

NATIONAL
IMMIGRANT
JUSTICE CENTER
A HEARTLAND ALLIANCE PROGRAM

Via Electronic Delivery

January 28, 2016

U.S. Citizenship and Immigration Services
Chicago Asylum Office
Attn: APSO Supervisory Asylum Officers
181 W. Madison, Suite 3000
Chicago, IL 60602

RE: [REDACTED] (A# [REDACTED])
Request to Reconsider Credible Fear Decision

Dear APSO Supervisory Asylum Officers:

The National Immigrant Justice Center (“NIJC”) represents [REDACTED] in her request that the Chicago Asylum Office reconsider her negative Credible Fear determination made by the Houston Asylum Office and grant her a further interview with regard to her fear of returning to her country of origin. My G-28 is enclosed.

Applicants who state they are seeking asylum or fear persecution or torture and can establish to an asylum officer that have has a credible fear of persecution will not be subjected to expedited removal. 8 C.F.R. §§ 235.3(b)(4). Credible fear is defined as: “A significant possibility ... that the alien could establish eligibility for asylum under section 208.” If the applicant establishes a credible fear to the officer, her case is then referred for an INA § 240 hearing before an Immigration Judge (IJ). 8 C.F.R. §§ 208.30, 235.3, 1208.30, 1235.3. If the asylum officer determines that the applicant does not have a credible fear, then the applicant may request review before the IJ. 8 C.F.R. §§ 208.30(g). If the IJ concurs with the determination of the asylum officer that the applicant does not have a credible fear of persecution or torture, the applicant will be removed. 8 C.F.R. § 1208.30(g)(2)(iv)(A). However, **the Asylum Office may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge.** 8 C.F.R. 1208.30(g)(2)(iv)(A).

I also ask that [REDACTED] be re-interviewed so that she may provide crucial facts relevant to her asylum claim, as outlined in her attached affidavit. These facts were not elicited during her initial interview, but are material to [REDACTED] fear of persecution. *See* 8 CFR 208.30(d)(noting that “[t]he purpose of the interview shall be to elicit all relevant and useful information bearing on whether the applicant has a credible fear of persecution or torture....” Additionally, at the time of her initial interview, [REDACTED] appeared *pro se* and was unable to submit evidence in support of her claim. [REDACTED] now seeks to introduce evidence that was not available to her at the time of her initial interview, given that she

is in Department of Homeland Security (DHS) custody, without access to evidence relevant and material to her claim. *See* 8 CFR 208.30(d)(4) (permitting an individual to present evidence). Further, [REDACTED] was previously unable to consult with a “person...of her choosing” prior to her interview. *See id.* She has now been able to do so and is presently represented by counsel at the National Immigrant Justice Center. As such, and as permitted by the regulations, we request that counsel be permitted to be present during her interview. *Id.*

I. Relevant Background and Facts

[REDACTED] is a young woman from Honduras. She is a former student who began attending an evangelical Christian church with her mother and three younger sisters around 2010. On October 6, 2012, while she was walking down the street shopping, the pastor of her church, [REDACTED], asked that she get into his car because he wanted to drive her home. Rather than driving her home, he drove her to a motel in the center of [REDACTED] where he beat and raped her. He threaten to kill her if she told anyone about the rape and also stated that no one would believe her because she was a young woman and he was a pastor. Despite the threats, [REDACTED] told her mother what the pastor had done. That same day, her mother took [REDACTED] to the local police to file a formal complaint. The police arrested the pastor the same day, but he was soon released on bond. [REDACTED] believes that the legal fees for [REDACTED] were covered by his uncle, who is a mayor in [REDACTED]. After [REDACTED] filed the complaint and her story became public, three other young women from her church told her that they had also been raped by the pastor, but had been too scared to report the crime. [REDACTED] encouraged them to come forward to file complaints, but she thinks that they did not because they were scared that the same thing that was happening to her would happen to them.

After [REDACTED] filed the complaint, the pastor and his family began to threaten her by calling her mother and demanding that she either drop the charges against him or pay the consequences. On one occasion, shortly after the pastor was released on bond, he attempted to run [REDACTED] over with his car. [REDACTED] reported this incident along with the other threats to the prosecuting attorney from the Public Ministry, but he was never rearrested. The pastor’s trial was to be held on February 2015 nearly two and a half years after he raped her and she reported the crime to the authorities. During that time [REDACTED] had lived in hiding. She was constantly in fear that he or his family would try to hurt or kill her because she continued her cooperation with the prosecution of the case. [REDACTED] who had formerly been an aspiring university student who wanted to pursue a degree in accounting, had to abandon her dreams of higher education because she could no longer leave her house.

[REDACTED] had hoped that once the pastor was convicted and imprisoned, she would be safe again. However, shortly after his trial was to take place, the prosecuting attorney called [REDACTED] mother to inform her that he was a fugitive. Even while a fugitive, the [REDACTED] continued to make threats against her stating that he was going to make her pay even if it was the last thing he did. [REDACTED] mother reported one of these threats to the prosecutor from the Public ministry, but the police still did not provide the requested protection to [REDACTED] and did not appear to be searching for him.

In September 2015, ██████████ fled to the United States because she feared that now that ██████████ had been convicted and had escaped, he was going to make good on his threats and she could not continue to live in hiding. On October 3, 2015, ██████████ crossed the border into the United States and turned herself into border patrol officers and requested asylum. She has been detained in immigration custody since that time.

II. USCIS should reconsider ██████████ negative credible fear determination

Per 8 C.F.R. § 1208.30(g)(2)(iv)(A), the Asylum Office may reconsider a negative credible fear finding that has been concurred upon by an immigration judge after providing notice of its reconsideration to the immigration judge. In ██████████ case, we respectfully request that you reconsider her credible fear decision because an incorrect legal analysis was conducted, questions crucial to her claim were not asked during the interview, and ██████████ did not have the opportunity to provide vital information related to her fear of return. For these reasons, we respectfully request that you reconsider your decision and make a positive credible fear determination.

III. ██████████ faces a significant possibility of persecution in Honduras on account of her membership in a particular social group, as well as a significant possibility of torture with the government's acquiescence.

Several legal errors were made during the analysis of ██████████ credible fear interview. In part B1 of the credible fear determination checklist, the officer states that while ██████████ was threatened and harmed by her persecutor because she reported the crime to the police, her case is distinguishable from "Hondurans who report serious gang related (or cartel related) crimes to law enforcement." The officer states that in the present case the persecutor is not a member of a gang or a cartel, but a private individual who raped her. This was the sole rationale provided by the officer for finding that ██████████ did not establish a particular social group. The Asylum Office erred in its analysis in several ways.

First, the officer erroneously determined that because the pastor was a private actor, he could not have engaged in persecution. The officer erroneously applied a requirement that the persecutor be part of an organized crime group, either a gang or cartel. However, courts have long-held that persecution, as required under the INA, can indeed be directed by a single, private actor, whom the government cannot or will not control. *Pramaratov v. Gonzalez*, 454 F.3d 764, 766 (7th Cir. 2006); *Bitsin v. Holder*, 719 F.3d 619, 628 (7th Cir. 2013); *Cece v. Holder*, 733 F.3d 662, 675 (7th Cir. 2013) (en banc).

A. ██████████ is a member of a particular social group

In its decision, the Asylum Office conflated the PSG analysis with the requirement that the government be the persecutor or an individual that the government is unable or unwilling to control. The officer found that ██████████ could not establish a PSG on the basis that her persecutor is a private actor, rather than independently analyzing the viability of the PSG and her membership in that group. However, the facts and circumstances of ██████████ claim support two particular social groups: 1) witnesses to crimes who actively participate in the

prosecution of the crime, which mirrors other social groups which the Seventh Circuit and other federal courts of appeals have found cognizable, *see R.R.D. v. Holder*, 746 F.3d 807, 809 (7th Cir. 2014); *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (en banc); *Crespin-Valladares v. Holder*, 632 F.3d 117, 127 (4th Cir. 2011), *Gashi v. Holder*, 702 F.3d 130, 137 (2d Cir. 2012); and 2) gender, which is a social group specifically acknowledged by the BIA in *Matter of Acosta*, 19 I. & N. Dec. 211, 233–34 (1985), and one other circuit courts have indicated to be a viable one. *See Cece v. Holder*, 733 F.3d at 675; *Perdomo v. Holder*, 611 F.3d 662, 667 (9th Cir. 2010).

In terms of the government’s willingness or ability to control her persecutor, while the local authorities did attempt to prosecute [REDACTED] persecutor, it was not sufficient to protect her and avoid further persecution. First, the authorities did not further investigate or charge [REDACTED] for his attempt to harm [REDACTED] with his car while out on bond on the rape charges. Second, and significantly, [REDACTED] was able to escape when he was out on bond and did not present himself at his trial. Thereafter, although [REDACTED] continued to receive threats from [REDACTED] *even after he escaped*, the local authorities did not appear to take any steps to protect her or to apprehend him. [REDACTED] mother requested a police presence in their neighborhood after the threats were made to no avail. When her mother requested police protection from prosecutor at Public Ministry she was told that it was unlikely to happen because they did not have the resources available for patrols and because her type of case was complicated. Additionally, the fact that [REDACTED] is the nephew of a town’s mayor, who had been covering his legal fees, and that [REDACTED] entire family also threatened [REDACTED] makes her fear that the Honduran government is unable or unwilling to control her persecutor more than plausible.

B. The Honduran government is unable or unwilling to control [REDACTED] [REDACTED] persecutor.

Furthermore, in part B1, the officer also states that while [REDACTED] claimed that she could not live safely in other parts of Honduras because [REDACTED] would find her, “it is not clear how and why he would be able to find her throughout the country if he is hiding from the police.” However, the officer did not address the issue that [REDACTED] had also received threats from her persecutor’s family. Furthermore according to the interview notes, [REDACTED] [REDACTED] was not asked why and how he would be able to find her. She was also not asked if she had family in other parts of Honduras and whether it would have been feasible to live anywhere else in order to provide sufficient information to determine whether it would have been a reasonable expectation under the circumstances for her to relocate. *See* 8 C.F.R. § 208.13(b)(3).

Moreover, the format of the interview did not allow [REDACTED] to provide critical information for this portion of the analysis. [REDACTED] states in her affidavit that she felt rushed during the interview and stated that several times, the interpreter told her to only answer the question and not provide any additional explanation. She explains in her affidavit that if she had been allowed an opportunity she would have added that she feared that [REDACTED] could simply hire someone to harm her because he had the financial resources to do so and would not have to look for her himself.

C. ██████████ faces a significant possibility of torture with the government's acquiescence.

Finally, the credible fear determination regarding ██████████ eligibility for CAT relief – which found a significant possibility of torture by the persecutor, but no significant possibility that the persecutor would act with the acquiescence of the Honduran government – also missed key portions of ██████████. This testimony demonstrated that a significant possibility exists that ██████████ could establish government acquiescence in a full hearing. The worksheet in part C2 states that she could not establish a significant possibility of torture by the government because the government had arrested her persecutor and had in fact prosecuted him for his crime. However, the officer's analysis ignores that fact that her persecutor fled as well as other crucial details, such as his family ties and economic resources, which likely made it possible that police officers will not search for him or release him even if he is found. Crucial as well to this analysis is the fact that the police did nothing to search for the ██████████ following his escape or to investigate the reported death threats made against ██████████ after his escape.

Additionally, worksheet in part C2 states that ██████████ did not explain why she did not report recent threats to law enforcement since her persecutor is an escaped inmate whom the police had an interest in prosecuting in the past. However, the interview notes reflect that she was not asked any questions about whether she reported these threats to law enforcement or why she did not, if she had not. In fact, ██████████ affidavit states that her mother, who had maintained communication with the prosecutor on the case, did report the first threat, but did not report the subsequent threats because the police did not appear to be searching for him and ██████████ found it futile to continue making reports that were unheeded.

Furthermore, the officer's analysis in part C2 states that the applicant did not express fear of the government. However, ██████████ did state that her persecutor is the nephew of the mayor of a neighboring town. If she had been provided with more time to respond to questions, ██████████ would have added that the persecutor's uncle had paid his legal fees. This information would have provided critical facts to aid in the officer's analysis of government acquiescence.

Finally, ██████████ belief that her persecutor will not be captured and brought to justice is not unfounded as it is corroborated by the U.S. State Department Human Rights Report for Honduras (2014). The Honduras country report states that government officers often engaged in corruption with impunity; instances of corruption and criminality (among other issues) plagued the police force; and judicial corruption is a major challenge for the judicial system. As the Seventh Circuit recently held in *Rodriguez-Molinero v. Lynch*, No 15-1860 at *4 (7th Cir., Dec. 17, 2015), acquiescence by the government only requires that a public official have had awareness of the activity constituting torture and breach his legal responsibility to intervene to prevent such activity. ██████████ testimony and the country condition evidence attached to this request demonstrate that a significant possibility exists that in a full hearing, she will be able to show that the Honduran police was not protecting her from the ongoing threats from her persecutor and was in fact breaching its legal responsibility to intervene to prevent

██████████ from harming her because police were not searching for him nor providing her with protection.

For the foregoing reasons, the Asylum Office should reconsider ██████████ credible fear decision and provide her with a new interview, at which she can present further testimony and evidence with regard to her claim.

Thank you for your time and consideration of this request. Please do not hesitate to contact me at 312-660-1614 should you require any additional information.

Sincerely,



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