

Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

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In *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), the Board held that depending on the facts and circumstances in an individual case, “married women in Guatemala who are unable to leave their relationship” can constitute a cognizable particular social group (“PSG”) forming the basis of a claim for asylum or withholding of removal under the Act. Analyzing the proposed PSG under the threepart framework outlined in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), the Board first determined that the putative group was composed of members who share the common immutable characteristic of gender. It further observed that marital status may also be an immutable characteristic where the individual is unable to leave the relationship. As guidance, the Board explained that such a determination is fact- and evidence-dependent, based on such factors as whether dissolution of a marriage contravenes religious or other deeply held moral beliefs or if dissolution is possible in light of religious, cultural, or legal constraints. And the determination has a subjective component involving the respondent’s own experiences as well as an objective component, which can be established using evidence of background country conditions. Next, the Board found that the putative PSG was defined with particularity, since the terms “married,” “women,” and “unable to leave the relationship” all have commonly accepted definitions within Guatemalan society based on the facts in this case. Pointing out that a married woman’s inability to leave her relationship may be informed by societal expectations about gender and subordination, and legal constraints regarding divorce and separation, the Board found significant the fact that the respondent here had sought protection from her husband’s abuse but was rebuffed by the police’s refusal to intervene in a marital relationship. Turning to the third prong of the PSG definitional framework, the Board found that “married women in Guatemala who are unable to leave their relationship” is a socially distinct group within Guatemalan society. In reaching that conclusion, the Board explained that such an inquiry involved an examination of whether the society in question recognizes the need to offer protection to victims of domestic violence, including whether the country has criminal laws designed to protect abuse victims, whether the laws are effective, and other sociopolitical factors. The Board observed that the record evidence demonstrated that Guatemala has a culture of “machismo and family violence,” and that enforcement of its domestic violence laws can be problematic because the enforcement authority often ignores requests for assistance. Pointing out that domestic violence cases generally involve unique and discrete issues not present in other PSG determinations, particularly as to social distinction, the Board explained that the facts and evidence in each case, including documented country conditions, law enforcement statistics and expert witnesses, the respondent’s past experiences, and other credible sources of information, will be determinative. The case was remanded.