C.F.R. § 1208.16 (2007).

APPEARANCES

ON BEHALF OF RESPONDENT:

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Rebecca Davison, Law Student
Elizabeth Moon, Law Student
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Washington, DC 20052

ON BEHALF OF THE DHS:

Silvia Wang, Esq.
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Department of Homeland Security
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ORDER OF THE IMMIGRATION JUDGE

I. INTRODUCTION

The Respondents are a 21-year-old single male and a 15-year-old single female who are natives and citizens of El Salvador. They concede removability. I therefore find removability established by clear and convincing evidence.

The Respondents apply timely for asylum, withholding of removal, and relief under Article 3 of the CAT. I will grant their applications for asylum. I will not reach their other applications.

II. ISSUES

The issues are: (1) credibility; (2) corroboration; (3) particular social group; (4) past persecution (5) well-founded fear of future persecution; (5) nexus; (6) internal relocation; and (7) discretion.

III. LEGAL STANDARDS

The Immigration and Nationality Act, as amended by the REAL ID Act of 2005, governs this case because the Respondents initially filed their Form I-589 on or after May 11, 2005. *See Matter of S-B-*, 24 I&N Dec. 42 (BIA 2006). The Respondents have the burden of proof on the applications. Consequently, the Respondents' credibility is very important and may be determinative. Generally, the Respondents must testify in detail, plausibly, and consistently. The Respondents should satisfactorily explain any material discrepancies or omissions. I may also consider the Respondents' demeanor in assessing credibility.

I may grant an application solely on the basis of credible testimony, without further corroboration. But, I will do this only if I am satisfied that the Respondents' testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the Respondents are refugees.

In determining whether the Respondents have met the burden of proof, I may weigh credible testimony along with other evidence of record. Where I determine that the Respondents should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the Respondents do not have that evidence and cannot reasonably obtain it.

In making credibility determinations, I will consider the totality of the circumstances and all relevant factors. I may base a credibility determination on the Respondents' or witness's demeanor, candor, or responsiveness, and the inherent plausibility of the account. I may also consider the consistency between written and oral statements (whenever made, whether or not under oath, and considering the circumstances under which such statements were made), the internal consistency of each such statement with other evidence of record (including Department of State country reports), and any inaccuracies or falsehoods

in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the Respondents' claim. I may also consider any other factor or factors relevant to credibility.

In accordance with circuit law, even in cases when the Respondents do not testify credibly, I will evaluate the record as a whole to determine whether independent evidence establishes the Respondents' claims. *Camara v. Ashcroft*, 378 F.3d 361 (4th Cir. 2004). However, the Fourth Circuit has clarified that affidavits from friends and family are not the independent evidence that *Camara* contemplates. *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351 (4th Cir. 2006).

To be eligible for asylum, the Respondents must show that they are unwilling or unable to return to El Salvador because of persecution or an objectively reasonable fear of persecution and 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 Respondents. Under this generous standard, I may grant asylum when the chance of future persecution is as low as 10%. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987); *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

Under the regulations, if the Respondents establish past persecution, I must presume the Respondents' future persecution unless the government proves that *fundamentally* changed circumstances or a reasonably available internal relocation alternative have eliminated that *individualized* fear. See 8 C.F.R. § 1208.13(B)(ii); *Fergiste v. INS*, 138 F.3d 14 (1st Cir. 1998). Even then, I may grant asylum if the Respondents demonstrate compelling reasons arising out of the past persecution or if they show a reasonable possibility of other serious harm in the country of removal. 8 C.F.R. § 1208.13(b)(iii).

However, if the Respondents do not prove past persecution, the regulations place the burden on them to show that there is no reasonably available internal relocation alternative in El Salvador unless the feared persecution is by the government or government-sponsored. In the latter situation, I must presume countrywide persecution unless the DHS establishes that there is a reasonably available internal relocation alternative under the regulatory guidelines.

In exercising discretion, I generally will grant asylum to eligible aliens in the absence of *egregious* adverse discretionary factors. *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). Under the regulations, I must give special consideration to cases in which the Respondents qualify for withholding of removal, but the Respondents' spouses and minor children would be stranded abroad by a discretionary denial of asylum. 8 C.F.R. § 1208.16(e).

IV. SUMMARY OF CLAIM AND EVIDENCE

Male Respondent claims past persecution and a well-founded fear of future persecution on account of (1) membership in a particular social group of young Salvadorian students who expressly oppose gang practices and values and wish to protect their family against such practices and (2) political opinion, as a person who opposes the practices and values of MS-13 in El Salvador.

Female Respondent claims past persecution and a well-founded fear of future persecution on account of (1) membership in a particular social group of young female students who are related to an individual who opposes gang practices and values and (2) imputed political opinion, as the sister of person who verbally expressed his opposition to MS-13 in El Salvador.

A. Female Respondent's Testimony

Female Respondent testifies that she is 14 years old and grew up in Sensuntepeque, El Salvador, where she lived with three brothers, her grandparents, and cousins. She has three brothers—[REDACTED] the Male Respondent, who is 20; [REDACTED] who is 17, and [REDACTED] who is 16. Female Respondent adds that she attended school in Sensuntepeque through the sixth grade.

Female Respondent states that she felt uncomfortable living in Sensuntepeque because many Mara Salvatrucha ("MS-13") gang members were present in the community. She recognized them because they had "MS-13" tattoos and committed arson, theft, and robbery. Female Respondent notes that when she walked to school, the gang members sometimes spoke to her in vulgar, sexual language, which intimidated her. Sometimes gang members would tell her that they "wanted to have sex with her" and that they were going to "get her" when she was alone.

According to Female Respondent, MS-13 gang members attacked her on her way back from school in May 2003, when she was 11 years old. After her classes finished at 3:00 p.m., she took a shortcut home up a hill through a wooded area. She heard voices near her that she did not understand, and then someone grabbed her from behind and covered her mouth. The attacker hit her on the left side of the face, and she fell unconscious. When Female Respondent woke up, she found her blouse ripped, her chest exposed, and her skirt raised. She relates that her stomach and face were in pain, and she suspected that gang members may have raped her.

Female Respondent indicates that she went home after the incident and told her grandmother what happened. Her grandmother took her to a doctor, who examined her genital area and spoke only to the grandmother. Female Respondent did not hear the conversation. She adds that she only remembers going to the doctor once. Her family did not report the incident to the police because the police feared MS-13 and did not address gang issues. Female Respondent relates that she eventually told her oldest brother, [REDACTED] what happened to her. [REDACTED] then left the house running.

Female Respondent notes that after the attack, her family made her stop attending school and sent her and her brothers to San Salvador to live with their aunt, aunt's husband, and cousin in a small apartment for four months. Her grandparents did not want the children near gang members in Sensuntepeque. The children eventually moved back in with their grandparents in the summer of 2003. Female Respondent testifies that MS-13 gang members did not bother her when she moved back to Sensuntepeque because she only left the house to go to church and the market with her grandmother.

Female Respondent states that one night in 2004 a fire broke out at her grandparent's house. She notes that she does not know how or when it started, but woke up when her cousins began shouting after they saw fire come out of the windows. Neighbors then came to the home and tried to help Female Respondent's family extinguish the fire. Female Respondent states that she suspects MS-13 started the fire because they had committed prior acts of arson in the community. She notes that her family reported the arson to the police.

Female Respondent indicates that she traveled to the United States through Guatemala and Mexico with her cousin. She did not come to the United States with her brother [REDACTED] because she did not know he had plans to leave El Salvador. During her trip, Female Respondent stayed for one week in Mexico, before taking a bus to the United States border. Immigration officials stopped the bus and took her to a shelter. Female Respondent later moved to a house run by a woman, until her mother came to return her to El Salvador. Female Respondent indicates that her mother did not want to move back to Sensuntepeque because she said it had become dangerous.

Female Respondent testifies that she currently attends [REDACTED] school and is in the eighth grade. Her favorite subject is science. She currently lives with her mother and [REDACTED]. Female Respondent states that she fears returning to El Salvador because she believes she will encounter the same gang problems she lived with before moving to the United States. She adds that she considers El Salvador very dangerous and would rather live in a different country than return home.

B. Male Respondent's Testimony

Male Respondent testifies that he is 20 years old and in the eleventh grade at [REDACTED] High School in Northern Virginia. He currently lives in Virginia with his mother, sister, and uncle. In El Salvador, he lived in Sensuntepeque with his sister, his brothers [REDACTED], his grandparents, and his cousins [REDACTED]. His mother currently works in the United States to support the grandparents, who are elderly and no longer work.

Male Respondent relates that the MS-13 gang problem is very serious in El Salvador. When he was eight years old, gang members tried to recruit him, but he refused.

Male Respondent states that his neighborhood in Sensuntepeque comprised of two one-way streets, connected to the rest of the city by a highway. He notes that he did not feel comfortable in his neighborhood because gang members robbed, beat, and killed people. He adds that he personally witnessed gang members robbing and beating people in the street. Neighbors told him that they feared the gangs and were scared of confronting them. Male Respondent recognized the gangs as MS-13 members because of their tattoos. He relates that he personally believes that the gangs' criminal acts are morally wrong.

Male Respondent notes that he confronted the MS-13 gang members in his neighborhood after they attacked his sister, [REDACTED]. He is not sure if the gang members raped her, but he knows that they beat her. At first [REDACTED] did not tell him what happened. Later she told him that MS-13 members were responsible for the attack. Male Respondent relates that he did not think of calling the police because the police feared gang members and were reluctant to approach them. He adds that he did not tell his friends about his sister's attack.

According to Male Respondent, he and his friend [REDACTED] approached four gang members at the entrance of his neighborhood and asked why they wanted to abuse his sister. The gang members, who were shirtless, covered in tattoos, and six or seven years older than Male Respondent, stated that they can do what they want. Male Respondent adds that he believed the gang members remembered the attack on his sister. The gang then began to punch and kick Male Respondent, and the assault lasted for five minutes. Male Respondent states that neighbors in the street watched the assault and did not intervene. He and [REDACTED] ran home, and the gang members ran after them, but gave up on the attack once Male Respondent got home.

Male Respondent adds that when he got home, his grandmother asked what happened. He told her that MS-13 members had followed him. The family did not call the police, even though he had seen MS-13 gang members leave areas when police cars approached. Male Respondent relates that the community knew that the police usually did not react to crimes. Once his friend [REDACTED]'s father had related an incident to the police, but the police did not investigate the issue.

Male Respondent testifies that after his confrontation with the gang, he feared encountering them in the street. The gang members often followed him home from school and taunted him with foul language. The gang members also told Male Respondent that he was a coward for not fighting with them. Male Respondent began hiding behind friends who walked home to avoid detection by the gangs. He and his siblings remained in Sensuntepeque for one or two months, and then moved in with their aunt in San Salvador. The living conditions were crowded, as he shared a small home with his brothers, sister, aunt, her husband, and his aunt's daughter. Male Respondent notes that he does not remember why he failed to mention his stay in San Salvador in his written affidavit.

Male Respondent states that he saw gang members in San Salvador, but did not have problems with them because he avoided them. He adds that MS-13 members live throughout El Salvador and actively recruit people his age. Some of his own friends became gang members.

Male Respondent indicates that he and his siblings moved back to his grandparent's house, but rarely left the house. To pass time, he read books and planned to travel to the United States. Male Respondent notes that he did not tell his family that he planned to go to the United States, and states that his affidavit, which indicates that his mother paid for the trip, was incorrect. After he saved enough money, he traveled to Mexico, took a bus to the United States border, and walked into the border for about three

hours. The entire trip took approximately 15 days. He adds that he was scared during the trip because he heard that border crossers had died in the desert.

Male Respondent testifies that he fears returning to El Salvador. He believes that he has no place to stay other than his grandparents' house, and his friend █████ told him that the gang situation has worsened in El Salvador. He notes that some of his friends and cousins have had problems with gang members since he left the country. Male Respondent states that he believes MS-13 members will kill him if he returns to his country. Although he never personally received specific threats of harm, about a month ago his friend █████ told him that gang members said they would try to kill him if he returned.

C. Documentary Evidence

The Respondents submitted the following documentation in support of their applications: Male Respondent's I-589 and affidavit, timely filed on January 13, 2005 (Group Exhibit 2); Respondents' supplemental exhibit packet, submitted on October 19, 2005, containing a Table of Contents and Tabs 1-9 (Group Exhibit 3); Respondents' supplemental exhibit packet, submitted on February 27, 2007, with Tabs 10-28 (Group Exhibit 4); and Respondents' March 8, 2007 supplemental exhibit packet, containing an updated Table of Contents and the 2006 Department of State Country Report for El Salvador (Group Exhibit 5). The DHS submitted the Male Respondent's Notice to Appear ("NTA"), dated March 18, 2004 and filed with the San Diego Immigration Court on March 22, 2004 (Exhibit 1).

The record also contains Female Respondent's NTA, issued on September 3, 2004 and filed with the Harlingen Immigration Court on December 20, 2004, and her I-589 and affidavit, timely filed with the Arlington Immigration Court on April 21, 2005.

The record contains the latest State Department Country Report on El Salvador, dated March 8, 2007. *See* Group Exhibit 5. The background information indicates that although the El Salvadorian government generally respects the rights of its citizens, protection of human rights is undermined by widespread violent crime, including gang-related violence, impunity, and corruption. As of December 2005, El Salvador's Civilian National Police reported 12,930 gang members in the country.

The Report adds that despite efforts to report gang violence, the El Salvadorian police has been ineffective in responding to and controlling gangs. The police have had difficulties identifying, arresting, and prosecuting criminals, diminishing public confidence in the justice system. Inadequate training, corruption, insufficient government training, intimidation and killing of victims and witnesses, and the lack of a uniform code of evidence undermine the police force's effectiveness. Through December 2005, the authorities received 1,499 complaints of police misconduct.

The Report notes that crime in El Salvador is widespread and serious. Gangs exercise influence from within prisons, with inmates reportedly running criminal activities from their cells. The media has reported discoveries of a number of decapitated bodies of persons killed in 2005, possibly due to gang

violence. Domestic violence and rape is common, but underreported for a number of reasons, including societal and cultural pressures against victims, fear of reprisal, ineffective and unresponsive responses by the authorities toward victims, fear of publicity, and a perception among victims that cases were unlikely to be prosecuted.

The Report also indicates that gang victims have little recourse for protection in El Salvador. In August 2005, the government inaugurated a new center for victims and witnesses, but allocated inadequate resources to enable the center to provide victims with necessary care. The prosecutorial system also remains flawed, with the Attorney General fielding over 300 complaints of bribery, negligence, and failure to attend legal proceedings. Further, the Report notes substantial governmental corruption within El Salvador's judicial system, as well as in its executive and legislative branches.

V. FINDINGS AND ANALYSIS

A. Credibility

I find the Respondents generally credible, notwithstanding inconsistencies and memory lapses in Male Respondent's testimony. Both Respondents were children, ages 11 and 17, at the time the events in their testimony occurred. In its guidelines for children's asylum claims, the Department of Justice recommends considering a child's age and development at the time of the event and the time of the retelling, the impact of the lapse of time between the event and the retelling, and developmental or cultural reasons for a child's vagueness or inconsistencies. *See* Group Exhibit 3, Tab 7, at 107-08.

The Government advances several points in arguing for an adverse credibility determination. First, Female Respondent alleged that she may have been raped in May 2003, but her medical record does not specifically report a rape. *See* Group Exhibit 4, Tab 11. Second, the record indicates that Female Respondent made several trips to the doctor following her attack, but she testified that she remembers visiting the physician only once. *See id.* Third, Male Respondent testified that he and Female Respondent moved in with their aunt in San Salvador for four months following the attack, but he did not mention this move in his affidavit. *See* Group Exhibit 2. Fourth, Male Respondent wrote in his affidavit that his mother knew of his trip to the United States and helped fund it, but testified that no family members knew of the move and that he saved money for the trip himself. *See id.* Fifth, Male Respondent testified that the MS-13 gang had tried to recruit him when he was eight years old, but did not mention this recruitment in his affidavit. *See id.*

I find that these arguments fail to undermine Respondents' overall credibility. First, the medical record, though not specifically reporting a rape, indicates trauma to the head, stomach, arms, and legs, as well as "peritoneal washing." *See* Group Exhibit 4, Tab 11. These details reflect Female Respondent's claim that the attacker hit her in the face and other parts of the body and that the physician examined her for signs of rape. Second, Female Respondent's uncertainty of how many times she visited the doctor, and whether she was in fact raped, may result from the fact that she was only eleven years old at the time of

the attack, and almost four years have passed since she had the opportunity to testify about it. *See* Group Exhibit 3, Tab 7, at 107-08. Female Respondent's testimony that her physician and grandmother would not discuss the alleged rape with her is consistent with the Country Report's observation of cultural taboos on openly reporting rape in El Salvador. *See* Group Exhibit 5.

Third, Male Respondent's failure to mention his four months in San Salvador and his confusion over whether his mother knew of his plans to arrive in the United States also may stem from his young age at the time the events occurred. As developmental factors may lie behind these inconsistencies and omissions, I do not find that they indicate unreliability. *See* Group Exhibit 3, Tab 7, at 108. These factors also satisfactorily explain Respondent's failure to discuss recruitment attempts by MS-13 gang members he remembers from almost 13 years ago, when he was eight years old. *See id.*

Moreover, Respondents, despite their age and the lapse of time between the events in El Salvador and their testimony, testified consistently on the material aspects of their cases. Both Respondents remember Female Respondent's attack, the family's difficulty and privacy in dealing with it, the prevalence of and harassment by MS-13 members in the neighborhood, Male Respondent's engagement with the gang members after his sister's attack, their fear of the gang members and attempts to avoid them in Sensuntepeque and San Salvador, and the subsequent fire that enveloped their grandparents' home. I therefore find that this information the Respondents independently detailed is both plausible and reliable. *See* REAL ID Act of 2005, Div. B of Pub. L. No. 109-13, 119 Stat. 231.

B. Corroboration

I also find that Respondents have provided sufficient documentary evidence to support their claims that Female Respondent was assaulted in May 2003, that gang violence is a serious threat throughout El Salvador, that the local police are unable to control it, that individuals who confront gangs often are subject to dangerous retribution, and that a fire broke out at Respondents' home in 2003. *See Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997).

Respondents provided some reasonably available independent documentary evidence to establish their claims. *See Camaya, supra; Gandziami, supra.* First, the record contains Female Respondent's medical reports following her attack in May 2003. *See* Group Exhibit 4, Tab 11. The record indicates that she endured a beating and suffered injuries consistent with her testimony. Specifically, the physician noted injuries to her head, chest, arms, legs, and abdomen, which reflects her claim that a person beat her in the head. *See id.* The doctor also suggested "peritoneal washing," which is consistent with Respondent's claim that she believed the attackers may have raped her. *See id.* Moreover, some of the reports indicate that Female Respondent reported victimization by gangs. *See id.*

Second, the record includes Female Respondent's psychological evaluation, which reports symptoms of post traumatic stress disorder, nightmares, and psychological dissociation consistent with individuals exposed to trauma. *See* Group Exhibit 3, Tab 2. The evaluation also notes that Female

Respondent exhibits serious anxiety about the prospect of returning home, which reflects her testimony that she fears further harm if she returns to El Salvador. *See id.*

Third, Respondents provided three affidavits of individuals, including Respondents' grandmother, who witnessed the fire that engulfed their grandparents' home in August 2004. *See Group Exhibit 4, Tabs 12-14.* These letters corroborate Respondents' claim that the fire occurred after the attack on Female Respondent and after Male Respondent approached MS-13 gang members whom he believed was responsible for the attack.

Fourth, the record includes the 2006 Department of State Country Report and other news articles that confirms several aspects of Respondents' claim. The Country Report indicates that gang-related violence is widespread in El Salvador and that corruption plagues the government. *See Group Exhibit 5.* Specifically, the El Salvadorian police force has not effectively addressed the gang problem in El Salvador due to inadequate training, corruption, insufficient government funding, and a lack of a uniform code of evidence. *See id.* at 341. The Report also notes that domestic violence and rape are common in El Salvador, but underreported due to societal and cultural pressures against victims, fears of reprisal, and ineffective and unsupportive responses by the authorities toward victims. *See id.* at 346.

Other articles in the record describe a rise in often brutal crimes by MS-13 gang members in El Salvador, including deadly acts of retribution against individuals who challenge the gang. A 2006 USAID report notes that the high number of gang-related homicides in El Salvador gives the country "the unenviable ranking as one of the most dangerous countries in Latin America." *See Group Exhibit 4, Tab 18; see also Group Exhibit 4, Tab 24* (adding that gangs have grown in power in recent years and MS-13 members are particularly dangerous to the public). Students and teachers often are victims of gang harassment, and El Salvadorian police have been ineffective in addressing this problem. *See Group Exhibit 4, Tab 20.* Recent beheadings of gang victims suggest that murder is a common fate for individuals who threaten these gangs. *See Group Exhibit 4, Tab 28.*

The DHS contends that Respondents failed to provide reasonably available affidavits from friends who witnessed Male Respondent's encounter with the MS-13 gang in 2003, or other members of the community who witnessed gang violence. Considering the age of Respondents and their friends in 2003, the lapse of time since the event, and Male Respondent's explanation that several of his friends have left Sensuntepeque, obtaining these affidavits may be an unreasonable task. Therefore, I find that the omission is not fatal to Respondents' claim. *See Matter of S-M-J-, supra; see also Matter of M-D-, 21 I&N Dec. 1180 (BIA 1998).*

The record as a whole provides consistent and plausible documentary support for Respondents' major traumatic incidents, as well as the general violence and police ineffectiveness that form the basis of their fear of persecution. I therefore find that Respondents have met their burden to corroborate material aspects of their claim under *Matter of S-M-J-, supra.*

C. Particular Social Group

Respondents claim that they each are members of a particular social group. Male Respondent claims that he belongs to a particular social group of young Salvadorian students who expressly oppose gang practices and values and wish to protect their family against such practices. Female Respondent claims that she belongs to a particular social group of young female students who are related to an individual who opposes gang practices and values. I find that both stated social groups constitute a particular social group under case law.

First, both Respondents demonstrate that members of their proposed group share common characteristics that they either cannot change or should not be able to change because such characteristics are fundamental to their individual identities. *See Matter of Kasinga, supra*. Male Respondent cannot change the fact that in 2003 he was a young Salvadorian student who took the unretractable step of publicly opposing MS-13 gang members after he believed they attacked his sister. This irreversible act marks him as a potential victim. Moreover, Male Respondent should not be asked to change the fact that he challenged the gangs, which was a brave, law-abiding act that countered illegal acts of a dangerous criminal gang. *See id.* Similarly, Female Respondent cannot change the chronological and biological fact that she currently is a young female who is related to a person who publicly opposed the MS-13's practices and values in 2003, and she should not be required to change her student status. *See id.*

Second, Male and Female Respondents' social groups are socially visible, as required by the Board. *See Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006). Factors in determining the existence of a particular social group include whether the group's shared characteristics gives the members the requisite social visibility to make them readily identifiable in society. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69 (BIA 2007).

Male Respondent established that his act of challenging the gang as a young student was socially visible and readily identifiable within his community. *See Matter of C-A-, supra; Matter of A-M-E- & J-G-U-, supra*. Respondent testified that approaching the MS-13 gang in El Salvador to "expressly oppose" its practices is a very unusual act in that country. Even police avoid encountering or addressing problems by these gangs, which are known to kill those who defy them. *See, e.g.,* Group Exhibit 5. Respondent thus stood out by challenging the gang. Further, neighbors and friends in Respondent's small neighborhood, which consisted of two streets, watched his fight with MS-13 gang members. Respondent also adds that the gang members followed him home and remembered him. In his remaining months in El Salvador, the gang members repeatedly taunted him and referred to his encounter and fight with them.

Female Respondent's social group also is readily identifiable in society—particularly in a small neighborhood in Sensuntepeque, El Salvador. *See Matter of C-A-, supra; Matter of A-M-E- & J-G-U-, supra*. First, students in poor areas of El Salvador share the characteristic of being threatened by gang violence. *See* Group Exhibit 4, Tab 20. In support of this point, Male Respondent testified that the MS-13 gang members admitted that they remembered victimizing Female Respondent, whom they regularly

harassed on her way to and from school before they attacked her. Second, Respondents testified that in their relatively isolated neighborhood, family members of community members are easily recognizable to others in the area. Third, Because Male Respondent took the highly unusual step of encountering the MS-13 gang and then fighting them, he drew the gang's and other community members' attention to him and his sister, whose victimization led to the encounter. As such, it follows that the sister of Male Respondent stands out as a socially visible and readily identifiable individual in El Salvador due to her relation to a person who expressly opposes gang practices. See *Matter of C-A-*, *supra*; *Matter of A-M-E- & J-G-U-*, *supra*.

Finally, Respondents define their respective social groups with sufficient particularity to delimit membership. See *Matter of A-M-E- & J-G-U-*, *supra*. Although a large number of young students may encounter or be related to individuals targeted by gangs in El Salvador, Respondents focused on the objective act of Male Respondent's express and public opposition to the gangs' authority. This act narrows the pool of potential gang victims to young students who are brave enough to exhibit this relatively rare behavior, or persons related to them.

I therefore find that Respondents defined their social groups with the degree of immutability, visibility, and particularity that the Board requires. See *Matter of Kasinga*, *supra*; *Matter of C-A-*, *supra*; *Matter of A-M-E- & J-G-U-*, *supra*.

D. Past Persecution

Both Respondents claim past persecution. Male Respondent claims that MS-13 gang members beat and chased him in May 2003, forcing him to drop out of school and hide from the gang until he traveled to the United States in 2004. Female Respondent alleges that she suffered past persecution when MS-13 gang members set fire to her grandmother's home at 3:00 a.m. while the family slept inside.

I do not find past persecution in this case. Cumulatively, repeated beatings and degrading treatment may constitute past persecution. See *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998). However, Male Respondent has not demonstrated that the MS-13 gang members beat him on more than one occasion, when the beating was not dangerous or life-threatening enough to prevent him from getting up again and running home. Persecution within the Act does not encompass all treatment that society regards as unfair, unjust, or even unlawful or unconstitutional. See *Kasinga*, *supra* at 365. Although the gang members chased and harassed Respondent after the beating, these acts in themselves are not severe or frequent enough to constitute past persecution under the Act. See *id.* Female Respondent's claim that MS-13 gang members burned her family's home to punish her brother for his act also cannot comprise past persecution because the gang apparently sought to overcome Male Respondent's beliefs or characteristics, not hers. See *Matter of Acosta*, 19 I&N Dec. 211, 223 (BIA 1985), *modified by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

Because Respondents failed to demonstrate past persecution in this case, they are not entitled to the regulatory presumption of future persecution. 8 C.F.R. § 1208.13(b)(1)(ii).

E. Well-Founded Fear of Future Persecution

Overall, I find that Respondents face at least a ten percent chance of future persecution. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 432 (1987); *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). First, Respondents credibly testified that Male Respondent encountered and expressed his anger at the MS-13 gang's alleged attack on his sister. After approaching the gang, its members beat Respondent, chased him home, and continued to recognize and taunt him through 2003 and until he left El Salvador in 2004. These facts indicate that the gangs remember Male Respondent as a person who was bold enough to challenge their practices. Male Respondent also testified that the gang members remembered his sister, whom they had sexually harassed over the years and apparently assaulted.

Second, the country reports and news articles in the record suggest that the MS-13 gang presents a significant and widespread threat to non-gang members in El Salvador. *See* Group Exhibit 5; Group Exhibit 4, Tabs 18-28. Gang-related homicides have risen in recent years, rendering El Salvador as "one of the most dangerous countries in Latin America." *See* Group Exhibit 4, Tab 18. Students are common victims of gang violence, particularly in poor areas of El Salvador. *See* Group Exhibit 4, Tab 20. Murder is a common fate for individuals who threaten the gang, and recent beheadings of women suggest that relatives of gang members are targets. *See* Group Exhibit 4, Tab 28. The Department of State Country Report adds that the El Salvadorian police force has not effectively addressed the gang problem due to inadequate training, corruption, insufficient government funding, and a lack of a uniform code of evidence. *See* Group Exhibit 5, at 341.

Considering the violent and widespread nature of El Salvador's gang problem, Respondents face an objectively reasonable risk of future persecution if they return to El Salvador. The fact that Respondents' only viable long-term family home is in Sensuntepeque, and MS-13's recognition of Male Respondent as a person who crossed him and Female Respondent as his sister, heightens Respondents' risk of violence, and possibly death. *See* Exhibits 4, 5. Although the record does not establish that MS-13 gang members set the fire to Respondents' home, a reasonable person might believe that the MS-13 was involved. Overall, the record suggests a reasonable possibility that the gang will take further steps to punish Male Respondent's defiance, which may include attacks on the Female Respondent.

F. On Account of

As a whole, Respondents' documentary record indicates a nexus between their well-founded fear of future persecution and their membership in a particular social group. The record reflects that gangs in El Salvador deal with individuals who stand up to them with severe, and often deadly, violence. *See* Exhibits 4, 5. Male Respondents' stated social group focuses specifically on his prior express opposition to MS-13 practices, which made him visible to gang members and the community at large in

Sensuntepeque. Therefore, the deadly violence that Male Respondent fears from MS-13 would stem from the gang's desire to overcome him on account of the irreversible characteristic that brought him to their attention—the fact that he publicly challenged their acts and authority. *See Matter of Acosta, supra.*

Similarly, Female Respondent's reasonably objective fear of future persecution is on account of her membership in a particular social group of young female students who are related to an individual who opposes gang practices and values. The MS-13 gang near her family's home in Sensuntepeque remembers her as the sister of a person who publicly confronted and opposed the gang. MS-13 gangs have murdered, and even beheaded, family members of individuals who challenge, defy, or otherwise anger them. *See* Group Exhibit 4, Tab 28. Female Respondent fears that MS-13 will similarly harm her to overcome her characteristic as a recognizable family member of an individual who challenged and opposed their practices. *See Matter of Acosta, supra.*

In light of the foregoing finding, I do not reach the Respondents' claims based on actual or imputed political opinion.

G. Internal Relocation

The Government maintains that Respondents are ineligible for asylum because they spent four months in San Salvador in 2003 without threats or harm by MS-13 gangs, suggesting that internal relocation is possible. *See* 8 C.F.R. 1208.13(b)(2)(C)(ii).

I find this argument unsustainable. First, El Salvador is a small country, with a widespread and well-connected network of gangs that exist in small towns and the capital, San Salvador, alike. *See* Exhibit 5. Respondents stated that after the attack, they avoided harm in San Salvador only because they ventured out in public as little as possible to avoid encountering MS-13 members. As Respondents constantly feared for their safety, they lived in virtual hiding. *See Essohou v. Gonzales*, 471 F.3d 518 (4th Cir. 2006). Second, Respondents also suggested that moving in with their aunt's family was not reasonable because the family did not have enough room or resources to house them for a long period of time. Third, Respondents, as youth, likely would have more difficulties than adults relocating, finding a home, and working without their family's assistance in an area far from Sensuntepeque.

Under all the circumstances, it therefore is unreasonable to expect Respondents to internally relocate within El Salvador. *See* 8 C.F.R. 1208.13(b)(2)(C)(ii). Thus I find no basis to deny Respondents' asylum claim on the basis of internal relocation.

H. Discretion

I find no egregious adverse factors warranting the discretionary denial of asylum under *Kasinga, supra* and *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987). Respondents are young, have reunited with their mother in the United States, attend school, and have no criminal history. Nothing in the record

suggests that they will not live a productive, law-abiding life in the United States. I therefore exercise my discretion to grant Respondents' applications for asylum.

I. Other Relief

As I will grant Respondents' request for asylum, I do not reach their requests for withholding of removal to El Salvador under INA § 241(b)(3) or CAT relief.

VI. CONCLUSION

I find the Respondents removable as charged. I find them credible. I find that Respondents have not shown past persecution in El Salvador. On the basis of their testimony and other evidence, I find that they have established a well-founded fear of future persecution on account of membership in a particular social group. Finally, the record indicates no reasonably available internal relocation. Therefore, I grant Respondents' applications for asylum. I do not reach a decision on their other applications.

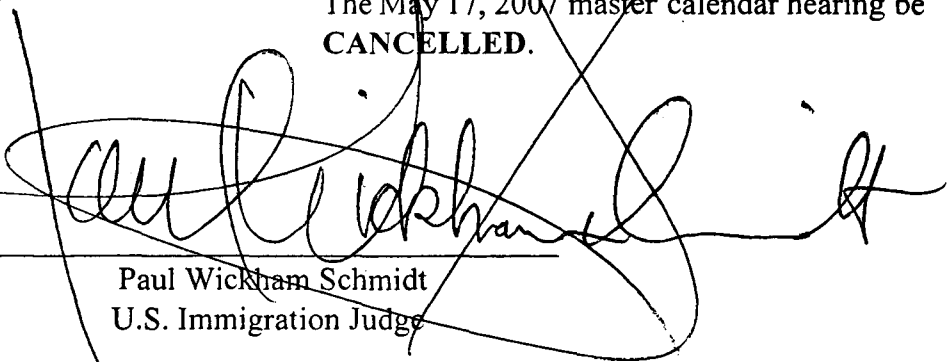
ORDER

It Is Ordered that:

Respondents' applications for asylum be **GRANTED.**

It Is Further Ordered that:

The May 17, 2007 master calendar hearing be **CANCELLED.**



Paul Wickham Schmidt
U.S. Immigration Judge

Date

5/2/07