No. 11-1989

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

JOHANA CECE,

Petitioner,

v.

ERIC H. HOLDER, JR., United States Attorney General,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF ON REHEARING *EN BANC*

Agency Case No. A096-158-857

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INTRODUCTION

The agency's decision in this case concludes that an alleged social group that an applicant has defined largely by the persecution and that does not exist independently of the persecutors is not a valid social group. The Board's decision is consistent with a sound social-group principle recognized in multiple decisions of this Circuit and in other circuits, and consistent with the statutory scheme, with logic, with Board precedent. The asylum statute describes distinct facts that cannot be merged in a way that obliterates the statute's structural elements and separate grounds. Cece's proposed social group, defined in terms of the persecution feared, collapsed the requirements for asylum to fear of persecution. Therefore, the Court should rule that the Board's conclusion is reasonable. The Court should further

rule that the record evidence, including Cece's successful relocation within Albania, amply supports the Board's conclusion that Cece failed to demonstrate that she could not reasonably relocate. The Court should scrupulously avoid independently determining issues that the Board has not addressed in this case.

STATEMENT OF THE CASE AND OF RELEVANT FACTS

Petitioner Johana Cece is a thirty-three-year-old native and citizen of Albania who entered the United States at Chicago, Illinois, on March 15, 2002, using a false Italian passport, and later applied for asylum. Certified Administrative Record ("AR") 174-77, 664, 739-40. In 2006, an immigration judge found that Cece had established a well-founded fear of persecution on account of her membership in a particular social group consisting of "young women who are targeted for prostitution by traffickers in Albania," AR 128, or "women in danger of being trafficked as prostitutes," AR 131-32, and granted her application for asylum. *Id.*

The Department of Homeland Security ("DHS") appealed the decision to the Board of Immigration Appeals ("Board"). AR 343-56, 365-68. The Board remanded, ruling that Cece had safely relocated within Albania, and applied its "social visibility" criterion to rule that Cece failed to establish a "particular social group" because there was no evidence that her social group was perceived as a group in Albania. AR 330-31. The Board also observed that the alleged social

group did not have "a narrowing characteristic other than their risk of being persecuted." *Id.*

After taking additional evidence, the immigration judge denied Cece's applications for asylum, withholding of removal, and protection from torture. AR 105-21. The immigration judge considered herself bound by the Board's determination that Cece had not established a valid social group. The immigration observed that Cece "is like" women who statistically have been victims of criminal trafficking in Albania, AR 114, and suggested that she had a well-founded fear of future persecution, but deferred to the Board's decision she did not assert a valid social group and denied Cece's application. AR 113-14.

Cece appealed the decision, AR 16-23, 39-44, 52-55, and the Board dismissed the appeal. AR 8-9. Given this Court's decisions in *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009), and *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009), declining to accord deference to the Board's "social visibility" criterion for a "particular social group," the Board did not base its decision on its "social visibility" criterion. AR 9. The Board concluded that Cece had failed to demonstrate the existence of a social group cognizable under the INA because her "proposed social group of young Albanian women who have been targeted for prostitution by traffickers is defined in large part by the harm inflicted on the group, and does not exist independently of the traffickers." AR 9 (citing *Poroj-Mejia v. Holder*, 397 F. App'x 234, 2010 WL 4102295 (7th Cir. Oct. 18, 2010)

(nonprecedential disposition)). Finally, as relevant here, the Board ruled that "there is insufficient evidence in the record that internal relocation is not reasonable."[1] AR 9.

This petition for review followed. A panel of this Court denied the petition, holding that that Cece's "proposed group . . . is defined solely by the persecution feared by its members and lacks the type of common, immutable characteristics otherwise required of a particular social group." Slip Op. 2. In addition, the Court ruled that substantial evidence supports the Board's conclusion that Cece has not established a well-founded fear of persecution if she returns to Albania because, even if Albanian women endangered by trafficking were a particular social group, she failed to establish an objective fear of future persecution, or that she could not relocate safely within Albania. Slip Op. 6-7.

Judge Rovner dissented. She agreed with the other panel members, and with the case law of the Circuit, that "'where a proposed group is defined only by the characteristic that it is persecuted, it does not qualify as a 'social group.'" Slip Op. 7 (quoting *Escobar v. Holder*, 657 F.3d 537, 545 (7th Cir. 2011)). However, Judge Rovner was of the view that "although it is true that [the putative members of Cece's alleged social group] are linked by . . . being targeted for prostitution[,]

[1] Cece's petition for review to the panel did not challenge the Board's determinations regarding persecution on account of her religion, AR 9, or the denial of withholding of removal and protection from torture, *id.*, so those issues are not before the Court.

they are also united by the common and immutable characteristic[s] of being women between the ages of sixteen and twenty-seven who meet the profile of the traffickers." Slip Op. 8; *see also id.* at 10 (replacing "who meet the profile of the traffickers" with "and live alone"). Judge Rovner also stated that the Board's relocation ruling had overlooked evidence that Cece could no longer live with family in Albania. Slip Op. 11. On May 31, 2012, the Court granted rehearing *en banc*, and vacated the panel's opinion and judgment.

ARGUMENT

THE BOARD CORRECTLY CONCLUDED THAT CECE IS NOT ELIGIBLE FOR ASYLUM

A. Review Is Limited to the Precise Issues That the Board Decided

Federal courts are courts of limited jurisdiction. *International Union of Operating Engineers, Local 150, AFL-CIO v. Ward*, 563 F.3d 276, 280 (7th Cir.), *cert. denied*, 130 S. Ct. 442 (2009). Review is limited to the jurisdiction granted by Congress. *Id.* at 281. Judicial review of agency decisions is not plenary. Not only are standards of review of matters before the Court limited, see 8 U.S.C. § 1252(b)(4), but the Court is limited to review of the agency's determination. *SEC v. Chenery*, 318 U.S. 80, 88 (1943). The Court's review of the agency's determination is further limited to the administrative record and to the issues and claims that Cece raised to the Board. *See* 8 U.S.C. § 1252(b)(4), (d)(1).

For purposes of review of the Board's disposition of a "particular social group" claim, the Court's role is limited to review of the agency's determination. An asylum applicant bears the burden to "clearly indicate" initially the "exact delineation" of any particular social group. *Matter of A-T-*, 25 I. & N. Dec. 4, 10 (BIA 2009). The Court may not reach out to hold *de novo* that an alleged group constitutes a "particular social group" or fashion the Court's own construct of a putative social group. *Gonzales v. Thomas*, 547 U.S. 183, 185-86 (2006) (summarily reversing a court of appeals decision because the court addressed a "particular social group" issue not addressed by the Board) (per curiam); *Keisler v. Hong Yin Gao*, 552 U.S. 801 (2007) (same). This is because a "judicial judgment cannot be made to do service for an administrative judgment." *Thomas*, 547 U.S. at 186 (quoting *INS v. Ventura*, 537 U.S. 12, 16 (2002), which in turn quoted *SEC v. Chenery*, 318 U.S. at 88). "'Within broad limits, [federal immigration] law entrusts the agency to make the basic asylum eligibility decision.'" *Thomas*, 547 U.S. at 186 (quoting *Ventura*, 537 U.S. at 16). "A court of appeals is not generally empowered to conduct a *de novo* inquiry into the matter being reviewed and to reach its own conclusions based on such an inquiry." *Id*. (quoting *Ventura*, 537 U.S. at 16, which in turn quoted *Florida Power & Light Co. v. Lorion*, 470 U.S. 729, 744 (1985) (internal quotation marks omitted)). Rather, where the agency has not decided a question, such as whether a putative group comes within the meaning of a "particular social group" under the statute, "the proper course, except in rare

circumstances, is to remand to the agency for additional investigation or explanation." *Thomas*, at 186 (quoting *Ventura*, 537 U.S. at 16, which in turn quoted *Florida Power & Light*, 470 U.S. at 744). Thus, for example, in *Thomas*, the Supreme Court held that a court of appeals erred in reaching out to hold in the first instance, without a prior decision by the agency on the questions, that "family" may constitute a "particular social group," and that the specific family in the *Thomas* case did constitute a "particular social group," and that persecution was on that account. *See Thomas*, at 186-87.

The social group formulation adjudicated by the Board in Cece's case is the sole formulation before this Court – "young Albanian women who have been targeted for prostitution by traffickers." To the extent that various other theories or formulations have been asserted or argued by Cece or others on review, such theories or formulations are not properly before the Court.[2] In addition, based on the principles for judicial review described above, to the extent that this Court is being asked to compare the social group in this case to the social groups in other decisions, such as *Tapiero de Orejueja*, *Sepulveda*, *Escobar*, and *Sarhan*, as an

[2] Various social groups definitions, formulations, or theories that are not the one the Board decided have been asserted or argued on review: women (or gender) (Pet. Sup. Bf at 7), young women (*id.*), young single women (*id.* at 5 n.1), single Christian Orthodox women who are trafficked by Muslim gangs (*id.*), and women targeted in the past by traffickers (*id.* at n.2); "women between the ages of sixteen and twenty-seven who meet the profile of the traffickers" (Slip Op. at 8, Rovner, J., dissenting); "women who are between the ages of sixteen and twenty-six (perhaps twenty-seven) who live alone" (*id.* at 10).

example for the Court to follow, this *en banc* Court should decline to do so. In each of those cases, the panel *sua sponte* reformulated the social group and proceeded to rule *de novo* on the validity of a "particular social group" that the Board had not addressed. *See Tapiero de Orejuela v. Gonzales*, 423 F.3d 666, 672-73 (7th Cir. 2005); *Sepulveda v. Gonzales*, 464 F.3d 770, 772 (7th Cir. 2006); *Escobar v. Holder*, 657 F.3d 537, 545–46 (7th Cir. 2011); *Sarhan v. Holder*, 658 F.3d 649, 654-55 (7th Cir. 2011). If the Board fails to decide a social group formulation that was properly raised and argued on appeal, it would be appropriate for the Court to remand for the Board to address the social group.[3] Here, as discussed below, the agency addressed the correct group formulation that was argued to the Board, so only that group is before the Court.

[3] To the extent that this Court's precedent may be interpreted to hold that persecution on account of membership in a particular social group may be based on individuals who are "linked by" persecution but are also "united by" some other characteristic (either unique or extracted by the Court from the applicant's proposed social group), *see* Slip Op. at 8, Rovner, J., dissenting, that matter is not before the Court because the Board has not addressed that reasoning. Even assuming that the "on account of" term of the statute were ambiguous, the Board is entitled to address the issue prior to the Court, and the Board has never asserted, implied, or accepted such an interpretation. Moreover, any methodology that involves requiring the agency to consider "particular social group" definitions other than that proposed by the applicant and developed in the administrative record is clearly contrary to Board practice administering its role as the delegate of the Attorney General, and is beyond the authority of the Court.

B. The Board Reasonably Concluded That Cece's Asserted Social Group Is Invalid Because It Is Largely Defined by the Persecution and Does Not Exist Independently of the Persecutor

The Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, et seq., does not define "particular social group." As courts have recognized, "particular social group" is an ambiguous term allowing for reasonable agency interpretation warranting substantial judicial deference. *See*, *e.g.*, *Ramos-Lopez v. Holder*, 563 F.3d 855, 859 (9th Cir. 2009); *Elien v. Ashcroft*, 364 F.3d 392, 396-97 (1st Cir. 2004); *Fatin v. INS*, 12 F.3d 1233, 1238 (3d Cir. 1993). *See also Gatimi*, 578 F.3d at 615 ("We are mindful of the Supreme Court's admonition to the courts of appeals, in *Gonzales v. Thomas*, 547 U.S. 183, 126 S.Ct. 1613, 164 L.Ed.2d 358 (2006) (per curiam), that the Board's definition of 'particular social group' is entitled to deference.").

The Board has determined that the term "particular social group" refers to a group of people who "common characteristics that members of the group either cannot change, or should not be required to change because such characteristics are fundamental to their individual identities." *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (BIA 1985), *modified on other grounds*, *Matter of Mogharrabi*, 19 I. & N. Dec. 439 (BIA 1987). This Court has accorded deference to the *Acosta* standard. *See Lwin v. INS*, 144 F.3d 505, 512 (7th Cir. 1998); *Benitez Ramos*, 589 F.3d at 428. The common characteristic among group members may be a shared past experience. *See Matter of Acosta*, 19 I. & N. Dec. at 233; *see also Sepulveda v.*

Gonzales, 464 F.3d 770, 771 (7th Cir. 2006). "However, this does not necessarily mean that the shared past experience suffices to define a particular social group for asylum purposes." *Matter of S-E-G-*, 24 I. & N. Dec. 579, 584 (BIA 2008) (citing previously rejected groups including "a woman who had been beaten and raped by guerrillas in her youth" and "a social group . . . circularly defined by the fact that it suffers persecution") (citations omitted).

As this Court has observed relying on Board precedent: "[t]he Board . . . has stated that . . . *a 'particular social group' is a group of persons who share a common [unchangeable or fundamental] characteristic other than the[] risk of being persecuted*." *Escobar v. Holder*, 657 F.3d 537, 545 (7th Cir. 2011) (emphasis added) (quoting *Matter of C-A-*, 23 I & N Dec. 951, 956 (BIA 2006), *aff'd sub nom., Castillo-Arias v. U.S. Att'y Gen.*, 446 F.3d 1190 (11th Cir. 2006)). There are multiple decisions in this Circuit recognizing this principle. This Court has stated: "[a] 'particular social group" cannot be defined merely by the fact of persecution." *Jonaitiene v. Holder*, 660 F.3d 267, 271-272 (7th Cir 2011). "'The risk of persecution alone does not create a particular social group within the meaning of the INA.'" *Id*. (quoting *Castillo–Arias*, 446 F.3d at 1198). "Where a proposed group is defined only by the characteristic that it is persecuted, it does not qualify as a 'social group.'" *Escobar*, 657 F.3d at 545 (internal quotation marks omitted); *Poroj-Mejia v. Holder*, 397 Fed.Appx. at 237 (same). "The agency 'has a legitimate interest in resisting efforts to classify people who are targets of

persecution as members of a particular social group when they have little or nothing in common beyond being targets.'" *Sarhan v. Holder*, 658 F.3d 649, 654 - 655 (7th Cir. 2011) (quoting *Gatimi v. Holder*, 578 F.3d 611, 616 (7th Cir. 2009)).

Cece had the burden of demonstrating, among other things, a valid "particular social group." *See* 8 C.F.R. § 1208.13(a);[4] *Matter of A-M-E- & J-G-U-*, 24 I. & N. Dec. 69, 73 (BIA 2007), *aff'd, sub nom. Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007). To meet this burden, she must have initially identified the "group" on which the claim is based and then have demonstrated that the group is a "particular social group" as that term is used in the "refugee" definition. *See Matter of A-T-*, 25 I. & N. Dec. at 10. The putative social group that Cece alleged to the immigration judge, and the only group upon which the immigration judge ruled, was framed circularly in terms of Cece's feared harm of being targeted for involuntary trafficking for prostitution ("young women who are targeted for prostitution by traffickers in Albania," "young women in danger of being trafficked as prostitutes by a criminal gang in Albania," "women in danger of being trafficked as prostitutes"). AR 113, 128, 131. On appeal to the Board, Cece did not assert any issue with the immigration judge's determination of the

[4] In 2005, the burden of proof was amended to require that the applicant prove that the protected ground "was or will be at least one central reason for persecuting the applicant." 8 U.S.C. § 1158(b)(1)(B)(I) (West 2005). Because Cece filed her application in 2002, the analysis of her claim is not affected by that amendment. *See Diallo v. Gonzales*, 439 F.3d 764, 765 n. 1 (7th Cir. 2006).

circularly described social group that Cece claimed. *See* AR 19-21.[5] Thus, the Board had before it a claim by Cece, a young Albanian woman, relying largely on the alleged future persecution (being targeted for prostitution by traffickers) to define the putative social group circularly, and in a way that that did not exist independently of the persecution or the persecutors. AR 19-21. The Board denied the claim for those reasons, AR 9, consistent with the law of this Court described above that a "particular social group" cannot be defined only by the persecution or risk of it.

Like this Circuit, other circuits have recognized this principle and give it effect. As the Third Circuit has held:

> [A] 'particular social group' must exist independently of the persecution suffered by the applicant for asylum. Although the shared experience of enduring past persecution may, under some circumstances, support defining a 'particular social group' for purposes of fear of future persecution, it does not support defining a 'particular social group' for past persecution because the persecution must have been 'on account of' a protected ground. Therefore, the 'particular social group' must have existed before the persecution began.

[5] On appeal to the Board, Cece did not assert that the immigration judge had misidentified her claimed social group or had failed to address other groups proposed. *See* AR 16-21. Cece's appeal brief specifically asserted only one social group (AR 16), not three, contrary to Cece's assertion to this Court (Pet. Sup. Bf at 5 n.1). Even her Opening Brief to this Court at page 22 pointed only to arguments (AR 19-20) that there was evidence in the record that religion and living alone potentially made women more vulnerable to crime, not a claim that she had raised other social groups. And Cece's sole argument to the Board was that the group addressed by the immigration judge should be sufficient. AR 19-21.

Lukwago v. Ashcroft, 329 F.3d 157, 172 (3d Cir. 2003). *See also Sarkisian v. Att'y Gen. of the U.S.*, 322 F. App'x 136, 142-143, 2009 WL 1028038 (3d Cir. Apr. 17, 2009) (unpublished disposition) ("A particular social group must exist independent of the persecution suffered by the applicant. As noted, for past persecution, this is a matter of logic: the particular social group must pre-exist the persecution to be a motivating factor." (citation omitted)). The Sixth Circuit too recognizes that the fact of persecution may not form the basis for a particular social group. *See Kante v. Holder*, 634 F.3d 321, 326-27 (6th Cir. 2011) ("Women subjected to rape as a method of government control" does not constitute a particular social group under the INA as it is "circularly defined by the fact that it suffers persecution, and the group does not share any narrowing characteristic other than the risk of being persecuted"). With regard to the claim and analysis at issue in this case, the Sixth Circuit specifically rejected a very similar proposed social group consisting of "young (or those who appear to be young), attractive Albanian women who are forced into prostitution," holding, inter alia, that individuals in a proposed social group "must share a narrowing characteristic other than their risk of being persecuted," and that "[i]f the group with which [petitioner] is associated is defined noncircularly – i.e., simply as young, attractive Albanian women – then virtually any young Albanian woman who possesses the subjective criterion of being

'attractive' would be eligible for asylum in the United States." *Rreshpja v. Gonzales*, 420 F.3d 551, 555-56 (6th Cir. 2005).[6]

The principle against social groups defined by the persecution, which this Circuit and others recognize, reflects the text and structure of the statute. Asylum is available if one qualifies as a refugee. 8 U.S.C. § 1158(b)(1). A refugee is a person who is unable or unwilling to return to her home country because of "[past] persecution or a well-founded fear of [future] persecution on account of race, religion, nationality, membership in a particular social group or political opinion." 8 U.S.C. § 1101(a)(42)(A). This definition has several "elements," which the

[6] The independent existence principle is a universal norm in "particular social group" law, precluding circular, or tautological, social groups defined in terms of the persecution experienced or feared, because such an approach would render the "on account of" requirement redundant. As a Justice of Australia's High Court explained, "[t]here is more than a hint of circularity" in the view that a number of persons fear persecution because of membership in particular social group of persons who fear persecution. *Applicant A v. Minister for Immigration and Ethnic Affairs*, (1997) 190 CLR 225, 242 (Dawson J.). Construing a particular social group in such a circular manner would also "reverse[] the statutory definition of [a] refugee . . . wherein persecution must be driven by one of the enumerated grounds and not vice versa." *Id.* *See also Islam v. Secretary of State for the Home Department*, 2 App. Cas. 629, 639-40 (H.L. 1999) (United Kingdom) (per Lord Steyn: "It is common ground that there is a general principle that there can only be a 'particular social group' if the group exists independently of the persecution"); *United Nations Guidelines on International Protection: Membership in 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* ("*UNHCR Guidelines*"), UNHCR, HCR/PIG/02/02, ¶¶ 2, 14 (7 May 2002) (adopting rule prohibiting circular or tautological social groups, and stated that a "particular social group" cannot be defined "exclusively by the fact that it is targeted for persecution").

applicant must establish. *See Tamas-Mercea v. Reno*, 222 F.3d 417, 422-423 (7th Cir. 2000); *Marquez v. INS*, 105 F.3d 374, 378 (7th Cir.1997). Two of those elements are: "persecution" (the required type and level of harm) and that it "is 'on account of' . . . membership in a particular social group" (the required motive). *See Tamas-Mercea*, 222 F.3d at 422-23; *Marquez*, 105 F.3d at 378. The statute "makes motive critical." *INS v. Elias-Zacarias*, 502 U.S. 478, 483-484 (1992). As a matter of logic, motive must precede action. As a matter of logic and the statute, since the social group must be the motive for persecution, the social group must exist prior to the persecution, and cannot be defined by the persecution.

Further, the statute must be interpreted to give meaning to its terms. The other terms of the statutory refugee definition, 8 U.S.C. § 1101(a)(42), demonstrate that "particular social group" does not equate to any group of individuals possessing a well-founded fear of persecution. The Court "must read a statute to give effect to each word so as to avoid rendering any words meaningless, redundant, or superfluous." *Witzke v. Femal*, 376 F.3d 744, 753 (7th Cir. 2004); *see TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001) (noting canon that statutes should be read to avoid making any provision "superfluous, void, or insignificant" (internal quotation marks omitted)). Cece's interpretation of particular social group to include any set of individuals linked by an immutable or fundamental characteristic would impermissibly render the other four protected grounds for asylum completely redundant or superfluous. *See id.; see also Castillo-Arias*, 446

F.3d at 1198 ("[t]he risk of persecution alone does not create a particular social group" and the term "should not be a 'catch all' for all persons alleging persecution who do not fit elsewhere."); *Orellana-Monson v. Holder*, 685 F.3d 511, 518-19 (5th Cir. 2012) (quoting *Castillo-Arias*); *Matter of C-A-*, 23 I. & N. Dec. at 960 (citing the *UNHCR Guidelines* with apparent approval "that the social group category was not meant to be a 'catch all' applicable to all persons fearing persecution"). Thus, the asylum statute itself supports the Board's decision and demonstrates the error in Cece's approach. *See* 8 U.S.C. §§ 1101(a)(42), 1158(a).

Cece does not contest any of these principles, but rather argues that her proposed social group, rejected by the Board, is nonetheless valid because it is not "solely" based on the persecution. Cece relies on *Escobar v. Holder*, which considered a quotation in *Matter of C-A-* that "a group of persons who share a common characteristic other than their risk of being persecuted...," and reasoned that a social group that is not solely based on the persecution may be valid. *See* Pet. Suppl. Bf at 3, 6. Cece's argument is without merit because, as discussed above, her group fundamentally is based on the persecution she fears. But the underlying premise that the Board has broadly held that "a social group cannot be defined exclusively by the fact that it is targeted for persecution" is also wrong.

The Board has suggested that "considering the group's visibility in society," the persecution suffered may be "a relevant factor" in establishing a social group. *Matter of S-E-G-*, 24 I. & N. Dec. at 584; *Matter of A-M-E- & J-G-U-*, 24 I. & N.

Dec. at 74; *see generally Matter of C-A-*, 23 I. & N. Dec. at 960 (quoting the concept apparently with approval). In these decisions describing "social visibility," the Board has stated that a "particular social group" cannot be defined "exclusively by the fact that it is targeted for persecution." *Matter of S-E-G-*, 24 I. & N. Dec. at 584; *Matter of A-M-E- & J-G-U-*, 24 I. & N. Dec. at 74; *see also Castillo-Arias*, 446 F.3d at 1193-94; *Castellano-Chacon v. INS*, 341 F.3d 533, 548 (6th Cir. 2003) ("[S]ociety's reaction to a 'group' may provide evidence in a specific case that a particular group exists, as long as the reaction by persecutors to members of a particular social group is not the touchstone defining the group"); *see generally Matter of C-A*, 23 I. & N. Dec. at 960 (quoting the concept apparently with approval).

In *Matter of C-A-*, the phrases "a group of persons who share a common characteristic other than their risk of being persecuted...." and "a social group cannot be defined exclusively by the fact that it is targeted for persecution," were actually just quotations from the *UNHCR Guidelines*, used to support the entirely different proposition "that 'visibility' is an important element in identifying the existence of a particular social group." 23 I. & N. Dec. at 956, 960. Those phrases in no way represented a holding in *Matter of C-A-*, and without question related only to "social visibility" analysis.

This Court in *Escobar* and other cases failed to give any meaningful consideration to this context of *Matter of C-A-*. Instead, the Court attributed the

quote in *Matter of C-A-* as a Board rule, observing that the Board "never demanded an utter absence of any link to the persecutor." 657 F.3d at 545. Then, giving "*Chevron* deference" to a proposition that the Board had not stated as a holding in either *Matter of C-A-* or the underlying *In re Escobar* decision,[7] the Court asserted to a sweeping rule that "a 'social group' cannot be defined solely by the fact that its members suffer persecution" but may therefore be defined, at least in part, by the persecution. *Id.* Moreover, the Court proceeded directly to "decid[ing] whether Escobar's proposed group, as a matter of fact, suffers from that flaw," reformulated the social group to include of "former" truckers, and determined that the resulting group did not lack a "common link apart from the characteristic that the members were persecuted." *See id.* at 545-46. The Board had made none of these findings. The *en banc* Court should not rely on such reasoning for the proposition that persecution may be factor in all types of "particular social group" analysis.

Cece's claim is essentially that "I am an individual who will be targeted for forced trafficking for prostitution on account of my membership in group of individuals who are targeted for trafficking for prostitution." The only requirement for asylum is, therefore, effectively, that two or more people fear the same harm.

[7] In the decision underlying the Escobar case, the Board rejected the social groups solely because their characteristics were not immutable. *See Escobar*, 657 F.3d at 550 (Easterbrook, CJ, dissenting)

Her approach is circular because it assumes both that such common characteristics establish the existence of a "particular social group" and that the risk of harm is on account of those characteristics, reading the remainder of the statute out of existence. As described above, the Board's determination that Cece's putative social group is invalid are consistent with decisions of this Circuit and others, the text of the statute, logic, and the Board's precedent. The Board's position in this case was reasonable, the decision should be affirmed by the Court.[8]

C. The Evidence Amply Supports the Determination that Cece Failed to Establish Inability to Reasonably Relocate, and the Board Adequately Articulated that Determination

To establish a well-founded fear of persecution by traffickers in Albania, Cece also must have demonstrated that safe internal relocation is not a reasonably available alternative. 8 C.F.R. § 1208.13(b)(2)(ii), (b)(3)(i). Therefore, the Court also must deny the petition for review if record evidence fails to compel the conclusion that Cece demonstrated that she could not reasonably avoid persecution by relocating from Korce within Albania.

In its initial decision on July 24, 2007, the Board noted that after Cece moved to Tirana, where she lived with her sister and obtained a teaching job, she

[8] If the Court cannot resolve the case based on the Board's independent existence conclusion, or the internal relocation grounds described below, the Court should remand to the Board to address the Court's concerns. If the *en banc* Court does remand, it should specifically clarify that the Court's prior panel decisions in *Gatimi* and *Benitez Ramos* do not foreclose the Board from applying particularity or social perception criteria to the term "particular social group."

had no problems with Reqi or anyone else, and found "insufficient indication in the record that [Cece] has a well-founded fear of persecution in Tirana or in another city within Albania, outside of Korce." AR 330. The Board further noted that although Cece testified that if Reqi wanted to come after her he would find her wherever she went, "[t]here was no indication that Reqi [or any other trafficker] tried or was motivated to pursue [her] outside of Korce." AR 331. In its opinion of March 31, 2011, the Board "once again [found] that there is insufficient evidence in the record that internal relocation is not reasonable." AR 9.

Cece challenges the Board's finding on two grounds, claiming that: (1) the Board "does not analyze any of the factors set forth in [8 C.F.R. § 1208.13(b)(3)] to determine whether relocation is reasonable under all the circumstances," and (2) the Board failed to take into consideration Dr. Fischer's testimony that she could not safely relocate in Albania and that her location would be discovered should she return. Pet. Opng Bf at 30-31 (citing Dr. Fischer's affidavit at AR 648-49). Both of these challenges are meritless.

The Board is "not required to write an exegesis on every contention" raised by a petitioner. *Iglesias v. Mukasey*, 540 F.3d 528, 531 (7th Cir. 2008). Nor is it required to explicitly analyze every factor listed in 8 C.F.R. § 1208.13(b)(3). It is merely required to "consider the issues raised, and announce its decision in terms sufficient to enable a reviewing court to perceive that it has heard and thought, and not merely reacted." *Iglesias*, 540 F.3d at 531. The Board has done so here.

Although Cece's expert on Albania testified that internal relocation was generally not "practical" or "viable" for various reasons, *see* AR 228, 231, 256, 544-545 at ¶15, those characterizations are not the applicable standard under the regulations. Moreover, expert opinion testimony does not purport to be evidence as to "fact." *Matter of V–K–*, 24 I. & N. Dec. 500, 502 n.2 (BIA 2008), *pet'n for review granted on other grounds sub nom. Kaplun v. Attorney General of U.S.*, 602 F.3d 260 (3d Cir. 2010). The overall probative value of expert opinion as to the specific facts in issue in a case is a matter of weight. *Matter of D–R–*, 25 I. & N. Dec. 445, 464 n.13 (BIA 2011). The Board was free to consider the underlying record evidence, and to reach different conclusions as to the ultimate legal standard. *Matter of V–K–*, 24 I. & N. Dec. at 502 n.2.

Here, Cece's prior safe relocation to Tirana was persuasive evidence that internal relocation was both safe and reasonable, and the record evidence does not compel the opposite conclusion. Cece herself testified that she could have enrolled in the university herself and moved into a dormitory, although she would have had to wait until the next semester. AR 416-17. Although it is uncommon for a single woman to live alone, and that such a woman may be more vulnerable, there was no evidence that a single woman cannot live alone in Albania. More directly, there was no evidence that even a young single woman cannot live safely in a place where she has already lived unnoticed. Cece submitted no evidence that Reqi or any other trafficker knew where she was, followed her, attempted to find her, or

had any further interest in her. During the six months she lived safely and free of harassment in Tirana, Cece was not in hiding, never leaving the dormitory alone, staying on campus at all times, never providing opportunity for Reqi or other traffickers to accost her. In fact, the record shows just the opposite. Cece took a full-time job teaching English at a school for more than six months, yet she experienced no harm or threat whatsoever while doing so. AR 168, 414. One assumption of the expert's opinion was that when people relocate in Albania they "tend to move to areas already populated by either members of their clan or members of their village or members of their small town," making it "difficult to disappear even there." AR 231. But there was no evidence that Cece could not have remained in Tirana after her sister's departure, and if she had, the expert's assumption would not apply. No factual evidence in the record compels the conclusion that Cece demonstrated that it would be either impossible for her to live safely outside of Korce, or unreasonable to expect her to do so. *See* 63 Fed. Reg. 31,945, 31,947-48 (1998) (explaining that "the difficulties associated with an internal relocation option would have to be substantial to render relocation unreasonable" and that "[m]ere economic disadvantage or the inability to practice one's chosen profession would not qualify as 'other serious harm'"). Accordingly, the Court should find that the Board properly determined that Cece failed to establish that she could not safely relocate within Albania.

CONCLUSION

For the foregoing reasons, this Court should deny Cece's petition for review.

Respectfully submitted,

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DATED: August 30, 2012

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the attached Respondent's Supplemental Brief on Rehearing *En Banc* complies with the type/volume limitations for a principal brief described in Fed. R. App. P. 32(a) in that it contains 23 pages, excluding those parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii), was prepared using Microsoft Word 2010, is proportionally spaced using Times New Roman 14-point typeface, and contains 6031 words of text.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on August 30, 2012.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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