

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS**

File #: [REDACTED]

Date: August 9, 2011

In the Matter of)
[REDACTED])
Respondent.)

IN ASYLUM-ONLY
PROCEEDINGS

APPLICATIONS: Section 208 of the INA, 8 U.S.C. § 1158 – Asylum.
Section 241(b)(3) of the INA, 8 U.S.C. § 1231(b)(3) – Withholding of Removal.

ON BEHALF OF THE RESPONDENT:
[REDACTED]
McDermott Will & Emery LLP
[REDACTED]
Chicago, Illinois 60606

ON BEHALF OF THE GOVERNMENT:
Mirta Woodall, Esq.
Department of Homeland Security
55 East Monroe Street, Suite 1700
Chicago, Illinois 60603

DECISION OF THE IMMIGRATION JUDGE

I. BACKGROUND

The respondent is a twenty-three-year-old female native and citizen of the Democratic Republic of the Congo. She was admitted to the United States at Chicago, Illinois on July 13, 2008 on a fraudulent Belgian passport as an applicant under the Visa Waiver Program. She has remained in the United States since that time. The respondent filed an affirmative application for asylum with the Department of Homeland Security (“the Government”) on October 20, 2008. On November 21, 2008, the asylum officer referred the respondent’s application for asylum to the Immigration Court at Chicago, Illinois because, in accordance with 8 C.F.R. § 1208.2(c)(1)(iii), the Immigration Court has exclusive jurisdiction over asylum applications filed by Visa Waiver Program applicants. See Exh. 1 (Notice of Referral to Immigration Judge for the respondent). The respondent was placed in asylum-only proceedings pursuant to INA § 217(b) and issued a notice advising her to appear for a hearing before the Court on January 15, 2009.

The respondent failed to appear for her January 15, 2009, and the Court denied her application *in absentia*. See Exh. 2. The respondent filed a motion to reopen on

February 9, 2009 alleging that she had not received the hearing notice, and the Court granted the motion on February 23, 2009.

On October 4, 2010, the respondent appeared before the Immigration Court at Chicago, Illinois for a master calendar hearing in asylum-only proceedings. As the respondent is a Visa Waiver Program applicant in asylum-only proceedings, removability is not at issue, and the Court only has jurisdiction to consider her applications for asylum and withholding of removal under INA § 217(b)(2) and 8 C.F.R. § 1208.2(c)(1)(iii). The respondent renewed her applications before the Court on March 21, 2011, and an individual hearing on the merits of her claims was held on that date.

II. CLAIM AND EVIDENCE PRESENTED

The respondent claims that she has been a victim of past persecution and has a well-founded fear of future persecution in the Democratic Republic of the Congo on account of her membership in a particular social group: young Congolese women who have engaged in prostitution. She further claims that she is eligible for humanitarian asylum because of the severity of the past persecution and the likelihood that she will suffer other serious harm if she is removed. She further claims that she has a separate well-founded fear of future persecution on account of her membership in two other social groups: Congolese women who have escaped prostitution after being trafficked and failed asylum-seekers returned to the Democratic Republic of the Congo.

A. Testimony

On March 21, 2011, the Court heard testimony from the respondent and her expert witness, Dr. Herbert Weiss (“Dr. Weiss”). Their testimony is summarized as follows:

1. The Respondent’s Testimony

The respondent was born on [REDACTED], 1988, in Kinshasa, Democratic Republic of the Congo (“DRC”), the daughter of [REDACTED] and [REDACTED] who were both merchants and are now deceased. She also has one brother, [REDACTED] who is still in the DRC. She is unmarried and has one daughter, [REDACTED], who is a citizen of the United States and was born in Champaign, Illinois on [REDACTED] 2009.

In August 2006, when the respondent was eighteen years old, her parents died in an automobile accident. Until then, she, her parents, and her brother had lived in Kinshasa in [REDACTED] Kimpepe. When they died, they had no savings or assets, so the respondent’s brother left the DRC to live with one of her parents’ friends, and she went to go live with a friend of her mother’s named [REDACTED] (whom she called “Mother [REDACTED]”).

Although [REDACTED] did not initially charge the respondent rent, after a few weeks, she told the respondent that she needed to get a job and pay rent. The respondent went to

look for a job, but she could not find one. However, she saw girls in the streets who were prostitutes, and when she returned to [REDACTED] house and told her about them, [REDACTED] told her that she had to work as a prostitute as well. For the next few months, the respondent worked as a prostitute, finding men in the same area where she had seen the other prostitutes; she gave the money to [REDACTED]

In December 2006, the respondent met a white man who became her client. He spoke some French, and he told her that he was Russian and that his name was "Mr. [REDACTED]". Approximately two weeks later, Mr. [REDACTED] approached her again. He took her to his house, and he asked her why she was working as a prostitute. After she explained that she had no family, he asked her if she wanted to work for him and promised that she would make a lot of money if she did. She agreed, and she started working for him as a prostitute from his house.

Mr. [REDACTED] found clients for the respondent, and every time she saw one, she would make \$300. She would keep \$50, and Mr. [REDACTED] would take the other \$250. This arrangement continued for the next several months. Mr. [REDACTED] often talked about taking her to Europe, assuring her that she could change her life there. The word "Europe" sounds very good to young girls in Africa; the respondent thought that she would be able to go to school and live like other girls her age.

In 2007, Mr. [REDACTED] briefly left the DRC to arrange papers for the respondent. He returned in December 2007. The papers had her face, but not her name. They first went to the Central African Republic, where she stayed in a hotel in the city of Bangui for a few weeks. She did not ever leave the hotel room because Mr. [REDACTED] locked the door.

Then, the respondent and Mr. [REDACTED] flew to Brussels, Belgium, entering on January 1, 2008. Two men met them at the airport and took them to a white bus. They went to a house, and the respondent met three girls there: one white girl from a country the respondent does not remember, one girl from Cameroon, and one girl from Togo. These three girls were about the respondent's age and in the same position as the respondent.

Mr. [REDACTED] behavior toward the respondent changed dramatically when they arrived in Belgium. Whereas previously he had been nice to her and promised her that he would give her a better life, now he treated her as his slave. About two weeks after she arrived, a man tattooed Mr. [REDACTED] name on her back, and he explained to her that this marked her as his property. He told her that he was friendly with the police throughout Europe, and that if she tried to escape and go to the authorities, they would see the tattoo and know to return her to him. Mr. [REDACTED] forced her to work as a prostitute for him, and he now began to take all of the money. The respondent lived in an isolated house with the other girls, and they were not allowed to go outside of their bedrooms or the house except to meet clients. Mr. [REDACTED] would always lock both their bedroom doors and the front door from the outside.

The respondent generally worked from Monday to Friday, seeing approximately four clients a week. Generally, when a man would come to the house, the respondent would give him a glass of whiskey, drink with him, and then go into the bedroom to perform the sexual services they demanded. She does not know where these men would come from because she never left the house.

On the weekend, the respondent and the three other girls would only sleep with Mr. [REDACTED]. She did not want to sleep with him, but he would use his position as their boss to force them to accede to his demands. Mr. [REDACTED] engaged in rough, violent sexual intercourse with the respondent and the other girls, and he would force them to perform fellatio on him.

One day in July 2008, Mr. [REDACTED] told the respondent and the other girls that they were going outside to work in a bus. Mr. [REDACTED] had a hidden camera with which he intended to film the respondent and the other girls having sex with clients. One of the girls saw the camera, and they all objected and refused to work under the camera. Mr. [REDACTED] became very angry and went back to the house with the girls. He drank a lot of alcohol, and they took the opportunity to add alcohol to his glass. When they saw that he was very drunk and had fallen asleep, they took his money and keys and left the house.

After their escape, the girls walked to a bus stop and took a bus to the Brussels-Midi train station in Brussels. There, they bought a ticket to the Gare du Nord in Paris. In Paris, they went their separate ways. The respondent knew no one, but at the train station, she heard a man on the phone speaking Lingala, so she knew he was Congolese. When he was done, she said hello to him and told him her story. He told her that his name was [REDACTED] and, because she had told him that Mr. [REDACTED] had contacts with the police in Europe, he advised her to leave Europe and go to the United States.

[REDACTED] knew people who could make a fake passport for the respondent, and he asked her for €1200 to do so. She paid him with the money she had stolen from Mr. [REDACTED]. He provided her with a fraudulent Belgian passport bearing the name "[REDACTED]" and she bought a plane ticket from Paris to Chicago. She arrived in Chicago on July 13, 2008, and she made it through immigration and customs at the airport without any trouble. She met a Congolese man at the airport, and he told her about a church in Champaign where there were lots of Congolese people. She bought a bus ticket to Champaign for \$100, and people at the church advised her to apply for asylum.

Under cross-examination from the Government and questioning from the Court, the respondent admitted at testimony that some of the facts in the written statement she included with her asylum application were not true. In the statement, she represented that Mr. [REDACTED] raped her repeatedly, that her clients in Belgium hit her and penetrated her with inanimate objects, and that Mr. [REDACTED] bodyguards also raped her. In her testimony, she clarified that, although Mr. [REDACTED] forced her to have sex with him and used some violence, she thinks "rape" is too strong a word for what he did; that the clients did not hurt her; and that she never had sex with the bodyguards.

The respondent is afraid of returning to the DRC for three reasons: she is afraid that, because of her past experiences as a prostitute, she will be unable to find a job in the DRC and targeted by sex traffickers again; she is afraid that Mr. [REDACTED] will find her and harm her out of revenge for having escaped and stolen his money; and she is afraid that she will be punished by the Congolese government for having sought political asylum in the United States.

2. Dr. Weiss's Testimony

Dr. Weiss is a political scientist with a Ph.D. from Columbia University. He currently serves as a senior policy scholar at the Woodrow Wilson International Center for Scholars, a professor *emeritus* at the City University of New York-Brooklyn College, and a research fellow at the City University of New York's Ralph Bunche Institute on the United Nations. His research has focused on the DRC since 1958, when he served as a research analyst for the Department of State. He has traveled to the DRC several times, first in 1959 and most recently in 2009. He has been awarded the Herskovits Prize for Best Book on Africa, and he has published numerous books and articles relating to the DRC. He has been qualified as an expert in more than thirty Congolese immigration cases, and he has also served as an expert for the United States government and the United Nations on the DRC.

Dr. Weiss has never met the respondent, but he has reviewed her affidavit and is familiar with her claim. From his careful review of recent human rights reports, he knows that the respondent may be imprisoned for having sought asylum if she is returned to the DRC. He described prison conditions in the DRC as "absolutely horrendous"; prisoners in the DRC are not fed, physical abuse is rampant, and women are often raped. He believes that the respondent would be particularly vulnerable because she has no family and because of her gender and past history. He is not familiar with the Government's regulations prohibiting disclosure of the status of asylum applicants.

Although Dr. Weiss has not personally done research on women's rights or sex trafficking in the DRC, he is familiar with reports to the effect that sex trafficking is very common and that the Congolese government has not taken significant steps to tackle the problem. He therefore finds the respondent's story plausible and believes she may be trafficked again if she is returned to the DRC.

B. Documentary evidence

In addition to the testimony of record, the Court has considered the documents relevant to the respondent's claim, including:

Exhibit 1: Notice of Referral filed November 21, 2008.

Exhibit 2: I-589 Application for Asylum and Withholding of Removal for the respondent filed October 20, 2008, renewed and amended March 21, 2011.

- Exhibit 3: Respondent's Memorandum of Law and Facts in Support of her Asylum Application, with supporting documents including:
- Tab A: Dr. Weiss's affidavit;
- Tab B: Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *2009 Country Reports on Human Rights Practices: Democratic Republic of the Congo* (March 11, 2010);
- Tab C: Bureau of African Affairs, U.S. Dep't of State, *Background Note: Democratic Republic of the Congo* (October 8, 2010);
- Tab D: Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone* (July 16, 2009),
- Tab E¹: [REDACTED] affidavit;
- Tab F²: [REDACTED] affidavit;
- Tab G: U.S. Dep't of State, *2010 Trafficking in Persons Report* (June 14, 2010);
- Tab H: The respondent's birth certificate;
- Tab I: The respondent's affidavit;
- Tab J: [REDACTED] affidavit;
- Tab K: Photograph of the respondent's tattoo;
- Tab L: The respondent's travel documents;
- Tab M: [REDACTED] birth certificate;
- Tab N: United Nations High Commissioner for Refugees, *Guidelines on International Protection: The Application of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees to Victims of Trafficking and Persons at Risk of Being Trafficked* (April 7, 2006)
- Tab O: U.S. Dep't of State, *2007 Trafficking in Persons Report* (June 12, 2007);
- Tab P: Affidavit of Dr. Gregory N. Lewis;
- Tab Q: International Organization for Migration, *The Causes and Consequences of Re-Trafficking: Evidence from the IOM Human Trafficking Database* (2010);
- Tab R: Diane Taylor, "Britain Sending Refused Congo Asylum Seekers Back to Threat of Torture," *The Guardian* (May 27, 2009);
- Tab S: The respondent's Witness List;
- Tab T: The respondent's Biometrics Notice;
- Tab U: Motion for Telephonic Testimony;

¹ The Government objected to the admission of this document because it is an affidavit submitted by an expert who did not include a *curriculum vitae* and did not testify. While the Court overruled the Government's objection and admitted the document, it will be given less weight.

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III. FINDINGS AND ANALYSIS

A. Credibility and Corroboration

Because the respondent filed her application for asylum, withholding of removal, and protection under the CAT on October 20, 2008, the credibility provisions of the REAL ID Act govern his applications.³ The Seventh Circuit has held that the REAL ID Act requires, in the absence of documentary proof, that an Immigration Judge use the details of an alien's story to make an evaluation of its truth. *Mitondo v. Mukasey*, 523 F.3d 784, 789 (7th Cir. 2008).

The Court may evaluate the alien's credibility "using whatever combination of considerations seems best in the situation at hand." *Id.* The REAL ID Act lists the following factors among those that may be considered in the assessment of an asylum applicant's credibility: demeanor, candor, responsiveness, inherent plausibility of the claim, the consistency between oral and written statements, the internal consistency of such statements, the consistency of such statements with evidence of record, and any inaccuracy or falsehood in such statements, whether or not such inaccuracy or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii).

In the instant case, the Court finds respondent's testimony was detailed, responsive, internally consistent, and generally plausible in light of the country conditions evidence in the record. However, the Government noted certain significant inconsistencies between the respondent's written statement and her testimony before the Court.

These inconsistencies principally concerned the level of harm the respondent claims to have suffered in Belgium while working as a prostitute for Mr. [REDACTED]. In her written statement, she represented that she "was hit during sex, and raped with inanimate objects" by her clients. She also stated that "[REDACTED] and his bodyguards (when [REDACTED] let them) would also rape [her]." Mr. [REDACTED] "used to drag [her] out of bed at night by the hair so he could scream at [her] or rape [her]." *See* Exh. 3, Tab I at 241.

During her testimony, however, the respondent stated that she was never raped. She testified that the clients did not hit her or rape her with inanimate objects, though they sometimes required her to perform sexual acts against her will. She also testified that she never had sex with the guards and that, although Mr. [REDACTED] had violent sex with her and that she felt compelled to submit to him because he was in charge, she would not characterize him as having raped her. When asked to explain these inconsistencies, the respondent simply stated that she was telling the truth and speculated that misunderstandings had arisen due to the language barrier and her own confusion at earlier points in the process.

³ The REAL ID Act's credibility and corroboration provisions govern asylum applications made on or after May 11, 2005. INA § 208(b)(1)(B), n.65.2.

In the Court's view, it seems likely that much of the discrepancy between the respondent's testimony and her statement can be accounted for by cultural and linguistic nuances surrounding the definition of the word "rape." It is true that these issues do not explain why specific facts (her claimed rape by Mr. [REDACTED] bodyguards and the specific physical harm she claimed the clients inflicted) were included and described in some detail in the respondent's statement that she later unequivocally stated were not true. However, given that these details are relatively minor and that the respondent candidly admitted against her interest that they were not true even when presented with her previous statements, the Court finds these inconsistencies insufficient to support a finding that the respondent is not credible.

The Government also raised some questions about the plausibility of the respondent's claim. In particular, counsel for the Government stated that she found it unlikely that the respondent would meet by coincidence a Congolese man who would happen to be extremely helpful to the respondent at both the train station in Paris and the airport in Chicago. Without evidence in the record to support the contention that these facts are inherently implausible, though, the Court cannot find that her credibility is undermined by these facts.

The REAL ID Act also provides that if the Court determines that corroborative evidence should be produced, it "must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii). Pursuant to the REAL ID Act, "an immigration judge now enjoys substantial leeway to demand corroboration of an asylum applicant's allegations whether or not the judge finds the applicant credible.... Only if such evidence is beyond the reasonable ability of the immigrant to obtain is the judge precluded from demanding corroboration." *Krishnapillai v. Holder*, 563 F.3d 606, 618 (7th Cir. 2009) (citing *Rapheal v. Mukasey*, 533 F.3d 521, 527 (7th Cir. 2008)). The absence of corroborating evidence can lead to a finding that the applicant has failed to meet his burden of proof. *See Matter of J-Y-C-*, 24 I&N Dec. 260, 263 (BIA 2007).

The respondent has provided facially reliable documentary evidence corroborating some of her claims: that her name is [REDACTED] and that she was born in Kinshasa; that she has a tattoo on her back that says "[REDACTED]" that she traveled from Paris to Chicago on a fraudulent Belgian passport in the name of [REDACTED] and that she has a daughter named [REDACTED] who was born in the United States. *See* Exh. 3, Tab H; Tabs J-M. On the other hand, there is no evidence in the record corroborating the central elements of the respondent's claim: that she was trafficked from the DRC to Belgium, forced into prostitution, and abused. However, given the respondent's relative isolation and lack of connections in the DRC and Belgium, the underground, criminal nature of the respondent's claimed persecutors, and the speed with which she claims to have made her escape, the Court cannot find that it would have been reasonable under the circumstances for the respondent to have provided further corroborative evidence.

For these reasons, the Court finds the respondent credible and will give full weight to her testimony without requiring further corroboration.

B. Asylum

Under section 208(b) of the INA, asylum may be granted to an alien who is physically present in the United States if the alien meets the statutory definition of a “refugee.” A “refugee” is defined as an individual who is unable or unwilling to return to his or her native country “because of persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A). The applicant ultimately carries the burden of establishing statutory eligibility for asylum. 8 C.F.R. § 1208.13(a); *Torres v. Mukasey*, 551 F.3d 616, 625 (7th Cir. 2008).

Generally speaking, an alien who is physically present in the United States, irrespective of status, may apply for asylum under section 208 of the INA only if she demonstrates by clear and convincing evidence that she submitted the application within one year after her date of arrival in the United States. INA § 208(a)(2)(B). As the respondent has demonstrated that she filed for asylum approximately four months after she arrived in the United States, her application is timely.

1. The respondent has demonstrated that she suffered past persecution.

An applicant who has established that she was persecuted in the past is presumed to have a well-founded fear of future persecution on the same basis. 8 C.F.R. § 1208.13(b)(1); *see also Xiao v. Mukasey*, 547 F.3d 712, 716 (7th Cir. 2008).

a. The respondent suffered harm rising to the level of persecution in the DRC.

The term “persecution” denotes a high standard, requiring “powerful and moving evidence” that the harm suffered rises above mere harassment. *Dandan v. Ashcroft*, 339 F.3d 567, 573-74 (7th Cir. 2003). According to the Seventh Circuit Court of Appeals, it “involves the use of *significant* physical force against a person’s body, or the infliction of comparable physical harm without direct application of force . . . or nonphysical harm of equal gravity.” *Stanojkova v. Holder*, --- F.3d ---, No. 10-3327 (7th Cir. July 14, 2011). In applying this definition, the Court must bear in mind that no “generic checklist” exists as to what counts as persecution, and the frequency and severity of mistreatment, whatever that may be, remain relevant factors. *Tarraf v. Gonzales*, 495 F.3d 525, 535 (7th Cir. 2007). “Conduct can rise to the level of persecution without being life-threatening,” *id.*, and the court must evaluate the evidence of harm cumulatively to determine if it qualifies the applicant for relief. *Bejko v. Gonzales*, 468 F.3d 482, 485 (7th Cir. 2006). The Seventh Circuit has held, for example, that rape and other forms of sexual assault constitute persecution. *See, e.g., Sankoh v. Mukasey*, 539 F.3d 456, 471 (7th Cir. 2008).

In the instant case, the Court finds that the respondent has established through her credible testimony that she is a victim of a “severe form” of sex trafficking under the Trafficking Victims Protection Act, which defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of a commercial sex act” and lists “sex trafficking in which a commercial sex act is induced by force, fraud, or coercion” as a severe form of sex trafficking. 22 U.S.C. § 7102(8); (9).

Neither the Seventh Circuit nor the Board of Immigration Appeals has specifically held that sex trafficking in itself constitutes harm rising to the level of persecution. However, the respondent has submitted the UNHCR Guidelines on International Protection, which opine that the harms inherent in sex trafficking “constitute serious violations of human rights which will generally amount to persecution.” Exh. 3, Tab N at 263. The details of the respondent’s testimony, according to which she was imprisoned against her will for several months, treated as a sex slave, and subjected to repeated sexual assault, indicate that she herself clearly suffered significant harm rising to the level of persecution. While much of the physical and psychological harm the respondent claims to have suffered occurred in Belgium rather than the DRC, this harm was a direct and, under the circumstances and from the respondent’s perspective, inevitable consequence of having been trafficked from the DRC. Thus, in the circumstances of this case, the Court concludes that the experience of being trafficked for sex constitutes harm rising to the level of persecution.

b. The respondent has met her burden to show that the harm she suffered in the past was on account of her membership in a particular social group: young Congolese women who have participated in prostitution.

In order to meet the definition of a refugee for purposes of asylum, an applicant must show a nexus between his fear of harm and one of the five protected grounds. *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008). A “particular social group” is “a group of persons all of whom share a common, immutable characteristic.” *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985); *Tapiero de Orejuela v. Gonzales*, 426 F.3d 666, 671-72 (7th Cir. 2005) (citing *Acosta*). “[W]hatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.” *Acosta*, 19 I&N Dec. at 233-34.

The validity of a proposed “particular social group” may be measured by internal and external criteria. *See Benitez-Ramos v. Holder*, 589 F.3d 426, 430-31 (7th Cir. 2009) (describing the “external criterion”). In other words, there are two distinct perspectives from which a social group may be evaluated.⁴ *See Castellano-Chacon v. INS*, 341 F.3d 533, 546-549 (6th Cir. 2003). The first, or “internal” criterion, depends on whether the

⁴ *See* UNHCR, GUIDELINES ON INTERNATIONAL PROTECTION: “MEMBERSHIP OF A PARTICULAR SOCIAL GROUP” WITHIN THE CONTEXT OF ARTICLE 1A(2) OF THE 1951 CONVENTION AND/OR ITS 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES ¶ 6-9 (7 May 2002), <http://www.unhcr.org/3d58de2da.pdf> (defining the immutable characteristic approach and the social perception approach).

members share an immutable or fundamental characteristic. *See, e.g., Acosta*, 19 I&N Dec. at 233-34. In contrast, the “external” criterion depends on whether other members of the alien’s society would recognize the members as part of a distinct group. *See, e.g., Benitez-Ramos*, 589 F.3d at 430. The external criterion does not require that *all members of society* view the group as distinct, but at least the group’s persecutors must. *Id.*

In this case, the respondent claims that the harm she suffered in the past was on account of her membership in the social group of “young Congolese women who have participated in prostitution.” The Government argued at the respondent’s individual hearing that the respondent’s social group must fail because it is circular: that is, in its view, the respondent is claiming that she was trafficked—her claimed form of persecution—for having been trafficked. This argument misunderstands the nature of the respondent’s claim: the respondent claims that she was trafficked because she was a young woman in the DRC who worked as a prostitute.

Thus, the respondent’s social group is based on her age, her gender, and her past experience of having worked as a prostitute: all of these are immutable characteristics within the *Acosta* definition. *See Matter of Kasinga*, 21 I&N Dec. 357, 366 (recognizing age and gender as immutable characteristics). The Seventh Circuit Court of Appeals has recognized particular social groups based on shared past circumstances in many different circumstances. *See Benitez-Ramos*, 589 F.3d 426 (former gang members); *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009) (former members of the Mungiki sect); *Sepulveda v. Gonzales*, 464 F.3d 770 (7th Cir. 2006) (former prosecutors). As in *Sepulveda*, the respondent’s claimed social group is defined in large part by her former profession, and it is logical that former members of the same profession (particularly when the profession is as stigmatized and fulfills as particular a function as prostitution) would be perceived as a distinct group by members of any society. The Court therefore concludes that the respondent’s social group is a particular social group within the meaning of the Act.

In order for an applicant for asylum to show that he has been targeted on account of a protected, the applicant’s claimed ground must be “one central reason” that he is harmed. INA § 208(b)(1)(B)(i); *Matter of N-M-*, 25 I&N Dec. 526 (BIA 2011); *Matter of C-T-L-*, 25 I&N Dec. 341, 350 (BIA 2010). However, that status need not be the only motive behind persecution. *See Gjerazi v. Gonzales*, 435 F.3d 800, 812-13 (7th Cir. 2006) (describing the “mixed motives doctrine”). An applicant may show a persecutor’s motives through direct or circumstantial evidence. *Elias-Zacarias*, 502 U.S. at 483. Such evidence may include statements by persecutors, or treatment of others in the population who are in a similar situation. *See Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996). “[I]n certain cases, the factual circumstances alone may constitute sufficient circumstantial evidence of a persecutor’s motives.” *Martinez-Buendia v. Holder*, 616 F.3d 711 (7th Cir. 2010) (internal citations omitted).

Here, the respondent has demonstrated through her testimony that her status as a young woman who had worked as a prostitute was at least one central reason why she was targeted for trafficking. Mr. █████ first encountered the respondent while she was working as a prostitute as her client, and he learned that she was extremely poor, had no

family, had been unable to find employment, and dreamed of a better life. He used this information to exploit and manipulate her, first employing her as a prostitute himself in the DRC, and then deceiving her into accompanying him to the Central African Republic and then to Europe, rendering her a victim of trafficking. Thus, the respondent has met her burden to show a nexus between her claimed harm and her claimed social group.

c. The respondent has demonstrated that the government of the DRC was unwilling or unable to protect her from the harm she suffered.

The persecution contemplated by the Act may be perpetrated by non-governmental actors as well as by governments. *See Matter of McMullen*, 19 I&N Dec. 90 (BIA 1984), *aff'd*, *McMullen v. INS*, 788 F.2d 591 (9th Cir. 1986). Where an alleged persecutor is a non-state governmental actor, a respondent bears the burden of showing that the government of the country of removal is either unable or unwilling to protect him. 8 C.F.R. § 1208.13(b)(3). The Seventh Circuit has held that “[p]ersecution is something a *government* does, either directly or by abetting (and thus becoming responsible for) private discrimination by throwing in its lot with the deeds or by providing protection so ineffectual that it becomes a sensible inference that the government sponsors the misconduct.” *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005). The government must either “condone[]” the harm or “at least demonstrate[] a complete helplessness to protect the victims.” *Galina v. INS*, 213 F.3d 955, 958 (7th Cir. 2000).

The country conditions evidence in the record and the testimony of the respondent’s expert witness, Dr. Weiss, strongly indicate that government of the DRC is generally unwilling or unable to control sex traffickers. Generally, the DRC weak state with an extremely poor human rights record; corruption is rampant, and the rule of law in many areas. *See* Exh. 3, Tab B at 44-46. With regard to sex trafficking in particular, the State Department recently designated the DRC a “Tier 3” trafficking country, meaning that its government does not comply with minimum standards and is not making significant efforts to do so. *See* Exh. 3, Tab G at 198. The State Department’s report describes trafficking as a serious problem in the DRC and notes that the government “lack[s] sufficient financial, technical, and human resources to effectively address trafficking crimes.” *Id.* at 222. On this evidence, the Court must find that the DRC was unwilling or unable to protect the respondent from being trafficked in the past.

As such, the Court concludes that the respondent was persecuted in the past on account of her membership in a particular social group.

2. The presumption that the respondent’s life or freedom will be threatened if she is returned to the DRC has not been rebutted.

The presumption that an alien may be rebutted if the Government establishes by a preponderance of the evidence that either: (1) there has been a fundamental change in circumstances in the country of removal, such that the applicant no longer has a well-founded fear of persecution on account of one of the enumerated grounds; or (2) the

applicant could avoid future persecution by relocating to another part of the country and under the circumstances, it would be reasonable to expect the applicant to do so. 8 C.F.R. § 1208.13(b)(1)(i)-(ii). In cases in which the persecutor is a government or is government-sponsored, it shall be presumed that internal relocation would not be reasonable, unless the Government establishes by a preponderance of the evidence that under all the circumstances, it would be reasonable for the applicant to relocate. 8 C.F.R. § 1208.13(b)(3)(ii).

The Government has presented no evidence suggesting either that there has been a fundamental change in circumstances in the DRC or that the respondent could reasonably relocate to another part of the country. Indeed, as explained at Part III.B.1.c *supra*, the evidence in the record indicates that sex trafficking remains a very serious problem in the DRC and that the Congolese government is completely ineffective in investigating and prosecuting it. The same evidence also indicates that conditions are equally bad or worse throughout the country. Moreover, in the Court's view, it would not be reasonable to expect a respondent with no family or connections in other parts of the DRC to relocate under the circumstances.

As the Government has not rebutted the presumption that the respondent's life or freedom would be threatened if she returned to the DRC on the same basis on which he was persecuted in the past, the Court concludes that she has established a well-founded fear of future persecution.

3. Even if the presumption had been rebutted, the Court would find the respondent eligible for asylum because she would suffer "other serious harm" if she were returned to the DRC.

Under the regulations, even if the Government is able to rebut the presumption of a well-founded fear of persecution, the Court may grant asylum to an applicant who has demonstrated that she has suffered past persecution and has provided (1) compelling reasons for being unable or unwilling to return to the country arising out of the severity of the past persecution; or (2) a reasonable possibility that she may suffer "other serious harm" upon removal. 8 C.F.R. §§ 208.13(b)(1)(iii)(A)-(B). The "other serious harm" need not be on account of a protected ground, and the Seventh Circuit has determined that lack of access to mental health care for an individual with mental problems and few financial resources could constitute "other serious harm" within the meaning of the regulation. *See Kholyavskiy v. Mukasey*, 540 F.3d 555, 577 (7th Cir. 2008).

Here, the respondent has been diagnosed with Depressive Disorder-Not Otherwise Specified and Anxiety Disorder-Not Otherwise Specified. *See* Exh. 3, Tab P at 325. A psychiatrist who performed an evaluation in preparation for her hearing before the Court determined that it would be "highly detrimental" for her to return to the DRC because she has no family members who could provide her with emotional or financial support and returning her to the DRC would force her to relive her traumatic experiences, which would be very damaging, especially if she were not able to obtain mental health care. *Id.* at 326. Given the nature of the respondent's past persecution and her particularly

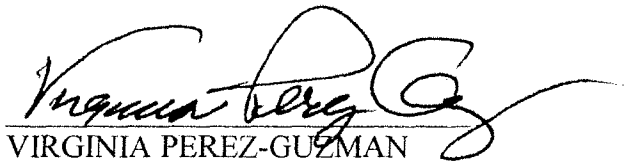
vulnerable position as a young woman with no familial connections and limited income, the Court finds it very likely that she would suffer serious harm if removed to the DRC. Thus, given that she has been persecuted in the past, the Court would conclude that she is eligible for “humanitarian” asylum even if the Government had been able to rebut the presumption that she will be persecuted in the future.

IV. CONCLUSION

The Court finds that the respondent’s testimony is credible and that she satisfied her burden of proof to show that she was persecuted in the past on account of the protected grounds, thus creating a presumption of future persecution on the same grounds. The Court further finds that the presumption has not been rebutted and that the respondent would be eligible for asylum even if it had been. Thus, the Court concludes that the respondent has established eligibility for asylum under INA § 208. Accordingly, the following order will be entered:

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that the respondent’s application for asylum be GRANTED.⁵


VIRGINIA PEREZ-GUZMAN
IMMIGRATION JUDGE

⁵ As the respondent has been granted asylum, the Court need not address the alternative theories under which she claims she may be eligible for asylum or her alternative application for withholding of removal under INA § 241(b)(3), which carries a higher burden of proof.