No. 17-17002

IN THE

SUPREME COURT OF THE UNITED STATES

LEILA MARCOS,
Petitioner,

v.

ATTORNEY GENERAL OF THE UNITED STATES,
Respondent.

BRIEF FOR THE RESPONDENT

Team #1012
Counsel for Respondent

QUESTIONS PRESENTED

I. Is the Ninth Circuit's disfavored group analysis test a sufficiently rigorous and valid basis to establish a well-founded fear of persecution for the purposes of asylum eligibility?

II. Did the Thirteenth Circuit correctly delegate responsibility to petitioner to prove whether it would be reasonable for her to relocate within her home country?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

REGULATIONS

OPINIONS ENTERED BELOW

The Board of Immigration Appeals affirmed the Immigration Judge's ruling without opinion and therefore no opinion appears in the record below.

The opinion of the Thirteenth Circuit of the United States Court of Appeals appears on Page 14 of the record below.

STATEMENT OF JURISDICTION

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.

STATUTES AND REGULATIONS

8 U.S.C. § 1101(a)(42): The term "refugee" means (A) any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and 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…

Secretary of Homeland Security.

8 U.S.C. § 1103(a)(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of aliens, except insofar as this Act or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however,* That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

8 U.S.C. §1158(b)(1)(A) Eligibility. The Secretary of Homeland Security or the Attorney General may grant asylum to an alien who has applied for asylum in accordance with the requirements and procedures established by the Secretary of Homeland Security or the Attorney General under this section if the Secretary of Homeland Security or the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A) [8 USCS § 1101(A)(42)(A)].

8 U.S.C. §1158(b)(1)(B)(i): The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 1101(a)(42)(A) of this title. To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant.

8 C.F.R. § 1252(b)(4)(B) the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary,

8 C.F.R. § 1208.13(b)(1) Past persecution. An applicant shall be found to be a refugee on the basis of past persecution if the applicant can establish that he or she has suffered persecution in the past in the applicant's country of nationality or, if stateless, in his or her country of last habitual residence, on account of race, religion, nationality, membership in a particular social group, or political opinion, and is unable or unwilling to return to, or avail himself or herself of the protection of, that country owing to such persecution. An applicant who has been found to have established such past persecution shall also be presumed to have a well-founded fear of persecution on the basis of the original claim. That presumption may be rebutted if an asylum officer or immigration judge makes one of the findings described in paragraph (b)(1)(i) of this section. If the applicant's fear of future persecution is unrelated to the past persecution, the applicant bears the burden of establishing that the fear is well-founded.

8 C.F.R. § 1208.13(b)(1)(i) Discretionary referral or denial. Except as provided in paragraph (b)(1)(iii) of this section, an asylum officer shall, in the exercise of his or her discretion, refer or deny, or an immigration judge, in the exercise of his or her discretion, shall deny the asylum application of an alien found to be a refugee on the basis of past persecution if any of the following is found by a preponderance of the evidence:

…

(B) The applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

8 C.F.R. § 1208.13(b)(1)(iii) Grant in the absence of well-founded fear of persecution. An applicant described in paragraph (b)(1)(i) of this section who is not barred from a grant of asylum under paragraph (c) of this section, may be granted asylum, in the exercise of the decision-maker's discretion, if:

(A) The applicant has demonstrated compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution; or

(B) The applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country.

8 C.F.R. § 1208.13(b)(2)(C) He or she is unable or unwilling to return to, or avail himself or herself of the protection of, that country because of such fear.

(ii) An applicant does not have a well-founded fear of persecution if the applicant could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, if under all the circumstances it would be reasonable to expect the applicant to do so.

(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. § 1208.13(b)(3) Reasonableness of internal relocation. 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.

STATEMENT OF THE CASE

In the face of decades of storms, unfavorable tides, and flooding, the island of Isda, one of two islands that make up the nation of Basag, had begun to experience marked damage to its fresh water supply. Facts at 2, 3. By 2011, this increase in extreme weather had polluted wells across the island with salt water, making a large amount of it undrinkable. Facts at 2, 3. In early 2012, then newly-elected President Ferdinand Aquinto nationalized the water on both islands in an effort to curb the pollution. Facts at 3. A year later, he signed a 30-year concession contract with Life Incorporated (Life Inc.), a Delaware corporation, under which they would work to rebuild the nation's water facilities and ensure that every occupant could receive clean, drinkable water. Facts at 4.

Under the contract, Life Inc. pays the government fees in exchange for the assignment, and the Basag military promises to continue protecting the assigned water facilities. Facts at 4. In response to isolate incidents of attacks on water resources, Life Inc. has also hired a number of additional guards to patrol and protect the water facilities. Facts at 5.

Although a presidential election will be held in December 2018, no candidate currently running wishes to breach the contract with Life, Inc. As long as neither party breaches, Life Inc. will continue to operate within the island for the foreseeable future. Facts at 5.

Petitioner is a Basag citizen and a former occupant of the island of Isda. Like the majority of Isda residents, Marcos is ethnically Timog. Facts at 2. Per Basag social custom, Marcos is the individual in her household responsible for fetching water at Life, Inc. wells. Facts at 5. Petitioner currently seeks asylum in the United States after being harassed by multiple Life, Inc. guards and threatened on multiple occasions by the same guard. Facts at 6,7,8. Rumors have circulated regarding similar claims by Isda-Timog women, Facts at 6, 9, and Petitioner recalls

seeing a woman asked to remove her clothing as a safety precaution by another Life, Inc. employee while fetching water at a well. Facts at 7. Petitioner also presented testimony of a Life, Inc. employee on Mayaman gossiping with other Life, Inc. employees that he cornered a woman against a wall to hit and forcibly rape her. Op. at 6.

Upon arriving in the United States, Petitioner's Immigration Judge (the "**IJ**") denied her application, ruling that she could have reasonably avoided such persecution through relocation within Basag. Facts at 10. The IJ stated that Life Inc. was not a "government-sponsored" entity and therefore concluded that Petitioner did not meet her burden to prove that it would be unreasonable for her to relocate. Op. at 15.

Petitioner's appeal to the Board of Immigration Appeals (the "**BIA**") was ultimately fruitless as the BIA affirmed the IJ's decision, stating, "Marcos is denied asylum because she could have reasonably relocated in Basag. Thus, we summarily uphold the IJ's denial of her application for asylum." Facts at 10.

Petitioner further appealed to the United States Court of Appeals for the Thirteenth Circuit (the "**Thirteenth Circuit**"), and they affirmed the original holding. Facts at 10. The Supreme Court of the United States granted certiorari.

SUMMARY OF ARGUMENT

At issue on appeal is petitioner's request that this Court adopt the disfavored group analysis test, a Ninth Circuit creation that lowers applicant's evidentiary burden and alters existing regulatory language on asylum eligibility. Both regulatory and statutory language require that asylum applicants demonstrate a well-founded fear via a pattern or practice of persecution, or, in the absence of well-founded fear, demonstrate that they have a reasonable possibility of future persecution. 8 C.F.R. § 208.13; 8 U.S.C. § 1103. The Ninth Circuit authors of the disfavored group analysis have held that the test is an *alternative* to existing regulatory scheme, as it encompasses *non*-pattern or practice persecution and allows for a reduced showing of group "mistreatment" and individual "risk." *Wakkary v. Holder*, 558 F.3d 1049, 1064 (9th Cir. 2009); *Tampubolon v. Holder*, 598 F.3d 521, 524 (9th Cir. 2010).

The disfavored group test, which has been rejected by the First, Third, and Seventh circuits, has been regarded as a fundamental alteration to regulatory language that is "less stringent on its face." *Wan Chien Kho v. Keisler*, 505 F.3d 50, 55 (1st Cir. 2007). By allowing petitioners to meet their burden through a reduced mix of evidence, the disfavored group analysis has accommodated petitioners whose evidence would not either the meet pattern or practice or the individualized risk standard under existing regulatory language.

As a result, the disfavored group test's alteration of regulatory language has also garnered scrutiny by numerous circuit courts in their rejection of the test. *Wan Chien Kho*, 505 F.3d at 56 (holding that "a petitioner may [not] put forth less evidence of individualized persecution simply by virtue of belonging to a disfavored group… Congress has delegated the authority to the Attorney General and the Secretary of Homeland Security to establish regulations in this area. It has made no such delegation to the courts."). It is therefore the job of federal agencies and

Congress to modify or alter the existing regulatory scheme on asylum eligibility. *SEC v. Chenery Corp.*, 332 U.S. 194 (1947) (holding that "an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency.").

Finally, even if this Court chooses to adopt the disfavored group analysis test, substantial evidence would compel a reasonable adjudicator to find that that petitioner had not met her evidentiary burden to establish a well-founded fear of future persecution on two grounds. First, petitioner has not established a sufficiently high risk of individualized targeting to compensate for a low disfavored group showing. Second, petitioner has failed to demonstrate that she has a well-founded fear of future persecution "on account of" one of five enumerated grounds: "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1).

The IJ, BIA, and Thirteenth Circuit also correctly rejected Petitioner's application for asylum on the grounds that she had not met her burden of proving that it would be unreasonable for her to relocate within Basag as opposed to being granted asylum here in the United States. The burden of proof was on Petitioner in this case because 8 C.F.R. § 1208.13(b)(3)(i) (2018) and 8 C.F.R. § 1208.13(b)(3)(ii) (2018) establish that this allocation is the default unless the Petitioner can prove that she suffered past persecution or that she has a well-founded fear of either future persecution that is by the government or of future persecution that is sponsored by the government. Petitioner has not presented evidence that prove either of these points and therefore maintains the burden of proving that it would be unreasonable for her to relocate. However, the case for relocation is so strong that even if this burden were shifted to the Respondent, they could still prove that it would be reasonable for her to relocate. For these reasons, Petitioner's asylum application should be denied.

First, the issue of past persecution was not disputed by Petitioner after the IJ concluded that no such persecution existed, and the record shows no evidence that would support such an argument. Numerous circuits establish that a Petitioner must face more than mere harassment to establish past persecution, and that even threats of rape and violence do not meet this high bar. *Sandoval v. United States AG*, 212 F. App'x 893, 895 (11th Cir. 2006); *Milinah Chin v. Holder*, 471 F. App'x 72, 72-73 (2d Cir. 2012); *Martínez-Pérez v. Sessions*, 897 F.3d 33, 40-41 (1st Cir. 2018); *Mitev v. INS*, 67 F.3d 1325, 1330 (7th Cir. 1995).

Second, Life Inc. does not meet any reasonable definition of the term "government-sponsored", and does not reflect the types of organizations that have been found to meet this designation in the past. *Chouchkov v. INS*, 220 F.3d 1077, 1083-84 (9th Cir. 2000). Further, Auer deference would require this court to follow the reasonable regulatory interpretation of the agencies even if such interpretation was one of many potential views.

Finally, Petitioner's four-month stay on Mayaman free from any form of harassment shows that relocation is not only reasonable but has in fact already been successful. Further, any civil strife that may be present on the island is not sufficient to have an impact on the measure of reasonability. *Ghanim v. Holder*, 425 F. App'x 463, 470 (6th Cir. 2011).

For these reasons, this Court should reverse the decision of the Thirteenth Circuit with respect to their use of the disfavored group analysis, but should uphold its final holding that internal relocation would be reasonable and ultimately dispositive against the potential for approval of Petitioner's asylum application.

ARGUMENT

Legal determinations of the BIA are subject to *de novo* review. *Abedini v. INS*, 971 F.2d 188 (9th Cir. 1992); *Patel v. Gonzalez,* 432 F.3d 685, 692 (6th Cir. 2005). It is therefore fully within this court's purview to decline to adopt the disfavored group analysis test, as this court owes no deference to the lower court's use of the disfavored group analysis test, a purely legal determination. The IJ's findings of fact are evaluated under the substantial evidence standard. *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). The substantial evidence standard grants some deference to factual findings, but reversal is appropriate where "any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B).

I. THE THIRTEENTH CIRCUIT ERRED IN ADOPTING THE DISFAVORED GROUP ANALYSIS BECAUSE THE TEST'S SLIDING SCALE SCHEME FUNDAMENTALLY LOWERS PETITIONER'S EVIDENTIARY BURDEN, THUS MODIFYING THE EXISTING REGULATORY SCHEME, AND, EVEN IN ITS ADOPTION, A REASONABLE ADJUDICATOR WOULD BE COMPELLED TO FIND THAT PETITIONER FAILED TO ESTABLISH AN OBJECTIVELY REASONABLE FEAR OF PERSECUTION.

An individual may receive asylum if they meet the definition of a "refugee" as defined by the Immigration and Nationality Act ("**INA**"). 8 U.S.C. § 1158(b)(1)(A) (2008) (**"U.S. Code"**). The INA defines a refugee as a person who is unable or unwilling to return to, and unable or unwilling to avail themself of the protection of, his or her home country due to past 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) (2014). Critically, the applicant bears the burden of establishing that they satisfy this definition. 8 U.S.C. § 1158(b)(1)(B)(i) (2008).

A. The disfavored group analysis is an invalid method to measure an applicant's well-founded fear of persecution because it fundamentally lowers petitioner's evidentiary burden by allowing for a lower standard of evidence where regulatory and statutory language did not establish, infer, or intend one.

The United States Code of Federal Regulations ("**C.F.R.**") Title 8 Section 1208.13 ("**C.F.R. § 208.13**") delineates that petitioners may establish a well-founded fear of future persecution through first establishing that there is a "pattern or practice of persecution of similarly situated persons" on account of one of the protected grounds as enumerated in the INA. To constitute a "pattern or practice," the persecution of the group must be "systemic, pervasive, or organized." *Ngure v. Ashcroft*, 367 F.3d 975 (8th Cir. 2004); *Mgoian v. INS*, 184 F.3d 1029, 1038 n.1 (9th Cir. 1999). As is true with any claim of persecution, violence or other harm perpetrated by civilians against the putative group does not constitute persecution unless such acts are "committed by the government or forces the government is either 'unable or unwilling' to control." *Lie v. Ashcroft*, 396 F.3d 530 (3d Cir. 2005).

In absence of a well-founded fear of future persecution, federal regulation allows for an individual to be granted asylum if the applicant has established that there is a reasonable possibility that he or she may suffer other serious harm upon removal to that country. 8 C.F.R. § 1208.13(b)(1)(iii) (2008). An applicant must show that there is a "reasonable possibility" of suffering such persecution if they were to return to the country. An objectively reasonable and subjectively genuine well-founded fear may exist even when there is as little as a one-in-ten chance of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-1 (1987); *Arriaga-Barrientos v. INS*, 937 F.2d 411, 413 (9th Cir. 1991). The objective component of future risk can be established by providing "credible, direct, and specific" testimony and evidence in the record of facts supporting a reasonable fear of persecution. *Ahmed v. Keisler*, 504 F.3d 1183, 1191 (9th Cir. 2007); *Duarte de Guinac v. INS*, 179 F.3d 1156 (9th Cir. 1999).

Notably, both federal regulation and statute mandate that there must be a nexus between a given applicant's identity under one of the aforementioned grounds and the feared persecution; To establish that nexus, petitioner must establish that a protected ground "was or will be at least one central reason for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(i) (2008). Finally, the asylum applicant must be "unable or unwilling to return to or avail himself or herself of the protection of that country because of such fear." 8 C.F.R. § 1208.13(b)(2)(c) (2008).

In contrast to the existing statutory and regulatory language, the disfavored group analysis test, created by the Ninth Circuit in the 1994 decision *Kotasz v. INS*, allows asylum applicants to meet their evidentiary burden through a reduced showing of *non*-pattern or practice persecution ("disfavor") and individualized risk ("targeting"). *Kotasz v. INS*, 31 F.3d 847 (9th Cir. 1994). Notably, in marked contrast to *existing* regulatory language delineating that an applicant must show a pattern or practice of persecution ("systemic, pervasive, and organized") *or* individualized risk in absence of well-founded fear, the disfavored group analysis crafts a sliding scale wherein petitioners can meet their burden through a reduced showing of the two. *Ngure v. Ashcroft*, 367 F.3d at 991; *Tampubolon v. Holder*, 598 F.3d at 522.

Courts that have adopted the disfavored group test have admitted that it accommodates petitioners who present evidence of *non*-pattern or practice of persecution, and "reduced" individualized risk, by allowing them to. *Kotasz*, 31 F.3d at 853 (Holding that "a group may be deemed 'disfavored' on the basis of evidence of mistreatment that is less pervasive and less severe than that required to establish a pattern or practice of persecution." The Ninth Circuit, the disfavored group test's authors, has conceded that its "disfavored group" analysis is an alternative to establishing the "pattern or practice of persecution." *Sael v. Ashcroft*, 386 F.3d 922, 924 (9th Cir. 2004).

To this end, the disfavored group analysis test offers an "alternative" approach through a sliding scale, where, the more significant the showing of group persecution, "the less evidence of individualized persecution must be adduced" to satisfy a well-founded fear showing. *Kotasz,* 558 F.3d at 1062-63; *Halim v. Holder*, 590 F.3d 971, 978 (9th Cir. 2009); *Sael*, 386 F.3d at 925; *Hoxha v. Ashcroft*, 319 F.3d 1179, 1183-84 (9th Cir. 2003) (holding that, if mistreatment of Albanians is extensive, the level of individualized risk [petitioner] must show in order to establish a well-founded fear of future persecution is comparatively low"). Petitioners are consequently able to present weakened individualized risk, *less* than the 10% possibility mandated by *INS v. Cardoza Fonseca,* and that weakened individualized risk would nonetheless bolster a group mistreatment showing, as "these elements operate in tandem." *Pupella v. Gonzales*, 207 F. App'x 683, 686 (7th Cir. 2006).

The disfavored group analysis test creates an alternative third avenue to existing regulatory pathways. This alteration accommodates a mix of individualized risk and group disfavor, thereby lowering petitioner's evidentiary burden. The disfavored group test's departure from the regulatory evidentiary requirement and pathways has been recognized by multiple circuits, who have recognized it as a "judicially created alternative," that is "less stringent on its face." *Wan Chien Kho*, 505 F.3d at 56; *Firmansjah v. Gonzales*, 424 F.3d 598, 607 (7th Cir. 2005). By allowing for a reduced showing of both elements to add up to a well-founded fear, the disfavored group test reduces petitioner's evidentiary burden as mandated by federal statute and regulation.

The counterargument that group mistreatment is an *inherent* element of asylum law has been duly resolved by numerous circuits, who readily distinguish the difference in *considering* group membership versus allowing for less individual evidence because of it. *Wan Chien Kho*,

505 F.3d at 55 (holding that "though we often discuss a petitioner's membership in a particular group in the context of assessing an individualized threat … we have never held that a petitioner may put forth less evidence of individualized persecution simply by virtue of belonging to a disfavored group"); See *Zhou Ji Ni v. Holder*, 635 F.3d 1014, 1020 (7th Cir. 2011). Circuits who follow regulatory and statutory language and accordingly reject the disfavored group test "have always required a petitioner to show 'specific, detailed facts supporting the reasonableness of [his] fear that [he] will be singled out for persecution.'" *Bhatt v. Reno*, 172 F.3d 978, 982 (7th Cir. 1999); *Wan Chien Kho*, 505 F.3d at 56. Consequently, the disfavored group analysis is a departure and not a codification of existing circuit-wide practice, not because it considers group conditions, but because it allows petitioners to meet their burden through putting forth less evidence than is mandated by federal statute and law.

i. The disfavored group analysis test's novel sliding scale poses a deference issue by altering existing regulatory and statutory language on asylum eligibility

Beyond its recognition as a less stringent standard, the disfavored group test is unfit for nationwide adoption because it alters existing regulatory language. Its adoption by this Court would consequently pose a deference question; this issue has been recognized by the U.S. circuit courts that have rejected the disfavored group test. *Id.* at 55 (holding that "Congress has delegated the authority to the Attorney General and the Secretary of Homeland Security to establish regulations in this area, see 8 U.S.C. § 1103… It has made no such delegation to the courts. The disfavored group analysis works a subtle alteration of the usual standards of review. We are bound by the standards Congress sets.").

8 U.S.C. § 1103(a)(1) (2009) affirms that "The Secretary of Homeland Security shall be charged with the administration and enforcement of all laws relating to the immigration and

naturalization of aliens." It is therefore the job of federal agencies and Congress to modify or alter the existing regulatory scheme on asylum eligibility. *Chenery*, 332 U.S. 194 at 84 (holding that "an appellate court cannot intrude upon the domain which Congress has exclusively entrusted to an administrative agency.").

The disfavored group test alters regulatory and statutory language by creating a third pathway to asylum eligibility that is not delineated or contemplated in the Code of Federal Regulations, the United States Code and the Immigration and Naturalization Act, or the United Nations Convention Relating to the Status of Refugees. While creative, the disfavored group analysis test is judge-made law that crafts a "safety net for those who fall short of establishing a pattern of practice of persecution." *Salim v. Holder*, 728 F.3d 718, 723-24 (7th Cir. 2013); *Wan Chien Kho*, 505 F.3d at 55. Critically, the disfavored group test is a safety net that was not established, inferred, or intended in existing federal law on the matter. 8 C.F.R. § 1208.13 (2018), 8 U.S.C. § 1101 (2014), 8 U.S.C. 1103(a)(1) (2009).

Notably, the disfavored group analysis test allows for *non*-pattern or practice "mistreatment," not "systemic, pervasive, and organized" persecution, and permits *reduced* individualized risk. *Sael*, 386 F.3d at 923; *Ngure*, 367 F.3d at 991. The disfavored group test is therefore fundamentally contrary to 8 C.F.R. § 1208.13 (2018) which, while not enumerating every possible example of pattern or practice, clearly asserts that the applicant must demonstrate either a pattern or practice of persecution or an individualized showing that amounts to a 10% risk of future persecution. In marked contrast to the existing regulatory scheme, the disfavored group test offers a distinct pathway for petitioners to assert claims that would fail under the pattern or practice standard, as Petitioner's initial claim did. Op. at 7; See also: *Mgoian v. INS*, 184 F.3d 1029 at 1035 (holding that "a group may be deemed 'disfavored' on the basis of

evidence of mistreatment that is less pervasive and less severe than would be required to establish a 'pattern or practice' of persecution); *Meguenine v. INS*, 139 F.3d 25 (1st Cir. 1998) (holding that solely because "a group suffers due to violent civil conflict or 'general insecurity' in the home country" does not satisfy a pattern or practice of persecution).

Additionally, disfavored group proponents argue that the test is needed to properly contemplate group membership; this attempt is resolved by a glance into existing statutory and regulatory language enumerating the five group categories of eligibility: "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A) (2014); 8 C.F.R. § 1208.16(b) (2000); *Wan Chien Kho*, 505 F.3d at 55 (asserting that "the regulations already contemplate the effect of group membership on an individual's circumstances by enumerating the five statutory categories … Beyond that, the regulations do not require the agency to credit automatically discrimination experienced by a group toward an individual's case in removal proceedings. We will not impose such a requirement on the agency"); *Lie v. Ashcroft,* 396 F.3d n.4 (noting that "the regulations establish a threshold for relieving the need for an individualized showing; the disfavored group analysis creates a different threshold, and we reject it.").

While proponents of the disfavored group test may allege that their test is within regulatory language and would promote clarity among the circuits, even courts that have adopted it have conceded that it is not a clear standard or manifestly necessary addition to existing regulation. *Chen v. INS*, 195 F.3d 198, 204 (4th Cir. 1999); *Salim*, 728 F.3d at 722 (holding that the disfavored group approach has fomented "significant disagreement among the circuits because it invites one to question what exactly it seeks to add to the existing regulatory regime that is not already covered under the 'pattern or practice' theory of persecution.").

Furthermore, if this Court finds that there is ambiguity in the language, or a circuit split requiring clarification, U.S. law mandates that the proper body to address such clarification are the federal agencies tasked with drafting and altering it. *Chenery*, 332 U.S. 194 at 84. Similarly, an alteration to the INA or U.S.C. regarding the existing regulatory pathways to establish a well-founded fear must be made by Congress, the drafters, authors and editors of such legislation. it is the job of federal agencies, such as DHS, and not the judiciary, to take steps in altering asylum procedure.

B. Even if this court chooses to adopt the disfavored group analysis test, a reasonable adjudicator would be compelled to find that petitioner did not meet her evidentiary burden by failing to establish a sufficiently high claim of group disfavor to compensate for a relatively weak claim of individualized risk, and failing to establish a necessary nexus between the alleged mistreatment and a protected ground.

Arguendo, if this court does choose to adopt the disfavored group analysis test, substantial evidence would compel a reasonable adjudicator to conclude that petitioner did not meet her evidentiary burden under the disfavored group test. Petitioner presents corroborated testimony of rumors of nonconsensual sex and rape of Basag women by Life, Inc. employees. Op. at 4. Petitioner nonetheless concedes that she did not know anyone or of anyone who had been the victim of rape or sexual violence by Life, Inc. employees. Facts at 10. There is also not corroborated evidence in the record that *Timog* or Isda-Timog women are targeted in particular; the United Nations report only alleges nonconsensual sex against *women* within Basag. Op. at 4.

i. Even if this court adopts the disfavored group analysis test, petitioner's claim fails to rise to giving her a well-founded fear of future persecution because she has not established a sufficiently high risk of individualized targeting to compensate for a low disfavored group showing.

Groups typically classified as disfavored have often experienced "centuries-long persecution," including genocide, church bombings, murder at government checkpoints, public

executions, and terrorism. *Kotasz*, 31 F.3d at 847; *Wakkary*, 558 F.3d at 1049-1050, *Tampubolon*, 598 F.3d at 521-522; *Makonnen v. INS*, 44 F.3d 1378, 1379 (8th Cir. 1995). Courts that adopt the disfavored group test generally assert that one factor critical to both a showing of "disfavor" as well as individual targeting is the government's perspective. *Halim*, 590 F.3d at 979. Groups deemed as disfavored had suffered violence that the government was either unwilling or unable to control, and the suffering they experienced was often either government-sponsored or condoned, giving disfavored groups few options to protect themselves. *Makonnen*, 44 F.3d at 1378 (approving a group as disfavored because they had been under direct threat by the Ethiopian government and other insurgent terrorist groups for centuries). In this case, evidence before the court do not indicate that the Basag government is not unable or unwilling to control the sexual assault petitioner alleges. Petitioner did not report the incidences she asserts, and Basag's government and Life, Inc. appear to be taking steps to remedy any sexual misconduct by their employees. Op. at 5, Facts at 5.

Akin to the Ninth Circuit's analysis and determination in *Halim v. Holder*, petitioner's claim should be denied due to "(1) the relative weakness of the claim of disfavored status, (2) the lack of evidence of government approval of the alleged discrimination, and (3) petitioner's limited showing of individual risk." *Halim*, 590 F.3d at 978. Circuits that have upheld the disfavored group test affirm that a stronger showing of individual targeting "will be necessary where the underlying basis for the applicant's fear is membership in a diffuse class against whom actual persecution is haphazard and rare." *Yong Hao Chen v. U.S. Immigration & Naturalization Service*, 195 F.3d 198 (4th Cir. 1999). In this case, petitioner concedes that she does not know anyone or of anyone who was raped or subject to non-consensual sex, nor was she personally raped or subject to such assault. Op. at 3. Petitioner also lived within the country for five months

after relocation with no instances of unwanted sexual advances or assault by Life, Inc. employees. Facts at 9.

Furthermore, akin to the fact pattern in *Halim* and *Yong Hao Chen*, if the putative group suffers from only haphazard harm, such a reduced showing of group disfavor must be overcome by a strong showing of individualized risk, even if corroborated by independent reports. *Yong Hao Chen*, 195 F.3d at 201. This showing must be "credible, direct, and specific." *Ahmed v. Keisler*, 504 F.3d at 1186. Individuals deemed to be at heightened individualized risk have included prominent political activists, and those whose close friends and family were murdered, tortured, and raped. *Makonnen*, 44 F.3d at 1378; *Kotasz*, 31 F.3d at 850.

A reasonable adjudicator could be compelled to find that petitioner did not have a well-founded fear of persecution, because she fails to present that she would be at heightened individualized risk to be singled out for persecution, a requisite element of the disfavored group test. *Wakkary*, 558 F.3d at 1049. The sexual advances petitioner alleges and cites as elevating her risk, while deeply unfortunate, do not suggest that she would be somehow recognizable or at heightened risk nearly two years after the alleged incidences. Additionally, the incidents and reasons petitioner does cite, like a promised that a guard would have sex with her (Op. at 5), are significantly weaker to the heightened individualized risk approved in prior cases, wherein petitioner presented clear and specific evidence of targeting on behalf of their a protected ground, and of country conditions where they would be at heightened danger. *Makonnen*, 44 F.3d at 1380.

While petitioner may attempt to argue that she would be at increasing individual risk because of her identifiability as a litigant whose case is pending before the Supreme Court, allowing such a circumstance to bolster a showing of individualized risk would allow every

asylum applicant whose litigation had reached the courts to proclaim individual risk as more identifiable than the rest of the group. Such a finding is untenable, because it would allow every petitioner to advance their disfavored group showing by simply litigating their case.

Additionally, petitioner's argument regarding Life, Inc. guards coming to her home has no bearing on her individual risk, because the Life, Inc. guards were simply escorting her husband home after he brandished a knife and yelled at them. Op. at 5. The guards' potential familiarity with petitioner's home address is also not dispositive, because petitioner and her husband left that home shortly thereafter, and, according to the record, do not appear to have returned there since, nearly two years after the incident. Facts at 8.

ii. Petitioner fails to provide a nexus between the fear she alleges and a protected ground.

Petitioner also fails to provide a nexus between the advances of sexual misconduct and a protected ground. The disfavored group petitioner seeks to assert is not clearly delineated in lower court opinions or the record. Notably, no corroborated reports offer evidence of targeting against ethnic Timogs; Instead, it appears that sexual misconduct operates without regard to ethnicity or background. However, federal law requires that an asylum applicant must prove that she has a well-founded fear of future persecution "on account of" one of five enumerated grounds: "race, religion, nationality, membership in a particular social group, or political opinion." *Lie*, 396 F.3d at 530; 8 U.S.C. § 1101(a)(42)(A); 8 C.F.R. § 1208.13(b)(1). The record suggests that the nexus between sexual mistreatment on Basag is not ethnicity, but mere *proximity* to Life, Inc. employees through daily interaction at the wells.

This Court, in *INS v. Elias-Zacarias*, affirmed that though asylum-seeker would not "be expected to provide direct proof of his persecutors' motives," the applicant nevertheless, in accordance with the statute, must provide some evidence of [motive], direct or circumstantial.

Elias-Zacarias, 502 U.S. at 480. Additionally, courts have consistently affirmed that "[a] persecutor may have multiple motivations for his or her conduct, but the persecutor must be motivated, at least in part, by one of the enumerated grounds." *Lukwago v. Ashcroft*, 329 F.3d 157, 170 (3d Cir. 2003); see also *Chang v. INS*, 119 F.3d 1055, 1065 (3d Cir. 1997) (finding persecution on account of political opinion where persecutor's action was "motivated, at least in part" by the applicant's political opinion).

In each of the incidents Petitioner cites and the reports presented, the record suggests that the alleged persecutors may have had at least two possible reasons for targeting Basag women: 1) mere convenience due to proximity at a well, where Life, Inc. guards work, 2) their status as Timog women. Only the second reason is a protected ground. While petitioner appears to have tried to connect regional conditions and cultural differences between Hilagans and Timog as indicia of discrimination or strife, there is no evidence in the record that Basag suffers from ethnic turmoil or social strife. Facts at 3 (“Mayaman locals did not treat the relocated Isda-Timogs with contempt”).

If petitioner seeks to classify Isda-Timog women as a disfavored group or that she would be targeted because of her Isda-Timog ethnicity, a lack of evidence in the record would bar such a claim, because there is no clear nexus that Life, Inc. employees target women due to their ethnicity. *Lie v. Ashcroft*, 396 F.3d at 535, (holding that “‘a single ethnic slur’ was insufficient to establish” that attackers were motivated by petitioner’s ethnicity). The lack of nexus between ethnicity and sexual misconduct is further supported by the record; When petitioner was on Mayaman, she testifies hearing a Life, Inc. employee equate that “getting sex was as easy” on Isda as it was on Mayaman. Facts at 9. Such testimony strongly indicates that there is no clear nexus between the disfavored group petitioner seeks to certify and the fear she alleges.

II. THE EXECUTIVE AGENCIES AND THE THIRTEENTH CIRCIUT CORRECTLY REJECTED PETITIONER'S APPLICATION FOR ASYLUM BECAUSE SHE DID NOT MEET HER BURDEN OF PROVING THAT INTERNAL RELOCATION WITHIN BASAG WAS UNREASONABLE

The IJ, BIA, and Thirteenth Circuit have all adhered to the letter of the law by requiring Petitioner to bear the burden of providing evidence that internal relocation within Basag would not be reasonable, and all three entities have found that she has not met that burden of proof. An asylum officer or immigration judge can deny an asylum-seeker's application if "[t]he applicant could avoid future persecution by relocating to another part of the applicant's country of nationality or, if stateless, another part of the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.13(b)(1)(i)(b) (2018). If the applicant can establish past persecution or that its would-be persecutor is a government or government-sponsored, internal relocation will be presumed unreasonable unless the government "establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate." 8 C.F.R. § 1208.13(b)(3)(ii) (2018).

The IJ in Petitioner's case held that she had not faced past persecution and did not establish a well-founded fear of future persecution by a government or of persecution that was government-sponsored. This meant that the burden of proof regarding internal relocation remained on her, and the IJ found that she did not meet it. The BIA affirmed this holding, and the Thirteenth Circuit further upheld this conclusion.

Although Petitioner's case is unfortunate and sympathetic, the delicate nature of the asylum system requires that these regulations be adhered to as they currently stand. As such, this court must find that Petitioner has not met her burden, and that her asylum application must ultimately be denied. We are reassured that internal relocation within Basag will allow Petitioner

to avoid any future harassment that she may have previously faced, and that Mayaman will continue to offer her a safe home and a fulfilling life.

A. Petitioner Was the Correct Party to Bear the Burden of Proof Because She Has Not Experienced Past Persecution and Does Not Have a Well-Founded Fear of Future Persecution by a Government or of Persecution that is Government-Sponsored.

When the BIA affirms an IJ decision without issuing an opinion, the IJ's decision is regarded as the final agency decision. *See generally Donchev v. Mukasey*, 553 F.3d 1206 (9th Cir. 2009); *Bah v. Gonzales*, 144 F. App'x 525 (6th Cir. 2005); *Sierra-Espita v. United States AG*, 210 F. App'x 821, 823 (11th Cir. 2006). This court has held that when reviewing a case "immerse[s] courts in case-specific factual issues, … [that case] should usually be reviewed with deference", and affirmed that, "the standard of review for a mixed question depends on whether answering it entails primarily legal or factual work." *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 961 (2018). In the context of an asylum case such as this, that deferential standard would be "whether any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B) (2005).

In determining whether the IJ was correct in deciding that Petitioner did not face past persecution and in its classification of Life Inc. as a non-government-sponsored entity, this reviewing court would need to immerse itself in such a mixed question of law and fact that would require review of direct factual issues. Petitioner's evidence will need to be examined to determine whether she suffered past persecution, and the court will need to look to contracts and interactions between the Basag government and Life Inc. to determine whether or not Life Inc. was government-sponsored. This is fact-intensive analysis that is best performed by the original agency, and this court should therefore be deferential to their findings. Here, however, the IJ's

findings need not only be deferred to, but can stand on their own, supported by the weight of evidence.

iii. Petitioner has not experienced past persecution because any alleged harassment does not rise above the standard of unpleasantness, harassment, or even basic suffering.

While Petitioner has not disputed the IJ's holding that she did not suffer past persecution, no such argument presented would be sufficient to overcome the substantial evidence standard necessary to overturn the finding. The circuit courts have consistently held that "persecution is an 'extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation, and that mere harassment does not amount to persecution.'" *Sandoval*, 212 F. App'x 893 at 895 (quoting *Sepulveda v. United States AG*, 401 F.3d 1226, 1231 (11th Cir. 2005)). The Second Circuit has specified that threats of rape that are not carried out and which do not result in physical injury do not constitute persecution, *Milinah Chin*, 471 F. App'x 72 at 72-73, the First Circuit has held that death threats and beatings fail to rise to the level of persecution, *Martínez-Pérez*, 897 F.3d 33 at 40-41; *Bocova v. Gonzales*, 412 F.3d 257, 263 (1st Cir. 2005), and while the Seventh Circuit offers a somewhat broader definition that includes "evidence of detention, arrest, interrogation, prosecution, imprisonment, illegal searches, confiscation of property, surveillance, beatings, or torture", it still does not allow mere harassment. *Mitev v. INS*, 67 F.3d 1325 at 1330. Petitioner here was clearly unfairly subjected to harassment by individuals on her home island of Isda, but under United States law, these threats to not rise to the level of past persecution, and this is likely why petitioner has not made such an argument so far.

iv. Life Inc. is not a government-sponsored entity because it does not conform to any reasonable definition of the term, nor are its actions analogous to any previous application of the term.

The word "sponsored" as it is used in 8 C.F.R. § 1208.13(b)(3)(i) (2018) and 8 C.F.R. § 1208.13(b)(3)(ii) (2018) does not conform to any defensible interpretation of Life Inc.'s relationship with the Basag government. When this court is faced with interpreting regulatory or statutory language, it is informative to begin with an analysis of the plain meaning conveyed by the words of the text itself. In interpreting aspects of the United States' "comprehensive scheme for admitting aliens into this country[,] [w]e do justice to this scheme only by applying the 'plain meaning of [the section], however severe the consequences.'". *Ins v. Phinpathya*, 464 U.S. 183, 191-92 (1984) (quoting *Jay* v. *Boyd*, 351 U.S. 345, 357 (1956)); *Cardoza-Fonseca*, 480 U.S. 421 at 423. Dictionary definitions of the adjective "sponsored", by and large, present the characteristic as one that is inherently linked to the provision of monetary support. *Sponsored*, *Oxford English Dictionary* (OED Online 2018) ("Financially supported or promoted; frequently of radio or television programmes, etc., having (a portion of) their expenses paid by a commercial interest in return for granting advertising space or rights."). The conforms with the most frequent usage and understanding of the word which is often in the context of advertisers paying to get their name attached to an organization or program or companies paying money to have an article or entry in a database promoted through increased exposure.

Here, the opposite is in fact the case. Life Inc. is paying the Basag government in order to receive this allocation of water resources, and is engaging in a traditionally-contracted business relationship. Facts at 4. If the monetary payments were going in the other direction, it is possible that this relationship could be construed as government-sponsored, but that is simply not the

situation here. The government and Life Inc. are contractually linked, and Life Inc. cannot be construed as government-sponsored.

Petitioner's argument at the Thirteenth Circuit that this entire case should be remanded because the agencies did not specifically define the term "government-sponsored" does not comport with this court's precedent. Op. at 13. There was no need in this case to provide a definition, because the term was not ambiguous. In the similar context of *Lopez v. Gonzales*, 549 U.S. 47, 53 (2006), this court examined the term "trafficking" and held that "The everyday understanding of "trafficking" should count for a lot here, for the statutes in play do not define the term, and so remit us to regular usage to see what Congress probably meant." Although that case pertained to a statute and this one to a regulation, the spirit behind the comparison is the same. Agencies should not and are not forced to specifically define every term used in one of their regulations, and indeed the BIA, in its processing of countless cases, has never taken issue with applying the plain meaning of the term "government-sponsored". When this sort of language is crafted, it must be assumed that the entity reading it, here the BIA, has the ability to understand the clear and unambiguous language without the need for the mechanical and redundant process that Petitioner is requesting. If agencies needed to define every word they came across, the machinery of our asylum system would grind to a halt under the weight of this unnecessary and fruitless burden.

This IJ's application of the term "sponsored" in this context is not only backed up by the plain meaning but also by precedent across circuits. The majority of appellate decisions on the subject of government-sponsorship focus on delineating what the term does not constitute because the standard is such a high bar to clear. In *Thomas v. Ashcroft* and *Vasilev v. Holder*, the Ninth and Sixth Circuits respectively, found government-sponsorship to be a higher standard

than the “unwilling or unable to control”. *Thomas v. Ashcroft*, 359 F.3d 1169, 1179-80 (9th Cir. 2004); *Vasilev v. Holder*, 366 F. App'x 585, 587 (6th Cir. 2010). In the Eleventh Circuit case *Louis v. United States AG*, 286 F. App'x 668, 671 n.6 (11th Cir. 2008), the court stipulated that the sponsoring government cannot be out of power, and the Third Circuit case *Wibowo v. Gonzales*, 140 F. App'x 401, 401 (3d Cir. 2005) further held that the persecution cannot just be the actions of private citizens.

Two of the few cases that show the typical degree of association necessary to define persecution as “government-sponsored” showed truly exceptional circumstances. The 9th Circuit case *Chouchkov*, 220 F.3d 1077 at 1083-84 involved persecution by a branch of the Russian Institute of Power and Technology called "Atom Kor", which was a research organization for Russian state agencies and ministries that was two-thirds funded by the Russian government and whose parent company was fully funded by the Russian government. Further, as a precondition hiring at the institute, individuals were subject to a mandatory background check by the KGB. Additionally, in the 8th Circuit Case *Tu Kai Yang v. Gonzales*, 427 F.3d 1117, 1121 (8th Cir. 2005) a Chinese government official informed the petitioner’s brother that she would be forcibly sterilized upon her return to China.

The caselaw defining what government-sponsorship is not is certainly the more prevalent examination of the term, and those examples identifying government-sponsored persecution are extreme and yet typical in the instances of such a classification. While petitioner cites a fear based the actions of Life Inc. guards, these guards cannot qualify as government-sponsored because their organization receives no monetary support from the Basag government. Further, any harassment that Petitioner may allege is certainly not condoned by the Basag government (as was the case in *Yang*), and in fact the record indicates that the Basag police force would

investigate any reported crimes committed by Life Inc. guards. Op. at 17. Both the dictionary definition of the term "sponsored" and the case law reflecting the application of "government-sponsorship" support the plain meaning interpretation of the regulation and show that the term was correctly applied by the IJ.

However, even if this court does not find this argument to be persuasive and believes instead that the term "government-sponsored" is still ambiguous, administrative deference would compel this court to follow the IJ's interpretation. The Thirteenth Circuit refers to *Chevron* deference in its opinion, but the proper deference in the case of an agency interpreting its own regulation would be *Auer* or *Seminole Rock* deference. *Bowles v. Seminole Rock & Sand Co.*, 325 U.S. 410, 413-14 (1945) ("Since this involves an interpretation of an administrative regulation a court must necessarily look to the administrative construction of the regulation if the meaning of the words used is in doubt … which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation."); *Auer v. Robbins*, 519 U.S. 452, 463 (1997). In the asylum context, courts have continued to provide this deference to agency interpretations and the interpretation at hand should be no different. *Salto v. Holder*, 441 F. App'x 56, 57contd (2d Cir. 2011). It is not enough to say that the agency did not choose the correct definition out of a possible set of potential options, rather to overcome such deference, the agency must have interpreted a regulation unreasonably. *Hernandez-Perez v. Whitaker*, 911 F.3d 305, 312 (6th Cir. 2018) (Although "*Auer* deference is not an inexorable command in all cases," ... a party seeking to overcome *Auer* deference must show more than just another plausible reading of the regulation") (internal citations omitted).

The OED definition above shows that there is at least one clear definition that does not apply to the relationship between Life Inc. and the Basag government, and therefore this court must respect the IJ's interpretation on this matter.

B. Even If the Government Bore the Burden of Proof on the Issue of Internal Relocation, They Could Still Prove That It Would be Reasonable for Petitioner to Safely Relocate by Returning to Mayaman.

Even if this court shifts the burden off of its default placement on Petitioner and onto the government, the government could still prove that internal relocation was and would be reasonable, and that Petitioner should ultimately not be granted asylum. The code of federal regulation determines that the calculus for reasonability of relocation should be based on "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" and says that "[t]hose factors … are not necessarily determinative of whether it would be reasonable for the applicant to relocate." 8 C.F.R. § 1208.13(b)(3) (2018). The BIA has further established that one must "balance the factors identified at 8 C.F.R. § 1208.13(b)(3) in light of the applicable burden of proof to determine whether it would be reasonable under all the circumstances to expect the respondent to [relocate]." *In re M-Z-M-R-*, 26 I. & N. Dec. 28, 36 (BIA 2012). Here, neither the conditions on the island nor the threat of serious harm support a determination that it would be unreasonable for Petitioner to relocate within Basag.

i. Any strife that Petitioner alleges is afflicting the islands does not rise to a level that would make relocation unreasonable.

While the Water Warriors have targeted certain Life Inc. sites across both islands, their impact to the community at large is not sufficient to suggest that civil strife makes Petitioner's

relocation unreasonable. The standard for such strife is, once again, quite high. In the Sixth Circuit case *Ghanim v. Holder*, the court found that there was substantial evidence to uphold the IJ's determination that the ongoing civil strife in the Palestinian Territories was not sufficient to make relocation unreasonable. *Ghanim*, 425 F. App'x 463 at 470 ("[A]lthough there is evidence of gross, flagrant, or mass violations of human rights in the Palestinian Territories, Ghanim did not provide evidence of past torture and there is evidence that he could relocate safely to another area within the Territories."). The conditions within Basag may not be perfect, but the record indicates that the majority of violence connected with the Water Warriors occurs on Isda as opposed to Mayaman. Facts at 5. This, combined with the clearly high standard set in *Ghanim* strongly indicate that the civil strife on Basag should not be a controlling or even influential factor in determining whether or not relocation would be reasonable. Further, Petitioner's own history on Basag shows that relocation would be reasonable.

ii. Petitioner herself has lived safely on Mayaman for four months, showing that relocation is not only reasonable but has already been accomplished.

Petitioner's stay on Mayaman from April 7th to August 6th, 2017, proves that it would be reasonable for the her to relocate within Basag. Facts at 8,9. As the 11th Circuit case *Juan-Esteban v. United States AG*, 407 F. App'x 413, 415 (11th Cir. 2011) established, "evidence that an alien's family continues to reside unharmed in the country of removal supports a conclusion that a threat may be avoided by relocation." The record indicates that since Petitioner's departure, there have been no substantial changes in conditions within the country, and it can be presumed that she would find Mayaman virtually the same as she left it. Facts at 10.

Further, during the four months Petitioner lived on Mayaman, she did not once face harassment and lived free from the threats she alleged occurred on Isda. She has taken up a job at a small jewelry store and been able to accumulate enough money to afford the expensive plane

ticket from Basag to the United States. Facts at 9. This need to accumulate a large sum of money quickly offers an explanation for Petitioner resorting to begging in addition to her job at a local shop.

It is possible that petitioner may claim that she fears future persecution due to her status as an Isda-Timog woman on Mayaman and that her relocation is unreasonable because she is living in hiding. This argument, however is not supported by the facts on the record nor is it supported by precedent. Petitioner's friend Bayani made it clear that she can easily integrate into the culture and start a safe life on Mayaman, Facts at 9, and there is actually no evidence that she actually began dressing differently to hide her ethnicity as she may suggest. In fact, even if she did begin to dress more like the local Hilagan women, the facts of this case would still be distinguishable from cases involving hiding on relocation. The Seventh Circuit's case *N.L.A. v. Holder*, 744 F.3d 425, 435-36 (7th Cir. 2014) holds that if petitioner must hide when she returns to her country of origin, such relocation cannot be held to be reasonable. The facts of that case, however, involved a woman fleeing kidnapping through moving between the houses of various relatives and changing her cellphone so that she could not be found. This brutal scenario is distinguishable from the case at bar as Petitioner has only moved once to avoid what amounted to less than persecution and thereafter experiences no harassment whatsoever. Such an argument by Petitioner is not sufficient to establish that relocation would be unreasonable.

CONCLUSION

Asylum law is in many cases a line-drawing exercise and its administration can at times appear unfeeling and impersonal. Ultimately, while the United States asylum system is a benefit to the world at large, it is also delicately balanced. It benefits, more than anything, from the consistent and rote administration of its laws.

In this case, the Court should not adopt the disfavored group analysis test as it is not an apt method to evaluate a well-founded fear. Despite this, petitioner would even fail to meet the disfavored group test's lower evidentiary burden if this court chose to adopt it, and would not be eligible for asylum in either circumstance.

Further, the burden of proving the reasonability of relocation is on Petitioner because she has not faced past persecution and does not fear future persecution by the Basag government or persecution that the government sponsors. Petitioner's stay on Mayaman for four months before her flight to the United States makes a case much on its own for the reasonability of her relocation. As she was able to live there free from the harassment she faced on Isda, and as the Water Warriors do not pose a sufficient threat to influence this determination, it is reasonable to say that she could return home without a fear of future harm.

For these reasons, this Court should reverse the decision of the Thirteenth Circuit with respect to the disfavored group analysis test, uphold the decision with respect to the reasonability of relocation, and ultimately deny Petitioner's application for asylum. The government feels sympathy for Ms. Marcos' experiences, but trusts that her future on Mayaman will continue to be bright.

Respectfully submitted.