

**Immigration Court: BIA****Case:** *Matter of M-E-V-G-*, 26 I&N Dec. 277 (BIA 2014)**Date:** Feb. 7, 2014**Adjudicated by:** Adkins-Blanch, Guendelsberger\*, Greer**Tags:** Immigration, Particular Social Group, social visibility, social distinction, asylum**Question Presented:** Does respondent qualify as a “refugee” based on his past mistreatment by gangs? (Has he established an asylum claim based on PSG membership?)

- What does it mean for a particular social group to be “socially visible”?

**Holdings:** Case remanded to IJ in light of clarified requirements for PSG definition.

- “We adhere to our prior interpretations of the phrase but emphasize that literal or ‘ocular’ visibility is not required, and we rename the ‘social visibility’ element as ‘social distinction.’” (228)

**Rationale:**

- Some folks have mistakenly understood us to mean that “social visibility” requires *literal* visibility in a society, so we’re going to use the term “socially distinct” instead.
- “To be socially distinct, a group need not be seen by society; rather, it must be perceived as a group by society.” (240)

**Facts:** Native of Honduras was kidnapped and beaten by gang members in Guatemala. PSG claim: “Honduran youth who have been actively recruited by gangs but who have refused to join because they oppose the gangs.” (228)**History of the Case:**

- **IJ (2005):** denied application for asylum, withholding of removal, and CAT protection.
- **BIA (2006):** affirmed IJ’s decision.
- **Third Circuit (2007):** Remanded to BIA for further consideration of respondent’s applications for asylum and withholding of removal
- **BIA (2008):** on remand, again denied applications for asylum & withholding of removal, because respondent did not establish past persecution according to protected ground; concluded that PSG lacked particularity and “social visibility”
- **Third Circuit (2011):** Remanded to BIA again because BIA didn’t have coherent requirement for PSG’s “particularity” and “social visibility.”

**Appeals to Statute & Precedent:**

- **8 U.S.C. §1101(a)(42)(2012):** definition of refugee—persecution on protected grounds
- ***Matter of Acosta*, 19 I&N Dec. 211, 232-33 (BIA 1985):** PSG = immutability (via *ejusdem generis*)
- ***Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006):** PSG = particularity & social visibility
- ***Matter of A-M-E- & J-G-U*, 24 I&N Dec. 69, 74-76 (BIA 2007):** can't define PSG based on persecution alone; must be "recognizable" as a discrete group, must have well-defined boundaries.
- ***Matter of S-E-G-*, 24 I&N Dec. 582 (BIA 2008):** PSG = particularity & social visibility
- ***Matter of E-A-G-*, 24 I&N Dec. 594 (BIA 2008):** PSG = particularity & social visibility
- ***Orellana-Monson v. Holder*, 685 F.3d 511, 521 (5<sup>th</sup> Cir. 2012):** PSG = "social visibility" and "particularity" are requirements now
- ***Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014):** Companion case to *Matter of M-E-V-G-*.

**Relevant U.S./Immigration Law History:**

- "Now, close to three decades after *Acosta*, claims based on social group membership are numerous and varied. The generality permitted by the *Acosta* standard provided flexibility in the adjudication of asylum claims. However, it also led to confusion and a lack of consistency as adjudicators struggled with various possible social groups, some of which appeared to be created exclusively for asylum purposes." (231)
- "The limited nature of the protection offered by refugee law is highlighted by the fact that it does not cover those fleeing from natural or economic disaster, civil strife, or war." (235)

**Quotes:**

- "Societies use a variety of means to distinguish individuals based on race, religion, nationality, and political opinion. The distinctions may be based on characteristics that are overt and visible to the naked eye or on those that are subtle and only discernible by people familiar with the particular culture. The characteristics are sometimes not literally visible." (236)
- "Therefore these enumerated grounds of persecution have more in common than simply describing persecution aimed at an immutable characteristic. They have an external perception component within a given society, which need not involve literal or 'ocular' visibility." (236)
- "Contrary to our intent, the term 'social visibility' has led some to believe that literal, that is, 'ocular' or 'on-sight,' visibility is required to make a particular social group cognizable under the Act." (236)

- “...if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.” (238)
- “...we clarify that 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.” (Should not define PSG solely on the perception of the persecutor) (242)
- “...a successful case will require evidence that members of the proposed PSG share a common immutable characteristic, that the group is sufficiently particular, and that it is set apart within the society in some significant way.” (244)
- “The clarifications provided by our decision in this matter should only alter the result in cases where a literal or ‘ocular’ visibility standard was improperly determinative of the outcome in the case.” (247 n.14)

**Commentary:**

- Problem with designating victims of gang violence as a PSG: since just about everybody in a society deals with the gang violence, it’s difficult to see what the boundaries of the PSG are.