UNITED STATES DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW IMMIGRATION COURT ARLINGTON, VIRGINIA

IN THE MATTER OF:) IN WITHHOLDING ONLY PROCEEDINGS
) File No: A
Respondent)

CHARGE:

Section 241(a)(5) of the Immigration and Nationality Act ("INA" or "Act"), as amended, as an alien who has illegally reentered the United States after having been previously removed or departed voluntarily while under an order of exclusion, deportation or removal and is therefore subject to removal by reinstatement of the prior order.

APPLICATIONS:

Withholding of Removal, pursuant to INA § 241(b)(3); and Deferral of Removal, under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"), under 8 C.F.R. § 1208.17 (2010).

APPEARANCES

ON BEHALF OF RESPONDENT:

Catherine Birdwell, Supervised by, Ajay Malshe, Esq. C.A.I.R. Coalition 1612 K Street NW, Suite 204 Washington, D.C. 20006

ON BEHALF OF THE DHS:

Erika Borkowski, Esq. Assistant Chief Counsel Department of Homeland Security 901 North Stuart St., Suite 708 Arlington, VA 22203

DECISION AND ORDER OF THE IMMIGRATION JUDGE

I. INTRODUCTION

The Respondent is a 30-year-old single male who is a native and citizen of El Salvador. He concedes removability. I therefore find removability established by clear and convincing evidence.

The Respondent was admitted to the United States ("U.S.") on October 4, 1990 as a

lawful permanent resident. In May 2005, after receiving two convictions of petit larceny and one conviction of possession of cocaine, the Respondent was issued a Notice to Appear by the Department of Homeland Security ("Government" or "DHS") and placed into removal proceedings. On September 12, 2005, the Respondent's application for withholding of removal was denied by this Court and the Respondent was ordered removed to El Salvador. The Respondent was removed on December 2, 2005.

In April 2006, the Respondent entered the U.S. without inspection along the Texas border. On September 2, 2009, the Respondent was detained by the DHS.

The Respondent applies timely for withholding of removal and relief under Article 3 of the CAT. I will grant his application for withholding of removal. I will not reach his other application.

II. ISSUES

The issues are: (1) credibility and corroboration; (2) past persecution based on religion, or alternatively, particular social group consisting of family; (3) El Salvadoran government's inability or unwillingness to protect the Respondent; (4) clear probability of future persecution based on religion; and (5) conviction of a particularly serious crime.

III. LEGAL STANDARDS

The Immigration and Nationality Act, as amended by the REAL ID Act of 2005, governs this case because the respondent initially filed Form I-589 on or after May 11, 2005. See Matter of S-B-, 24 I&N Dec. 42 (BIA 2006). The Respondent has the burden of proof on the applications. Consequently, the Respondent's credibility is very important and may be determinative. Generally, the Respondent must testify in detail, plausibly, and consistently. INA § 240(c)(4)(C). The Respondent should satisfactorily explain any material discrepancies or omissions. I may also consider the Respondent's demeanor in assessing credibility. Id.

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 Respondent's testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the Respondent is eligible for withholding of removal.

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

In making credibility determinations, I will consider the totality of the circumstances and all relevant factors. See Matter of J-Y-C-, 24 I&N Dec. 260 (BIA 2007). I may base a credibility

determination on Respondent's or witness's demeanor, candor, or responsiveness, and the inherent plausibility of the account. INA § 240(c)(4)(C). 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 Respondent's claim. *Id.* I may also consider any other factor or factors relevant to credibility. *Id.*

In accordance with Circuit Court law, even in cases when the Respondent does not testify credibly, I will evaluate the record as a whole to determine whether independent evidence establishes the Respondent's claims. Camara v. Ashcroft, 378 F.3d 361 (4th Cir. 2004); Zuh v. Mukasey, 547 F.3d 504 (4th Cir. 2008). 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 withholding, the Respondent must show that it is more likely than not that he will be persecuted in El Salvador on account of race, religion, nationality, membership in a particular social group, or political opinion. See 8 C.F.R. § 1208.16(b). This is a higher standard than for asylum. It is mandatory that I grant withholding when the chance of future persecution is "more likely than not." INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).

The BIA finds that the addition of the "at least one central reason" language does not radically alter the prior standard in mixed motive cases. See Matter of J-B-N- & S-M-, 24 I&N Dec. 208, 214 (BIA 2007); see also Menghesha v. Gonzales, 440 F.3d 201 (4th Cir. 2006), modified, 450 F.3d 142 (4th Cir. 2006). The applicant must present direct or circumstantial evidence of a motive that is protected under the Act. The protected ground cannot play a minor role in the alien's past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to a non-protected reason for harm. Rather, it must be a central reason for persecuting the Respondent. The motivation of the persecutors involves questions of fact, and the burden can be met by testimonial evidence. Matter of S-P-, 21 I&N Dec. 486, 490 (BIA 1996). Supporting documents and corroborative background evidence also "must be taken into account." Id.

Under the regulations, if the Respondent establishes past persecution, I must presume the Respondent's 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. § 1208.16(b)(1)(i).

IV. SUMMARY OF CLAIM AND EVIDENCE

A. Respondent's Testimony

The Respondent said that he was born in El Salvador in 1979 and first came to the U.S. as a permanent resident in 1990. He lost his status as a legal permanent resident in December 2005 when he was ordered removed from the U.S. He said he returned to the U.S. on March 21, 2006. The Respondent testified that he has two brothers and one sister. His sister and one of his brothers live in Virginia and his other brother lives in Costa Rica. The Respondent stated the he no longer has any family in El Salvador.

The Respondent testified that he is a born-again Christian, his religion is Pentecostal Evangelist and he is a practicing Evangelist. He said he was baptized in 2001 under the religion of Seventh Day Adventist but that after May 2002, he was no longer part of that church. He resumed going to church in July 2003 at the church La Ultima Cosecha where he says he is now an active member. On cross examination, the respondent said that between 2003 and 2009 he was living in between Virginia and New York so he was not attending La Ultima Cosecha church regularly. The Respondent said that he was a member of a church in New York during the time he was living there. He stopped going to the Seventh Day Adventist Church because of problems that he had with his girlfriend who accompanied him to the church. He said that he likes his new church because he can be involved in the church as well as in the community. He stated that he particularly likes to work with youth.

The Respondent testified that he was persecuted by the 18th Street gang in El Salvador after his removal in 2005. The first confrontation that he had with members of the gang was four days after his arrival. He said that the gang members confronted him and asked him to lift his shirt up so that they could see whether he was a member of a rival gang. The gang members told him that they were going to watch him and then one of the gang members began to attack him. The Respondent said that he fought back so well that the gang members asked him to join their gang. He replied that he could not because he is a born-again Christian. He said that he asked the gang members to go to church but they laughed at him and mocked him.

The Respondent stated that there is no police station in his town in El Salvador. There are two to three police officers that patrol the town at times but the main police station is located in the town of La Union. He said that after the first incident in which the gang members beat him, he went to the police station to report the attack. The Respondent said that the two police officers at the desk laughed at him and one said, "What do you want me to do about it? We weren't there to see it." The Respondent said that he had witnesses who had seen the fight and were willing to testify to the police but that nothing was done about the case. He said that the police did not take an initial report or write anything down on paper about the incident. On cross examination, the Respondent said that he knew some of the gang members by name because they attended elementary school together. He added that he told the police officers the names of the gang members, but they never took his statement.

The Respondent testified that he was a member of the Iglesia de Dios Church in El Salvador and that he began to attend services the second day that he arrived in the country. He said that he attempted to attend all four weekly services. The 18th Street gang members began to

harass him near his home and when he went to church. He said that the gang members knew the route he took to church and would make sure to stay on the route and harass him. The respondent testified that he would evangelize people in the streets with a group of three other people: his brother his cousin has, and his brother-in-Christ He said that whenever the gang members saw him they would threaten him. The Respondent stated that sometimes the gang members would hold him at gun-point and demand money or his shoes. They would make fun of the Respondent for paying money to the church and demand that he give money to them instead. The Respondent stated that the gang members always harassed him on his way to and from church.

The Respondent stated that the gang's harassment became especially severe when he was on his way to church. He hid at the house and then took a longer route to church in order to avoid the gang members. He said that sometimes on his way to church the gang members would flash a gun at him, preventing him from continuing on to church. He said that at other times, members of his church would go in a group to pick him up from his house and accompany him to church so that he would not be harassed. Sometimes the gang members did not ask him for money and would simply mock him saying, "Here comes the preacher man. Hooray, we're all saved." The gang members would also ask him, "Why are you talking all this nonsense? It does not even matter," in reference to his religious beliefs. The gang members would also curse at him and say that he came to El Salvador and started trying to tell them what to do. Despite the severe harassment, the Respondent said that initially he did not flee the country because he believed that he could reason with the gang members. He said that he eventually realized that was impossible. The Respondent believes that he was targeted by the gang members because they felt threatened by his evangelism and believed that if their members converted to Pentecostal Christians, they would leave the gang. On cross examination, the Respondent testified that the gang members did not target other people that were deported from the U.S. He said the gang initially demanded twenty to twenty-five dollars but when they saw he could not pay, they demanded smaller amounts from him because they knew that he was giving money to the church. The gang members also demanded money from other church members.

The Respondent said that he would go up to different groups of people and evangelize. He noted that sometimes he could tell if members of the group were gang members because of tattoos that he could see. At other times he did not know if the person he was speaking with was a gang member or not. He added that he did evangelize to gang members at times. The Respondent said that there were two young gang members whom he convinced to join his church. He added that after he returned to the U.S., one of those former gang members, was killed in retaliation by members of his former gang and the other disappeared. The Respondent said that, to his knowledge, if a gang member converted to his religion, the other gang members would find out and would retaliate against the converted gang member. He said that many gangs believe there is no way out of the gang.

The Respondent testified that an and an an area were also persecuted by members of the 18th Street gang because of their religion. He said that the has always been a Christian and

was active in the church before the Respondent. The Respondent stated that when returned to El Salvador he preached in the streets and the gang members beat him. The Respondent said that when he returned to El Salvador, was already there. He said that as soon as he arrived, the 18th Street gang members began to threaten him because they knew that he was also a Christian.

The Respondent said that was attacked various times by the 18th Street gang. On December 31, 2005, was severely beaten by the gang members. The Respondent said that he was out walking with and On their walk, they encountered the 18th Street gang members who said they wanted to beat up the Respondent. and and The Respondent said he was able to talk the gang members out of it. and after dropping of at his father's home, the Respondent and left to return to house. The Respondent said he noticed that the gang members were not in the same place they were before so he returned to check on found three gang members beating him and stomping on him. The Respondent began to scream for the police and when they arrived they saw what was happening but did not chase after the gang members. The Respondent said that he and asked the police officers to chase after the gang members or at least to take a report of what had occurred. He said that the police did nothing about the incident. They did not interview the witnesses who were willing to testify, take statements, make a report, or write anything down. The Respondent said that the statement as a split lip, fractured ribs, bruising all over his body and was bleeding badly.

After another gang attack in 2006, which field the country and returned to the U.S. The Respondent said that after was removed to El Salvador in 2009 he went into hiding in a different town due to his fear of living in his family's town. Was afraid because the 18th Street gang issued a "green light" against the Respondent, was afraid because the 18th explained that a "green light" is an order for all of the members of a gang to target and kill a person that has a "green light" on him. He added that the "green light" follows you wherever the gang is located and that if a gang member recognizes someone who has a "green light" he will kill that person. The Respondent said that while was in hiding, a member of the 18th Street gang recognized and told him that the gang had not forgotten that he and his brother, the Respondent, had a "green light" on them. The gang members then beat up that The Respondent said that as a result of that incident, and fled El Salvador for Costa Rica due to his fear that he would be killed by the 18th Street gang. Street gang to target and returned to the U.S. The Respondent said that as a result of that incident, and fled El Salvador for Costa Rica due to his fear that he would be killed by the 18th Street gang.

The Respondent testified that and and were both killed by members of the 18th Street gang. One day when he was returning from church with they encountered members of the 18th Street gang who told them that they were giving them their last warning and that a "green light" had been issued against them. He said that as a result of that "green light," was shot and killed by members of the 18th Street gang on March 19, 2006. He said that was killed in broad daylight in front of many witnesses and those witnesses saw the person who killed making 18th Street gang signs in order to "claim the kill." The Respondent testified that the police were called after was killed and that they arrived three hours after the incident occurred.

The Respondent stated that was getting out of the bus when gang members approached and shot him. He stated that there were many witnesses who saw the 18th Street gang "claim the kill." The Respondent believes that was group of people who were evangelizing in the community. He believes that his group was particularly targeted because they evangelized to the youth in the community and this was something that other members of his church did not do. The other church members did not evangelize to the group of youth that the Respondent and his group evangelized to because the church members were afraid of them.

The Respondent provided details about what occurred in 2009 to cause him to be convicted of brandishing a firearm or other similar object. The Respondent said that he was at his father's home when he saw that there was a BB gun on the doorstep. He said that because there were many young kids in the area, and he did not know if the gun was loaded, he decided to take the BB gun inside the house so that no would be harmed. He stated that ten to fifteen minutes later a police officer arrived at his home. He said that the police found the BB gun and arrested him for brandishing a firearm or other similar object.

On cross examination, the Respondent stated that he previously used aliases and that he was convicted of giving false information to a police officer. He was arrested for assault and battery, and subsequently, violation of a protective order, due to a conflict that he had with his girlfriend. He said that his girlfriend communicated with him while he was in jail, sent him money and picked him up when he was released. He said that a month after his release a police officer found the Respondent in his girlfriend's car and charged him with violation of a protective order even though his girlfriend did not want to press charges.

The Respondent said that he has sought treatment for alcoholism. He went to a required class and to Alcoholics Anonymous of his own free will. The Respondent also said that he is not and never has been a gang member. He said that he once told a police officer that there were people in his neighborhood who claimed to be members of MS-13.

B. Documentary Evidence

The Respondent submits the following documentation in support of his applications: Notice of Referral to Immigration Judge, dated January 6, 2010 (Exhibit 1); Credible Fear Worksheet and attached package (Group Exhibit 2); Respondent's I-589 application for Withholding of Removal and Relief under the Convention against Torture (Exhibit 3); and Supplemental Exhibit Package containing Brief in support of Respondent's Applications and Tabs A-BB (Group Exhibit 4).

Group Exhibit 2 contains the following: USCIS Form I-899 Record of
Determination/Reasonable Fear Worksheet; Reasonable Fear Determination Report: USCIS
Record of Sworn Statement; Respondent's Birth Certificate; Death

Certificate; Death Certificate; U.S. Certificate of Naturalization; U.S. Certificate of Naturalization; U.S. Certificate of Naturalization; Letter of Employment for Respondent from USCIS Form M-488 Information about Reasonable Fear Interview; DHS Form I-871 Notice of Intent/Decision to Reinstate Prior Order; Order of the Immigration Court to deny Respondent's application for withholding of removal, dated September 12, 2005; DHS Form I-213 Record of Deportable/Inadmissible Alien; and DHS Form I-215B Record of Sworn Statement in Affidavit Form.

Group Exhibit 4 contains the following: DHS Form I-213 Record of Deportable/Inadmissible Alien, DHS Form I-215B Record of Sworn Statement in Affidavit Form (Tab A); Respondent's Declaration (Tab B); Letter from Reverend of the Pentecostal La Ultima Cosecha Church (Tab C); Article "Pentecostals: Christianity Reborn" (Tab D): Declaration (Tab E); Letter from Iglesia de Dios (Tab F); Article "Gang Prosecution" (Tab G): s Death Certificate (Tab H) Death Certificate (Tab I); Summary of Respondent's Criminal Conviction Record (Tab J); Respondent's Notice to Appear, dated May 2005 (Tab.K); Respondent's Conviction Record for possession of cocaine, Va. Code § 18.2-250 (Tab L); Respondent's Conviction Records for two petit larceny convictions, Va. Code § 18.2-96 (Tab M); Respondent's Conviction Record for assault and battery, Respondent's Conviction Record for violation of protective order (Tab N); Respondent's Conviction Record for identity fraud (Tab O); Respondent's Conviction Record for public intoxication (Tab P); Respondent's Conviction Record for driving under the influence (Tab Q); Respondent's Conviction Record for brandishing a firearm, Va. Code § 18.2-282 (Tab R); Respondent's Conviction Record for false identification, Respondent's Conviction Record for public intoxication (Tab S); Respondent's EARM Case Summary (Tab T); Respondent's Reasonable Fear Determination Report (Tab U); Congressional Research Service Report: "El Salvador: Political, Economic, and Social Conditions and U.S. Relations" (Tab V); Department of State El Salvador 2009 Country Report on Human Rights Practices (Tab W); Article "The Gangs of El Salvador: A Growing Industry" (Tab X); Report "No Place to Hide: Gang, State, and Clandestine Violence in El Salvador" (Tab Death Certificate (Tab Z); Department of State El Salvador 2009 Country Report on International Religious Freedom (Tab AA); and U.S. Agency for International Development Central America and Mexico Gang Assessment Annex 1: El Salvador Profile (Tab BB).

The DHS submits the following documentation: Department of State International Religious Freedom Report 2009 (Exhibit 5); and Department of State Issue Paper: Youth Gang Organizations in El Salvador, dated June 2007 (Exhibit 6).

The DHS also submits the following unmarked evidence: Letter from Respondent to Designated Immigration Officer.

C. Country Conditions

The record contains the latest Department of State Country Report on El Salvador, dated March 11, 2010. The record also contains the Department of State International Religious Freedom Report on El Salvador, dated October 26, 2009 and the Department of State Issue Paper: Youth Gang Organizations in El Salvador, dated June 2007.

The Country Report states that the "protection of human rights [in El Salvador] was undermined by widespread violent crime, including...gang-related violence [and] high levels of impunity from prosecution." Group Exh. 4, Tab W at 104. Through November 2009, El Salvador's "Office of the Inspector General had received 2,230 complaints of alleged police misconduct." Id. at 106. The Country Report adds that "street gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution." Id. at 107. "Inadequate government funding of the [national police], combined with intimidation and killing of victims and witnesses, made it difficult to identify, arrest, and prosecute perpetrators of...crimes." Id. The State Department's International Religious Freedom Report from 2009 notes that "there were no reports of societal abuses or discrimination based on religious affiliation, belief or practice." Exh. 5 at 1.

The background information indicates that El Salvador has had difficulty controlling gang's criminal activity. The State Department Issue Paper on Youth Gang Organizations in El Salvador notes that criminal gangs "have emerged as a serious and pervasive socio-economic challenge to the security, stability and welfare of El Salvador." Exh. 6 at 1. The 18th Street gang and the MS-13 gang are the two most known gangs in the region. Id. at 2. It is estimated that gangs in El Salvador are responsible for 27 percent of crimes and 40 percent of homicides. Id. The Issue Paper adds that in some cities in El Salvador, "gangs have operated virtual fiefdoms in neighborhoods, demanding that public transport workers and inhabitants pay regular protection money often called war taxes." Id. at 3. The Issue Paper states that gangs "presen[t] a major challenge to Salvadoran law enforcement agencies, which have limited manpower, financial resources, and technical capacity." Id. Despite this, the Issue Paper also notes that "the Salvadoran government does not have a policy or practice of refusing assistance to persons who receive threats or are otherwise victims of gang violence." Id.

There are "various allegations that it is standard gang policy and practice to harass and target for recruitment observant members of evangelical Protestant and other religious groups." Id. at 5. There is also evidence that "indicates that gangs generally do not forcibly recruit practicing members of Catholic or Protestant religious groups." Id. There were reports "in which clergy members, who aggressively sought to extricate certain individuals from gangs for rehabilitation, were assaulted or killed for these actions apparently by gang members." Id. at 6.Yet, the Issue Paper notes that such killings were exceptional and not the norm. Id. The Issue Paper states that there is a reported moratorium on such attacks towards clergy members and "in general, gangs do not target persons based on religious affiliation." Id. Finally, the Issue Paper states that there are reports that "joining a church group [is considered by gangs] to be the most respected legitimate reason for leaving a gang." Id. at 7.

V. FINDINGS AND ANALYSIS

A. Credibility and Corroboration

I find the Respondent credible. His testimony was detailed, plausible, and consistent with the asylum application and with known background conditions.

I have had an opportunity to observe the Respondent's demeanor. On the basis of those observations, I believe that the Respondent testified and answered questions sincerely, forthrightly, and truthfully during the lengthy direct and cross-examinations.

The Government advanced several points in arguing for an adverse credibility determination. The Government doubts the Respondent's general credibility, noting his various convictions for fraud related offenses including giving false information to police and identity fraud. See Group Exh. 4, Tabs O, S. The Government does not believe that the Respondent was truthful in his explanations about his convictions for brandishing a firearm, assault and battery, public intoxication and violation of a protective order. See Group Exh. 4, Tabs N, P, R. The Government is also unconvinced by the sincerity of the Respondent's religious conversion in 2003, noting that he was convicted of possession of cocaine in the same year. See Group Exh. 4, Tab L. In support of this argument, the Government points out that the Respondent did not submit a letter from the church in New York where he said he attended services and that under Matter of S-M-J-, the Respondent should reasonably be able to receive a letter from New York. See 21 I&N Dec. 722 (BIA 1997). Also, the Government notes that the Respondent has not provided any medical documentation of his injuries.

First, I note that the Respondent testified credibly to the persecution he faced while in El Salvador. Credible testimony alone may be sufficient for the Respondent to sustain his burden of proof. See 8 C.F.R. § 1208.16(b). Second, the Respondent is detained which limits his ability to submit the amount of corroborating evidence that might reasonably be expected of a non-detained individual. I, along with the Government, acknowledge that the Respondent has various criminal convictions but I find that the Respondent has been credible and consistent in his testimony about the persecution that he faced in El Salvador. I am also mindful that I cannot speculate about the sincerity of the Respondent's religious conversion. See Tewabe v. Gonzales, 446 F.3d 533, 538 (4th Cir. 2006) ("If the IJ's [adverse credibility] conclusion is not based on a specific, cogent reason, but, instead is based on speculation, conjecture, or an otherwise unsupported personal opinion," it cannot be upheld "because...it will not have been supported by substantial evidence.") (quoting Dia v. Ashcroft, 353 F.3d 228, 250 (3d. Cir. 2003)). The Respondent testified credibly about his religious conversion and the important role that his religion plays in his life. The Respondent also submitted letters from two pastors confirming the Respondent's attendance at their churches. See Group Exh. 4, Tabs C, F.

Considering the totality of the circumstances and all relevant factors, I find the Respondent credible. See INA § 240(c)(4)(C).

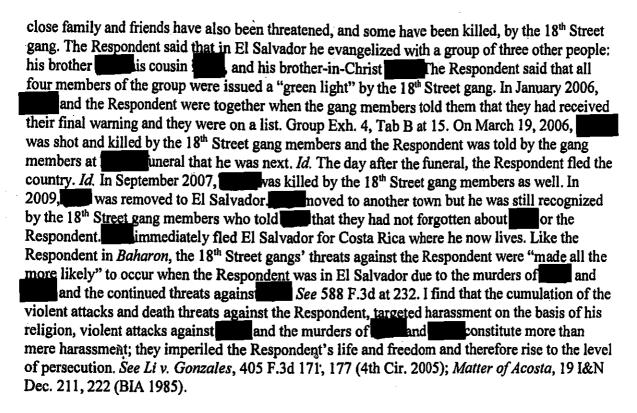
B. Past Persecution

The Government objects to the Respondent's claim that he was targeted by 18th Street gang members because of his religion. The Government believes that the Respondent was targeted solely for extortion purposes and not on the basis of a protected ground. In support of this belief, the Government points to the Respondent's letter to his Designated Immigration Officer, the transcript from his Reasonable Fear Interview, and the letter from the Respondent's brother, all of which, the Government argues, points to an extortion motive for his mistreatment and not a religious motive. See Group Exh. 2; Group Exh. 4, Tab E. The Government also submits information in the Department of State Issue Report that states, "gangs reportedly consider joining a church group to be the most respected legitimate reason for leaving a gang." Exh. 6 at 7. Finally, the Government emphasizes that the Department of State International Religious Freedom Report states that "there were no reports of societal abuses or discrimination based on religious affiliation, belief or practice" in El Salvador. Exh. 5 at 1.

In addition, the Government argues that even if the Respondent was targeted by gang members, he has not shown that their harassment rises to the level of past persecution. The Government also believes that the Respondent has not met his burden because he has not shown that the El Salvadoran government was unable or unwilling to protect the Respondent from the gangs. See 8 C.F.R. § 1208.16(b). In particular, the Government points to the Department of State Issue Paper that states, "the U.S. Embassy in San Salvador has no information to suggest that persons have been denied assistance from police authorities in relation to complaints they have made relating to gang violence or threats from gang members." Exh. 6 at 3.

The Respondent testified that he was first attacked by members of the 18th Street gang four days after he arrived in El Salvador in December of 2005. He said that one of the gang members began to beat him and he told the gang members he would not join their gang because he is a born-again Christian. Three weeks after this incident, the gang members attacked the Respondent again resulting in a black eye, fractured ribs, and blood in his urine. Group Exh. 4, Tab B at 13. Following that incident the gang members began to harass the Respondent more routinely and were particularly severe in their harassment when the Respondent was on his way to church, including waiting for the Respondent near the church or on the route that he normally took to church. See Group Exh. 4, Tab B at 13. The gang members would demand that the Respondent give money to them instead of to the church and would flash their guns at him, preventing him from attending church.

In Baharon v. Holder, the Fourth Circuit Court held that "violence or threats to one's close relatives is an important factor in deciding whether mistreatment sinks to the level of persecution." 588 F.3d 228, 232 (4th Cir. 2009). In Baharon, the court found that the Immigration Judge and the Board of Immigration Appeals failed to take into account police threats to "disappear" the Respondent, a "threat [that] was made more likely by the [Respondent's] uncle's disappearance." Id. at 228. The Respondent credibly testified that his



While it does appear that the Respondent was targeted for extortion, the Respondent's credible testimony, along with his corroborating documents, demonstrates that the Respondent's religion was a central reason for his persecution. See Matter of J-B-N-& S-M-, 24 I&N Dec. at 208. The Respondent credibly testified about the harassment, beatings and death threats that the gang directed at him because of his religion. He stated that at times the gang members would not demand money from the Respondent but would simply mock him instead, saying, "Here comes the preacher man! Hooray, we're all saved!" He also submits independent documents that corroborate his claim that he was attacked because of his religion, including a statement from who stated, "[The gang members] knew that my brother and I are Christians and it is because of this that they extorted, beat and robbed us." See Group Exh. 4, Tab E at 28.

The Respondent also submits various published reports comborating his claims of the high levels of gang violence in El Salvador. See Group Exh. 4, Tabs V-Y, BB. In particular, the Harvard Law School Report, "No Place to Hide," corroborates the Respondent's testimony about the lack of respect by some gangs for a person's religious conversion or beliefs and the danger of being marked with a "green light." See Group Exh. 4, Tab Y at 156-57. The Department of State Issue Paper, submitted by the Government, also corroborates the Respondent's assertion that he was persecuted because of his religion. See Exh. 6. The Respondent stated that he was involved in the evangelization and conversion of two young gang members. The Issue Paper states that before 2007, there were reports of church members who tried to rehabilitate gang members and "were assaulted or killed for these actions apparently by gang members." Exh. 6 at 6. The Issue Paper adds that the gangs have reportedly ordered such killings to stop but that there are still a

"few reports of persons being harassed by gang members based on membership in a church organization." Id. Therefore, I find that the evidence demonstrates that "at least one central reason" the Respondent was persecuted was because of his religious beliefs and practices. Matter of J-B-N- & S-M-, 24 I&N Dec. at 208.

The Respondent provided credible testimony that the El Salvadoran government was unwilling or unable to protect the Respondent from further violent attacks and harassment by the gang members. See INS v. Cardoza-Fonseca, 480 U.S. at 440-41. The Respondent stated that after the first incident in which he was attacked by 18th Street gang members, he immediately went to the police and asked them to investigate the attack and write a report. The police officers laughed at the Respondent's request and refused to take any action. The Respondent also described an incident in which the 18th Street gang members threatened him along with his brother. The gang members badly beat the Respondent's brother and though police in the area saw the gang members fleeing the scene of the attack, they did not pursue the gang members nor did they write a report about what had occurred.

The Country Report provides evidence supporting the Respondent's claim that the police were not willing to investigate the attacks against him and his brother. In 2009, there were 2,230 reports of police misconduct, 1,181 officers sanctioned, and the Attorney General prosecuted 462 police officers. Group Exh. 4, Tab W at 106. The Country Report adds that "instances of corruption and outright criminality interfered with the...effectiveness" of the El Salvadoran police. *Id.* Finally, "street gang intimidation and violence against witnesses contributed to a climate of impunity from criminal prosecution." *Id.* at 107. I find that the Respondent's credible testimony, along with the corroborating evidence from the Country Report, is sufficient to show that the El Salvadoran government was unwilling or unable to protect the Respondent from further attacks by the 18th Street gang members.

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Because I find that the Respondent has established past persecution on account of his religion, I do not reach the issue of whether he suffered past persecution on account of his membership in a particular social group composed of his family.

C. Clear Probability of Future Persecution

Because the Respondent has shown that he suffered past persecution, he is entitled to a rebuttable presumption of a clear probability of future persecution on account of religion. See 8 C.F.R. § 1208.16(b)(1)(i). The Government can rebut the regulatory presumption if it shows by a preponderance of the evidence that fundamentally changed circumstances or a reasonably available internal relocation alternative have eliminated the individualized fear of persecution. 8 C.F.R. § 1208.16(b)(1)(ii).

The Government argues that the Respondent did not attempt to relocate in El Salvador but it has not shown by a preponderance of the evidence that there is a reasonably available internal relocation alternative for the Respondent in El Salvador. Therefore, the Government has

not rebutted the presumption that the respondent has a clear probability of future persecution due to the past persecution that he suffered. See 8 C.F.R. § 1208.16(b)(1)(ii).

D. Particularly Serious Crime

The Government argues that the Respondent's total convictions or his conviction for brandishing a firearm could make him ineligible for withholding as an alien who has been convicted of a particularly serious crime. See INA § 241(b)(3)(B)(ii)(stating that "an alien who has been convicted of an aggravated felony (or felonies) for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years shall be considered to have committed a particularly serious crime").

The Respondent's conviction for brandishing a firearm with a thirty day sentence is not an aggravated felony under the Act, see INA § 101(a)(43) and, therefore, it does not rise to the level of a particularly serious crime. See INA § 241(b)(3)(B)(ii). Even if I were to find that the Respondent's conviction for brandishing a firearm is an aggravated felony, his thirty day sentence would disqualify the crime from being classified as a particularly serious crime. Id. Additionally, though none of the Respondent's convictions are aggravated felonies, if all of the sentences from the Respondent's convictions were added together they would not reach the required "aggregate term of imprisonment of at least five years" to qualify as a particularly serious crime. Id.; see also Group Exh. 4. Tabs J, L-S. Therefore, I do not find that the Respondent has been convicted of a particularly serious crime. He is eligible for withholding of removal under the Act. See INA § 241(b)(3). A grant of withholding is mandatory if I find that the Respondent's life or freedom would more likely than not be threatened in El Salvador on account of his race, religion, nationality, membership in a particular social group, or political opinion. See INA § 241(b)(3)(A).

I grant withholding of removal to El Salvador under INA § 241(b)(3) on the basis of the Respondent's unrebutted regulatory presumption of future persecution. See 8 C.F.R. § 1208.16(b)(1)(ii).

VI. CONCLUSION

I find the Respondent removable as charged. I find him credible. On the basis of the testimony and other evidence, I find that he has shown past persecution in El Salvador on account of his religion. I also find that he has established a clear probability of future persecution on that basis. I find that the Respondent has not been convicted of a particularly serious crime. Therefore, I grant the application for withholding of removal under INA § 241(b)(3). Because I grant the Respondent's application for withholding of removal, I do not consider his alternative request for withholding of removal to El Salvador under the CAT.

Accordingly, after a careful review of the entire record, and for the reasons stated above, I enter the following Order:

It is Ordered that:

Respondent's application for withholding of removal to El Salvador under INA § 241(b)(3) be GRANTED.

It is Further Ordered that:

The master calendar hearing on September 8, 2010 be CANCELLED.

Paul Wickham Schmidt
U.S. Immigration Judge