No. 17 - 17002

IN THE

Supreme Court of the United States

Leila Marcos,
Petitioner,

v.

Attorney General of the United States,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES
COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR PETITIONER

Team 103
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the disfavored group analysis test is a valid method for determining a well-founded fear of persecution, given that circuits acknowledge that categories of individual and group targeting often co-exist.

2. Whether the Court of Appeals erred in determining the actions of Life Inc. were not government-sponsored and subsequently placing the internal relocation burden of proof on Marcos pursuant to 8 C.F.R. § 208.13(b)(3)(i), given that the Basag government was both unable and unwilling to protect her against the company's actions.

TABLE OF CONTENTS

QUESTIONS PRESENTED ii

TABLE OF AUTHORITIES iv

REGULATIONS v

OPINIONS AND ORDERS ENTERED BELOW vi

STATEMENT OF JURISDICTION vii

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 4

I. Disfavored Group Analysis 4

II. Burden of Establishing Reasonability of Internal Relocation 6

ARGUMENT 8

I. Leila Marcos Should Be Granted Asylum Because She Presents A Well-Founded Fear Of Persecution Under The Valid Disfavored Group Analysis Test 8

a. The Disfavored Group Analysis Is A Necessary Method For Determining A Well-Founded Fear Of Persecution Because It Fills An Essential Gap In The Law 8

i. The Disfavored Group Analysis Test Comports With 8 C.F.R 208.13(b)(iii)(2) 9

ii. Asylum Applicants Must Meet The Same Burden Under The Disfavored Group Analysis 10

iii. If Disfavored Group Analysis Is Not Adopted, Many Who Deserve Asylum Will Be Barred From Obtaining It 12

b. Leila Marcos Satisfies Both Prongs Of The Disfavored Analysis Group Test And Therefore, Should Be Granted Asylum 14

i. The Group Of Timog Women Qualify As A Disfavored Group, Which Leila Marcos Is A Part Of, Satisfying The First Prong Of The Disfavored Group Analysis Test 15

ii. Leila Marcos Meets The Bar For Individualized Targeting, Satisfying The Second Prong Of The Disfavored Analysis Group Test 17

II. The Government Bears The Burden Of Proof For Ms. Marcos' Relocation Analysis Since Life Inc. Is A "Government-Sponsored" Entity 18

a. Because Both The Immigration Judge And Bureau Of Immigration Appeals Failed To Offer An Interpretation Of A "Government-Sponsored" Entity, This Court May Provide Its Own Reading Of The Term 19

b. The Lower Court Incorrectly Found That The Actions Of Life Inc. Guards Were Not Government-Sponsored, And In Utilizing A Proper Definition Of The Term, This Court Should Properly Place The Internal Relocation Burden Of Proof On The United States Government 21

i. Substantial Evidence Would Compel Any Reasonable Adjudicator To Conclude The Basag Government Was Unable To Protect Marcos 22

ii. Substantial Evidence Would Compel Any Reasonable Adjudicator To Conclude The Basag Government Was Unwilling To Protect Marcos 23

c. Regardless Of The Definition Of "Government-Sponsored" Entity And The Assignment Of The Internal Relocation Burden Of Proof, Substantial Evidence From The Record Compels The Conclusion The Internal Relocation Within Basag Would Have Been Unreasonable, Providing Marcos With A Valid Basis For Asylum 24

i. Substantial Evidence Compels The Conclusion That It Was Not Possible For Marcos To Safely Relocate To Another Part Of Basag 25

ii.Substantial Evidence Compels The Conclusion That It Was Not Reasonable For Marcos To Safely Relocate To Another Part Of Basag 27

CONCLUSION 28

TABLE OF AUTHORITIES

Cases

Abedini v. INS, 971 F.2d 188 (9th Cir. 1992) 14
Afriyie v. Holder, 613 F.3d 924 (9th Cir. 2010) 21
Albathani v. INS, 318 F.3d 365 (1st Cir. 2003) 8
Angoucheva v. INS, 106 F.3d 781 (7th Cir. 1997) 11, 13
Auer v. Robbins, 519 U.S. 452 (1997) 6, 19
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000) 16
Bringas-Rodriguez v. Sessions, 850 F.3d 1051 (9th Cir. 2017) 7, 22
Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984) 18
Decker v. Nw. Envtl. Def. Ctr., 568 U.S. 597 (2013) 19
Essohou v. Gonzales, 471 F.3d 518 (4th Cir. 2006) 26
Firmansjah v. Gonzales, 424 F.3d 598 (7th Cir. 2005) 4
Halim v. Holder,590 F.3d 971 (9th Cir. 2009) 12
Hor v. Gonzalez, 400 F.3d 482 (7th Cir. 2005) 20
Hoxha v. Ashcroft, 319 F.3d 1179 (9th Cir. 2003) 15
In re M-Z-M-R-, 26 I. & N. Dec. 28 (B.I.A. 2012) 24
INS v. Elias-Zacarias, 502 U.S. 478 (1992) 5, 14, 24
INS v. Ventura, 537 U.S. 12 (2002) 20
Ivanov v. Holder, 736 F.3d 5 (1st Cir. 2013) 6, 20
Kaiser v. Ashcroft, 390 F.3d 653 (9th Cir. 2004) 24
Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004) 26
Kotasz v. INS, 31 F.3d 847 (9th Cir. 1994) ..... passim
Lie v. Ashcroft, 396 F.3d 530 (3d Cir. 2005) 4, 10
Lolong v. Gonzales, 484 F.3d 1173 (9th Cir. 2007) 11
Lopex-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996) 15
Makonnen v. INS, 44 F.3d 1378 (8th Cir. 1995) 4, 9
Menjivar v. Gonzales, 416 F.3d 918 (8th Cir. 2005) 20
Negusie v. Holder, 555 U.S. 511 (2009) 6, 19
Oryakhil v. Mukasey, 528 F.3d 993 (7th Cir. 2008) 23
Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2004) ..... passim
Tampubolon v. Holder, 61 F.3d 1056 (9th Cir. 2010) 8
Ucelo-Gomez v. Gonzales, 464 F.3d 163 (2d Cir. 2006) 20
Vitug v. Holder, 723 F.3d 1056 (9th Cir. 2013) 22
Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009) 8, 10, 14
Wan Chien Kho v. Keisler, 505 F.3d 50 (1st Cir. 2007) 4, 9, 11, 13
Yong Hao Chen v. United States INS, 195 F.3d 198 (4th Cir. 1999) 4, 11, 13
Zubeda v. Ashcroft, 333 F.3d 463 (3d Cir. 2003) 15

Statutes

8 U.S.C. § 1252(b)(4)(B) 21, 24
8 U.S.C.S. § 1158 (2018) 11

Other Authorities

96 P.L. 212, 94 Stat. 102 12
G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993) 15

Regulations

8 C.F.R. § 208.13(b) (2018) ..... passim

REGULATIONS

8 C.F.R. § 208.13(b)(2)(iii): In evaluating whether the applicant has sustained the burden of proving that he or she has a well-founded fear of persecution, the asylum officer or immigration judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if:

(A) The applicant establishes that there is a pattern or practice in his or her country of nationality or, if stateless, in his or her country of last habitual residence, of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(B) The applicant establishes his or her own inclusion in, and identification with, such group of persons such that his or her fear of persecution upon return is reasonable.

8 C.F.R. § 208.13(b)(3): For purposes of determinations under paragraphs (b)(1)(i), (b)(1)(ii), and (b)(2) of this section, adjudicators should consider, but are not limited to considering, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. Those factors may, or may not, be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate.

OPINIONS AND ORDERS ENTERED BELOW

The opinion of the Board of Immigration Appeals is unreported and does not appear in the record below.

The opinion of the United States Court of Appeals is reported and appears in the record below.

STATEMENT OF JURISDICTION

A statement of jurisdiction has been omitted in accordance with the rules of the U.C. Davis School of Law Asylum and Refugee Law National Moot Court Competition.

STATEMENT OF THE CASE

Leila Marcos ("Petitioner") lived with her husband, Bernardo Marcos, on the island of Isda in the nation of Basag. She is eighteen years old and of Timog ethnicity. Facts at 5. In 2011, the country began facing issues of water scarcity, specifically on Isda. In 2012, the Basag government nationalized all the water sources in the country. Facts at 3. In 2013, Basag signed a Thirty-year Concession Contract with Life Incorporated (Life Inc.), tasking the company with the obligation of maintaining and rebuilding water facilities in Basag. Facts at 3. Isda struggled with water scarcity while Basag's other island, Mayaman, experienced less hardship owing to its established tourism industry and better infrastructure. Facts at 3-4. In response to the government's delegation of power to Life Inc., a group of protestors, known as "Water Warriors" demonstrated at Life Inc. facilities, expressing their dissatisfaction with the company's presence. Facts at 4. In response, Life Inc. hired armed guards to protect their operations. Facts at 5. Since July 2016, Life Inc. guards and Basag military forces have killed over 75 individuals identified as Water Warriors throughout Basag. The majority of these individuals were killed on Isda. Facts at 5.

Due to water scarcity on Isda, residents of the island are forced to collect water, a biological necessity, through Life Inc.'s storage facilities or from wells. Facts at 6. Since men are generally occupied working in local businesses or fisheries, Timog women bear the burden of traveling to gather water. Facts at 6. A number of rumors have circulated in Isda about Life Inc. guards raping or harassing women collecting water at the Life Inc. facilities. Facts at 6. A United Nations report corroborates these rumors, detailing female accounts of nonconsensual sexual interactions with Life Inc. guards from 2013 to February 2017. Op. at 4. In addition, Marcos recounts a very recent rumor of a rape that occurred on March 6, 2017. The Department of

Homeland Security (DHS) found that there are no facts showing Basag police or the government took any action against the guard or Life Inc. for this alleged rape. Op. at 4. Along with the United Nations report, a study, Water Warriors: Crisis in Basag, found that Life Inc. guards, who are typically ethnic Hiligan, regularly mistreat poorer Timog women using those facilities. Op. at 12. Another report, Risking Rape to Reach Water, offered findings corroborating Marcos's belief that Isda-Timog women were being attacked at Life Inc. facilities. Furthermore, the report cited an uptick in the number of attacks on women caused by the water shortage. Op. at 12. None of the rape rumors appear to have been investigated by the Basag government. In response to the March 6, 2017 rape allegation, Life Inc. issued a public statement via Basag's state-controlled radio and television broadcast assuring Basag citizens that all Life Inc. employees underwent comprehensive sexual harassment employees training. Op. at 5.

In addition to the numerous rumors and reports about the mistreatment of Timog women by Life Inc. guards, Leila Marcos also personally experienced extremely disturbing encounters with Life Inc. guards. One guard repeatedly targeted Marcos on multiple occasions at different facilities. On March 6, 2017, the Life Inc. guard told her she could get more water if she had sex with him. Op. at 4. Marcos understood this as a threat because of the rumors of rape she had previously heard and left with the fear of being raped. Facts at 6. On March 12, 2017, Marcos went to a different Life Inc. facility. Facts at 7. The same guard threatened her again, stating "I am going to have my way with you, honey, whether you want it or not." Facts at 7. On April 6, 2017, the guard winked at Marcos and made a thrusting motion with his fingers at her, targeting Marcos in her own home. Facts at 8. In addition to this guard, Marcos had several other unnerving encounters with hostile Life Inc. guards. Facts at 7-8. On April 5, 2017, at a separate water facility, a Life Inc. guard brazenly grabbed her backside and whistled while other guards

stood by, actively encouraged his behavior. Facts at 8. On another occasion, Marcos witnessed a Life Inc. guard threatening a pregnant woman and demanding that she remove her shirt to prove to him she was not a Water Warrior. Facts at 7.

On April 6, 2017, Marcos traveled to Mayaman with her husband who was in need of medical treatment after being shot in the arm by Life Inc. guards. Facts at 8. They stayed at a friend's home, Bayani Santos, who offered them a temporary place to stay in Mayaman. Facts at 8. He told them that water scarcity was better controlled in Mayaman and that women did not have to travel as far to fetch water. That said, he warned Marcos that Life Inc. guards were known to target Isda-Timog women, who stood out due to their poorer appearances. Facts at 9. Leila found temporary work at a local shop and also begged near resorts to sustain herself. She overheard Life Inc. guards boasting about how "'getting sex here is as easy it was on Isda.'" Op. at 6. She heard one guard brazenly share how he cornered a woman by a well and hit her until she submitted to him. Op. at 6.

Marcos left Basag using a one-way ticket to the United States, planning to stay with her husband's distant relatives. Facts at 9. She applied for asylum on August 7, 2017. The immigration judge denied her application, and the BIA affirmed. Conditions in Basag have not changed since she left the country. Facts at 9.

SUMMARY OF ARGUMENT

With regards to the first question, Marcos requests that the court affirm the decision of the lower court and adopt the disfavored group analysis test. In accordance with this test, Marcos requests that the court affirm the decision that she has established a well-founded fear of persecution, giving her grounds for asylum.

With regards to the second question, Marcos requests that the court reverse the decision of the lower court and find that the actions of Life Inc. were government-sponsored and that Marcos could not have reasonably relocated within the nation of Basag. Or, in the alternative, Marcos requests that the court remand this case back to the Board of Immigration Appeals for further clarification of the term "government-sponsored" persecution.

I. Disfavored Group Analysis

In order to be granted asylum, a petitioner must show they have a well-founded fear of persecution. 8 C.F.R. § 208.13(b)(iii)(2). The court should adopt the disfavored group analysis test in order to determine whether or not a petitioner, such as Marcos, qualifies for asylum when a pattern or practice of persecution does not exist. The court should then rule that Marcos exhibits a well-founded fear of persecution per the disfavored group analysis test.

There is currently a circuit split on the use of the disfavored group analysis test. The Ninth Circuit championed the test, which the Eight and Fourth circuits adopted it. Sael v. Ashcroft, 386 F.3d 922, 923 (9th Cir. 2004), Makonnen v. INS, 44 F.3d 1378, 1380 (8th Cir. 1995), Yong Hao Chen v. United States INS, 195 F.3d 198, 203-04 (4th Cir. 1999). Other circuits, specifically the First, Third, and Seventh, have rejected the test. Wan Chien Kho v. Keisler, 505 F.3d 50, 52 (1st Cir. 2007), Lie v. Ashcroft, 396 F.3d 530, 530 (3d Cir. 2005),

Firmansjah v. Gonzales, 424 F.3d 598, 599 (7th Cir. 2005). However, these circuits still use blending tests similar to that of the disfavored group analysis.

The court should adopt the disfavored group analysis test for three reasons. First, 8 C.F.R. § 208.13(b)(2)(iii), which discusses a pattern or practice of persecution, leaves open what to do in cases when such a pattern or practice is not present. The disfavored group analysis test comports with the regulation because it still requires a showing individual targeting. Second, the disfavored group analysis test does not change the burden for asylum applicants. The disfavored group analysis utilizes a sliding scale approach, taking into account individual targeting and group persecution. The less egregious the crimes faced by the disfavored group, the more individual evidence is required. Sael, 386 F.3d at 923. Third, adopting this test fills an essential gap in the law, reflecting the current realities of persecution around the world. This test is important because most groups will not meet the standard of a pattern or practice. That said, being in a disfavored group still increases the risk that one will be persecuted. This risk, combined with individual targeting, rises to the level of a well-founded fear of persecution. Most circuits, even those rejecting the disfavored group analysis, acknowledge that the categories of individual and group targeting overlap and even use blending tests. The disfavored group analysis test is a necessary and valid method that will promote uniformity and comprehensiveness across the circuits.

The court should also find that Leila Marcos exhibits a well-founded fear of persecution under the disfavored group analysis. Since this is a question of fact, the court should defer to the substantial evidence standard of review, which is highly deferential. INS v. Elias-Zacarias, 502 U.S. 478, 479 (1992). Marcos belongs to the disfavored group of Isda-Timog women. All Timog women must travel long distances to collect water for their families, putting them at a

disproportionately higher risk of harassment and assault. They are mistreated by the Life Inc. guards, as witnessed by Marcos herself. A substantial number are persecuted as seen through various reports documenting sexual violence in Basag and through rumors circulating in the country. Op. at 4.

In addition to belonging to the disfavored group of Timog women, Marcos also meets the bar for individualized targeting under the disfavored group analysis test. She has had various encounters with guards verbally threatening her, gesturing at her, and touching her. Rumors of rape have been corroborated by the United Nations and other reports. Op. at 4, 12.

Marcos' membership in a disfavored group, coupled with the evidence of individual targeting, establish that she had a well-founded fear of persecution.

II. Burden of Establishing Reasonability of Internal Relocation

This court possesses the proper authority to offer an interpretation of the term "government-sponsored" persecution as both the Immigration Judge (IJ) and Bureau of Immigration Appeals (BIA) failed to offer their own interpretation of the term. While the concept of Auer deference generally requires judicial courts to defer to administrative agencies for interpretation of their own ambiguous regulatory definitions (Auer v. Robbins, 519 U.S. 452, 461 (1997)), this court has provided an opening for courts to do so in "rare circumstances". Negusie v. Holder, 555 U.S. 511, 523 (2009). The instant case represents a rare circumstance as both the IJ and BIA have declined to exercise their authority to offer an interpretation of the term, thereby giving this court the authority to provide its own reading. However, should this court believe the instant case does not constitute a rare circumstance, the only other viable alternative is to remand to the BIA for further clarification of the term "government-sponsored" persecution.

In evaluating the actions of Life Inc. guards, this court should look to the widely used standard of determining government sponsorship, which asks whether the government was unable or unwilling to control private conduct. Ivanov v. Holder, 736 F.3d 5, 12 (1st Cir. 2013). Life Inc. should qualify as "government-sponsored" as the Basag government was both unable and unwilling to control the company's actions. The government of Basag contracted with Life Inc. in order to more effectively manage the ongoing water crisis in the nation. Facts at 3-4. Breach of contract would have resulted in significant financial liability for the government of Basag. Facts at 5. Thus, the government was effectively unable to remove the presence of Life Inc. guards, even after multiple reports of sexual harassment and assault at the hands of the guards. The government was also unwilling to protect Marcos. A government's unwillingness to control private conduct can be shown in instances where the government offers its citizens no effective forms of recourse, where persecution is well-known and uncontrolled, or where reporting would have been futile. Bringas-Rodriguez v. Sessions, 850 F.3d 1051, 1066 (9th Cir. 2017). Multiple prominent allegations of rape and sexual assault appear to have gone uninvestigated, suggesting the government's unwillingness to seriously prosecute the responsible individual. Op. at 4-5. While the government did offer its citizens legal recourse against Life Inc., the record does not demonstrate a single instance of these laws providing individuals with any form of relief, suggesting a lack of true recourse.

Even if the actions of Life Inc. cannot be considered "government-sponsored", Marcos still could not have relocated within Basag. Safe relocation was not possible, as evidenced by the lack of security Marcos experienced after moving to Mayaman, one of the safer areas of the island. Further relocation on the island would likely expose her to greater danger, as Marcos would be forced to resume water-fetching, the very practice that subjected her to harassment at

the hands of Life Inc. guards in the first place. Marcos' lower economic status makes further relocation unreasonable, as the financial cost she would incur in moving would be overly burdensome.

ARGUMENT

I. Leila Marcos Should Be Granted Asylum Because She Presents A Well-Founded Fear Of Persecution Under The Valid Disfavored Group Analysis Test

The disfavored group analysis must be adopted to provide a comprehensive test for asylum applicants. Currently there is a circuit split on the use of the disfavored group analysis. The Ninth, Fourth, Eighth, and Thirteenth Circuits have adopted the use of the test. While the First, Third, and Seventh Circuits reject this test, they acknowledge that the categories of group and individual targeting blend.

The appropriate standard of review in reviewing the use of the disfavored group analysis test is *de novo* because it is a matter of law. According to Albathani v. INS, "a court reviews the BIA's legal conclusions de novo, although it gives deference, where appropriate, to the agency's interpretation of the underlying statute in accordance with administrative law principles." 318 F.3d 365, 367 (1st Cir. 2003). Since the BIA did not issue an opinion, the court can view the IJ's opinion as final, which the 13th circuit Court of Appeals relied on in their decisions. Tampubolon v. Holder, 61 F.3d 1056, 1059 (9th Cir. 2010). When reviewing this case, the 13th circuit, BIA, and IJ each found the disfavored group analysis valid.

a. The Disfavored Group Analysis Is A Necessary Method For Determining A Well-Founded Fear Of Persecution Because It Fills An Essential Gap In The Law

The disfavored group analysis is a valid method for deciding asylum cases. "A disfavored group is defined as a group of individuals in a certain country or part of a country, all of whom

share a common, protected characteristic, many of whom are mistreated, and a substantial number of whom are persecuted." Wakkary v. Holder, 558 F.3d 1049, 1052 (9th Cir. 2009). "Disfavored group analysis consists of two elements--membership in a disfavored group and an individualized risk of being singled out for persecution--that operate in tandem. Thus, the more serious and widespread the threat to the group in general, the less individualized the threat of persecution needs to be." Sael, 386 F.3d at 923. The test fills an essential gap in the law by interpreting the burden of applicants who belong to non-pattern or practice groups.

i. The Disfavored Group Analysis Test Comports With 8 C.F.R 208.13(b)(iii)(2)

The disfavored group analysis does not override or circumvent regulations set forth in 8 C.F.R. § 208.13(b)(iii)(2). The language indicates that a "judge shall not require the applicant to provide evidence that there is a reasonable possibility he or she would be singled out individually for persecution if (A) The applicant establishes that there is a pattern or practice… of persecution." 8 C.F.R. § 208.13(b)(iii)(2) (2018). Hence, the statute simply indicates that if there is a pattern or practice of persecution, individual evidence is not necessary. In the disfavored group analysis, however, a showing of individual targeting is a necessary component to meet the burden of a well-founded fear. "Disfavored group analysis consists of two elements--membership in a disfavored group and an individualized risk of being singled out for persecution--that operate in tandem." Sael, 386 F.3d at 923. By still requiring a showing of individualized risk in a non-pattern or practice setting, the disfavored group analysis test stays within the bounds of the statute.

This court is the proper authority to adopt the use of this test, not Congress. This is supported by Kotasz v. INS, which found that the "regulation is, deliberately, far from comprehensive… [T]he regulation leaves the standards governing non-pattern or practice cases

to be developed through case law, as before." 31 F.3d 847, 853 (9th Cir. 1994); see also Makonnen, 4 F.3d at 1380. Opposing party may argue that Congress has delegated the authority to the Attorney General and the Secretary of Homeland Security to establish regulations in this area. Keisler, 505 F.3d at 55. However, the disfavored group analysis is not a new regulation but rather a reflection of how to establish a well-founded fear of persecution, which the courts decide. Interpreting how to show a well-founded fear is well within the power of the courts, as long as the courts do not override statutes in play. Courts have even developed what it means to constitute a pattern or practice of persecution in country. The Third Circuit in Lie pointed out that The Immigration and Nationality Act regulations did not define a pattern or practice standard, and as a result, the courts developed case law defining that the persecution must be systemic, pervasive, or organized. 396 F.3d at 537. In addition to being the proper authority, this court is better positioned to adopt this test because it can more efficiently resolve the circuit split and has more experience dealing with asylum cases. Further, adopting the test respects the decision of the BIA and the IJ, who also affirmed the use of the test in Marcos's case. Since the disfavored group analysis follows the language and is simply an interpretation of showing a well-founded fear of persecution, adopting the test does not overstep the bounds of this court.

ii. Asylum Applicants Must Meet The Same Burden Under The Disfavored Group Analysis

Circuits that contend that the disfavored group analysis lowers or changes the burden for asylum applicants are incorrect. An individual seeking asylum must always show that "he faces at least a 10% chance of persecution, whether he attempts to meet his burden by showing a pattern or practice or by showing a likelihood that he will be individually singled out." Wakkary, 558 F.3d at 1052.The disfavored group analysis test still requires applicants to meet this ten percent threshold by showing that they belong to a disfavored group, putting them at a higher

risk of persecution, and then by additionally showing that they will be individually singled out. Further, the court in Wakkary held the disfavored group analysis as a valid method. Id. As a result, the burden on asylum applicants remains the same.

The test operates in a way that acknowledges the reality of persecution, in that the categories of individual targeting and group targeting co-exist, rather than functioning as separate, distinct categories. "In the non-pattern or practice cases, there is a significant correlation between the asylum petitioner's showing of group persecution and the rest of the evidentiary showing necessary to establish a particularized threat of persecution. Kotasz, 31 F.3d at 853. The categories act in tandem, so if a disfavored group is not severely disfavored, then there is a higher standard for individual targeting (and vice versa). Sael, 386 F.3d at 925. The categories interact because group membership "is an aspect of nearly all asylum claims, not a special problem limited to pattern or practice cases." Kotasz, 31 F.3d at 853. As per the Refugee Act, all asylum applicants need to show persecution on the basis of race, religion, nationality, social group membership, or political opinion, all of which are groups. 8 U.S.C.S. § 1158 (2018). Furthermore, even circuits that reject the disfavored group analysis test concede that the categories interact and have even adopted their own blending tests similar to that of the disfavored group analysis. See Keisler, 505 F.3d at 52; See Angoucheva v. INS, 106 F.3d 781, 790 (7th Cir. 1997). Hence, the test is not changing the burden but rather, is engaging in a balancing test that more accurately reflects the realities of those being persecuted.

In addition to the fact that the disfavored group analysis does not lower the burden in theory, it also does not lower the burden in practice. This is evidenced by the fact that circuits that have adopted the disfavored group analysis test have rejected applicants who belonged to the disfavored group, but did not meet the bar for individualized targeting. For instance, in Yong

Hao Chen, the court used the disfavored group analysis and still rejected the petitioner's asylum because the individual evidence bar was not met. 195 F.3d at 203-04. This shows that the disfavored standard does not just attempt to allow a flood of people into the United States. In Lolong v. Gonzales, the court argued that the petitioner needed to prove more "than their status as female members of Indonesia's Chinese Christian community," even though the Chinese Christian Community was a disfavored group. Lolong v. Gonzales, 484 F.3d 1173, 1181 (9th Cir. 2007). This shows that the Ninth Circuit denies applications that only show they belong to a disfavored group, requiring more evidence. This ruling was echoed by the case in Halim v. Holder, where the court denied the petitioner asylum. 590 F.3d 971, 973 (9th Cir. 2009). The court found that while the petitioner was part of a disfavored group (Indonesia's Chinese minority), the group was not severely disfavored, and therefore the petitioner had to meet a higher burden of individually targeting. Id. These examples show that the disfavored group analysis still requires petitioners to meet the same burden that one has under the pattern or practice standard or under the individual targeting standard.

iii. If Disfavored Group Analysis Is Not Adopted, Many Who Deserve Asylum Will Be Barred From Obtaining It

The disfavored group analysis fills an essential gap in the law, more accurately reflecting the reality of persecution. It is unlikely that most cases will meet the standard of a pattern or practice. The issues of non-pattern and practice persecution of members of groups are far more common. Being in a disfavored group does place one at a higher risk of persecution, though it may not rise to the standard of pattern or practice. Kotasz, 31 F.3d at 853. If one can show membership in such a group and then show individual targeting in addition that does rise to the level of a well-founded fear, the applicant deserves protection. To not grant asylum to these people would be to ignore the whole purpose of the asylum system. This is bolstered by the fact

that the purpose of The Refugee Act of 1980 was adopted to honor special humanitarian concerns. Congress explained that the "historic policy of the United States to respond to the urgent needs of those subject to persecution in their homelands… including humanitarian assistance for their care and maintenance in asylum areas" and used this to justify the enactment of The Refugee Act of 1980. 96 P.L. 212, 94 Stat. 102 (1980). It has always been the goal of asylum law to respond to humanitarian concerns, and the disfavored group analysis satisfies this objective.

The disfavored group analysis is standardizing the system in which most courts grant judge asylum cases. The Ninth, Fourth and Eighth Circuits have already adopted disfavored group analysis. According to Yong Hao Chen, applicants typically demonstrate a combination of the two [individual and group targeting] to establish a well-founded fear of persecution, even before the disfavored group test was in use. 195 F.3d at 203-04. This is bolstered by the fact that even circuits that reject the disfavored group test have adopted blending methods similar to the disfavored group analysis test. In Angoucheva, a Seventh Circuit case, a Macedonian citizen of Bulgaria could establish well-founded fear by showing persecution of Macedonian community and her own visible role in Macedonian political advocacy group, showing the blending of the two categories.106 F.3d at 790. Even the First Circuit, which is known for vehemently rejecting the disfavored group analysis test, agrees that the categories often blend. In Wan Chien Kho,"the First Circuit notes that, in evaluating each claim on its facts, it may be that evidence short of a pattern or practice will enhance an individualized showing of likelihood of a future threat to an applicant's life or freedom." 505 F.3d at 52. Because the categories are not distinct, and being in certain groups does put individuals at a specialized risk for persecution, the disfavored group analysis is necessary if we want to offer protection to those who qualify for it. Focusing solely on

cases of clear pattern or practice would be too narrow a standard. It does not make sense to grant asylum only in cases where one can show an individualized risk or a pattern or practice of persecution, but not in cases where situations fall in the middle of these two categories. Opposing party may argue that the regulations under pattern or practice are purposely narrow. The disfavored group analysis test is still just as narrow (as described in the previous section) because it still requires applicants to meet the ten percent threshold. Adopting the disfavored group analysis test fills an essential gap in the law and promotes uniformity across the circuits, leading to more consistency in asylum law.

b. Leila Marcos Satisfies Both Prongs Of The Disfavored Analysis Group Test And Therefore, Should Be Granted Asylum

Marcos should be granted asylum because she satisfies both prongs of the disfavored group analysis. First, she belongs to the disfavored group of Timog women and second, she meets the bar for individualized targeting. The standard of review regarding whether Marcos satisfied the disfavored group analysis is the substantial evidence standard. "Factual findings, including whether alien has demonstrated a well-founded fear of persecution, are reviewed under the substantial evidence standard." Abedini v. INS, 971 F.2d 188, 190 (9th Cir. 1992). Hence, the decision of the lower courts (the IJ, BIA, and 13th Circuit Court of Appeals) can be overturned only if "the evidence… presented was so compelling that no reasonable fact-finder could fail" to find that Marcos did not establish a well-founded fear of persecution. Elias-Zacarias, 502 U.S. at 479. This standard of review is highly deferential. All lower courts have found that Marcos did demonstrate a well-founded fear through the disfavored group analysis. To reverse this factual finding would be to reject the decisions of the IJ, BIA, and 13th Circuit Court of Appeals. Marcos clearly satisfies the prongs of the disfavored group analysis and this court should defer to the factual findings of the lower courts as a result.

i. The Group Of Timog Women Qualify As A Disfavored Group, Which Leila Marcos Is A Part Of, Satisfying The First Prong Of The Disfavored Group Analysis Test

The group of Timog women clearly qualify as a disfavored group. By definition, a disfavored group is "a group of individuals in a certain country or part of a country, all of whom share a common, protected characteristic, many of whom are mistreated, and a substantial number of whom are persecuted" Wakkary, 558 at 1052. The treatment of members of disfavored groups may not rise to the level of a standard pattern or practice of persecution, but nonetheless, the members are still at somewhat of a higher risk of persecution. The Timog women had to collect water, often travelling far distances, sometimes even travelling 20 miles daily. Women are already subjected to harassment and sexual assault, and the necessity to collect water heightened this risk. There were various rumors that spreading near Marcos's route of rapes, showing that many were mistreated. Facts at 4. A United Nations report corroborated female accounts of nonconsensual sexual interactions with Life Inc. guards from 2013 to February 2017. Op. at 12. Moreover, other reports show that a substantial number of Timog women were persecuted. An article, Water Warriors: Crisis in Basag, indicated that Life Inc. guards, who tend to be ethnic Hilagan, regularly mistreat poorer Timog women using such facilities. Op. at 12. Another report, Risking Rape to Reach Water, corroborated Marcos' belief that Isda-Timog women were being attacked at the Life Inc. facilities and cited an uptick in the attacks on women caused by the water shortage. Op. at 12. The instant case is similar to the case Hoxha v. Ashcroft, where the court labeled the Albanians in Kosovo as a disfavored group. 319 F.3d 1179, 1183 (9th Cir. 2003). The Albanians were considered a disfavored group because the government subject them to torture and inhumane treatment, which the United Nations condemned. Courts recognize that rape, which the Timog women face, can constitute torture and that "[r]ape is a form of aggression constituting an egregious violation of humanity." Zubeda v.

Ashcroft, 333 F.3d 463, 472 (3d Cir. 2003); see also Lopex-Galarza v. INS, 99 F.3d 954, 963 (9th Cir. 1996). The United Nations also recognizes that rape, sexual assault, and sexual harassment constitute violence against women and condemns it. G.A. Res. 48/104, Declaration on the Elimination of Violence Against Women (Dec. 20, 1993). In Sael, the case championing disfavored group analysis, the court cited rape as an important factor in ruling that the ethnic Chinese minority in Indonesia were a disfavored group. 386 F.3d at 926. Rape and sexual violence are clearly recognized as atrocious acts that can rise to level of persecution. Due to the evidence, Timog woman constitute a disfavored group, which Marcos is clearly a part of.

Opposing party may argue that the plight of Timog women was not comparable to that of other groups that were deemed disfavored. They may cite to cases such as Sael, where the ethnic Chinese minority, a disfavored group, faced centuries of persecution. Id. However, the length of time a group has been mistreated or persecuted, while relevant, is not dispositive. This is bolstered by the situation in Kotasz, where anti-communists were considered a disfavored group in Hungary. The court did not take into account the length of time the Hungarian government had been disfavoring anti-communists, but rather took into account the treatment of anti-communists in a communist regime. 31 F.3d at 849-50. Furthermore, requiring groups to wait for centuries of persecution to be deemed disfavored imposes a heinous burden on asylum applicants, severely limiting who will be eligible for asylum.

Opposing party may argue that once Marcos moved to Mayaman, she no longer faced the same risks. While this issue of relocation will be discussed further in subsequent sections regarding internal relocation, Life Inc. employees in Mayaman were perpetuating the same actions they were back in Isda. This is highlighted by the fact that one employee brazenly bragged of raping a woman and told his fellow employees how easy it was getting “sex” back in

Isda. Facts at 9. Moreover, Marcos is more likely to be targeted because she is Timog, rather than Hiligan. Facts at 3. One could also argue that Life Inc. actually put their employees through harassment training. However, as indicated in the record, the situation in Basag has not changed since Marcos left the country. Facts at 9. Timog women are subjected to deplorable treatment, fearing sexual harassment and rape on a daily basis. They clearly are a disfavored group, putting them at a higher risk of persecution.

ii. Leila Marcos Meets The Bar For Individualized Targeting, Satisfying The Second Prong Of The Disfavored Analysis Group Test

As evidenced through her personal experiences, Marcos does meet the bar of individualized risk. A petitioner "meets this burden [of individualized risk] with evidence of past threats and violence." Sael, 386 F.3d at 923. This means that past threats and violence, even if they do not rise to the level of persecution, establish a sufficient individualized risk. Avetova-Elisseva v. INS, 213 F.3d 1192, 1201 (9th Cir. 2000). Other cases using the disfavored test have looked at situations where the petitioner was individually mistreated as evidence of individual targeting. The same can be done in Marcos's situation. There were multiple rumors, corroborated the reports, that scared Marcos. Marcos was repeatedly harassed and threatened by the same Life Inc. guard at different facilities on a multitude of occasions. On March 6th, 2017, Marcos was solicited for sex by this Life Inc. guard. Facts at 6. At another facility, the same guard threatened to "have his way with her" on March 12th 2017. Facts at 7. Later, this same guard, who helped bring her husband back home after he was shot, made thrusting motions at her with his fingers to further intimidate her on April 6th 2017. Facts at 8. In addition to this guard, Marcos witnessed another guard forcing a pregnant woman to expose her chest and stomach to prove she was not carrying weapons. On April 5th, 2017, a guard grabbed Marcos by her backside and whistled at other. Other guards, rather than stepping in to protect or help Marcos, joined in by laughing and

jeering at her as well. Facts at 8. Due to her multiple personal experiences, Marcos clearly meets the bar for individualized risk under the disfavored analysis group test.

Opposing party may argue that because other Timog women also faced harassment at the facilities, Marcos does not satisfy the bar for individual targeting because she was not singled out. However, as per Kotasz, "it is irrelevant whether one person, twenty persons, or a thousand persons were targeted or placed at risk" as long as the people can show they faced a higher risk in addition to being a member of the disfavored group. 31 F.3d at 854-55. Being in the disfavored group put Marcos at risk of persecution. The fact that multiple guards targeted Marcos multiple times highlights the fact that she was individually targeted. This is analogous to Kotasz, where petitioner cited being in a disfavored group of anti-communists and then providing evidence of arrests and mistreatment in addition. Id. She meets the bar for individual targeting as set forth in this case.

Marcos satisfies both prongs of the disfavored group analysis test and therefore exhibits a well-founded fear of persecution. As a result, she should be granted asylum to the United States of America.

II. The Government Bears The Burden Of Proof For Ms. Marcos' Relocation Analysis Since Life Inc. Is A "Government-Sponsored" Entity

Under the Immigration and Nationality Act (INA), in determining if an asylum applicant would face a well-founded fear of persecution by returning to their home country, adjudicators consider "whether the applicant would face other serious harm in the place of suggested relocation" 8 C.F.R.§ 208.13(b)(3). In instances where the persecution is not by the government or government-sponsored, the applicant bears the burden of proving that internal relocation would be unreasonable. Id. Where the persecution is by the government or is government-

sponsored, the United States government bears the burden of proof to establish that relocation would be reasonable. Id. In the case at hand, the government should bear the burden of proof since Life Inc. is a government-sponsored entity. This court should properly define Life Inc. as a government-sponsored entity, thereby shifting the internal relocation of proof to the United States Government. However, regardless of which party bears the internal relocation burden of proof, substantial evidence compels the conclusion that internal relocation within Basag would have been unreasonable, giving Marcos valid grounds for asylum.

a. Because Both The Immigration Judge And Bureau Of Immigration Appeals Failed To Offer An Interpretation Of A "Government-Sponsored" Entity, This Court May Provide Its Own Reading Of The Term

In the instant case, given that both the Immigration Judge (IJ) and the Board of Immigration Appeals (BIA) failed to offer their own interpretation of what constitutes a "government-sponsored entity", this Court has the proper authority to provide its own interpretation. With regards to statutory definitions, judicial courts generally apply the concept of Chevron deference, deferring to agency interpretations of ambiguous statutory terms insofar as the interpretation is based on a permissible construction of the statute. Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 842-45 (1984). Related to Chevron deference is the principle of Auer deference, which generally requires judicial courts to defer to administrative agencies for the interpretation of the agency's own ambiguous regulatory definitions. Auer, 519 U.S. at 461. Although distinct from one another, the principles of Auer and Chevron deference have been acknowledged to function in the same manner, the former being applicable to regulations and the latter to statutes. Decker v. Nw. Envtl. Def. Ctr., 568 U.S. 597, 617 (2013). As such, this court may evaluate the applicability of Auer deference using the more often discussed principles of Chevron deference.

While Chevron deference generally requires deference to administrative agencies in applicable circumstances, this court has previously left open the door for courts to provide their own interpretations of ambiguous terms in "rare circumstances". Negusie, 555 U.S. 511, 523. The instant case constitutes a rare circumstance for a number of reasons. First, both the IJ and the BIA have failed to provide an interpretation of the term "government-sponsored". Thus, there is no interpretation to which this court may properly defer. Second, the case is one of the few that receive time and attention from the IJ, BIA, the Court of Appeals, and now, the Supreme Court of the United States. Given the substantial time allocated to this case, this court would serve the interests of judicial efficiency by not needlessly remanding the case when a proper decision may be rendered in the present location. Finally, it would establish a clear precedent, demonstrating that when the IJ and the BIA fail to exercise their administrative authority to interpret ambiguous terms, this court may properly step in. In the long run, this would incentivize agencies to take ownership of their own responsibilities and provide interpretations where needed at the risk of losing decision-making authority to courts. This, in turn, would lighten the case load of judicial courts going forward.

However, should this court believe that the instant case does not constitute a rare circumstance, the only suitable alternative is a remand for to the BIA for further clarification of the term "government-sponsored" persecution. The Second Circuit Court of Appeals has previously held that "judicial judgement cannot be made to do service for an administrative judgment." Ucelo-Gomez v. Gonzales, 464 F.3d 163, 169 (2d Cir. 2006). And, in general, "a court of appeals should remand a case to an agency for decision of a matter that statutes place primarily in agency hands." INS v. Ventura, 537 U.S. 12, 16 (2002). While the circumstances

surrounding this case should be thought of as rare, if the court declines to agree, past precedent suggests the proper course of actions is a remand to the BIA.

b. The Lower Court Incorrectly Found That The Actions Of Life Inc. Guards Were Not Government-Sponsored, And In Utilizing A Proper Definition Of The Term, This Court Should Properly Place The Internal Relocation Burden Of Proof On The United States Government

The lower court held that Life Inc. was not "government sponsored" "because the corporation's reach [was] not so extensive as to equate it with the government." Op. at 17. However, in its interpretation of the term, the lower court applied an unnecessarily vague and narrow interpretation of government sponsorship. Moreover, the lower court failed to consider a more widely used definition of "government-sponsored" persecution, under which the actions of Life Inc. guards would have qualified as "government-sponsored". The alternative definition looks to a "government's unwillingness or inability to control private conduct." Ivanov, 736 F.3d 5, 12. The Seventh Circuit Court of Appeals provided further color to this standard, stating the government-sponsored persecution may arise when a government "provid[es] protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct." Hor v. Gonzalez, 400 F.3d 482, 485 (7th Cir. 2005). Whether a government is unable or unwilling to provide protection "is a factual question that must be resolved based on the record in each case," subject to the substantial evidence standard of review. Menjivar v. Gonzales, 416 F.3d 918, 921 (8th Cir. 2005). While this standard is deferential to administrative findings of fact, a court may overturn a decision of the BIA if there exist evidence in the record such that "any reasonable adjudicator would be compelled to conclude to the contrary" 8 U.S.C. § 1252 (b)(4)(B). In this case, any reasonable adjudicator would be compelled to find that the Basag government was either unwilling or unable to protect Marcos. This finding would therefore lead to the conclusion that Marcos suffered government-sponsored persecution at the hands of Life

Inc. guards, and subsequently, that the burden of proving the reasonability of internal relocation should shift to the United States government.

i. Substantial Evidence Would Compel Any Reasonable Adjudicator To Conclude The Basag Government Was Unable To Protect Marcos

The Basag government was unable to sever its contractual relationship with Life Inc. and end Marcos' threat of persecution at the hands of Life Inc. guards, leaving it without the capacity to protect Marcos. Thus, because of the government's inability to control the actions of Life Inc., the company's actions should qualify as "government-sponsored". The Ninth Circuit Court of Appeals has held that a government's "inability to provide protection may arise because of a lack of financial and physical resources." Afriyie v. Holder, 613 F.3d 924, 931 (9th Cir. 2010). In that case, the court found the Ghanian government unable to protect an individual because the local police station possessed only one gun for the entire force and often expected people to track down and bring in their own perpetrators. Id at 928. After signing the 30-Year Concession Contract with Life Inc., the Basag government did not have the ability to exit the agreement with the company due to significant financial liability it would have incurred, thus cementing Life Inc.'s continued control of the country's water resources. Facts at 5. This perverse incentive remained in spite of multiple accounts of sexual violence perpetrated by Life Inc. guards against Basag women. Facts at 6-8. In line with this principle, the Basag government found itself unable to adequately control the persecution of Life Inc. guards owing to the financial liability it would have faced by severing the existing contractual agreement. Therefore, this court should properly place the internal relocation burden of proof on the United States government.

ii. Substantial Evidence Would Compel Any Reasonable Adjudicator To Conclude The Basag Government Was Unwilling To Protect Marcos

Even if this court determines that the Basag was able to protect Marcos, substantial evidence from the record compels the conclusion that the government was unwilling to protect Marcos. Since the test operates in the disjunctive, this alone would prove sufficient to demonstrate the government's effective sponsorship of Life Inc. An asylum applicant may demonstrate a government's unwillingness to provide protection by showing the "country's laws or customs effectively deprive the petitioner of meaningful recourse,", "that others have made reports of similar incidents to no avail", "private persecution of a particular sort is widespread and well-known but not controlled by the government", or by demonstrating that reporting "would have been futile." Bringas-Rodriguez, 850 F.3d at 1066. In line with these principles is the Ninth Circuit Court of Appeals reasoning in Vitug v. Holder, in which the court found that the petitioner's failure to report his persecution was valid, since Philippine police frequently "turn[ed] a blind eye to hate crimes against gay men." 723 F.3d 1056, 1063-64 (9th Cir. 2013). Like the police in Vitug, the Basag government has failed to investigate numerous crimes committed by Life Inc. guards throughout the course of the company's operation in Basag. The record holds that "[s]ince July 2016, the Basag military and Life Inc. guards have killed over 75 men and women… throughout Basag." Facts at 5. Although these killings were admittedly limited to individuals incorrectly identified as Water Warriors, there is no evidence that the Basag government made any effort to punish the responsible Life Inc. guards. Id. Furthermore, numerous claims of sexual violence against women and the shooting of Bernardo Marcos all appear to have gone uninvestigated by law enforcement authorities. Facts at 6-8. Combined, the pattern of uninvestigated criminal activity lends credibility to the notion that the government failed to control crime, and, specifically, that sexual assault and violence was widespread and

well-known, yet the Basag government failed to provide protection. While the 30-Year Concession contract with Life Inc. offered Basag citizens the opportunity to purse civil and criminal recourse against the company, there is no evidence in the record to suggest these legal remedies had provided past victims of Life Inc. with any type of recourse in the past, suggesting the lack of true legal protection. In conjunction, the practices of the Basag government suggest an unwillingness to provide protection, thereby rendering the actions of Life Inc. guards as government-sponsored persecution. Regardless of the Basag government's ability to provide its citizens with protection against Life Inc. guards, its unwillingness to do so is sufficient grounds to place the internal relocation burden of proof on the United States government.

c. Regardless Of The Definition Of "Government-Sponsored" Entity And The Assignment Of The Internal Relocation Burden Of Proof, Substantial Evidence From The Record Compels The Conclusion The Internal Relocation Within Basag Would Have Been Unreasonable, Providing Marcos With A Valid Basis For Asylum

Regardless of this court's determination of whether the actions of Life Inc. guards are government sponsored and its determination as to which party bears the burden of proof with regards to the internal relocation analysis, substantial evidence from the record compels the conclusion that internal relocation within Basag would have been unreasonable for Marcos, thus providing her with valid grounds for asylum. To have a valid claim for asylum, an applicant must not be able to "avoid future persecution by relocating to another part of the applicant's country of nationality" 8 C.F.R. § 208.13(b)(1)(i)(b). The internal relocation standard has been further clarified by the Seventh Circuit, and asks "1) whether safe relocation is possible and if so 2) whether it would be reasonable for the applicant to safely relocate." Oryakhil v. Mukasey, 528 F.3d 993, 998 (7th Cir. 2008). Determination of the ability to relocate internally is a finding of fact reviewed under 8 U.S.C. § 1252(b)(4)(B), which states that "administrative findings of fact

are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary". 8 U.S.C. § 1252(b)(4)(B) (2018); See Also INS v. Elias-Zacarias, 502 U.S. 478, 484 (1992). No matter which party bears the burden of proof, substantial evidence would compel any reasonable adjudicator to determine that internal relocation was neither possible nor reasonable.

i. Substantial Evidence Compels The Conclusion That It Was Not Possible For Marcos To Safely Relocate To Another Part Of Basag

Owing to dangerous conditions on Isda and Mayaman, it was not possible for Marcos to relocate to another part of Basag to avoid persecution. For it to be possible for an asylum applicant to internally relocate safely, "there must be an area of the country where he or she has no well-founded fear of persecution." In re M-Z-M-R-, 26 I. & N. Dec. 28, 33 (B.I.A. 2012). Moreover, because the purpose of the relocation rule is not to require an applicant to stay one step ahead of persecution in the proposed area, that location must present circumstances that are substantially better than those giving rise to a well-founded fear of persecution on the basis of the original claim. Id.

Marcos' temporary stay on Mayaman did not afford her safety conditions that were substantially better than those on Isda. Marcos' situation is analogous to that of the petitioner in Kaiser v. Ashcroft, a case in which the Ninth Circuit Court of Appeals held that internal relocation within Pakistan would not be safe since the petitioner continued to receive similar death threats across locations separated by hundreds of miles. 390 F.3d 653, 660 (9th Cir. 2004). Only a month after relocating to Mayaman, Marcos overheard guards discussing an apparent rape of a woman. Facts at 9. Marcos had previously received information from a family friend, Bayani Santos, that led her to believe Isda-Timog women were still common targets of Life Inc. guards on the island. Facts at 9. Combined with this knowledge, the brazenness and candor with which the Life Inc. guards discussed their violent acts gave Marcos reason to believe that she

was still at a high risk of attack. Significant evidence demonstrates that the conditions on Mayaman were not substantially better than those on Isda, and that Marcos still faced a well-founded fear of persecution.

Marcos would also be unlikely to safely relocate within additional regions of Mayaman. While living with Santos, Marcos and her husband resided in what was perhaps the safest part of the country: the tourist zone. Op. at 19. Relocation to another part of Mayaman would likely prove more dangerous for Marcos, as she would be required to live in an area with an active Water Warrior presence. See Op. at 19. The government and Life Inc. have previously shown an inability to limit their forceful defense of water facilities to Water Warriors members, and other innocent civilians have been killed as a result. Facts at 5. Should Marcos move to an area with an active Water Warriors presence, she would be at risk of being caught in the crossfire, or be subject to even greater threat of sexual violence at the hands of Life Inc. guards.

Furthermore, Marcos' harassment across multiple regions of Isda demonstrate that safe relocation within the island would not be possible. Owing to her need to secure clean water, Marcos visited three different water wells on Isda in 2017. Op. at 17-18. These wells were five miles, seven miles, and ten miles away from her home, respectively, and Marcos reported receiving threats or witnessing harassment at each location. Facts at 6-8. The substantial distance between each well illustrates that the threat of violence pervaded across multiple regions of the island, and was not limited to a single discrete location. Marcos has already attempted to relocate at least a portion of her daily activities to other regions of Isda without success; further attempts to do so would likely be fruitless.

ii. ***Substantial Evidence Compels The Conclusion That It Was Not Reasonable For Marcos To Safely Relocate To Another Part Of Basag***

To determine if relocation is reasonable, adjudicators consider "whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographic limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties." 8 C.F.R. § 208.13(b)(3).

First, Marcos' permanent relocation to Mayaman was unreasonable owing to her status as a relatively poor Isda-Timog woman. The Ninth Circuit Court of Appeals has held that expecting an asylum applicant to relocate to area "with no property, no family, and no means of earning a living is not only unreasonable, but excessively harsh." Knezevic v. Ashcroft, 367 F.3d 1206, 1214 (9th Cir. 2004). In line with this principle, Marcos and her husband had access only to a temporary living situation with their family friend, and her husband's physical injury paired with Marcos' need to beg to secure money demonstrate the couple's inability to earn a living. The severe financial limitations of the Marcos couple provide significant evidence demonstrating the unreasonable nature of permanent relocation to Mayaman.

Second, permanent relocation to Mayaman would also be unreasonable as Marcos would need to live in effective hiding to avoid persecution. The Fourth Circuit Court of Appeals has held that relocation was unreasonable in a case where an individual avoided persecution in a region only by living in hiding. Essohou v. Gonzales, 471 F.3d 518, 522 (4th Cir. 2006). Similar to the applicant in Essohou, Marcos had to effectively hide in Mayaman to avoid persecution. Upon arriving to the island, Marcos received a suggestion to buy new clothing to disguise her Isda-Timog heritage, and in doing so, effectively hide her identity. Facts at 9. While it is not clear if Marcos heeded the advice, she felt compelled to hide when faced with a possible

encounter with Life Inc. guards in order to avoid the threat of sexual harassment or assault. If Marcos were to permanently relocate to Mayaman, it is likely she would need to continue her hiding in-effect to avoid persecution by Life Inc. guards, demonstrating the unreasonable nature of relocation.

CONCLUSION

In regards to Issue One (Disfavored Group Analysis), the court should affirm the use of the disfavored group analysis test because it fills an essential gap in the law. In accordance with the disfavored group analysis, the court should find that Marcos established a well-founded fear of persecution, giving her grounds for asylum. In regards to Issue Two (Burden of Internal Relocation), the court should reverse the decision of the lower court by finding that the actions of Life Inc. were government-sponsored and that internal relocation within Basag would have been unreasonable, giving Marcos grounds for asylum. Or, in the alternative, the court should remand the case to the BIA for further clarification of the term “government-sponsored” persecution.