

Immigration Court: BIA**Case:** *Matter of V-A-B-*, 29 I&N Dec. 621 (BIA 2026)**Date:** May 8, 2026**Adjudicated by:** Hunsucker, Gemoets, Chaban**Opinion:** Hunsucker**Tags:** PSGs, circularity, marriage-based PSGs**Question Presented:**

- (1) Cognizability of PSG “married Mexican women who are unable to leave their relationship”?
- (2) Presumption of legal marriage based on cohabitation and shared children?

Holdings:

- (1) “The proposed particular social group defined as ‘married Mexican women who are unable to leave their relationship’ is not cognizable under the INA because it is circularly defined and lacks particularity.” 621, 622
- (2) “The existence of a lawful marriage cannot be presumed simply because two persons are cohabiting or have children in common.” 621

Rationale:

Facts: (621) Mexico. Respondent has resided continuously in US since 2000. She has seven children with her former husband, married formally in US 10/24/2016. Left him because of abuse both in Mexico and in the US.

Procedural History:

- 1/7/2025 – IJ Decision granting withholding of removal bcz PSG
- 2/2025 – DHS appealed
- 6/6/2025 – BIA remanded to reexamine marriage & abuse on account of PSG in MX
- 8/19/2025 – IJ Decision granting withholding of removal again
- 9/2/2025 – *Matter of S-S-F-M-* was decided.
- 9/2025 – DHS appealed

Appeals to Statute & Precedent:

- *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) – relied on by IJ for finding that proposed PSG was cognizable. Now it’s overruled by...
- *Matter of S-S-F-M-*, 29 I&N Dec. 207 (A.G. 2025) – overruled *A-R-C-G-* and reinstated...
- *Matter of Matter of A-B- I*, 27 I&N Dec. 316 (A.G. 2018) – originally overruled *A-R-C-G-*, saying that it improperly recognized “married women in Guatemala who are unable to leave their relationship” as a PSG because not particular enough.
- *Perez-Zenteno v. A.G.*, 913 F.3d 1301, 1309-10 (11th Cir. 2019): concluding that a proposed social group was impermissibly circular because it was ‘defined in large measure by the risk of persecution.’
- *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014): immutable, particular, and socially distinct PSGs.

- ***Matter of Da Silva*, 15, I&N Dec. 778, 779 (BIA 1976)**: “The legal validity of a marriage is generally determined by the law of the place of the celebration.”
- ***Matter of Garcia*, 16 I&N Dec. 623, 624 (BIA 1978)**: concluding that a common-law marriage had not been established under TX law where purported common-law husband was listed as father on BCs but not husband. 624
- ***Matter of C-G-T-*, 28 I&N Dec. 740, 743-44 (BIA 2023)**: whether government is unable or unwilling to protect respondent. “A failure to report abuse to authorities, even if based on a subjective belief that they would not assist, is insufficient to show the government is unable or unwilling to control private violence.” 625)
- ***Ayala v. U.S. A.G.*, 605 F.3d 941, 951 (11th Cir. 2010)**: “Persecution must be inflicted under government sanction or by private actors that the government is unwilling or unable to control.” (V-A-B- 624)
- ***Matter of A-B- II*, 288 I&N Dec. 199, 205 (A.G. 2021)**: “ ‘unable’ must mean more than the failure to prevent or solve a particular crime.”
- ***Lopez v. A.G.*, 504 F.3d 1341, 1345 (11th Cir. 2007)**: if persecutor is private actor, respondent must have tried reporting to local police or shown that it would have been futile to do so.
- ***Matter of R-S-H-*, 23 I&N Dec. 629, 638 (BIA 2003)**: respondent waives opportunity to present an issue on appeal if it was not raised before the IJ. **In V-A-B-, BIA is applying this to PSGs that were not raised before the IJ ON REMAND.**

Relevant U.S. History:

- Note the timing of the procedural history of this case: the IJ’s first decision happened about two weeks before Trump 2.0 (1/7/25), and the second IJ decision happened during the summer of Trump’s second reign (8/19/25). At both of those moments, *A-C-R-G-* was still good law—DHS had just begun to deny and appeal everything on principle. But the A.G. decision *Matter of S-S-F-M-*, which vacated the DV case law *A-C-R-G-*, occurred Sept. 2, 2025, AFTER the IJ’s second decision granting this respondent withholding on remand. This means that the BIA addressed the case on appeal ***under a legal regime that did not exist until a few days before the DHS appeal was filed.*** Total rough luck for this respondent.

Discussion:

- A PSG “must be defined by characteristics that provide a clear benchmark for determining who qualifies as a member of the group.” 623
- “The applicant’s proposed social group is also impermissibly circular as it is defined by the alleged persecution of ‘being unable to leave’ the relationship.” 623
- “The proposed social group at issue here, like in *Matter of A-R-C-G-*, does not exist independently of the harm asserted ‘because the inability “to leave” was created by [the] harm or threatened harm.’ *Matter of A-B- I*, 27 I&N Dec. at 335.” 623
 - IOW PSGs defined by vulnerability to private criminal activity are likely not particular enough.
- “the applicant has not established that her proposed social group of ‘married Mexican women unable to leave their relationship’ is meaningfully distinguishable from the group discussed in *Matter of A-B- I* and has the required particularity to be cognizable under the INA.” 623

- Even granting the PSG, “the IJ did not make sufficient findings to demonstrate that the applicant was a member of the group while residing in Mexico” (since she didn’t get officially married to the man until later in the U.S.). 624
 - IJ had determined that they engaged in a common-law marriage in MX.
- To determine marriage in society in question, IJ must first determine:
 - Place of alleged marriage
 - Date of alleged marriage
 - Applicable law that existed at that place & time
 - (Can’t just be presumed circumstantially)
- Re. relocation: “When the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country’s government.” *Matter of A-B- I*, 27 I&N Dec. at 345. 625
 - “Moreover, the applicant did not demonstrate that the reach of her former husband or Los Gonzalez is country-wide, such that her internal relocation would not reasonably provide her safety from the harm she claims to fear.” 626

Commentary:

- Re. not applying *Matter of A-B- I* retroactively: “the Attorney General’s decision in *Matter of A-B- I* is a clarification of the evolving concept of particular social groups and is not an ‘abrupt departure’ from existing law.” 623
- **NOTE:** if your case gets remanded to untangle a particular legal matter, make sure you raise ALL of the PSGs again – otherwise the BIA may say that you missed your opportunity to raise those matters on appeal because you failed to raise them before the IJ (even if you did so the first time around!). See fn. 3 on 626.

Notes:

- The BIA’s conclusion that “unable to leave” is circular may be incorrect in some cultural contexts: In *M-E-V-G-*, the cultural taboo against breaking or ending a marriage relationship was not the same as the persecution suffered by the DV victim in *V-A-B-*. IOW, if “unable to leave” means the person was falsely imprisoned and scared to leave because of threats, then it’s circular. If it means the culture frowns on divorce, then it’s not circular with regard to the specified persecution.