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

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: (b) (6)

Date: JAN 30 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Martin Resendez Guajardo, Esquire

ON BEHALF OF DHS: W. Manning Evans, Assistant Chief Counsel

ORDER:

PER CURIAM. This case comes before this Board pursuant to a motion to remand the record from the United States Court of Appeals for the (b) (6) The Court asks this Board to issue a decision on the merits of the respondent's appeal from an Immigration Judge's decision dated August 1, 2000. The appeal is sustained and the record is remanded to the Immigration Judge for further proceedings and the entry of a new decision.

In a decision dated August 1, 2000, an Immigration Judge determined that the respondent was subject to removal as charged. The Immigration Judge denied the respondent's applications for asylum, withholding of removal, and protection from removal under the Convention Against Torture. The respondent, through counsel, appealed the Immigration Judge's decision to this Board. In a decision dated March 18, 2002, this Board summarily dismissed the respondent's appeal because the respondent had failed to submit a brief after indicating that a brief would be forthcoming. The respondent subsequently filed a motion to reopen that was denied by this Board on June 23, 2003, as untimely filed. Pursuant to a remand from the United States Court of Appeals for the (b) (6) (b) (6) this Board reopened proceedings based on a claim of ineffective assistance of counsel. Accordingly, the merits of the respondent's appeal are now before this Board for the first time.

The respondent argues on appeal that the Immigration Judge's adverse credibility finding was faulty. The respondent further contends that the Immigration Judge applied an incorrect legal standard in denying his application for protection from removal under the Convention Against Torture.

The respondent's claim is based on his membership in the Sikh group Akali Dal Mann and mistreatment he suffered on account of his membership in that group while in police detention. The Immigration Judge determined that the respondent's testimony was not credible because the respondent did not answer questions responsively regarding the number and dates of Akali Dal Mann rallies he attended (I.J. at 4,6), failed to explain inconsistences when confronted (I.J. at 4), provided

testimony that was internally inconsistent, (I.J. at 5), and failed to support his testimony with sufficiently detailed corroboration (I.J. at 5, 7). Courts have held that and adverse credibility determination is sufficient where at least one ground is supported by substantial evidence. *See, e.g., Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004). Accordingly, we review each basis of the Immigration Judge's adverse credibility determination.

The Immigration Judge held that the respondent did not answer questions responsively. I.J. at 4-6. For example, when asked about the Akali Dal Mann rallies he attended that resulted in the claimed persecution, the respondent gave different dates at different times during his testimony. Tr. at 14-15, 34-35. Rather than being unresponsive, the record indicates that the respondent had difficulty distinguishing between questions regarding large rallies and small rallies. This appears to have been a result, in part, because his responses were too lengthy for the interpreter to accurately translate. *See* transcript at 13, 15, 23, 41-42, 47. The respondent's inability to distinguish between large and small rallies also appears to have led the Immigration Judge to find that the respondent provided inconsistent testimony regarding the dates rallies took place. However, we find that the respondent's testimony, when looked at as whole regarding rallies he attended, does not appear unresponsive or inconsistent. Tr. at 14, 16, 34-35. *See* (b) (6) *v. Ashcroft* (b) (6) (b) (6) (only specified instances of evasive or unresponsive answers, if identified, may support an adverse credibility finding).

The Immigration Judge also noted the absence of detailed corroboratory evidence to support his claim in finding the respondent's claim incredible. I.J. at 5, 7. Although the respondent testified that newspaper accounts existed of an attack by militants in Rajana and other events that he participated in, he did not produce such readily available evidence. Tr. at 35. Instead the affidavits submitted provide only general information regarding the respondent's involvement in the Akali Dal Mann. *See* Resp's evidence numbered 000218-000235. While the evidence submitted by the respondent does not contain extensive detail, the evidence does support the basic facts as represented by the respondent, namely his membership in the Akali Dal Mann and his attendance at rallies. Because we have found that the respondent's testimony regarding his attendance at rallies sufficiently responsive and consistent, we do not find the lack of extensive detail in the respondent's corroborative evidence supports the Immigration Judge's conclusion that the respondent's testimony lacked credibility. *See Shah v. INS*, 220 F.3d 1062, 1070 (9th Cir. 2000), *quoting Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999) ("The fact that an applicant's evidence is not as complete as might be desired cannot, without more, properly serve as a basis for a finding of lack of credibility.").

The Immigration Judge indicated that the respondent's testimony was internally inconsistent, particularly regarding certain incidents of his claim relating to the respondent's claimed mistreatment while detained by police. I.J. at 6. The respondent testified that he was beaten with rifle butts and hung upside down by a rope. Tr. at 45. The Immigration Judge noted that the respondent's description of this incident differed from his written declaration where he indicated that he was hung right-side up from a rope. *See* Resp's written addendum to I-589. The Immigration Judge further noted that the respondent said that he was detained seven days, which differed from the six day detention he indicated in his written statement. Tr. at 36-37. We note that the respondent's testimony regarding the position he was hung is not inconsistent with his written declaration, where he

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(b) (6)

indicated that he was hung from a rope in both positions. As to the apparent discrepancy in respondent's testimony regarding the length of his detention, we find that the distinction of six or seven days is too minor to support an adverse credibility determination. *See* (b) (6) *v. Gonzales*, (b) (6) (b) (6) (discrepancies and inconsistencies that do not relate to the basis of the alien's alleged fear of persecution, go to the heart of the asylum claim, or reveal anything about the alien's fear for his safety do not support an adverse credibility finding).

In sum, we find that the Immigration Judge's adverse credibility determination is clearly erroneous. Although the Immigration Judge noted that "even if the respondent's testimony were to be accepted as true, . . . he has failed to demonstrate adequate nexus to a protected political opinion or religious belief," the Immigration Judge failed to provide any analysis to support this conclusion. Accordingly, the record is ordered remanded to the Immigration Judge for further proceedings and the entry of a new decision.

FOR THE BOARD

Board Member Jeffrey L. Romig respectfully dissents without separate opinion.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[redacted]

In re the Matter of [redacted] Respondent	)	Date: May 12, 2008 File Number: [redacted] In Removal Proceedings

Charge: Section 237(a)(1)(A) of the Immigration and Nationality Act - inadmissible at time of entry.

Section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act- not in possession of a valid visa or other valid entry document

Applications: Asylum, Withholding of Removal, Protection Under the Convention Against Torture

On Behalf of Respondent:
Pro se[1]

On Behalf of the DHS/ICE:
Joseph Q. Lynch, Esq.
Office of the Chief Counsel
120 Montgomery Street, Suite 200
San Francisco, CA 94104

DECISION OF THE IMMIGRATION JUDGE

This Court hereby incorporates by reference as if fully set forth here the procedural history of the Immigration Judge's oral decision dated August 1, 2000 and adds the following:

[1] Respondent's former attorney, Martin Guajardo, was suspended by the Board of Immigration Appeals on March 5, 2008. This decision will be served on Respondent with a copy sent to Mr. Guajardo.

[redacted]

I. Procedural History

On August 1, 2000, this Court denied the application for asylum, withholding of removal, and protection under the Convention Against Torture ("CAT") filed by Respondent, (b) (6) (b) (6) This Court found that Respondent's testimony was not internally consistent and that the corroborating documentation he presented failed to specifically address aspects of his claim. This Court also held that even if Respondent's testimony were to be accepted as true, he failed to demonstrate an adequate nexus to a protected political opinion or religious affiliation or belief, and that he failed to demonstrate past persecution. For these reasons, this Court held that Respondent failed to demonstrate the statutory eligibility for asylum and to meet the higher standard required for restriction of removal under INA § 241(b)(3) and under the Convention Against Torture.

On March 18, 2002, the Board of Immigration Appeals ("BIA") dismissed Respondent's appeal because Respondent failed to submit a brief in support of his appeal, did not explain his failure to submit the brief, and failed to identify allegations of error. Respondent, through new counsel, subsequently filed motions to reconsider and reopen proceedings and to stay removal. On June 23, 2003, the BIA denied Respondent's motion to reconsider and reopen proceedings and motion to stay removal because they were filed out of time.

On (b) (6) the (b) (6) remanded to the BIA for a determination of whether the deadlines for Respondent's appeal were subject to equitable tolling in light of the ineffective assistance allegedly provided by Respondent's former counsel.

On May 8, 2006, the BIA concluded that Respondent was provided ineffective assistance of counsel and held that Respondent's motion to reopen was therefore not untimely. Therefore, the BIA reopened proceedings, vacated its March 18, 2002 and June 23, 2003 decisions, and reopened removal proceedings.

On January 30, 2007, the BIA issued a decision on the merits of Respondent's appeal of this Court's decision issued on August 1, 2000. The BIA found that this Court's adverse credibility determination was clearly erroneous and remanded to this Court for further proceedings and an entry of a new decision.

II. Statement of the Law

An applicant for asylum must demonstrate he is unwilling to return to his homeland because of past persecution or a well-founded fear of future persecution, by the government or a group that the government cannot control, based on the above enumerated grounds. Section 208 of the INA.[2] The Supreme Court has held that this requires an applicant to demonstrate an actual

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[2] This Court notes that Respondent filed his application for asylum, withholding of removal, and protection under CAT on September 30, 1999, before the effective date of the REAL ID Act of 2005,

and genuinely held subjective fear of persecution and further show that this fear is objectively reasonable, i.e. well-founded. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987).

Past persecution alone is sufficient to meet the refugee definition applicable to asylum cases. *Desir v. Ilchert*, 840 F.2d 723 (9th Cir. 1988). If past persecution is established, a rebuttable presumption of a well-founded fear arises under 8 CFR §208.13(b)(1) and the burden shifts to the government to demonstrate that there has been a fundamental change in circumstances such that the applicant no longer has a well founded fear. *Tawadrus v. Ashcroft*, 364 F. 3d 1099 (9th Cir. 2004). The government may rebut the presumption of a well-founded fear of future persecution by showing by a preponderance of the evidence, which must be particularized and individualized to the case at hand, that changed conditions in the home country will affect the specific applicant's situation in such a way as to negate the well-founded nature of the fear. *Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004).

Persecution as an extreme concept, marked by the infliction of suffering or harm . . . in a way regarded as offensive." *Li v. Ashcroft*, 356 F.3d 1153, 1158 (9th Cir. 2004) (en banc). Persecution covers a range of acts and harms, and the determination that any particular action or actions rise to the level of persecution is extremely fact-dependent. *Cordon-Garcia v. INS*, 204 F.3d 985, 991 (9th Cir. 2000). Not every act of discrimination or harassment rises to the level of persecution, as persecution is "an extreme concept that does not include every sort of treatment that our society regards as offensive." *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998). However, the cumulative effect of individual actions which standing alone may not be considered persecution can amount to persecution over a period of time. *See* (b) (6) *v. INS*, (b) (6) (b) (6) Physical violence has consistently been held to support a finding of past persecution. *See Chand v. INS*, 222 F.3d 1066, 1073-74 (9th Cir. 2000). The suffering or harm need not be physical, as imposition of substantial economic hardship can fall within the ambit of persecution. *See Kovac v. INS*, 407 F.2d 102,107 (9th Cir. 1969). Persecution also encompasses any serious human rights violation, including that which is not life-threatening. *See Desir v. Ilchert*, 840 F.2d 723 (9th Cir. 1988). Serious deprivation of liberty can also qualify as persecution. *See Arteaga v. INS*, 836 F.2d 1227, 1231 (9th Cir. 1988).

In addition, the statute requires that such harm be on account of one of the specific grounds enumerated in the Act, therefore a nexus to a protected ground must be shown by either direct or circumstantial evidence. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

The burden of proof to establish eligibility rests on the applicant. An applicant's own testimony, without corroborative evidence, may be sufficient to prove a well-founded fear of persecution where that testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis for the fear. *Matter of Mogharrabi*, 19 I&N Dec. 439

Pub. L. No. 109-113, 119 Stat. 231, and that therefore the statutory standards established therein are not applicable to his case. *See Matter of S-B-*, 24 I&N Dec. 42, 45 (BIA 2006) (finding that the REAL ID Act only applies to asylum applications filed after May 11, 2005).

(BIA 1987). The Court may properly consider the totality of the circumstances, including demeanor, candor, responsiveness, plausibility and consistency of the statements both internally, with prior statements and with general country conditions documentation, in order to arrive at a determination of credibility. INA § 208(b)(1)(B)(iii).

Finally, even if statutorily eligible for relief, an asylum applicant must demonstrate that he merits the favorable exercise of discretion.

In order to qualify for restriction on removal to a particular country, an applicant must demonstrate that his/her life or freedom would be threatened there on account of his/her race, religion, nationality, membership in a particular social group or political opinion. Section 241(b)(3)(A) of the INA. The Supreme Court has required that an applicant meet the clear probability standard, i.e. to show that persecution is more likely than not to occur. *INS v. Stevic*, 467 U.S. 407 (1984).

Relief under the Convention Against Torture must be granted if an alien demonstrates that he is more likely than not to be tortured in the country of removal "by or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. *See* 8 CFR § 208.16(c)(2) and 8 CFR § 208.18(a)(1).

III. Credibility

In its January 30, 2007 decision, the BIA determined that this Court's adverse credibility determination was erroneous because it failed to provide sufficient analysis supporting its determination. On review, this Court does not find any additional basis upon which to hold Respondent's testimony incredible. Accordingly, this Court will abide by the BIA ruling and treat Respondent's testimony as credible, true and correct, and thus will afford it full evidentiary weight.

IV. Findings of Fact

Based on his credible testimony, the following are this Courts findings of fact:

Respondent was a resident of village Kartarpur, in the state of Punjab, India. He is a member of the Akali Dal Mann, a Sikh political party. Respondent's father has also been a member of the Akali Dal Mann since Respondent was a child, and he has been arrested many times for his political alliance and activities. Respondent's father is well known in Respondent's community and is highly respected by Sikhs.

On December 25, 1995, some hoodlums set fire to the Sikh religious book causing Sikh militants to retaliate by firing indiscriminately on Hindus. *See* Tr. at 17. After the incident, the militants went to Respondent's home and stole his jeep at gunpoint. *See* Exhibit 2. After an hour, the police raided Respondent's home and arrested him. *Id.* They alleged that Respondent

was a Sikh militant. *Id.* At the police station, Respondent was badly beaten, tortured, and interrogated about his supposed involvement with Sikh militants. *See* Tr. at 19. The police interrogated Respondent about his involvement in the incident and demanded the names and addresses of other militants involved. *See* Exhibit 2. They alleged that Respondent was "Khalistani" and that he should admit that he was one of the militants involved in the shooting. *See* Tr. at 19. He was beaten with leather belts, sticks and a wooden roller that the police rolled over his legs. *Id.* The police did not file any charges against Respondent, but he was detained for six days until his father paid a bribe for his release. *Id.*

In August 26, 1996, the police were seeking to apprehend (b) (6) a famous local Sikh militant and area commander of the Khalistan Commando Force. *See* Tr. at 20. The police arrested Respondent in order to obtain information about the Sikh leader. During his detention, Respondent was beaten and tortured. *See* Exhibit 2. The police also asked Respondent to work for them in order to provide the information about (b) (6) *Id.* Respondent refused. *Id.* As a result, he was hanged upside down and a wooden roller was rolled on his thighs. *Id.* The police threatened Respondent that he would be killed in a fake police encounter if he disobeyed their orders and did not help them in arresting (b) (6) *Id.* Under this coercion, Respondent agreed to work for the police. He was given a wireless set to inform the police of any information, and after three days detention, he was released. *See* Tr. at 21. After his release, Respondent moved to another village, Rajasthan, with his uncle because he feared that the police would arrest him for his unwillingness to help them arrest (b) (6) and he feared retaliation from (b) (6) and his family. *Id.* at 22. One year later, on November 19, 1997, when Respondent learned that (b) (6) had been killed, he returned back to his native village. *Id.*

On January 26, 1998, the Sikhs of Respondent's village held a meeting at their local Sikh temple, celebrating a "black day." *See* Tr. at 22. This date is the day the Indian constitution was adopted, however in protest Sikhs have declared it a "black day" because they consider themselves not a protected people. *Id.* At the gathering, local leaders gathered and spoke in favor of Khalistan. Respondent spoke about his mistreatment while in police custody. *See* Exhibit 2. He demanded the creation of Khalistan, and voiced his opinion that their religion was in danger. *See* Tr. at 23. Respondent claimed that the Indian government was not affording Sikhs their religious, political and social rights and that Khalistan was the only solution. *See* Tr. at 23. People raised pro-Khalistan, anti-government, and anti-police slogans at the rally. *See* Exhibit 2.

The day after the gathering, the police raided Respondent's home and arrested him. *Id.* They accused him of being involved in anti-national and anti-government activities, and they questioned Respondent about his absence from his village. *Id.* The police alleged that Respondent had traveled to Pakistan for training in militant activities. *Id.* As a result, Respondent was beaten with rifle butts, sticks, and leather belts. *Id.* His hands were tied with a rope that hung from the ceiling. *Id.* The rope was pulled and while Respondent stood on his toes, a police officer used a stick to beat his ankles, legs, and back. *Id.* Respondent was detained for seven days until his father paid a bribe for his release. *Id.*

After these incidents, on May 13, 1998, Respondent attempted to escape India but was arrested during his attempt to travel on another's passport. *Id.* Respondent was arrested at the Gandhi International Airport in Delhi, detained for six days, and forced to pay a fine for his release. *Id.* Upon his release, Respondent went into hiding until he obtained a tourist visa to enter the United States. *Id.* He entered the United States on August 16, 1999. *Id.*

V. Additional Evidence

On remand, the parties chose to submit the matter without providing additional testimony regarding any change in Respondent's situation since his last hearing on August 1, 2000. At a master hearing on January 29, 2008, the parties submitted additional documentary evidence. In addition to Respondent's testimony, this Court will consider the DHS's post-remand submissions of background documentation (Exhibits D, G, and H); and Respondent's supplemental evidence (Exhibits E and F). The following summarizes the relevant documentary evidence submitted by the parties concerning current country conditions in India and the potential for internal relocation.

The 2006 State Department Report for India states that corruption in the police force was pervasive and acknowledged by many government officials. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't of State, *India Country Reports on Human Rights Practices - 2006* (March 2007) (Exhibit G). While the Indian government generally respected the rights of its citizens, major problems persisted including extrajudicial killings of persons in custody and torture by police and security forces. *Id.* Police in India enjoy impunity for most human rights abuses. *Id.* Corruption was deemed endemic in the government and police forces, and the government made little attempt to combat the problem. *Id.* Thousands of disappearances were reported from the Punjab. *Id.*

> Because many alleged torture victims died in custody, and other victims were afraid to speak out, there were few firsthand accounts. Marks of torture, however, were often found on the bodies of deceased detainees. The prevalence of torture by police in detention facilities throughout the country was reflected in the number of deaths in police custody. Police and jailers typically assaulted new prisoners or threatened violence in exchange for money, favors, and personal articles.

Id. (internal reference omitted). Though the Indian government reported only 139 deaths in police custody, the National Human Rights Commission confirmed 1,730 deaths during the same time period. *Id.* The police force was widely corrupted and police officers were not held accountable for their illegal actions. *See id.* Police often failed to file arrest reports and regularly held people in jail for extended periods of time prior to filing charges. *See id.*

According to Amnesty International ("AI"), Punjab police continue to commit torture, "although they are less frequent than during the period of violent opposition." Amnesty Int'l, *India: Break the Cycle of Impunity and Torture in Punjab* (2003). Torture generally occurs in

the context of criminal investigations and following unlawful and arbitrary arrests. With respect to arbitrary arrests, the report cited the cases of two men who were arrested and allegedly detained illegally and tortured in 1995 and 1999. *See id.* The report also discusses how the poor, members of *dalit* communities (formerly known as "untouchables"), women, and human rights activists are targets of torture. *See id.*

Human Rights Watch reports that often when criminal suspects are detained at police stations for investigations, there is minimal oversight. Human Rights Watch, *India: Don't Torture Sikh Activist Extradited by U.S.* (June 20, 2006). Indian security forces have a long history of mistreating criminal suspects and detainees by torturing and beating them, but they also use such methods against politically active Sikhs without facing punishment. *Id.*

A 2000 Danish Immigration Service Fact Finding Mission reported that there were no security problems in Punjab and that human rights abuses are individualized and had specific reasons. UK Home Office, *India Country Report* (Feb. 2007) (Exhibit H). In general, Sikhs were not subjected to torture or persecuted because they were Sikhs. *See id.* In addition, it is reported that the Punjab police may be serious about pursuing Sikhs anywhere in India whom they view as hard-core militants, but in practice, few militants are likely to be targeted. *Id.* According to the report, Punjabi Sikhs are able to relocate to another part of India and Sikhs are able to practice their religion without restriction in every state of India. *Id.* Sikhs from Punjab are able to move freely within India and internal relocation to escape the attentions of police would not be unduly harsh. *Id.* Therefore, where there is fear of local police and the individual is not of interest to the central authorities, internal relocation is feasible. *Id.*

VI. Analysis

On remand, this Court must determine whether Respondent suffered from past persecution. A showing of past persecution gives rise to a rebuttable presumption of a well-founded fear. 8 C.F.R. § 1208.13(b)(1).

A. Past Persecution

Physical harm "has consistently been treated as persecution." *Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000). Respondent was unlawfully arrested three times, in December 1995, August 1996, and January 1998. While in custody for each arrest, he was subjected to torture and beatings at the hands of the Punjab police.

However, the past persecution must also be "on account of" one or more of the five grounds enumerated in the statute: race, religion, nationality, membership in a particular social group, or political opinion. *See INS v. Elias-Zacarias*, 502 U.S. 478, 481-82 (1992). Respondent claims that he was persecuted on account of his political opinion. Proving the actual, exact reason for persecution or feared persecution may be impossible in many cases; hence, an asylum applicant must only establish facts on which a reasonable person would fear that the danger

"arises on account of one of the protected grounds." *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1998). Statements made by the persecutor to the victim, or the victim to the persecutor, may be considered direct proof of motivation. *See, e.g., Gonzales-Neyra v. INS*, 122 F.3d 1293, 1295-96 (9th Cir. 1997).

1. Respondent's First and Second Detentions by Punjab Police

The circumstances surrounding Respondent's first and second arrests involved the Punjab police suspecting that Respondent was a Sikh militant. The police first detained Respondent in 1995 believing that he took part in the indiscriminate shootings by Sikh militants who had subsequently gone to Respondent's home. During his first detention, Respondent was beaten with belts, wooden sticks, and a wooden roller was rolled over his thighs.

One year later, the police arrested and detained Respondent because they suspected that he could obtain information about (b) (6) an area commander for the Khalistani Commando Force. The police tortured and beat Respondent in an effort to force him to cooperate in their effort to apprehend the Sikh militant commander. During the second arrest, Respondent was hung upside down and beaten and a wooden roller was rolled over his legs.

The (b) (6) has held that "if there is no evidence of a legitimate prosecutorial purpose for a government's harassment of a person. . . there arises a presumption that the motive for the harassment is political." *Ratnam v. INS*, 154 F.3d 990, 995 (9th Cir. 1995) (quoting (b) (6) *v. Ilchert*, (b) (6) (ellipsis in original); *Hernandez-Ortiz*, 777 F.2d at 516. However, the (b) (6) emphasized in *Dinu v. Ashcroft*, 372 F.3d 1041, 1044 (9th Cir. 2004), that this presumption only arises where there appears to be no other logical reason for the persecution at issue. So long as the police are engaging in an investigation directed at the legitimate goal of finding evidence of a crime, even if "heavy-handed" tactics, such as beatings, are employed, the presumption will not arise. *Id.* The (b) (6) reasoned that legitimate criminal investigations may be protracted, and therefore the length of time an investigation is ongoing is a factor that may be taken into account, but does not alone raise a presumption of political persecution. *Id.*

In *Dinu*, the petitioner was beaten in the course of a criminal investigation into whether he had shot at civilians during a demonstration. *Id.* at 1044-45. This Court similarly finds that Respondent was mistreated by the police on these occasions in the course of a legitimate criminal investigation into militants who committed terrorist acts in the area. Accordingly, he does not benefit from the presumption that the police harassment was political.

Furthermore, because no direct or circumstantial evidence on the record suggests that the police detained him or mistreated him on account of his political opinion or religion, this Court concludes that Respondent has not met his burden of proving his persecutor's motive in his first and second detentions by the Punjab police.

2. Respondent's Third Detention by Punjab Police

In 1998, the Punjab police arrested Respondent the day after an Akali Dal Mann rally at which Respondent voiced his strong opinions against his treatment by the Punjab police and his opinions in favor of the creation of Khalistan. Respondent is an active member of the Akali Dal Mann. He attended rallies, collected funds for the group, and generated propaganda in favor of Khalistan. Respondent's father is a well-known member of the Akali Dal Mann, he has been arrested for his political affiliations, and is respected in his community.

While in detention, the police accused Respondent of going to Pakistan to train to be a militant during his one year absence. It is possible that the Punjab police had mixed motives in persecuting Respondent for political reasons as well as for their belief that he was a Sikh militant or was associated with Sikh militants. The (b) (6) has recognized that it is usually difficult to conclusively prove motive, and that persecutors often have more than one motive for their abuses. *See Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1075 (9th Cir. 2004). Both the (b) (6) (b) (6) and the BIA have stated that an applicant is not obliged to show the exact motivation for the persecutor's actions so long as he produces evidence "from which it is reasonable to believe that the harm was motivated in part by an actual or imputed protected ground." *Matter of S-P-*, 21 I&N Dec. 486, 486 (BIA 1996); *Navas v. INS*, 217 F.3d 646, 656 (2000) ("[T]he protected ground need only constitute a motive for the persecution in question; it need not be the sole motive.").

Here the police arrested Respondent the next day after he spoke out at an Akali Dal Mann rally at which he demanded the creation of Khalistan and denounced his treatment by the Punjab police. Therefore, Respondent has shown by circumstantial evidence that there is reason to believe the police persecuted him based at least in part as a known member of the Akali Dal Mann who held an opposition political opinion which they sought to overcome. During his third arrest, Respondent's was beaten with rifle butts, sticks, leather belts, and hands were tied with rope and he was hung while the police beat him. This Court finds that the beatings Respondent suffered by the police clearly rise to the level of persecution.

3. Persecution Committed by the Government

Respondent has shown that he was persecuted by the government, as the Punjab police were the perpetrators of his torture and abuse. Accordingly, this Court finds that Respondent has established *prima facie* eligibility for asylum based on past persecution by the Indian government.

B. Fundamental Change in Circumstances

In cases where an applicant has demonstrated past persecution, the DHS bears the burden of establishing by a preponderance of the evidence that "[t]here has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution in the

applicant's country of nationality . . . on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.13(b)(1)(A)-(B). To meet this burden, the DHS is "obligated to introduce evidence that, on an individualized basis, rebuts a particular applicant's specific grounds for his well-founded fear of future persecution." *Popovav. INS*, 273 F.3d 1251, 1259 (9th Cir. 2001) (internal quotation marks omitted). Generalized information from a State Department report on country conditions is not sufficient to rebut the presumption of future persecution. *See Molina-Estrada v. INS*, 293 F.3d 1089, 1096 (9th Cir. 2002). Instead, the Court is required to conduct an individualized analysis of how changed conditions will affect the specific petitioner's situation. *See Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1074 (9th Cir. 2004).

Though conditions have improved for Sikhs or persons who are politically involved in India since the time Respondent was persecuted, persons targeted by police in the past might still be at risk. The country conditions evidence shows that there are ongoing problems with police brutality, arbitrary arrests, and detentions. Police maintain lists of wanted persons and share them throughout the country. The lists generally name high-profile criminals or wanted persons, but also include persons to be "rounded up whenever something . . . happens." This suggests that police have also been known to add to their list persons who they seek to pursue even without legitimate law enforcement objectives.

The most recent country condition evidence submitted provides no evidence that there are significant fundamental changes in India since the date of Respondent's last arrest in 1998. Based on Respondent's past persecution by the Punjab police during an unlawful arrest after an Akali Dal Mann rally, and in light of the documentary evidence, this Court finds that the DHS has not met its burden of establishing by a preponderance of the evidence that there has been a fundamental change in country conditions such that Respondent no longer has a well-founded fear of persecution or would not be persecuted upon his return to India.

C. Internal Relocation

An application for asylum shall be denied in the exercise of discretion if it is found by a preponderance of the evidence that, after a finding of past persecution, an alien could relocate to another part of his country and, under all the circumstances, it would be reasonable to expect the applicant to do so. *See* 8 C.F.R. § 1208.13(b)(1)(i)(B). Therefore an alien does not have a well-founded fear of future persecution if he could reasonably relocate to another part of his country. *See id.* In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the DHS establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate. *See* 8 C.F.R. § 1208.13(b)(3)(ii). "The reasonableness of internal relocation is determined by considering whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife; administrative, economic, or judicial constraints, such as age, gender, health,

and social and family ties." *Knezevic v. Ashcroft*, 367 F.3d 1206, 1214-15 (9th Cir. 2004) (citing 8 C.F.R. § 1208.13(b)(3)).

Although low-level political involvement usually does not put a person at risk, police are willing and able to track wanted persons throughout India. Once in police custody, country conditions show that a detainee is likely to face torture or death. In the present case, Respondent has sufficiently shown that he has suffered past persecution. Respondent was an active and publicly vocal member of the Akali Dal Mann. One day after speaking at an Akali Dal Mann rally, Respondent was unlawfully arrested, beaten and tortured by the Punjab police. He has clearly suffered past persecution by the Indian government.

Moreover, the Punjab police also arrested and tortured Respondent because they believed that he is a Sikh militant or is affiliated with Sikh militants. Therefore, the Punjab police may continue to consider Respondent a person of interest. Respondent was targeted in the past by the Punjab police, therefore he may continue to be wanted by the police. As a result, the police is able to pursue him outside of Punjab, therefore he remains at risk should he return to India. Accordingly, this Court holds that the DHS has failed to establish by a preponderance of the evidence that it would be reasonable for Respondent to relocate internally.

This Court finds that the DHS has failed to rebut the presumption of a well-founded fear of future persecution. As there is nothing adverse in this record, this Court will exercise its discretion to grant Respondent's application for asylum. Having reached this result, it is not necessary to consider Respondent's applications for withholding of removal and protection under the Convention Against Torture.

In light of the foregoing, the following order shall enter:

ORDER

IT IS HEREBY ORDERED that Respondent's application for asylum under §208(a) of the INA be **GRANTED**.

Dana Leigh Marks
United States Immigration Judge

(b) (6)