

Immigration Court: BIA**Case:** *Matter of S-E-M-Z-*, 29 I&N Dec. (BIA 2026)**Date:** June 5, 2026**Adjudicated by:** Malphrus,, Gemoets, McCloskey**Opinion:** Gemoets**Tags:** Asylum, Withholding, Particular Social Groups, Social Distinction, family-based PSG, private-actor-based PSGs**Question Presented:** When determining “social distinction within the society in question” (per *W-G-R-*), what “society” is in question?**Holdings:** “The ‘social distinction’ element of a particular social group must generally be measured on a countrywide basis, rather than from the perspective of a neighborhood or other limited geographic location within a country.” 680**Rationale:** Nuclear family must be recognized by “society in question,” meaning the whole nation. 682

- “Adherence to this scope of inquiry is consistent with the concept of a refugee as being unable to return to a **country** as opposed to a solitary neighborhood or limited geographic location within such country.” 682 (emphasis added)

Facts: 680. Honduras. Opposed recruitment of daughter by MS-13. Daughter kidnapped. Applicant and nephew located her, drove to find her. Applicant and daughter relocated to rural village where Applicant’s mother lived. Perceived threats; Applicant and daughter fled to U.S. Nephew found murdered.**Procedural History:**

- **March 5, 2019:** IJ granted withholding of removal (WH only proceedings) based on family PSG.
- **April 2019:** DHS Appealed

Appeals to Statute & Precedent:

- **8 U.S.C. § 241(b)(3), 8 U.S.C. § 1231(b)(3):** Withholding of removal statute (refers to an applicant’s whole country)
- **8 C.F.R. §§ 1208.13(b), 1208.16(b):** adjudicators must determine whether the person can reasonably relocate within his country of origin.
- ***Matter of L-E-A-*, 27 I&N Dec. 40, 42 (BIA 2017) (“*L-E-A- I*”):** “family ties may meet the requirements of a particular social group depending on the facts and circumstances in the case.” Test for nexus is still popular with this government! (see 687) Overruled by:
- ***Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) (“*L-E-A- II*”):** No, they don’t. Overruled by:
- ***Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021) (“*L-E-A- III*”):** Yes, they do. Vacated by:
- ***Matter of R-E-R-M- & J-D-R-M-*, 29 I&N Dec. 202, 205 (A.G. 2025):** You better believe they don’t. *L-E-A- II* reinstated.

- ***Matter of S-S-F-M-*, 29 I&N Dec. 207 (A.G. 2025):** Reinstated *Matter of A-B- I* (27 I&N Dec. 316 A.G. 2018) and *Matter of A-B- II* (28 I&N Dec. 199 (A.G. 2021) rejecting DV / private actor persecution except under very rare circumstances.
- ***Matter of W-G-R-*, 26, I&N Dec. 208, 212-18 (BIA 2014), *vacated in part on other grounds sub nom., Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016):** PSG “requires immutable characteristics, must be defined with particularity, and must be socially distinct within the society in question.” (S-E-M-Z- 681)
- ***Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987):** didn’t deal with social distinction, but emphasized that the individual must be unable or unwilling to return to a particular country, and the harm must be **country-wide** for him. (Discussed in *S-E-M-Z-* at 682)
- ***Matter of H-*, 21 I&N Dec. 337, 334 (BIA 1996):** distinct and recognizable subclans in Somalia.
- ***Matter of A-M-E & J-G-U-*, 24 I&N Dec. 69, 74 (BIA 2007), *aff’d sub nom., Ucelo-Gomez v. Mukasey*, 509 F.3d 70 (2d Cir. 2007):** Social visibility must be considered in the context of the country of concern.
- ***Matter of M-E-V-G-*, 26 I&N Dec. 227, 242 (BIA 2014):** “a group’s recognition for asylum purposes is determined by the perception of the society in question, rather than by the perception of the persecutor.”
- ***Matter of Fuentes*, 19 I&N Dec. 658, 663 (BIA 1988):** asylum claim based on nongovernmental action can’t be established if you can only show neighborhood persecution.
- ***Matter of D-G-E-A- & N-G-G-E-*, 29 I&N Dec. 570, 575-76 (BIA 2026):** political opinion asylum claim implies opposition to government of a whole *country*.
- ***See p.685* for examples of Circuit Court cases that reference a whole nation as a “society.”**
- ***Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949-50 (4th Cir. 2015):** recognizes nexus to family-based PSG.
- ***Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007):** a protected ground “cannot be incidental, tangential, superficial, or subordinate to another reason for harm.”
- ***Ndayshimiye v. A.G.*, 557 F.3d 124, 129-31 (3d Cir. 2009):** rejects BIA’s idea (in *J-B-N- ^^*) that a protected ground cannot be *subordinate* to another reason for harm.

Relevant U.S. History:

- **Jan. 2017-Jan. 2021:** Trump 1.0
- **Jan. 2021-Jan. 2025:** Biden
- **Jan. 2025-Jan. 2029:** Trump 2.0

Applicant’s Argument & IJ’s Decision:

- People in Honduran neighborhoods know each other and are familiar with each other’s lives. Therefore, the PSG of a nuclear family from that neighborhood is “socially distinct.” 682

Discussion:

- “In *Matter of L-E-A- II*, the Attorney General held that an applicant’s immediate family ‘generally will not be distinct on a societal scale, whether or not it attracts the attention of criminals who seek to exploit that family relationship in the service of their crimes.’” 681 (quoting *L-E-A- II* at 582)

- Applicant “must show that his proposed group has some greater meaning in society.” *L-E-A- II* at 594.
- “It is not enough that the family be set apart in the eye of the persecutor, because it is the perception of the relevant society—rather than the perception of the alien’s actual or potential persecutors—that matters.” *Id.*
- “While [the IJ’s] finding is grounded in the record and is not clearly erroneous, the Immigration Judge erred by focusing on a specific neighborhood to determine the concept of social distinction, instead of **the relevant society at large.**” 682 (emphasis added)
 - “**Society at large**” needs to be able to recognize the family. Family must have “greater societal import” 682 (quoting *L-E-A- II* at 595)
- “Society’s perception” – for example:
 - Distinct and recognizable subclans in Somalia (*Matter of H-*)
- “This reference to society must be viewed within its statutory context of nationwide persecution, which is a fundamental aspect of fear-based relief.” 683
- “A focus on whether a proposed group is socially distinct within a neighborhood or other limited geographic location within a country is inconsistent with the purpose of nationwide protection contemplated by asylum and statutory withholding of removal.” 684
- “Merely focusing on a limited geographic location begs the question [*sic*] of why that group is not distinct amongst a larger population.” 684
 - Religion & political opinion have to do with the WHOLE country, so these PSGs should also. 684
- “It would render the concept of social distinction **meaningless** if review is limited to a minimal geographic location where neighbors are familiar with one another but lack that similar familiarity outside the location within their country.” 684 (emphasis added) (Challenge this! See notes below.)
- PSG can’t be too broad or too narrow! *Matter of A-B- I* at 336. “Focusing on too narrow a subset of society runs the risk that the proposed group will lack that larger significance to society.” 686
- **Re. nexus in this case:**
 - Test from *Matter of L-E-A- I* (at 43-44) for determining nexus if there’s mixed motives:
 - Protected ground must be a but-for cause of the wrongdoer’s acts
 - Protected ground must play more than a minor role – not incidental or tangential to the perpetrator’s actions 687
 - See 687-88 for circuit court cases finding that PSG of family was just a means to an end, not a central reason for the persecution.

- Fourth Circuit still recognizes family-based PSG as sufficient for nexus under *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949-50 (4th Cir. 2015) (making today’s BIA froth at the mouth, see p. 688)
 - “Even if the family ties provide a ‘but-for’ causation for harm to the applicant, the goals of recruitment and sustaining the gang’s power and control are the only central reasons for harm [to the mother] in this case.” 688
 - Also, the protected ground claimed is “immediate family members,” and the only person to suffer harm was a nephew, who’s not an “immediate family member.” SO THEREFORE THERE’S NO DANGER FOR IMMEDIATE FAMILY MEMBERS. The fact that the nephew was killed is just reflective of general gang violence in Honduras. 689

More *S-E-M-Z*- Commentary on “society” issue:

- According to this decision, circuit court opinions refer to “a nation’s society,” so that must mean they always and only consider the WHOLE country. Examples on 685-86
 - “Mexican society” – “Salvadoran society” – “Guatemalan society” – etc.
 - “These cases include countries with large, diverse populations and geographic footprints, as well as smaller, less-populated countries. They do not indicate that a neighborhood can be a relevant society for measuring social distinction.” 686
- Counterexamples of *Matter of A-M-E & J-G-U-*, *Matter of Kasinga*, *Matter of M-E-V-G-* (see below for notes):
 - “However, none of these cases **holds that a neighborhood or other limited geographic location within a country constitutes a society for purposes of social distinction.**” 686 (see notes below)

Pushing Back re. Social Distinction:

BIA is defining “society” too narrowly (ironic, since they’re defining it as the whole country!). See below for other ways of framing this idea of “social distinction *within* the society in question”:

- Find examples of nations where control over certain regions is negligible or nonexistent.
- Similarly, a country may contain many diverse and essentially societally separate regions.
- National registry for families – since “social distinction” doesn’t need to be “ocularly visible,” after all, might it not be enough to have the family officially registered with the government?
 - Also: is the “perception” of a given “society” referring to the government as record-keeper, or government actors in their day-to-day jobs? Or is it the average man on the street?
- What are the markers that a given society recognizes a group? – gossip (i.e, everyone just *knows* about this)? TikTok? National laws or regulations referencing the group? Commercials? Appearance on TV sitcoms or in movies? The subject matter of songs? Taught in school? Historically significant? Organized groups registered nationally or locally? Groups receiving national or local benefits or aid? Named groups on a government’s hit list? Preached about by church leaders? If people living in parts of

the country in question don't yet realize that this group exists, could they reasonably be taught about its existence?

- People travel: who's to say that a local altercation would be merely confined to one locale?
 - **This also means that you want to show why safe interior relocation is impossible.** IOW, even if the “society in question” is currently just the local community in your case, why would your applicant be equally in danger in another location within their country?
- Language usage: e.g., “American society” encompasses many smaller societies. Why wouldn't this be true in other countries?
 - Also, *W-G-R-*'s standard of “socially distinct within the society in question” is not the same as saying “**societally** distinct.” A pocket of the society is certainly “**within** the society in question.” **Social** distinction involves other humans perceiving the distinction. **Societal** distinction requires the whole society to recognize the group. *W-G-R-* contemplates “**social** distinction.” (I am spitballing, so no references.)
- Counterexamples (where the contemplated “society” is smaller than a nation) (given 686):
 - *Matter of A-M-E & J-G-U*, 24 I&N Dec. at 74: “the shared characteristic of the group should generally be recognizable by others **in the community . . .**”
 - *Matter of Kasinga*, 21 I&N Dec. 357, 366 (BIA 1996): persecution limited to a remote region of the country
 - *Matter of M-E-V-G-*, 26 I&N Dec. at 243: referencing *Matter of Kasinga* for the principle that such a situation “may invite an inquiry into a more limited subset of the country's society”
 - Arguing (686) that the above cases didn't HOLD that “a neighborhood = a society for purposes of social distinction” is irrelevant: those cases weren't asking about the scope of the society. They were just commenting reasonably on where the social distinction might exist, geographically speaking.

Pushing back re. Nexus to PSG of family:

- Fourth Circuit still recognizes family-based PSG as sufficient for nexus under *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 949-50 (4th Cir. 2015)
- Third Circuit rejects BIA precedents stating that protected ground cannot be “subordinate” to another reason. *Ndayshimiye v. A.G.*, 557 F.3d 124, 129-31 (3d Cir. 2009). (See 688 at n.2)
- Harm to non-immediate family members seems to me to be an indication that *immediate* family members would be targeted at least as often, if not more, in connection with the gang's previous predatory intention re. that family. (see 689 and exasperated notes above)