No. 17-17002

IN THE SUPREME COURT OF THE UNITED STATES

Leila Marcos,
Petitioner,

-against-

Attorney General of the United States,
Respondent.

On Writ of Certiorari to the Thirteenth Circuit Court of Appeals

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BRIEF FOR RESPONDENT

Team 1018

QUESTION PRESENTED

I. Whether the disfavored group analysis used by the Ninth Circuit is enough to establish a well-founded fear of persecution when it removes the individualized risk to the applicant for asylum eligibility.

II. Whether the proper party bore the burden of demonstrating that future persecution could be avoided by internal relocation after determining whether Life Inc. is a government-sponsored entity.

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Following a hearing for asylum, the Immigration Judge ("IJ") denied Marcos' application. (R. 10). The IJ denied her application because, even though Marcos proved an objectively reasonable fear of future persecution, she could avoid persecution by relocating to another part of Basag. Id. Marcos appealed this ruling to the Board of Immigration Appeals ("BIA"). Id. The BIA summarily affirmed the IJ's decision. Id. Marcos petitioned to the United States Court of Appeals for the Thirteenth Circuit. (R. 10). The government cross-appealed challenging the validity of the BIA's well-founded fear analysis. Id. The Thirteenth Circuit affirmed the decision of the IJ and BIA after ruling Life Inc. was not a government-sponsored entity leaving the burden on Marcos to prove her fear of future persecution. (R. 31).

STATEMENT OF THE CASE

In 2012, President Ferdinand Aquinto ("President") nationalized all water sources on the two-island nation of Basag. (R. 3). President responded in this matter to protect the country's water sources. Id. The water sources were under constant attack from deteriorating environmental conditions caused by intense flooding of sea water brought on by global warming. (R. 2-3). The island of Mayaman fared better than its sister island Isda. (R. 3). Mayaman continued to prosper due to its tourism. (R. 3). Isda, being primarily a fishing island and more rural, did not have the infrastructure to fully fund new water wells and facilities. (R. 3).

A year later, President signed a thirty-year Concession Contract ("the contract") with Life Incorporated (Life Inc.). (R. 3-4). The contract granted full control of the water facilities to Life Inc. (R. 4). Life Inc. paid Basag annual fees for the rights and obligation of maintaining and rebuilding the water works in Basag. (R. 4). To assist Life Inc., Basag provided military security in the event the water facilities operated by Life Inc. came under attack or were threatened. (R. 4).

Over the next several years, Mayaman continued to prosper whereas Isda fell deeper into poverty. (R. 4). The Timog people who primarily resided on Isda did not have the financial means to travel to Mayaman to escape the de-escalating situation on Isda. (R. 4). Not only were the water sources an issue, but a domestic militia group known as the Water Warriors, began to cause problems for Life Inc. and President in 2016. (R. 4). Most of the people of Basag did not support the Water Warriors. (R. 5).

In response to the growing threat, Life Inc. hired guards who were primarily ethnic Hilagan. (R. 5). The Hilagan people primarily resided on the prosperous island of Mayaman and were better off financially because of their location. (R. 2). The Hilagan guards were suspicious of most people approaching the water facilities—especially the Timog. (R. 6).

The Isda-Timog women were primarily tasked with retrieving water on Isda because the men were primarily fisherman or worked in local shops. (R. 6). Leila Marcos ("Marcos"), the Petitioner, retrieved water every three days for her and her husband on Isda. (R. 6). During one of her trips to retrieve water, Marcos was propositioned by one of the guards at the facilities. (R. 6). The guard offered her more water in exchange for sex. (R. 6). There were rumors of a woman in a nearby village being raped, however, no action was taken against any guard, and Life Inc. assured all its employees underwent sexual harassment training. (R. 6). Life Inc. publicly issued a new policy where Life Inc. would immediately terminate any employee suspected of sexual assault. (R. 6, n.2).

To avoid harassment, Marcos traveled to a different water facility for her next trip. (R. 7). During this trip, Marcos witnessed a soldier force a pregnant woman to remove her top to prove she was not carrying explosives into the facilities. (R. 7). During another trip on March 9, 2017, to acquire water, Marcos was harassed again by the same guard who previously harassed her. (R. 7). On April 5, 2017, Marcos was harassed by a different guard who grabbed her backside and whistled at her. (R. 8).

Marcos told her husband about the harassment the next evening, April 6, 2017. (R. 8). The same evening, her husband was shot at a water checkpoint when he confronted the guards while he was brandishing a fillet knife. (R. 8). The guards brought Marcos' husband home that evening, and Marcos recognized the guard who previously harassed her on March 6th and March 9th. (R. 8). The guard made a sexual gesture with his hands towards Marcos. (R. 8). The following day, April 7, 2017, Marcos and her husband relocated to Mayaman to live with a friend of Marcos' husband, Bayani Santos ("Santos"). (R. 8).

Santos advised Marcos there was little to no harassment on Mayaman due to the tourism infrastructure. (R. 8-9). He did advise Marcos of rumors that Life Inc. guards tend to "target"

Isda-Timog women as they stood out due to their poorer appearance, however, he was unaware of any actual violence. (R. 8-9).

After living with Santos for a month, neither Marcos nor her husband acquired permanent employment. (R. 9). Marcos testified she was reluctant to work around men preventing her from gaining employment at the local resort. (R. 9). Her husband was unable to acquire work the first month due to the injury he sustained when shot in the arm on Isda. (R. 9). Seven months of saving allowed Marcos to purchase a ticket to America on August 6, 2017. (R. 9).

At the point of entry on August 7, 2017, Marcos filed for asylum. (R. 9-10). Marcos argued her situation provided a well-founded fear of future persecution. (R. 10). During her hearing, Marcos testified she did not know of anyone who was a victim of rape or sexual violence, but nevertheless feared for her safety as a member of the Isda-Timog ethnic group. (R. 10). Following the hearing, the Immigration Judge ("IJ") found that Marcos had an objectively reasonable fear and that she could avoid persecution by relocating to Mayaman. (R. 10). Consequentially, the IJ denied Marcos' asylum application. (R. 10).

Marcos appealed her decision to the Board of Immigration Appeals ("BIA"). (R. 10). The BIA summarily affirmed the IJ's decision. (R. 10). Marcos then appealed to the United States Court of Appeals for the Thirteenth Circuit. (R. 10). The Thirteenth Circuit affirmed the IJ's decision to shift the burden to Marcos, and that Marcos did not prove relocating was an invalid option. (R. 10).

The Supreme Court of the United States granted certiorari.

SUMMARY OF THE ARGUMENT

The case before the Court presents two issues. First, whether the disfavored group analysis used by the Ninth Circuit is enough to establish a well-founded fear of persecution when it removes the individualized risk to the applicant for asylum eligibility. Second, whether the proper party bore the burden of demonstrating that future persecution could be avoided by internal relocation after determining whether Life Inc. is a government-sponsored entity.

First, the disfavored group analysis should not be used to determine persecution because the analysis removes the requirement of an individualized risk, and regulations already include group membership as a factor in determining refugee status. The disfavored group analysis lowers the burden of proof by removing the requirement of the applicant to show an individualized risk of threat on her life. Congress granted the Attorney General and Secretary of Homeland Security, not the courts, the power to establish such regulations for asylum.

Second, the Petitioner properly bore the burden of demonstrating her future persecution could be avoided by internal relocation after a determination that Life Inc. is not a government-sponsored entity. This Court reviews the statutory interpretation of "government-sponsored" *de novo*; Chevron deference does not apply. Life Inc. is not a "government-sponsored" entity because it is more comparable to a private criminal actor. Finally, under an internal relocation analysis, the burden of proof remains with the petitioner and does not shift to the government—the Petitioner cannot meet this burden.

Accordingly, the Government respectfully requests that this Court affirm the lower court's decision denying the Petitioner's asylum application.

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.

ARGUMENT

I. THE DISFAVORED GROUP ANALYSIS SHOULD NOT BE USED TO DETERMINE PERSECUTION BECAUSE THE ANALYSIS REMOVES THE REQUIREMENT OF AN INDIVIDUALIZED RISK, AND REGULATIONS ALREADY INCLUDE GROUP MEMBERSHIP AS A FACTOR IN DETERMINING REFUGEE STATUS.

The disfavored group analysis should not be used because it lowers the burden of proof an individual must show to establish a fear of future persecution; Congress delegated authority to the Attorney General and the Secretary of Homeland Security to establish regulations for asylum status; and those regulations established a threshold for relieving the need for an individualized showing of persecution. 8 U.S.C. § 1101(a)(42)(A); 8 U.S.C. § 1103; 8 C.F.R. § 208.16(b); Sael v. Ashcroft, 386 F.3d 922, 925 (9th Cir. 2004); Hoxha v. Ashcroft, 319 F.3d 1179, 1182-83 (9th Cir. 2003); Kotasz v. I.N.S., 31 F.3d 847, 853-54 (9th Cir. 1994). Legal decisions from a Board of Immigration Appeals ("BIA") are reviewed *de novo*. Zhou Hua Zhu v. U.S. Att'y. Gen., 703 F.3d 1303, 1307 (11th Cir. 2013). However, where an agency has implemented a particular statutory provision, and "it appears that Congress has delegated authority to the agency . . . to make rules carrying the force of law," and the agency has "promulgated in the exercise of that authority," deference will be given to the given agency's interpretation of the statutory provision. United States v. Mead Corp., 533 U.S. 218, 226–27 (2001) (citing Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)).

A. The Disfavored Group Analysis Lowers The Burden Of Proof By Removing The Requirement Of The Applicant To Show An Individualized Risk Of Threat On Her Life.

The Ninth Circuit's adoption of the disfavored group analysis lowers the burden of proof an applicant must show when applying for asylum. Kotasz, 31 F.3d at 853; Hoxha, 319 F.3d at 1182. Under this lower burden of proof, the Petitioner need only prove she is a member of a class continuously persecuted for being different but does not need to show any individualized

persecution. Id. The Petitioner is a member of the Isda-Timog ethnic group of Basag. (R. 5-6). The Isda-Timog are one of two ethic groups inhabiting the island nation of Basag. (R. 1). The other ethnic group inhabiting Basag, the Hilagan, are generally wealthier due to the tourism on the island of Mayaman upon which they primarily reside. (R. 1).

As a poorer class, the Isda-Timog do not benefit from the contract with Life Inc. the same way the Mayaman-Hilagan people benefit from the contract. (R. 3-5). The women of Isda-Timog must journey weekly to gather water. (R. 6). This journey leaves the women susceptible to being harassed and threatened by the men who guard the water facilities. (R. 7). Women of the Isda-Timog group are harassed and threatened by the men who guard the facilities. However, there are only rumors of harassment and threats. (R. 10). Nevertheless, the Petitioner is a female member of the Isda-Timog; thus, she is a member of a class that may be continuously persecuted for being different.

To show a well-founded fear of persecution exists, an applicant needs to prove a subjective and objective fear of future persecution through a pattern or practice of past persecution. Arriaga-Barrientos v. U.S. I.N.S., 925 F.2d 1177, 1178 (9th Cir. 1991). Persecution is the "infliction of suffering or harm upon those who differ (in race, religion, or political opinion) in a way regarded as offensive." Desire v. Ilchert, 840 F.2d 723, 727 (9th Cir. 1988). The disfavored group analysis used by the Ninth Circuit ultimately removes the subjective application merely because a group is threatened. Kotasz, 31 F.3d at 853; Hoxha, 319 F.3d at 1182. Threats themselves, while uniformly unpleasant, are sometimes hollow and often do not affect significant actual suffering, harm, or persecution. Lim v. I.N.S., 224 F.3d 929, 936 (9th Cir. 2000).

As unfortunate as it is the Isda-Timog women are verbally harassed and groped by the men of the water facilities, there is no pattern of persecution against the Petitioner. (R. 10). The

Petitioner may have felt threatened, but as stated in Lim, threats are sometimes hollow. Lim, 224 F.3d at 936; (R. 8). The Petitioner testified during her hearing for asylum she did not know of anyone personally who was the victim of rape or sexual violence by Life Inc. employees. (R. 10). However, she claims the rumors of the rape and her single encounter give her a reasonable fear of future harm. (R. 10). While BIA agreed there is an objective fear of persecution as a member of the class, it failed to clarify whether the Petitioner's subjective fear existed. (R. 10).

Under the disfavored group analysis, the BIA is not required to apply both tests to Marcos situation. Therefore, the disfavored group analysis should not be used to determine well-founded fear of persecution because it removes the subjective portion of the test into non-existence. This analysis is contrary to the intent of the Attorney General and the Secretary of Homeland Security whose regulations already include as a factor the historical persecution of a group that of which the individual is a member. 8 C.F.R. § 208.16(b)(2).

B. Congress Granted the Attorney General and Secretary of Homeland Security, Not the Courts, The Power to Establish Such Regulations for Asylum.

Congress established the power of the Attorney General to act as the President's agent with concerns to immigration matters through Congress' passing of the Immigration and Nationality Act of 1952. 8. U.S.C. § 1103; Negusie v. Holder, 555 U.S. 511, 517 (2009); Sale v. Haitian Ctrs. Council, Inc., 509 U.S. 155, 170 (1993). Regulations established by the Attorney General and Secretary of Homeland Security consider an individual's membership in group for refugee status; however, the regulations do not require the membership to credit any discrimination the group faces to the individual automatically. 8 C.F.R. § 208.16(b); Wan Chien Kho v. Keisler, 505 F.3d 50, 55 (1st Cir. 2007). Under the regulations set forth by the Attorney General and Secretary of Homeland Security, an applicant for asylum status must show a fear of future persecution. 8 C.F.R. § 208.16(b)(2). The applicant must prove "it is more likely than not

that [she] would be persecuted on account of [her] race . . . [or] membership in a group" if returned to her home country. Id.

The BIA established there is an objectively reasonable fear of future persecution of this group. (R. 10). However, the regulation provides an applicant who can reasonably relocate to another area of the proposed country of removal to escape persecution, she must do so in lieu of being granted asylum. 8 C.F.R. § 208.16(b)(2). In cases like the Petitioner's, where she has not personally been the recipient of any persecution, the applicant bears the burden of establishing why it is unreasonable to relocate. 8 C.F.R. § 208.16(b)(3)(i); see also Baquero v. Gonzales, 127 Fed. App'x 634 (3rd Cir. 2005) (holding Barquero could relocate internally within Columbia because the persecution he was fleeing was localized around a specific area within the country).

Similarly, the Petitioner and her husband relocated from Isda to Mayaman. (R. 8). While on Mayaman, they did not find permanent work. (R. 8-9). However, they were able to find temporary work and earned enough funds over seven months for the Petitioner to fly to America. (R. 9). The Petitioner testified during her hearing she did not personally know of any attacks on Isda-Timog women but knew of the rumors. (R. 10). The Petitioner did not mention any further harassment while on Mayaman. (R. 10). The Petitioner did provide through testimony she was reluctant to work at the local resorts. (R. 9). This pattern of work and lack of harassment shows that the Petitioner was no longer in danger of persecution. Therefore, under the regulations established by the Attorney General and Secretary of Homeland Security, the Petitioner should not be granted asylum because she avoided persecution by relocating internally within Basag.

Accordingly, the IJ's and BIA's decision to deny Marcos' application for asylum should be affirmed for two reasons. First, disfavored group analysis should not be adopted because it removes a subjective element of determining refugee status. Second, disfavored group analysis

is redundant of the regulations established by the Attorney General and Secretary of Homeland Security which provide the inclusion of a persecuted group as a factor.

II. THE PETITIONER PROPERLY BORE THE BURDEN OF DEMONSTRATING HER FUTURE PERSECUTION COULD BE AVOIDED BY INTERNAL RELOCATION AFTER A DETERMINATION THAT LIFE INC. IS NOT A GOVERNMENT-SPONSORED ENTITY.

This second issue before the Court presents a question as old as the practice of law: who must prove what? The Petitioner is seeking asylum in the United States based on an alleged fear of persecution from the private corporation Life Inc. (R. 17). The Code of Federal Regulations provides that an applicant seeking asylum "may qualify as a refugee either because . . . she has suffered past persecution or because . . . she has a well-founded fear of future persecution." 8 C.F.R. § 208.13(b). The Code further provides that an alien "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 . . . if under all the circumstances it would be reasonable to expect the applicant to do so." 8 C.F.R. § 208.13(b)(2)(ii). However, the Code also provides:

> 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.

8 C.F.R. § 208.13(b)(3)(ii).

This Court must determine whether the corporation, Life Inc., is a non-government-sponsored, private entity, and whether it would be possible and reasonable for Marcos to relocate within Basag to avoid future persecution. However, prior to establishing whether Life Inc. is a private nongovernment entity, an understanding and analysis of the proper standard of review is necessary.

A. This Court Reviews The Statutory Interpretation Of "Government-Sponsored" *De Novo*; Chevron Deference Does Not Apply.

Legal and constitutional decisions from a BIA are reviewed *de novo*. Zhou Hua Zhu v. U.S. Att'y. Gen., 703 F.3d 1303, 1307 (11th Cir. 2013); see also Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Const. Trades Council, 485 U.S. 568, 574-75 (1988) (holding that a court should not defer to a federal agency's interpretation of a federal statute if the interpretation may conflict with the Constitution). While the "clearly erroneous" standard applies to the credibility of testimony and to any question of fact, it does not apply to "the application of the standard of law to those facts." Id. at 1312 n. 2 (citing 67 FR 54878, 54888–89). However, where the BIA has permissibly defined an ambiguous term under the Immigration and Nationality Act, deference will be given to the BIA. Chevron, 467 U.S. at 842-45; see also Mead Corp., 533 U.S. at 229 (holding that an agency's construction of a statute will be upheld if it is reasonable); Auer v. Robbins, 519 U.S. 452, 461 (1997) (holding that an agency's interpretation of its own regulations is controlling).

At issue is the term "government-sponsored"; neither the BIA nor the IJ have defined the term. (R. 26). Where an agency does not offer an interpretation nor does it promulgate an interpretation of a particular statutory provision, this Court does not offer the agency deference. Mead Corp., 533 U.S. at 227; see also I.N.S. v. Aguirre-Aguirre, 526 U.S. 415, 416 (1999) (finding that ambiguous terms may be defined through "a process of case-by-case adjudication"). Consequentially, because the BIA did not offer an explicit definition, and because "government-sponsored" has not been defined through "a process of case-by-case adjudication," this Court reviews the lower courts' analysis of "government-sponsored" activity *de novo* and may provide its own definition; Chevron deference does not apply. Id.; (R. 29); see also 63 FR 31945-01 at 31948 (stating that, in the context of asylum and refugee status, federal courts are expected to provide guidance on statutory interpretation when deciding cases).

The Petitioner will likely argue that this case must be remanded to the BIA to provide a definition of "government-sponsored." The Petitioner will likely contend that under Negusie, because "government-sponsored" is an ambiguous term, this case must be remanded to provide a definition. See Negusie v. Holder, 555 U.S. 511, 511 (2009); I.N.S. v. Orlando Ventura, 537 U.S. 12, 16-17 (2002). This argument is misplaced. Negusie and Orlando Ventura do not require the BIA to provide an explicit definition of an ambiguous term; rather, they only require that the BIA "address the matter in the first instance in light of its own expertise." Negusie, 555 U.S. at 517; Orlando Ventura, 537 U.S. at 16-17. In this case, while the BIA did not and has not provided an explicit definition of "government-sponsored," it addressed the matter in light of its own expertise when it held that Life Inc. is not a government-sponsored entity. (R. 28). Accordingly, it would be inappropriate to remand under Negusie.

Having established that Chevron deference does not apply, and that the proper standard of review is *de novo*, the analysis now shifts towards a determination of whether Life Inc. is a government-sponsored entity, and then towards an examination of who bears the burden of proving whether it is possible and reasonable for the Petitioner to relocate within Basag to avoid persecution.

B. Life Inc. Is Not A "Government-Sponsored" Entity Because It Is More Comparable To A Private Criminal Actor.

Under the Code of Federal Regulations, if an asylum applicant is facing persecution at the hand of a government or a government-sponsored entity, internal relocation is deemed unreasonable unless the United States established by a preponderance of the evidence that it would be reasonable for the applicant to relocate. 8 C.F.R. § 208.13(b)(3)(ii). In this case, both the IJ and the Thirteenth Circuit Court of Appeals found Life Inc. not to be a "government-sponsored" entity. (R. 30-31). This Court should affirm the lower courts' finding because the record reflects the Basag government was both willing and able to intervene in the persecution of

its citizens.

The deplorable actions of certain Life Inc. employees are comparable to gang members or private criminals and are not actions sponsored by the Basag government. A private actor's actions may be considered government-sponsored where a government is unable or unwilling to control the persecuting agent; this description is uniform across the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuit Courts of Appeals. See Rosales Justo v. Sessions, 895 F.3d 154, 162 (1st Cir. 2018); Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015); Vahora v. Holder, 707 F.3d 904, 908 (7th Cir. 2013); Fernandes de Paula v. U.S. Att'y. Gen., 380 F. App'x 946, 949 (11th Cir. 2010); Garcia-Garcia v. Mukasey, 294 F. App'x 827, 829 (5th Cir. 2008); Valdiviezo-Galdamez v. Att'y Gen. of U.S., 502 F.3d 285, 288 (3d Cir. 2007); Ivanishvili v. U.S. Dep't of Justice, 433 F.3d 332, 342 (2d Cir. 2006); Koshkina v. Gonzales, 135 F. App'x 824, 827 (6th Cir. 2005); Menjivar v. Gonzales, 416 F.3d 918, 921 (8th Cir. 2005); Niang v. Gonzales, 422 F.3d 1187, 1194 (10th Cir. 2005); Navas v. I.N.S., 217 F.3d 646, 656 n. 10 (9th Cir. 2000). Moreover, a "failure to report persecution to local authorities can be fatal to an asylum claim, unless an applicant convincingly demonstrates the authorities would have been unable or unwilling to protect her." Morehodov v. U.S. Att'y. Gen., 270 F. App'x 775, 780 (11th Cir. 2008).

The Basag government was willing and able to intervene when the private actors from Life Inc. harassed Basag citizens. "DHS emphasized that to whatever extent there are unruly groups of individuals attacking particular women, there is evidence the Basag police force would investigate any reported crimes committed by Life Inc. guards." (R. 30). Even though the Petitioner "did not report her interactions with Life Inc. guards, there is no evidence suggesting the police would not have intervened to investigate or protect her if she had reported her interactions and fears." (R. 30). The record is clear: the Basag government was both willing and

able to intervene when necessary, and the Petitioner's failure to report the alleged harassment, coupled with the fact that the Basag government indicated they would investigate any reported crimes, is fatal to an argument that the Basag government was unwilling or unable to control Life Inc. Accordingly, Life Inc. does not qualify as a government-sponsored nongovernment entity as defined by the circuit courts of appeals, and it is more comparable to a private criminal actor.

The Petitioner will likely argue Life Inc. should be considered government-sponsored because of the unique relationship the Basag government and Life Inc. share. Petitioner's argument would be incorrect because the analysis determining whether a nongovernment actor is government-sponsored turns on whether the government is unwilling and unable to intervene—not on the nongovernment actor's role or purpose in the nation. Any such argument proffered by the Petitioner is inappropriate and should be rejected.

Accordingly, because the Basag government is not unwilling nor unable to intervene on Life Inc's persecution of Isda-Timog individuals, Life Inc. is not a government-sponsored agent.

C. Under An Internal Relocation Analysis, The Burden Of Proof Remains With The Petitioner And Does Not Shift To The Government.

An applicant seeking asylum "may qualify as a refugee either because . . . she has suffered past persecution or because . . . she has a well-founded fear of future persecution." 8 C.F.R. § 208.13(b). An individual seeking asylum "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." 8 C.F.R. § 208.13(b)(2)(ii). An internal relocation analysis presents two questions: (1) whether relocation is possible; and (2) whether it would be reasonable to expect the applicant to relocate safely. See 8 C.F.R. §§ 208.13(b)(2)(ii), 208.13(b)(3)(i); Oryakhil v. Mukasey, 528 F.3d 993, 998 (7th Cir. 2008); Mohamed v. Ashcroft, 396 F.3d 999, 1006 (8th Cir. 2005) ("Relocation must not only be possible, it must also be reasonable."); Gambashidze v. Ashcroft, 381 F.3d 187, 192 (3d Cir. 2004) ("[T]he regulation envisions a two-part inquiry:

whether relocation would be successful and whether it would be reasonable."); Knezevic v. Ashcroft, 367 F.3d 1206, 1214 (9th Cir. 2004) ("Having determined that it would be safe for the Knezevics to relocate to the Serb-held parts of Bosnia–Herzegovina, we must examine the evidence as to whether it would be reasonable to require them to do so . . . ."). Accordingly, this Court must ask whether it was both possible and reasonable for Marcos to relocate on Basag. To make this determination, the Code has set forth several factors to consider including "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." 8 C.F.R. § 208.13(b)(3).

Here, it is the Petitioner's burden of proving that she cannot reasonably relocate to another part of her home country to avoid persecution as she has not established past persecution. (R. 22 n. 3 (stating "that Marcos' experiences did not rise to the level of past persecution.")); 8 C.F.R. §§ 208.13(b)(2)(ii), 208.13(b)(3)(i). However, contrary to the Petitioner's predilection, the record establishes by a preponderance of the evidence that it is both possible and reasonable for Marcos to safely relocate in her home country of Basag, and that Life Inc. is not a government-sponsored entity. See discussion supra Parts I.B, II.B; see also Khattak v. Holder, 704 F.3d 197, 206 (1st Cir. 2013) (finding that "the fact that an asylum applicant or an asylum applicant's family member owns a home in another part of the country may support a finding that internal relocation is reasonable.").

The Petitioner and her husband relocated from Isda to Mayaman and were able to find temporary work. (R. 8-9). Moreover, the Petitioner testified during her hearing she did not personally know of any attacks on Isda-Timog women and only knew of rumors; the Petitioner did not mention any further harassment while on Mayaman. (R. 10). Moreover, while it was not family that the Petitioner and her husband were staying with, the Petitioner and her husband had

a friend they stayed with that provided both housing and insight on how to blend into Mayaman society. (R. 8-9). This pattern of work and lack of harassment on Mayaman, as well as the fact that the Petitioner and her husband had a place to stay on Mayaman, indicate that it was both possible and reasonable for the Petitioner to safely relocate within Basag.

The Petitioner may argue this case must be remanded because the IJ failed to adequately explain why the burden remained with Marcos. See Afriyie v. Holder, 613 F.3d 924, 936 (9th Cir. 2010) (remanding because it was not clear from the record whether the lower court considered factors set forth under 8 C.F.R. § 1208.13(b)(3) when denying asylum). This argument is inapposite because the record reflects that the IJ considered the factors set forth under 8 C.F.R. § 1208.13(b)(3). See 8 C.F.R. § 1208.13(b)(3). The IJ, in its decision to deny asylum, considered many of the factors listed under § 1208.13(b)(3) including the gender, administrative and economic infrastructure of Basag, the social and cultural constraints of the Petitioner such as her gender, social, and familial ties. (R. 16-20). Each of these factors were established via the testimony and evidence presented at the IJ hearing; these factors would have been considered by the IJ when it made its decision to deny asylum.

In addition, and contrary to the Petitioner's argument, the IJ further considered and characterized Life Inc. as not "government-sponsored," and thereby concluded that "Marcos must prove that, under all the circumstances, it would be not reasonable for her to relocate." (R. 28). Furthermore, the IJ adequately addressed why the burden of proof remains with the Petitioner. Thus, the Petitioner's prayer for remand is inappropriate.

Accordingly, because Marcos cannot prove she cannot safely relocate within Basag, her asylum application should be denied; this court should affirm the Thirteenth Circuit Court of Appeals decision.

CONCLUSION

For the reasons stated above, the Respondent respectfully requests that the Court affirm the lower court's decision.

Respectfully Submitted,

Respondents.