UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
COURT NAME

Matter(s) of	Date:
First Name LAST NAME,	File Number(s): **A____-____-____**
The Respondent(s)	In Removal Proceedings

Charge(s): Section **[ENTER REFERENCE]** of the Immigration and Nationality Act, as amended, **[READ RELVANT STATUTORY TEXT]**

Applications: Asylum, Withholding of Removal, and protection under the Convention Against Torture

On Behalf of the Respondent(s):
Pro Se **[or Attorney Name]**

On Behalf of DHS:
[DHS COUNSEL NAME]
Office of the Chief Counsel

DECISION OF THE IMMIGRATION JUDGE

I. PROCEDURAL HISTORY

The Department of Homeland Security ("DHS") initiated these removal proceedings against the respondent(s), **[*First Name LAST NAME*]**, by filing a Notice to Appear ("NTA") on the **[*COURT NAME*]**, Immigration Court on **[*DATE*]**. The NTAs allege that **[*read NTA allegations*]**. *Id*. Based on those allegations, the NTAs charge the respondent(s) with removability under section **[*section number*]** of the Immigration and Nationality Act ("INA" of "the Act"), as amended, **[*read text of charge of removability*]**.

II. PLEADINGS

A. There is no Derivative Relief Under the Withholding of Removal Statute or the Convention Against Torture

[*name of derivative*] is a derivative on that application for asylum, but **[*has / has not*]** applied for withholding of removal or protection under CAT. INA § 208(b)(3); *Matter of A-K-*, 24 I&N Dec. 275, 279 (BIA 2007) ("the Act does not permit derivative withholding of removal under any circumstances."); *see Arif v. Mukasey*, 509 F.3d 677, 682 (5th Cir. 2007).

III. EVIDENCE PRESENTED

A. Administrative Notice

The Court takes administrative notice of country conditions evidence in **[*name of country*]** from the **[*source of information*]**. *Rivera-Cruz v. INS*, 948 F.2d 962, 966 (5th Cir. 1991).

B. Objections to Evidence

"The rules of evidence, including those that exclude hearsay, do not govern [removal] proceedings." *Olabanji v. INS*, 973 F.2d 1232, 1234 (5th Cir. 1992). Rather, these proceedings are governed by the due process standard of fundamental fairness. *Ogbemudia v. INS*, 988 F.2d 595, 598 (5th Cir. 1993). Thus, objections to evidence must establish an initial showing of substantial prejudice. *Anwar v. INS*, 116 F.3d 140, 144 (5th Cir. 1997). "That is, [the respondent] must make a prima facie showing that she was eligible for [relief] and that the excluded evidence 'could have made a strong showing in support of [that] application." *Tariq v. Holder*, 537 F. App'x 494, 496 (5th Cir. 2013) (citing *Anwar*, 116 F.3d at 144).

IV. ANALYSIS

A. Credibility

An applicant seeking asylum, withholding of removal, or CAT relief must persuade the Court that his or her evidence is credible. *See Zhang v. Gonzales*, 432 F.3d 339, 345 (5th Cir. 2005). Applications, like the respondent's, that were filed after May 11, 2005, are subject to the credibility-assessment standards articulated in the REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231 (2005). *See Wang v. Holder*, 569 F.3d 531, 537–39 (5th Cir. 2009).

The INA, as amended by the REAL ID Act, provides that a credibility finding may be based on the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of the applicant's account; the consistency between the applicant's written and oral statements; the internal consistency of each such statement; the consistency of such statements with other evidence of record; any inaccuracies or falsehoods in such statements; or any other relevant factor. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C). An adverse credibility determination may be based on any of these factors, but it "must be supported by specific and cogent reasons derived from the record." *Zhang*, 432 F.3d at 344.

[*Conduct Analysis*]

For the aforementioned reasons, the Court finds that the respondent **[*testified credibly / did not testify credibly*]**. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).

B. Corroboration

"[A]pplicants are eligible for asylum based solely on credible testimony *only if corroborating evidence is not reasonably available*." *Rui Yang v. Holder*, 664 F.3d 580, 586 (5th Cir. 2011) (emphasis supplied); *see Garcia v. Lynch*, 608 F. App'x 280, 281 (5th Cir. 2015) ("the failure to [corroborate] may be dispositive of the petitioner's application for relief without regard to the credibility of his testimony."). In the absence of corroborating evidence, the Court is required to explain "how the testimony has been assessed and how its plausibility or implausibility has been established without such information." *Matter of S–M–J–*, 21 I&N Dec. 722, 729 (BIA 1997).

[*conduct analysis here*]

Here, the Court finds that the respondent **[*did / did not*]** adequately corroborate **[*his /her*]** application for relief. INA § 240(c)(4)(B); 8 C.F.R. § 1208.13(a).

C. Asylum

To qualify for a grant of asylum, an applicant bears the burden of demonstrating that he or she meets the statutory definition of a refugee. INA §§ 101(a)(42)(A), 208(b)(1)(A). The INA defines the term "refugee" as any person who is outside his or her country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of that country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b).

1. Persecution

The INA does not define persecution, but the Fifth Circuit has described it as "the infliction or suffering of harm, under government sanction, upon persons who differ in a way regarded as offense . . . in a manner condemned by civilized governments." *Abdel-Masieh v. INS*, 73 F.3d 579, 583 (5th Cir. 1996). "The harm or suffering need not be physical, but may take other forms, such as the deliberate imposition of severe economic disadvantage or the deprivation of liberty, food, housing, employment or other essentials of life." *Id*. Persecution "requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty." *Eduard v. Ashcroft*, 379 F.3d 182, 187 (5th Cir. 2004) (quoting *Mikhailevitch v. INS*, 146 F.3d 384, 390 (6th Cir. 1998)); *see Huezo v. Mukasey*, 269 F. App'x 374, 375 (5th Cir. 2008) (discussing death threats). Past persecution may be established "based on the cumulative effect of multiple threats and attacks, even if no single incident is sufficient." *Venturini v. Mukasey*, 272 F. App'x 397, 403 (5th Cir. 2008) (citing *Eduard*, 379 F.3d at 188)).

2. Protected Ground

[*refer to Fifth Circuit materials*]

3. Nexus

The REAL ID Act of 2005 requires an applicant to prove that one of the protected grounds was or will be "at least one central reason" for the claimed persecution. *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009). The BIA has explained that "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 another reason for harm." *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007). Thus, an applicant must show proof of a nexus between the protected ground and the persecution through direct or circumstantial evidence. *Sharma v. Holder*, 729 F.3d 407, 412 (5th Cir. 2013) (explaining that credible testimony may establish the persecutor's motives); 8 C.F.R. § 1208.13(b)(1).

4. Unable or Unwilling to Control

Additionally, to establish persecution, the respondent must show that the government is unable or unwilling to control these actors. *See Tesfamichael v. Gonzales*, 469 F.3d 109, 113 (5th Cir. 2006). Whether the government is unable or unwilling to control persecutors is an issue of fact reviewed for substantial evidence and overturned only if no reasonable factfinder could agree. *See, e.g.*, *Betancur v. Holder*, 593 F. App'x 414, 415 (5th Cir. 2015) ("because [petitioner] has not shown the government of Colombia is working with, or unable or unwilling to control FARC, he has not demonstrated the evidence compels a finding of past persecution."). The respondent can establish the government's unwillingness or inability to protect if she shows the government "condoned [] or at least demonstrated a complete helplessness to protect the victims." *Shehu v. Gonzales*, 443 F.3d 435, 437 (5th Cir. 2006) (citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000)).

5. Well Founded Fear of Future Persecution

a. No Past Persecution

Even in the absence of past persecution on account of a protected ground, an applicant may be eligible for asylum based on a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(2). An applicant has a well-founded fear of persecution if: (1) he or she fears persecution in the country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if she were to return to that country; and (3) he or she is unable or unwilling to return to that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i). An applicant may establish a well-founded fear of persecution if they would be singled out individually for persecution or if there is a "pattern or practice" of persecution of "similarly situated" persons. 8 C.F.R. § 1208.13(b)(2)(iii).

An individual who premises an asylum claim on a well-founded fear of future persecution must demonstrate fear that is both subjectively genuine and objectively reasonable. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-31 (1987); *Eduard v. Ashcroft*, 379 F.3d 182, 189 (5th Cir. 2004). An alien's subjective fear of persecution establishes a subjective fear if "a reasonable person in her circumstances would fear persecution if she were to be returned to her

native country." *Guevara Flores v. INS*, 786 F.2d 1242, 1249 (5th Cir. 1986), *cert. denied*, 480 U.S. 930 (1987). To establish the objective reasonableness of a well-founded fear of persecution, an applicant must prove:

(1) that they possess a belief or characteristic a persecutor seeks to overcome by means of punishment of some sort;
(2) that the persecutor is already aware, or could become aware, that the respondent possesses this belief or characteristic;
(3) that the persecutor has the capability of punishing the alien; and
(4) that the persecutor has the inclination to punish the alien

Zhao v. Gonzales, 404 F.3d 295, 307 (5th Cir. 2005) (internal citation omitted).

b. Past Persecution Established: Presumption of Well-Founded Fear

If an applicant establishes past persecution on account of a protected ground, they are entitled to a rebuttable presumption of a well-founded fear of future persecution. *Diallo v. Holder*, 601 F. App'x 300, 301 (5th Cir. 2015); 8 C.F.R. § 1208.13(b)(1). The presumption may be rebutted if the government establishes by a preponderance of the evidence that: (1) there has been a fundamental change of conditions that removes the threat to the applicant, or (2) the applicant could avoid the threat by relocating to another part of the country." *Zhu v. Gonzales*, 493 F.3d 588, 596–97 (5th Cir. 2007).

D. Discretion

An individual who meets their burden to establish that they are a "refugee" under INA § 101(a)(42) must still convince the Court that they warrant a grant of asylum as a matter of discretion. INA § 208(b)(1)(A); *Mikhael v. INS*, 115 F.3d 299, 303 (5th Cir. 1997).

E. Withholding of Removal

To qualify for withholding of removal, an applicant must show that her life or freedom would be threatened on account of a protected ground if she were to return to the country of removal. INA § 241(b)(3)(A); *INS v. Stevic*, 467 U.S. 407, 430 (1984). The withholding of removal standard, "is even higher than the standard for asylum, requiring a showing that it is more likely than not that the alien's life or freedom would be threatened by persecution on one of those protected grounds." *Ramirez-Mejia v. Lynch*, 813 F.3d 240, 241 (5th Cir. 2016).

F. Protection Under the Convention Against Torture

Protection under CAT is mandatory relief. *See* 8 C.F.R. §§ 1208.16-18. The CAT analysis has two prongs: "first, is it more likely than not that the alien will be tortured upon return to his country; and second, is there sufficient state action involved in that torture." *Iruegas–Valdez v. Yates*, 846 F.3d 806, 812 (5th Cir. 2017) (quoting *Garcia v. Holder*, 756 F.3d 885, 891 (5th Cir. 2014)); 8 C.F.R. § 1208.16(c)(2). "Torture" is defined as:

> [A]ny act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity.

8 C.F.R. § 1208.18(a)(1); *see Zhang v. Gonzalez*, 432 F.3d 339, 345 (5th Cir. 2005). "Acquiescence of a public official requires that the official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7); *Garcia v. Holder*, 756 F.3d 885, 892 (5th Cir. 2014) ("acts motivated by an officer's personal objectives are 'under color of law' when the officer uses his official capacity to further those objectives."). Willful blindness to torture constitutes acquiescence. *Ontunez–Tursios v. Ashcroft*, 303 F.3d 341, 354 (5th Cir. 2002). Under Fifth Circuit law, even "the use of official authority by low-level officials, such as police officers, can work to place actions under the color of law even when they are without state sanction." *Iruegas–Valdez v. Yates*, 846 F.3d 806, 813 (5th Cir. 2017) (internal citation and quotations omitted).

The Court must consider all evidence relevant to the likelihood of future torture, including but not limited to: past torture inflicted upon the respondent; evidence that the respondent could relocate to another part of the country where it is unlikely he will be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in the respondent's country. *Ramirez–Mejia v. Lynch*, 794 F.3d 485, 493 (5th Cir. 2015); 8 C.F.R. § 1208.16(c)(3).

In light of the foregoing, the following orders shall enter:

ORDERS

IT IS HEREBY ORDERED that the respondent's application for **[*type of application*]**.

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Immigration Judge