Files: (b) (6)

Date: DEC 27 2007

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Errol I. Horwitz, Esquire

AMICUS CURIAE FOR RESPONDENTS: Deborah E. Anker, Esquire, Matthew D. Muller, Esquire (Harvard Immigration and Refugee Clinic) H. Elizabeth Dallam, Esquire, Kate Jastram, Esquire (United Nations High Commissioner for Refugees)

ON BEHALF OF DHS: David Landau, Chief Appellate Counsel

CHARGE:

Notice: Sec. 237(a)(1)(B), I&N Act [8 U.S.C. § 1227(a)(1)(B)] - In the United States in violation of law (all respondents)

APPLICATION: Asylum; withholding of removal

This matter is before the Board following a July 13, 2006, remand from the United States Court of Appeals for the (b) (6) Pursuant to an (b) (6) decision issued by the United States Supreme Court, *Gonzales v.* (b) (6) the (b) (6) remanded the record to the Board for a determination in the first instance whether "Boss (b) (6) family" presents the kind of kinship ties that constitute a "particular social group" under section 101(a)(42)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(42)(A), and, if so, to answer in the first instance any remaining questions raised by the petition. The motions for oral argument are denied. The respondents' motion to strike is denied. As we explain below, we find that the respondents have not established that they were persecuted in the past or that they have a well-founded fear of persecution in the future on account of membership in a particular social group. The respondents' appeal, therefore, will be dismissed.

FACTUAL BACKGROUND

The respondents are natives and citizens of South Africa who entered the United States on May 28, 1997, with visitors' visas (Exh. 1). The lead respondent filed an asylum application in which she included her husband and her two children (Exh. 2).[1] The asylum claim is based upon incidents of vandalism and intimidation, a threat, and a physical assault, all of which occurred at the respondent's home in 1996 and 1997.

The respondent testified that she and her family lived in Durban, South Africa (Tr. at 84). She testified that her father-in-law, (b) (6) was a supervisor at the "Strongshore" construction company and that he was known to his employees as "Boss (b) (6) (Tr. at 70, 73, 75, 85). The respondent related that her father-in-law was exceptionally racist and that he abused his black employees by making them perform work for no pay, refusing to give them breaks, forcing them to work extremely long hours, and verbally abusing them (Tr. at 69, 73-74, 116-17; Dec. at ¶ 3[2]). She stated that her father-in-law bragged about how he treated his workers (Tr. at 74; Dec. at ¶ 3). The respondent's husband tried on several occasions to reason with his father about his treatment of the employees, but his father was unmoved (Tr. at 71-72, 124-25).

The respondent and her family experienced a number of disturbing incidents in 1996 and 1997. First, their dog died, apparently after having been poisoned (Tr. at 69-70; Dec. at ¶ 4). On March 4, 1996, very early in the morning, the respondent's car, which was parked outside her house, was vandalized but nothing was taken (Tr. at 70-71; Dec. at ¶ 6). On an evening in May of 1996, the respondents heard noises at the front door of their residence and went to investigate. They found that human feces had been thrown onto the doorstep, and they observed people running away from the scene (Tr. at 71-72; Dec. at ¶ 11). Feces were left outside the gates of the property on other occasions (Tr. at 95, 99-100; Dec. at ¶ 11). The respondents installed higher fencing, put bars on their windows, acquired a guard dog, and requested additional police patrols (Tr. at 77; Dec. at ¶14). In December 1996, the respondent was on her veranda with her children when a black man, whom the respondent had not seen before, came up to the gate in front of the house and asked if she knew Boss (b) (6) Tr. at 72, 104; Dec. at ¶ 15). The man was wearing a uniform carrying the Strongshore logo (Tr. at 79). The respondent did not answer, and the man stated that he would return and cut her throat (Tr. at. 72, 104). The last incident occurred in March 1997 (Tr. at 77-78). The respondent exited her property through her front gate on her way to the store with her young daughter (Tr. at 78, 107; Dec. at ¶ 19). When she was just outside the gate, four black men, one wearing Strongshore overalls, grabbed her and tried to take her daughter away from her (Tr. at 77-79, 107-08; Dec. at ¶ 19). The respondent screamed, and a neighbor came to assist (Tr. at 107-08). The four men ran away (Tr. at 107-08; Dec. at ¶ 20).

The respondent testified that she discovered that each incident she experienced occurred shortly after her father-in-law had been involved in an altercation with his employees at work (Tr. at 69-70).

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[1] Further references to "the respondent" in the singular will be to the lead respondent.

[2] The respondent submitted a "Declaration" that appears in the record as part of Exhibit 2 and also as part of Exhibit 3. In this decision, we will refer to it as "Dec."

She testified that the employees could not harm her father-in-law personally because he had turned his own home into a "fortress" so that he was inaccessible (Tr. at 76-77). She stated that, in contrast, she and her husband and children were easy targets because they had no security (Tr. at 117). She testified that they lived just down the road from her father-in-law's house (Tr. at 74). She related that her father-in-law often came to their house to visit and have tea with his son, and that he would also drive by the house in the construction van while transporting his employees (Tr. at 75, 78). She said that the employees knew her father-in-law came to visit at her house and that they knew who the family was (Tr. at 78). She stated that, despite the fact that her father-in-law was the cause of their troubles, her husband decided he would not prevent his father from visiting and seeing his grandchildren (Tr. at 75). The respondent testified that she believed the workers who came to her house might have worn the clothing showing the Strongshore logo to make a point that if Boss (b) (6) did not "back off" he was "going to have problems" (Tr. at 110).

The respondent testified that she reported the death of her dog to the police but was told the problem was too minor for them to investigate (Tr. at 80, 94; Dec. at ¶ 5). She also reported the vandalism of her car to police (Tr. at 71). The police responded "right away" and patrolled the area but could not find anyone (Tr. at 71). The next day, someone from the police department came to take fingerprints (Tr. at 71). After that, the respondent did not hear back from the police (Tr. at 71). The respondent also called the police after the incident involving her daughter (Tr. at 80-81). The police responded and patrolled the area but could not locate anyone (Tr. at 80-82). The respondent was unable to provide a description of the perpetrators other than to note that one wore a Strongshore uniform (Tr. at 80-81, 90, 107-08). The police wanted to go to Strongshore to investigate, but the respondent asked them not to investigate because she was afraid it would make matters worse (Tr. at 81-82, 108). The respondents left South Africa 2 months later (Tr. at 83, 93). No other incidents involving the Strongshore employees occurred during their final months in South Africa (Tr. at 93).

The respondent testified about other family members living in South Africa. She testified that her husband had two sisters and a brother in the country and that her own father and sister also lived there (Tr. at 111-12). When asked if any of them had ever been bothered by the Strongshore employees, she testified that she was not aware of any such problems with the workers (Tr. at 112). She testified that her brother-in-law experienced some problems at his place, specifically that his house was broken into, his car was vandalized, and there were some threats (Tr. at 109, 112). The respondent said she was unaware of any information linking those events with her own problems or with her father-in-law's employees (Tr. at 109, 112). She acknowledged that there is a significant amount of crime in South Africa (Tr. at 109-10).[3] The respondent testified that her brother-in-law had traveled to the United States but then returned to South Africa (Tr. at 125-26).

[3] The respondent submitted an attachment to her asylum application in which she stated that there were many reasons they were leaving South Africa, including the high rate of crime generally, including muggings, murders, and vandalism; the fact that they were seeing friends and older people being murdered; the departure of teachers and closing of schools; and the political corruption and lack of law enforcement (Exh. 2, Attach.).

The respondent related that her father-in-law retired from his job in 1998, the year after she and her family came to the United States (Tr. at 87). She testified that she was afraid of returning to her country because people can hold a grudge for a long time and she did not want to take that chance with her children (Tr. at 113).

ANALYSIS

The respondent has the burden of demonstrating both that she was a member of a particular social group and that the past or feared persecution satisfies the "on account of" requirement for asylum. *See* 8 C.F.R. § 1208.13(b). We recently affirmed our conclusions articulated previously in *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985), overruled in part on other grounds, *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) that "persecution on account of membership in a particular social group" refers to:

> persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership or land ownership. The particular kind of group characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever 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. Only when this is the case does the mere fact of membership become something comparable to the other four grounds of persecution under the Act, namely, something that is beyond the power of an individual to change or that is so fundamental to his identity or conscience that it ought not be required to be changed. By construing "persecution on account of membership in a particular social group" in this manner, we preserve the concept that refuge is restricted to individuals who are either unable by their own actions, or as a matter of conscience should not be required, to avoid persecution.

Matter of C-A-, 23 I&N Dec. 951, 955 (BIA 2006) (citing *Matter of Acosta*, *supra*, at 233-34). In *Matter of C-A-*, *supra*, we observed that our decisions involving social groups have considered the recognizability, i.e., the social visibility, of the group in question, and we concluded that groups based upon innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups. *See Matter of C-A-*, *supra*, at 959. Thus, we have affirmed that a family relationship or kinship ties can form the basis of a particular social group

claim.[4] The question before us is whether "Boss (b) (6) s family" presents the kind of kinship ties that constitute a particular social group for purposes of asylum.

It appears that "Boss (b) (6) family" refers to Boss (b) (6) children and their nuclear families. The family members whose case is before us now claim that their relationship to another family member, Boss (b) (6) is the reason for the harm perpetrated against them in South Africa. They further argue that their relationship to Boss (b) (6) is immutable. In this respect, Boss (b) (6) son and grandchildren are related by blood, and his daughter-in-law is related by marriage. Clearly the biological relationship of father and child cannot be changed and is therefore immutable. Furthermore, we agree with the respondents that a relationship formed by marriage is immutable since it is fundamental to individual identity. However, one of the difficulties presented by this particular case is that while the respondents' family relationship to (b) (6) is immutable, their relationship to "Boss (b) (6) is not. Until Ronald Thomas assumed his job at Strongshore, he was not the racist boss known as "Boss (b) (6) who instilled a desire for revenge in his employees. Moreover, now that (b) (6) has retired, there no longer is a Boss (b) (6) Because there is no Boss (b) (6), there is no family of Boss (b) (6)

Nevertheless, there is little in the record to indicate that the respondents, while they were in South Africa, had it within their power to either force the retirement of Boss (b) (6) or to persuade him to change his treatment of the employees. *Cf. Matter of Acosta, supra*, (finding that occupation is not an immutable characteristic). The lead respondent testified about her disgust with her father-in-law's behavior, and it is clear that she would have changed his behavior if she had been able. Additionally, her husband tried to convince his father to treat the employees better, but he was unsuccessful in his quest. While Boss (b) (6) himself or the manager or owner of Strongshore could have made a difference, the respondents appear to have lacked such power.

We have consistently held that the group characteristic of "a particular social group" must be one that the members of the group either cannot change or should not be required to change. *See Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 73 (BIA 2007), citing *Matter of Acosta, supra*, at 233. However, we have not before encountered a social group claim in which the identifying characteristic is easily changed but not by the members of the group itself. Having such a situation before us now, we find that our established analysis should stand. Thus, we conclude that the

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[4] The (b) (6) has previously defined "particular social group" as a group united by either a voluntary association or by an innate characteristic that is so fundamental to the identities or consciences of its members that members either cannot change it or should not be required to change it. *See Hernandez-Montiel v. INS*, 225 F.3d 1084, 1093 (9th Cir. 2000). There is currently an intra-circuit conflict concerning whether a family may constitute a particular social group. *See e.g. Lin v. Ashcroft*, 377 F.3d 1014, 1028 (9th Cir. 2004) (recognizing family as social group); *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (concluding that immediate members of a family may be prototypical example of particular social group); *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985) (finding family by definition is a small identifiable group); *but see Estrada-Posadas v. INS*, 924 F.2d 916, 919 (9th Cir. 1991) (holding that concept of persecution of a particular social group does not extend to the persecution of a family).

guiding question should remain whether the identifying characteristic of the claimed particular social group is one that the members of the group either cannot change or should not be required to change. The family of Boss (b) (6) meets this requirement.

This conclusion does not end our analysis however. Not all groups that have an immutable or fundamental characteristic will be considered particular social groups for purposes of asylum. As we explained in *Matter of C-A-*, *supra*, the group must also have a distinct, recognizable identity in the particular country at issue. *See Matter of C-A-*, *supra*, at 959-60. The group must be perceived as being different from other groups or from society at large. *See Matter of A-M-E- & J-G-U-*, *supra*, (finding that applicants failed to establish that their status as "affluent Guatemalans" gave them sufficient visibility to be perceived as a group by society or that the group was defined with adequate particularity to constitute a particular social group); *see also Castellano-Chacon v. INS*, 341 F.3d 533, 548 (6th Cir. 2003) (noting that society's reaction to a group may provide evidence that a particular social group exists). While not every family will necessarily have the distinct, recognizable identity in its society that is necessary to be a particular social group, some families certainly will.

In the case before us, the parties agree that the family of Boss (b) (6) has a distinct, recognizable identity, such that they are perceived as being different from other groups within their society or from the society at large. Accordingly, we accept that Boss (b) (6) family is a particular social group for purposes of this appeal.

Having accepted that the respondent established membership in a particular social group, we must proceed with a determination as to whether she met her burden of establishing that the harm and threats of harm she experienced in South Africa were on account of her membership in that group. *See INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (addressing requirement that asylum applicant produce some evidence of motive); *Borja v. INS*, 175 F.3d 732, 736 (9th Cir. 1999) (an applicant must produce some evidence from which it is reasonable to believe that the harm was motivated, at least in part, by an actual or implied protected ground); *see generally Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997) (asylum applicants may not establish persecution on account of a protected ground by inference, unless the inference is one that is clearly to be drawn from the facts). On the record before us, we find that the respondent has not met her burden of establishing the required nexus.[5]

First, the record lacks sufficient evidence to establish that the perpetrators of the harm actually knew that the respondent, her husband, and her children were members of Boss (b) (6) family. The fact that a family can be an identifiable group does not mean that the alleged persecutors actually did identify the group. Without adequate evidence of such identification, there cannot be a showing that the family was targeted on account of their status as a family. The perpetrators in this case

[5] The respondent's appellate brief does not discuss in detail the causal link between the social group identified and the harm inflicted. As the Supreme Court noted in *INS v. Elias-Zacarias*, *supra*, it is not enough to find that a social group exists. The respondent must also establish that the harm was motivated, at least in part, by membership in that group. It is here that the respondent has failed in her burden of proof.

appeared to know that Boss (b) (6) drove by the respondents' house and visited in the house. However, the only comment made by any of the workers to the respondent about her relationship to Boss (b) (6) was, "Do you know Boss (b) (6) ?" This statement is not only insufficient to establish that Boss (b) (6) workers knew of the family relationship, it indicates a lack of awareness. The respondent testified that the workers knew who they were, but she did not offer any particular reason for her conclusion other than the fact that Boss (b) (6) could be seen coming into their house (Tr. at 78). Her speculation, without more, is not evidence that the family was actually identified as Boss (b) (6) family. This is especially true considering that the respondent did not present any testimony or other evidence to suggest she was in a position to know what the employees did or did not know about her family status. She did not claim to be personally acquainted with any of the workers, including the ones she saw near her house. She described the man who threatened her as someone she had never seen before. She did not claim to have spoken with any of the workers. In fact, she could not even provide a description to police of the workers who assaulted her. Even though the respondent might truly believe that the employees knew who she was, there is no objective basis in the record for accepting the assumption as fact.

Additionally, the Strongshore employees' actions never went beyond targeting the people found at a particular house near where Boss (b) (6) lived and where Boss (b) (6) could have been seen making visits. There was no mention by the respondent that she or other family members were ever approached, harassed, threatened, or harmed in any way when they were carrying out their daily activities beyond the house and its grounds. This is true despite the evidence that the respondent and her husband both worked outside the house and that their son attended a school (Tr. at 82; Dec. at ¶¶ 4, 18; Exh. 2, Attach.). On the record before us, it is unknown whether the employees would have even recognized the respondents had they met at a location other than the house.

Of further significance is the lack of testimony or other evidence that family members of Boss (b) (6) who were living in other households in South Africa were targeted for harm by the employees. Boss (b) (6) had three adult children other than the respondent's husband, living in South Africa. The respondent did not know of any harm experienced by the two daughters. Additionally, although she related that some criminal acts occurred at the house of her brother-in-law, the respondent did not know of anything that would link those acts to the Strongshore employees. If there had been any evidence at all connecting the events to the Strongshore employees, the respondent could have presented it at her hearing. It was the respondent's burden to establish the merits of her case. However, she did not offer any statement from her brother-in-law or anyone else with knowledge of the incidents that occurred at his house. Nor did the respondent testify that she or her husband had ever spoken with the brother-in-law to ask him whether the Strongshore employees were involved or even whether the employees had been seen near their house. Finally, the record before us provides an insufficient basis for simply assuming that the criminal acts were at the hands of Strongshore employees. This is especially true given the high crime rate that was described by the respondent.

To the extent that the respondents were targeted because they resided in a specific house where Boss (b) (6) was known to go, this factor was well within the ability of the respondents to change and was not fundamental to their family identity. Yet, not only did the respondents not change their residence to another location within South Africa, they specifically decided to welcome Boss (b) (6) into their household for visits in general and for the purpose of seeing his grandchildren. They

continued to do this even after experiencing incidents of vandalism and intimidation and after having connected those incidents with the Strongshore employees. Notwithstanding the family relationship, the respondents were not required to extend the hospitality of their home to a hated racist employer.

Even if the evidence suggested that the Strongshore employees knew of the family's relationship to Boss (b) (6) we would find on this record that the acts of harm were not shown to be on account of that relationship. As we observed on *Matter of Kasinga*, 21 I&N Dec. 357, 367 (BIA 1996), establishing the required nexus to a particular social group does not necessarily mean establishing that the actors carrying out the harm were motivated by a desire to punish. Nexus may be shown, not only where there is a desire to punish membership in the particular social group, but also where there is a desire to overcome what is deemed to be an offensive characteristic identifying the particular social group. *See Matter of Kasinga, supra,* at 367 (addressing situation in which female genital mutilation could be done with subjectively benign intent but was done in significant part to overcome the sexual characteristics of young women of the tribe who had not been subjected to such mutilation); *see also Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997) (addressing mistreatment of homosexuals to "cure" them and rejecting concept that intent to punish was an element of persecution). The respondent must identify some evidence, direct or circumstantial, that the Strongshore employees were motivated, at least in part, by a desire to punish or to overcome the family relationship to Boss (b) (6) .[6] *Compare Matter of J-B-N & S-M-*, 24 I&N Dec. 208 (BIA 2007) (holding that in cases governed by section 101(a)(3) of the REAL ID Act, the applicant alleging mixed motives must produce direct or circumstantial evidence that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution).

In deciding whether acts of harm are on account of membership in a particular social group, we would not ordinarily find that acts motivated solely by criminal intent, personal vendettas, or personal desires for revenge establish the required nexus. We find it helpful to compare the case before us with *Matter of H-*, 21 I&N Dec. 337 (BIA 1996). There, we found that the Marehan subclan in Somalia, whose members shared ties of kinship and linguistic commonalities, was a particular social group. We also found that the asylum applicant in that case established persecution on account of membership in the particular social group. The Marehan subclan had previously been the subject of favoritism by the country's former leader, Mohammed Siad Barre. His 21-year rule ended in 1991, when he fled an uprising in the capital. Thereafter, members of the Marehan subclan were the subjects of repeated attacks, with victims being singled out for no reason other than their clan affiliation. They were singled out for the general role their clan previously had in the history of the country and not because of anything currently occurring in the country. *See Matter of H-, supra*, at 343-345. The persecution was not on account of any particular personal vendetta or personal desire for revenge against an individual but was on account of a general perception of the clan as a whole.

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[6] In reaching this conclusion, we find it unnecessary to address the position advanced by the DHS in its brief, namely that an applicant must prove that a persecutor harbored a subjective intent to punish, suppress, or overcome a protected characteristic.

In the case before us, the respondent claims that each specific act of harm or intimidation directly resulted from a prior specific action taken by Boss (b) (6) After each confrontation with Boss (b) (6) there was a desire for personal revenge against him. The employees involved in the retaliation reacted quickly and very specifically to particular acts of harm. Unable to access the house of Boss (b) (6) they went to another house where Boss (b) (6) made frequent visits. As a result, the respondent and her family became caught up in what was a personal dispute. This is not the type of situation in which we will find there was persecution on account of a particular social group. In addition, as the respondent suggested, the employees may have wanted to convey a message that if Boss (b) (6) did not "back off" he was going to have trouble. (Tr. at 110). In other words, the employees may have been motivated not only by a desire for revenge but also by a desire not to be abused any longer. Even assuming this were the case, such a motive is not the same as a desire to punish or to overcome the family relationship. For all of these reasons we find that the respondent did not establish the required nexus.

Continuing on, we find that the respondent's asylum claim fails for other reasons. In establishing eligibility for asylum, the respondent must also establish that the harm she experienced or fears is either government-sponsored or at the hands of persons the government is unwilling or unable to control. *See Navas v. INS*, 217 F.3d 646, 655-56 (9th Cir. 2000); *Korablina v. INS*, 158 F.3d 1038 (9th Cir. 1998); *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995). Based upon the record before us, we find that the respondent has not met her burden of proof as to this aspect of her claim. The respondent does not allege that the harm she experienced is state-sponsored. Also, the record contains insufficient evidence that the law enforcement authorities in South Africa lacked the will or the wherewithal to find and prosecute the persons who threatened and assaulted the respondent. Of course, no government is able to guarantee the safety of each of its citizens at all times. Our focus, therefore, will be on whether the government takes reasonably effective steps to control the infliction of harm or suffering.

The respondent acknowledged that her country does arrest criminals, that trials are conducted, and that convicted persons are put in prison (Tr. at 127). She further acknowledged that there is a full judicial system operating in South Africa (Tr. at 127). With respect to her own problems, the respondent stated that she reported only three of the incidents to the police. Two of them were perpetrated by unknown persons and had no known witnesses. The police did not investigate the first incident, the death of the respondent's dog. However, the respondent had little information to offer the police about the incident, and the police decision that it was too minor to pursue was reasonable under the circumstances, particularly given the numbers of very serious crimes that were taking place at the time. With respect to the second incident, the respondent testified that she called the police after her car was vandalized and that they responded right away. They patrolled the area and were not able to find anyone. The next day they came to take fingerprints. The fact that the police did not solve the crime is not surprising given that nothing was taken from the car, the crime occurred in the early hours of the morning, and nobody was seen near the car. Finally, the respondent called the police after the incident in which four men tried to take the respondent's daughter away from her. This was the only reported incident in which the respondent saw the persons involved. However, she was unable to provide police with a description of any of them except to say that one was wearing a Strongshore uniform. At this point, the police wanted to go to Strongshore to investigate but the respondent specifically asked them not to investigate. With no information other than a link to Strongshore, which the police were asked not to pursue, it is unclear

how the respondent expected the police to assist her.[7] We will not find that an asylum applicant has met her burden of establishing that the government is unwilling or unable to control the persons she claims to fear where the law enforcement authorities have sought to investigate the incidents of harm but have been thwarted by the asylum applicant. Accordingly, we conclude that the respondent has not established past harm by persons the government is unwilling or unable to control and has not, therefore, established past persecution.

Additionally, even if the respondent had established past persecution on account of membership in a particular social group and were therefore entitled to a presumption of a well-founded fear of future persecution, we would find that the DHS has rebutted the presumption. First, the record establishes a fundamental change in circumstances that rebuts any presumption of a well-founded fear of persecution in the future. *See* 8 C.F.R. § 1208.13(b)(1)(i)(A). The respondent testified that each incident she experienced occurred just after her father-in-law had a confrontation at work with his employees. The respondent's father-in-law retired in 1998, almost 10 years ago, and there have been no confrontations between Boss (b) (6) and the Strongshore employees since then. As previously observed, there no longer is a Boss (b) (6) On this record, there is no reason to anticipate any future acts of harm perpetrated against the respondent or her family by the employees supervised by Boss (b) (6)

Finally, the record before us establishes that the respondents could avoid future persecution by relocation within South Africa and that under all the circumstances it would be reasonable to expect such relocation. *See* 8 C.F.R. § 1208.13(b)(1)(i)(B). The respondent testified that prior to the incidents that formed the basis of her application, the family was very happy in South Africa (Tr. at 83). When asked about internal relocation possibilities, the respondent testified that she could not move because she owned her house (Tr. at 91). She then described the difficulty of arranging to rent or sell her house, but she did not explain why it would be more difficult to rent or sell the house for a move within South Africa than it would be for a move to the United States (Tr. at 91-93). She acknowledged that she found tenants for the house before coming to the United States (Tr. at 91). Furthermore, the respondent had no information that the family members of Boss (b) (6) living outside of the Durban area had experienced any incidents of harm at all, even criminal acts

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[7] Notably the respondent did not report to police the prior incident, the threat to cut her throat that was carried out by a man wearing a Strongshore uniform. Had the respondent reported that incident and permitted an investigation at Strongshore, it is questionable whether the final incident would have occurred. The respondent did not specifically say whether she thought the man wearing the Strongshore overalls during the final incident was the same as, or different from, the man who threatened to cut her throat.

The United Nations High Commissioner for Refugees states that being "unable" to avail himself or herself of protection implies circumstances beyond the will of the refugee applicant, such as a state of war, civil war, or other grave disturbance. *Handbook on Procedures and Criteria for Determining Refugee Status*, ¶ 98 (1979). That is not the situation here. Similarly, "unwilling" refers to persons who refuse to accept the protection of the country's government owing to a fear of persecution on the basis of a protected ground. *Id.* at ¶ 100. As explained herein, the respondent has not shown that she meets this test.

perpetrated by persons unrelated to Strongshore. The respondent testified that her husband was a firefighter, and when asked about employment options elsewhere, she did not offer any reason why he could not obtain employment in other parts of the country (Tr. at 82, 127-28). The respondent testified as to her subjective belief that the Strongshore employees could find her family anywhere in South Africa, but the record contains no objective evidence to indicate there was any motivation, interest, or ability on the part of the employees to travel around South Africa to find them (Tr. at 113, 118). As far as we know from the record, the employees did not even travel around Durban to find them. Given the record before us and the fact that the respondent was provided an opportunity to identify reasons why the family could not relocate and did not offer any reasonable basis why they could not do so, we find that the respondent and her family could avoid further harm by the Strongshore employees by internal relocation and that under all the circumstances, it would be reasonable to expect them to do so. *See* 8 C.F.R. § 1208.13(b)(1)(i)(B).

In summary, we accept that the respondent has established membership in a particular social group but conclude that she has not established past harm on account of that membership. We also conclude that the respondent has not established that any harm she experienced was government sponsored or at the hands of those the government cannot or will not control. We conclude that even if the respondent had established past persecution in South Africa, any presumption of a well-founded fear of future persecution has been rebutted by a showing of changed circumstances and also by a showing that the respondent could avoid future harm by internal relocation. Accordingly, the respondent has not met her burden of establishing eligibility for asylum. Given that the respondent has failed to establish a well-founded fear of persecution so as to be eligible for asylum, she has also failed to establish that it is "more likely than not" that she will be persecuted on account of a protected ground, so as to establish eligibility for withholding of removal. *See INS v. Stevic*, 467 U.S. 407 (1984).

As there are no other issues before us, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, each respondent is permitted to voluntarily depart from the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security (DHS, formerly the Immigration and Naturalization Service). *See* section 240B(b) of the Immigration and Nationality Act; 8 C.F.R. §§ 1240.26(c), (f). In the event any respondent fails to so depart, that respondent shall be removed as provided in the Immigration Judge's order.[8]

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[8] In our original decision, the respondents were granted a 30-day voluntary departure period. Since then, the Board has issued a decision holding that, absent specific reasons for reducing the period of voluntary departure initially granted by the Immigration Judge at the conclusion of removal proceedings, the Board will reinstate the same period of time afforded to the alien by the Immigration Judge. *See Matter of A-M-*, 23 I&N Dec. 737 (BIA 2005). As the Immigration Judge (continued...)

NOTICE: If a respondent fails to depart the United States within the time period specified, or any extensions granted by the DHS, that respondent shall be subject to a civil penalty of not less than $1,000 and not more than $5,000, and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Immigration and Nationality Act. *See* section 240B(d) of the Act.

FOR THE BOARD

(...continued)
granted the respondent 60 days of voluntary departure, we will now reinstate that same period of time.