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Immigration Litigation Bulletin

Vol. 16, No. 12 December 2012

LITIGATION HIGHLIGHTS

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Second Circuit Holds that Potential War Crimes Witnesses Are a Socially Visible Particular Social Group

In *Gashi v. Holder*, 702 F.3d 130 (2d Cir., 2012)(Kearse, *Leval*, Chin), the Second Circuit vacated the BIA's denial of asylum to a native of Kosovo and citizen of Serbia on the basis that the applicant had established that as witness and a cooperating witness to Serbian war crimes, he belonged to a particular social group.

The petitioner, a citizen of Serbia, claimed that in 1998, he and others were attacked by soldiers under the command of Haradinaj, a leader of the Kosovo Liberation Army ("KLA"). In 2004 and 2005, petitioner met with international officials investigating allegations that Haradinaj and the KLA had committed war crimes during the Kosovo conflict and related to them the details of the attack. Soon thereafter, petitioner said that he was assaulted and threatened, prompting him to flee to the United States. In his asylum application petitioner contended he was targeted by supporters of Haradinaj by reason of his cooperating with the war crimes investigators.

The IJ found that the abuse could not be considered to be on account of petitioner's membership in a particular social group because of the lack of a socially visible trait identifying membership in the group. The IJ also determined that petitioner had not been subject to past persecution. The BIA adopted the IJ's reasoning, concluding that as a potential witness against an accused war criminal, petitioner did not belong to a particular social group.

The Second Circuit disagreed with the IJ's conclusion that members

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Ninth Circuit Holds It Lacks Jurisdiction to Review BIA's Particularly Serious Crime Determination But Reviews Merits of Asylum Denial

In *Pechenkov v. Holder*, __F.3d__, 2012 WL 5995430 (9th Cir. December 3, 2012) (Schroeder, O'Scannlain, *Graber* (concurring)), the Ninth Circuit held that the criminal alien bar to judicial review at INA § 242(a)(2)(C) precluded review of the discretionary determination that the petitioner was ineligible for withholding of removal because his aggravated felony conviction constituted a particularly serious crime.

Petitioner, a native and citizen of Russia, was admitted to the United States in 1992. Subsequently, he was convicted of felony assault with a deadly weapon in violation of California Penal Code section 245(a)(1) (1993) and sentenced to a suspended sentence of three years, felony probation for three years, and 248 days in jail. After denying petitioner's application to adjust his status to that of a lawful permanent resident, DHS revoked his asylee status and initiated removal proceedings. Petitioner then applied for withholding of removal and filed a second adjustment application. After considering and weighing several factors, the IJ determined that petitioner's crime qualified

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Potential witnesses as a particular social group

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of a group consisting of persons who witnessed Haradinaj's alleged crimes and cooperated with international investigators were not visible to both persecutors and the wider community.

The court explained that petitioner's name was published on a list of potential witnesses against Haradinaj, his fellow villagers were aware that he had spoken with investigators, and other potential witnesses were harassed. "These facts satisfied the social visibility requirement for a particular social group. Therefore, we cannot accept the BIA's conclusion that a group consisting of potential witnesses against Haradinaj does not constitute a particular social group," said the court.

"We cannot accept the BIA's conclusion that a group consisting of potential witnesses against Haradinaj does not constitute a particular social group."

The court determined that the proposed group meets the three requirements of having an immutable, common characteristic, having some degree of social visibility, and being defined with sufficient particularity. First, explained the court, petitioner satisfied the visibility requirement because his name appeared on a list of potential witnesses against Haradinaj compiled by the U.N. prosecutors. Also, people in his village knew that he had spoken to the U.N. prosecutors, and as a result had been attacked by masked men, called a traitor and had received telephone threats. These incidents, said the court, demonstrated that his identity was well known to society, and therefore was socially visible to potential persecutors.

Second, persons who have witnesses war crimes and have cooperated with investigators, are "characteristics" that "cannot be undone and therefore by their very nature are immutable," explained the court. Third, "these characteristics also serve to define the group with particularity," noting that the number of cooperating individuals is limited and verifiable. Therefore, the court held that the proposed group of cooperating witnesses is a particular social group under the INA.

The court also determined that the IJ failed to articulate why the abuse that petitioner had been subject to, did not amount to persecution. "The IJ did not indicate what standard of persecution he employed to determine that this level of abuse failed to qualify," said the court. Finally, the court disagreed with the findings that petitioner had not demonstrated a well-founded fear of future persecution. The court explained that this finding was probably made under "an incorrect allocation of burden of proof," because if the IJ had determined that petitioner had been subject to persecution on account of his membership in a particular social ground, then the burden would have shifted to the government to prove no likelihood future persecution.

The court vacated and remanded the case to the BIA to reconsider the denial of asylum and withholding.

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Criminal alien jurisdictional bar

(Continued from page 1)

as a "particularly serious crime" and that petitioner was a danger to the community. For that reason, the IJ denied withholding of removal. The IJ also found that he lacked jurisdiction to consider petitioner's argument that the termination of his asylee status was unconstitutional. The BIA adopted the IJ's opinion.

The Ninth Circuit held that it lacked jurisdiction under the criminal alien bar to consider the petition for review. Specifically, the court noted that the exception for questions of law was not triggered where petitioner did not raise a legal claim but rather challenged the weight given to factors in the "particularly serious crime" analysis. The court further upheld the revocation of petitioner's asylee status pursuant to regulation and denied his constitutional challenge that the regulation usurped congressional authority.

In a concurring opinion, Judge Graber urged the court to consider revisiting its line of cases following *Unuakhaulu v. Gonzales*, 416 F.3d 931 (9th Cir. 2005). "In my view, once we are satisfied that a given alien has been found "removable by reason of" conviction of a crime covered by § 242(a)(2)(C), we lack jurisdiction to conduct further review of the "final order of removal," whether relating to asylum, withholding of removal, or CAT relief. In such cases, we have jurisdiction only over constitutional claims or questions of law," wrote Judge Graber. She further pointed out that at least four circuits have adopted this textually based view of § 242(a)(2)(C)'s jurisdiction-stripping provision. See, e.g., *Constanza v. Holder*, 647 F.3d 749 (8th Cir. 2011); *Saintha v. Mukasey*, 516 F.3d 243, (4th Cir. 2008); *Conteh v. Gonzales*, 461 F.3d 45 (1st Cir. 2006); *Alaka v. Att'y Gen. of U.S.*, 456 F.3d 88 (3d Cir. 2006).

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FURTHER REVIEW PENDING: Update on Cases & Issues

Aggravated Felony — Drug Trafficking

On October 6, 2012, the Supreme Court heard argument in ***Moncrieffe v. Holder*** on the question of whether, to establish a drug trafficking aggravated felony, the government must prove that marijuana distribution involved remuneration and more than a small amount of marijuana, as described in 21 U.S.C. § 841(b)(4). In a decision at 662 F.3d 387, the Fifth Circuit joined the First and Sixth Circuits in holding that the government need not. The Second and Third Circuits require that the government make this showing, because a defendant could make them in a federal criminal trial to avoid a felony sentence for marijuana distribution.

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Asylum — Particular Social Group

During the March 20, 2012, *en banc* argument in ***Henriquez-Rivas v. Holder***, the court requested that the government determine whether the BIA would make a precedent decision on remand in *Valdiviezo-Galdamez v. Attorney General*, 663 F.3d 582 (3d Cir. 2011). The BIA declined to comment on its pending case. The now-withdrawn unpublished *Henriquez-Rivas* decision, 2011 WL 3915529, upheld the agency's ruling that El Salvadorans who testify against gang members do not constitute a particular social group for asylum. Concurring judges on the panel, and the subsequent petition for rehearing, suggested *en banc* rehearing to consider whether the court's social group precedents, especially regarding "visibility" and "particularity," are consistent with each other and with BIA precedent.

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Asylum – Particular Social Group

On September 27, 2012, the *en banc* Seventh Circuit heard argument on rehearing in ***Cece v. Holder***, 668 F.3d 510 (2012), which held an alien's proposed particular social group of young Albanian women in danger of being targeted for kidnapping to be trafficked for prostitution was insufficiently defined by the shared common characteristic of facing danger.

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Asylum — Corroboration

On December 11, 2012, an en banc panel of the Ninth Circuit heard argument on rehearing in ***Oshodi v. Holder***. The court granted a *sua sponte* call for en banc rehearing, and withdrew its prior published opinion, 671 F.3d 1002, which declined to follow, as dicta, the asylum corroboration rules in *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011). The parties have filed en banc supplemental briefs.

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Convictions – Modified Categorical Approach

On January 7, 2013, the Supreme Court heard oral argument in ***Descamps v. United States***, a criminal sentencing case in which the question presented is whether the Ninth Circuit was correct in *United States v. Aguila-Montes De Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc), that a state conviction for burglary, where the statute is missing an element of the generic crime, may be subject to the modified categorical approach. Resolution of the case is expected to implicate the reasoning of *Aguila-Montes* and the "missing element" rule that it overruled. The government's brief was filed on December 3, 2012.

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Convictions – Modified Categorical Approach

On January 4, 2013, the government filed a petition for panel rehearing in ***Aguilar-Turcios v. Holder***, 691 F.3d 1025 (9th Cir. 2012), in which the Ninth Circuit applied *United States v. Aguila-Montes De Oca*, 655 F.3d 915 (9th Cir. 2011) (en banc), and held that the alien's convictions did not render him deportable. The rehearing petition argues that the court should grant rehearing and hold the case, and decide it when the Supreme Court rules in *Descamps v. United States*. The petition also argues that the court should permit the agency to address other grounds for removal on remand.

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Consular Nonreviewability

On July 25, 2012, the government filed a petition for rehearing en banc in ***Rivas v. Napolitano***, 677 F.3d 849 (9th Cir. 2012), which held that the district court had jurisdiction to review a consular officer's failure to act on the alien's request for reconsideration of the visa denial. The petition argues that the longstanding doctrine of consular nonreviewability recognizes that the power to exclude aliens is inherently political in nature and that consular decisions and actions are generally not, therefore, appropriately subject to judicial review. The court ordered the appointment of pro bono counsel to respond to the government petition by December 27, 2012.

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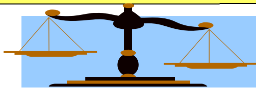

Summaries Of Recent Federal Court Decisions

FIRST CIRCUIT

■ First Circuit Holds BIA Did Not Abuse Its Discretion in Denying Motion to Reopen, but Urges Prosecutorial Discretion

In *Gasparian v. Holder,* 700 F.3d 611 (1st Cir. 2012) (*Boudin*, Lynch, Woodlock (by designation)), the First Circuit concluded that the BIA properly denied the Armenian aliens' motion to reopen where the BIA addressed the issue of a possible conflict between Armenia and Azerbaijan, and because the aliens have resided in the United States for over eighteen years and have failed to provide any evidence that the individuals who harassed them in Armenia have a continuing interest in them. However, the court urged the consideration of prosecutorial discretion or Deferred Action for Childhood Arrivals.

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■ Second Circuit Holds Attorney General's Interpretation of Statutory "Grandfathering" Provision Is Entitled to *Chevron* Deference

In *Lee v. Holder,* 701 F.3d 931 (2d Cir. 2012) (Leval, *Cabranes,* Sack), the Second Circuit held the Attorney General's regulations, 8 C.F.R. §§ 245.10(j) & 1245.10(j), regarding the substitution of a beneficiary on an application for labor certification were a reasonable interpretation of the adjustment of status statute. The court concluded that the agency properly determined that an alien who was substituted for the previous beneficiary of an application for labor certification is ineligible for adjustment of status if he was not listed as a beneficiary on the application for labor certification on or before April 30, 2001.

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THIRD CIRCUIT

■ BIA Did Not Abuse Its Discretion in Denying Motion to Reopen

In *Lin v. Holder*, 700 F.3d 683 (3d Cir. 2012) (Scirica, Fisher, *Jordan*), the Third Circuit concluded that the BIA properly denied a Chinese petitioner's motion to reopen where the prior adverse credibility finding and petitioner's reliance on unauthenticated documents prevented him from establishing prima facie eligibility for relief.

Petitioner illegally entered the United States in 2004. After being placed in removal proceedings, petitioner applied for withholding of removal based on his fear that, if he returned to China, he would be persecuted on account of his Christian faith. The IJ found petitioner not credible and denied his request for relief and protection. The BIA affirmed.

Petitioner then filed a timely motion to reopen and submitted unauthenticated documents purportedly showing that he was wanted for arrest in China because he practices Christianity. The BIA denied the motion.

The Third Circuit determined that the BIA did not abuse its discretion in denying the motion for failure to establish prima facie eligibility for relief where petitioner was previously found not credible and "made no effort to establish the authenticity of his documents through any means." The court also held that the BIA properly denied the motion to reopen on procedural grounds where petitioner failed to file a new asylum application with his motion as required by 8 C.F.R. § 1003.2(c)(1).

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> **Burglary of a vehicle under New Mexico statute is necessarily a crime of violence, and therefore an aggravated felony, because the offense involves a "substantial risk" of the use of physical force.**

FIFTH CIRCUIT

■ Fifth Circuit Holds Burglary of a Vehicle Is a Crime of Violence

In *Escudero-Arciniega v. Holder*, __F.3d __, 2012 WL 6129137 (5th Cir., December 11, 2012) (Jolly, Benavides, Higginson)(*per curiam*), the Fifth Circuit concluded that burglary of a vehicle under New Mexico statute § 30-16-3(B) is necessarily a crime of violence, and therefore an aggravated felony, because the offense involves a "substantial risk" of the use of physical force. Thus, the court denied the petition for review to the extent the alien challenged the determination his burglary conviction is an aggravated felony, and dismissed the remainder of the petition for lack of jurisdiction.

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SEVENTH CIRCUIT

■ Seventh Circuit Affirms Denial of Untimely Reopening Request Where Alien Failed to Demonstrate Changed Country Conditions or Prima Facie Eligibility for Relief

In *Zheng v. Holder*, 701 F.3d 237 (7th Cir. 2012) (Bauer, Rovner, *Randa* (by designation)), the Seventh Circuit ruled that the BIA did not abuse its discretion in denying the petitioner's untimely motion to reopen where petitioner's marriage and the birth of her two children were changes in personal circumstances insufficient to warrant reopening.

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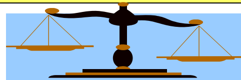

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When placed in removal proceedings, petitioner applied for asylum and claimed that she was persecuted in China on account of her practice of Falun Gong. On June 1, 2004, the IJ denied her application due to lack of credibility and the BIA affirmed. The Seventh Circuit denied the subsequent petition for review.

On September 8, 2011, petitioner filed a motion to reopen based on the birth of her two United States citizen children and increased enforcement of China's family planning policy. The BIA denied the motion because petitioner's evidence failed to establish the requisite changed country conditions to except the motion to reopen from the relevant time limitations.

The Seventh Circuit held that the birth of petitioner's children alone was not enough to merit reopening and that the evidence she submitted showed only "uneven" enforcement rather than a material change in China's family planning policy. The court also determined that the BIA did not abuse its discretion in denying reopening because petitioner did not establish prima facie eligibility for asylum.

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EIGHTH CIRCUIT

■ Eighth Circuit Upholds Denial of Asylum to Cambodian Applicant, Holds That Document Verification Did Not Constitute a Breach of Confidentiality

In *La v. Holder,* 701 F.3d 566 (8th Cir., December 13, 2012) (Loken, Smith, *Benton*), the Eighth Circuit upheld the BIA's conclusion that the harm described by an asylum applicant from Cambodian failed to rise to the level of persecution, and that she failed to demonstrate that her fear of future persecution was objectively reasonable, or that there was a pattern or practice of persecution against Sam Rainsy Party members.

The court further held that the alien's confidentiality was not breached when Government officials submitted documents to a Phnom Penh municipal official for verification of authenticity, as the disclosure did not raise a reasonable inference that La had sought asylum.

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■ Eighth Circuit Holds Petitioner's Eight-Hour Detention and Unattributed Deaths of His Children Do Not Constitute Past Persecution

In *Garcia-Colindres v. Holder*, 700 F.3d 1153 (8th Cir. 2012) (Riley, Beam, *Bye*), the Eighth Circuit concluded that petitioner was ineligible for asylum because his eight-hour detention with minor beatings and threats did not rise to the level of persecution, and there was no evidence of the identity or motives of the individuals involved in the disappearance and deaths of his children.

> **The court found that petitioner was ineligible for asylum because his eight-hour detention with minor beatings and threats did not rise to the level of of persecution.**

The petitioner illegally entered the United States in 1994 and filed an application for asylum, claiming that, because petitioner's son supported a guerilla group, the Guatemalan police detained and beat the petitioner and killed two of his children. The IJ denied asylum and the BIA affirmed.

The Eighth Circuit agreed with the agency that, even in the aggregate, the detention, beatings, and threats of future violence that the petitioner suffered did not rise to the level of persecution. The court also held that, in the "complete absence" of evidence demonstrating the identity of petitioner's children's kidnappers or their motives, petitioner failed to demonstrate government involvement. Finally, the court concluded that country conditions in Guatemala had fundamentally changed since petitioner's departure such that he could not demonstrate an objectively well-founded fear of future persecution.

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■ Eighth Circuit Holds BIA Adequately Addressed Alien's Asylum Claim Based on HIV Status by Incorporating Immigration Judge's Adverse Credibility Finding

In *R.K.N. v. Holder*, 701 F.3d 535 (8th Cir. 2012) (Melloy, *Benton*, Baker), the Eighth Circuit held that the BIA did not have to specifically address the credibility of the petitioner's alternative HIV-positive claim when its decision incorporated the IJ's adverse credibility findings in full and acknowledged the existence of other claims.

Petitioner returned to the United States from a trip to Kenya in 2001 and, after being denied entry because his F-1 student visa had expired, applied for asylum. Petitioner claimed that he would be persecuted because of his HIV-positive status and his membership in the Mungiki group. The IJ denied his request for lack of credibility and the BIA affirmed.

The Eighth Circuit rejected petitioner's argument that the BIA failed to consider his HIV-related claim where it incorporated the IJ's adverse credibility finding as it related to petitioner's trip to Kenya for his father's funeral and subsequent beating on account of his HIV status. The court further noted that, while the BIA focused on credibility findings related to the Mungiki claim, the BIA sufficiently addressed the HIV-related claim by acknowledging that petitioner presented "other

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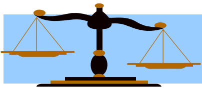

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claims" that would not otherwise alter the its decision. The court also ruled that, even if the IJ erred in excluding medical records, petitioner did not demonstrate prejudice. Finally, the court held that the BIA did not err in declining to remand the case even though the IJ may have incorrectly used the REAL ID Act's credibility standard because the credibility finding could be sustained under pre-REAL ID Act standards.

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NINTH CIRCUIT

■ Ninth Circuit Upholds District Court's Finding That USCIS Did Not Arbitrarily or Capriciously Deny Visa Petition on Marriage Fraud Grounds

In *Garcia-Lopez v. Mayorkas,* 11-16327, 2012 WL 6571617 (9th Cir., December 12, 2012) (Hawkins, Tashima, Murguia), the Ninth Circuit, in an unpublished opinion, upheld the Northern District of California's grant of summary judgment in favor of USCIS. The district court held that USCIS did not arbitrarily or capriciously deny plaintiff's visa petition on marriage fraud grounds. Specifically, the district court determined that USCIS properly weighed all the evidence presented and reasonably concluded plaintiff's submissions of unsworn and undetailed affidavits did not overcome the probative value of the visa beneficiary's admission of marriage fraud, which qualified as a statement against interest.

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■ Ninth Circuit Concludes that an Aggravated Felon's Relief from Removal Does Not Estop Government from Considering Underlying Crime as a Permanent Bar to Naturalization

In *Alocozy v. USCIS*, __F.3d __, 2012 WL 6720669 (9th Cir., December 28, 2012) (*Trott*, Rawlinson, Block) (by designation)), the Ninth Circuit affirmed an Eastern District of California order granting summary judgment to USCIS. The court concluded the government had not waived the permanent bar to naturalization caused by the alien's aggravated felony conviction. The court explained that the requirements of becoming a naturalized citizen and the grounds for avoiding "deportation" as a felon are as "different as chalk is from cheese."

The court explained that the requirements of becoming a naturalized citizen and the grounds for avoiding "deportation" as a felon are as "different as chalk is from cheese."

The court held the alien's conviction was a permanent bar to naturalization although the crime was not, at the time of his guilty plea, defined under federal immigration law as an aggravated felony that would prevent a lawful permanent resident from establishing the good moral character necessary for naturalization.

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■ Ninth Circuit Joins Second and Seventh Circuits in Holding the REAL ID Act Bars Administrative Procedure Act Claims that Indirectly Challenge a Final Order of Removal

In *Martinez v. Holder*, __F.3d__, 2012 WL 5995444 (9th Cir. December 3, 2012) (B. Fletcher, Hawkins, *Murguia*), the Ninth Circuit affirmed the Northern District of California's dismissal of the petitioner's Administrative Procedure Act ("APA") claim for lack of jurisdiction where the REAL ID Act designated a petition for review filed with an appropriate court of appeals as the sole and exclusive means for judicial review of the agency's decision denying relief and ordering removal.

In 1992, petitioner filed a false asylum application for political asylum. When placed in removal proceedings, petitioner withdrew that application and submitted a new application, claiming that he would be persecuted in Guatemala as a homosexual. The IJ denied petitioner's asylum application lack for credibility and the BIA affirmed. The court denied petitioner's subsequent petition for review.

Petitioner then filed a complaint with the Northern District of California and argued that the BIA acted arbitrarily and capriciously by treating him differently than similarly situated individuals and, therefore, violated the APA. The district court denied the claim for lack of jurisdiction. On appeal, the Ninth Circuit held that, despite petitioner's efforts to characterize his complaint as an "independent" claim subject to review by the district court, his claim was an "indirect" attack on his removal order and, therefore, the district court lacked jurisdiction.

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TENTH CIRCUIT

■ Tenth Circuit Holds DHS Did Not Deprive Alien of Due Process by Simultaneously Issuing the Notice of Intent and the Final Administrative Removal Order

In *Aguilar-Aguilar v. Napolitano,* 700 F.3d 1238 (10th Cir. 2012) (Matheson, Porfilio, *Baldock),* the Tenth Circuit held that the DHS did not deprive the alien of his procedural due process rights when it terminated "regular" removal proceedings

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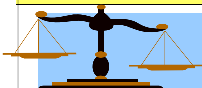

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under 8 U.S.C. § 1229a and commenced "expedited" removal proceedings under 8 U.S.C. § 1228(b), issuing the Notice of Intent and the Final Administrative Removal Order at the same time. The court rejected the alien's claim that he was unconstitutionally denied the opportunity to present evidence because he did not contest the charges that rendered him amenable to § 1228 (b) proceedings, and he had no liberty or property interest in obtaining the purely discretionary relief he sought.

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ELEVENTH CIRCUIT

■ **Eleventh Circuit Affirms District Court's Grant of Government's Motion for Summary Judgment Dismissing Challenge to Denial of Petition for Alien Relative**

In *Diaz v. USCIS*, 2012 WL 59097503, (11th Cir., November 27, 2012) (Carnes, Barkett, Marcus) (*per curiam*) the Eleventh Circuit affirmed the Southern District of Florida's order granting the government's motion for summary judgment. The USCIS denied the Form I-130, Petition for Alien Relative filed by the alien's second wife on the grounds that the alien committed marriage fraud in his first marriage.

The court held that the denial was not arbitrary, capricious, an abuse of discretion, or unsupported by substantial evidence. The court also concluded that USCIS's refusal to re-interview the alien's first wife on an earlier petition, after she contradicted the alien's answers in her first interview, was not a violation of the alien's due process rights.

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OIL TRAINING CALENDAR

February 19, 2013. Brown Bag Lunch & Learn with Lori Scialabba, Deputy Director of USCIS.

Patrick Weil on Citizenship

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From its 1906 inception, Weil explained, denaturalization made two major contributions to American citizenship, even as it made numerous lives considerably more complicated. First, it federalized the naturalization process. Previously, prospective citizens seeking naturalization looked primarily to state courts, which ran a brisk naturalization business in exchange for fees. But state courts did not necessarily follow federal citizenship requirements, often leading to fraudulent and illegally procured citizenship. The advent of denaturalization deterred these problems. And the institution of denaturalization also coincided with the accretion of the naturalization power in federal hands. Moreover, the harshness of widespread denaturalization led the Supreme Court to redefine the country's very understanding of sovereignty vis-à-vis citizenship.

In the early 1900s, Weil explained, people viewed citizenship as "a constellation of rights contingent on the satisfaction of certain obligations, a regime in which the law could say: 'If you act this way, you will lose your citizenship.'" But the legal dimensions of citizenship evolved as challenges to denaturalization increased. Eventually prohibiting denaturalization for native-born citizens (and foreign-born citizens in most circumstances), the Supreme Court embraced a core Western liberal value: The notion that citizenship is itself the source of sovereignty.

by Benjamin Mark Moss, OIL
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New USCIS Immigrant Fee

On Feb. 1, 2013, USCIS will begin collecting a new USCIS Immigrant Fee of $165 from foreign nationals seeking permanent residence in the United States. This new fee was established in USCIS's final rule adjusting fees for immigration applications and petitions announced on Sept. 24, 2010.

The new fee allows USCIS to recover the costs of processing immigrant visas in the United States after immigrant visa holders receive their visa packages from DOS. This includes staff time to handle, file and maintain the immigrant visa package, and the cost of producing and delivering the permanent resident card.

INSIDE OIL

Kudos to **Margaret Perry** and **Virginia Lum** who performed at the Annual Civil Division Awards Ceremony. Congratulations to all attorneys who received awards at the ceremony, including Paralegal **Rosa Domenech**, who received the Award for Excellence in Paralegal Support, Legal Assistant **Aleise Hemphill**, Award for Excellence in Administrative Support, Trial Attorneys **Timothy Belsan** (DCS) and **Lindsay Murphy**, Rookie of the Year Award, DCS Senior Litigation Counsel **Geoffrey Forney,** Perseverance Award, and Senior Litigation Counsel, **John Hogan,** Special Commendation Award.

Congratulations to Senior Litigation Counsel **Norah Schwarz** who received her 35-year service pin from Director David McConnell.

Historian Patrick Weil OIL Luncheon Speaker

From Contingent Citizenship to Citizen Sovereignty

The privilege of naturalization—the process by which an immigrant becomes a U.S. citizen—can be reversed. Aliens who become citizens without satisfying citizenship requirements, or who misrepresent or conceal past crimes, for instance, can lose their citizenship. And this might come as no surprise.

But there was a time when the U.S. government forcibly stripped the citizenship of significant numbers of Americans for reasons unrelated to misrepresentation or failing to satisfy citizenship requirements. Native-born American women who married foreigners, naturalized U.S. citizens who moved abroad, members of ethnic or political groups perceived as "un-American," and those who disagreed with U.S. wartime policy were just some of the people whom the U.S. Government expatriated in the early 20th century.

So recounted Patrick Weil, French historian, political scientist, Visiting Professor of Law at Yale, and author of *The Sovereign Citizen: Denaturalization and the Origins of the American Republic*, in a December 14, 2012 visit to OIL. Weil, a comparative citizenship expert, shared insights into the history of the U.S. immigration system through the lens of the denaturalization power. Denaturalization began, said Weil, as a national-security tool widely used against native- and foreign-born citizens to protect U.S. interests during wartime.

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Please note that the views expressed in this publication do not necessarily represent the views of this Office or those of the United States Department of Justice.

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"To defend and preserve the Executive's authority to administer the Immigration and Nationality laws of the United States"

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