Kuyomars Golparvar
Division Chief
Ronald A.A. Lapid
Section Chief
George R. Martin
Associate Legal Advisor
Immigration Law & Practice Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
5201 Leesburg Pike, Ste. 1300
Falls Church, VA 22041
(703) 820-3000

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matters of: A [redacted] C [redacted] G [redacted] In removal proceedings	)	File Nos.: A [redacted] A A A

DEPARTMENT OF HOMELAND SECURITY
MOTION TO REMAND

The Department of Homeland Security timely submits this motion to remand in response to the Board of Immigration Appeals' supplemental briefing request.

The general position of the Department is that an alien may qualify for asylum when she establishes, *inter alia*, that: she has suffered, or there is a reasonable possibility that she would suffer, serious harm by a domestic partner; the alien's status in the relationship plays a central part in the domestic partner's motivation to harm her; depending on regulatory presumptions and burdens of proof, the alien could not reasonably relocate within her home country to avoid future persecution by the domestic partner; and the state is unwilling or unable to afford reasonable protection from such serious harm. Depending on conditions in the home country and the facts as they relate to the alien, either of the following particular social groups may be cognizable: "women [of a particular nationality] in domestic relationships who are unable to leave" or "women [of a particular nationality] who are viewed as property by virtue of their positions within a domestic relationship." Each case, of course, must be assessed on its own individual merits. *See Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987).

After further review of the record evidence, the Department stipulates that the principal respondent has established past persecution on account of her membership in a cognizable particular social group, i.e., "[m]arried women in Guatemala who are unable to leave their relationship." Tr. at 40.[1] The Department submits, however, that further factual development of the record and related findings by the Immigration Judge are necessary on several issues before the case can be properly resolved. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (concerning the general prohibition against fact-finding by the Board and the necessity of remand to the Immigration Judge when fact-finding is necessary).

[1] The Department respectfully withdraws from any positions set forth in its prior appellate brief that are inconsistent with the positions set forth in the instant motion to remand, including, but not limited to, its position on the motivation of the principal respondent's husband to abuse her. *See* Department's 2010 Brief at 10-11.

For example, further inquiry on the issue of state protection, in the specific context of the principal respondent's situation, *see, e.g.*, Tr. at 46-49, is necessary to determine whether the respondent's not reporting to the authorities the full extent of her husband's abuse, *see* Tr. at 75-76, established the government's inability or unwillingness to provide protection and whether the government would likely be able and willing to provide protection in the future. *Compare, e.g.*, *Rahimzadeh v. Holder*, 613 F.3d 916, 922-23 (9th Cir. 2010) (concerning state protection and holding that while reporting is not a requirement, failure to do so leaves a "gap in proof," and discussing the relevance of private threats of retaliation), *with Matter of S-A-*, 22 I&N Dec. 1328, 1335 (BIA 2000) (concluding that the Moroccan authorities would have been unable or unwilling to control the persecutor even had the applicant sought their help).

In addition, further inquiry would be beneficial on the issue of whether the record reflects that the principal respondent could have reasonably relocated within Guatemala so as to avoid future persecution from her husband. *See, e.g.*, Tr. at 55-56, 69-72 (concerning the principal respondent's temporary residence with her girlfriend and parents); *see also Matter of M-Z-M-R-*, 26 I&N Dec. 28, 33-36 (BIA 2012) (discussing proper inquiry for safe internal relocation determinations); 8 C.F.R. § 1208.13(b)(2)(ii), (3). Moreover, further exploration is warranted as to the severity of the past persecution suffered by the principal respondent or the potential for other serious harm with respect to any necessary inquiry into her eligibility for a discretionary grant of asylum in the absence of a well-founded fear of future persecution. *See, e.g.*, Tr. at 52-53, 73-74; 8 C.F.R. § 1208.13(b)(1)(iii). Finally, on remand the record can be updated with any other information pertinent to the principal respondent's applications.

Accordingly, the Department moves the Board to remand this matter to the Immigration Judge for further proceedings and the entry of a new decision.

Respectfully submitted on this 13th day of November, 2012,

George R. Martin
Associate Legal Advisor
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security[2]

[2] The Department respectfully requests that all correspondence to it in this matter continue to be directed, in the first instance, to the local U.S. Immigration and Customs Enforcement (ICE) Office of the Chief Counsel in [redacted] with copies to the Division Chief of ICE's Immigration Law & Practice Division.