UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1961 STOUT STREET, STE. 3101
DENVER, CO 80294

Catholic Charities of Central Colorado
Goldin, Claudia Brett
228 N. Cascade Ave.
Colorado Springs, CO 80903

In the matter of File A [redacted] DATE: Nov 17, 2021

[redacted]

__ Unable to forward - No address provided.

X Attached is a copy of the decision of the Immigration Judge. This decision is final unless an appeal is filed with the Board of Immigration Appeals within 30 calendar days of the date of the mailing of this written decision. See the enclosed forms and instructions for properly preparing your appeal. Your notice of appeal, attached documents, and fee or fee waiver request must be mailed to: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

__ Attached is a copy of the decision of the immigration judge as the result of your Failure to Appear at your scheduled deportation or removal hearing. This decision is final unless a Motion to Reopen is filed in accordance with Section 242b(c)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1252b(c)(3) in deportation proceedings or section 240(b)(5)(C), 8 U.S.C. § 1229a(b)(5)(C) in removal proceedings. If you file a motion to reopen, your motion must be filed with this court:
IMMIGRATION COURT
1961 STOUT STREET, STE. 3101
DENVER, CO 80294

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

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

__ Other: _____

COURT CLERK
IMMIGRATION COURT FF

cc: LONGO, CHRISTINE
12445 E CALEY AVE
CENTENNIAL, CO, 80111

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1961 STOUT STREET, SUITE 3101
DENVER, COLORADO 80294

In the Matter of:	)	**Date: November 15, 2021**
[redacted]	)	
Respondent.	)	IN REMOVAL PROCEEDINGS
File No.: [redacted]	)	

CHARGE: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA or Act), as amended, as an 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 pursuant to INA § 208; Withholding of Removal pursuant to INA § 241(b)(3); Relief under the United Nations Convention Against Torture (CAT) pursuant to 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18.

ON BEHALF OF RESPONDENT:
Claudia B. Goldin, Esquire
Catholic Charities of Central Colorado
228 North Cascade Avenue
Colorado Springs, CO 80903

ON BEHALF OF THE DEPARTMENT:
Cara Cutler, Assistant Chief Counsel
U.S. Department of Homeland Security
12445 East Caley Avenue
Centennial, CO 80111

WRITTEN DECISION

I. Procedural History

[redacted] (Respondent) is a [redacted] year-old native and citizen of Guatemala. Respondent and her [redacted] year-old son, [redacted] entered the United States at or near San Luis, Arizona, on or about [redacted] without being admitted or paroled after inspection by an Immigration Officer. Exh. 1. Based on the foregoing, the Department of Homeland Security (DHS or the Department) served Respondent with a Notice to Appear (NTA) on [redacted] charging her as inadmissible to the United States under section 212(a)(6)(A)(i) of the Act. On [redacted] the Department filed the NTA with the Court, thereby initiating removal proceedings. 8 C.F.R. § 1003.14.

At a master calendar hearing on Respondent, through counsel, admitted the allegations contained in her NTA and conceded the charge of inadmissibility. Based on her admissions and concession, the Court found Respondent inadmissible as charged and designated Guatemala as the country of removal. That same day, Respondent filed a Form I-589, Application for Asylum and for Withholding of Removal (I-589). Respondent testified in support of her application at an individual hearing on November 9, 2017. The Department did not call any additional witnesses.

For the reasons set forth below, the Court grants Respondent's application for asylum.

II. Documentary Evidence

The documentary evidence within Respondent's Record of Proceedings (Record) consists of nineteen exhibits. Respondent objected to the inclusion of the Forms I-213, Record of Deportable/Inadmissible Alien (I-213), arguing that they were hastily prepared, contain inaccurate information, and rely on unreliable statements from Respondent. Exh. 2. Respondent pointed out that the documents state that she "carried her daughter" into the United States from Mexico; in reality, Respondent entered the United States with her son, Moreover, I-213 lists his birthday as whereas he was actually born in *Id.* Additionally, the forms do not indicate that Respondent had the benefit of an interpreter at the time of the interview, and as the Court observed at Respondent's initial master calendar hearing, even though Respondent claims to speak "a little" Spanish, she is unable to clearly communicate in any language other than Mayan.

The Court recognizes that the I-213s are official government documents that are entitled to the presumption of reliability. *See Matter of J-C-H-F-*, 27 I&N Dec. 211, 212 (BIA 2018) ("Generally, there is a presumption of reliability of Government documents."). This presumption, however, is not absolute. Where, as here, government documents present indicia of unreliability or untrustworthiness, the Court may find that they are not sufficiently reliable to be admitted into the Record. *See Vladimirov v. Lynch*, 805 F.3d 955 (10th Cir. 2015) (recognizing administrative documents as "presumptively reliable," unless "there is evidence of unreliability"). Here, the errors contained in the I-213s and the Department's failure to use a Kanjobal Mayan interpreter to collect the information contained in the documents raise serious questions concerning their reliability. Accordingly, while the Court admits the I-213s into the Record, it affords the documents limited evidentiary weight. *See Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (affording an immigration judge broad discretion to determine what evidence to admit into the Record and what weight each piece of evidence receives in rendering a decision).

The Court has given thorough consideration to all admitted evidence, regardless of whether that evidence is specifically named in this decision.

III. Credibility

In all applications for asylum, withholding of removal, and requests for protection under the CAT, the Court must make a threshold determination of the applicant's credibility. INA §§ 208(b)(1)(B)(ii)-(iii), 241(b)(3)(C); 8 C.F.R. § 1208.16(c)(2); *see also Matter of O-D-*, 21 I&N

Dec. 1079, 1081 (BIA 1998). The Court may base a credibility determination on the applicant's demeanor, candor, or responsiveness, as well as the plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with other evidence of record, and any inaccuracy or falsehood in such statements, regardless of whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); *Matter of J-Y-C-*, 24 I&N Dec. 260, 262 (BIA 2007).

Respondent's testimony was consistent during direct and cross-examination and conformed to the information provided in her application for relief and documentary evidence. The Court also observed Respondent's demeanor and nonverbal indicators, and her testimony appeared authentic, genuine, and based in fact. Thus, the Court finds Respondent credible.

IV. Asylum

Asylum is a discretionary form of relief available to aliens physically present or arriving in the United States, in accordance with sections 208 or 235(b) of the Act. INA § 208(a)(1); *see INS v. Cardoza-Fonseca*, 480 U.S. 421, 443-44 (1987). An applicant is eligible for asylum if: (1) her application was timely filed within one year of her last arrival in the United States; (2) she is not statutorily barred from relief; (3) she demonstrates she is a refugee within the meaning of INA section 101(a)(42)(A); and (4) she merits asylum in the exercise of discretion. *See* INA §§ 208(a)(2)(B), (b)(1)(A), (b)(2).

A. Timeliness

To be eligible for asylum, an applicant must present clear and convincing evidence that she filed her asylum application within one year after the date of her last entry into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2)(i). Here, Respondent entered the United States on , and filed her I-589 on Exhs. 1, 3. Thus, her asylum application is timely.

B. Refugee Status

An asylum applicant bears the burden to prove that she is a "refugee" as defined in section 101(a)(42) of the Act. INA § 208(b)(1); 8 C.F.R. § 1208.13(a). This requires the applicant to establish that she is outside her country of nationality and is unable or unwilling to return to or avail herself of that country's protection because she has suffered past persecution or has a well-founded fear of future persecution on account of her race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42); *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992); *Matter of M-E-V-G-*, 26 I&N Dec. 227, 230 (BIA 2014).

1. *Well-Founded Fear Based on Past Persecution*

An applicant who suffered past persecution in her country of nationality on account of a protected ground is entitled to the presumption that she has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(1). An applicant seeking asylum based on past persecution bears the burden to establish that: (1) she suffered harm rising to the level of persecution; (2) the

persecution was on account of a protected ground; and (3) the persecution was committed by the government or by a force the government is unable or unwilling to control. *Id.*

a. *Severity of Harm*

To qualify for asylum based on past persecution, an applicant must show that the harm she suffered amounts to persecution. 8 C.F.R. § 1208.13(b)(1). Persecution is a threat to life or freedom or the infliction of suffering or harm upon those who differ, in a way that is regarded as offensive. *Woldemeskel v. INS*, 257 F.3d 1185, 1188 (10th Cir. 2001); *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985). For such acts to rise to the level of persecution, they must be "more than just restrictions or threats to life and liberty." *Woldemeskel*, 257 F.3d at 1188; *see also Hayrapetyan v. Mukasey*, 534 F.3d 1330, 1337 (10th Cir. 2008). In determining whether an applicant experienced harm constituting persecution, the Court considers incidents in the aggregate. *See Hayrapetyan*, 534 F.3d at 1337-38; *see also Matter of O-Z- & I-Z-*, 22 I&N Dec. 23, 26 (BIA 1998).

Respondent lived with her parents in a small village in Guatemala, where everyone is related to one another. Respondent's sister d her family—including her husband, and their three children—also lived with Respondent's parents. Respondent testified tha forced [her] to have sex with him" when no one else was home, beginning when she was seventeen years old. She described at least ten instances over the course of seven months where raped her and threatened to beat her if she told anyone what he did to her. At first, Respondent was too afraid to tell anyone about the rapes, knowing that would act on his threats. Respondent, however, became pregnant, and when she was seven months into her pregnancy, she had no choice but to confide in her mother that was the father. Even though Respondent explained that had sex with her against her will, Respondent's mother blamed her for getting pregnant. Likewise, when Respondent's father learned about the pregnancy, he was outraged and tried to beat Respondent with a belt, threatening to cause a miscarriage. Respondent's parents wanted her to have an abortion or give the child away, but Respondent's Catholic faith deterred her from pursuing either option.

When earned that Respondent told her parents about the rapes, he beat Respondent using his hands and feet, even though she was pregnant with their child. Although Respondent's father wanted her to move out of the house, Respondent had nowhere to go. Therefore, to separate Respondent and he family forced o stay with his parents. Nevertheless, even though they no longer lived together, Respondent still encountered from time to time because of s relationship with . beat Respondent whenever he had the opportunity. He would go to her house when no one else was home or find Respondent alone in the village and beat her beneath her ribs, on her legs, and on her back. This happened five or six times. Although did not treat as his son, he threatened to take him away from Respondent. Respondent came to the United States because she "didn't want [her] son to suffer."

The harm Respondent experienced in Guatemala fro constitutes persecution under the Act. When Respondent was a teenager, raped her on at least ten occasions. *See Matter of D-V-*, 21 I&N Dec. 77, 78-79 (BIA 1993) (recognizing rape and beatings as persecution). The rapes resulted in an unwanted pregnancy, and hreatened to hurt Respondent if she told

anyone what he did to her. *See Vatulev v. Ashcroft*, 354 F.3d 1207, 1210 (10th Cir. 2003) (noting that threats that are "so immediate and menacing as to cause significant suffering or harm in themselves" qualify as persecution). When Respondent told her parents what happened to her, acted on his threats and beat Respondent using his hands and feet on multiple occasions. *See Matter of O-Z- & I-Z-*, 22 I&N Dec. at 23 (finding that beatings, threats, humiliation, and theft, constituted "persecution"). Respondent's father also attacked her, trying to hit Respondent with a belt as punishment for the pregnancy. Accordingly, based on the series of harms Respondent endured in Guatemala—including extreme forms of sexual violence—the Court finds that Respondent suffered harm rising to the level of past persecution.

b. *On Account of a Protected Ground*

To establish past persecution, an asylum applicant must demonstrate that such persecution was "on account of" race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 1208.16(b); *see Elias-Zacarias*, 502 U.S. 478.

i. *Protected Ground – Particular Social Group*[1]

Respondent argues that she was persecuted in Guatemala on account of her membership in three particular social groups: "Guatemalan women unable to leave their domestic relationship," "Guatemalan women who are viewed as property by virtue of their position in a domestic relationship," and "indigenous Mayan Guatemalan women." To establish persecution on account of membership in a particular social group, an applicant must demonstrate the existence of a cognizable particular social group, her membership therein, and a nexus between her persecution and her membership in that group. *Matter of W-G-R-*, 26 I&N Dec. 208, 223 (BIA 2014). To be cognizable, a particular social group must be "(1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question." *Matter of M-E-V-G-*, 26 I&N Dec. at 237; *see also Rivera Barrientos v. Holder*, 658 F.3d 1222, 1229 (10th Cir. 2011).

Two of Respondent's proposed social groups are defined by her "domestic relationship" with "Guatemalan women unable to leave their domestic relationship," "Guatemalan women who are viewed as property by virtue of their position in a domestic relationship." While these proposed social groups may be cognizable, *see Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), Respondent failed to establish that she is a member of either proposed group. First, it is unclear whether Respondent was in a "domestic relationship" with at all. They never considered each other to be in a relationship, never held each other out to the public as being in a relationship, and only lived together for a temporary period as part of a large family home. Even if the Court accepts Respondent's argument that she was in a "domestic relationship" with simply by virtue of having s child, Respondent left that "relationship" in —a year and a half before she fled Guatemala in Exh 11 at 9. Respondent's ability to safely live in her hometown for a year and a half, without having any direct contact with

[1] Because the Court finds that Respondent was persecuted in Guatemala on account of her membership in a particular social group, the Court does not reach whether she suffered persecution on account of her race or political opinion. *See* Exh. 3 at 5; *Matter of J-G-*, 26 I&N Dec. 161, 170 (BIA 2013) (recognizing that IJs are not required to make findings on issues that are unnecessary to result reached).

shows that she was able to leave any relationship she may have had with [redacted] Accordingly, the Court does not find that Respondent was persecuted on account of her proposed social groups of "Guatemalan women unable to leave their domestic relationship" or "Guatemalan women who are viewed as property by virtue of their position in a domestic relationship."

The Court, nevertheless, finds the Respondent is a member of her alternative proposed social group: "indigenous Mayan Guatemalan women." This proposed social group is also cognizable, because it is immutable, particular, and socially distinct.

First, an individual's gender, nationality, and indigenous status are immutable traits that an individual cannot change. *See* INA § 101(a)(42) (listing nationality as a protected ground); *Matter of Acosta*, 19 I&N Dec. at 233-34 (recognizing that a "common, immutable characteristic" may include one's "sex, color, [or] kinship").

Second, Respondent's proposed particular social group, "indigenous Mayan Guatemalan women," satisfies the "particularity" requirement. Particularity requires that a proposed group be defined by characteristics that "provide a clear benchmark for determining who falls within the group." *Matter of M-E-V-G-*, 26 I&N Dec. at 239 (citing *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 76 (BIA 2007)). "The essence of the particularity requirement . . . is whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons." *Matter of S-E-G*, 24 I&N Dec. 579, 584 (BIA 2008). Here, the terms that define Respondent's proposed social group of "indigenous Mayan Guatemalan women" are clear, precise, and identifiable. An individual who falls into this group must be female, must be an indigenous Mayan, and must be from Guatemala—three easily ascertainable traits. Therefore, because Respondent's particular social group of "indigenous Mayan Guatemalan women" is precisely defined and not amorphous or overbroad, it is sufficient to satisfy the particularity requirement.

Finally, the group composed of "indigenous Mayan Guatemalan women" is socially distinct. To establish social distinction, there must be "evidence showing that society in general perceives, considers, or recognizes persons sharing the particular characteristic to be a group." *Matter of W-G-R-*, 26 I&N Dec. at 217. Respondent presented abundant evidence demonstrating how Guatemalan society views women—and specifically indigenous women—as sufficiently distinct to constitute a cognizable social group. Recognizing the unique needs of Guatemalan women, civil society organizations operate throughout the country to provide them with social services. Exh. 11 at 34 (Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, Guatemala Country Report on Human Rights Practices—2016 (2017)). These organizations even collaborate with the Guatemalan government, which operates several programs to address problems specific to Guatemalan women, such as the Office of the Coordinator for the Prevention of Domestic Violence and Violence Against Women and the Office of Ombudsman for Women. *Id.* There are similar programs designed to address the specific needs of indigenous women in particular, such as the Office of Ombudsman for Indigenous Women. *Id.* at 35. Moreover, indigenous communities speak languages and wear attires that set them apart from others in Guatemala. Exh. 7 at 18-20 (Declaration of Professor Linda B. Green) ("Language is a key distinguishing feature[] of the indigenous peoples in general" and the "traditional dress of indigenous peoples also sets them apart" from others in Guatemala). This evidence establishes

that Guatemalan society recognizes indigenous women, based on their distinguishing features, gender-specific needs, and unique vulnerabilities, as a recognizable group in Guatemalan society. *See Matter of M-E-V-G-*, 26 I&N Dec. at 246 ("Social groups based on innate characteristics such as sex . . . are generally easily recognizable and understood by others to constitute social groups." (quoting *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006))) Thus, Respondent's proposed particular social group meets the social distinction requirement.

Based on the foregoing, the Court concludes that Respondent's proposed particular social group of "indigenous Mayan Guatemalan women" is immutable, particular, and socially distinct. Therefore, as an indigenous Mayan Guatemalan woman, the Court finds Respondent to be a member of a cognizable particular social group for purposes of her asylum application.

ii. *Nexus*

Respondent must also show that the harm she suffered was "on account of" her membership in her particular social group of "indigenous Mayan Guatemalan women." The Court will find a nexus between persecution and a protected ground if the protected ground is "at least one central reason" that motivated the persecutor to harm Respondent. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211-12 (BIA 2007). The protected ground cannot play a minor role in the persecution, nor can it be "incidental, tangential, superficial, or subordinate to another reason for harm." *Karki v. Holder*, 715 F.3d 792, 800 (10th Cir. 2013) (citations omitted).

Here, the Court finds Respondent met her burden to show that [redacted] persecuted her on account of her membership in the particular social group of "indigenous Mayan Guatemalan women." Respondent's testimony demonstrates that [redacted]'s behavior conformed to the deep-rooted *machismo* culture that is pervasive throughout Guatemala—and especially in indigenous areas. Country conditions describe Guatemala's long history of persecution against indigenous Mayan women, beginning in colonial times and growing increasingly widespread over the years. Exh. 7 at 21. This persecution transpired at the hands of both indigenous and nonindigenous men who perpetrated gender-based violence, including gang rape, sexual torture, and mutilation of indigenous women for no articulable reason except for their status as indigenous women. *See id.* at 23-24. Today, Guatemala's history of persecution against indigenous women informs nearly every element of Guatemalan culture, where indigenous women are considered inferior to their nonindigenous male counterparts. *Id.* at 25. As a result, "epidemic proportions" of femicide and "rampant" forms of domestic abuse against indigenous women persist throughout the country, with chauvinistic and *machismo* attitudes defining life in Guatemala. *Id.* at 24-25.

The violent consequences of these attitudes are apparent in the case at hand. Guatemala's *machismo* culture and deprecating treatment toward indigenous women informed every step of [redacted]'s behavior. For instance, although [redacted] engaged in several forms of violence against Respondent, he was a serial rapist at heart, forcing Respondent to have sex with him against her will for roughly seven months. [redacted]'s use of rape—which country conditions describe as form of violence to reinforce Guatemalan male dominance over women—was not accidental; it reflects [redacted]'s animosity toward women and demonstrates his desire to overcome Respondent's womanhood. Exh. 7 at 26. The Board of Immigration Appeals (BIA or the Board) addressed a

similar question in *Matter of Kasgina*, where it found a nexus between the harm the respondent suffered in the form of female genital mutilation and her status as an indigenous woman, noting that female genital mutilation is a form of "sexual oppression" that is "practiced, at least in some significant part, to overcome sexual characteristics of young women." 21 I&N Dec. 357, 365 (BIA 1996); *see also Mohammed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) ("[T]here is little question that genital mutilation occurs to a particular individual because she is a female."). Here too, rape constitutes a form of sexual oppression that is inextricable from the victim's gender and illustrate[redacted]s desire to overcome Respondent's status as an indigenous woman. This is further supported by Respondent's testimony in which she told the Court that [redacted]would not have targeted her if she was not indigenous. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. at 216 (providing that an applicant can rely on either direct or circumstantial evidence to show that the harm she endured was on account of a protected ground).

When viewed in the specific context of Guatemalan culture, where sexual violence against indigenous women is commonplace and socially accepted, [redacted]s use of gender-based violence indicates that Respondent's status as an indigenous woman served as at least one motivation to persecute Respondent. *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988) (noting that an applicant "does not bear the unreasonable burden of establishing the exact motivation" of her persecutor). Although [redacted]id not persecute every indigenous woman he encountered, "[t]he lack of persecution of other persons who share the protected ground does not conclusively establish that the persecution is not on account of the protected ground." *Orellana-Recinos v. Garland*, No. 19-9596, 2021 WL 1247938, at *3 (10th Cir. Apr. 5, 2021). Accordingly, based on the Record as a whole, the Court finds that [redacted]ersecuted Respondent on account of her status as an indigenous Mayan Guatemalan woman.

iii. *Government*

To be considered a refugee, an applicant for asylum must also demonstrate that she is unable or unwilling to return to, or avail herself to protection from her country's government. 8 C.F.R. § 1208.13(b)(2)(i)(C). Thus, an applicant must establish persecution by the government or by groups the government is unwilling or unable to control. *Niang v. Gonzalez*, 422 F.3d at 1193 (quoting *Vatulev v. Ashcroft*, 354 F.3d 1207, 1209 (10th Cir. 2003)). Here, Respondent argues that the government is unable or unwilling to protect her from persecution in Guatemala.

Respondent testified that she did not seek police protection while she was in Guatemala, because "women don't have any rights there." Rather, according to Respondent, Guatemalan men have "all the rights"—especially men like [redacted] who have the means to bribe the police to avoid accountability for criminal behavior. Country conditions corroborate Respondent's testimony. Although Guatemalan law criminalizes physical, economic, and psychological violence against women, such violence remains a "serious problem." Exh. 11 at 17. As the U.S. Department of State reports, impunity is widespread throughout Guatemala, where the government fails to conduct adequate investigations—if any investigations at all—into violence against women. Exh. 19 (Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, Guatemala Country Report on Human Rights Practices—2020 (2021)). As a result, survivors of sexual violence decline to report crimes "due to lack of confidence in the justice system, social stigma, and fear of reprisal." *Id.* The situation in Guatemala is so grave that international

organizations, including the Inter-American Commission on Human Rights, have admonished the Guatemalan government for "creating an environment conducive to the chronic repetition of acts of violence against women." Exh. 7 at 31 (Karen Musalo & Blaine Bookey, *Crimes without Punishment: An Update on Violence Against Women and Impunity in Guatemala*, Hastings Race and Poverty Law Journal (2013)).

Circumstances are particularly difficult for indigenous women, like Respondent, who face even more barriers to government protection. Exh. 19 at 20. As Respondent explained in her declaration, the Guatemalan police are largely absent in rural, indigenous communities like Exh. 11 at 10. Respondent wrote that the closest police station is in which is an hour-long walk from Respondent's village. *Id.* And even if Respondent made the trek to the police station, Respondent would likely be unable to communicate with the officers who generally only speak Spanish and are unable to converse with speakers of indigenous languages. Consistent with Respondent's account of the situation in country conditions describe "pervasive ignorance by security authorities" to the rights and needs of indigenous peoples. Exh. 7 at 43. As Professor Linda Green, an expert on violence against indigenous women in Guatemala explained, "Mayan women in Guatemala rightly understand that neither the National Civil Police nor other government actors will protect them from violence." Exh. 7 at 27. As a result, Professor Green said, it "would be futile" for an indigenous woman to seek protection from the Guatemalan government for sexual violence. *Id.*

Where, as here, an applicant demonstrates that she could not rely on government authorities for protection, she is not required to report her persecution to demonstrate the government's unwillingness or inability to protect. *Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) ("Although [the respondent] did not request protection from the government, the evidence convinces us that even if the respondent had turned to the government for help, [government] authorities would have been unable or unwilling to control her [persecutor's] conduct"); *see also Lopez v. Att'y Gen. of the U.S.*, 504 F.3d 1341, 1345 (11th Cir. 2007) (finding that the applicant's failure to report to police does not automatically bar relief where the applicant can demonstrate under *Matter of S-A-* that authorities would have been unable or unwilling to protect her); *Afriyie v. Holder*, 613 F.3d 924, 931 (9th Cir. 2010) (holding that reporting persecution to government authorities is not essential and an applicant may use generalized country conditions information to show that reporting such activity would be futile). This is especially true in cases, such as the one at hand, where country conditions show widespread impunity for sex-based violence and an institutional failure to enforce laws that are designed to protect women from violence. Accordingly, the Court finds that the Guatemalan government is unable or unwilling to protect Respondent from persecution on account of her status as an indigenous woman.

c. <u>*Rebuttable Presumption of Persecution*</u>

An asylum applicant who suffered past persecution is presumed to have a well-founded fear of future persecution on the same grounds. 8 C.F.R. § 1208.13(b)(1). The Department may rebut this presumption by demonstrating either that there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in her home country, or that the applicant could relocate to another part of the country to avoid future

harm, and it would be reasonable to expect her to do so. 8 C.F.R. §§ 1208.13(b)(1)(i)(A)-(B); *Matter of M-Z-M-R-*, 26 I&N Dec. 28, 31 (BIA 2012). The Department bears the burden of rebutting this presumption by a preponderance of the evidence. 8 C.F.R. § 1208.13(b)(3)(ii); *Matter of D-I-M-*, 24 I&N Dec. 448, 450 (BIA 2008). As Respondent has demonstrated that she suffered past persecution on account of her membership in the particular social group of "indigenous Mayan Guatemalan women," she is entitled to a presumption of future persecution based on her membership in the same group. To rebut this presumption, the Department argues that there has been a fundamental change in circumstances concerning her association with and that she can relocate to another part of Guatemala to avoid future persecution.

First, the Department argues that the change in the nature of Respondent's relationship with demonstrates that she no longer has a well-founded fear of persecution. To support its argument, the Department notes that and Respondent no longer live together in the same house, and that Respondent was able to live safely from for a year and a half before fleeing the country. The Court, however, cannot overlook the high likelihood tha would target Respondent when she returns to Guatemala. Respondent testified that she would have to return to her small hometown, where also lives. As a resul uld be a constant, unavoidable presence in Respondent's life. This is especially problematic given threats to take away from Respondent. Moreover, the fact that tacked Respondent in both private and public spaces shows that the mere fact that they no longer live together is insufficient to prevent from persecuting Respondent. Ultimately, even though the nature of Respondent's relationship with s different than it used to be, circumstances have not changed such that she no longer has a well-founded fear of persecution in Guatemala, where still has the means, opportunity, and incentive to persecute Respondent.

The Department also failed to establish that Respondent could reasonably relocate within Guatemala to avoid persecution. C.F.R § 1208.13(b)(3)(ii); *Matter of M-Z-M-R-*, 26 I&N Dec. at 31. This requires the Department to prove that Respondent "can avoid future persecution by relocating within [her] country of nationality" and that "under all circumstances it would be reasonable to expect [her] to do so." *Addo v. Barr*, 982 F.3d 1263, 1269 (10th Cir. 2020) (quoting 8 C.F.R. § 1208.13(b)(1)(i)(B)). Respondent testified that she cannot live safely anywhere in Guatemala. In her statement to the Court, Respondent explained that she has never lived anywhere outside her home village, and that she does not have any family in any other part of Guatemala. Exh. 11 at 10. Although Respondent was able to live with her uncle for a brief period of time, he died shortly before she fled Guatemala. Respondent's status as an indigenous Mayan makes relocation even more difficult. Dr. Linda Green corroborated Respondent's statements, explaining that "[i]t is virtually impossible for indigenous women to successfully relocate in rural areas in Guatemala and survive." Exh. 19 at 8. Respondent explained that her native language and dialect is only spoken in a small region of Guatemala, and that she is unable to communicate with people in other parts of the country. Exh. 11 at 11. This, according to Respondent, would leave her with no other option except to return to her home village and risk persecution from *Id.*

Accordingly, because the Department failed to establish that circumstances in Guatemala have changed for Respondent or that Respondent could safely and reasonably relocate within Guatemala to avoid harm, the Department failed to rebut the presumption of future persecution.

The Court, therefore, grants Respondent's asylum application based on the presumption of a well-founded fear of persecution in Guatemala on account of her status as an indigenous Mayan Guatemalan woman.

2. *Humanitarian Asylum*

Even if the Department rebutted the presumption of future persecution based on Respondent's past harm, the severity of harm Respondent suffered in Guatemala entitles her to humanitarian asylum. An asylum applicant who has established past persecution on account of a protected ground but no longer has a well-founded fear of persecution may nevertheless warrant a discretionary grant of humanitarian asylum based on either compelling reasons arising out of the severity of past persecution or other serious harms that the applicant may suffer upon removal to her home country. 8 C.F.R. § 1208.13(b)(1)(iii)(A)-(B). Here, the Court finds that the brutal rapes, which began when Respondent was only seventeen years old, combined with beatings and threats that caused lasting psychological trauma, are compelling reasons to grant humanitarian asylum.

In *Matter of Chen*, the Board of Immigration Appeals (BIA or the Board) emphasized a "general humanitarian principle" against repatriating individuals who have suffered "atrocious forms of persecution." 20 I&N Dec. 116, 19 (BIA 1989) (quoting *The Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees* (1988)). There, the Board recognized that the Department rebutted the presumption of future persecution, but found that the harm the respondent endured in his home country—including violence against his family, forced imprisonment, deprivation of food—constituted "more than the usual amount of ill-treatment" such that it entitled him to a discretionary grant of humanitarian asylum. In the years since *Matter of Chen*, the Board has granted humanitarian asylum based on whether the applicant suffered the level of "severe" or "atrocious" persecution illustrated in that case. *See, e.g.*, *Matter of S-A-K- & H-A-H-*, 24 I&N Dec. 464 (BIA 2008) (finding that rape and female genital mutilation under aggravated circumstances merited a grant of humanitarian asylum based on past harm); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996) (remanding to the Immigration Judge to decide whether the harm respondent suffered in Somalia—including targeted attacks against his family home, the murder of his brother, and the severe beatings he experienced while detained—entitled him to humanitarian asylum); *Matter of B-*, 21 I&N Dec. 66 (BIA 1995) (granting humanitarian asylum based on the three months of physical abuse, including torture, and thirteen months of imprisonment the respondent suffered in Afghanistan).

Here, when measured against the degree of harm the respondents in *Matter of Chen* and subsequent case law experienced, the Court finds that the torment Respondent suffered in Guatemala amounts to "past persecution so severe that repatriation would be inhumane." *Baka v. INS*, 963 F.2d 1376, 1379 (10th Cir. 1992); *see Krastev v. INS*, 292 F.3d 1268, 1280 (10th Cir. 2002) ("We have held that the past persecution necessary to establish eligibility for humanitarian asylum must have been so severe that . . . 'it would be inhumane to force him to return there, even though he is in no danger of future persecution.'" (quoting *Nazaraghaie v. INS*, 102 F.3d 460, 463 (10th Cir.1996)) [redacted] raped Respondent approximately ten times. He targeted her when they were alone in their family house and no one was able to help Respondent when she

tried to fight back against The rapes, however, were only part of the persecution Respondent experienced. In a letter to the Court, Respondent's therapist explained that the rapes Respondent endured "put in motion a chain of traumatic events," including "emotional abandonment by her parents and other family members, attempted physical abuse by her father, emotional abuse by her parents, interpersonal violence and emotional abuse perpetrated by her siste community shunning, and the constant anxiety from the threat to her life and family emotional abandonment." Exh. 11 at 13. This is consistent with Respondent's testimony, in which she described how her father tried to beat her to abort her pregnancy and that beat her on multiple occasions, both before and after she gave birth to their child.

The physical and psychological persecution Respondent suffered in Guatemala remains with her today as she still wrestles with the "ongoing traumatic emotional impact from her violent and repeated rapes." *Id.* Respondent is unable to psychologically heal from the persecution she endured, because she "recalls the traumatic events almost daily"—particularly the rapes and her efforts to fight off the sexual assaults. *Id.* The Court also notes that the attacks began when Respondent was a teenager, while she was in a "developmentally vulnerable time in [] her life." *Id.* Even though is in Guatemala, Respondent possesses lingering fears about her rapist and a general distrust of men. Respondent told her therapist, "I no longer enjoy people's company; it feels like I live in a world of fear and mistrust." *Id.* at 14. When considered in the aggregate, the Court finds that the harm Respondent suffered in Guatemala—especially in light of the consequences flowing from the rapes, including an unwanted pregnancy, lasting physical injuries, and psychological trauma—entitles her to a grant of humanitarian asylum.

V. Conclusion

Based on the foregoing, the Court finds that Respondent met her burden to show there is at least a ten percent chance that she will be persecuted in Guatemala on account of her status as an indigenous Maya Guatemalan woman. *See INS v. Cardoza-Fonseca*, 480 U.S. at 440. Respondent demonstrated through credible testimony that she was persecuted on account of her membership in a cognizable particular social group, and that the Guatemalan government was unable or unwilling to protect her, thus entitling Respondent to the presumption of a well-founded fear of persecution in Guatemala. Furthermore, the Court finds the Department failed to rebut the presumption of future persecution. And even if the Department did rebut the presumption of future persecution, the Court finds that Respondent is eligible for humanitarian asylum based on the severity of persecution she endured in her home country. Finally, the Court finds that Respondent merits a positive exercise of the Court's discretion. Thus, the Court grants Respondent's application for asylum.

VI. Other Requested Relief

As the Court finds that Respondent is eligible for relief in the form of asylum under section 208 of the Act, the Court declines to analyze her eligibility for withholding of removal under section 241(b)(3) of the Act and protection under the CAT.

Accordingly, the Court will enter the following orders:

ORDERS

It is HEREBY ORDERED that Respondent's application for asylum under section 208 of the Act be GRANTED.

IT IS FURTHER ORDERED that appeal is RESERVED on behalf of both parties.

November 15, 2021
Date

Eileen R. Trujillo
Immigration Judge