

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
26 FEDERAL PLAZA  
NEW YORK, NEW YORK**

File No.: [REDACTED]

In the Matter of:  
[REDACTED]  
Respondent

**IN REMOVAL PROCEEDINGS**

**CHARGE:** INA § 212(a)(7)(A)(i)(I) Not in possession of a valid entry document

**APPLICATIONS:** INA § 208 Asylum  
INA § 241(b)(3) Withholding of Removal  
8 C.F.R. § 1208.16(c) Convention Against Torture ("CAT")

ON BEHALF OF RESPONDENT  
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**DECISION AND ORDER OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL HISTORY**

[REDACTED] ("Respondent") is a twenty-eight-old native and citizen of India. Respondent entered the United States ("U.S.") at or near Laredo, Texas on February 19, 2007. [Exh. 1.] She was detained at the South Texas Detention Center in Pearsall, Texas, upon apprehension by Border Patrol. [Exh. 2.] On May 3, 2007, the Department of Homeland Security ("DHS") served Respondent with a Notice to Appear ("NTA") charging her with removability pursuant to Immigration and Nationality Act ("INA") § 212(a)(7)(A)(i)(I) in that she was not in possession of a valid entry document. [Exh. 1.]

At a master calendar hearing on June 11, 2007 at the San Antonio Immigration Court, Respondent admitted the factual allegations contained in the NTA and conceded removability as charged. Thus, removability has been established by clear and convincing evidence. See 8 C.F.R. §§ 1240.8, 1240.10(c). The Immigration Judge ("IJ") designated India as the country of removal. On June 25, 2007, Respondent filed an application for asylum, withholding of removal under the INA, and withholding of removal under the Convention Against Torture ("CAT"). [Exh. 3.]

On September 11, 2007, Respondent filed a motion to change venue from the San Antonio Immigration Court to the New York City Immigration Court following her release from detention. The IJ granted Respondent's motion to change venue on September 24, 2007. On July 10, 2009, Respondent appeared before this Court for her individual hearing and offered testimony.

## II. EXHIBITS

- Exhibit 1:** Form I-862, Notice to Appear, served May 3, 2007;
- Exhibit 2:** Record of Determination/Credible Fear Worksheet; Form I-213, Record of Deportable/Inadmissible Alien;
- Exhibit 3:** Form I-589, Application for Asylum and for Withholding of Removal, filed on June 25, 2007;
- Exhibit 4:** Copy of Respondent's Indian passport; copy of Respondent's school records (marked for identification only);
- Exhibit 5:** Background materials on country conditions in India; Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *India Country Reports on Human Rights Practices- 2006* (March 2007);
- Exhibit 6:** Court request for comment to the U.S. Department of State, dated June 25, 2007;
- Exhibit 7:** Frivolous warnings for asylum applicants, served June 25, 2007;
- Exhibit 8:** Letter and copy of identity card from [REDACTED], Respondent's friend; letter and copy of identity card from [REDACTED], Respondent's friend; letter and copy of identity card from [REDACTED], Respondent's friend; letter and copy of identity card from [REDACTED], Respondent's friend; Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *India Country Reports on Human Rights Practices- 2007* (March 2008); background materials on India;
- Exhibit 9:** Letter, copy of identity card and envelope from [REDACTED], Respondent's friend; letter, copy of identity card, and envelope from [REDACTED], Respondent's friend; letter, copy of identity card, and envelope from [REDACTED], Respondent's friend; letter, copy of identity card, and envelope from [REDACTED], Respondent's friend;
- Exhibit 10:** Copy of Respondent's birth certificate (marked for identification only);

- Exhibit 11:** Copies of previously submitted statements from Exhs. 8 & 9, with new certificates of translation; copy of Respondent's high school diploma;
- Exhibit 12:** Amendments to Form I-589;
- Exhibit 13:** Respondent's affidavit; letter from [REDACTED], Respondent's friend; letter from [REDACTED], Respondent's friend; letter from [REDACTED] Respondent's friend; background materials on country conditions in India; Bureau of Democracy, Human Rights and Labor, U.S. Dep't of State, *India Country Reports on Human Rights Practices- 2008* (March 2009);
- Exhibit 14:** Amendment to Form I-589;
- Exhibit 15:** Record of sworn statement in proceedings; record of sworn statement in affidavit form.

### III. TESTIMONY

Respondent resided with her parents, two brothers, and sister in Gujarat, India until 2007. Respondent left India because her parents wanted her to marry a "very old man," her father's friend. Arranged marriages are common in India and people in her community start to marry around the age of eighteen. Respondent had two or three marriage proposals prior to the proposal in 2007 which led to her departure from India. However, Respondent had no interest in getting married when she received these proposals because she wanted to focus on her studies, which she completed in 2003.

In January 2007, Respondent's father showed her a photograph of his friend, [REDACTED] who was about forty years old. Respondent told her father that she did not wish to marry him. However, Respondent's father believed that she had been single for too long and was anxious for her to be married. Respondent's father said that if she did not marry [REDACTED] he would beat her and throw her out of the house. Her father then beat her with a stick. Respondent's mother and siblings were there and tried to intervene, but were unable to help her. Respondent did not suffer any serious injuries as a result of this beating, but she had pain in her back. She did not seek medical care as a result of the beating. She also did not seek help from the police because of her belief that the police do not intervene in cases of domestic violence. Respondent spoke with her mother, telling her that she did not wish to marry this man, but her mother told her that she had to comply with her father's wishes.

After the beating, Respondent left her home, taking her birth certificate, school records, and Indian passport with her. She then went to stay with her friend, [REDACTED] Nemisa said that she would help Respondent arrange to leave India. Nemisa made all the arrangements for Respondent to leave the country, including helping her obtain a visa to travel to Guatemala. Respondent stayed with [REDACTED] for two or three days and then traveled to Delhi. From Delhi, Respondent traveled to Guatemala. Her Indian passport was lost during the trip.

When Respondent arrived in Guatemala, she called her parents. Respondent contacted her family because she was hoping that her father had a change of heart and would accept her

back into the family. However, her father threatened that if she ever returns to India, he will kill her. Respondent called her father again about four or five months prior to the date she testified in these proceedings. He again told her that if she returns to India, he will kill her because she dishonored his name in the community. Respondent did not know whether her mother was present during the phone calls. Respondent's mother is very scared of her husband and that is why she has not tried to contact Respondent.

Respondent entered the U.S. in a car on February 19, 2007, through Laredo, Texas. She was picked up by border patrol agents a few minutes after crossing the border. Respondent recalls being asked at that time whether she had a fear of returning to India. She stated that "I did not answer a lot, I answered a little bit, because I was very much scared." She stated that she was traveling with a "boy" and he answered the agent's questions. There was no interpreter present during the interview and she is not sure what her travel companion answered. She felt scared and was crying. When confronted with information that she told the agent that she did not fear returning to India, Respondent stated that she must not have understood what he said and may have wrongly answered that she does not fear return. Respondent clarified that she does fear returning to India, stating that she believes she will be killed if she goes back. She also testified that she does not know how much [REDACTED] paid for her to be smuggled into the U.S. and she does not know why the record of sworn statement prepared by the border patrol agent states that she paid twenty-five lakh rupees to be smuggled.

Respondent fears returning to India because she believes that her father will kill her because she has "blackened their [sic] face" in the community. Respondent does not believe that there is anywhere in India she can live and be safe. Her father would find her anywhere in India, even if she moved to a big city. The government of India could not protect her from harm by her father.

Respondent was questioned as to why several of the affidavits submitted on her behalf indicate she had troubles with her aunt and uncle. Respondent testified that she had no problems with her aunt and uncle although they are now being tormented because Respondent shamed the family. They lived next door to her family and she occasionally did housework for them. Respondent was also asked why she did not obtain a letter from [REDACTED]. Respondent was not sure whether she had received a letter from [REDACTED] but she believes she will receive a letter from her in the future.

#### IV. LEGAL STANDARDS AND ANALYSIS

##### A. Asylum

In an asylum adjudication, the applicant bears the burden of establishing statutory eligibility, which requires a showing 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). If eligibility is established, asylum may be granted in the exercise of discretion. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987); *Abankwah v. INS*, 185 F.3d 18, 22 (2d Cir. 1999).

## 1. Credibility

In all applications for asylum, the Court must make a threshold determination of the alien's credibility. *Matter of O-D-*, 21 I&N Dec. 1079, 1081 (BIA 1998). An applicant's own testimony is sufficient to meet her burden of proving her asylum claim if it is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis of her fear. 8 C.F.R. § 1208.13(a); *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). An applicant may be given the "benefit of the doubt" if there is some ambiguity regarding an aspect of her asylum claim. *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

The REAL ID Act of 2005 amended various sections of the INA relating to the adjudication of asylum applications. For asylum applications filed on or after May 11, 2005, such as the application in the instant case, the following factors may be considered in the assessment of an applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii); *Sun v. BIA*, 510 F.3d 377, 378 (2d Cir. 2007).

The Court finds Respondent's testimony to be credible. Respondent's testimony was consistent with her application for asylum and with the background information before the Court regarding the treatment of women in India, including the problems of forced marriage, domestic violence, and honor killings. [Exhs. 3, 5, 8, & 13.] Respondent's description of her father's reaction to her refusal to submit to forced marriage is consistent with the background material before the Court, which indicates that a woman who has shamed her family is often ostracized, subject to physical violence, or even killed. [Exhs. 5, 8, & 13.]

Additionally, the Court finds reasonable Respondent's explanation for the inconsistencies between her testimony in Court and her statements to Border Patrol. [Exh. 15.] The Court credits Respondent's explanation that she was terrified after having been apprehended by Border Patrol. Additionally, Respondent testified that government officials in India do not take violence against women seriously. Therefore, Respondent's reluctance to reveal her fears to government officials is understandable, given her experience in her home country. *See Ramsameachire*, 357 F.3d at 180 (finding an interview at the border may be deemed less reliable if the alien appears reluctant to reveal information to government officials based on negative experiences with government officials in the home country). Moreover, Respondent testified that there was no Gujarati interpreter present to assist her at the border patrol interview.<sup>1</sup> Given the lack of an in-person interpreter, the Court finds it reasonable that there were misunderstandings or communication difficulties. *Id.* (finding alien's statements should be considered less reliable when there is evidence to suggest that the alien did not understand the questions being asked).

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<sup>1</sup> Form I-213 suggests that a Gujarati interpreter was contacted via telephone but, as Respondent testified, was not present at the time of the interview. [Exh. 2.]

The Court also acknowledges inconsistencies between Respondent's testimony and several of the affidavits submitted on her behalf by her friends. [Exh. 11.] Specifically, these affidavits mention that Respondent had problems with her aunt and uncle and do not mention that her opposition to forced marriage was the reason that she left India. *Id.* However, Respondent's testimony was internally consistent, consistent with her written statement, and consistent with her credible fear interview in detention. Therefore, the Court finds Respondent's explanation for the discrepancies adequate and accepts her consistent story that the reason that she left home was her opposition to forced marriage and her fear of violence at the hands of her father. Considering the totality of the circumstances, the Court finds Respondent credible.

## 2. Corroboration

An alien requesting asylum bears the evidentiary burden of proof and persuasion in connection with any application under INA § 208. 8 C.F.R. § 1208.13(a). Uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for asylum. *See* INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987). The BIA has recognized the difficulties that an applicant may face obtaining documentary or other corroborative evidence to support her claim of persecution. *Dass*, 20 I&N Dec. at 124. As such, "unreasonable demands are not placed on an asylum applicant to present evidence to corroborate particular experiences (e.g., corroboration from the persecutor)." *See Matter of S-M-J*, 21 I&N Dec. 722, 725 (BIA 1997). However, where it is reasonable to expect corroborating evidence for certain alleged facts pertaining to the specifics of an applicant's claim, such evidence must be provided as long as the applicant has the evidence or can reasonably obtain it. INA § 208(b)(1)(B)(ii); *see also Diallo v. INS*, 232 F.3d 279, 285 (2d Cir. 2000); *S-M-J*, 21 I&N Dec. at 725.

Respondent submitted voluminous supporting documentation regarding country conditions in India, which details the prevalence of domestic violence, the government's inadequate response to such violence, and the continued practice of forced marriage in India. [Exhs. 5, 8, & 13.] Based on Respondent's submissions, the Court finds Respondent has presented sufficient evidence to corroborate her claim.

## 3. Past Persecution

An asylum applicant may demonstrate that she is a "refugee" in either of two ways. First, she may demonstrate that she has suffered past persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A). Second, she may demonstrate a well-founded fear of future persecution on account of a protected ground through credible testimony that she subjectively fears persecution and that her fear is objectively reasonable. *Id.*; *Ramsameachire*, 357 F.3d at 178.

There is no universally accepted definition of "persecution." *See Handbook on Procedures and Criteria for Determining Refugee Status*, Office of the United Nations High Commissioner for Refugees, ¶51, p.14 (Geneva, January 1992) ("Handbook"). "Persecution" has generally been interpreted to include threats to life, confinement, torture, and economic

restrictions so severe that they constitute a threat to life or freedom. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985) (noting that persecution may include mental suffering or even severe economic deprivation). When evaluating whether persecution has occurred, the Court must consider events cumulatively. *Poradisova v. Gonzales*, 420 F.3d 70, 79-80 (2d Cir. 2005). The determination whether mistreatment rises to the level of persecution must be made on a case-by-case basis. See *Matter of C-Y-Z-*, 21 I&N Dec. 915, 924 (BIA 1997).

After careful consideration of the events that Respondent has described, the Court finds that the mistreatment she suffered, considered in the aggregate, rises to the level of past persecution. Respondent suffered physical abuse at the hands of her father, who beat her back with a stick. The Second Circuit has held that physical attacks conducted by “private actors who behave with impunity in the face of government reluctance to intervene” on account of an alien’s membership in a protected class “may preclude a finding that the conduct is mere harassment.” *Ivanishvili v. U.S. Dep’t of Justice*, 433 F.3d 332, 342 (2d Cir. 2006). Respondent’s father also threatened her with forced marriage, threatened to beat her and throw her out of the house, and made death threats to her on two occasions. Threats can sometimes establish persecution, especially when there are aggravating factors like threats of death, threats that are imminent and concrete, or threats accompanied by other forms of persecution. See *Un v. Gonzales*, 415 F.3d 205, 210 (1st Cir. 2005) (credible verbal death threats may fall within the meaning of persecution). Respondent suffered humiliating physical and mental abuse by her father, who used a stick to beat her back and then threatened her with forced marriage, beatings and expulsion from her home, and death. The Court finds that this mistreatment, in the aggregate, rises to the level of past persecution.

Respondent also described her distrust of governmental authorities, who she did not believe would have come to her aid. This belief is supported by the evidence of record. The 2009 Human Rights Country Report for India (“2009 Country Report”)<sup>2</sup> describes the corruption that exists at all levels of the police and government. The 2009 Country Report also notes that torture and rape by police and security forces remain a common problem in India. Additionally, an article from *USA Today* describes the “honor killing”<sup>3</sup> of a pregnant woman named Sunita in India. [Exh. 8.] Sunita had a romantic relationship with a man her family did not accept. She was strangled and her body was displayed in the village for passers-by to see. *Id.* The article states that this crime was unlikely to ever be prosecuted because the police were under enormous pressure not to apprehend those responsible. [Exh. 8.] Given the corruption in the police force in India, and the reluctance of the police to intervene in what are viewed as private matters, Respondent has demonstrated that the government was unwilling or unable to protect her from her father’s abuse.

#### 4. Membership in a Particular Social Group

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<sup>2</sup> The Court takes administrative notice of the contents of the most recent Department of State Country Report. *Yang v. McElroy*, 277 F.3d 158, 163 (2d Cir. 2002).

<sup>3</sup> The term “honor killing” refers to the killing of a woman by her family because she has damaged the family honor. [Exh. 3.]

In a claim of persecution on account of membership in a particular social group, the applicant must establish that she possesses an immutable characteristic shared with a group of people, that is, a characteristic that is either beyond the power of the individual members to change, or that is so fundamental to their identities or consciences that it should not be required to be changed. *See Acosta*, 19 I&N Dec. 211; *Cardoza-Fonseca*, 480 U.S. 421; *see also Matter of S-A-*, 22 I&N Dec. 1328, 1336 (BIA 2000); *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996); *Matter of H-*, 21 I&N Dec. 337 (BIA 1996). The Second Circuit and BIA have held that social groups are defined by the views of the persecutor, so that the members of a social group must have a fundamental characteristic in common which serves to distinguish them in the eyes of a persecutor or in the eyes of the outside world in general. *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991); *see also Matter of C-A-*, 23 I&N Dec. 951, 961 (BIA 2006). Building upon the concepts of “immutability” and “visibility,” the BIA also explained that particular social groups must have “particularity.” *See Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008). The BIA held that the essence of particularity is “whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *Id.* at 584.

In the instant case, the Court finds that Respondent has demonstrated past persecution on account of her membership in the particular social group of Indian women opposed to forced marriage. The Court finds this to be a valid particular social group as required for statutory asylum eligibility. The Court will analyze the requirements of immutability, social visibility, and particularity below.

a. Immutability

In a claim of persecution on account of membership in a particular social group, the applicant must establish that she possesses an immutable characteristic shared by a group of people—a characteristic that is either beyond the power of the individual members to change, or that is so fundamental to their identities or consciences that it should not be required to be changed. *See Acosta*, 19 I&N Dec. at 233-34. Being an Indian woman opposed to forced marriage is an immutable characteristic defining Respondent’s proposed social group. Respondent cannot change her gender or her nationality, nor should she be required to submit to a forced marriage, which would constitute a violation of her basic human rights.<sup>4</sup> *See Kasinga*, 21 I&N Dec. at 365 (finding that the social group of “young women of the Tchamba-Kunsuntu Tribe who have not had FGM, as practiced by that tribe, and who oppose the practice” is

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<sup>4</sup> Forced marriage is a form of persecution. *See Gao v. Gonzales*, 440 F.3d 62, 66 (2d Cir. 2006), *vacated and remanded on other grounds by Keisler v. Gao*, 552 U.S. 801 (2007) (noting that “the [g]overnment appears to concede, as it must, that forced marriage is a form of abuse that rises to the level of persecution”). The Department of State distinguishes between forced and arranged marriages, recognizing forced marriages as human rights violations under international law. U.S. Dep’t of State, Foreign Affairs Manual, Consular Affairs, Forced and Arranged Marriage of Adults, 7 FAM §1459. However, the Department of State respects arranged marriages which “have been a long-standing tradition in many cultures and countries.” *Id.* An arranged marriage is distinct from a forced marriage because in an arranged marriage, “the families of both spouses takes a leading role in arranging the marriage but the choice whether to accept the arrangement remains with the individuals.” *Id.* Respondent was opposed to a forced marriage, not an arranged marriage, because she did not accept the marriage and was not viewed as having any say in whether to accept the marriage.



immutable because a young woman cannot change her gender or her tribal affiliation, and the quality of having intact genitalia is so fundamental to a person's identity that she should not be required to change it). Similarly, the quality of being able to choose whom to marry is so fundamental to a person's identity that forcing Respondent to submit to forced marriage would constitute a violation of her human rights. U.S. Dep't of State, Foreign Affairs Manual, Consular Affairs, Forced and Arranged Marriage of Adults, 7 FAM §1459. The Court also notes that the Second Circuit has previously held in *Gao v. Gonzales*, 440 F.3d 62, that the particular social group of "women who have been sold into marriage (whether or not that marriage has taken place) and who live in a part of China where forced marriages are considered valid and enforceable" met the requirements of sharing a common, immutable characteristic and therefore fulfilled the *Acosta* test.<sup>5</sup>

b. Social Visibility

In addition to the immutability requirement, the BIA and Second Circuit have held that membership in a particular social group requires a certain level of "social visibility." *C-A-*, 23 I&N Dec. at 961; *Gomez*, 947 F.2d at 664. The BIA emphasized that social visibility is contingent upon a group's relevance to the purported persecutor as well as to members of society in general. *C-A-*, 23 I&N Dec. at 961. The BIA explained further that a group is not sufficiently visible where there is no distinct and recognizable factor to tie group membership to a risk of persecution. *See id.* In *Matter of A-M-E- and J-G-U-*, the BIA further construed the particularity and social visibility requirements laid out in *C-A-*, holding that the proposed social group of "affluent Guatemalans" lacked the requisite social visibility in part because there was no evidence that they "[were] exposed to more violence or human rights violations than other segments of society." *See Matter of A-M-E- and J-G-U-*, 24 I&N Dec. 69, 74-75 (BIA 2007) (*aff'd by Ucelo-Gomez v. Mukasey*, 508 F.3d 70 (2d Cir. 2007)).

The particular social group of Indian women opposed to forced marriage possesses sufficient social visibility. Respondent was socially visible to her father, the persecutor, and to other members of society because she protested the proposed forced marriage. Respondent shamed her family by disobeying her father's wishes for her to marry an older man. Respondent humiliated her whole family, including her extended family, because she left her home and refused to submit to her father's wishes. For example, Respondent testified that her aunt and uncle were also being tormented because she refused to submit to the forced marriage. Respondent was easily recognizable both to her father and to society as a whole as a person who

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<sup>5</sup> The Supreme Court vacated *Gao* based on a procedural defect. The Second Circuit had impermissibly formulated a particular social group before allowing the agency to formulate the social group in the first instance. *Keisler v. Gao*, 552 U.S. 801 (2007). However, the Court is not precluded from relying on the reasoning in *Gao*. Indeed, the Sixth Circuit cited the *Gao* case in a 2010 decision finding that a respondent who had been abducted by a man trying to force her into marriage in an area where forced marriages are recognized constituted a cognizable particular social group under the law. *Qu v. Holder*, 618 F.3d 602 (6th Cir. 2010).

shamed her family and thus deserved harsh treatment. Furthermore, the background evidence indicates that society as a whole would consider Respondent to be undeserving of protection from her father, given the lower status of women, the acceptance of forced marriages, and the prevalence of domestic violence in India. *See* 2009 Country Report.

c. Particularity

The particularity requirement is “whether the group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *S-E-G-*, 24 I&N Dec. at 584. The Court finds that the social group made up of Indian women opposed to forced marriage is sufficiently discrete and reliable. Although arranged marriages are common in India, opposition to such marriages is less common. For example, a *BBC News* article notes that few women in India object to the custom of arranged marriages. [Exh. 8.] Therefore, Respondent’s group is a small and distinct subset of Indian women who have refused to submit to a forced marriage and whose families react with violence. The descriptive characteristics of the instant social group are neither amorphous nor subjective as they were in *S-E-G-*. Therefore, the Court finds the group to be sufficiently particular.

5. Nexus

Respondent must also demonstrate that the persecution she faced and continues to fear is “on account of” a protected ground. While she need not show conclusively what the motive for the persecution would be, or that the persecutor would be motivated solely by a protected ground, she must produce evidence from which it is reasonable to conclude that the harm would be motivated by an actual or imputed ground. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992). In post-REAL ID cases, the asylum applicant must demonstrate that a protected ground was or would be a “central reason” for the persecution. INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007).

Considering the evidence of record, the Court finds that the persecution Respondent faced was motivated by her membership in the particular social group of Indian women opposed to forced marriage. Respondent’s father’s words and actions indicate that he persecuted Respondent *because of* her membership in the particular social group of Indian women opposed to forced marriage. Respondent was viewed by her father as being a second-class citizen with no choice as to whom she would marry. Her father was the head of the household with the ultimate authority to determine the course of her life. Because Respondent disobeyed her father’s wishes and opposed the forced marriage, she was subjected to physical abuse and death threats.

6. Well-Founded Fear of Future Persecution

As Respondent has established past persecution on account of a protected ground, it is presumed that she has a well-founded fear of future persecution unless DHS establishes, by a preponderance of the evidence, that there has been a fundamental change in circumstances or that Respondent could avoid future persecution by relocating to another part of India. *See* 8 C.F.R. 208.13(b)(1). DHS has not demonstrated by a preponderance of the evidence that it would be reasonable for Respondent to relocate in India, given Respondent’s credible testimony

that her father would find her anywhere in India. Considering that DHS provided no evidence to the Court to suggest that Respondent's internal relocation would be reasonable under the circumstances, it has clearly failed to meet its burden of proof.

The Court additionally finds that there has not been a fundamental change in circumstances since Respondent's departure in 2007. On the contrary, Respondent spoke with her father four or five months prior to the hearing, and he stated that he will kill her if she ever returns to India. Additionally, the 2009 Country Report confirms that domestic violence, forced marriage, and honor killings all continue to be common and serious problems in India. The 2009 Country Report states that 16,113 crimes against women were committed in the Gujarat state in 2009, including 6,093 cases of physical or mental torture. The number of crimes against women is likely even higher than the officially reported number, given the reluctance of many women to seek police protection. *See* 2009 Country Report (noting that underreporting of crimes against women is likely). Based on the foregoing, the Court is persuaded that there has been no fundamental change in circumstances in India and Respondent would continue to face the risk of harm rising to the level of persecution. Thus, the Court finds that Respondent has a well-founded fear of future persecution.

#### 7. Discretion

An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that she merits a grant of asylum as a matter of discretion. INA § 208(b)(1); *see also Cardoza-Fonseca*, 480 U.S. at 482. As there are no adverse factors in this case, the Court finds that Respondent warrants a favorable exercise of discretion as to her asylum claim.

#### V. CONCLUSION

Respondent has met her burden of proof as to her asylum claim. Since Respondent's asylum application is hereby granted, it is unnecessary to make a finding as to her request for withholding of removal pursuant to INA § 241(b)(3) or pursuant to the Convention Against Torture.

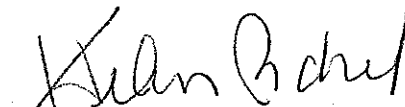
After a careful review of the record, the following order will be entered:

#### ORDER

**IT IS HEREBY ORDERED** that Respondent's application for asylum under § 208 of the Immigration and Nationality Act be **GRANTED**.

Date

March 1, 2011.



Helen Sichel  
U.S. Immigration Judge