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
United States Court of Appeals
For the Thirteenth Circuit

BRIEF ON THE MERITS
FOR PETITIONER

Team #1010
Counsel for Petitioner

QUESTION PRESENTED

The issues certified on appeal are:

1. Whether the disfavored group analysis is a valid basis to establish a well-founded fear of persecution for the purposes of asylum eligibility; and
2. Whether the proper party bore the burden of demonstrating if substantial evidence supported a finding that future persecution could be avoided by internal relocation.

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The Thirteenth Circuit's opinion is unpublished but is reproduced in the Record on pages 14 through 31. The accompanying order number is 18-0512. The Board of Immigration Appeals' ("BIA") opinion is unpublished, but the holding is set forth as part of the Thirteenth Circuit's opinion on page 20. Finally, the Immigration Judge's ("IJ") opinion is also unpublished, but the IJ's findings are also found in the Record on page 20.

JURISDICTIONAL STATEMENT

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

STATUTORY PROVISIONS INVOLVED

This case concerns the Refugee Act of 1980, an amendment to the Immigration and Nationality Act ("INA") revising the procedures for admissions of refugees. The relevant provision provides that in general an alien "physically present [or] who arrives in the United States [may] apply for asylum [regardless of status]." INA § 208(a)(1); *See also* 8 U.S.C. § 1158(a)(1). Asylum may be granted if an alien is determined to be "a refugee within the meaning of 101(a)(42)(A)." INA § 208(b)(1)(A); *See also* 8 U.S.C. § 1158(b)(1)(A). A refugee is "any person who is outside any country of such person's nationality [who] is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" 8 U.S.C. § 1101(a)(42)(A). A well-founded fear of persecution may be shown by evidence that there is a pattern or practice "of persecution of a group of persons similarly situated to the applicant [in the applicant's country of nationality]." 8 C.F.R. § 208.13(b)(2)(iii)(A).

STATEMENT OF THE CASE

A. Statement of Facts

The country of Basag is composed of two very distinct islands separated through ethnic lines, the Mayaman, where the Hiligan people lived, and Isda, where the Timog people resided. (R. 2). Both islands are highly dependent on tourism and fishing. (R. 2). Mayaman is home to magnificent beaches and resorts. (R. 2). In 2011, water on Isda became scarce as rising tides and seasonal floods polluted wells with salt water, caused harm to its villages, fishing industries, and coastline, and forced the Isda Timog people to move and be displaced from their homes. (R. 3). Leila Marcos (Petitioner) ("Leila"), a Timog native of Basag, resided near the coast of northern Isda. (R. 5). In 2012, Basag's president Ferdinand Aquino ("Aquino") nationalized all water sources to protect the country's water source. (R. 3). While the tourism infrastructure produced local taxes to subsidize new water and sanitation facilities in Mayaman, Isda faced a government shutdown of polluted wells, and relocation of its water sources. (R. 3). This resulted in Isda's people having to relocate inward in order to obtain access to fresh water. (R. 3). Leila was one of the affected people. (R. 6).

In 2013, Aquino entered into a contract with Life Incorporated ("Life"), an American corporation, giving Life full and exclusive control of Basag's water facilities. (R. 4). The contract provided that the Basag government would provide Life with military aid if the assigned water facilities were threatened. (R. 4). The contract terminates on January, 2043. (R. 4). Water in Isda can only be acquired through old scattered wells or through Life's controlled storage facilities. (R. 6). Women predominantly travel to gather water in northern Isda. (R. 6). Leila bikes miles to obtain water from a Life water facility, but finds this difficult when Life

permanently closes water facilities due to salt-water pollution and compromised infrastructure. (R. 6).

In June 2016, Basag military forces assigned to the water facility shot into a crowd and tear gassed protesters to disperse them after a small group of Timogs held a protest against Aquinto outside a Life facility. (R. 4). Life also hired armed guards, and since July 2016, Basag military and Life guards have killed over 75 men and women throughout Basag, with more than half of those individuals killed on Isda alone. (R. 5). Although presidential elections were held on December 2018, no candidate, including Aquinto, wants to reinstate government control over water resources. (R. 5). A breach of the 30-year contract would result in substantial liability for the country, incentivizing Life's continued control. (R. 5). Although Leila and her husband have moved because of severe flooding, they continue to have difficulties adapting and accessing nearby clean water sources. (R. 6).

In March 6, 2017, Leila was harassed at one of Life's water facilities by one of its guards. (R. 6). The guard offered Leila more water in exchange for sex. (R. 6). Leila recognized that she was in danger because she had heard from a friend that another Isda woman had been raped at a Life facility by a guard who approached the woman in a similar fashion. (R. 6). Although Life issued a public statement about the incident regarding the rape accusations, no action was taken against this guard. (R. 6). On March 9, 2017, in order to avoid contact with the Life guard, Leila went to another water facility which required her to travel an additional 10 miles, where she witnessed a Life guard threaten a pregnant woman and demanded that she remove her shirt. (R. 7). On March 12, 2017, she returned to the same facility she attended on March 9, where the guard that had harassed her was there. (R. 7). The guard once again threatened Leila, stating that he would "have [his] way with [her], … [whether she] want[ed] it

or not." (R. 7). On April 5, Leila was inappropriately touched by another Life guard while obtaining water at a Life facility. (R. 8). After telling her husband about what was happening in the Life facilities, Leila's husband went to confront the guards and was shot in the arm. (R. 8). Life guards returned her husband but continued to harass Leila. (R. 8). No one been prosecuted for any of these acts. (R. 9).

In April 6, 2017, due to fear for their safety, Leila and her husband temporarily relocated to Mayaman and stayed with Bayani Santos ("Bayani"), the husband's fishing mate. (R. 8). Bayani had warned Leila that Life guards tended to target Isda-Timong women due to their poor appearance and financial inability to buy clothing in Mayaman. (R. 9). Leila was unable to find a steady job in Mayaman. (R. 9). One day, while begging for money in the streets of Mayaman, Leila overheard a Life guard brag about cornering and beating a woman until she submitted and forced her into having sex. (R. 9). Leila overheard the guard state, "I cornered her by the well, and hit her until she submitted. Getting sex here is as easy as it is on Isda." (R. 9).

In August of 2017, Leila moved to the United States to seek asylum. (R. 9).

B. Procedural History

Upon arrival to the United States, Leila applied for asylum. (R. 10). Following a hearing, the IJ denied Leila's asylum application on grounds that she could have avoided persecution by relocating to another part of Basag, even though she established an *objectively reasonable fear* of future persecution. (R. 10). On appeal, the BIA summarily affirmed the IJ's decision. (R. 10). Leila then appealed to the Thirteenth Circuit for review of the BIA's denial of her application, who subsequently affirmed as well. (R. 10, 31).

STANDARD OF REVIEW

This Court reviews the Immigration Judge's (IJ) decision as the final removal order when the Board of Immigration Appeals (BIA) "summarily affirms the IJ's decision without an opinion." *Mendoza v. U.S. Atty. Gen.*, 327 F.3d 1283, 1284 n. 1 (11th Cir. 2003).

An IJ's finding of facts "are conclusive unless [a] reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). To reverse the IJ's decision, the evidence presented by the applicant "must be such that a reasonable fact finder would have to conclude the requisite fear of persecution existed" *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). The fear of persecution "need not be the alien's only motivation for fleeing [in order to support a request for asylum]." *Melkonian v. Ashcroft*, 320 F.3d 1061, 1068 (9th Cir. 2003).

Questions of law regarding the INA are reviewed *de novo. Ladha v. INS*, 215 F.3d 889, 896 (9th Cir. 2000). While a court will give deference to the IJ's interpretation of the INA, "the [IJ] must follow the decisions of the court, and [the court] will not defer to [IJ] decisions that conflict with circuit precedent." *Id*.

SUMMARY OF THE ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeal's finding that the "disfavored group analysis" is an appropriate standard of review in determining a well-founded fear persecution. However, this Court must reverse the Circuit Court's finding that Petitioner bore the burden of proof to support a finding that persecution could be avoided by internal relocation.

First, this Court should affirm the Circuit Court's decision holding that the disfavored group analysis was an appropriate standard for review in determining a well-founded fear of prosecution. To establish a well-founded fear of persecution, an applicant must show "(1) [fear]

of persecution in [applicant's] country of nationality, (2) a reasonable possibility of suffering such persecution, and (3) [an] unwillingness to return to [applicant's] country because of such fear." However, in evaluating whether an applicant has sustained their burden of proving that he or she has a well-founded fear of persecution, an "[IJ] *shall not require the applicant* to provide evidence [of a reasonable possibility of being singled out] for persecution if [there is] evidence that there is a pattern or practice of persecution of a group of persons similarly situated to the applicant [in the applicant's country of nationality]."

The disfavored group analysis is an appropriate standard of review because the disfavored group analysis (1) does not require a lower standard of proof, and (2) allows for uniformed results in similar cases.

While some courts have rejected the use of disfavored group analysis, their rejection is due to the concern that the disfavored group analysis requires a lower showing of proof. However, while those concerns are legitimate, the Ninth Circuit Court has clarified that this concern explicitly stating that even under the disfavored group analysis an individual seeking asylum must always show at least a ten percent chance of persecution. After the Ninth Circuit Court's clarification, rejecting courts have signaled a willingness to embrace the disfavored group analysis.

The INA gives very little guidance as to how a refugee can show a well-founded fear. With the current circuit court split, asylum cases with similar facts can lead to two different results. These two different results show the lack of uniformity across circuit courts in similar asylum cases when the courts have very little guidance. IJ's, the BIA, and the courts can benefit from the disfavored group analysis because the use of the disfavored group analysis can help get uniformed results in similarly situated cases by providing much needed guidance in non-pattern

or practice cases. The disfavored group analysis also provides circuit courts with a balancing approach that can help guide them in determining whether an applicant could establish a well-founded fear of persecution.

Secondly, this Court must reverse and remand the Circuit Court's finding that Petitioner bore the burden of proof to support a finding that persecution could be avoided by internal relocation. For well-founded fear of persecution cases, the party who bears the burden of demonstrating if substantial evidence supports a finding that future persecution could be avoided by internal relocation changes depending on the source of persecution. If the persecutor is a "government" or is "government-sponsored," there is a presumption that internal relocation is not reasonable, unless the Executive Office of Immigration Review ("Service") proves by a preponderance of the evidence that internal relocation would be reasonable. However, the asylum seeker bears this burden when the persecutor is not the government or government-sponsored. Therefore, if the BIA fails to properly specify which party had the burden of proof on the reasonable internal relocation issue, then this requires that cases be reversed and remanded.

The lower court's ruling must be reversed and remanded as to the internal relocation issue because (A) Life is a government-sponsored entity, (B) since Life is government-sponsored, it will then be presumed that internal relocation is unreasonable, and (C) lastly, even if this Court determines that the Thirteenth Circuit Court was correct in its classification of Life as not "government sponsored," the Service will not be able to establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for Leila to relocate within Basag. Life is a government-sponsored entity because of the level (or lack thereof) of control that the Basag government has over its actions, an inability or unwillingness from Basag government forces to control the actions of Life, and the Basag government's

inaction as to prosecution of individuals who have harassed, intimidated, abused, and killed innocent Basag civilians. Due to Life's status as a government-sponsored entity, it will then be presumed that Leila's internal relocation is unreasonable. Lastly, even if this Court determines that Life is not government-sponsored, the Service will not be able to establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for Leila to relocate within Basag.

Moreover, ambiguous statutory terms, such as that of government-sponsored, should be construed in favor of the alien. A goal of the immigration system is to prevent improper interpretations of deportation statutes because deportation is always a harsh measure, which may subject the asylum seeker to persecution or death if improperly forced to return to their home country. This court should construe government-sponsored in favor of Leila because deportation is such a drastic measure that at times is the equivalent of banishment or exile.

Alternatively, a remand is necessary where the court has failed to properly specify which party bears the burden of proof of showing that future persecution could be avoided by internal relocation. Ambiguities have resulted from the IJ's and the BIA's failure to define government-sponsored, and because it has not exercised it power to provide concrete meanings to regulatory terms, such as government-sponsored.

It now becomes the duty of this Court to promote fundamental fairness and uniformity by properly interpreting and implementing regulations where the BIA has failed to do so. By not providing a positive definition of government-sponsored, the court has set precedent that lacks uniformity and fairness because the only way to define the term is to compare it to Life, which may unfairly fail to consider the status of future persecuting entities, and thus, unfairly lead to deportations of other asylum seekers who have legitimate claims.

Lastly, appellate courts may not interfere upon the domain that Congress has entrusted to the BIA to make asylum eligibility decisions, thus, the Thirteen Circuit Court's act of conducting a de novo review and defining government sponsored goes against statutory provisions and well-established Congressional law.

ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeal's finding that the "disfavored group analysis" is an appropriate standard of review for determining a well-founded fear persecution. However, this Court should reverse the Circuit Court's finding that Petitioner bore the burden of proof to support a finding that persecution could be avoided by internal relocation.

I. THE DISFAVORED GROUP ANALYSIS IS AN APPROPRIATE STANDARD OF REVIEW BECAUSE IT DOES NOT REQUIRE A LOWER STANDARD OF PROOF AND ALLOWS FOR UNIFORMED RESULTS IN SIMILAR CASES.

The Court of Appeals for the Thirteenth Circuit correctly held that the "disfavored group analysis" is an appropriate standard of review to determine whether an asylum applicant has a well-founded fear of prosecution. To establish a well-founded fear of persecution, an applicant must show "(1) [fear] of persecution in [applicant's] country of nationality, (2) a reasonable possibility of suffering such persecution, and (3) [an] unwillingness to return to [applicant's] country because of such fear." 8 C.F.R. § 208.13(b)(2)(i). However, in evaluating whether an applicant has sustained their burden of proving that he or she has a well-founded fear of persecution, an "[IJ] *shall not require the applicant* to provide evidence [of a reasonable possibility of being singled out] for persecution if [there is] evidence that there is a pattern or practice of persecution of a group of persons similarly situated to the applicant [in the applicant's country of nationality]." 8 C.F.R. § 208.13(b)(2)(iii)(A).

While some courts have rejected the use of the disfavored group analysis established by the Ninth Circuit Court, their rejection of this standard is due to a misinterpretation that the standard requires a lower showing of proof to establish a well-founded fear of future persecution. Thus, this court should affirm the Thirteenth Circuit's holding that the disfavored group analysis is an appropriate standard of review because the disfavored group analysis (1) does not require a lower standard of proof, and (2) allows for uniformed results in similar cases.

A. The disfavored group analysis does not require a lower standard of proof to show a well-founded fear of future persecution, rather it provides an alternative method for establishing an individualized fear.

In 1994, the Ninth Circuit Court introduced the "disfavored group analysis" in response to Immigration Naturalization Services ("INS") lack of guidance in non-pattern and practice cases because the problem of "non-pattern and practice is far more common" *Kotasz v. INS*, 31 F.3d 847, 853 (9th Cir. 1994). The court reasoned that in such cases while members of disfavored groups were not "threatened by systematic persecution, the fact of group membership nonetheless plac[ed] them at some risk, [that could] rise to the level of a well-founded fear of persecution." *Id*. In 2004, the Ninth Circuit Court reaffirmed this view by holding that there are two approaches for establishing a well-founded fear of persecution "(1) establishing a pattern or practice of persecution of similarly situated [individuals], and (2) [determining that the applicant] is a member of a disfavored group coupled with a showing that [the applicant] is likely to be targeted as a member of that group." *Sael v. Ashcroft*, 386 F.3d 922, 925 (9th Cir. 2004).

While some circuits courts have dismissed the use of the disfavored group analysis, these courts have rejected this standard of review due to a concern the standard requires a lower showing of proof to establish a well-founded fear. *See Kho v. Keisler*, 505 F.3d 50 (1st Cir. 2007) (Rejecting the disfavored group analysis because it "requires a lower standard for individualized fear absent a pattern of practice of persecution"); *See also Firmansjah v.*

Gonzales, 424 F.3d 598 (7th Cir. 2005) (Rejecting the disfavored group analysis because it requires a "comparatively low level of risk in order to establish a well-founded fear of persecution").

However, while the courts' concerns are legitimate, the disfavored group analysis does not require a lower burden of proof. Recently the Ninth Circuit responded to the concerns raised by the other circuit courts by clarifying that the disfavored group analysis does not require a lower burden of proof. The Ninth Circuit held that the disfavored group analysis "does not prescribe a lower-than usual burden of proof for asylum claims of members of certain [groups]. An individual seeking asylum *must always show* [at least] a ten percent chance of persecution." *Wakkary v. Holder*, 558 F.3d 1049, 1064 (9th Cir. 2009). The Circuit Court reasoned that it "never held [throughout its disfavored group analysis case law] that a member of a disfavored group must show [a lesser] likelihood of persecution to be eligible for asylum." *Id*. The Circuit Court explained that the burden it referred to in *Kotasz* and *Sael* did not refer to the "ultimate standard", but rather a sliding scale approach that balances the "individualized evidence of risk [of persecution] with the risk of [group based persecution] [to determine if the ultimate standard has been met]."*Id*; *See also* Bridget Tainer-Parkins, *Protection From a Well-Founded Fear: Applying the Disfavored Group Analysis in Asylum Cases*, 65 Wash. & Lee L. Rev. 1749, 1757 (2008) (explaining that the disfavored group analysis balances the risk of group based persecution with evidence of particularized persecution). Thus, the disfavored group analysis merely provides an alternative method of showing an individualized fear which does not alter the ultimate standard.

Additionally, other circuit courts have also recognized that the disfavored group analysis does not lower the requisite showing of proof needed to establish a successful asylum claim and

have accepted the disfavored group analysis as an appropriate standard. For example, the Fourth Circuit Court embraced the disfavored group analysis in *Chen v. INS* where a Chinese petitioner sought asylum or withholding of removal on grounds that he feared being subject to involuntary sterilization upon his return to China as a result of his violation of China's one-child policy. *Chen v. INS*, 195 F.3d 198 (4th Cir. 1999). The Fourth Circuit Court in *Chen* reasoned that "[i]ndividual targeting and systematic persecution do not necessarily constitute distinct theories. Rather, [an] applicant [can] demonstrate some combination of the two to establish a well-founded fear." *Id*. at 203. The *Chen* court explained the sliding scale approach of the disfavored group analysis by stating that the "more egregious the showing of group persecution the less evidence of individualized persecution [is needed]. Conversely, [where group persecution is haphazard and rare] the stronger [the need to show] individual targeting." *Id*. at 204. Furthermore, the Eight Circuit Court in *Makonnen v. INS* adopted the disfavored group analysis on a claim of persecution based on ethnicity. The Eight Circuit Court held that the BIA had erred as a matter of law by failing to consider the petitioner's well-founded fear since the BIA solely focused on petitioner's Oromo ethnicity but failed to consider her membership in a group known as the OLF. *Makonnen v. INS*, 44 F.3d 1378, 1384 (8th Cir. 1995). The court in *Makonnen* adopted the Ninth Circuit Court' reasoning and stated that "although members of disfavored groups are not threatened by systematic persecution, their group membership alone places them at some risk [that can rise to a level well-founded fear of persecution]." *Id*. at 1383.

However, even in adopting the disfavored group analysis and finding that each petitioner established a membership in a disfavored group, those findings alone were not enough to reverse the BIA's findings in their asylum petitions. In *Chen* the court affirmed the BIA's decision because Chen failed to establish that he would be placed at risk upon his return to

China. 195 F.3d at 205. In *Makonnen* the court remanded the case to the BIA for further proceedings. 44 F.3d at 1387. Similarly here, although the Thirteenth Circuit Court found that Petitioner was a member of a disfavored group that alone was not enough to reverse the BIA's decision. Thus, this suggest that contrary to the First and Seventh Circuit Courts' view, the disfavored group analysis does not lower the requisite standard of proof. Therefore, the Thirteenth Circuit Court correctly held that the disfavored group analysis is an appropriate standard of review because it does not lower the requisite burden of proof to establish eligibility for asylum.

Finally, while some courts have rejected the disfavored group analysis because of their mistaken belief that it requires a lower standard of proof, those courts have signaled the possibility of revisiting the issue. For example, in *Sugiarto v. Holder,* the First Circuit Court hinted at the possibility of revisiting the disfavored group analysis after the Ninth Circuit Court clarified the disfavored group analysis' standard of proof in *Wakkary*. *Sugiarto v. Holder*, 586 F.3d 90, 97 (1st Cir. 2009). However, the court in *Sugiarto* decided not to revisit the issue because "adoption of [the disfavored group analysis] would not have changed the outcome of the case." *Id*. at 98; *See also Banturino v. Holder*, 576 F.3d 10, 15 (1st Cir. 2009) (Declining to revisit the disfavored group analysis issue because it would not change the outcome of the case). Thus, this suggests that the rejection of the disfavored group analysis is solely based on the misconception that it requires a lower standard of proof. However, the Ninth Circuit Court has clarified the misconception, therefore this Court should affirm the Thirteenth Circuit Court's finding that the disfavored group analysis is an appropriate standard of proof.

B. The disfavored group analysis allows for uniformed results in similar cases because it provides much needed guidance in non-pattern and practice cases.

The INA provides that an alien "physically present [or] who arrives in the United States [may] apply for asylum [regardless of status]". INA § 208(a)(1); *See also* 8 U.S.C. § 1158(a)(1). The INA gives the Department of Homeland Security ("DHS") and the Attorney General ("AG") discretion to grant asylum to an applicant if the applicant is considered "a refugee within the meaning of 101(a)(42)(A)." INA § 208(b)(1)(A); *See also*8 U.S.C. § 1158(b)(1)(A). Under the cited provision a refugee is "any person who is outside any country of such person's nationality [who] is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion" 8 U.S.C. § 1101(a)(42)(A).

However, apart from the definition of a refugee, the INA gives very little guidance as to how an applicant can show a well-founded fear when applying for asylum. Tainer-Parkins, *Protection From a Well-Founded Fear*, *supra* at 1772. It was because of this lack of guidance that the Ninth Circuit Court established the disfavored group analysis in *Kotasz*. 31 F.3d at 853. While some courts have rejected the use of the disfavored group analysis, the disfavored group analysis provides guidance in non-pattern or practice cases. This is done by requiring an IJ or the BIA to balance the showing of group persecution with evidence of individualized risk of persecution. *Chen,* 195 F.3d at 204. If IJs and the BIA were to use the disfavored group analysis its use would provide uniform results in similar asylum cases because two cases with similar facts would lead to the same result under the disfavored group analysis.

With the current circuit court split, asylum cases with similar facts can lead to two different results. This is evident by taking two similar cases tried in two different circuit courts, the Ninth Circuit Court which established the disfavored group analysis and the First Circuit

Court which rejected the disfavored group analysis. On the one hand, in *Sael* the Ninth Circuit Court held the petitioner Sael an ethically Chinese Indonesian citizen of Christian faith was eligible for asylum because she faced discrimination based on her race and religion. 386 F.3d at 930. On the other hand, in *Kho* the First Circuit Court upheld the IJ's denial of Kho's asylum petition, Kho was an ethically Chinese Indonesian Citizen of Christian faith whom was also discriminated against based on his race and religion. 505 F.3d at 58. These two different results show the lack of uniformity across circuit courts in similar asylum cases when the courts have very little guidance.

Conversely, IJ's, the BIA, and the courts can benefit from the disfavored group analysis because the use of the disfavored group analysis can help get uniformed results in similarly situated cases by providing much needed guidance in non-pattern or practice cases. For example, in *Chen* the court found that Chen was a member of a disfavored group because he had three children in violation of China's one-child policy putting him in a group of individuals that could face persecution by the government and be forced to involuntarily sterilization. 195 F.3d at 204. However, the *Chen* court affirmed the BIA's decision to deny Chen asylum because he did not show sufficient evidence to establish an individualized fear of persecution. *Id*. at 205. Similarly in this case, the Thirteenth Circuit Court found that Petitioner was a member of a disfavored group, Isda-Timong Women whom were susceptible to being sexually abused, harassed and raped by Life guards, but affirmed the BIAs decision to deny Petitioner asylum. While the Thirteen Circuit Court incorrectly affirmed the BIA's decision, in both cases both courts required each petitioner to have a greater showing of individualized persecution since there was little evidence of group-based persecution. Thus, this suggest that the disfavored group

analysis is a valuable tool that can help guide circuit courts in non-pattern or practice cases to obtain uniformed results in similarly situated cases.

Finally, the disfavored group analysis also provides circuit courts with a balancing approach that can help guide them in determining whether an applicant could establish a well-founded fear of persecution.

Therefore, the Thirteenth Circuit Court correctly held that the disfavored group analysis is an appropriate standard of review and this Court should affirm the Circuit Court's decision.

II. THIS COURT MUST REVERSE AND REMAND THIS CASE BECAUSE OF THE LOWER COURT'S FAILURE TO PROPERLY SPECIFY WHICH PARTY BORE THE BURDEN OF PROOF OF DEMONSTRATING IF SUBSTANTIAL EVIDENCE SUPPORTED A FINDING THAT FUTURE PERSECUTION COULD BE AVOIDED BY INTERNAL RELOCATION.

The lower courts incorrectly established that Ms. Marcos should be the party who bears the burden of demonstrating whether substantial evidence supported a finding that future persecution could be avoided by internal relocation. Internal relocation precludes establishment of a well-founded fear of persecution if under all the circumstances it would be "reasonable to expect the applicant to do so." 8 C.F.R. § 208.13(b)(2)(C)(ii) (2019). The internal relocation standard states that (1) safe relocation must be possible, and if it is, (2) safe relocation must be reasonable. *Oryakhil v. Mukasey*, 528 F.3d 993, 998 (7th Cir. 2008) (citing 8 C.F.R. §§ 208.13(b)(2)(ii) and (b)(3)(i) (2019)). The possibility of internal relocation is not in dispute here. Moreover, to determine if relocation is reasonable, non-exhaustive factors to consider include whether the applicant would face serious harm in the place of suggested relocation; any ongoing civil conflicts within the country; administrative and economic infrastructure; geographical limitations; and social and cultural constraints, such as gender and social ties. 8 C.F.R. § 208.13(b)(3) (2019).

Further, for well-founded fear of persecution cases, the party who bears the burden of demonstrating whether substantial evidence supports a finding that future persecution could be avoided by internal relocation changes depending on the source of persecution. If the persecutor is a "government" or is "government-sponsored," there is a presumption that internal relocation is not reasonable, unless the Service proves by a preponderance of the evidence that internal relocation would be reasonable. 8 C.F.R. § 208.13(b)(3)(ii) (2019). However, the asylum seeker bears this burden when the persecutor is not the government or government-sponsored. § 208.13(b)(3)(i). The BIA's failure to properly specify which party had the burden of proof on the reasonable internal relocation issue requires that cases be reversed and remanded. *Khan v. Holder*, 727 F.3d 1, 9 (1st Cir. 2013); *Afriyie v. Holder*, 613 F.3d 924, 935-36 (9th Cir. 2010); *Gambashidze v. Ashcroft*, 381 F.3d 187, 193-94 (3d Cir. 2004). Therefore the lower court's ruling should be reversed and remanded because (A) Life Incorporated ("Life") is a government entity, (B) it will then be presumed that internal relocation is unreasonable because Life is government-sponsored, and (C) lastly, even if this Court determines that the Thirteenth Circuit Court was correct in its classification of Life as not "government sponsored," the Service cannot establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for Leila to relocate within Basag.

A. *Life Inc. is a "government-sponsored" entity*

Although there is not a pre-determined definition for "government-sponsored," an entity can qualify as such depending on the level of government control, an inability or unwillingness from government forces to control the actions of that entity, government inaction, and the status or position of an individual within the government or government-controlled entity. *See Boer-Sedano v. Gonzales*, 418 F.3d 1082 (9th Cir. 2005); *Vata v. Gonzales*, 243 F. App'x 930, 942-43

(6th Cir. 2007); *Valdiviezo-Galdamez v. U.S. Atty. Gen.*, 502 F.3d 285, 291-92 (3d Cir. 2007) (remanding where the IJ failed to consider that the prominent gang problem in the country and the government's failure to contain the problem qualifies as the government for purposes of internal relocation).

In *Awale v. Ashcroft*, the court of appeals appropriately placed the burden of proof on the Service to prove that Awale, the asylum seeker, could reasonably relocate within her home country and remanded her denial of asylum because neither the IJ nor the BIA acknowledged the inherent complexity of the clan-based system within her home country of Somali. 384 F.3d 527, 531 (8th Cir. 2004). Somali does not have a central government and local conditions depend on the effectiveness of regional clan-based authorities, making it difficult and unreasonable for individuals like Awale who do not belong to the majority clan to reasonably relocate. *Id.* The court held that the "clans" were considered the government or government-sponsored for purposes of internal relocation because (1) members of minority clans are continually "subjected to harassment, intimidation, and abuse by armed gunmen," (2) the clans controlled routes of transportation, making it difficult to travel, and (3) women "who lack[ed] the protection of powerful clan structures or who belong to particularly vulnerable groups, such as ethnic minorities, [were] particularly at risk." *Id.* at 532. Therefore, the court properly concluded that the government should be the one to bear the burden as to the internal relocation issue because these clans were classified as the government or government-sponsored. *Id.*

This court should place the burden on the Service to prove that Leila could reasonably relocate within her home country of Basag. Just as in *Awale*, where the clan-based system was classified as the government because of the country's government's inherent complexities and local conditions that depended on the effectiveness of regional clan-based

authorities, here, Life's relationship with the Basag government is inherently complex as access to clean water and water work systems depends on the effectiveness and protection of Basag military. Without Basag's governmental military providing Life and Life guards protection, it cannot fulfill its exclusive duty of maintaining and rebuilding water works in Basag, which may lead to several adverse consequences, such as a lack of water to Basag occupants, a breach of contract on part of the government, and substantial liability for the country.

Moreover, similarly to *Awale*, where the majority clans were classified as the "government" because members of minority clans were continually "subjected to harassment, intimidation, and abuse by armed gunmen," Leila and other Isda-Timog women have also been harassed, intimidated, and abused by Basag military and Life guards by being grabbed, whistled at, forced to remove their clothes, or at times even killed. Women in *Awale* who lacked protection of these powerful majority clans were at particular risk of such harassment, abuse, and intimidation, which is similar here in that those Isda-Timog women who would have to travel far to access clean water were at particular risk of similar acts from both Life guards and the Basag military. Also, just as the clans controlled routes of transportation in *Awale*, making it difficult to travel, Life exclusively controlled access to clean water, the most important resource to human life. Therefore, this court should place the burden on the Service to prove that Leila could reasonably relocate within her home country of Basag.

In *Boer-Sedano*, the court of appeals overturned the IJ's finding on internal relocation, stating that a man had suffered persecution at the hands of the government by being forced to perform sexual acts with and repeatedly threatened with death by a high-ranking police officer, raising a presumption that the threat existed nationwide. 418 F.3d at 1090.

Life's persecution as a government entity raises the presumption that threats exist nationwide. Similarly to *Boer-Sedano* where a man had suffered persecution at the hands of the government by being forced to perform sexual acts upon a high-ranking police officer, Life guards have also admittedly cornered and beaten a woman for sex, forced a woman to take off her clothes, inappropriately touched and made sexual gestures to Leila, and have not been prosecuted for such acts. Also, just as in *Boer-Sedano* where this man suffered persecution at the hands of the government by repeatedly being threatened with death, here, over 75 innocent men and women have actually been killed at the hands of the Basag military and Life guards. Similar unprosecuted acts from government officials in *Boer-Sedano* and those from Life show that persecution occurred by the government, thus raising the presumption that the threat exists nationwide.

To differentiate, in *Vata*, the court established that police unwillingness or inability to help an asylum seeker seek protection from governmental authorities from an extremist organization could qualify as the government if that argument was made. 243 F. App'x at 942-43. However, the court affirmed the denial of Vata's asylum due to (1) Vata's failure to timely follow up with the police as to who threatened him and (2) his failure to seek any other sort of security units from Albania, failing to show that authorities were unwilling to protect him which would have been the basis to prove that the extremist organization would be considered as the government. *Id.* Vata simply claimed ignorance to pursue the criminal action on part of the police but did not act in a way that would show the police's unwillingness or inability to protect Vata from the extremist organization, thus leading to his denial of asylum. *Id.*

Basag's unwillingness or inability to help Leila and others qualifies Life as the government. Unlike *Vata*, where the asylum seeker failed to follow up with the police as to who

threatened him and failed to seek any other form of security from other security units, Leila actively attempted to avoid confrontation and continued harassment by seeking water at further storage facilities, notifying her husband who was shot trying to confront Leila's past harassers, moved homes, hid from Life guards, and ultimately bought a one-way-ticket to the United States. While the asylum seeker in *Vata* simply claimed police ignorance to pursue the criminal action without showing the police's unwillingness or inability to protect him from an extremist organization, people in Basag have in fact and will in fact not been helped, which is demonstrated by the following scenarios: (1) Basag military killing civilians alongside Life guards; (2) forcing a pregnant woman to take off her clothes without police or government intervention; (3) overhearing statements from Life guards in a place where Leila has relocated stating, "I cornered her by the well, and hit her until she submitted. Getting sex here is as easy as it is on Isda;" (4) lack of criminal prosecutions or employee terminations resulting from alleged crimes and rapings; (5) government incentives to prevent a breach of contract that may result in greater liability; and (6) the president's active attempts to cover up Basag military and Life guard's murders of over 75 innocent civilians.

Therefore, this Court should conclude that the government should be the one to bear the burden as to the internal relocation issue because these clans were considered to be the government or government-sponsored.

B. *It shall be presumed that internal relocation is not reasonable because Life is a government-sponsored entity.*

Internal relocation shall be presumed to be unreasonable where the persecutor is the government or is government-sponsored, unless the Service can establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate. § 208.13(b)(3)(ii).

It shall be presumed that Leila's internal relocation is unreasonable because Life is statutorily a government-sponsored entity for reasons proven above. Thus, the burden now falls upon the Service to prove by a preponderance of the evidence that, under all the circumstances, it would be reasonable for Leila to relocate. Without such proof, Leila must qualify for asylum, warranting her case to be reversed and remanded to reflect that decision.

C. *Internal relocation is presumed to be unreasonable; yet, even if this Court determines that the 13th Circuit was correct in its classification of Life as not "government sponsored," the Service cannot establish by a preponderance of the evidence that, under all the circumstances, it would be reasonable for Leila to relocate within Basag.*

Once the Court determines that the persecutor is the government or government-sponsored, the Service then has the burden of proving by a preponderance of the evidence that, under all of the circumstances, it would be reasonable for the asylum seeker to relocate. § 208.13(b)(3)(ii). To determine if relocation is reasonable, this Court should consider the following non-exhaustive factors: whether the applicant would face serious harm in the place of suggested relocation; any ongoing civil conflicts within the country; administrative and economic infrastructure; geographical limitations; and social and cultural constraints, such as gender and social ties. § 208.13(b)(3); *see also Boer-Sedano*, 418 F.3d at 1090 (determining that relocation is not reasonable and should not be allowed where the petitioner's age, limited job prospects, and lack of family or cultural connections to the proposed place of relocation warrant a finding against relocation); *Mashiri v. Ashcroft*, 383 F.3d 1112, 1123 (9th Cir. 2004) (holding that relocation was not reasonable given evidence of continued anti-foreigner violence throughout Germany, lack of access to housing, and family ties in the U.S.). The fact that someone has already stayed in a particular part of their home country for an extended period of time does not establish that a person could reasonably relocate there today. *See Awale*, 384 F.3d

at 532 (holding that the BIA could not rely on Awale's four-year stay in Baidoa because it does not establish that she could reasonably relocate to Baidoa today).

In *Knezevic v. Ashcroft*, the court of appeals determined that the lower court erred in deciding that relocation would be reasonable and remanded to consider that the Serbian couple (1) was targeted like the aliens and threatened with death in their hometown; (2) is afraid that the Serbian government could not protect them if they return; and (3) were unable to return to their home; and (4) had their business destroyed. 367 F.3d 1206, 1214-15. Moreover, the court still remanded in light of the lack evidence showing that a Muslim group attacked a population of Serbs which this asylum seeker claimed to occur. *Id.* The court stated that to expect this Serbian couple start their lives over again in a new town, with no property, no home, no family, and no means of earning a living is not only unreasonable, but exceptionally harsh. *Id.*

Forcing Leila to start her life over again under her current circumstances would be exceptionally harsh. Similarly to *Knezevic*, where a Serbian couple was targeted like the aliens and threatened with death in their hometown and are afraid that their government could not protect them if they return, Isda-Timog women like Leila have been targeted by Life guards for sex because of their socio-economic status and are continually afraid that such harassment will continue because there is no evidence that any action has been taken against these harassers. Also, just as the court determined that it would be unreasonable for the Serbian couple to relocate because they were unable to return to their home and unable to continue to work at their destroyed business, Leila is also unable to return home due to a legitimate fear of continued harassment and difficulties in trying to obtain a stable job. While the court in *Knezevic* still remanded even when there was no evidence showing an attack on the Serbian people, here, there is actual evidence of innocent Basag civilians being killed by Life guards and military personnel.

Forcing Leila to start her life over again in a new town, with no property, no home, no family, and no means of earning a living would not only unreasonable, but exceptionally harsh.

In *Awale*, the court of appeals remanded Awale's denial of asylum because neither the IJ nor the BIA acknowledged the inherent complexity of internal relocation within the country of Somali. 384 F.3d at 531. Somalia does not have a central government and local conditions depend on the effectiveness of regional clan-based authorities, making it difficult and unreasonable for individuals like Awale who do not belong to the majority clan to reasonably relocate. *Id.* Moreover, the court reasoned that it would be unreasonable for Awale, a member of a minority clan, to relocate where (1) she has no home to which she can return, (2) members of minority clans continue to be "subjected to harassment, intimidation, and abuse by armed gunmen," (3) that travel is difficult because rival groups control routes of transportation, and (4) women of minority groups are particularly at risk of harassment due to lack of protection. *Id.* at 532. Considering all of these circumstances, the court concluded that the record does not contain substantial evidence rebutting the presumption of a well-founded fear with proof that Awale could reasonably relocate. *Id.*

Considering all of the circumstances, this Court should conclude that the record does not contain substantial evidence sufficient to prove that Leila could reasonably relocate. Just as the inherently complex Somali government that depends on the effectiveness of regional clan-based authorities for local functions, Basag depends upon the effectiveness of Life to maintain and provide water to citizens, complicating the state's administrative and economic infrastructure. Moreover, similarly to *Awale* where the asylum seeker has no home to which she can return to, Leila also does not have a home to which she can return to because she has been continually displaced due to fear, geographical and weather conditions, and social constraints keeping her

from integrating into a different island in her own country. Unfortunately, like *Awale* where she has difficulties in travelling because rival groups control routes of transportation, Leila has difficulties obtaining a quintessential resource for human development which is water. Moreover, compared to *Awale* where members of minority clans continue to be "subjected to harassment, intimidation, and abuse by armed gunmen," Leila and many minority Isda people have been subject to harassment, intimidation, and abuse by Life in that they have beaten women for sex, forced women to take off their clothes, inappropriately touched and made sexual gestures to women, and have not been prosecuted for such acts. Women like Leila are particularly at risk of harassment due to lack of protection and their socio-economic status. Therefore, considering all of the circumstances, this Court should conclude that the record does not contain substantial evidence sufficient to prove that Leila could reasonably relocate.

III. AMBIGUOUS STATUTORY TERMS, SUCH AS GOVERNMENT-SPONSORED, SHOULD BE CONSTRUED IN FAVOR OF THE ALIEN.

Ambiguities should be construed in favor of the alien. The Court in *INS v. Cardoza-Fonseca* stated that "lingering ambiguities in deportation statutes should be construed in favor of the alien." 480 U.S. 421, 449 (1987). Appropriate definitions within deportation statutes and within the immigration system are crucial because improper interpretation of statutes could lead to a deportation, which is always a harsh measure, and it is more dangerous when the alien makes a claim that she will be subject to death or persecution if forced to return to her home country. *Id.* Where language within a deportation statute is ambiguous and a proper interpretation or definition has not been provided as to the meaning of a specific term, then the Court should construe its definition in favor of the individual seeking relief because deportation is a drastic measure that at times is the equivalent of banishment or exile. *See INS v. Errico*, 385 U.S. 214, 225 (1966); *Costello v. INS*, 376 U.S. 120, 128 (1964); *Fong Haw Tan v. Phelan*, 333

U.S. 6, 10 (1948). This Court's duty is to ensure that Congress does not make an alien's right to remain in the United States dependent on "fortuitous and capricious" circumstances. *Delgadillo v. Carmichael*, 332 U.S. 388, 391 (1947).

Ambiguities as to the definition of government-sponsored within the deportation statute (§ 208.13(b)(3)(i-ii)) should be construed in favor of the alien, Ms. Marcos. Neither the IJ, BIA, or Congress have established a single definition of government-sponsored for purposes of internal relocation for asylum seekers. Appropriate definitions within this deportation statute and within the immigration system are crucial because improper interpretation of statutes could lead to a deportation of Ms. Marcos, which would be the harshest measure to take. In this case, it is more dangerous for Ms. Marcos because it has been established that she has an objectively reasonable fear of future persecution, which could subject her to continued harassment or persecution if forced to return to her home country. Improper interpretation of statutes could lead to improper deportation of not only Ms. Marcos, but also all those aliens who have been denied asylum due to an absence of or improper interpretation of § 208.13(b)(3), potentially resulting in much worse adverse effects for the alien who may risk torture, sexual assault, or even death within their home country. "Lingering ambiguities" within the § 208.13(b)(3)(i-ii) should be construed in favor of Ms. Marcos because deportation is a drastic measure that here will be the equivalent of banishment or exile. It now becomes this Court's duty is to ensure that Congress does not make an alien's right to remain in the United States dependent on "fortuitous and capricious" circumstances, such as leaving this deportation statute open to several interpretations which could result in Ms. Marcos's deportation into a country where she may be persecuted.

IV. A REMAND IS NECESSARY WHERE AN AMBIGUOUS REGULATION LEADS TO THE COURT'S FAILURE TO PROPERLY SPECIFY WHICH PARTY BEARS THE BURDEN OF PROOF OF SHOWING THAT FUTURE PERSECUTION COULD BE AVOIDED BY INTERLATION RELOCATION.

Additionally, a remand is necessary where an ambiguous statute or regulation leads to the court's failure to properly specify which party bears the burden of proof of showing that future persecution could be avoided by internal relocation. *See Cajun Elec. Power Coop. v. FERC*, 924 F.2d 1132, 1136 (D.C. Cir. 1991) (remanding where ambiguity arose because the agency acted upon an erroneous belief that Congress' intent had been clearly expressed as to a statute). The Attorney General has given the BIA the discretion and authority conferred upon the Attorney General by law in the course of considering and determining cases before it. 8 C.F.R. § 3.1(d)(1) (1998). Thus, the BIA should be granted *Chevron, U.S.A., Inc. v. NRDC, Inc.* deference when providing concrete meaning to ambiguous statutory terms through case-by-case adjudication; however, when the BIA is silent on a "matter that statutes place primarily in agency hands," the proper remedy is to remand, giving the BIA the opportunity to address the matter "in the first instance in light of its own experience." 467 U.S. 837, 842-43 (1984); *Negusie v. Holder*, 555 U.S. 511, 516-517 (2009).

A remand is necessary due to ambiguities resulting from the IJ's and BIA's silence when a definition of "government-sponsored" was required. The BIA has been given the authority and discretion conferred upon the Attorney General in considering and determining cases, meaning that the BIA should have been granted Chevron deference when providing concrete meaning to the ambiguous term, government-sponsored; however, the BIA was silent on this matter that the statute places primarily in the agency hands, the proper remedy is to remand. In other words, the Attorney General has given the BIA the authority it would have otherwise had to determine cases and to provide proper definitions for ambiguous terms, such as government-sponsored. However, in this case, the only and appropriate remedy left for this Court is to remand because the BIA has remained silent and did not exercise its power to provide a concrete meaning to "government-

sponsored." A remand would rightly give the BIA the opportunity to address this matter "in the first instance in light of its own experience," giving back to the BIA power given to it by the Attorney General to adjudicate Ms. Marcos's case.

V. IT BECOMES THE DUTY OF THIS COURT TO PROMOTE FUNDAMENTAL FAIRNESS AND UNIFORMITY BY PROPERLY INTERPRETING AND IMPLEMENTING REGULATIONS WHEN THE BIA HAS FAILED TO DO SO.

It becomes the duty of this Court to promote fundamental fairness and uniformity by properly interpreting and implementing regulations when the BIA has failed to do so. The BIA must provide clear and uniform guidance to the Service, the immigration judges, and the general public on the proper interpretation and administration of the INA and its implementing regulations. 8 C.F.R. § 1003.1(d) (2019); *see Hussain v. Gonzales*, 477 F.3d 153, 161 (4th Cir. 2007).

Issues should be remanded where the BIA's review of the evidence in the record and the BIA's exercise of its conferred interpretive expertise is required. *Gonzales v. Thomas*, 547 U.S. 183, 186 (2006). It is a clear error for the court of appeals to evaluate the evidence and make its own determinations where the court must have only determined whether the BIA's decision has exceeded the "leeway that the law provides" it with. *INS v. Ventura*, 537 U.S. 12, 17 (2002) (remanding the case to the BIA because the court of appeals seriously disregarded the BIA's legally-mandated role to give it the opportunity to address the matter in the first instance in light of its own expertise). Failure to properly allow the BIA to make its own legal determinations will improperly create potentially far-reaching legal precedent on a highly complex and sensitive matter, a matter that was legally entrusted to the BIA. *Id.*

It is this Court's duty to promote fundamental fairness and uniformity by properly interpreting and implementing "government-sponsored" because the BIA has failed to do so. Here, the BIA has not provided clear and uniform guidance to neither the Service, the

immigration judges, nor the general public on the proper interpretation and administration of 8 C.F.R. § 208.13(b)(3)(i-ii) and on how to approach the statutory term, "government-sponsored." At best, the Service, immigration judges, and the general public simply know the Life is not government-sponsored, meaning that anything like this entity will also likely not be government-sponsored as well. However, by not providing a positive definition of what is government sponsored, all other entities like Life are still left to an individual case by case determination, resulting in a lack of uniformity and fundamental fairness.

The issue of who bore the burden of proof should be remanded because we are requiring for the BIA's review of the evidence in the record and the BIA's exercise of its conferred interpretive expertise. It was a clear error for the Thirteenth Circuit Court to evaluate the evidence and make its own determinations on whether Life was government-sponsored where the Thirteenth Circuit Court's only duty was to determine whether the BIA's decision has exceeded the "leeway that the law provides." It is the BIA's duty as a matter of law to evaluate, decide, and make interpretive determinations as to whether Life was government-sponsored and it was the BIA's duty to determine and explain why Life was or was not government-sponsored. Failure from the BIA to decipher and explain whether Life is "government-sponsored" did not mean that the Thirteenth Circuit Court was now allowed to usurp the BIA's legally-mandated role and make its own determinations, making those determinations a clear error. A remand is necessary in this instance to in order to give the BIA the opportunity to address whether Life is government-sponsored in the first instance in light of its own expertise without Thirteenth Circuit Court interference.

Moreover, there will also be far reaching negative effects and a lack of uniformity by failing to allow the BIA to make its own legal determinations on statutory terms, such as

"government-sponsored." If the BIA does not properly define "government-sponsored," this will improperly create potentially far-reaching legal precedent on matter that was legally entrusted to the BIA, not the Thirteenth Circuit Court. When dealing with highly complex and sensitive matters such as asylum cases where people's lives and safety is on the line, future courts, Immigration judges, and agencies cannot risk erring due to a simple failure to properly define "government-sponsored;" thus, a remand is not only appropriate but necessary.

VI. APPELATE COURTS MAY NOT INTERFERE UPON THE DOMAIN THAT CONGRESS HAS ENTRUESTED TO THE BIA TO MAKE ASYLUM ELIGIBILITY DECISIONS, MAKING A REMAND NECESSARY WHERE ADDITIONAL INVESTIGATION OR EXPLANATION IS REQUIRED AS TO WHICH THE PROPERTY PARTY BEAR THE BURDEN OF PROOF.

Within broad limits the law entrusts the agency to make the basic asylum eligibility decision. 8 U.S.C.S. § 1158(a) (2019); 8 U.S.C.S. § 1253(h)(1) (2019). An appellate court cannot intrude upon the domain which Congress has exclusively entrusted to the agency, such as the BIA. *INS v. Ventura*, 537 U.S. at 16; *SEC v. Chenery Corp.*, 318 U.S. 80, 88 (1943). Generally, a court of appeals does not have the power to conduct a de novo inquiry on a matter being reviewed and reach its own conclusions based on that inquiry. *Id.* Instead, the court of appeals must remand to the BIA for additional investigation or explanation. *Id.*

This case warrants a remand because Congress has exclusively entrusted the BIA to make basic asylum eligibility decisions, and an appellate court cannot intrude upon that domain. If the BIA makes an eligibility decision, the Thirteenth Circuit Court then does not have the power to conduct a de novo inquiry on whether Life is government-sponsored which has in turn affected the party who bore the burden of proof and ultimately led to this improper decision to deny Ms. Marcos asylum claim. Therefore, the proper resolution that the Thirteenth Circuit Court should

have taken was to remand to the BIA for additional investigation or explanation as to the "government-sponsored" inquiry.

CONCLUSION

The Thirteenth Circuit Court correctly held that the disfavored group analysis is an appropriate standard of review. The disfavored group analysis does not require a lower showing of proof. Furthermore, it provides for uniformed results. However, this Court must reverse and remand the Circuit Court's finding that Petitioner bore the burden of proof to support a finding that persecution could be avoided by internal relocation. Life is a government-sponsored entity, raising the presumption that internal relocation is unreasonable, and the Service will not be able to establish by a preponderance of the evidence that it would be reasonable for Leila to relocate within Basag. Moreover, this Court should remand because ambiguous statutory terms should be construed in favor of the alien. Alternatively, a remand is necessary where the court has failed to properly specify which party bears the burden of proof of showing that future persecution could be avoided by internal relocation, and where appellate courts interfere upon the domain that Congress has entrusted to the BIA to make asylum eligibility decisions, such as Leila's case. It now becomes the duty of this Court to promote fundamental fairness and uniformity by properly interpreting and implementing regulations where the BIA has failed to do so.

Respectfully Submitted;

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Team #1010

Counsel for Petitioner