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Immigration Litigation Bulletin

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NINTH CIRCUIT FINDS SOUTH AFRICAN NATIONALS PERSECUTED ON ACCOUNT OF MEMBERSHIP IN PARTICULAR SOCIAL GROUP

In ***Thomas v. Ashcroft***, __F.3d__, 2004 WL 385379 (9th Cir. March 2, 2004) (*Pregerson*, Berzon; Fernandez, dissenting), the Ninth Circuit, over a vigorous dissent by Judge Fernandez, held that the principal petitioner, her husband, and two children, were persecuted on account of membership in a particular social group, namely because the petitioner was the daughter-in-law of "Boss Ronnie," a racist foreman who had abused his black workers.

> ***"Where family membership is a sufficiently strong and discernible bond that it becomes the foreseeable basis for personal persecution, the family qualifies as a 'social group.'"***

The petitioners entered the United States as visitors in 1997. They did not depart when their visa expired, and within a year of their admission they applied for asylum. The principal petitioner testified that she came to the United States to avoid threats of physical violence and intimidation they were subjected to because of abuses committed by her father-in-law. The petitioner testified that in February 1996, their dog was apparently poisoned. The next month, their car was vandalized and its tires slashed. When petitioner told her father-in-law of this incident, he told her that he had just had a confrontation with his workers, and that she should buy a gun. In May 1996, human feces were apparently thrown at petitioners' residence.

In December 1996, petitioner while sitting on her veranda was confronted by a black man wearing overalls bearing the logo of Strongshore, the construction company where her father-in-law had been a foreman. This individual asked petitioner if she knew "Boss Ronnie," and then told her that he would come back and cut her throat. Lastly, in March 1997, while on her way to a store, four black men wearing Strongshore overalls, approached petitioner and tried to take her daughter from her arms. When she screamed, her neighbor came out and the men ran off. At this point petitioner decided to leave South Africa.

Petitioner also stated that her brother-in-law had his

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EIGHTH CIRCUIT REVERSES RELEASE ORDER IN SOMALI CASE

In ***Jama v. Ashcroft***, __F.3d__, 2004 WL 587666 (8th Cir. March 25, 2004) (Arnold, Bowman; Bye dissenting), the Eighth Circuit issued a brief order reversing the district court's judgment ordering the release of petitioner under 28 U.S.C. § 2241.

The court found that the district court had erred in concluding under *Zadvydas* that "there is no significant likelihood of removal in the reasonably foreseeable future." The court noted that the Supreme Court had granted certiorari in petitioner's immigration case, and expressed its belief that the Court will decide the case in a reasonable time. "It would be wrong to conclude that there is no significant likelihood that the government will prevail,"

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DEPUTY ATTORNEY COMEY TO SPEAK AT IMMIGRATION LITIGATION CONFERENCE

Deputy Attorney General James Comey, Jr., will be among the speakers at the Eighth Annual Immigration Litigation Conference. The Conference, sponsored by the Civil Division's Office of Immigration Litigation, will be held May 4-6, 2004, in Washington, D.C., in the Great Hall of the Robert F. Kennedy Building. The theme of this year's Conference, "Immigration in Transition - Challenges at our Border and Before the Courts," reflects the impact of the restructuring of immigration responsibilities at our borders and in the federal courts. Additionally, as reflected in the Preliminary Agenda appended to this newsletter, the Conference will present various panels addressing topics of current interest,

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PERSECUTION ON ACCOUNT OF FAMILIAL RELATIONSHIP

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house broken into and his car vandalized several times. Petitioner speculated that her family was the subject of the attacks because her father-in-law lived in what was essentially a "fortress."

The IJ determined that petitioner had not met her burden in demonstrating that her family had suffered persecution based on any of the five statutory grounds, "whether it is race or political opinion." The IJ rejected petitioner's claim that she was subjected to persecution on account of race finding that incidents of crimes in South Africa were not restricted to "Blacks committing crimes against Whites." The IJ also found that there was nothing political in the attacks against the petitioner. Finally, the IJ opined that petitioner's testimony was not totally credible, noting in particular that there was no explanation as to why the attacks suddenly began in 1996. The BIA affirmed the IJ's decision without opinion.

Preliminarily, the Ninth Circuit panel found that any adverse credibility findings made by the IJ were not supported by substantial evidence. Although the government contended that the IJ had accepted petitioner's testimony as true, the court noted that the IJ's concerns about the veracity of petitioner may have played a role in the final determination.

The panel then criticized the immigration judge for assuming that the petitioners "were claiming persecution based only on race or political opinion," noting that in her original asylum application, petitioner had checked the box for applicants claiming persecution based upon membership in a particular social group. Moreover, because petitioner had "consistently stated that the persecution was based on her relationship to her father-in-law," the court explained that she "should not be penalized for failing to recognize during questioning that that relationship can be articulated as one of the legally-recognized bases for relief from removal." Accordingly, the panel therefore reframed petitioners' asylum claim as one based upon "membership in a particular social group, as relatives of Boss Ronnie."

The panel then found that, although "the case law has been somewhat unclear," family relations may constitute a particular social group for purpose of asylum and withholding. The court cited the decision in *Lin v. Ashcroft*, __F.3d__ (9th Cir. 2004), where it held that "where family membership is a sufficiently strong and discernible bond that it becomes the foreseeable basis for personal persecution, the family qualifies as a 'social group.'" Here, the panel held that "the acts committed against the [petitioners] were sufficiently linked to their family membership so as to constitute alleged persecution on the basis of membership in a particular social group."

> ***"This case expands and extends general language in our cases almost beyond recognition in order to foster a grant of asylum to people who are in no proper sense true refugees."***

The panel rejected the government's argument that the alleged persecution was personal retaliation or a result of the country's high crime. The court pointed out that because the petitioners were targeted "because of their relationship with [petitioner's] father-in-law," and because petitioner's family is a "particular social group," it was reasonable to conclude that "the acts constituting persecution were not purely personal retribution against the petitioners; instead, they were actions *on account of* one of the statutory grounds."

The panel also held, using a "cumulative effects" analysis, that the acts alleged by the petitioner were sufficiently serious as to amount to persecution. The panel rejected the government's contention that the incidents reported were not sufficiently extreme to constitute persecution, noting that "'threats of violence and death are enough' to constitute persecution."

The panel remanded the case under *Ventura* for a determination in the first instance whether the alleged persecution had been inflicted by individuals whom the government was unwilling or unable to control.

Judge Fernandez, in a vigorous dissent, gave numerous reasons why, in his view, "this case expands and extends general language in our cases almost beyond recognition in order to foster a grant of asylum to people who are in no proper sense true refugees." He observed that Ninth Circuit case law does not support the broad proposition that a family is a "social group" for asylum purposes; that private violence generally is not a basis for asylum; that disgruntled employees are not the type of group that ordinarily can be held to inflict persecution; that there is no record evidence that the government of South Africa is unable or unwilling to protect its citizens from crime; and that the petitioners could have protected themselves by moving to another city within South Africa.

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SOMALI CASE

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said the court.

In a dissenting opinion, Judge Bye would have affirmed the release order. He noted that petitioner has already been in post-removal-order administrative custody since May 2001. In his view, there is a significant likelihood the government will not prevail, making petitioner's pending removal even less reasonably foreseeable.

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CONVENTION AGAINST TORTURE CHECKLIST

- ***This outline has been condensed for publication. A complete outline, with case citations, is on the OIL website at* https://oil.aspensys.com/res_train_ctr/CAT.checklist.3.pdf.**
- *Although applications for CAT protection and asylum and withholding of removal under the INA are often paired due to the mechanics of the application (the same application form [I-589] is used to apply for all three remedies/defenses to removal), they are separate remedies and must be considered separately.*
- *Similar to withholding of removal under the INA, protection under the Convention Against Torture ("CAT") is forward looking. Unlike asylum and withholding of removal under the INA, however, (1) there is no requirement that the prospective torture be on account of a protected ground, and (2) generally, the torturer must be the government, or must have acted at the government's instigation or with its consent or acquiescence.*
- *Similar to withholding under the INA, CAT protection affects only the applicant's removal - there are no provisions for derivative status or permanent residency.*

I. PROCEDURAL REQUIREMENTS AT THE AGENCY LEVEL

A. Was the request for CAT protection timely? If the final order of removal was entered before March 22, 1999, the applicant must have filed a motion to reopen to apply for CAT protection before June 21, 1999. 8 C.F.R. § 1208.18(b)(2)(i). *(Other time and numerical limitations on motions to reopen do not apply to MTRs to request CAT protection filed before June 12, 1999, nor does the MTR requirement that the evidence in question be previously unavailable and undiscoverable. 8 C.F.R. 1208.18(b)(2).)* An application filed after that date may be considered if the basis of the claim for protection is changed country conditions. 8 C.F.R. §§ 1003.23(b)(4)(i) & 1208.18(b)(2). Such a motion must be timely in light of the claimed change.

B. If the applicant was or remains in immigration court proceedings, did the applicant request CAT consideration? If not, IJ is required to consider *sua sponte* where the applicant is ineligible for asylum under INA §§ 208(a)(2) or (b)(2), 8 U.S.C. 1158(a)(2) or (b)(2), and the evidence indicates possible torture in country of removal. See 8 C.F.R. § 1208.13(c)(1).

II. JUDICIAL REVIEW

A. Does the Court have subject matter jurisdiction?

1. Is this a petition for review of a removal order in the court of appeals? A court of appeals has subject matter jurisdiction over CAT claims where the petitioner requests review of a final order of removal pursuant to INA § 242, 8 U.S.C. § 1252. Jurisdictional bars, such as the one for criminals at INA § 242(a)(2)(C), preclude jurisdiction over CAT claims to the same extent as over claims for other remedies.

2. Is this a petition for habeas corpus? It is OIL's litigation position that because the CAT is not a self-executing treaty, a specific grant of jurisdiction from Congress is required. As FARRA granted jurisdiction only to the courts of appeals to review CAT claims in the context of a petition for review of a final order of removal, the district courts have not been granted jurisdiction over CAT claims. Thus, even the grant of jurisdiction in the general habeas corpus statute, 28 U.S.C. § 2241, does not suffice to grant habeas jurisdiction to review CAT denials. This position, however, has often been unsuccessful, especially where no alternative judicial forum exists to pursue a claim, as suggested in INS v. St. Cyr, 533 U.S. 289, 314 (2001). Where direct review is available, habeas jurisdiction may be precluded.

3. If the habeas court has jurisdiction, what is the scope of review in habeas? Habeas corpus jurisdiction is restricted to constitutional claims and pure questions of law. Generally, habeas jurisdiction does not extend to review of factual or discretionary determinations. Some circuits hold, however, that habeas courts have jurisdiction to review the application of law to the "undisputed" facts of the case, generally quoting St Cyr, 533 at 302 ("error law, including the erroneous application or interpretation of statutes.").

B. Are there procedural defaults that preclude jurisdiction?

1. If a BIA appeal was pending when the regulations were published, did the applicant file a motion to remand for CAT consideration? If not, claim may not be exhausted. See INA § 242(d)(1), 8 U.S.C. 1252(d)(1).

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2. If the application was denied by the IJ, did the alien include argument on the denial of CAT protection in his or her appeal to the Board? If not, the claim is not exhausted. INA § 242(d)(1), 8 U.S.C. 1252(d)(1).

3. If this is a petition for habeas review, did the applicant fully exhaust his administrative remedies?
The mandatory statutory exhaustion requirement in INA § 242(d)(1), 8 U.S.C. 1252(d)(1) also applies to habeas claims stemming from removal orders.

a. A limited exception for mandatory exhaustion requirement applies where agency lacks authority to address specific claims.

b. Where prudential exhaustion applies, other exceptions may apply, including futility, irreparable injury, raising a substantial constitutional claim, and no genuine opportunity for relief. The fact that exhaustion was likely to fail is not tantamount to showing it was futile to exhaust.

4. If this is a petition for habeas review, is the petitioner in "custody"? An alien who has been removed from the United States is not "in custody" for habeas purposes.

C. Standard of Review

1. Petitions for Review: Factual findings underlying the agency's determination are reviewed under the "reasonable adjudicator/substantial evidence" standard set forth in *INS v. Elias-Zacarias*, 502 U.S. 478, 483-84 (1992), and codified at INA § 242(b)(4)(B), 8 U.S.C. § 1252(b)(4)(B), which requires the reviewing court find that "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." INA § 242(b)(4)(B). The agency's interpretations of the immigration laws are given Chevron deference. The agency's interpretations of its own regulations are given controlling weight unless those interpretations are plainly erroneous or inconsistent with the regulations.

***2. Motions to Reopen*:** Courts "employ a very deferential abuse of discretion standard" for review of any Board decision denying a motion to reopen, including those requesting reopening to seek CAT protection.

3. Habeas: The question of what standard of review is to be applied in the habeas context is still an open one.

III. BURDEN OF PROOF

A. Who has the burden of proof? The burden of proof remains entirely with the applicant. 8 C.F.R. § 1208.16(c)(2). *Unlike asylum and withholding of removal under the INA, there is no provision providing a presumption of future torture based upon past torture that requires rebuttal by the DHS. Moreover, the applicant has the burden of showing no reasonable relocation within the country of removal.*

B. What is the burden of proof?

1. The applicant must establish that it is more likely than not that he or she would be tortured in the country of removal. 8 C.F.R. § 1208.16(c)(2). The applicant must show a "particularized threat" of torture - not just that torture occurs in country, but a clear probability that the applicant himself or herself would be singled out for torture.

2. On motions to reopen to apply for CAT protection, the applicant must present a prima facie case of eligibility. The evidence presented with the motion to reopen, if assumed to be true, must establish each element of a CAT claim. 8 C.F.R. § 1208.18(b)(2)(ii).

IV. EVIDENCE

A. Is the testimony sufficient to sustain the burden of proof? The regulations and case law provide that while the testimony of the applicant may be sufficient to sustain the burden of proof, the applicant should corroborate the testimony where reasonable.

B. Was the applicant's testimony regarding the elements of his CAT claim credible?

1. Where the applicant relies on the *same* facts to support his CAT claim as those relied upon to support his claim for asylum and/or withholding of removal under the INA, the adjudicator may adopt an overall adverse credibility finding that applies to all of the claims. *But see merits analysis (IV.D), infra.*
2. Where the adverse credibility finding is based upon testimony regarding facts not relied upon for the applicant's CAT claim, however, a separate credibility finding may be necessary.
3. Credibility is reviewed under the *Elias-Zacarias* "compelling" evidence standard.

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C. Upon which element(s) is the claim based? A CAT claim requires consideration of the totality of the elements. The regulations provide a non-exhaustive list of elements which may be considered, including (i) past torture inflicted on the applicant, (ii) the possibility of relocation within country to avoid torture, (iii) evidence of gross, flagrant or mass violations of human rights within country, and (iv) other relevant information regarding conditions in country. 8 C.F.R. § 1208.16(c)(3). No one element is determinative; the adjudicator must look at the totality of the evidence to determine whether the applicant has established that it is more likely than not that he or she will be singled out for torture in the proposed country of removal. For example, evidence of past torture is relevant only to the extent that it affects the likelihood of future torture, and does not suffice in and of itself to establish CAT eligibility.

D. Were the merits of the applicant's CAT claim considered separately from the merits of any claim for asylum of withholding of removal under the INA? The adjudicator must decide the merits of the CAT claim *separately*.

E. What evidence of country conditions was submitted? The most common forms of evidence regarding country conditions are reports from the Department of State and reports from non-governmental organizations.

V. ELEMENTS OF A CAT CLAIM

A. What is the definition of "Torture"?

1. Torture is "extreme and outrageous treatment," an extreme form of cruel, inhuman or degrading treatment, and does not include lesser forms of cruel, inhuman, or degrading treatment. 8 C.F.R. § 1208.18(a)(2).

- Torture does not include pain or suffering arising from or inherent in lawful sanctions, such as the death penalty. 8 C.F.R. § 1208.18(a)(3).
- Torture is not solely physical mistreatment; it may also include mental mistreatment. Mental mistreatment that rises to the extreme level of "torture" requires "prolonged mental harm caused by or resulting from (i) intentional infliction or threatened infliction of severe physical pain or suffering; (ii) actual or threatened administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality; (iii) the threat of imminent death; and/or (iv) the threat of imminent torture to another. 8 C.F.R. § 1208.18(a)(4).

2. The victim must be in the torturer's custody or control at the time of torture. 8 C.F.R. § 1208.18(a)(6).

3. The torturer must have the specific intent to inflict torture for a purpose. The torture must have a specific illicit purpose, such as obtaining information or a confession, punishment for an act, intimidation or coercion, or on account of discrimination of any kind. 8 C.F.R. § 1208.18(a)(5). An act which results in unanticipated or unintended severity of pain does not constitute torture. 8 C.F.R. § 1208.18(a)(5).

4. CAT only provides protection for acts of torture with a government nexus. The torture must be inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1).

- Where the torturers are government officials, the question becomes whether they are acting in their official capacity. Thus, where a government official acts *ultra vires*, or from personal vengeance, there is no direct governmental nexus.
- Where the torturers are NOT government officials, but private actors, the question becomes whether government officials consented to the torture or acquiesced to such activity.
  - Acquiescence is more than powerlessness to prevent activity. The government official must, at a minimum, turn a blind eye to reported torture. The government's inability to control a private actor does not necessarily constitute acquiescence.
  - The government official(s) must know of or be aware of the activities of the private actors beforehand and breach a legal responsibility to intervene to prevent the torture. 8 C.F.R. § 1208.18(a)(7). It is OIL's position that the act of turning a blind eye to the activity does, however, require intent, and not merely an act of negligence or recklessness.

B. What do country reports show regarding risk of torture? Where country reports show mass human rights violations, the evidence must indicate that the applicant would be personally at risk of torture.

- If country condition reports state that torture is generally used against or specific to a group, does the applicant fit within the group?

C. Has the applicant addressed whether internal relocation would be feasible? Where the alleged activity is specific to one area or one group, the applicant may not face torture in a separate area of the country. If the alleged activity is not country-wide, the applicant must address whether relocation is feasible.

CONVENTION AGAINST TORTURE CHECKLIST

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VI. CAT PROTECTION

A. Is the applicant eligible for withholding of removal, or only deferral of removal? Similar to withholding of removal under the INA, if the applicant establishes eligibility for protection under the CAT but (i) the applicant persecuted others on account of a protected ground; (ii) the applicant has been convicted of a particularly serious crime in the United States; (iii) there are "serious reasons to believe that the [applicant] committed a serious nonpolitical crime outside the United States" before arriving in the United States; and/or (iv) the applicant is a danger to the security of the United States, the applicant is ineligible for withholding of removal and may only be granted deferral of removal. 8 C.F.R. § 1208.17(a); INA § 241(b)(3)(B).

B. Is the applicant removable to a third country where he or she would not be tortured? Protection under the CAT, whether withholding or deferral, bars removal only to the country where the applicant has established a clear probability of torture. The applicant may be removed to a third country where he is not likely to be tortured. See 8 C.F.R. § 1208.16(f).

C. Has the U.S. Government received assurances that the applicant will not be tortured? If the Secretary of State obtains assurance from the government of the designated country that an applicant will not be tortured, and the Attorney General deems the assurance "sufficiently reliable", CAT protection is no longer provided and the alien may be removed. 8 C.F.R. § 1208.18(c)(3).

D. Does a grant of protection under the CAT necessarily result in the applicants release from DHS custody? CAT protection does not necessarily result in the applicant's release from DHS custody, where the applicant is subject to such custody (because removal to a third country is a possibility). 8 C.F.R. § 1208.17(b)(1)(ii). Release of aliens granted deferral of removal is governed by 8 C.F.R. § 241.4(b)(3).

E. What does a grant of deferral of removal entail?

1. Deferral of removal confers no lawful or permanent immigration status in the United States and thus does not require issuance of employment authorization. 8 C.F.R. § 1208.17(b)(1)(i).
2. A grant of deferral is subject to termination where either the applicant or DHS request termination, or where the U.S. government receives assurances from the designated country. 8 C.F.R. §§ 1208.17(b)(1)(iv);1208.17(f).

a. DHS may request termination of deferral when it has evidence, not previously presented, that the applicant is no longer more likely than not to be singled out for torture in the designated country. 8 C.F.R. § 1208.17(d)(1) & (d)(3). DHS counsel must present a motion to the immigration judge that establishes a possibility that the applicant will no longer face torture, the immigration court must schedule a hearing and provide the applicant with notice that he or she has 10 (personal service) or 13 (service by mail) days to supplement the evidence provided in the initial application. 8 C.F.R. 1208.17(d)(1). Once that period to supplement expires, the immigration court must forward the application, with all additional evidence provided by the parties to the Department of State for comments. 8 C.F.R. § 1208.17(d)(2). At the hearing, the applicant bears the burden of proving that it is remains likely than not that he or she will be tortured. 8 C.F.R. § 1208.17(d)(3). If the applicant no longer establishes a clear probability, the order of deferral is terminated. 8 C.F.R. § 1208.17(d)(4). The applicant may appeal the decision of the immigration judge to the Board. *Id.*

b. The applicant may request termination by filing a written request for termination with the immigration court. 8 C.F.R. § 1208.17(e). The immigration judge must determine, either on the basis of the written submission or after a hearing, whether the request for termination of deferral is knowing and voluntary. If so, the order of deferral will be terminated. *Id.*

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Summaries Of Recent Federal Court Decisions

ASYLUM

■Ninth Circuit Reverses Immigration Judge's Adverse Credibility Finding In Chinese Asylum Case

In ***Guo v. Ashcroft,*** __F.3d__, 2004 WL 556705 (9th Cir. March 23, 2004) (*Alarcon*, Beezer, W. Fletcher), the Ninth Circuit reversed the IJ's adverse credibility finding and found that the petitioner had demonstrated past persecution on account of his religion.

The petitioner, a citizen of China, entered the United States as a visitor for business, but did not depart when his visa expired on April 15, 2000. When placed in proceedings petitioner sought asylum claiming that he had been persecuted by the Chinese government for believing "in Jesus and Christianity." He stated that on one occasion he had been detained for participating in an illegal religious activity and that he had been struck in the face, kicked in the stomach, and ordered to do push ups. On another occasion petitioner was detained for fifteen days because he had sought to prevent a police from removing a cross from a tomb. Petitioner was again beaten while in detention. During the hearing, the IJ examined the petitioner as to his knowledge of Christianity, asked him to recite the Lord's Prayer, and to list the Ten Commandments. The IJ determined that petitioner's testimony that he was a Christian before entering the United States, was not credible. Even if credible, the IJ found that petitioner had not suffered past persecution on account of religion.

The IJ examined the petitioner as to his knowledge of Christianity, asked him to recite the Lord's Prayer, and to list the Ten Commandments.

The court held that the IJ had impermissibly based her adverse credibility finding on vague and ambiguous testimony, a lack of corroborating evidence where none was required, and impermissible conjecture and speculation. Moreover, the court concluded that in light of petitioner's credible testimony, the two short detentions during which he was punched in the face and forced to sign a document renouncing Christianity, rose to the level of past persecution giving rise to a rebuttable presumption of future persecution in China.

The court remanded the case for further consideration of whether petitioner had a well-founded fear of future persecution in China.

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■Eighth Circuit Upholds Denial Of Asylum And Withholding Of Removal, But Remands For Further Proceedings On Petitioner's Application Under CAT

In ***Habtemicael v. Ashcroft,*** __F.3d__, 2004 WL 421750 (8th Cir. March 9, 2004) (*Murphy*, Lay, Fagg), the Eighth Circuit affirmed the IJ's denial petitioner's asylum and withholding of removal applications and remanded his Convention Against Torture claim for further findings.

The petitioner, was born in Asmara, Ethiopia, now the capital of Eritrea. In the 1970s revolutionary forces began a war for independence of Eritrea and petitioner was conscripted by the Eritrean People's Liberation Front (EPLF), a Marxist/Leninist group. In 1986, petitioner and two others decided to escape and after a skirmish with EPLF guards, including the killing of two ELPF soldiers, fled into Sudan. Petitioner then traveled to Saudi Arabia in 1989 where he obtained a visitor visa to enter the United States. He subsequently changed his status to student to attend Minneapolis Community College. When his visa expired, petitioner failed to depart. In 1997, he applied for asylum directly with the INS. When that application was denied he was placed in deportation proceedings, where he renewed his request and also sought protection under the Torture Convention. In 1993, Eritreans voted to secede from Ethiopia and the EPLF took control of the new Eritrean government and remains in power today.

An IJ determined that petitioner had not shown that the EPLF had abducted or pursued him on account of his political beliefs, and that any future punishment by the Eritrean government would be motivated to punish a military deserted rather than a desire to punish an ideological opponent. The IJ also found petitioner ineligible for CAT finding that prosecution and punishment by the government would be a lawful sanction against petitioner for deserting the military forces.

The Eight Circuit agreed with the IJ's finding that petitioner had failed to demonstrate past persecution on account of his political beliefs. Petitioner's own witness had testified that the EPLF's criterion for forcing individuals into military service was simple: "they sought men, and later women, with 'two legs that could move.'" Similarly, the court agreed with the IJ's finding that any adverse action that the Eritrean government would take against petitioner would not be on account of his politics, and not on a protected statutory ground. The court, however, reversed the denial of the CAT claim because the IJ had not made any findings regarding whether the EPLF had the status of a recognized government at the time petitioner was conscripted. "If the EPLF did not have sovereign authority in 1986, then [petitioner] as a citizen of Ethiopia may have acted lawfully in escaping and defending himself against recapture." The sanction of death might therefore be a violation of the Convention Against Torture." Accordingly, the court remanded for a

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determination of whether Eritrea could validly punish Petitioner for offenses that occurred before Eritrea was a country.

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■First Circuit Sustains Immigration Judge's Adverse Credibility Finding In Chinese Asylum Case

In ***Qin v. Ashcroft,*** __F.3d __, 2004 WL 489058 (1st Cir. March 15, 2004) (Boudin, *Lynch*, Lipez), the First Circuit held that substantial evidence supported the Immigration Judge's adverse credibility finding.

The petitioner entered the United States illegally in 1999, with the help of a "snake head" who was paid $50,000 for making the arrangements. Petitioner reunited with her husband who was living in Boston and who had himself illegally entered the United states. In December 1999, the couple had a child. Subsequently petitioner applied for asylum, and when that application was not granted she was placed in removal proceedings, where she renewed her claim.

The IJ determined that petitioner had provided contradictory information regarding her pregnancy in China and the reasons why she had not been sterilized after being forced to abort her child in 1994. At the hearing, petitioner had submitted a hospital record purporting to record the 1994 abortion. However, the IJ noted that the Department of State 1998 Profile of Asylum Claims from China indicated that it was not standard practice to issue abortion certificates and that documentation purporting to certify abortions is subject to widespread fabrication and fraud.

The First Circuit held that the Department of State profile, considered in light of petitioner's inconsistent and implausible testimony, was sufficient to support the IJ's conclusion that the abortion certificate was fake and that it had been provided by a smuggler. The court found that the IJ's conclusion that the alien fabricated her story about being forcibly aborted was justified, and that the fabrication of this aspect of her claim rendered incredible many of the alien's related assertions regarding any future persecution she might face in China.

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■Third Circuit Affirms BIA's Adverse Credibility Finding In Chinese Asylum Case

In ***Xie v. Ashcroft***, __F.3d__, 2004 WL 333664 (3d Cir. February 24, 2004) (*Sloviter*, Roth, Stapleton), the Third Circuit sustained the BIA's conclusion that the asylum applicant's testimony was materially inconsistent with his written asylum application.

Specifically, the court noted that petitioner's failure to mention his wife's sterilization in his asylum application, and the inconsistencies within his testimony regarding his alleged detention by family planning officials constituted substantial evidence in support of the BIA's adverse credibility finding.

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■Ninth Circuit Affirms Immigration Judge's Denial Of Asylum To Applicant From Togo

In ***Eusebio v. Ashcroft,*** __F.3d__, 2004 WL 583311 (8th Cir. March 25, 2004) (*Arnold*, Lay, Riley), the Eighth Circuit found that substantial evidence supported the IJ's conclusion that the alien established neither past persecution nor a well-founded fear of future persecution in Togo.

The petitioner rested his claim principally on the fact that as a teacher he had been threatened after giving a failing grade to the son of General Eyadema, who has ruled Togo since 1967. petitioner also stated that he had been beaten while participating in demonstrations against Eyadema and on one occasion he was detained because he was wearing a T-shirt emblazoned with the face of Sylvanus Olympio, the leader whom General Eyadema overthrew.

The Eight Circuit held that the past abuse suffered by the petitioner was not more severe than that suffered by those whose asylum claims have been routinely rejected. "It is a well-established principle that minor beatings and brief detentions, even detentions lasting two or three days, do not amount to political persecution, even if government officials are motivated by political animus," said the court. The court further found that while the current situation in Togo was "hardly optimal," it did not compel the conclusion that the petitioner would be persecuted on account of a protected ground.

> ***"It is a well-established principle that minor beatings and brief detentions, even detentions lasting two or three days, do not amount to political persecution."***

Judge Lay, in dissent, would have found that petitioner had demonstrated a well-founded fear of future persecution based on his political beliefs.

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■Eighth Circuit Remands To BIA For Further Consideration Of Somali Alien's Ability To Internally Relocate

In ***Hagi-Salad v. Ashcroft,*** __F.3d__, 2004 WL 421748 (8th Cir. March 9, 2004) (*Loken*, Lay, Bowman), the Eighth Circuit remanded the case to the BIA after finding that it had erred by failing to apply 8 C.F.R. § 208.13(b)

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(3), a recent regulation defining when the ability to relocate within an applicant's country of origin causes him to be ineligible for asylum.

The petitioner, a citizen of Somalia, claimed persecution on account of his membership in a Somali clan. The IJ and subsequently the BIA determined that petitioner was not eligible for asylum because he could relocate within Somalia and "not reasonably fear harm on account of a protected ground."

The court held that under the pertinent regulation, the BIA was required to undertake an analysis on whether the relocation would be reasonable under a potential broad range of relevant factors, including whether petitioner would face other "serious harm" in areas of Somalia where his clan or subclan are dominant.

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■Eight Circuit Affirms IJ's Finding That Ethiopian Asylum Applicant Failed To Establish A Well-Founded Fear Of Future Persecution

In ***Wondmneh v. Ashcroft,*** __F.3d__, 2004 WL 583593 (8th Cir. March 25, 2004) (*Riley*, Lay, Heaney), the Eighth Circuit found that substantial evidence supported the IJ's conclusion that the petitioner did not have an objectively reasonable fear of future persecution in Ethiopia.

The petitioner, a native of Ethiopia, entered the United States as a visitor in 1992, but did not depart when his visa expired. Subsequently, when placed in removal proceedings petitioner applied for asylum, withholding, and protection under CAT.

The Eight Circuit held that petitioner had not shown that he personally had suffered past persecution or fear of future persecution. In particular, the court noted that petitioner had not belonged to any political party in Ethiopia, and that his parents have continued to live unharmed in the family home since the time of his departure.

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■First Circuit Finds Peruvian Asylum Applicant Firmly Resettled In Venezuela

In ***Salazar v. Ashcroft***, __F.3d__, 2004 WL 350621)(Selya, Cyr, *Lynch*) (1st Cir. February 26, 2004), the First Circuit held that substantial evidence supported the IJ's finding that petitioner was firmly resettled in Venezuela and thus statutorily barred from asylum. The court noted that petitioner had a facially valid government offer of permanent residence, lived in Venezuela for over a year, obtained employment, rented an apartment, and made two return trips to Venezuela after his arrival in the United States.

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CANCELLATION

■Tenth Circuit Finds No Jurisdiction To Review Discretionary Denial Of Cancellation Of Removal

In ***Alvarez-Delmuro v. Ashcroft***, __F.3d__, 2004 WL 431531(Kelly, *Henry*, Lucero) (10th Cir. March 9, 2004), the Tenth Circuit held that it had no jurisdiction to consider whether the petitioners had established exceptional and extremely unusual hardship for the purposes of cancellation of removal. The petitioners, husband and wife, are citizens of Mexico. They entered the United States unlawfully in 1986 and subsequently had four U.S. born children. When placed in proceedings, they applied for cancellation of removal. An IJ determined that their removal to Mexico would not cause exceptional or extremely unusual hardship to the U.S. citizen children aged from four to thirteen. The BIA affirmed that decision without opinion.

On appeal, petitioner contended *inter alia* that the IJ had unconstitutionally evaluated the rights of petitioners' children. The court determined, following its ruling in *Morales-Ventura v. Ashcroft*, 348 F.3d 1259 (10th Cir. 2003), that it lacked jurisdiction under INA § 242(a)(2)(B)(i), to review a discretionary denial of cancellation that did not present a "substantial constitutional question." The court reaffirmed its view that "the incidental impact visited upon the citizen children of deportable, illegal aliens does not raise constitutional problems." The court noted, however, that review could be possible in some circumstances where the hardship determination raises a substantial constitutional question.

"The incidental impact visited upon the citizen children of deportable, illegal aliens does not raise constitutional problems."

Judge Lucero concurred with the majority and expressed his view that a remedy for these type of cases must come from Congress "as we have no statutory authority to entertain such pleas."

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CRIMES

■Ninth Circuit Vacates Removal Order Against Criminal Alien, Finding That BIA Used Wrong Date Of "Admission"

In ***Shivaraman v. Ashcroft***, __F.3d__, 2004 WL 444882(*Reinhardt*, Thomas; Browning) (9th Cir. March 12, 2004), the Ninth Circuit held that for purpose of triggering the five-year removal provision under INA § 237(a)(A)(i), the date of an alien's admission is that date of the alien's lawful entry under INA § 10(a)(13)(A), and not the date of his adjustment of status.

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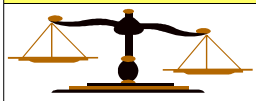

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The petitioner entered the United States in 1989 as a nonimmigrant student and, in 1997, adjusted his status to an alien admitted for lawful permanent residence. In December 2000, he was convicted of theft based on acts he committed in 1998. Using the 1997 date of admission to lawful permanent residency, the INS charged him with removability as an alien convicted of a crime involving moral turpitude within five years of the date of his admission. Both the IJ and the BIA held that petitioner was removable as charged.

The Ninth Circuit reversed, finding that "the date of admission" referenced in section 237(a)(2)(A)(i) of the INA is the first date that the alien lawfully enters the United States. The court held that the text of the statute "leaves no room for doubt, unambiguously defining admission as the lawful entry of the alien into the United States. Further, the statute makes clear that it is the date on which the alien lawfully enters that triggers the five-year period under § 237(a)(2)(A)(i)." Here, petitioner's lawful entry occurred in 1989. Because the 1998 theft crimes were committed more than five years after the date of admission in 1989, petitioner was not subject to removal as charged by the INS. Accordingly, the court vacated the removal order.

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■Ninth Circuit Holds That Conviction For Mayhem Is Crime Of Violence.

In ***Ruiz-Morales v. Ashcroft,*** __F.3d__, 2004 WL 574842 (9th Cir. March 24, 2004) (Trott, *Rawlinson*, Bea), the Ninth Circuit held that the California crime of mayhem is an aggravated felony crime of violence, thus depriving the court of jurisdiction to consider the petition for review.

The petitioner, a citizen of Nicaragua and an LPR, fought with a man outside a restaurant, and after the man punched him, petitioner bit off the top quarter of the man's ear. As a result, petitioner was subsequently convicted of mayhem under Cal. Penal Code § 203, and sentenced to a two-year term of imprisonment. An IJ and later the BIA, agreed with the INS's charge, that petitioner was removable as an alien convicted of an aggravated felony.

The Ninth Circuit rejected petitioner's contention that a violation under the California statute is not a crime of violence because physical force is not an element of the crime. "Notwithstanding petitioner's heroic efforts to concoct an example of mayhem involving no physical force," said the court, "depriving another person of a member of his body, or disabling, disfiguring, or rendering it useless, quintessentially involves a substantial risk that physical force will be used in the process of committing the offense."

> *"A party is entitled to a fair hearing, not a perfect one."*

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DUE PROCESS

■First Circuit Finds No Due Process Violation And Affirms Immigration Judge's Adverse Credibility Determination

In ***Laurent v. Ashcroft, 359*** F.3d 59 (1st Cir. 2004) (Coffin, Cyr, *Selya*), the First Circuit affirmed the BIA's denial of asylum and withholding of removal. The court held that the Immigration Judge did not violate petitioner's due process rights by cutting off cumulative testimony and refusing to allow a witness to testify telephonically. "A party is entitled to a fair hearing, not a perfect one, and within wide margins – not approached here – a judge's efforts at routine administration of court proceedings do not offend principles of fundamental fairness," said the court. The court also rejected petitioner's contention that the IJ was biased because he had formed an adverse opinion about her credibility before taking any evidence. The court noted that "the mere fact that a judge forms a preliminary opinion about the facts based on an initial review of the record does not render a proceedings fundamentally unfair."

On the merits, the court then upheld the IJ's adverse credibility determination, noting that petitioner's claim that she was abused and raped was unconvincing in light of the fact that she maintained contact with her alleged abuser even after she arrived in the United States.

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MARRIAGE

■Ninth Circuit Reverses Finding That Marriage Was Not In Good Faith

In ***Damon v. Ashcroft***, __F.3d__, 2004 WL 439858 (9th Cir. March 11, 2004) (*Paez*, Berzon, Bea), the Ninth Circuit reversed an IJ's finding that petitioner had not entered into a good faith marriage and consequently was ineligible for a waiver of the joint filing requirement under INA S 216(c)(4).

The petitioner, a native of Korea, met Damon, a United States citizen, during a trip to Hawaii . Because petitioner did not speak English and Damon did not speak Korean, they communicated "using hand signs" and with the help of petitioner's sister and brother-in-law who lived in Hawaii. Two months after they met, Damon moved to the downstairs bedroom of the house that petitioner shared with her sister. In August 1989, petitioner returned to Korea and her two children

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from a prior marriage. A few days later, however, her brother-in-law called her to tell her that Damon missed her. Petitioner returned to Hawaii in November and married Damon in a civil ceremony on November 9, 1989. Subsequently, petitioner obtained conditional residence from the INS. In December, 1990, Damon left the petitioner, after attempts at reconciliation failed. They formally divorced in September 1993. Because petitioner could not file a joint petition to remove the conditional residence, she applied for a waiver under INA § 216 (c)(4). The INS denied the waiver and petitioner was placed in proceedings.

The IJ agreed the INS's finding that petitioner had not proven that her marriage to Damon had been entered into in good faith or that she would suffer extreme hardship if deported. The IJ further conclude, that had the marriage been entered in good faith, she would have granted the waiver in the exercise of discretion.

The Ninth Circuit, citing to the seminal decision in *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975), held that "the sole inquiry in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at the time of the marriage." Under this test, the court confines its "inquiry to evidence relevant to the parties intent at the time of marriage and refrain from imposing our own opinions about what a 'real' marriage is or should be or how the parties in such a ,marriage should behave." Here, the court found that the objective evidence established that the marriage was entered into in goof faith. The court "reject[ed] the implication that only those who share a common language and background can form an intent to establish a life together" and held that "[a]n immigration judge's personal conjecture cannot be substituted for objective and substantial evidence." The court remanded the case to the BIA to determine whether petitioner should be granted the discretionary waiver.

"The sole inquiry in determining whether a marriage was entered into in good faith is whether the parties intended to establish a life together at the time of the marriage."

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MOTION TO REOPEN

■Ninth Circuit Reverses Denial Of Motion To Reopen And Rescind *In Absentia* Deportation Order

In ***Andia v. Ashcroft***, __ F.3d__, 2004 WL 385385 (9th Cir. March 2, 2004) (Tashima, Berzon, Clifton), the Ninth Circuit, in a *per curiam* order, held that a motion to reopen and rescind an *in absentia* deportation order based on failure to receive proper notice could be filed at any time, and could not be denied simply because the alien failed to file a motion for seven months after learning of the *in absentia* order.

The petitioners, mother and son, were ordered deported in absentia after they failed to appear at their deportation hearing. They subsequently filed a motion to reopen claiming that they had not received the notice of the hearing. The IJ denied the motion on the ground that petitioners did not file the motion until seen months after they discovered the deportation order. The BIA affirmed that decision as an appropriate exercise of discretion.

The Ninth Circuit reversed the BIA finding that the statute and the regulations in effect in 1995 allowed reopening of an in absentia order at "any time," on lack of notice grounds. INA § 242B(c)(3)(B). The court also held that the BIA's conclusion that the IJ retained discretion to deny the motion even if petitioners received no proper notice, was contrary to the court's due process jurisprudence. "Had petitioners not received any notice satisfying constitutional requirements – actual or constructive –of the deportation proceedings, it would be a violation of their rights under the Fifth Amendment of the Constitution to deport them in absentia, " said the court.

The court remanded for consideration of the notice issue on its merits.

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■Seventh Circuit Finds No Abuse Of Discretion In Board's Denial Of Aliens' Motions To Reopen

In ***Selimi v. Ashcroft***, __F.3d__, 2004 WL 438315 (7th Cir. March 10, 2004) (Easterbrook, Wood, *Evans*), the Seventh Circuit affirmed the BIA's denials of the petitioners' separate motions to reopen their exclusion proceedings. The petitioners, ethnic Albanian citizens of Macedonia, filed motions to reopen contending that the conflict between Albanian separatists and the Macedonian military, which began in 2001, constituted a change in country conditions warranting reopening their asylum cases. Although the court found the BIA's decisions "somewhat muddled," it ultimately agreed with the BIA that petitioners failed to demonstrate a reasonable fear of future persecution. The court also found that it was not an abuse of discretion to deny reopening.

In a dissent, Judge Wood would have granted the motion to reopen noting that the BIA failed to "offer even the outline of a reasoned explanation for why the actual circumstances in Macedonia did not justify permitting the Selimis to reopen their petition."

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JUVENILES

■Ninth Circuit Requires Service Of Order To Show Cause On Both Juvenile Alien And Responsible Adult

In ***Flores-Chavez v. Ashcroft***, __F.3d__, 2004 WL 583727 (*Wardlaw*, Berzon, Ishii (E.D. Ca.)) (9th Cir. March 25, 2004), the Ninth Circuit found that petitioner, who had been detained by the INS at the age of fifteen, had not been given proper notice of his deportation proceedings, because the notice had not been served to the responsible adult relative. granted the alien's petition for review. The court noted that as a juvenile in INS custody, the petitioner was entitled to notice, under the federal regulations governing juvenile detention and release, in addition to that provided for under section 242B of the INA. "Were we to adopt the INS's position and find notice under 8 C.F.R. § 103.5a to be adequate, we would place the INS in a bureaucratic quandry in which the person whose very presence is necessary under the regulations for an alien minor to be deported is not given notice of the hearing," said the court. The court also noted that due process concerns would arise if the INS's view were adopted.

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STREAMLINING

■Fourth Circuit Upholds BIA's Streamlining Regulation, Affirms Denial of Asylum

In ***Belbruno v. Ashcroft***, __F.3d__, 2004 WL 603501 (4th Cir. March 29, 2004) (*Wilkinson*, Gregory, Shedd), the Fourth Circuit joined the First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits, to hold that the BIA's streamlining procedures do not violate an alien's right to due process.

The petitioner, her husband, and four children, entered the United States from Guatemala in 1990 as nonimmigrants. Petitioner's husband is a citizen of Argentina. The petitioner and her daughter returned to Guatemala for in March 1998 for medical reasons. They subsequently reentered the United States without valid visas. Eventually, the family was placed in proceedings where petitioner sought asylum on behalf of her family. Petitioner claimed that they had received numerous threats from guerillas and the government because of her husband's membership in a group called "Pro Human Rights." She also claimed that one early morning gunmen fired shots at their house. An expert on human rights in Guatemala testified that individuals involved in investigating human rights abuses are facing harassment in Guatemala. The IJ denied asylum finding no past persecution or a well-founded fear of future persecution. The BIA affirmed without opinion.

The Fourth Circuit held that the Attorney General had the statutory authority to issue the streamlining regulation and that these regulations were not inconsistent with the INA. "The agency operates in an environment of limited resources, and how it allocates those resources to address the burden of increasing claims is a calculation that courts should be loather to second guess," said the court. The court also rejected a due process challenge to the regulation finding that under *Chenery* the IJ decision provides the reasoned basis on which the agency relied and that the court can meaningfully review that decision. Likewise, the court rejected the contention that a decision by a single BIA member violates due process, noting that the statistical study conducted by the ABA "prove little." Finally, the court rejected the contention that the application of the streamlining procedures to her case had a constitutionally impermissible retroactive effect. The court found that under *Landgraf* and *St. Cyr*, the regulations created no new legal consequences for events completed before its enactment.

On the merits, the court held that substantial evidence supported the IJ's decision that the petitioner had failed to demonstrate past persecution or a well-founded fear of future persecution in Guatemala. In particular, the court found that events supporting petitioner's claim of persecution were "few and ambiguous." Moreover, there was no evidence of "causation," that petitioner's past harm was due to either her or her husband's political beliefs.

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■Eighth Circuit Affirms BIA's Use Of Streamlining In Suspension Of Deportation Case

In ***Ortiz v. Ashcroft***, __F.3d__, 2004 WL 527029 (8th Cir. March 18, 2004) (Wollman, *Fagg*, Hansen), the Eighth Circuit held that it lacked jurisdiction to consider the IJ's discretionary determination that the petitioner failed to establish the necessary extreme hardship for suspension of deportation.

The petitioner, a citizen of Mexico, argued that the IJ had not properly considered expert testimony and the totality of the circumstances in deciding the hardship issue.

The court additionally found that the BIA properly employed streamlined review to adjudicate the petitioner's administrative appeal.

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■Second Circuit Upholds Constitutionality of BIA's Streamlining Regulation

In ***Zhang v. U.S. Dep't of Justice,*** __F.3d__, 2004 WL 575743 (2d Cir. March 24, 2004) (Straub, B.D. Parker, Raggi), the Second Circuit joined the First, Third, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits, to hold that the BIA's streamlining procedures do not themselves vio-

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late an alien's right to due process.

The petitioner, a Chinese citizen, claimed that he left his wife and children behind, to escape persecution for violation of his country's birth control policies. The IJ denied his application for asylum and the BIA affirmed that decision under the streamlined review procedures.

The Second Circuit rejected petitioner's due process challenge to the streamlining procedures. The court observed that an alien's right to an administrative appeal from an adverse asylum decision derives from statute rather than from the Constitution. The court found that "nothing in the immigration laws requires that administrative appeals from IJ decisions be resolved by three-member panels of the BIA through formal opinions that 'address the record.'" Moreover, noted the court, the fact that the challenged procedures are followed by further appellate process, namely judicial review, supports the conclusion that streamlining does not violate due process.

In a separate order issued on the same day, the Court rejected the alien's substantive arguments relating to the Immigration Judge's adverse credibility finding.

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VOLUNTARY DEPARTURE

■Ninth Circuit Denies Due Process And Equal Protection Challenges To Voluntary Departure Provisions

In ***Tovar-Landin v. Ashcroft***, __F.3d__, 2004 WL 527885 (9th Cir. March 18,2004) (*Silverman*, Gould, Bea), the Ninth Circuit rejected a constitutional challenge to INA § 240B(a), which provides, *inter alia*, that aliens who have been in the United States for less than one year are not eligible for voluntary departure if they request it at the conclusion of the § 240 proceeding.

The petitioner, a citizen of Mexico, entered the United States unlawfully on March 1, 1999. The INS placed him in proceeding nine months later. At the hearing, petitioner unsuccessfully argued that the proceedings should be terminated and the government be estopped from removing him, because the United States immigration policies encourage illegal immigration. At the conclusion of the hearing petitioner asked for voluntary departure. The IJ found the petitioner deportable as charged and denied his request voluntary departure under INA § 240B(b)(1)(A), because he had been physically present in the U.S. for less than one year. The BIA summarily affirmed that decision.

> "Aliens have no fundamental right to discretionary relief from removal for purposes of due process and equal protection."

The Ninth Circuit preliminarily held that under INA § 242 (a)(2)(B)(i), it lacked jurisdiction to review a denial of voluntary departure. However, under its established case law, the court retained jurisdiction to consider constitutional claims arising from discretionary relief. The court then rejected petitioner's due process challenge, finding that "aliens have no fundamental right to discretionary relief from removal for purposes of due process and equal protection." *See Munz v. Ashcroft*, 339 F.3d 950 (9th Cir. 2003). The court also rejected petitioner's equal protection challenge finding Congress's requirement that an alien have been present in the United States for at least one year to receive voluntary departure at the conclusion of proceedings was not "wholly irrational."

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IMMIGRATION CONFERENCE

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including immigration crimes, the detention and repatriation of criminal aliens, asylum and withholding of removal, and relief under the Convention Against Torture. As in prior years, we expect the participation of senior officials from the Department of Justice, the Department of Homeland Security, and the Department of State.

The Annual Immigration Litigation Conference is designed for government attorneys, including Assistant and Special Assistant United States Attorneys, DHS attorneys, and attorneys from EOIR who litigate or assist in the litigation of civil immigration cases. The Conference will also be useful to Federal prosecutors who are involved with task forces established to locate, apprehend, and to prosecute or remove aliens subject to final orders of removal. The Conference has been accredited for CLE credits in prior years, and we expect that it will again be approved.

Government attorneys who wish to attend should register for the Conference by sending an e-mail to:
francesco.isgro@usdoj.gov
The e-mail should provide the full name and title of the attendee, the mailing address, and the official e-mail address and telephone number. Subject to space availability, registration will remain open until April 23, 2004. Attendees will be responsible for their own hotel, travel, and per diem costs. Registration and training materials are provided at no cost.

Rooms have been reserved at the following hotels at the government rate: The Churchill Hotel (800-424-2464); Georgetown Inn (800-368-5922); Latham Hotel (800-368-5922). Note that hotels are filling up quickly and are therefore subject to availability. When making a reservation, identify yourself as member of the U.S. Department of Justice.

Questions regarding hotel accommodations and requests for any special need at the conference, should be directed to Kurt Larson at 202-616-9321.

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ATTENTION READERS!

If you are interested in writing an article for the Immigration Litigation Newsletter, or if you have any ideas for improving this publication, please contact Francesco Isgro at:

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INSIDE OIL

OIL welcomes the following three new lawyers: **Victor M. Lawrence**, **Joanne E. Johnson**, and **Jennifer A. Paisner**.

Mr. Lawrence is a graduate of Indiana University and the University of Richmond School of Law. After law school, Mr. Lawrence became a Senior Trial Attorney for the U.S. Equal Employment Opportunity Commission, where he worked until 2001, when he transferred to the U.S. Department of Commerce. In January 2002, he transferred to the Torts Branch of the Civil Division, U.S. Department of Justice.

Ms. Johnson is a graduate of Georgetown University and the Catholic University Law School. Prior to joining OIL, she was a Trial Attorney in the Commercial Litigation Branch of the Civil Division, U.S. Department of Justice. Ms. Johnson has worked in the Office of the Chief Counsel of the Internal Revenue Service, and subsequently was an associate with the law firm of Venable, Baetjer & Howard.

Ms. Paisner is a graduate of Harvard University and the Duke University School of Law. She clerked for Judge Stanley Marcus of the Eleventh Circuit Court of Appeals. In 2000, she joined the Federal Programs Branch of the Civil Division, U.S. Department of Justice.

INSIDE DHS

William Howard, an Assistant United States Attorney in Alexandria, Virginia, has been appointed Principal Legal Advisor to U.S. Immigration and Customs Enforcement. Prior to joining the U.S. Attorney's Office, Mr. Howard was a Senior Litigation Counsel in the Office of Immigration Litigation.

Mr. Howard received his undergraduate degree from Thomas Aquinas College in Los Angeles and his law degree from Notre Dame Law School. Prior to joining the Department of Justice, Mr. Howard worked as General Counsel, and, prior to that, as Deputy General Counsel and attorney, to the U.S. Commission on Civil Rights.

The goal of this monthly publication is to keep litigating attorneys within the Departments of Justice and Homeland Security informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice. This publication is also available online at https://oil.aspensys.com. If you have any suggestions, or would like to submit a short article, please contact Francesco Isgro at 202-616-4877 or at francesco.isgro@usdoj.gov. 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.

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

If you are not on our mailing list or for a change of address please contact francesco.isgro@usdoj.gov

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