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## **COUNSEL**

INS's evidence of changed country conditions failed to rebut the presumption of future persecution. He seeks asylum and withholding of deportation. We grant Ventura's petition for review, and hold that he is entitled to withholding of deportation. We also conclude Ventura is eligible for asylum, and remand his asylum application to the BIA for the Attorney General's exercise of his discretion in granting or denying that application.

## I.

Ventura is a 30-year-old native and citizen of Guatemala. He first entered the United States without inspection in July 1993. He left Guatemala after guerrillas spray-painted three "notes" on the wall of his house in 1992 and 1993, demanding that he join their forces and threatening harm to his family if he did not. In his testimony before the Immigration Judge (IJ), Ventura stated that all three notes were the same and that they read, "Fredy Ventura, you must join us, or your family will suffer the consequences." He further testified "if I didn't turn myself in to them, that they would kill me, that they would threaten me."

Ventura testified and stated in his asylum application that because members of his family are in the military, the guerrillas perceive him to be their enemy (for that reason they) Tj T\* -0.1313 Tc 0.1313 Tw (have threatened him



our review is limited to its decision. Singh v. INS, 94 F.3d 1353, 1358 (9th Cir. 1996). A factual determination by the BIA must be upheld if it is "supported by reasonable, substantial, and probative evidence on the record considered as a whole." Elias-Zacarias, 502 U.S. at 481. That determination "can be reversed only if the evidence presented by [the petitioner] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." Id. (citing NLRB v. Columbian 527 U.S. 424, 438 (2000)).

tion "must establish that the  
conclusion that [he] is a refugee."





at 1489 (citing Arriaga-Barrientos v. U.S. INS, 937 F.2d 411, 414 (9th Cir. 1991)). Forced recruitment without evidence of a discriminatory purpose is insufficient to compel a finding of persecution on account of political opinion. Pedro-Mateo v. INS, 224 F.3d 1147, 1151 (9th Cir. 2000) (citing Elias-Zacarias, 502 U.S. at 482-83).

Ventura's evidence that his persecution occurred on account of imputed political opinion consists of his credible, uncontradicted testimony that the guerrillas targeted him because they believed he held anti-guerrilla sympathies; that his uncle was attacked and his cousin was killed by guerrillas because of their military affiliations; and that he is closely associated with his cousin Oswaldo, an army lieutenant.

In Del Carmen Molina, we held the petitioner established a well-founded fear of persecution on account of political opinion. Although notes directed to her by the guerillas gave no explicit indication that the guerillas were motivated by her political opinion, the notes stated that the guerillas wanted to talk to her about her cousins, and to take her with them. 170 F.3d at 1249. The petitioner's credible and uncontradicted testimony was that the guerillas threatened her because of her political opinion. Id. at 1250. Relying on this evidence, we

associated with the military, that family members have been

not alone constitute persecution on the basis of political opinion. Id

a local leader of the ARENA party in El Salvador, but there was no evidence the attack was politically motivated. See id.

**[10]** When the BIA does not reach the issue of whether changed country conditions rebutted the presumption of a well-founded fear of future persecution, we generally will remand to the BIA for it to consider the issue. We do not

ion has been so minimized as to rebut the presumption of such persecution. See Cordon-Garcia v. INS, 204 F.3d 985, 990 (9th Cir. 2000) ("A well-founded fear may be based on no more than a ten percent chance of actual persecution.") (citing Velarde v. INS, 140 F.3d 1305, 1310 (9th Cir. 1998)). Ventura's case is similar to Borja v. INS, 175 F.3d 732 (9th Cir. 1999) (en banc), in which we determined that the petitioner's well-founded fear of future persecution by rebels was not rebutted by general evidence of lessened violence in the home country.

In Borja, a State Department report stated that the numbers

