

**Particular Social Group Practice Advisory:  
Applying for Asylum After *Matter of M-E-V-G* and *Matter of W-G-R*<sup>1</sup>**

I. The Starting Point: *Matter of Acosta*

To qualify for asylum, an individual must demonstrate a well-founded fear of persecution on account of “race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A). In [Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\)](#), the Board of Immigration Appeals (BIA) established a rule for determining whether an asylum applicant has demonstrated membership in a particular social group (“PSG”). Relying on the doctrine of *ejusdem generis*, “of the same kind,” the BIA construed the term in comparison to the other protected grounds within the refugee definition (i.e. race, religion, nationality and political opinion). The BIA concluded that the commonality shared by all four protected grounds is the fact that they encompass innate characteristics (like race and nationality) or characteristics one should not be required to change (like religion or political opinion). *Id.* at 233. To be a protected ground then, PSG membership can be based either on a shared characteristic members cannot change (like gender or sexual orientation) or a characteristic they should not be required to change (like being an uncircumcised woman). See *id.* (listing gender as an immutable characteristic); see also [Matter of Toboso-Alfonso, 20 I&N Dec. 819 \(BIA 1990\)](#) (recognizing homosexuality as an immutable characteristic); [Matter of Kasinga, 21 I&N Dec. 357, 366 \(BIA 1996\)](#) (recognizing the status of being an uncircumcised woman as a characteristic one should not be required to change).

Federal courts of appeals have endorsed the *Acosta* standard for discerning PSGs as a valid interpretation of the statute. The *Acosta* test – or a variation of it – has governed the analysis of PSG claims for decades. See *Niang v. Gonzales*, 422 F.3d 1187, 1199 (10th Cir. 2005); *Castellano-Chacon v. INS*, 341 F.3d 533, 546-48 (6th Cir. 2003); *Lwin v. INS*, 144 F.3d 505, 511 (7th Cir. 1998); *Safaie v. INS*, 25 F.3d 636,640 (8th Cir. 1994); *Fatin v. INS*, 12 F.3d 1233 (3rd Cir. 1993); *Alvarez-Flares v. INS*, 909 F.2d 1, 7 (1st Cir. 1990).

II. Confusing the PSG Analysis: *Matter of S-E-G-* and *Matter of E-A-G-*

In 2008, the BIA issued two precedential decisions in cases involving gang-based asylum claims and the test for establishing membership in a PSG. The first case, [Matter of S-E-G-, 24 I&N Dec. 579 \(BIA 2008\)](#), involved siblings who sought asylum based on their membership in the group of “Salvadoran youth who have been subjected to recruitment efforts by the MS-13 gang and who have rejected or resisted membership in the gang based on their own personal moral, and religious opposition to the gang’s values and activities, and their family members.” The second case, [Matter of E-A-G-, 24 I&N Dec. 591 \(BIA 2008\)](#), involved a young man who sought asylum

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<sup>1</sup> This practice advisory is primarily intended for attorneys practicing within the jurisdiction of the Seventh Circuit. Attorneys practicing within other jurisdictions are encouraged to utilize other resources specific to their jurisdiction in addition to this practice advisory.

based on his membership in the group of “young persons who are perceived to be affiliated with gangs.”

In these cases, for the first time, the BIA added two new requirements to the PSG test.<sup>2</sup> The BIA held that in order to establish a viable PSG, the group must be based on an immutable characteristic, be socially visible, and particularly defined. According to the BIA, “particularity” means that a group is defined in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons. *S-E-G-*, 25 I&N Dec. at 584. To meet the particularity requirement, a group must not be “too amorphous . . . to create a benchmark for determining group membership,” *Id.* The BIA went on to reject the respondent’s proposed group under the particularity requirement because the group is made up of “a potentially large and diffuse segment of society.” *Id.* at 585. The BIA didn’t provide a definition of “social visibility” beyond stating that a PSG’s shared characteristic “should generally be recognizable by others in the community.” *Id.* at 586.

The immigrant advocacy community harshly criticized these two decisions. The BIA’s reasoning in *S-E-G-* and *E-A-G-* was often circular and frequently conflated social visibility and particularity with nexus (the “on account of” requirement), which is separate question from whether the PSG is viable in the first place. For example, in analyzing the *S-E-G-* respondents’ proposed group of “Salvadoran youth who have resisted gang recruitment, or family members of such Salvadoran youth,” the BIA held that the group (1) failed the particularity test because the gang could have had many different motives for targeting Salvadoran youth, and (2) failed the social visibility test because members of the group weren’t targeted for harm more frequently than the rest of the population. These justifications for denying asylum rest on a finding that the asylum seekers were not harmed *because of* their status as gang resisters – which is a nexus issue – and not because the PSG suffers from legal infirmity.

In addition, the BIA’s decisions left unclear whether “particularity” only required that a group be defined with clear, objective words, or if a group must also be narrow and homogenous. The BIA also created confusion as to whether social visibility meant literal or figurative visibility. In a subsequent asylum case before the U.S. Court of Appeals for the Seventh Circuit, Judge Posner queried whether an asylum seeker needed to put a target on his back announcing his PSG in order to qualify for asylum. *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009). Finally, the decisions completely ignored the fact that PSGs the BIA had previously accepted, such as young women of a particular tribe who oppose the practice of female genital mutilation, or gay men from a particular country, no longer appeared viable under this new test.

### III. The Reaction of the Federal Courts

As asylum cases involving PSG claims and the BIA’s new social visibility and particularity requirements soon began to make their way to the U.S. Courts of Appeals, some courts deferred to the BIA’s addition of the two new PSG requirements under *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984). However, others courts struck down the requirements and refused to find that they merited *Chevron* deference.<sup>3</sup>

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<sup>2</sup> Although the BIA had previously referenced social visibility and particularity in other decisions, see [Matter of A-M-E- & J-G-U](#), 24 I&N Dec. 69 (BIA 2007) and [Matter of C-A-](#), 23 I&N Dec. 951 (BIA 2006), the BIA did not state that they were requirements for establishing a PSG until *S-E-G-* and *E-A-G-*.

<sup>3</sup> See Appendix A for a list of each circuit’s position on the social visibility requirement.

## Seventh Circuit

The first court to strike down parts of the BIA's new PSG test was the Seventh Circuit in *Gatimi*, 578 F.3d at 616. In *Gatimi*, the Court found that the social visibility requirement "makes no sense" and that the BIA has never attempted "to explain the reasoning behind the criterion of social visibility." Because the BIA had been inconsistent in its use and explanation of the social visibility criterion, the Seventh Circuit declined to defer to the BIA's interpretation and rejected social visibility as a requirement for establishing membership in a PSG.

Although the Seventh Circuit has not explicitly rejected the particularity requirement, several decisions after *S-E-G-* and *E-A-G-* directly contradict the BIA's explanation of particularity. In particular, in *Cece v. Holder*, 733 F.3d 662 (7th Cir. 2013), the en banc Seventh Circuit explicitly stated that the breadth of a protected ground has never been a per se bar to asylum and that it would be "antithetical to asylum law to deny refuge to a group of persecuted individuals who have valid claims merely because too many have valid claims."<sup>4</sup> *Cece*, 733 F.3d at 674-75. Moreover, the *Cece* Court reaffirmed that the Seventh Circuit follows a pure, *Acosta*-only test for establishing membership in a PSG, in which a group need only be based on an immutable characteristic in order to be a viable social group. See *Cece*, 733 F.3d at 669 ("This Circuit has deferred to the Board's *Acosta* formulation of social group"), at 672 (explaining that it is not fair to analyze the group "merely based on the language used . . . we must look to see whether the group shares "common characteristics that members of the group either cannot change, or should not be required to change.").

## Third Circuit

In 2011, the Third Circuit joined the Seventh in rejecting social visibility and struck down the particularity requirement as well. *Valdiviezo-Galdamez v. Holder*, 663 F.3d 582 (3d Cir. 2011). Like the Seventh Circuit, the Third Circuit declined to give *Chevron* deference to the BIA's new PSG requirements because they were unreasonable additions to the PSG definition and inconsistent with prior BIA decisions. The Court also noted that it was "hard-pressed to discern any difference between the requirement of "particularity" and the discredited requirement of "social visibility." Indeed, they appear to be different articulations of the same concept and the government's attempt to distinguish the two oscillates between confusion and obfuscation, while at times both confusing and obfuscating." *Valdiviezo-Galdamez*, 663 F.3d at 608.

## Ninth Circuit

Unlike the Seventh and Third Circuits, the Ninth Circuit declined to reject social visibility and particularity. *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013)<sup>5</sup>. Significantly, however, the Court acknowledged that the BIA and the Ninth Circuit had both conflated the social visibility and particularity tests at times. *Id.* at 1090-91. The Court explicitly clarified that a PSG need not be homogenous and overruled its precedent decisions that seemed to indicate otherwise. *Id.* at 1093-94. The Court also noted that although the BIA has not made clear whose perspective is relevant in determining social visibility, it believes the perception of the persecutor may matter the most. *Id.* at 1089-90.

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<sup>4</sup> NIJC's amicus brief in support of the petitioner in *Cece* can be found at <http://immigrantjustice.org/sites/immigrantjustice.org/files/Cece%20NIJC%20amicus%20FINAL.pdf>.

<sup>5</sup> NIJC's amicus brief in support of the petitioner in *Henriquez-Rivas* can be found at <http://immigrantjustice.org/sites/immigrantjustice.org/files/HENRIQUEZ%20NIJC%20amicus%20Final.pdf>.

#### IV. Rolling Back the Courts' Progress: *Matter of M-E-V-G* and *Matter of W-G-R*

Despite the criticism of the Courts of Appeals, in February 2014, the BIA issued two decisions, [Matter of M-E-V-G, 26 I&N Dec. 227 \(BIA 2014\)](#)<sup>6</sup> and [Matter of W-G-R, 26 I&N Dec. 20 \(BIA 2014\)](#), which restated and emphasized the BIA's decision in *S-E-G*. In *M-E-V-G*, the BIA clarified that social visibility does not mean literal visibility, but instead refers to whether the PSG is recognized within society as a distinct entity. 26 I&N Dec. at 240-41. The BIA therefore renamed the requirement "social distinction." The decisions do not provide any new clarification or interpretation of the "particularity" requirement, but include some troubling dicta. For example, in *W-G-R*, the BIA applied the particularity test to a PSG composed of former gang members. The BIA held that such a group failed the "particularity" requirement because "the group could include persons of any age, sex, or background," despite having previously noted in *Matter of C-A*, 23 I&N Dec. 951, 956-57 (BIA 2006), that homogeneity was *not* a requirement for PSG membership. 26 I&N Dec. at 221. According to the BIA, such a group would need to be defined with additional specificity, such as defining the group by "the duration or strength of the members' active participation in the activity and the recency of their active participation." *Id.* at 222.

The BIA claimed its intention in issuing the two decisions was to "provide guidance to courts and those seeking asylum," *M-E-V-G*, 26 I&N Dec. at 234, citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009). The decisions, however, suffer from the same errors as *S-E-G* and *E-A-G*, and are made worse by the fact that *M-E-V-G* and *W-G-R* seek to rationalize a legal test that is simply irreconcilable with existing domestic and international asylum law.

- A. The BIA's post-hoc rationalization of the social distinction and particularity requirements is disingenuous.

A frequent criticism of the BIA's decisions in *S-E-G* and *E-A-G* was that the BIA had not explained how previously accepted PSGs would still qualify under the new standard. See e.g., *Gatimi*, 578 F.3d at 615-16 ("[R]egarding "social visibility" as a criterion for determining "particular social group," the Board has been inconsistent rather than silent. It has found groups to be "particular social groups" without reference to social visibility . . . as well as, in this and other cases, refusing to classify socially invisible groups as particular social groups but without repudiating the other line of cases.").

The BIA attempted to respond to this criticism in *M-E-V-G* and *W-G-R*, but its attempts ring false. For example, the BIA asserted that in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), it found the group of young women of the Tchamba-Kunsuntu Tribe who had not been subjected to FGM and opposed the practice was a distinct group based on the record evidence regarding the prevalence of FGM and the expectation that women would undergo it. *M-E-V-G*, 26 I&N Dec. at 246. But in the BIA's decision in *Kasinga*, the BIA at no time discussed whether the group was perceived as distinct within the applicant's society. The entire analysis of the PSG in *Kasinga* was two, short paragraphs long and merely stated that the characteristics which make up the group either cannot be changed or should not be required to be changed. *Kasinga*, 21 I&N Dec. at 365-66. Country evidence discussed in the decision related to conditions for women in Togo

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<sup>6</sup> NIJC's amicus brief in support of the respondent in *M-E-V-G* can be found at <http://immigrantjustice.org/sites/immigrantjustice.org/files/Valdiviezo%20NIJC%20Amicus%20FINAL.pdf>.

generally, or in some cases, in all of Africa, as opposed to just the applicant's tribe. *Id.* at 361-62. All of this undercuts the BIA's claim, nearly 20 years later, that the PSG in *Kasinga* was found to have met the social distinction test and is not inconsistent with the BIA's new analysis.

- B. The combination of "particularity" and "social distinction" creates a Scylla and Charybdis dilemma.

According to the BIA, a PSG cannot be defined by language commonly used in society (such as "wealth" or "young") if the language would not define the group with precision. *W-G-R-*, 26 I&N Dec. at 221-22. For example, "young" does not say how young; "wealthy" does not say how wealthy. Even "former gang member" does not pass the particularity test – says the BIA – because a variety of people from different backgrounds and levels of gang involvement could be former gang members. *Id.* However, the BIA simultaneously requires the definition to capture a concept which is "distinct" in the eyes of the society from whence the claim arises. That is, if the group is defined as "18 to 25 year olds," the applicant would need to demonstrate that society views that group as distinct from, e.g., 26 year olds. Thus, the particularity requirement, as defined in *M-E-V-G-* and *W-G-R-*, effectively precludes the use of common parlance labels to describe a PSG, even as the social distinction test requires that a PSG be limited by parameters a society would recognize. Taken together, it's hard to see how any PSG can qualify.

- C. The BIA requirements effectively preclude pro se applicants from obtaining asylum.

As noted above, the BIA requires an asylum applicant to formulate a group in terms which are statistically precise, i.e., not using natural, common linguistic descriptors, and also commonly recognized. Nearly all pro se applicants will be unable to posit such a group. For example, a former child soldier who fears persecution in her home country because of that former affiliation will not know the duration of membership necessary to formulate a PSG – she only knows that people in her country wish to harm her for something she cannot change.

Second, the BIA's social distinction test requires a country condition expert or similar evidence to show how the society from whence the claim arises views the group. *M-E-V-G-*, 26 I & N Dec. at 244 ("Evidence such as country conditions reports, expert witness testimony, and press accounts of discriminatory laws and policies, historical animosities, and the like may establish that a group exists and is perceived as 'distinct' or 'other' in a particular society."). This standard effectively requires sociological evidence, though it appears that significant country conditions documentation might suffice. Pro se applicants are unlikely to be able to marshal such evidence.

In addition to prejudicing pro se applicants, the BIA's tests disadvantage under-represented asylum applicants, whose attorneys may understand asylum generally but are not experts in the area. Notably, nowhere on the application for asylum or in its accompanying instructions does the government ask the applicant for a precise PSG. And even where one manages to articulate a PSG, many applicants have limited resources and cannot pay for experts – who often charge thousands of dollars – even where they can be identified. In *Cece*, the Seventh Circuit noted that it is the substance of the claim rather than the precise construction of the PSG that should drive the adjudicator's assessment in asylum cases. 733 F.3d at 672. The BIA's tests purport to tie the hands of adjudicators, forcing them to determine asylum eligibility based on whether an applicant can craft a sufficient PSG rather than by discerning whether she is a bona fide refugee.

D. The BIA requirements call on the BIA and immigration judges to act outside their expertise.

The BIA's decisions apparently call upon the BIA and immigration judges (IJs) to not merely decide the facts and law before them, but to opine on sociological matters in foreign societies, in cases which will commonly lack any kind of expert opinion which might enable adjudicators to make such findings. The BIA and IJs are tasked with arriving at conclusions based on evidence in the record, but the BIA has not developed any way for adjudicators to competently make the determinations required by these tests. *Cf. Banks v. Gonzales*, 453 F.3d 449, 453–55 (7th Cir. 2006) (suggesting the use of agency experts); *Chun Hua Zheng v. Holder*, 666 F.3d 1064, 1068 (7th Cir. 2012) (same).

The issues that arise when the BIA acts outside its expertise and issues opinions on the sociology of another country are immediately evident from the decision in *W-G-R-*. Here, the BIA found the group of former gang members not sufficiently particular because it could include someone who joined the gang many years ago, but left shortly after initiation, as well as a long-term hardened gang member. According to the BIA, “[i]t is doubtful that someone in the former category would consider himself, or be considered by others, as a “former gang member” or could be said to have any but the most peripheral connection to someone in the latter category.” 26 I&N Dec. at 221. The BIA provides no evidence to support this speculative conclusion, which is at odds with the stories told by asylum seekers from Central America and objective evidence supplied in other matters. Federal courts of appeals, particularly the Seventh Circuit, have been troubled by the attempts of IJs to substitute their own judgment for that of an expert, but this is precisely what these tests compel adjudicators to do. See *Torres v. Mukasey*, 551 F.3d 616, 632 (7th Cir. 2008) (criticizing an IJ for having “improperly relied on his own assumptions about the Honduran military . . . to reach his conclusion.”).

E. The BIA's international law analysis was deeply flawed.

The BIA noted – after years of avoidance – that while it had derived the “social visibility” test from the UNHCR, it had not followed the UNHCR's use of that idea. The UNHCR advocates a disjunctive test, finding a social group where the characteristic forming the group is either immutable or the group is perceived as a group by society. See Brief of the United Nations High Commissioner for Refugees as Amicus Curiae in Support of the Petitioner, p. 13, *Valdiviezo-Galdamez v. Attorney Gen. of U.S.*, 663 F.3d 582, 587 (3d Cir. 2011) (“The Board's reliance here on its previous articulations of “social visibility” is misplaced because its conclusion in *S-E-G-* and earlier decisions that the *UNHCR Social Group Guidelines* “endorse an approach in which an important factor is whether the members of the group are ‘perceived as a group by society’ is inaccurate.”). The BIA requires both. The BIA purported to agree with the European Union's approach, 26 I & N Dec. at 248 n.15, but the BIA's characterization of the EU rules is dubious. The BIA, for instance, failed to acknowledge that the House of Lords interpreted the precise EU text as supporting the UNHCR approach to the matter. *Secretary of State for the Home Department v. K and Fornah v. Secretary of State for the Home Department* (“Fornah and K”), [2006] UKHL 46 (U.K.). The BIA also failed to acknowledge other international case law that adopts a divergent approach, noted in *M-E-V-G-* by amicus curiae, including Canada, Australia, New Zealand, and South Africa, as well as various non-common law countries. Brief of Thomas & Mack Legal Clinic, University of Nevada, Las Vegas, William S. Boyd School of Law as Amicus Curiae in Support of the Respondent, *In re Valdiviezo-Galdamez* (Aug. 13 2012).

F. The BIA's approach conflicts with *ejusdem generis* principles.

The BIA has historically interpreted "particular social group" in parallel with the other four protected grounds, pursuant to principles of *ejusdem generis*. *Acosta*, 19 I&N Dec. at 233. In *M-E-V-G-* and *W-G-R-*, the BIA continues to pay lip service to that doctrine but simultaneously violates its core principle. *M-E-V-G-*, 26 I&N Dec. at 234 n.10. The BIA's PSG tests are entirely unlike those employed in the analysis of the other four protected grounds. Responding to the criticism that the particularity requirement involves boundary determinations that do not exist for the other protected grounds, the BIA asserts that "there is a critical difference between a political opinion or religious belief, which may in theory be entirely personal and idiosyncratic, and membership in a particular social group, which requires that others in the society share the characteristics that define the group." *Id.* at 239 n.13. This blanket assertion lacks any explanation.

According to the BIA, where a proposed group doesn't have precise boundaries, it is not cognizable; no such rule applies to political groups or religious groups. The fact that the word "Catholic" might be thought to apply either to devoted practitioners or to "cultural" members of the group would not preclude a religious-based claim where Catholicism was the basis of the persecution. Yet a "former gang member" group would not be cognizable simply because the boundaries of the group may be unclear (although possibly irrelevant to the claim). Likewise, no expert testimony is required to show that a society recognizes Catholics; the fact that the individual has established her own status as a Catholic is enough.

It is true that the PSG ground refers by its nature to particular groups. But the BIA's definitional tests go far beyond this justification and the excuses that some protected grounds may be "personal and idiosyncratic" while such characteristics are fatal in the PSG context is unfounded in the law and unsupported by commonsense.

G. The BIA considers society's view when determining social distinction; not the persecutor's view.

In *M-E-V-G-*, the BIA clarifies that when determining whether a group is socially distinct, it is society's perspective – not the persecutor's – which is relevant. 26 I&N Dec. at 242. The BIA reasons that considering the persecutor's views would conflate the fact of the persecution with the reasons for it. *Id.* This does not follow. If a persecutor targets redheads for death, a redheaded person might reasonably fear death even if society in general does not think of redheads differently than other people. Limiting the viability of a PSG by requiring that society – and not merely the persecutor – view the group conflicts with well-reasoned appellate case law, *Henriquez-Rivas*, 707 F.3d at 1089-90, and draws false lines that honor neither the purpose nor intent of the statute.

#### IV. The State of Particular Social Group Case Law Today

For circuits that had already accepted the social visibility/distinction and/or particularity requirements, the BIA's decisions have a limited impact. However, even in those circuits, the BIA's clarification that social distinction is based on society's perception and not the persecutor may conflict with circuit precedent. Likewise, even though the decisions do not purport to

provide a new interpretation or clarification of “particularity,” the BIA’s determination that former membership-based PSGs might fail the particularity test may conflict with circuit precedent.

As noted above, before *M-E-V-G-* and *W-G-R-*, the Seventh and Third Circuits had rejected the BIA’s social visibility (now distinction) requirement, the Third Circuit had rejected the particularity requirement, and the Seventh and Ninth Circuits had issued decisions that appear to limit the particularity definition. For example, while the BIA rejected the former gang member PSG in *W-G-R-* as insufficiently particular, the Seventh Circuit explicitly found that the same PSG was “neither unspecific nor amorphous.” *Benitez-Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009).

The BIA has a longstanding policy of following circuit precedent in any case arising within that circuit. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Where there is disagreement regarding an ambiguous statute, the BIA may invoke its authority to interpret the statute, and may in some cases decline to follow circuit precedent, even within that circuit. *Nat’l Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967 (2005). Under *Brand X* principles, it appears that the Courts of Appeals that have rejected social visibility/distinction may have to consider anew whether the BIA’s interpretation is reasonable. Because the BIA in *M-E-V-G-* and *W-G-R-* did not purport to clarify or issue a new interpretation of the particularity requirement, *Brand X* arguably does not require new analysis of particularity by circuits that previously issued decisions conflicting with the BIA’s interpretation.

At the asylum office and immigration court levels, however, it can be argued that conflicting circuit precedent remains binding law despite the new BIA decisions. First, where the BIA has declined to follow binding circuit precedent within a federal circuit, it has explicitly said so in a published decision. See, e.g., *Matter of Konan Waldo Douglas*, 26 I&N Dec. 197 (BIA 2013) (“we respectfully decline to follow the Third Circuit’s case law to the contrary and will apply our holding in *Matter of Baires* to cases arising in that circuit”); *Matter of Gallardo*, 25 I&N Dec. 838, 844 (BIA 2012) (“our holding... should apply uniformly nationwide”); *Matter of Armendarez-Mendez*, 24 I&N Dec. 646, 653 (BIA 2008) (“we ... respectfully decline to follow *Lin v Gonzales*, *supra*, and *Reynoso-Cisneros v. Gonzales*, *supra*, even within the Ninth Circuit”).

*Matter of W-G-R-* does not invoke *Brand X* at all. *Matter of M-E-V-G-* only does so in passing reference to the general proposition that the BIA’s reasonable interpretation of “membership in a particular social group” is entitled to deference and when explaining why the BIA has decided to use a different PSG test than the UNHCR. *M-E-V-G-*, 26 I&N Dec. at 230. At no point in either *M-E-V-G-* or *W-G-R-* does the BIA ever state that it is declining to follow the Seventh Circuit’s analysis within the Seventh Circuit, or anything to that end.

It also seems unlikely that *Brand X* would apply to the BIA’s discussion of particularity in *M-E-V-G-* and *W-G-R-* because the BIA has not issued any new clarification or interpretation of the term. The definition asserted in *M-E-V-G-* and *W-G-R-* is the same decision that existed throughout numerous Seventh Circuit decisions that have focused on the immutable characteristics underlying the PSG as opposed to the specific language used to define the PSG.

Because the BIA in *M-E-V-G-* and *W-G-R-* did not explicitly decline to follow Seventh Circuit precedent regarding the social distinction or particularity requirement, the Seventh Circuit’s decisions rejecting the BIA’s social visibility/distinction requirement and affirming the *Acosta*



immutable characteristic test should remain binding precedent on the Chicago Asylum Office and Chicago Immigration Court.

Second, even if *Brand X* principles are implicated at the asylum office and immigration court levels, arguments can still be made that the BIA's requirements do not merit deference because – as described in section III – they are an impermissible and unreasonable interpretation of “membership in a particular social group.”

## V. Practice Pointers

The BIA's decisions in *M-E-V-G-* and *W-G-R-* will no doubt create much confusion among asylum adjudicators and the Courts of Appeals will ultimately be called upon to provide clarification and correction. In the meantime, attorneys representing asylum seekers must be prepared to respond to these decisions when presenting PSG-based asylum claims, no matter the jurisdiction. Attorneys should plan to both educate adjudicators about the impact – or lack thereof – of *M-E-V-G-* and *W-G-R-* on PSG case law and establish, possibly in the alternative, how their clients' cases meets the BIA's requirements.

It is also important to note that while *M-E-V-G-* and *W-G-R-* both involved asylum claims based on Central American gang violence, the BIA's decisions may impact all PSG-based asylum claims, including asylum claims based on gender; sexual orientation; resistance to recruitment and extortion by criminal organizations; status as former child soldiers or trafficking victims; and many other common and well-established reasons that individuals seek protection in the United States.

### A. Formulating a PSG

NIJC does not recommend that attorneys representing asylum seekers within the Seventh Circuit significantly modify their PSGs in response to the BIA's decisions. Doing so will likely result in complex and artificial PSGs that will pass either the particularity or social distinction requirement, but only at the expense of the other. However, attorney should consider creating an alternative PSG that meets the particularity and social distinction requirements. In addition, given the uncertain state of PSG case law, it has become even more important that attorneys formulate PSGs carefully and with a clear understanding of the current law in their jurisdictions. Circuit law from only a few years ago, although not explicitly overruled, may no longer be useful to support a proposed PSG. Moreover, since PSG claims are now more likely to result in federal litigation, it is important that the strongest PSG possible be preserved at the IJ level. *Pro bono* attorneys representing NIJC asylum clients are strongly encourage to consult with NIJC when formulating PSGs for their clients' cases. More information about developing a PSG can be found in NIJC's asylum manual, available at <https://www.immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers> and NIJC's PSG seminar at <http://immigrantjustice.org/nijc-pro-bono-seminars>.

### B. Client affidavits and testimony

To the extent the BIA's social distinction requirement receives deference by an adjudicator, attorneys must use their client's affidavit and testimony to help establish that the proposed PSG is socially distinct. A client should provide examples of how her community viewed her group as a group. For example, in an asylum claim based on forced gang recruitment, the client's

affidavit and testimony should explain how the community viewed individuals who resisted recruitment. Descriptions of the way in which community members treated those pressured for recruitment differently from others in the community (perhaps by helping them escape from the gangs or ignoring their requests for assistance) can help establish the group's "distinction." Similarly, in a case involving forced marriage, the client's affidavit and testimony should explain how the community viewed women who refused a marriage. Are they ostracized or punished within the society? In a domestic violence-based asylum claim, it may be useful in the affidavit and testimony to compare how the community responded to domestic violence as opposed to a random assault by one man against another man. Showing that women who are harmed in the context of a relationship are treated differently than individuals harmed in other contexts can be useful to prove the group is socially distinct.

### C. Other evidence

Country condition experts have long been critical in asylum cases, but in light of the BIA's new decisions, their importance has grown significantly. It is difficult to see how most PSGs could meet the social distinction test without the assistance of an expert witness. Therefore, whenever possible, attorneys representing clients with PSG-based claims should plan to provide an expert affidavit and in some cases, expert testimony to support their claim. Generally, country condition experts are most useful when they are truly experts, such as academics or professionals with substantial scholarly credentials, and when they are not overtly partisan. Individuals who are active in political or advocacy organizations with a pronounced point of view about a particular country may have their credentials as "experts" called into question by Immigration and Customs Enforcement (ICE) attorneys, asylum officers, and immigration judges.

Although generally it is not wise for an expert to make legal conclusions as to whether an individual meets the asylum elements, that rule does not apply to the social distinction requirement. Once a qualified expert is found, it will be important for the expert's affidavit and testimony to specifically address the social distinction issue. Attorneys may find it useful to review the evidentiary findings in *M-E-V-G-* and *W-G-R-* and ask the expert whether he or she can adopt similar language in the expert's affidavits. See e.g., *M-E-V-G-*, 26 I&N Dec. at 246 (explaining that the group of young women of a certain tribe who had not been subjected to FGM was a socially distinct group based on objective evidence regarding the prevalence of FGM in the society and the expectation that women of the tribe would undergo FGM).

In asylum claims arising out of countries in which civil strife or criminal violence is wide-spread, it will be particularly important that experts differentiate clients' PSGs from the rest of the population. See *id.* at 250-51; *W-G-R-*, 26 I&N Dec. at 222-23. Attorneys should also be sure to clarify that the question of whether the client fears persecution on account of her PSG membership (as opposed to random violence) is a separate question from whether the PSG is cognizable in the first place.

### D. Briefing the issue

Because of the two, new BIA decisions, it is more important than ever that attorneys clearly separate the asylum elements in their briefs and when arguing their cases before the courts. Although the BIA in *M-E-V-G-* states that adjudicators must be sure to separate the assessment of whether the applicant has established a protected ground from the issue of nexus (the "on account of" prong), the rest of the BIA's analysis says otherwise. 26 I&N Dec at 242. As in *S-E-*

G- and E-A-G-, the BIA's analysis of the PSGs in M-E-V-G- and W-G-R- frequently conflates the question of whether the PSG is cognizable with the question of whether the applicant was targeted on account of his PSG membership. See e.g., W-G-R-, 26 I&N Dec. at 222 ("Other parts of the report also indicate that such discrimination and . . . harassment are directed at a broader swatch of people . . . even if they never had any affiliation with a gang. . . . This broader grouping suggests that former gang members are not considered to be a distinct group by Salvadorans.") Attorneys briefing PSG-based asylum claims must therefore clearly separate the PSG element from the nexus element in their briefs. Discussion of reasons why a client was targeted should remain within the nexus section of the brief, not the PSG section.

Depending on the jurisdiction in which attorneys present asylum claims, attorneys should argue that positive circuit precedent remains binding, but also assert that their clients' groups meet the social distinction and particularity tests. Arguments can be made that prior circuit precedent remains binding unless and until the circuit reexamines the reasonableness of the BIA's new decisions. However, because the state of the law is uncertain, it is crucial that attorneys nonetheless explain how their clients' PSGs remain viable under the social distinction and particularity requirements, even if they should not apply. Please see Appendix B for suggested language to include in asylum briefs.

Finally, because of the poor analysis, circular reasoning, and confusing dicta in M-E-V-G- and W-G-R-, attorneys should expect that many adjudicators and ICE attorneys will not have a clear understanding of the two BIA decisions or the state of PSG case law. Attorneys representing clients with PSG-based asylum claims should plan to educate adjudicators regarding the new BIA decisions and their impact on PSG law in the adjudicator's jurisdiction.

For more information on representing asylum seekers, including sample briefs from PSG-based asylum claims, please review the resources on NIJC's website at <https://www.immigrantjustice.org/useful-documents-attorneys-representing-asylum-seekers>. Attorneys representing asylum clients through NIJC are encouraged to consult with NIJC regarding any questions about their case.

Appendix A

**SOCIAL VISIBILITY TODAY**

The federal circuit courts of appeals are divided on the Board's addition of social visibility to the particular social group definition in *Matter of S-E-G-*, 24 I&N Dec. 519 (BIA 2008).

Federal Court of Appeals	Case(s)	Position
First Circuit	<i>Mendez-Barrera v. Holder</i> , 602 F.3d 21, 26 (1st Cir. 2010); but see <i>Rojas-Perez v. Holder</i> , 699 F.3d 74 (1st Cir. 2012) (questioning rationality of Board's application of new rule)	Accepts Social Visibility, but doubts its rational application
Second Circuit	<i>Ucelo-Gomez v. Mukasey</i> , 509 F.3d 70 (2d Cir. 2007)	Accepts Social Visibility
Third Circuit	<i>Valdiviezo-Galdamez v. Attorney Gen. of U.S.</i> , 663 F.3d 582, 607 (3d Cir. 2011)	Rejects Social Visibility
Fourth Circuit	<i>Lizama v. Holder</i> , 629 F.3d 440, 446-47 (4th Cir. 2011); <i>Crespin-Valladares v. Holder</i> , 632 F.3d 117, 126 (4th Cir. 2011); <i>Martinez v. Holder</i> , 740 F.3d 902, 910 (4th Cir. 2014)	Declined to Address Social Visibility
Fifth Circuit	<i>Orellana-Monson v. Holder</i> , 685 F.3d 511, 520 (5th Cir. 2012)	Accepts Social Visibility
Sixth Circuit	<i>Al-Ghorbani v. Holder</i> , 585 F.3d 980, 991, 994 (6th Cir.2009)	Accepts Social Visibility
Seventh Circuit	<i>Gatimi v. Holder</i> , 578 F.3d 611, 615-16 (7th Cir.2009); <i>Benitez Ramos v. Holder</i> , 589 F.3d 426, 430 (7th Cir.2009); <i>Cece v. Holder</i> , 733 F.3d 662, 668 n.1 (7th Cir. 2013)	Rejects Social Visibility
Eighth Circuit	<i>Davila-Mejia v. Mukasey</i> , 531 F.3d 624, 629 (8th Cir.2008); <i>Gaitan v. Holder</i> , 671 F.3d 678, 681 (8th Cir. 2012) (noting that the court is bound by the decisions of earlier panels to find that social visibility is not arbitrary or capricious) <i>cert. denied</i> , 133 S. Ct. 256 (2012)	Accepts Social Visibility
Ninth Circuit	<i>Arteaga v. Mukasey</i> , 511 F.3d 940, 945 (9th Cir.2007); <i>Ramos-Lopez v. Holder</i> , 563 F.3d 855, 858-62 (9th Cir.2009); <i>Henriquez-Rivas v. Holder</i> , 707 F.3d 1081, 1089 (9th Cir. 2013)	Accepts Social Visibility
Tenth Circuit	<i>Rivera-Barrientos v. Holder</i> , 666 F.3d 641, 652-53 (10th Cir. 2012)	Accepts Social Visibility
Eleventh Circuit	<i>Castillo-Arias v. U.S. Att'y Gen.</i> , 446 F.3d 1190, 1197 (11th Cir.2006)	Accepts Social Visibility

Appendix B

**Sample Language to Include in Asylum Briefings and Legal Memoranda  
to Support Particular Social Group-Based Claims  
Post-*Matter of M-E-V-G* and *Matter of W-G-R***

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*On February 7, 2014, the Board of Immigration Appeals issued two decisions – Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014) and Matter of W-G-R-, 26 I&N Dec. 20 (BIA 2014) – that address the analysis of asylum claims based on membership in a particular social group. For background on M-E-V-G and W-G-R, please review NIJC’s analysis of the decisions, practice advisory, and the decisions themselves at <http://immigrantjustice.org/asylum-brief-bank-membership-particular-social-group>. In light of these decisions, NIJC recommends that attorneys with asylum claims arising in the Seventh Circuit include an argument that draws from the guidance below to support asylum claims based on membership in a particular social group before the asylum office and immigration court.*

*As always, NIJC invites pro bono attorneys handling asylum matters through NIJC to consult with the NIJC managing attorney for asylum prior to positing a proposed particular social before the USCIS asylum office and/or immigration courts.*

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A. The Respondent's social group remains viable despite recent BIA decisions.

The BIA recently issued two decisions which purport to “clarify” its prior case law regarding the particular social group analysis. See *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014). Specifically, the BIA renamed the social visibility requirement (which the Seventh Circuit rejected in *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009)) “social distinction” and clarified that it does not mean literal visibility. *M-E-V-G-*, 26 I&N Dec. at 228. The new BIA decisions are unreasonable interpretations of the statutory text; but in any event the BIA has not yet decided to apply them in circuits which adhere to the traditional *Acosta* formulation. As such, Seventh Circuit precedent remains binding in this matter.

1. The BIA applies circuit case law, unless the BIA explicitly indicates it seeks to impose a new interpretation that conflicts with existing circuit court precedent.

The BIA has a longstanding policy of following circuit precedent in any case arising within that circuit. *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993); *Matter of Anselmo*, 20 I&N Dec. 25 (BIA 1989). Where there is disagreement regarding an ambiguous statute, the BIA may invoke its authority to interpret the statute, and may in some cases decline to follow circuit precedent, even within that circuit. *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, 545 U.S. 967 (2005). However, where the BIA declines to follow binding circuit precedent within a federal circuit, it has explicitly said so in a published decision. See, e.g., *Matter of Konan Waldo Douglas*, 26 I&N Dec. 197, 201 (BIA 2013) (“we respectfully decline to follow the Third Circuit’s case law to the contrary and will apply our holding in *Matter of Baires* to cases arising in that circuit”); *Matter of Gallardo*, 25 I&N Dec. 838, 844 (BIA 2012) (“our holding... should apply uniformly nationwide”); *Matter of Armendarez-Mendez*, 24 I&N Dec. 646, 653 (BIA 2008) (“we ... respectfully decline to follow

*Lin v Gonzales, supra*, and *Reynoso-Cisneros v. Gonzales, supra*, even within the Ninth Circuit”).

Indeed, the BIA frequently decides whether to apply its precedent, rather than case law from the circuit, many years after it issues its interpretation. See, e.g., *Matter of M-H-*, 26 I&N Dec. 46, 49 (BIA 2012) (“we will respectfully apply our ruling in *Matter of N-A-M-* [24 I&N Dec. 336 (BIA 2007)] to cases arising in the Third Circuit”); *Matter of Islam*, 25 I&N Dec. 637, 641 (BIA 2011) (“we respectfully conclude that our analysis [in *Matter of Adetiba*, 20 I&N Dec. 506 (BIA 1992)], should now be uniformly applied in all circuits throughout the country”).

The BIA has made no such decision here. *Matter of W-G-R-* does not invoke *Brand X* at all. *Matter of M-E-V-G-* only does so in passing reference to the general proposition that the BIA’s reasonable interpretation of “membership in a particular social group” is entitled to deference and when explaining why the BIA has decided to use a different social group test than the UNHCR. *M-E-V-G-*, 26 I&N Dec. at 230, 248-49. At no point in either *M-E-V-G-* or *W-G-R-* does the BIA ever state that it is declining to follow the Seventh Circuit’s analysis within the Seventh Circuit, or anything to that end. The closest the BIA comes to observing a parting of ways with circuit court precedent is with regard to the Third Circuit and its finding that social visibility and particularity are indistinguishable. *M-E-V-G-*, 26 I&N Dec. at 240 (“The Third Circuit has indicated that it was “hard-pressed to discern any difference between the requirement of ‘particularity’ and the discredited requirement of ‘social visibility.’” *Valdiviezo-Galdamez II*, 663F.3d at 608. We respectfully disagree”). This general statement does not refuse to apply Seventh Circuit case law.

Indeed, it seems unlikely that *Brand X* would apply to the BIA’s discussion of particularity in *M-E-V-G-* and *W-G-R-* because the BIA has not issued any new clarification or

interpretation of the term. Unlike social visibility, which the BIA renamed “social distinction” and clarified does not mean literal visibility, the definition of particularity asserted by the BIA in *M-E-V-G-* and *W-G-R-* is not new. It is the same definition that existed in 2009 when the Seventh Circuit held that “tattooed, former Salvadoran gang members” were a particular social group, *Benitez-Ramos v. Holder*, 589 F.3d 426, 431 (7th Cir. 2009); in 2011 when the Seventh Circuit held that “Jordanian women who . . . are accused of being immoral criminals,” were a particular social group, *Sarhan v. Holder*, 658 F.3d 649, 654 (7th Cir. 2011); and in 2013, when the en banc Seventh Circuit found that “young Albanian women who live alone” were a particular social group. *Cece v. Holder*, 733 F.3d 662, 671 (7th Cir. 2013). Significantly, the Court in *Cece* noted that the particular language used to define a group should not be over-emphasized; rather, the Court must look at the characteristics the group members share to discern particular social group viability. *Id.* at 672.

Because the intervening BIA decisions do not explicitly decline to follow Seventh Circuit precedent within the Seventh Circuit, either with regard to the social distinction requirement or to the particularity requirement, it follows that the Seventh Circuit’s decisions rejecting the BIA’s social visibility (distinction) requirement and affirming the *Acosta* immutable characteristic test as the only requirement for establishing a particular social group remain binding precedent on this Court.

2. Deference is not warranted here because the BIA’s interpretation is impermissible.

In order for the BIA’s interpretation of “particular social group” to receive deference, the agency’s interpretation must be based on a permissible construction of the statute. *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 (1984); *Cece*, 733 F.3d at 668-669 (the BIA’s reasonable interpretation of the INA receives *Chevron*



deference). The asylum statute states that “[a]ny alien who is physically present in the United States or who arrives in the United States . . . may apply for asylum.” INA § 208(a)(1). The term “particular social group” is included in the definition of a refugee at INA § 101(a)(42)(A). Though this term and the process of seeking asylum in general are concededly ambiguous, the BIA’s convoluted and burdensome interpretation of the statute is impermissible.

The requirements the BIA set forth in *M-E-V-G-* and *W-G-R-* for establishing a particular social group effectively preclude pro se applicants from seeking asylum and this cannot possibly represent congressional intent. First, the BIA’s particularity requirement requires the applicant to articulate a particular social group in terms which are statistically precise. *W-G-R-*, 26 I&N Dec. at 221-222. A pro se applicant – and indeed many represented applicants – would generally be unable to prevail because formulating such a group is counterintuitive and complex to the point of being nearly impossible. Second, the BIA’s social distinction requirement effectively requires a country condition expert or similar sociological evidence to show how the foreign society views the group posited by the applicant. *M-E-V-G-*, 26 I&N Dec. at 244. Pro se applicants and represented applicants with limited resources are unlikely to be able to marshal such evidence, assuming it even exists. By raising the evidentiary burden for an individual seeking asylum based on membership in a particular social group to such a level that an asylum seeker must have representation, expert witnesses, and significant financial resources to obtain asylum, the BIA’s interpretation directly conflicts with the statutory language allowing “any alien” to apply for asylum. As an impermissible interpretation of the statute, the BIA’s decisions cannot receive deference.

The BIA's approach also fails to keep with *ejusdem generis* principles that were the basis of its initial interpretation of "particular social group." *Acosta*, 19 I&N Dec. at 233. Although the BIA claims that *ejusdem generis* principles are consistent with its social distinction and particularity requirements, these particular social group tests are entirely unlike the tests employed for other protected grounds. For example, according to the BIA, a group is not cognizable unless it has precise boundaries. *M-E-V-G-*, 26 I&N Dec at 239; *W-G-R-*, 26 I&N Dec at 214. No such rule applies to political or religious groups – the fact that "Catholic" could apply to a devoted practitioner or a "cultural" member would not preclude a religious persecution claim. Likewise, a Catholic need not provide evidence that Catholics are considered a group in his country of origin; proof that the applicant is Catholic or is believed to be Catholic is enough to establish the protected ground. The BIA addresses this incongruity by stating "there is a critical difference between a political opinion or religious belief, which may in theory be entirely personal and idiosyncratic, and membership in a particular social group, which requires that others in society share the characteristics that define the group." *W-G-R-*, 26 I&N Dec. at 213 n.3. This blanket assertion that the tenets of *ejusdem generis* don't fully apply to particular social groups lacks any explanation, finds no support in the law and, as such, warrants no deference. Because the BIA's decisions are not a permissible interpretation of the asylum statute, they are not entitled to *Chevron* deference.

3. Deference is not warranted here because the BIA's interpretation is unreasonable.

One of the primary reasons the Third and Seventh Circuits found the social visibility requirement arbitrary and unreasonable was the BIA's failure to explain how previously accepted social groups would still qualify under the new standard. *Gatimi*, 578 F.3d at 615-

16. Although the BIA attempted to respond to this criticism in *M-E-V-G-* and *W-G-R-*, its attempts are disingenuous and insufficient. For example, in *M-E-V-G-*, the BIA asserted that based on the record evidence, it found the social group in *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), to be perceived as a distinct group. 26 I&N Dec. at 246. In reality, the decision in *Kasinga* never references anything about the social group beyond the immutable characteristics forming the group and the evidence cited does not support the group being perceived as distinct among others in the respondent's home country. *Kasinga*, 21 I&N Dec. at 360-62, 365-66.

Likewise, the BIA's attempt to make the social group in *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990), fit the social visibility requirement also falls flat. *M-E-V-G-*, 26 I&N Dec. at 245. The evidence the BIA references to explain that Cuban society considers homosexuals a discrete group does not do so; it only supports the idea that the respondent's *persecutors* consider the group as such. *Id.* The BIA's continued failure to reconcile previously accepted social groups with its new social group requirements means that social visibility/distinction remains an arbitrary and unreasonable addition to the particular social group test.

Furthermore, the BIA's interpretation of the "particularity" requirement is inconsistent and irrational. According to the BIA, "particularity" means that a group must "be defined by characteristics that provide a clear benchmark for determining who falls within the group. . . . [and] be discrete and have definable boundaries – it must not be amorphous, overbroad, diffuse, or subjective." *M-E-V-G-*, 26 I&N Dec. at 239. Since these terms all have very different and potentially divergent meanings, it is unclear how "particularity" can encompass them all in any cogent way. To the extent the BIA intends for the particularity requirement to constrict group size, that limitation would violate *ejusdem generis* since the other protected

grounds are not so limited (as noted by the Seventh Circuit in *Cece*, 773 F.3d at 674). Likewise, although the BIA attempts to explain that social distinction and particularity are two separate terms, its explanation that “[s]ocietal considerations have a significant impact on whether a proposed group . . . is sufficiently particular” and “whether the people in a given society would perceive a proposed group as sufficiently separate or distinct” *M-E-V-G-26* I&N Dec at 241, leaves it extremely difficult “to discern any difference between the requirement of ‘particularity’ and the discredited requirement of ‘social visibility.’” *Valdiviezo-Galdamez*, 663 F.3d 582, 608 (3d Cir. 2011) (agreeing with the Seventh Circuit’s rejection of social visibility and rejecting the particularity requirement). Because the BIA’s explanation of social distinction and particularity is not reasoned, the decisions are not entitled to *Chevron* deference.

4. The Respondent’s particular social group remains viable under the BIA’s modified particular social group test.

If this court applies the social distinction and particularity tests as articulated in *M-E-V-G-* and *W-G-R*, the Respondent should nonetheless be found to be a member of a cognizable particular social group because the group of **GROUP** is (1) comprised of members who share a characteristic that is immutable or that they should not be required to change; (2) is social distinct; and (3) is particular.

- a. The group of **GROUP** is comprised of members who share a common immutable characteristic. **OR** The group of **GROUP** is comprised of members who share a characteristic they should not be required to change.

As established *supra*, the Respondent’s social group is based on common immutable characteristics...

- b. The group of **GROUP** is socially distinct.

Evidence in the record establishes that the group of **GROUP** is socially distinct because society in **REGION/COUNTRY** views them as a group. **EXPLAIN THE EVIDENCE...**

c. The group of **GROUP** is particularly defined.

The group of **GROUP** is also sufficiently particular, as the term has been interpreted by the Seventh Circuit. The group of **GROUP** is not defined by unspecific or amorphous terms, any more so than the groups accepted in *Benitez-Ramos*, 589 F.3d 426; *Sarhan*, 658 F.3d 649; or *Cece*, 733 F.3d 662. And under *M-E-V-G-* and *W-G-R*, the group is sufficient particular because evidence in the record establishes... **EXPLAIN THE EVIDENCE...**

Thus, the Respondent has shown that even under the new BIA decisions, her particular social group remains viable.