

*CECE V. HOLDER AND THE INADEQUACY IN THE  
ASYLUM PROCESS FOR HELPING POTENTIAL  
TRANSNATIONAL HUMAN TRAFFICKING VICTIMS*

*Theresa Du\**

INTRODUCTION

On August 9, 2013, Johana Cece accomplished what many before her failed to do—she successfully qualified for asylum as a victim of potential human trafficking.<sup>1</sup> The Seventh Circuit, in an en banc decision, ruled that Cece has sufficiently defined a particular social group (“PSG”) in order to qualify for asylum protection.<sup>2</sup> Her proposed PSG was—young women, living alone, who are targeted for prostitution by traffickers in Albania.<sup>3</sup>

Cece was a twenty-three year old woman when she arrived in the United States in 2002.<sup>4</sup> Cece used to live with her family in Korçë, about 120 miles southeast of the Albanian capital Tirana.<sup>5</sup> However, her parents left the country in 2001, leaving her alone in Korçë.<sup>6</sup> Subsequently, a well-known local gang that was notorious for trafficking women into prostitution stalked Cece.<sup>7</sup> Reqi, the leader of the gang, harassed her by inviting her out for drinks, offering her rides in his car, and following her throughout the city.<sup>8</sup> Cece had seen Reqi looking for other girls and offering them drugs; she had also heard that he forced some of those women into prostitution.<sup>9</sup> Therefore, Cece denied Reqi’s advances.<sup>10</sup>

---

\* George Mason University, Antonin Scalia School of Law, J.D. Candidate, December 2017. I would like to thank my ESL teachers. When I was twelve, I came to the United States knowing a dozen words in English. This article would not be possible without them.

<sup>1</sup> See *Cece v. Holder*, 733 F.3d 662, 678 (7th Cir. 2013). The terms “victim” and “alien” are used throughout this note. Although these terms now have acquired certain negative connotations, they are not meant as pejoratives, but are used because these are the terms used in authoritative law as well as legal literature.

<sup>2</sup> *Id.* at 677.

<sup>3</sup> *Id.* at 667–669. There were many iterations of her proposed PSG. Although this is not her exact phrasing, this definition encompassed her proposals most thoroughly.

<sup>4</sup> *Cece v. Holder*, 668 F.3d 510, 512 (7th Cir. 2012), *vacated*, 733 F.3d 662 (7th Cir. 2013) (en banc).

<sup>5</sup> *Cece*, 733 F.3d at 667.

<sup>6</sup> *Id.* at 666.

<sup>7</sup> *Id.*

<sup>8</sup> *Cece*, 668 F.3d at 512.

<sup>9</sup> *Cece*, 733 F.3d at 666.

<sup>10</sup> *Id.* at 667.

On June 4, 2001, Reqi followed Cece into a cosmetics store, cornered her, and pinned her to a wall.<sup>11</sup> There, Reqi made it clear to Cece that he would always “find her and do whatever he wanted to her.”<sup>12</sup> There were witnesses in the store but nobody came to her aid.<sup>13</sup> Furthermore, although Cece reported the incident, the police took no action.<sup>14</sup> Two days later, someone shattered Cece’s apartment window with a rock.<sup>15</sup>

Afterwards, Cece moved to Tirana to stay with her sister, who lived in a university dormitory.<sup>16</sup> But in 2002, her sister moved to the United States.<sup>17</sup> That is also when Cece procured a fake Italian passport and travelled to the United States under the Visa Waiver Program.<sup>18</sup> Within a year of her arrival, she applied for asylum.<sup>19</sup>

For the next decade, Cece’s case was tangled up in the American legal system. First, in 2006, an immigration judge granted her asylum.<sup>20</sup> However, the Board of Immigration Appeals (“BIA”) reversed that decision, finding that she was not persecuted on account of her membership in a PSG.<sup>21</sup> The immigration judge, bound by the BIA, then reversed its prior order and denied Cece’s asylum claim.<sup>22</sup> Cece appealed, and the BIA upheld the denial.<sup>23</sup>

In 2011, Cece then appealed the BIA’s denial to the Seventh Circuit.<sup>24</sup> Initially, in February 2012, the Seventh Circuit denied her petition, but Cece applied for an en banc rehearing.<sup>25</sup> On September 27, 2012, ten years after her arrival in the United States, Cece reargued her case and claimed that she had a well-founded fear of persecution in Albania on account of her membership in the PSG of “young wom[e]n living alone . . . who are targeted for prostitution by traffickers in Albania.”<sup>26</sup> The Seventh Circuit finally deemed this proposed PSG protectable on August 9, 2013.<sup>27</sup>

However, this Note argues that *Cece v. Holder*<sup>28</sup> may not have been correctly decided. While sympathetic to the plight of both potential and befallen

---

<sup>11</sup> *Id.* at 666–67.

<sup>12</sup> *Id.* at 667.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Cece*, 733 F.3d at 667.

<sup>16</sup> *Id.*

<sup>17</sup> *Cece*, 668 F.3d at 512.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Cece*, 733 F.3d at 667.

<sup>21</sup> *Id.* at 668.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Cece*, 733 F.3d at 668, 670.

<sup>27</sup> *Id.* at 662, 678.

<sup>28</sup> 733 F.3d 662 (7th Cir. 2013).

trafficking victims, Cece's proposed PSG should not have passed legal muster. Instead, this Note proposes amending the T visa requirements in order to better serve transnational trafficking victims in the United States. Specifically, Part I of this Note examines human trafficking and its relevance to *Cece*. Part II looks at the asylum process as an immigration protection for trafficking victims, and demonstrates the difficulties of asserting asylum claims on the basis of well-founded fear of persecution on account of being in a PSG. Part III then looks at a list of cases revealing that trafficking victims have regularly failed to qualify for asylum because their proposed PSGs never passed legal muster. Part IV inspects *Cece v. Holder*, the first case of its kind that approved a potential sex-trafficking victim's PSG as a protected ground. It argues that *Cece* may have been incorrectly decided because its proposed PSG of "young women, living alone, who are targeted for prostitution by traffickers in Albania" should not have passed legal muster.<sup>29</sup> Finally, this Note concludes by advocating a change in the T visa eligibility requirements in order to better protect potential victims of transnational trafficking.

## I. BACKGROUND ON HUMAN TRAFFICKING

Human trafficking is a serious crime. According to the United Nations Office on Drugs and Crime, human trafficking affects almost every country in the world with thousands of men, women, and children falling into the hands of traffickers.<sup>30</sup> The International Labour Organization estimated in 2012 that there are 20.9 million victims of human trafficking globally.<sup>31</sup> The United States Congress found "[a]pproximately 50,000 women and children are trafficked into the United States each year."<sup>32</sup> The Federal Bureau of Investigation ("FBI") believes human trafficking is the third-largest criminal activity in the world,<sup>33</sup> and the Department of Homeland Security ("DHS") reports that "human trafficking generates many billions of dollars of profit per year, second only to drug trafficking as the most profitable form of transnational crime."<sup>34</sup>

---

<sup>29</sup> *Cece*, 733 F.3d at 667.

<sup>30</sup> *Human Trafficking*, UNITED NATIONS OFFICE ON DRUGS AND CRIME ("UNODC"), <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited July 15, 2017).

<sup>31</sup> *New ILO Global Estimate of Forced Labour: 20.9 Million Victims*, INTERNATIONAL LABOUR ORG. ("ILO") (June. 1, 2012), [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_182109/lang-en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_182109/lang-en/index.htm).

<sup>32</sup> 22 U.S.C. § 7101(b)(1) (2016).

<sup>33</sup> *Human Trafficking/Involuntary Servitude*, THE FEDERAL BUREAU OF INVESTIGATIONS, <https://www.fbi.gov/investigate/civil-rights/human-trafficking> (last visited July 15, 2017) [hereinafter FBI, *Human Trafficking*].

<sup>34</sup> The Blue Campaign, *What is Human Trafficking?*, DEP'T OF HOMELAND SECURITY, <https://www.dhs.gov/blue-campaign/what-human-trafficking> (last visited Jan. 5, 2017).

According to the United Nations Special Rapporteur on Trafficking in Persons, Especially Women and Children (the “Special Rapporteur”),<sup>35</sup> there are many interplaying causes to human trafficking.<sup>36</sup> First, the Special Rapporteur determined that the lack of guarantees for fundamental human rights is the root cause of human trafficking.<sup>37</sup> In addition, she concluded that there are a variety of “underlying factors that render people vulnerable to trafficking, such as poverty, lack of employment opportunities, sex discrimination and inequality, restrictive immigration laws and policies, war and conflict.”<sup>38</sup> Likewise, DHS reported that traffickers often target “people who are susceptible [to force, fraud, or coercion] for a variety of reasons, including psychological or emotional vulnerability, economic hardship, lack of a social safety net, natural disasters, or political instability.”<sup>39</sup>

These varying causal factors result in many forms of trafficking. For example, in the economic sectors alone, the Special Rapporteur noted that trafficking has infiltrated “agriculture and horticulture, construction, garments and textile, hospitality and catering, mining, logging and forestry, food processing and packaging, transportation, domestic service and other care and cleaning work.”<sup>40</sup> In the United States, the legal definition of “severe forms of trafficking in persons” is outlined as:

[S]ex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>41</sup>

Therefore, in the eyes of American law, there are two forms of human trafficking: commercial sex trafficking and labor trafficking.<sup>42</sup>

---

<sup>35</sup> Special Rapporteurs are independent experts working on behalf of United Nations Office of the High Commissioner for Human Rights (“OHCHR”) under specific mandates. There have been three Special Rapporteurs on Trafficking. Ms. Sigma Huda served between 2004 and 2008. Ms. Joy Ngozi Ezeilo succeeded her and served until 2014. The current Special Rapporteur is Ms. Maria Grazia Giammarinaro. *Special Rapporteur on Trafficking in Persons, Especially Women and Children*, OHCHR, <http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx> (last visited Jan. 17, 2018).

<sup>36</sup> See Joy Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, ¶ 26, U.N. Doc. A/65/288 (Aug. 9, 2010) [hereinafter *2010 Trafficking Report*].

<sup>37</sup> *Id.* ¶ 21.

<sup>38</sup> *Id.*

<sup>39</sup> The Blue Campaign, *supra* note 34.

<sup>40</sup> Joy Ezeilo, *Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children*, ¶ 8, U.N. Doc. A/67/261 (Aug. 7, 2012) [hereinafter *2012 Trafficking in Supply Chains Report*].

<sup>41</sup> 22 U.S.C. § 7102(9) (2016).

<sup>42</sup> See *id.*

Trafficking, though first and foremost a human rights issue, is sometimes discussed using economic terminology.<sup>43</sup> In the context of sex trafficking, the supply side obviously consists of the victims who were trafficked for sexual exploitation. However, it also includes the causal factors that make women and children especially susceptible to trafficking.<sup>44</sup> Demand, on the other hand, includes the traffickers and the sexual exploiters; it also involves “any act that fosters any form of exploitation that, in turn, leads to trafficking.”<sup>45</sup> Both sides drive the economy of sex trafficking.<sup>46</sup> Therefore, in order to prevent and combat trafficking, one must eradicate the sexual exploiters and traffickers, and eviscerate the economic, social, legal, political, institutional, and cultural conditions that oppress women.<sup>47</sup> In fact, according to the Special Rapporteur, it would be a “grave injustice” to focus only on one side of the sex trafficking economy, such as only punishing women who were engaged in sexual exploitation.<sup>48</sup>

The United States Government also recognizes this holistic approach.<sup>49</sup> On the supply side, for example, the FBI employs a “victim-centered approach”, which means “the needs of the victims take precedence over all other considerations.”<sup>50</sup> DHS recognizes that trafficking victims “rarely come forward to seek help because of language barriers, fear of the traffickers, and/or fear of law enforcement” and that “trauma caused by the traffickers can be so great that many may not identify themselves as victims or ask for help, even in highly public settings.”<sup>51</sup> Immigration and Customs Enforcement, an agency within DHS, recognizes that trafficking victims from other countries often “find themselves surrounded by an unfamiliar culture and language without identification documents, fearing for their lives and the lives of their families.”<sup>52</sup> Knowing this, the United States Government promulgated the Trafficking Victims Protection Act (“TVPA”), which established several statutes to prosecute traffickers, prevent human trafficking, and protect victims of trafficking.<sup>53</sup> One important fruit of the TVPA is the availability of T visas, which DHS grants to eligible victims of transnational human trafficking.<sup>54</sup>

---

<sup>43</sup> See Sigma Huda, *Integration of the Human Rights of Women and a Gender Perspective*, ¶¶ 23–78, U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006).

<sup>44</sup> *Id.* ¶ 30.

<sup>45</sup> *Id.* ¶ 52.

<sup>46</sup> See *id.* ¶¶ 70–72.

<sup>47</sup> See *id.* ¶ 74.

<sup>48</sup> *Id.*

<sup>49</sup> See, e.g., FBI, *Human Trafficking*, *supra* note 33.

<sup>50</sup> *Id.*

<sup>51</sup> The Blue Campaign, *supra* note 34.

<sup>52</sup> U.S. Immigration and Customs Enforcement, *Human Trafficking*, DEP’T OF HOMELAND SECURITY, <https://www.ice.gov/human-trafficking> (last visited July 15, 2017).

<sup>53</sup> Trafficking Victims Protection Act, 22 U.S.C. §§ 7101–7113 (2013).

<sup>54</sup> See 8 U.S.C. § 1101(a)(15)(T) (2016).

On the demand side, the Department of State annually compiles and releases the Trafficking in Persons (“TIP”) Report.<sup>55</sup> The TIP Report is one of the world’s most comprehensive accounts on governmental anti-human trafficking efforts.<sup>56</sup> The United States, international organizations, foreign governments, and nongovernmental organizations use the TIP Reports to advance anti-trafficking reforms.<sup>57</sup> The TIP Reports assess every country’s anti-trafficking efforts and rank each country into one of three tiers.<sup>58</sup> Tier one is the highest ranking, signifying that these countries have done their best to comply with minimum anti-trafficking standards.<sup>59</sup> These standards require countries to enact laws prohibiting severe forms of trafficking, prescribe penalty against human traffickers, and reduce the demand for commercial sex acts and international sex tourism.<sup>60</sup> In contrast, tier three countries do not fully meet these minimum standards and are not making significant efforts to do so.<sup>61</sup> Tier two falls somewhere in between.<sup>62</sup>

Albania, where Cece is from, was a tier two country in 2002, when Cece left.<sup>63</sup> The Department of State found that “Albania is a source and transit country primarily for women and girls trafficked for the purposes of sexual exploitation.”<sup>64</sup> It further stated that “[t]he Government of Albania does not yet fully comply with minimum standards for the elimination of trafficking; however, it is making significant efforts to do so.”<sup>65</sup> The TIP Report stated that the Albanian Government has an Anti-Trafficking Sector, and that they arrested ninety-six people and convicted twelve people for trafficking in 2001.<sup>66</sup> It noted, however, that “corruption hinders anti-trafficking efforts.”<sup>67</sup>

The 2016 TIP Report continued to categorize Albania as tier two.<sup>68</sup> It stated, “Albanian women and children are primarily subjected to sex trafficking within Albania,” and that “[c]orruption and high rates of turnover within the police force inhibit law enforcement action to address trafficking.”<sup>69</sup> The

---

<sup>55</sup> See Office to Monitor and Combat Trafficking in Persons, *2017 Trafficking in Persons Report*, U.S. DEP’T OF STATE, <https://www.state.gov/j/tip/rls/tiprpt/index.htm> (last visited July 22, 2017).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> See *id.*; see also U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 36* (June 2016), <https://www.state.gov/documents/organization/258876.pdf> [hereinafter 2016 TIP REPORT].

<sup>60</sup> 2016 TIP REPORT, *supra* note 59 at 36–37.

<sup>61</sup> *Id.* at 39.

<sup>62</sup> *Id.*

<sup>63</sup> U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 17* (June 2002), <https://www.state.gov/documents/organization/10815.pdf>.

<sup>64</sup> *Id.* at 22.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> 2016 TIP REPORT, *supra* note 59, at 68.

<sup>69</sup> *Id.*

TIP Report continued to note that the government is making significant efforts to combat trafficking, and that there were twenty-five investigations, fifteen prosecutions, and eleven convictions in 2015.<sup>70</sup>

## II. ASYLUM QUALIFICATIONS IN THE HUMAN TRAFFICKING CONTEXT

One cruel irony of transnational trafficking is that victims may become undocumented immigrants in their destination countries, even though they were brought there by force, fraud, or coercion. In response, some trafficking victims have applied for asylum. Asylum is an immigration status granted to refugees that allows them to remain in the resettlement country, authorizes them to work, and qualifies them for permanent residence status readjustment after a period of time.<sup>71</sup> According to a joint UN Commentary on Human Trafficking, the “possibility that some victims or potential victims of trafficking may be entitled to international [asylum] protection is explicitly recognized” by international law.<sup>72</sup> The joint UN Commentary found, however, that “asylum systems remain a weak link in the process of identifying, referring and protecting trafficked persons.”<sup>73</sup>

In the United States, the Immigration and Nationality Act (“INA”) defines an asylum seeker as:

[A]ny person who is outside any country of such person’s nationality . . . and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>74</sup>

Therefore, in order to establish eligibility for asylum in the United States, an alien must prove three elements: (1) she must show past persecution, or well-founded fear of future persecution; (2) she must show she belongs to one of the five protected grounds: race, religion, nationality, membership in a PSG, or political opinion; and (3) she must show that her persecution was “on account of” a protected ground.<sup>75</sup>

---

<sup>70</sup> *Id.* at 69.

<sup>71</sup> See *Benefits and Responsibilities of Asylees*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/benefits-and-responsibilities-asylees> (last visited July 14, 2015).

<sup>72</sup> OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS ET AL., PREVENT, COMBAT, PROTECT: HUMAN TRAFFICKING: JOINT UN COMMENTARY ON THE EU DIRECTIVE – A HUMAN RIGHTS-BASED APPROACH 51 (Nov. 2011) <http://www2.unwomen.org/-/media/headquarters/media/publications/en/uncommentaryeutraffickingdirective2011.pdf>.

<sup>73</sup> *Id.* at 52.

<sup>74</sup> 8 U.S.C. § 1101(a)(42)(A) (2016).

<sup>75</sup> *Id.*

It is difficult to meet these three requirements as a trafficking victim. This Note focuses on the last two requirements—that trafficking victims belong to a protected ground, and that the persecution happened on account of that protected ground—and assumes that all acts associated with human trafficking can equate to persecution.<sup>76</sup>

#### A. *Requirement that the Trafficking Victims Belong in a PSG*

For trafficking victims, the applicable protected ground is likely to be status as a “member in a particular social group.”<sup>77</sup> PSG is the most nebulous of the protected grounds because neither the Refugee Convention nor the INA defined the term.<sup>78</sup> Thus, the BIA has had to embark on a long journey to define PSG.<sup>79</sup>

##### 1. Immutable Characteristic Standard

Originally, BIA defined PSG as a group of people who share a common characteristic that is either immutable or so fundamental to individual identity that a person ought not to be required to change it.<sup>80</sup> Gender, nationality, familial relations, and sexual orientation are some examples of immutable characteristics that are fundamental to a person’s identity.<sup>81</sup> Immutable characteristics can also be past memberships or associations, such as military service or gang affiliation.<sup>82</sup>

In addition, the immutable characteristic cannot be circularly defined by the act of persecution itself; there must be some other characteristic that binds the group together.<sup>83</sup> It would be a tautology to protect a persecuted group

---

<sup>76</sup> For a more in-depth discussion on the first element—proving “persecution” or “well-founded fear” of persecution in the trafficking context—see generally Calvin C. Cheung, *Protecting Sex Trafficking Victims: Establishing the Persecution Element*, 14 ASIAN AM. L.J. 31 (2007).

<sup>77</sup> OFFICE OF THE HIGH COMM’R FOR HUMAN RIGHTS ET AL., *supra* note 72, at 53.

<sup>78</sup> The 1951 Convention Relating to the Status of Refugees gave the term its definition. In 1968, United States signed the 1967 Protocol Relating to the Status of Refugee. However, the definition section of this Protocol is silent on PSG. See *The Protocol Relating to the Status of Refugees*, Jan. 31, 1967, 19 U.S.T. 6224, 606 U.N.T.S. 267. Likewise, the definition section of the INA does not define to PSG. See 8 U.S.C. § 1101 (2016).

<sup>79</sup> See *Acosta*, 19 I. & N. Dec. 211, 232–34 (B.I.A. 1985), *overruled by on other grounds by* *Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987).

<sup>80</sup> *Id.* at 233–34.

<sup>81</sup> *Id.* (noting that gender, nationality, and familial relations are immutable characteristics).

<sup>82</sup> *Id.* (noting military service specifically).

<sup>83</sup> See *Castellano-Chacon v. I.N.S.*, 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.”).



solely because of their persecution. For example, trafficking victims cannot define their PSG as people who have been trafficked.<sup>84</sup>

Therefore, for trafficking victims to propose a PSG that meets the “immutable characteristic” standard, she needs to describe a PSG of people that share an unchangeable characteristic that is fundamental to their identity, and this characteristic must be more than the fact that they were all targeted by traffickers.<sup>85</sup>

## 2. Social Visibility Standard

Later, the BIA proscribed an addition to the immutable characteristic standard—“social visibility.”<sup>86</sup> In 2007, United States Citizenship and Immigration Services (“USCIS”) issued a memorandum expounding on this analysis.<sup>87</sup> In it, USCIS noted that socially visible groups “must be recognizable and distinct in the society.”<sup>88</sup> Accordingly, it is not enough that members of the PSG share a common immutable characteristic, but the general population must also find that characteristic to be identifiable.<sup>89</sup> This means invisible characteristics, such as secret informants, cannot form a PSG.<sup>90</sup>

## 3. *M-E-V-G*- Standard

Then in 2014, BIA issued a new standard in *M-E-V-G*,<sup>91</sup> dictating that PSGs must be (1) defined with particularity, and (2) socially distinct within society.<sup>92</sup> The BIA meant for this update to clarify the “social visibility” standard by abolishing the need for ocular visibility.

The BIA explained that “particularity” is about the PSG’s boundaries, which an alien must describe with clear and distinct adjectives.<sup>93</sup> It cannot be

---

<sup>84</sup> *Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005).

<sup>85</sup> *Id.* at 555.

<sup>86</sup> C-A-, 23 I. & N. Dec. 951, 959 (B.I.A. 2006).

<sup>87</sup> Memorandum from Lynden D. Melmed, Chief Counsel, U.S. Citizenship and Immigration Services, to Lori Scialabba, Associate Director, Refugee, Asylum and Int’l Operations (Jan. 12, 2007) [https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Archive%201998-2008/2007/Jan%202007/c\\_a\\_guidance011207.pdf](https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Archive%201998-2008/2007/Jan%202007/c_a_guidance011207.pdf).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> C-A- sought asylum due to persecution account of his membership in the PSG of informants working against the drug cartel. BIA held that confidential informants are by definition secretive and invisible. Therefore, this PSG does not pass legal muster. *See* C-A-, 23 I. & N. Dec. at 959–61.

<sup>91</sup> 26 I. & N. Dec. 227 (B.I.A. 2014).

<sup>92</sup> *Id.* at 236–37.

<sup>93</sup> *Id.*

“amorphous, overbroad, diffuse, or subjective.”<sup>94</sup> For example, the BIA previously held that “wealthy people” is not an acceptable identifier, because people’s definitions of wealth are different and fluid.<sup>95</sup> Other examples of amorphous definitions may include “male children who lack stable families,”<sup>96</sup> “a group of educated Westernized free-thinking individuals,”<sup>97</sup> or “young, westernized people.”<sup>98</sup>

“Social distinction,” on the other hand, is about the recognition of the proposed PSG.<sup>99</sup> To meet the “social distinction” element, other people within society must be able to recognize and describe this PSG.<sup>100</sup> But the distinction no longer needed to be ocularly visible.<sup>101</sup> Some examples of social distinctions may include plainly visible differences, such as racial and tribal memberships.<sup>102</sup> Other distinctions may remain invisible, but if they become known, people in society would be able to recognize them. These types of distinctions may include religious or political views, sexual orientation, and secret activities.<sup>103</sup>

It is important to note that the circuits are split on the above standards.<sup>104</sup> While they all require a shared immutable characteristic that is not circularly defined, they do not agree on social visibility versus particularity and distinction.<sup>105</sup> For example, the Ninth<sup>106</sup> and Tenth<sup>107</sup> Circuits have since adopted the particularity and social distinction standard, even noting that they have always used the same analysis before *M-E-V-G-* was decided.<sup>108</sup> However, the Third Circuit completely declined to follow the *M-E-V-G-* standard in *Valdiviezo-Galdamez v. Attorney Gen. of U.S.*<sup>109</sup>

<sup>94</sup> *Id.* at 239.

<sup>95</sup> A-M-E- & J-G-U-, 24 I. & N. Dec. 69, 72 (B.I.A. 2007).

<sup>96</sup> S-E-G-, 24 I. & N. Dec. 579, 585 (B.I.A. 2008).

<sup>97</sup> *Fatin v. I.N.S.*, 12 F.3d 1233, 1237 (3d Cir. 1993).

<sup>98</sup> *Al-Ghorbani v. Holder*, 585 F.3d 980, 995 (6th Cir. 2009).

<sup>99</sup> *See M-E-V-G-*, 26 I. & N. Dec. at 240.

<sup>100</sup> *Id.* at 238 (“[I]f 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.”).

<sup>101</sup> *Id.*

<sup>102</sup> H-, 21 I. & N. Dec. 337, 342 (B.I.A. 1996) (stating that in Somali society, clan membership is a “highly recognizable” characteristic).

<sup>103</sup> *See M-E-V-G-*, 26 I. & N. Dec. at 240.

<sup>104</sup> *See BIA Clarifies the “Particularity” and “Social Visibility” Elements to Establish “A Particular Social Group” Under Asylum Provision*, U.S. DEP’T OF JUSTICE, 18 IMMIGR. LITIGATION BULLETIN 2, 4 (Feb. 2014), [https://www.justice.gov/sites/default/files/civil/legacy/2014/10/17/February\\_2014.pdf](https://www.justice.gov/sites/default/files/civil/legacy/2014/10/17/February_2014.pdf).

<sup>105</sup> *Id.*

<sup>106</sup> *Pirir-Boc v. Holder*, 750 F.3d 1077, 1084 (9th Cir. 2014) (remanding the case to the BIA in order to apply the new *M-E-V-G-* standard).

<sup>107</sup> *Rodas-Orellana v. Holder*, 780 F.3d 982, 992–93 (10th Cir. 2015) (noting that the new *M-E-V-G-* standard was not different from traditional Tenth Circuit analysis).

<sup>108</sup> *Id.*; *Pirir-Boc*, 750 F.3d at 1085.

<sup>109</sup> 663 F.3d 582, 586 (3d Cir. 2011).

In conclusion, for trafficking victims to meet the second element of asylum—showing that they belong in a PSG—they must, at a minimum, share an immutable characteristic with other members of the PSG that is more than their common history of being trafficked.<sup>110</sup> Some circuits require the PSG to be ocularly visible.<sup>111</sup> In other circuits, they need to describe this PSG with terms that are particular and not amorphous, and others in society must be able to recognize this PSG’s distinctions if they become known.<sup>112</sup>

#### B. *Requirement that the Persecution Happened “On Account Of” Membership in the PSG*

In addition to belonging to a PSG, the trafficking victim must be persecuted “on account of” her membership in that PSG.<sup>113</sup>

##### 1. The Size of the PSG

Some circuits refuse to recognize PSGs that are too large, noting “[p]ossession of broadly-based characteristics such as youth and gender will not by itself endow individuals with membership in a particular group.”<sup>114</sup> Other circuits recognize that PSGs can be broad, as long as a relationship exists between the PSG and the persecution.<sup>115</sup> In fact, they think “[i]t would be antithetical to asylum law to deny refuge to a group of persecuted individuals who have valid claims merely because too many have valid claims.”<sup>116</sup>

The interpretation of these latter circuits is more legally sound.<sup>117</sup> The law only requires persecution to be related to the victim’s membership in a PSG, and it makes no reference to the size of the group.<sup>118</sup> In reality, many PSGs that are already recognized have been quite broad, as the Seventh Circuit summarizes:

These include: women in tribes that practice female genital mutilation; persons who are opposed to involuntary sterilization; members of the Darood clan and Marehan subclan in Somalia (1% of the population of Somalia are members of the Marehan subclan); homosexuals in

---

<sup>110</sup> See *Rreshpja*, 420 F.3d at 555.

<sup>111</sup> See *C-A-*, 23 I. & N. Dec. at 959.

<sup>112</sup> See *Rodas-Orellana*, 780 F.3d at 992; *Pirir-Boc v. Holder*, 750 F.3d at 1085.

<sup>113</sup> 8 U.S.C. § 1101(a)(42) (2016).

<sup>114</sup> *Gomez v. INS*, 947 F.2d 660, 664 (2d Cir. 1991). See, e.g., *Rreshpja*, 420 F.3d at 555; *Qeta v. Holder*, 378 F. App’x 93, 94 (2d Cir. 2010); *Sarkisian v. Attorney Gen. of U.S.*, 322 F. App’x 136, 143 (3d Cir. 2009); *Papapano v. Gonzales*, 188 F. App’x 447, 454 (6th Cir. 2006).

<sup>115</sup> See *Cece*, 733 F.3d at 675; see also *Kalaj v. Holder*, 319 F. App’x 374, 376 (6th Cir. 2009).

<sup>116</sup> *Cece*, 733 F.3d at 675; see also, e.g., *Kalaj*, 319 F. App’x at 376–77.

<sup>117</sup> See *Cece*, 733 F.3d at 675; see also, e.g., *Kalaj*, 319 F. App’x at 376–77.

<sup>118</sup> *Cece*, 733 F.3d at 675; see also, e.g., *Kalaj*, 319 F. App’x at 376–77.

Cuba; Filipinos of Chinese ancestry living in the Philippines (approximately 1.5% of the Philippines population has an identifiable Chinese background).<sup>119</sup>

The Seventh Circuit further prospects that “a Tutsi [during the Rwanda genocide] singled out for murder who managed to escape to the United States could surely qualify for asylum in this country. And undoubtedly any of the six million Jews ultimately killed in concentration camps in Nazi-controlled Europe could have made valid claims for asylum.”<sup>120</sup>

Therefore, in the Seventh Circuit, if all women in country X are victims to trafficking, then the PSG of “women from country X” ought to be enough.<sup>121</sup> That characterization, in and of itself, would be an acceptable protected ground.<sup>122</sup>

## 2. The REAL ID Act’s “At Least One Central Reason” Test

The REAL ID Act of 2005 clarified that the “on account of” requirement means the protected ground must be “at least one central reason” for the persecution.<sup>123</sup> This means that the alien must present “direct or circumstantial” evidence to show that the persecutor’s actions were centrally motivated by a protected ground.<sup>124</sup> Direct or circumstantial evidence may include the actions and words of the persecutor at the time of the act; for example, being taunted as a “pork eater” and being struck while on the way to a Christian church in a predominately Muslim country may show motive for persecution on account of one’s religion.<sup>125</sup>

“At least one central reason” also means the protected ground “cannot be incidental, tangential, superficial, or subordinate to another reason for harm” and that it “cannot play a minor role in the alien’s past mistreatment or fears of future mistreatment.”<sup>126</sup> For example, a Muslim man who suffered

---

<sup>119</sup> *Cece*, 733 F.3d at 674 (internal citations omitted).

<sup>120</sup> *Id.*

<sup>121</sup> *See id.* at 675.

<sup>122</sup> *See id.*

<sup>123</sup> 8 U.S.C. § 1158(b)(1)(B)(i) (2016).

<sup>124</sup> *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (“But since the statute makes motive critical, he must provide some evidence of it, direct or circumstantial.”).

<sup>125</sup> *Eduard v. Ashcroft*, 379 F.3d 182, 187–88 (5th Cir. 2004) (“When Eduard lived in Indonesia, he was struck in the head with a rock while walking to church. Although Eduard was not able to identify the assailant, he nonetheless presumed that the assailant was a Muslim . . . Eduard also testified that he was taunted as a ‘pork eater’ by a Muslim while he sat on a bus.”).

<sup>126</sup> *J-B-N & S-M*, 24 I. & N. Dec. 208, 214 (B.I.A. 2007).

violence at the hands of a Hindu organization may establish that the persecution was on account of the victim's religion.<sup>127</sup> If the Hindu organization actually treats all people violently in a generally lawless environment, however, then the victim's Islamic faith was only incidental to his persecution.<sup>128</sup>

In conclusion, for trafficking victims to meet the third element of asylum, there must be direct or circumstantial evidence showing at least one central reason the persecution was "on account of" the victim's membership in a PSG.<sup>129</sup> This reason cannot be incidental or tangential to other motives.<sup>130</sup> The size of the PSG should not matter.

### III. BEFORE *CECE V. HOLDER*, VICTIMS OF TRAFFICKING WERE NOT RECOGNIZED AS A PARTICULAR SOCIAL GROUP

Combining these two elements, to qualify for a PSG asylum claim, the trafficking victim must show (1) her membership in a group that, at a minimum, shares an immutable characteristic that is more than being trafficked, and (2) that at least one central reason for the persecution was her membership in that PSG.<sup>131</sup> Additionally, some courts may require the PSG to be socially visible, while other courts may require the victim to define the PSG with particularity and distinction.<sup>132</sup>

#### A. *The Sixth Circuit*

*Rreshpja v. Gonzales*<sup>133</sup> was the first case to tackle the fact pattern of a potential sex-trafficking victim asserting an asylum claim.<sup>134</sup> Vitore Rreshpja was a nineteen-year-old Albanian woman.<sup>135</sup> In June of 2001, a man attempted to abduct her as she was walking home from school, and alluded to his desire to traffick her to Italy where she "would end up on her back . . . like many other girls."<sup>136</sup> She escaped to the United States in November 2001

---

<sup>127</sup> See *Shaikh v. Holder*, 588 F.3d 861, 864 (5th Cir. 2009).

<sup>128</sup> See *id.* ("[T]he IJ found that Shaikh had not shown that any past persecution he suffered was on the basis of religion or any other protected ground. Although Shaikh testified that he is Muslim and Shiv Sena [a Hindu nationalist organization] was demanding money for Hindu festivals and then threatening him when he did not pay, he also testified that Shiv Sena demanded money from *all* business people in his neighborhood, Muslim and Hindu alike.").

<sup>129</sup> See *Cece*, 733 F.3d at 668.

<sup>130</sup> See *Shaikh*, 588 F.3d at 864.

<sup>131</sup> See *Cece*, 733 F.3d at 668; *Rreshpja*, 420 F.3d at 555; *Shaikh*, 588 F.3d at 864.

<sup>132</sup> See *Rodas-Orellana*, 780 F.3d at 992 (10th Cir. 2015); *Pirir-Boc*, 750 F.3d at 1085.

<sup>133</sup> 420 F.3d 551 (6th Cir. 2005).

<sup>134</sup> See *id.* at 553.

<sup>135</sup> *Id.*

<sup>136</sup> *Id.*

with a fraudulent visa and applied for asylum.<sup>137</sup> She argued that she belonged to the PSG of “attractive young [or those appear to be young women] who risk[] being kidnapped and forced into prostitution.”<sup>138</sup>

The Sixth Circuit denied her asylum claim.<sup>139</sup> The court reasoned that her PSG was circularly and broadly defined.<sup>140</sup> First, the court considered the characteristic of a “woman who risks being kidnapped and forced into prostitution” circular, as it defined the immutable characteristic by the persecution itself.<sup>141</sup> Afterwards, the court ruled that the leftover characteristic of “young, attractive Albanian women” would encompass virtually any Albanian woman who possessed the subjective criterion of being “attractive” and appearing “young.”<sup>142</sup> Thus, this characteristic failed to meet the PSG legal standards because it was too big.<sup>143</sup>

Then, several cases of similar backgrounds followed in the Sixth Circuit.<sup>144</sup> First, in *Papapano v. Gonzales*,<sup>145</sup> an Albanian girl who proposed her PSG to be “women likely to be kidnapped or forced into prostitution,”<sup>146</sup> was denied asylum because her PSG was also broadly and circularly defined.<sup>147</sup> Later, the court rejected another Albanian girl’s asylum claim in *Kalaj v. Holder*,<sup>148</sup> where the proposed PSG was “young, impoverished, single, uneducated women who risk kidnapping and forced prostitution.”<sup>149</sup> However, this time the Sixth Circuit recognized that other Circuits allow large PSGs, so the breadth of the group is not a reason to bar it automatically.<sup>150</sup>

## B. *The Third Circuit*

The Third Circuit followed the *Rreshpja* reasoning when faced with this issue. In *Kuci v. Attorney General of U.S.*,<sup>151</sup> another case involving an Albanian girl applying for asylum after she escaped traffickers’ harassment, Kuci

---

137 *Id.*

138 *Id.* at 554–55.

139 *See Rreshpja*, 420 F.3d at 555–56.

140 *Id.*

141 *Id.* at 554–55.

142 *Id.* at 556.

143 *Id.* at 555–56.

144 *See, e.g., Papapano*, 188 F. App’x at 448; *Kalaj*, 319 F. App’x at 374.

145 188 F. App’x 447 (6th Cir. 2006).

146 *Id.* at 453.

147 *See id.* at 454.

148 319 F. App’x 374 (6th Cir. 2009).

149 *Id.* at 376.

150 *See id.* at 376 (“Arguably, decisions from our sister circuits raise questions about the breadth of what constitutes a ‘particular social group.’” (citing *Mohammed v. Gonzales*, 400 F.3d 785, 798 (9th Cir. 2005); *Niang v. Gonzales*, 422 F.3d 1187, 1200 (10th Cir. 2005))).

151 299 F. App’x 168 (3d Cir. 2008).

argued that she belonged to the PSG of “young women who have been approached or threatened with kidnapping, forced prostitution or killing by human traffickers.”<sup>152</sup> The Third Circuit denied her argument, also reasoning that her proposed PSG was both broadly and circularly defined.<sup>153</sup>

The court followed this reasoning in *Sarkisian v. Attorney General of U.S.*,<sup>154</sup> involving a “young, Armenian [woman] who [was] previously targeted for trafficking.”<sup>155</sup> The court affirmed its stance that broadly-based characteristics such as youth and gender are “far too vague and all encompassing to be characteristics that set the perimeters for a protected group.”<sup>156</sup> Therefore, the Third Circuit rejects PSGs that are too large.<sup>157</sup>

### C. *The Second Circuit*

The Second Circuit also followed the reasoning in *Rreshpja*. In *Qeta v. Holder*,<sup>158</sup> the court held that “young single women in Albania who do not have male relatives to protect them from sex traffickers” was defined too broadly to be cognizable as a PSG.<sup>159</sup> Finally, the last case before *Cece* was *Lushaj v. Holder*.<sup>160</sup> The Second Circuit ruled her PSG of “women who were previously targeted for sex-trafficking by members of the Haklaj gang and who managed to escape and avoid capture” was circularly defined.<sup>161</sup> In addition, relying on the new standard set out in *C-A*,<sup>162</sup> the court further ruled that her PSG also lacked social visibility.<sup>163</sup>

### D. *Conclusion on Precedents*

As demonstrated by these decisions, it is incredibly difficult for potential trafficking victims to successfully assert asylum claims.<sup>164</sup> The salient feature of their PSGs is often their common experience of traffickers harassing them, but circularly defined PSGs do not stand.<sup>165</sup> In any case, there are

---

<sup>152</sup> *Id.* at 169 (internal quotations omitted).

<sup>153</sup> *See id.* at 170.

<sup>154</sup> 322 F. App’x 136 (3d Cir. 2009).

<sup>155</sup> *Id.* at 139 (internal quotations omitted).

<sup>156</sup> *Id.* at 143 (quoting *Escobar v. Gonzales*, 417 F.3d 363, 367–68 (3d Cir. 2005)).

<sup>157</sup> *See supra* notes 151–156 and accompanying text.

<sup>158</sup> 378 F. App’x 93 (2d Cir. 2010).

<sup>159</sup> *Id.* at 94.

<sup>160</sup> 380 F. App’x 41 (2d Cir. 2010).

<sup>161</sup> *Id.* at 43 (internal quotations omitted).

<sup>162</sup> 23 I. & N. Dec. 951 (B.I.A. 2006).

<sup>163</sup> *Lushaj*, 380 F. App’x at 43.

<sup>164</sup> *See supra* notes 133–163 and accompanying text.

<sup>165</sup> *See Lushaj*, 380 F. App’x at 43; *Kuci*, 299 F. App’x at 170; *Papapano*, 188 F. App’x at 454.

complex, interplaying reasons for traffickers to target certain victims, including their lack of wealth, education, and employment opportunities.<sup>166</sup> Thus, it may be difficult to pinpoint specific qualities to form a PSG that encompasses all targeted victims.<sup>167</sup> Descriptions of PSGs that include these various underlying reasons also run into difficulty with particularity and visibility.<sup>168</sup> For example, youth, attractiveness, wealth, and level of education are all subjective and unseen qualities.<sup>169</sup>

It is also challenging for potential victims to prove, either by direct or circumstantial evidence, that the traffickers targeted them “on account of” their membership in a PSG, and not because of a general environment of lawlessness.<sup>170</sup> After all, the root cause of human trafficking is a general lack of fundamental human rights within certain societies.<sup>171</sup> For example, in Albania, “[c]orruption and high rates of turnover within the police force” are factors that augment the prevalence of human trafficking.<sup>172</sup> Thus, even if a potential victim identifies a protectable PSG, she must overcome another hurdle to prove that at least one central reason the traffickers targeted her was her membership in that PSG.<sup>173</sup> It may be equally possible that traffickers targeted her simply because various social, political, and cultural conditions enable them to do so.

Thus, it is no surprise that “[u]ntil the Seventh Circuit’s decision in *Cece v. Holder*, federal courts uniformly denied asylum claims of victims of attempted sex trafficking by ruling that these victims do not meet the INA’s requirement that refugees belong to a particular social group.”<sup>174</sup>

#### IV. *CECE* MAY HAVE BEEN INCORRECTLY DECIDED BECAUSE THE PROPOSED PSG SHOULD NOT HAVE BEEN ACCEPTABLE

*Cece v. Holder* was the first case of its kind to accept a sex-trafficking victim’s proposed PSG in an asylum claim.<sup>175</sup> Some praise it as a step in the right direction in protecting victims of trafficking, and argue for other courts to follow its example.<sup>176</sup> This Note exercises cautious celebration towards

---

<sup>166</sup> See *supra* notes 36–48 and accompanying text.

<sup>167</sup> See *supra* notes 133–163 and accompanying text.

<sup>168</sup> See Kelsey McGregor, *Human Trafficking and U.S. Asylum: Embracing the Seventh Circuit’s Approach*, 88 S. CAL. L. REV. 197, 217 (2014).

<sup>169</sup> *Id.* at 206.

<sup>170</sup> See *Lushaj*, 380 F. App’x at 43.

<sup>171</sup> See 2010 *Trafficking Report*, *supra* note 36, ¶ 21.

<sup>172</sup> 2016 TIP REPORT, *supra* note 59, at 68.

<sup>173</sup> See *supra* notes 123–130 and accompanying text.

<sup>174</sup> Emily Niklaus Davis, *Cece v. Holder: An Unprecedented Look at the Asylum Claim for Victims of Attempted Sex Trafficking*, 29 EMORY INT’L L. REV. 379, 413 (2014).

<sup>175</sup> See *id.* at 380–81.

<sup>176</sup> See, e.g., McGregor, *supra* note 168, at 226.



*Cece*, however, because despite helping *Cece* and potentially other sex-trafficking victims, the decision rested on shaky legal foundations.

Originally, *Cece*'s proposed PSG was "young women who are targeted for prostitution by traffickers in Albania."<sup>177</sup> Judge Manion, over one dissent, ruled that *Cece* had not named a cognizable PSG, because there was no evidence that women who were targeted for prostitution by traffickers were visible in Albania, and that these women did not share an immutable characteristic other than their trafficking.<sup>178</sup> The lone dissent, Judge Rovner, disagreed, reasoning that women were "also united by the common and immutable characteristic of being women between the ages of sixteen and twenty-seven who meet the profile of the traffickers."<sup>179</sup>

*Cece* then petitioned for an en banc rehearing.<sup>180</sup> During this rehearing, *Cece* proposed three iterations of her PSG, including "young Orthodox woman living alone in Albania," "young women who are targeted for prostitution by traffickers in Albania," and "women in danger of being trafficked as prostitutes."<sup>181</sup> Judge Rovner, writing for the majority this time, found the BIA ignored the "important characteristic that *Cece* lived alone"<sup>182</sup> and that "living alone in Albania" is an immutable or fundamental trait.<sup>183</sup> Thus, the court remanded the case to the BIA for further proceedings consistent with the finding that her proposed PSG passed legal muster.<sup>184</sup> The Seventh Circuit's recognition of *Cece*'s proposed PSG did not automatically grant *Cece* asylum protection. On remand, *Cece* still needed to prove that she belonged to this protectable group.

#### A. *Definitional Issues with Cece's Proposed PSG*

Combining the three iterations of *Cece*'s proposed identifiers and Judge Rovner's addition, *Cece*'s proposed PSG can be summarized as "young women, living alone, who are targeted for prostitution by traffickers in Albania." There are several definitional issues with this proposed PSG.

---

<sup>177</sup> *Cece*, 668 F.3d at 512.

<sup>178</sup> *Id.* at 513.

<sup>179</sup> *Id.* at 514 (Rovner, J., dissenting).

<sup>180</sup> *Cece*, 733 F.3d at 668.

<sup>181</sup> *Id.* at 670.

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 671.

<sup>184</sup> *Id.* at 667, 678.

First, part of Cece's proposed PSG is circularly defined.<sup>185</sup> The circular part of the characteristic—those “who are targeted for prostitution by traffickers”—should be ignored.<sup>186</sup> Thus, this leaves Cece's PSG as “young women who live alone in Albania.”<sup>187</sup>

Second, Judge Rovner relied heavily on the fact that Cece lived alone,<sup>188</sup> but living alone is not an immutable characteristic, nor a characteristic so fundamental to a person's identity that it ought not be changed.<sup>189</sup> Gender, nationality, familial relations, sexual orientation, and past memberships are some examples of immutable characteristics.<sup>190</sup> When compared to these accepted traits, it is clear that a person's living arrangement lacks the rigor required in order to be an immutable characteristic.<sup>191</sup> The dissent by Judge Easterbrook explained:

Whether a person lives alone also is subject to change. People may marry, live with relatives, or join forces with similarly situated persons. Many single women live with other single women. A group such as ‘young Albanian women who live alone’ therefore flunks the [BIA's] test on multiple grounds.<sup>192</sup>

In fact, the details of the case contradict the conclusion that living alone is an immutable characteristic.<sup>193</sup> Cece did change her living arrangements.<sup>194</sup> She moved to another city and moved in with her sister in a university dormitory.<sup>195</sup> There was no evidence that Cece could not continue living with other women in the university dormitory, or with other women who are similarly situated.<sup>196</sup> Therefore, living alone is not an immutable characteristic.<sup>197</sup> This identifier should be ignored, leaving “young women in Albania” as the only remaining characteristic.

Lastly, Cece's proposed PSG probably runs afoul with both the earlier “social visibility” standard and the newer “particularity with distinction” standard. According to the “social visibility” standard set out in *C-A-*, Cece also needed to describe a PSG that was ocularly visible. If the Albanian society in general did not view young women as targets for trafficking, then the

---

<sup>185</sup> See *Cece*, 733 F.3d at 667, 670.

<sup>186</sup> See *id.* at 667.

<sup>187</sup> See *id.*

<sup>188</sup> *Id.* at 671 (“Cece ‘lived by herself’ most of the time in Albania, and thus is vulnerable, particularly vulnerable to traffickers for this reason.” (internal citation omitted)).

<sup>189</sup> See McGregor, *supra* note 168, at 209.

<sup>190</sup> *Acosta*, 19 I. & N. Dec. at 233.

<sup>191</sup> See *Cece*, 733 F.3d at 670.

<sup>192</sup> *Id.* at 680–81 (Easterbrook, J., dissenting).

<sup>193</sup> See *id.* at 673.

<sup>194</sup> *Id.* at 667.

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* at 688 (Manion, J., dissenting).

<sup>197</sup> See *Cece*, 733 F.3d at 686 (Manion, J., dissenting).

proposed group is not a visibly protected PSG.<sup>198</sup> Here, the expert in *Cece* specifically testified, “[t]here are many examples of people outside of the targeted age group being kidnapped and trafficked.”<sup>199</sup> Therefore, with expert testimony to the contrary, evidence did not suggest that the general population saw young women as specific targets for trafficking.<sup>200</sup>

Under the new *M-E-V-G*- standard of “particularity” and “social distinction,” *Cece* must show that the immutable characteristic is (1) defined with “particularity” so that it is not amorphous, and (2) socially distinct so that other people in society can recognize the group.<sup>201</sup> Arguably, “young women in Albania” is an amorphous definition, because the perception of youth is fluid among different people.<sup>202</sup> *Cece* had an expert who testified that “young women” is any age between sixteen to twenty-six or twenty-seven, but he also testified “this is just a targeted age group” defined by a numeric range.<sup>203</sup> Youth also includes subjective qualifications such as appearances and mannerisms.<sup>204</sup> Whom an elderly man classifies as a young woman will differ from a child’s classification.<sup>205</sup> As such, *Cece* did not prove a clear benchmark for determining who falls within the group of “young women” in Albania, because the idea of youth is amorphous.<sup>206</sup> Furthermore, *Cece* did not prove that youth is a significant social distinction, as her expert testified that the traffickers targeted women of different ages.<sup>207</sup> Therefore, *Cece*’s proposed group completely failed to define a protectable PSG.

#### B. *Nexus Issues with Cece’s Proposed PSG*

Nevertheless, even assuming “young women, living alone, who are targeted for prostitution by traffickers in Albania” passes the definitional issues and is deemed a protectable PSG, *Cece* may still fail to gain asylum protection on remand because of the “on account of” requirement. On remand, if she offered no nexus between her membership in that PSG and her risk of being trafficked,<sup>208</sup> she would still fail to prove that at least one central reason for the gang to persecute *Cece* was her membership in the PSG.<sup>209</sup>

---

198 *See id.*

199 *Id.* at 673 (internal quotations omitted).

200 *See id.*

201 *See id.* at 228

202 *See* U.N. Dep’t of Econ. & Soc. Affairs, *Definition of Youth*, U.N. 1 (Jan. 1, 2013), <http://www.un.org/esa/socdev/documents/youth/fact-sheets/youth-definition.pdf>.

203 *Cece*, 733 F.3d at 673.

204 *See id.* at 684–85 (Manion, J., dissenting).

205 *See id.* at 685.

206 *Id.* at 684–85.

207 *See id.* at 673.

208 *See id.* at 675–76.

209 *Cece*, 733 F.3d at 668.

If evidence exists that the gang persecuted other types of Albanian people, or if other young women in Albania do not fear persecution, then there is no proof that the gang specifically targeted Cece “on account of” her membership in the PSG.<sup>210</sup> Again, the expert in the case testified that the gang trafficked other groups of people, so Cece’s youth, gender, and living arrangement may only be tangential to her persecution. Cece may infer that, as evidenced by the fact that she did not suffer attempted trafficking when she lived with her sister in Tirana, the gang only targeted Cece when she lived alone.<sup>211</sup> However, there may be many other factors to explain this correlation: maybe Tirana did not have many traffickers, maybe a university campus had better security, etc. There was nothing in the established record to suggest that the gang targeted Cece because she was a young woman who lived alone.<sup>212</sup> To the contrary, the TIP Report specifically identified the general environment of lawlessness perpetrated by corruption and ineffectiveness of the Albanian police force as causes for sex-trafficking.<sup>213</sup>

In conclusion, Cece may not qualify for asylum on account of her membership in the PSG of “young Albanian women who live alone, . . . who are targeted for prostitution by traffickers in Albania” for several reasons.<sup>214</sup> First, the inclusion of the characteristic of “targeted for prostitution by traffickers in Albania” makes the proposed PSG circularly defined.<sup>215</sup> Second, “living alone” is not an immutable characteristic as demonstrated both by case law and the record.<sup>216</sup> Third, the established record did not support the idea that society saw “young women in Albania” as specific targets for trafficking.<sup>217</sup> Nor is “young women” an identifier defined with “particularity” because it is an amorphous characteristic.<sup>218</sup> Lastly, Cece may not be able to offer proof that she was persecuted “on account of” her membership in this PSG, meaning that her membership in this PSG was not “at least one central reason” for the persecution.<sup>219</sup>

## V. THE T VISA

This Note demonstrates that these human trafficking fact patterns do not easily lend themselves for asylum claims.<sup>220</sup> In order to assert asylum claims,

---

<sup>210</sup> *See id.*

<sup>211</sup> *See id.* at 677.

<sup>212</sup> *Cece*, 733 F.3d at 685–86 (Manion, J., dissenting).

<sup>213</sup> *See id.* at 667 (majority opinion).

<sup>214</sup> *Id.* at 667; *id.* at 684 (Manion, J., dissenting).

<sup>215</sup> *Id.* at 668 (majority opinion).

<sup>216</sup> *Cece*, 733 F.3d at 688 (Manion, J., dissenting).

<sup>217</sup> *Id.* at 685.

<sup>218</sup> *Id.* at 684–85.

<sup>219</sup> 8 U.S.C. § 1158(b)(1)(B)(i) (2012).

<sup>220</sup> *See infra* Part III.

potential trafficking victims have to painfully morph their experiences into identifiers to meet many confusing standards.<sup>221</sup> As established above, Cece herself had to assert three different proposed PSGs, and the Seventh Circuit had to modify them by adding another feature, in order to uphold Cece's claim.<sup>222</sup> It is a disservice to trafficking victims to subject them to such a legal muddle.

It is important to note that aside from asylum, trafficking victims could gain legal status in the United States through the T visa. However, under the T visa eligibility rules as they are written now, Cece, and others like her, would not have qualified.<sup>223</sup>

#### A. *T Visa Eligibility Requirements*

USCIS can grant the T visa status if the alien proves that she:

(I) is or has been a victim of a severe form of trafficking in persons, as defined [previously];

(II) is physically present in the United States . . . or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime; (bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request . . . due to physical or psychological trauma; or (cc) has not attained 18 years of age; and

(IV) the alien would suffer extreme hardship involving unusual and severe harm upon removal.  
224

First and foremost, the T visa requires Cece to be a victim of a "severe form of trafficking in persons."<sup>225</sup> Its legal definition is limited to (1) sex trafficking in which force, fraud, or coercion induce a commercial sex act, or in which the person induced to perform such act has not attained 18 years of age; or (2) labor trafficking.<sup>226</sup> In Cece's case, force, fraud, or coercion must have induced her to engage in a commercial sex act in order to qualify for

---

<sup>221</sup> See 8 U.S.C. § 1101(a)(42) (2012).

<sup>222</sup> See *Cece*, 733 F.3d at 670.

<sup>223</sup> See 8 U.S.C. § 1101(a)(15)(T)(i) (2012).

<sup>224</sup> *Id.*

<sup>225</sup> See *id.* § 1101(a)(15)(T)(i)(1).

<sup>226</sup> See 22 U.S.C. § 7102(8) (2012) (2016).

the T visa.<sup>227</sup> Even though traffickers inflicted force upon her, Cece never engaged in commercial sex.<sup>228</sup> Ironically, her ability to escape her trafficker actually means she cannot qualify for the T visa.<sup>229</sup>

Second, the T visa has a physical presence requirement that demands all victims to be physically present in the United States on account of their trafficking.<sup>230</sup> If the Albanian gang transported Cece to the United States, then she would qualify for this physical presence requirement. Arguably, because the traffickers never physically transported Cece onto American soil, she would not meet this requirement.<sup>231</sup>

Third, Cece would not qualify for the T visa because she did not comply with reasonable request for assistance in the Federal, State, or local investigation or prosecution of trafficking.<sup>232</sup> The traffickers were in Albania.<sup>233</sup> Unless there was some nexus to the United States, American law enforcement agencies and prosecutors obviously would not have any jurisdiction to investigate or prosecute the Albanian gang.<sup>234</sup> Consequently, these law enforcement agencies would not issue requests for assistance. There was no simple way for Cece to meet this requirement in her situation.

B. *The T Visa Eligibility Requirements Must Be Changed in Order to Better Serve Potential Transnational Trafficking Victims in the United States*

As demonstrated above, potential victims of transnational human trafficking like Cece have traditionally failed to assert asylum claims and would never qualify for the T visa.<sup>235</sup> They risk deportation, and renewed efforts to traffick them once they are removed. Lawmakers must expand the T visa eligibility requirements to adequately protect these potential victims of trafficking.

First, lawmakers should start with expanding the definition of “severe forms of trafficking in persons” so that there is no requirement for trafficking to have actually occurred.<sup>236</sup> The threat of trafficking and attempted trafficking are egregious acts in of themselves. The requirement for trafficking to

---

227 *See id.*

228 *See Cece*, 733 F.3d at 666–67.

229 *See* 8 U.S.C. § 1101(a)(15)(T)(i)(I) (2016).

230 *See id.* § 1101(a)(15)(T)(i)(II).

231 *See id.*

232 *See id.* § 1101(a)(15)(T)(i)(III)(aa).

233 *See Cece*, 733 F.3d at 666–67.

234 *See* 8 U.S.C. § 1101(a)(15)(T)(i)(III)(aa) (2016).

235 *See infra* Part III.

236 8 U.S.C. § 1101(a)(15)(T)(i)(I).

have occurred punishes victims who managed to escape prior to their enslavement,<sup>237</sup> and forces victims to continually endure harassment until they are finally enslaved. The asylum context gives protection from potential harm; asylum seekers may receive protection because of their reasonable fear of future persecution. In those situations, asylum seekers must establish genuine subjective fear of future persecution and this subjective fear must be reasonable to people in similar circumstances. A showing of individualized threat, a pattern of persecutory practice, or generally established understanding of certain country conditions can establish this “well-founded fear.”<sup>238</sup>

Trafficking protection can mirror this process by allowing potential victims to bring an equivalent of a “well-founded fear” claim. Johana Cece could demonstrate this. She had a genuine, subjective fear because traffickers personally stalked, assaulted, and threatened her. There was also objective reasonability to her fear, because other women could attest to the fact that the gang was notorious for trafficking women. In addition, the TIP Report verified that “Albanian women and children are primarily subjected to sex trafficking.”<sup>239</sup> Allowing Cece to qualify for this expanded definition may have provided her with a legal escape from further harassment and eventual enslavement.

Next, the physical presence requirement should recognize people who arrive in the United States in order to escape trafficking, and not just victims brought to the United States by their traffickers.<sup>240</sup> It is against common sense to grant immigration relief to an Albanian girl transported by her traffickers to the United States, but not grant relief to a different Albanian girl who escaped her tormentor by coming into the United States. From the victims’ perspective, the distinction between the two scenarios is purely theoretical. Both victims suffered and both are seeking refuge in the United States.

Mirroring the “firm resettlement” concept in asylum, this expanded definition would exclude victims who have already gained safe harbor elsewhere. For example, Cece managed to escape her traffickers in Tirana, so arguably she did not need to move to the United States.<sup>241</sup> Additionally, victims must prove their potential trafficking directly and mainly caused their presence in the United States.<sup>242</sup> If Cece moved to the United States mainly to be closer to her sister, and incidentally as an escape from her traffickers, then she would still fail this requirement. Thus, this expanded definition would not open the floodgate for all potential trafficking victims worldwide,

---

<sup>237</sup> See U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 14* (June 2012), <https://www.state.gov/documents/organization/192587.pdf> (“Narrow definitions of trafficking could potentially exclude some victims from receiving the justice, protection, or benefits they deserve.”).

<sup>238</sup> See *id.*

<sup>239</sup> 2016 TIP REPORT, *supra* note 59, at 68.

<sup>240</sup> See 8 U.S.C. § 1101(a)(15)(T)(i)(II).

<sup>241</sup> See *Cece*, 733 F.3d at 666–67.

<sup>242</sup> See 8 U.S.C. § 1101(a)(15)(T)(i)(II).

but it may provide for victims who are purely and straightforwardly seeking refuge in the United States on account of their trafficking.

Lastly, T visa eligibility requirements should loosen the need for compliance with reasonable requests for assistance in the Federal, State, or local investigation or prosecution of trafficking. For many victims, compliance with law enforcement is unattractive.<sup>243</sup> Lawmakers could expand this requirement to include victims who reported their cases to the police, or victims who can prove that reporting to the police would be impracticable or unfeasible. This expanded requirement filters out victims who may raise fraudulent trafficking claims, but it also helps victims who cannot collaborate with Federal, State, or local law enforcement agencies.

With these expansions, the T visa eligibility requirements will be able to serve more potential transnational trafficking victims. For example, Cece can now escape to and stay in the United States without raising an asylum claim, as long as she can prove (1) there was reasonable certainty that she would be trafficked because she were harassed by gang members who had a known record for human trafficking, (2) that she was in the United States as a direct result of trying to escape trafficking, and (3) that she reported her harassment to the police, or show that it would have been useless to report these crimes to the police.

## CONCLUSION

The TVPA provides trafficking victims with T visa.<sup>244</sup> However, some trafficking victims, not eligible for the T visa, seek refuge in the United States by applying for asylum instead.<sup>245</sup> Courts have historically denied their asylum claims. *Cece v. Holder*, decided in 2013 by the Seventh Circuit, was the first case of its kind to find well-founded fear of persecution on account of membership in a PSG consisting of potential trafficking victims.<sup>246</sup> However, *Cece* was arguably incorrectly decided. Its PSG of “young women, living alone, who are targeted for prostitution by traffickers in Albania” should not have passed legal muster because it was circularly defined and lacked immutability, visibility, and particularity.<sup>247</sup> Cece, like all other trafficking victims before her, should not have needed to apply for asylum. Instead, lawmakers should expand the T visa eligibility requirements to meaningfully serve trafficking victims in similar circumstances.

---

<sup>243</sup> See, e.g., Terry Coonan, *Anatomy of a Sex Trafficking Case*, 5 INTERCULTURAL HUM. RTS. L. REV. 313, 347 (2010) (describing the perhaps inevitable tensions between law enforcement, service providers, and victims).

<sup>244</sup> See 8 U.S.C. § 1101(a)(15)(T)(i).

<sup>245</sup> See *Asylum*, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, <https://www.uscis.gov/humanitarian/refugees-asylum/asylum> (last updated May 12, 2017).

<sup>246</sup> See *Cece*, 733 F.3d at 677.

<sup>247</sup> See *M-E-V-G-*, 26 I. & N. Dec. at 237.