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Immigration Litigation Bulletin

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LITIGATION HIGHLIGHTS

Inside

Ninth Circuit Holds That BIA's Recent Particular Social Group Decisions Do Not Conflict with The Decision in *Henriquez-Rivas*

In ***Pirir-Boc v. Holder***, __ F.3d __, 2014 WL 1797657 (9th Cir., May 7, 2014) (*Reinhardt*, Thomas, Sessions), the Ninth Circuit held that the BIA's recent decisions in *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), and *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), clarifying its interpretation of the phrase "particular social group" for purpose of asylum, did not affect the court's construction of social group in *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1083 (9th Cir. 2013)(*en banc*), where it held that "witnesses who testify against gang members" may be cognizable as a particular social group.

The petitioner here, a Guatemalan citizen, claimed a well-founded fear of persecution as a member of a particular social group characterized as individuals "taking concrete steps to oppose gang membership and gang authority." He claimed that he was recruited by the Mara Salvatrucha, a violent Central American gang, but refused to join. His younger brother, however, joined the gang and pledged himself to it for life. Subsequently, petitioner helped his brother defect from the gang and as a result gang members beat him and threatened him with further harm petitioner and his brother then left Guatemala. An IJ

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Court of Appeals Adverse Credibility Project — Report for 2013

The Adverse Credibility Project was established ten years ago as a means to track decisions issued by the courts of appeals that specifically make a ruling on the agency's adverse credibility determinations. The decisions include opinions, memorandum dispositions, and orders – that is, decisions that are unpublished and published, non-precedent and precedent. The "database" or source for obtaining these decisions are the paper copies of decisions that the clerks' offices send to OIL, electronic copies of decisions obtained by OIL paralegals, including the electronic copies of adverse decisions that the Adverse Support Team (headed by Angela Green) obtains, and the "first cut" lists produced within OIL.

The data compiled in the table below reflect relevant decisions issued by the courts of appeals in 2013, the most recent year for which complete data are available. The table tallies all decisions in which – regardless of the ultimate outcome of the petition for review – the appellate court has either approved or, or reversed, the adverse credibility holding reached by the immigration judge or Board of Immigration Appeals. Petitions for review in which the decision

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Ninth Circuit on Particular Social Group Definition

determined that petitioner's testimony was credible and granted asylum. Following the government's appeal, the BIA vacated the IJ's decision and concluded that petitioner's purported social group lacked the requisite particularity and visibility. The BIA explained that petitioner's group was not meaningfully distinguishable from Salvadoran "youths who have resisted gang recruitment, or family members of such Salvadoran youth," the group the BIA had rejected in *Matter of S–E–G–*, 24 I&N Dec. 579 (2008).

"To determine whether a group is a particular social group for the purposes of an asylum claim, the agency must make a case-by-case determination as to whether the group is recognized by the particular society in question.

The Ninth Circuit preliminarily noted that the latest two BIA's precedent decision construing the meaning of "particular social group" had not affected its earlier decision in *Henriquez-Rivas.* The court first explained that the critical issue in those BIA decisions was whether there was evidence to support social recognition of the proposed group in that particular society. Similarly, the thrust of its decision in *Henriquez-Rivas* "was that the BIA had ignored specific evidence of whether Salvadoran society considered witnesses who testified against class members to be a social group."

The court thus interpreted the two BIA decisions and its decision in *Henriques-Riva* as establishing a rule that "to determine whether a group is a particular social group for the purposes of an asylum claim, the agency must make a case-by-case determination as to whether the group is recognized by the particular society in question. To be consistent with its own precedent, the BIA may not reject a group solely because it had previously found a similar group in a different society to lack social distinction or particularity, especially where, as here, it is presented with evidence showing that the proposed group may in fact be recognized by the relevant society."

The court also noted in a lengthy footnote, that although the BIA had declined to adopt the court's suggestion in *Henriquez-Rivas*, that the perspective of the persecutor may be the most important perspective in determining whether a group has sufficient social visibility or distinction, "it did give that perspective an important place."

Here, the court found that the BIA had not performed "the required evidence-based inquiry as to whether the relevant society recognizes [petitioner's] proposed social group. It failed to consider how Guatemalan society views the proposed group, and it did not consider the society-specific evidence submitted by [petitioner]." Therefore the court remanded the case to the BIA, finding that it was not clear from the record whether the evidence presented by petitioner was "sufficient to meet the revised standard in *W–G–R–* and *M–E–V–G–*."

In remanding the case, however, the court expressly noted that it was not deciding "whether the BIA's requirements of 'social distinction' and 'particularity' constitute a reasonable interpretation of "particular social group.'" It also pointed out that it had also declined to rule on this issue in *Henriquez-Rivas*. "After the BIA has on remand had the opportunity to apply the revised rule to this case, we may be in a better position to determine whether its revised construction of the term is reasonable" said the court.

The court also remanded to the BIA to reconsider petitioner's CAT claim. The court explained that the BIA had denied the CAT protection claim "in a single sentence" and had given "no explanation for its decision; nor did it mention any evidence that it had considered. In order for the court to exercise our limited authority, there must be a reasoned explanation by the BIA of the basis for its decision."

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OCAHO Launches Voluntary Electronic Filing System

The Office of the Chief Administrative Hearing Officer (OCAHO), Executive Office for Immigration Review (EOIR), has announced that it is creating a voluntary pilot program to test an electronic filing system in certain cases filed with OCAHO under 8 U.S.C. 1324a and 1324b.

Currently, parties before OCAHO submit paper filings to OCAHO, and simultaneously serve a physical copy of each document on other parties to the case. Under this pilot program, both filing with OCAHO and service on other parties could be accomplished by email in eligible cases.

The pilot program will be in effect from May 30, 2014 until November 26, 2014. Parties who enroll in the pilot program with respect to a particular case within these dates will be permitted to continue utilizing electronic filing throughout the pendency of that case. *See* 79 *Fed. Reg* 31143 (May 30, 2014)

Credibility Survey

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does not decide an adverse credibility issue are not counted, even though the immigration judge or Board made an adverse credibility determination. Cases in which the court upheld the agency's adverse credibility determination, although granting the petition for review on a different issue, would be included in the data. However, a petition denied because, for example, of a failure to demonstrate the requisite nexus, without addressing any credibility issues, would not.

This project's results were used to support the adoption of the REAL ID Act amendments. The project now monitors results in both pre- and post-REAL ID Act cases. The current purpose of the project is to determine the extent to which the courts of appeals are applying those amendments. The underlying assumption is that the courts' conscientious application of the amendments should be reflected in a higher government win rate.

RESULTS

Total number of adverse credibility decisions declined by about 10%

The chart shows that the number of relevant decisions dropped in 2013, with the total number of adverse-credibility-related decisions at 264. By contrast, in 2012 and 2011 the number was 293. As usual, the Ninth Circuit issued the highest number of decisions addressing the EOIR's credibility findings (85 in 2013, down from 101 in 2012). The second-place circuit in 2013 was the Sixth Circuit and the third-place circuit was the Second Circuit, exchanging the ranks they held in 2012. The Sixth Circuit rose to 62 from 45 in 2012 (all wins in both years); the Second Circuit dropped to 54 from 68 in 2012. Other cir-

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2013 Credibility Decisions

Circuits	Wins (%)	Wins (#)	Losses (%)	Losses (#)	Overall win % (all immigr. cases)
1st/pre REAL ID	100.0%	1	0.0%	0	
1st/post REAL ID	100.0%	2	0.0%	0	
1st/total	100.0%	3	0.0%	0	81.0%
2d/pre REAL ID	100.0%	8	0.0%	0	
2d/post REAL ID	86.5%	32	13.5%	5	
2d/total	88.9%	40	11.1%	5	95.1%
3d/pre REAL ID	88.9%	8	11.1%	1	
3d/post REAL ID	86.4%	19	13.6%	3	
3d/total	87.1%	27	12.9%	4	88.7%
4th/pre REAL ID	87.5%	7	12.5%	1	
4th/post REAL ID	95.2%	20	4.8%	1	
4th/total	93.1%	27	6.9%	2	94.8%
5th/pre REAL ID	--	0	--	0	
5th/post REAL ID	100.0%	6	0.0%	0	
5th/total	100.0%	6	0.0%	0	97.1%
6th/pre REAL ID	100.0%	20	0.0%	0	
6th/post REAL ID	100.0%	13	0.0%	0	
6th/total	100.0%	33	0.0%	0	93.2%
7th/pre REAL ID	100.0%	1	0.0%	0	
7th/post REAL ID	66.7%	2	33.3%	1	
7th/total	75.0%	3	25.0%	1	80.6%
8th/pre REAL ID	100.0%	1	0.0%	0	
8th/post REAL ID	--	0	--	0	
8th/total	100.0%	1	0.0%	0	92.5%
9th/pre REAL ID	71.0%	66	29.0%	27	
9th/post REAL ID	73.7%	14	26.3%	5	
9th/total	71.4%	80	28.6%	32	81.4%
10th/pre REAL ID	--	0	--	0	
10th/post REAL ID	100.0%	1	0.0%	0	
10th/total	100.0%	1	0.0%	0	90.5%
11th/pre REAL ID	100.0%	11	0.0%	0	
11th/post REAL ID	94.1%	16	5.9%	1	
11th/total	96.4%	27	3.6%	1	93.2%
TOTAL	84.6%	248	15.4%	45	
Total/pre REAL ID	80.9%	123	19.1%	29	
Total/post REAL ID	88.7%	125	11.3%	16	

win percentage in all asylum cases circuitwide — 86.7%
win percentage in all immigration cases circuitwide — 87.2%

Credibility Project

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cuits in double digits were (with 2012 numbers in parentheses) the Eleventh Circuit with 18 (16), the Third Circuit with 16 (all wins) (19), and the Fourth Circuit with 15 (23) decisions.

Overall win percentage decreased slightly

The overall win percentage in adverse credibility cases in 2013 was 87.5%, down slightly from 90.4% in 2012. This win percentage is comparable to the overall win percentage in 2013 in all asylum cases (87.5%), and only slightly below the 2013 overall win percentage in all immigration cases (89.1%).

Adverse-credibility-related losses occured only in the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits; but the win percentage declined in all of these except the Eleventh

All of the adverse credibility decisions in the following five circuits were wins in 2013: the First (three cases in that circuit), Third (16), Fifth (five), Sixth (62), and Seventh (two) Circuits.

In other words, we lost adverse credibility decisions in six circuits (the Second, Fourth, Eighth, Ninth, Tenth, and Eleventh Circuits), compared to only four circuits (First, Second, Ninth, and Eleventh) in 2012. Among those six, the lowest win percentages were in the Eighth Circuit, at 66.7% (based on only three cases) and the Ninth Circuit, at 71.8% (based on 85 cases). Although receiving some losses, we saw higher win percentages in the Eleventh Circuit at a win percentage of 88.9 % (18 cases), the Second Circuit at 92.6% (54 cases), and the Fourth Circuit at 93.3% (15 cases).

Compared with the 2012 statistics, the Second (from 97.1% to 92.6% of 54 cases), Fourth (from 100% to 93.3% of 15 cases), Eighth

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2012 Credibility Decisions

Circuits	Wins (%)	Wins (#)	Losses (%)	Losses(#)	Overall win % (all immigr. cases)
1st/pre REAL ID	100.0%	1	0.0%	0	
1st/post REAL ID	66.7%	2	33.3%	1	
1st/total	75.0%	3	25.0%	1	89.6%
2d/pre REAL ID	100.0%	8	0.0%	0	
2d/post REAL ID	96.7%	58	3.3%	2	
2d/total	97.1%	66	2.9%	2	95.2%
3d/pre REAL ID	100.0%	4	0.0%	0	
3d/post REAL ID	100.0%	15	0.0%	0	
3d/total	100.0%	19	0.0%	0	93.3%
4th/pre REAL ID	100.0%	2	0.0%	0	
4th/post REAL ID	100.0%	21	0.0%	0	
4th/total	100.0%	23	0.0%	0	95.4%
5th/pre REAL ID	100.0%	1	0.0%	0	
5th/post REAL ID	100.0%	5	0.0%	0	
5th/total	100.0%	6	0.0%	0	92.5%
6th/pre REAL ID	100.0%	16	0.0%	0	
6th/post REAL ID	100.0%	29	0.0%	0	
6th/total	100.0%	45	0.0%	0	93.4%
7th/pre REAL ID	100.0%	2	0.0%	0	
7th/post REAL ID	100.0%	2	0.0%	0	
7th/total	100.0%	4	0.0%	0	91.5%
8th/pre REAL ID	100.0%	2	0.0%	0	
8th/post REAL ID	100.0%	2	0.0%	0	
8th/total	100.0%	4	0.0%	0	92.5%
9th/pre REAL ID	74.2%	46	25.8%	16	
9th/post REAL ID	82.1%	32	17.9%	7	
9th/total	77.2%	78	22.8%	23	85.6%
10th/pre REAL ID	100.0%	2	0.0%	0	
10th/post REAL ID	100.0%	1	0.0%	0	
10th/total	100.0%	3	0.0%	0	93.7%
11th/pre REAL ID	50.0%	1	50.0%	1	
11th/post REAL ID	92.9%	13	7.1%	1	
11th/total	87.5%	14	12.5%	2	94.2%
TOTAL	90.4%	265	9.6%	28	
Total/pre REAL ID	83.3%	85	16.7%	17	
Total/post REAL ID	94.2%	180	5.8%	11	

win percentage in all asylum cases circuitwide -- 90.5%

win percentage in all immigration cases circuitwide -- 90.7%

Credibility Project

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from 100% to 66.7% of three cases), Ninth (from 77.2% to 71.8% of 85 cases), and Tenth (from 100% to 0% with only one case) Circuits experienced decreases in the win percentages in adverse credibility cases. In contrast, the win rates increased in the First (75.0% to 100% of three cases) and Eleventh (87.5% to 88.9% of 18) Circuits.

Circuit-wide, the percentage of decisions under the REAL ID Act increased by about 10%, and post-REAL ID Act decisions continued to show a higher win rate than pre-REAL ID decisions

The 2013 decisions were categorized as to whether they did or did not involve application of the changes introduced by the REAL ID Act. In 2013, 71.2% of the credibility-related decisions were decided under the REAL ID Act; in 2012, that percentage was 65.2%. The win percentage circuit-wide in 2013 was considerably higher for post-REAL ID Act determinations (89.9%) than for pre-REAL ID decisions (81.6%). The corresponding numbers in 2012 were 94.2% and 83.3%.

In 2013, the Sixth, Second, and Ninth Circuits were virtually tied for largest number of post-REAL ID Act decisions. The Sixth had 48 (77.4% of all its credibility decisions), the Second had 47 (87.0%), and the Ninth had 46 (54.1%). The Fifth, Eighth, and Ninth Circuits had higher win rates in post-REAL ID cases than in pre-REAL ID cases: the Fifth's win percentages were 100% (of five cases) and 0%, respectively; the Eighth's were 100% (of 3 cases) and 50.0%; and the Ninth's were 76.1% and 66.7%.

Zeroing in on the Ninth Circuit

The number of adverse credibility decisions was 85, down from 101 in

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2011 Credibility Decisions

Circuits	Wins (%)	Wins (#)	Losses (%)	Losses (#)	Overall win % (all immigr. cases)
1st/pre REAL ID	100.0%	1	0.0%	0	
1st/post REAL ID	100.0%	2	0.0%	0	
1st/total	100.0%	3	0.0%	0	81.0%
2d/pre REAL ID	100.0%	8	0.0%	0	
2d/post REAL ID	86.5%	32	13.5%	5	
2d/total	88.9%	40	11.1%	5	95.1%
3d/pre REAL ID	88.9%	8	11.1%	1	
3d/post REAL ID	86.4%	19	13.6%	3	
3d/total	87.1%	27	12.9%	4	88.7%
4th/pre REAL ID	87.5%	7	12.5%	1	
4th/post REAL ID	95.2%	20	4.8%	1	
4th/total	93.1%	27	6.9%	2	94.8%
5th/pre REAL ID	--	0	--	0	
5th/post REAL ID	100.0%	6	0.0%	0	
5th/total	100.0%	6	0.0%	0	97.1%
6th/pre REAL ID	100.0%	20	0.0%	0	
6th/post REAL ID	100.0%	13	0.0%	0	
6th/total	100.0%	33	0.0%	0	93.2%
7th/pre REAL ID	100.0%	1	0.0%	0	
7th/post REAL ID	66.7%	2	33.3%	1	
7th/total	75.0%	3	25.0%	1	80.6%
8th/pre REAL ID	100.0%	1	0.0%	0	
8th/post REAL ID	--	0	--	0	
8th/total	100.0%	1	0.0%	0	92.5%
9th/pre REAL ID	71.0%	66	29.0%	27	
9th/post REAL ID	73.7%	14	26.3%	5	
9th/total	71.4%	80	28.6%	32	81.4%
10th/pre REAL ID	--	0	--	0	
10th/post REAL ID	100.0%	1	0.0%	0	
10th/total	100.0%	1	0.0%	0	90.5%
11th/pre REAL ID	100.0%	11	0.0%	0	
11th/post REAL ID	94.1%	16	5.9%	1	
11th/total	96.4%	27	3.6%	1	93.2%
TOTAL	84.6%	248	15.4%	45	
Total/pre REAL ID	80.9%	123	19.1%	29	
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win percentage in all asylum cases circuitwide — 86.7%
win percentage in all immigration cases circuitwide — 87.2%

Credibility Project

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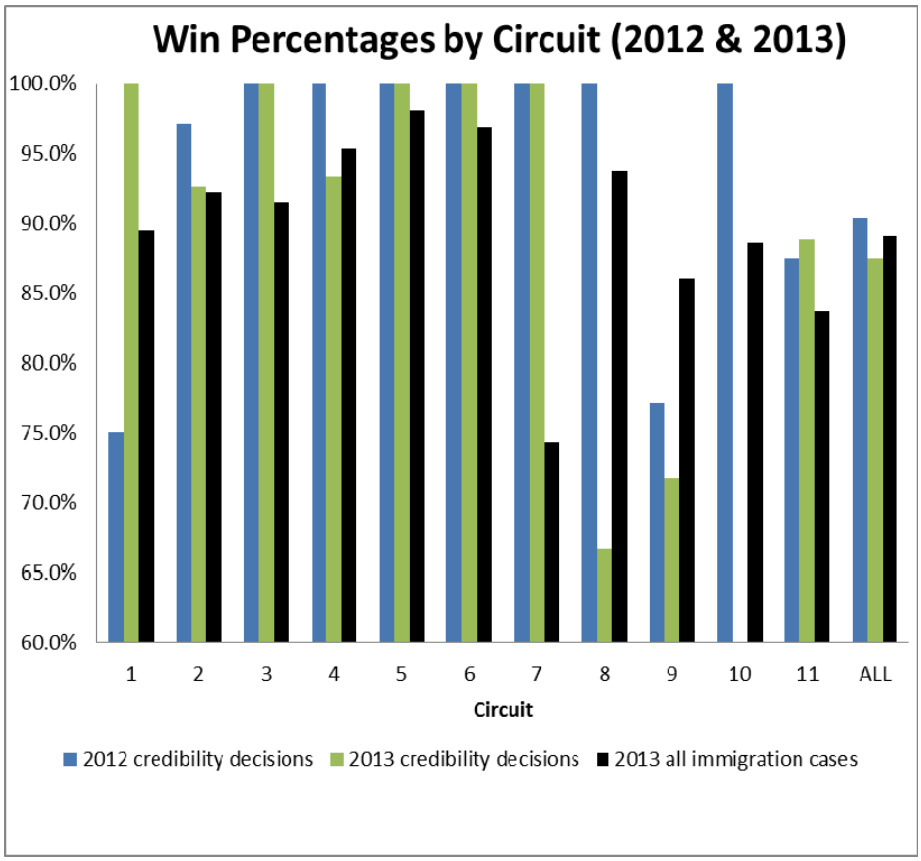
2012. The win percentage was 71.8%, down from 77.2% in 2012. We may see a continued correlation between fall in win rate and fall in number of decisions.

Focusing on the impact of the REAL ID Act, the number of such cases was 46, representing 54.1% of all the adverse credibility decisions in the Ninth Circuit. In 2012, there were 39 post-REAL ID Act decisions, representing About 39% of all the adverse credibility decisions in the Ninth Circuit. We may see a continued rise in the raw number and percentage of adverse credibility cases falling under the REAL ID Act.

The win rate for post-REAL ID Act cases was 76.1%, compared to a win rate of only 66.7% for pre-REAL ID Act cases. In 2012, these rates were 82.1% and 74.2%, respectively. We may see the win rates of post-REAL ID Act continue to surpass the win rates for pre-REAL ID Act cases. However, we may also see continuing declines in both the pre- and post-REAL ID Act win rates.



EOIR*

Asylum Statistics
FY 2009 - 2013

FY	Received	Granted	Denied	Abandoned	Withdrawn	Other
2009	30,112	8,800	9,876	3,248	6,450	6,927
2010	32,810	8,518	8,335	1,646	6,275	7,527
2011	42,664	10,137	9,280	1,430	5,137	5,291
2012	44,296	10,711	8,502	1,296	5,357	8,021
2013	36,674	9,933	8,823	1,439	6,400	11,391

*U.S. Department of Justice, Executive Office for Immigration Review, Office of Planning, Analysis, and Technology (April 2014).

BIA Publishes Three Cases on the Adam Walsh Act

In 2006, Congress enacted the Adam Walsh Child Protection and Safety Act ("Adam Walsh Act") to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, and to promote Internet safety. Title IV of the Act, "Immigration Law Reforms to Prevent Sex Offenders from Abusing Children" amended INA §§ 204(a)(1)(A) and 204(a)(1)(B)(i) to prohibit a U.S. citizen or lawful permanent resident who has been convicted of any "specified offense against a minor" from having a family-based visa petition approved unless the Secretary of Homeland Security determines, in his or her sole and unreviewable discretion, that the petitioner poses "no risk" to the beneficiary.

The BIA recently published three precedential decisions interpreting section 402(a)(2) of the Adam Walsh Act.

Matter of Aceijas-Quiroz

In *Matter of Aceijas-Quiroz*, 26 I&N Dec. 314 (BIA 2014), the BIA concluded that it lacked jurisdiction to review a "no risk" determination by the USCIS, including the appropriate standard of proof to be applied.

The petitioner, a United States citizen, filed a visa petition in 2008 to accord his non-citizen wife immediate relative status under section 201(b)(2)(A)(i) of the INA. The USCIS sent petitioner a notice of his ineligibility to petition for his wife due to his 2004 convictions of sexual abuse in the third degree, sexual abuse in the second degree, and contributing to the sexual delinquency of a minor. To overcome his ineligibility, petitioner had to show that his convictions were not for a "specified offense against a minor" or that he posed "no risk" to the beneficiary.

After considering documents filed by the petitioner, the Field Office Director denied the visa petition by concluding that the petitioner's convictions were for a "specified offense against a minor" under the Adam Walsh Act and that the petitioner had failed to show "beyond a reasonable doubt" that he posed no risk to the safety and well-being of the beneficiary.

The petitioner challenged the appropriate standard of proof to be applied to the "no risk" determination, arguing for a "preponderance of the evidence" standard, the standard applied in most immigration decisions. Petitioner argued that there was no statutory or regulatory provision explicitly empowering the USCIS to raise the standard of proof in Adam Walsh Act cases.

The BIA found that it had "no authority to review the application of this standard in this case," explaining that "the application of the appropriate standard of proof is part and parcel of the ultimate discretion delegated to DHS."

After engaging in an analysis of the language and legislative history of the Adam Walsh Act, the BIA determined that, in enacting Section 402(a)(2) of the Act, Congress placed "sole and unreviewable discretion" of the "no risk" determination with the Secretary of the DHS, who in turn delegated this authority to the USCIS.

The BIA rejected the petitioner's argument that "sole and unreviewable discretion" language was only intended to limit judicial review. The BIA further found that it had "no authority to review the application of this standard in this case," explaining that "the application of the appropriate standard of proof is part and parcel of the ultimate discretion delegated to DHS."

In a dissenting opinion, Board Member Mann would have concluded that the proper evidentiary standard to be applied was a question of law within the expertise of the BIA and within its statutory authority to decide.

Matter of Introcaso

In *Matter of Introcaso*, 26 I&N Dec. 304 (BIA 2014), the BIA held that a visa petitioner bears the burden of proving that he has not been convicted of a "specified offense against a minor." Further, when evaluating whether a petitioner has been convicted of a "specified offense against a minor," adjudicators may apply the "circumstance-specific" approach, which permits an inquiry into the facts and conduct underlying the conviction to determine if it is for a disqualifying offense.

The petitioner and beneficiary in this case were married in 2008. In 2009, the petitioner filed a visa petition to give his wife immediate relative status under section 201(b)(2)(A)(i) of the INA. The USCIS notified petitioner of his ineligibility to petition for his wife because he had been convicted of endangering the welfare of children in 1993 and criminal sexual contact in 2009. In response, the petitioner argued that the victim of his 2009 conviction was not a minor and therefore his offense was not a "specified offense against a minor." Likewise, he argued that his 1993 conviction was not a "specified offense against a minor." The Service Center Director concluded that the petitioner had not demonstrated that the 1993 offense fell outside of the definition of a "specified offense against a minor" as found in Title I of the Adam Walsh Act, and that the petitioner had not established that he posed "no risk" to the beneficiary.

In determining whether a crime is a "specified offense against a minor," the petitioner argued for a categorical approach, which would focus

BIA Publishes Three Cases on the Adam Walsh Act

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on the elements of the offense in assessing whether a crime falls within the parameters of a generic sentencing offense or a ground for removal. However, the USCIS determined that the purpose, structure, and language of the Adam Walsh Act "permit an inquiry into the facts and conduct underlying the conviction in determining whether a crime fits within the ambit of a 'specified offense against a minor.'"

The BIA held that section 402(a)(2) of the Adam Walsh Act does not have an impermissible retroactive effect when applied to convictions that occurred before its enactment.

The BIA agreed with the USCIS that the provisions of the Adam Walsh Act suggest a circumstance-specific inquiry into the age of the victim and the conduct underlying the offense. The BIA also found that the petitioner, who engaged in sexual conduct which would "impair or debauch the morals of a victim under the age of 16 when he was more than 4 years older," had committed a "specified offense against a minor." Finally, the BIA echoed the conclusion in *Matter of Aceijas-Quiroz* that it did not have jurisdiction to review the Director's "no risk" determination.

Matter of Jackson

In *Matter of Jackson*, 26 I&N Dec. 314 (BIA 2014), the BIA held that section 402(a)(2) of the Adam Walsh Act does not have an impermissible retroactive effect when applied to convictions that occurred before its enactment.

Jackson was convicted of sexual abuse in the first degree in 1979. In 2007, Jackson filed a Petition for Alien Fiancé (Form I-129F) on behalf of his fiancé, which was approved by the United States. After Jackson and his fiancé married, she filed an application for herself and her accompanying child for adjustment of status. In 2009, the USCIS sent Jackson's spouse a request for evidence and notice of intent to deny the applications for adjustment based on Jackson's 1979 conviction.

On October 22, 2010, the Field Office Director found that Jackson committed a "specified offense against a minor," because his 1979 offense was committed against a minor under the age of 12. The Director also concluded that the evidence submitted by Jackson's spouse to show that Jackson posed "no risk" to his beneficiaries was insufficient to meet the burden of proof. The Director concluded that Mr. Jackson was ineligible to have the visa petition approved, and the visas with which Jackson's spouse and stepchild entered the country were not valid.

Jackson's spouse and stepchild were placed in removal proceedings but moved to terminate these proceedings, arguing that the Adam Walsh Act should not be applied to Jackson's 1979 conviction. The Immigration Judge agreed, concluding that applying the Adam Walsh Act to a conviction that occurred prior to its enactment was an impermissible retroactive application of the statute and granted the respondents' motion to terminate the proceedings.

Following the government's appeal, the BIA vacated the Immigration Judge's decision. The BIA recognized that while Congress did not expressly indicate in the Adam Walsh Act that it should be applied to convictions occurring prior to its enactment, the purposes of the Adam Walsh Act were to address the potential for future harm posed by sexual predators. Therefore, the BIA concluded that the application of its provisions to convictions that occurred before the Adam Walsh Act's enactment did not have an impermissible retroactive effect and the Immigration Judge erred in terminating the removal proceedings.

By Danielle Drago, Summer Intern, OIL

DHS Announces DACA Renewal Process

DHS has announced the process for individuals to renew enrollment in the Deferred Action for Childhood Arrivals (DACA) program. USCIS has published an updated form to allow individuals previously enrolled in DACA, to renew their deferral for a period of two years. USCIS will also continue to accept requests for DACA from individuals who have not previously sought to access the program. As of April 2014, more than 560,000 individuals have received DACA.

"Despite the acrimony and partisanship that now exists in Washington, almost all of us agree that a child who crossed our border illegally with a parent, or in search of a parent or a better life, was not making an adult choice to break our laws, and should be treated differently than adult law-breakers," said DHS Secretary Jeh Johnson. "By the renewal of DACA, we act in accord with our values and the code of this great Nation. But, the larger task of comprehensive immigration reform still lies ahead."

The first DACA approvals will begin to expire in September 2014. To avoid a lapse in the period of deferral, individuals must file renewal requests before the expiration of their current period of DACA.

FURTHER REVIEW PENDING: Update on Cases & Issues

Consular Non-Reviewability

On May 23, 2014, the Solicitor General filed a petition for a writ of certiorari in ***Kerry v. Din***, from the Ninth Circuit's published decision, 718 F.3d 856. The government presented the questions: 1) whether a consular officer's denial of a visa to a U.S citizen's alien spouse impinges upon a fundamental liberty interest of the citizen that is protected under the Due Process Clause; and 2) whether a U.S. citizen whose constitutional rights have been affected by denial of a visa to an alien is entitled to challenge the denial in court and to require the government, in order to sustain the denial, to allege what it believes the alien did that would render him ineligible for a visa.

Stacey Young
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Standard of Review Nationality Rulings

The Ninth Circuit granted *en banc* rehearing, over government opposition, and vacated its prior decision in ***Mondaca-Vega v. Holder,*** 718 F.3d 1075. That opinion held that prior case law requiring *de novo* review of nationality claims was effectively overruled, that the clear-and-convincing and clear, convincing, and unequivocal standards are functionally the same. On March 17, 2014, an *en banc* panel heard oral argument. The court had granted *en banc* rehearing over government opposition, and vacated the published prior panel decision, 718 F.3d 1075.

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Retroactive Application of Board Decisions

On January 6, 2014, the Ninth Circuit ordered the government to respond to the rehearing petition challenging its September 19, 2013 unpublished decision in ***Diaz-Castaneda v. Holder***, 2013 WL 5274401. The petition contends that petitioners are eligible for adjustment of status because the balancing of the *Montgomery Ward* factors tilts against applying *Matter of Briones* retroactively to their case, and the case should be remanded to develop the record on their reliance and equitable interests relating to the *Montgomery Ward* balancing test. The government opposed rehearing on January 27, 2014, arguing that the panel appropriately determined the *Montgomery Ward* factors in the first instance and therefore the panel decision suffered no error of fact or law to support rehearing.

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Torture– Internal Relocation

In ***Maldonado v. Holder***, No. 09-71491, the Ninth Circuit has ordered the parties to file supplemental briefs on whether case should be heard *en banc* in the first instance to consider: (1) whether there is a conflict in our case law between *Perez-Ramirez v. Holder*, 648 F.3d 953, 958 (9th Cir. 2011), and *Hasan v. Ashcroft*, 380 F.3d 1114, 1123 (9th Cir. 2004), regarding which party bears the burden of proof on internal relocation; and (2) whether *Hasan* and *Lemus-Galvan v. Mukasey*, 518 F.3d 1081, 1084 (9th Cir. 2008), improperly elevated the burden of persuasion by requiring that a CAT petitioner establish that internal relocation is "impossible." Simultaneous briefs by the parties were filed June 16, 2014.

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Jurisdiction – Final Order

On May 7, 2014, the Ninth Circuit granted *en banc* rehearing, with government acquiescence, and vacated its published panel decision in ***Abdisalan v. Holder***, 728 F.3d 1122, which held that an unsuccessful asylum claim was necessarily final at time of remand of the successful withholding of removal claim to update her background checks, but ruled that it lacked jurisdiction to review the alien's challenge to the agency's ruling that the asylum application was untimely. The government response defended the judgment, but conceded that the court's precedents on finality are inconsistent and in need of correction *en banc*. Oral arguments before an *en banc* panel were heard on June 16, 2014.

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BIA Standard of Review

Oral argument on rehearing was heard before a panel of the Ninth Circuit on September 9, 2013, in ***Izquierdo v. Holder,*** 06-74629, addressing the question of whether the Board the engaged in impermissible fact-finding when it ruled that the alien witnessed a human rights crime and made no effort to prevent it.

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Asylum – State Dept Investigations

The Ninth Circuit requested a government response to the alien's petition for en banc or panel rehearing challenging the Court's published decision in ***Angov v. Holder***, 736 F.3d 1263, which held that the alien has the right to obtain documents, identities of investigators and witnesses, and testimony of the State employees involved in the investigation of his asylum claims by the Consulate in Romania. The government opposed rehearing on May 9, 2014.

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Summaries Of Recent Federal Court Decisions

FIRST CIRCUIT

First Circuit Holds that Temporary Protected Status Has No Effect on Validity of Removal Order Except to Prevent Execution of the Order

In ***Donnee v. Holder***, __ F.3d __, 2014 WL 1856738 (1st Cir., May 9, 2014) (Lynch, *Howard*, Thompson), the First Circuit held that the BIA did not abuse its discretion in denying petitioner's motion to reopen proceedings for administrative closure after he had been granted TPS.

The petitioner had been temporarily paroled into the United States from Haiti in 1995 for a period not to exceed two years. He overstayed. In March 2009, after he had been charged with several state criminal violations, DHS instituted removal proceedings. Petitioner admitted the allegations in the NTA and conceded the charge of removability at an immigration court hearing in July 2009. A few months later, he sought an adjustment of status based on a petition for alien relative submitted by his wife. After several continuances, a hearing was scheduled for early December 2010. However, neither he nor his attorney appeared at the hearing, and IJ ordered petitioner, *in absentia*, removed to Haiti.

Petitioner then filed a motion to reopen the proceedings contending that DHS had granted him TPS on December 13, 2010, and thus he was no longer removable, and at a minimum his case should be administratively closed. The IJ denied reopening explaining that TPS "grants only temporary relief from removal and does not make a recipient admissible." The BIA dismissed the appeal based on the same rationale.

The court concluded that the BIA had "correctly ruled that TPS only served to prevent execution of the removal order in any event; it did not affect the validity of the order."

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First Circuit Holds That Agency Did Not Abuse Its Discretion in Denying as Untimely and Number-Barred a Second Motion to Reopen

In ***Lin v. Holder***, __ F.3d __, 2014 WL 1910872 (1st Cir., May 14, 2014) (*Lynch*, Howard, Thompson), the First Circuit held that the agency acted within its discretion in denying the petitioner's second motion to reopen as untimely and number-barred under 8 C.F.R. § 1003.2(c)(2).

The BIA had "correctly ruled that TPS only served to prevent execution of the removal order in any event; it did not affect the validity of the order."

The petitioner arrived to the U.S. on June 7, 2000, at Chicago O'Hare International Airport without a valid entry document. She was charged with being removable for having entered the United States through fraud or willful misrepresentation of a material fact, and without a valid entry document. On September 5, 2000, she applied for asylum, withholding and CAT protection, claiming that she opposed China's population control policy and would be forced to undergo involuntary sterilization if she were returned to China. The IJ did not find her credible, denied all claims and ordered her removed. On February 1, 2005, the BIA affirmed the IJ's decision and dismissed the appeal.

On March 20, 2006, petitioner filed her first motion to reopen stating that her father had become a U.S. citizen and had filed an immigrant visa petition on her behalf. On May 16, 2006, the BIA denied petitioner's motion as untimely because it was not filed within ninety days of the BIA's February 1, 2005 decision dismissing her appeal.

On May 24, 2013, petitioner, who now had three children, two of them born in the United States, moved the BIA to reopen a second time. She argued that there was new material evidence not available during her 2001 removal proceedings showing that China currently enforces its one-child policy using "force and extreme coercion tantamount to force." She also submitted unsigned and unsworn letter from the Family Planning Office in her hometown of ChangLe City, Fujian Province, which was allegedly sent her sister in China. The letter said petitioner would be sterilized if she returned to China with her American-born children.

The BIA denied them motion, finding that petitioner had not shown that the unauthenticated documents from China were genuine or reliable and that there was insufficient evidence that she would likely suffer mistreatment or economic harm if returned to China. The BIA also concluded that the evidence was insufficient to establish a material change in country conditions so as to exempt her second motion from the requirements that she file only one motion to reopen within ninety days of the BIA's 2005 final decision.

The court, in upholding the BIA's denial, held that no exception to the bars applied where the petitioner failed to establish that she would be persecuted by forced sterilization due to the birth of two United States citizen children. In particular, the court found that the BIA did not abuse its discretion in concluding that petitioner's "evidence as to coercion in 'some areas of China' was insuffi-

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cient to establish either a likelihood of persecution or materially changed circumstances."

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■ **Guatemalan National Failed to Demonstrate Eligibility for Withholding of Removal On Account of Membership In A Particular Social Group**

In ***Sam v. Holder***, __ F.3d __, 2014 WL 1910962 (*Lynch*, Torruella, Lipez), the First Circuit held that the petitioner's arguments that as an individual who had stayed in the United States for an extended period, he would be perceived as wealthy upon his return and thus would be targeted for extortion and violence by Guatemalan gangs were foreclosed by the court's prior decision in *Sicaju-Diaz v. Holder*, 663 F.3d 1 (1st Cir. 2011). In *Sicaju* which the court considered and found that a group defined as "wealthy individuals returning to Guatemala from a lengthy stay in the United States" was not a cognizable social group for purposes of relief.

Individual who had stayed in the United States for an extended period, he would be perceived as wealthy upon his return and thus would be targeted for extortion and violence by Guatemalan gangs is not a member of a particular social group.

Petitioner sought to distinguish *Sicaju*, by arguing that returnees from the United States are a particular social group because that characteristic is immutable, and the class of people returning from the United States is discrete and socially visible. The court rejected petitioner's argument noting that it had specifically addressed it in *Sicaju*, when it explained that "'being part of a landowning [heritable and immutable] class is quite different than happening to be wealthy or perceived to be wealthy because of owning a large house, belonging to a well known family or 'returning to Guatemala after a lengthy residence in the United States.'"

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■ **First Circuit Upholds Decision that Asylum Applicant Failed to Show Changed Country Conditions for Christians in Indonesia**

In ***Simarmata v. Holder***, __ F.3d __, 2014 WL 1876987 (1st Cir., May 12, 2014) (*Lynch*, Howard, Thompson), the First Circuit upheld the BIA's denial of an untimely motion to reopen because the petitioner had not established changed country conditions.

The petitioner, a Christian and citizen of Indonesia overstayed his visa in 2003 and was placed in removal proceedings. He then applied for asylum, withholding and CAT protection claiming fear of returning to Indonesia because he believed he would be subjected to persecution as a Christian. The IJ and BIA denied his application for asylum as untimely, and denied the withholding claim on the basis that he not met his burden of showing that he personally was a victim of past persecution on account of his religion.

On December 3, 2012, petitioner filed an untimely motion to reopen asylum proceedings on the basis of changed country conditions in Indonesia. The BIA denied that motion on the grounds that the evidence he submitted failed to demonstrate a change in country circumstances.

In upholding the BIA's denial, the court specifically rejected the petitioner's claim that the BIA had abused its discretion by failing to give sufficient consideration to an affidavit of Northwestern University political science professor Jeffrey A. Winters that professed deteriorating country conditions in Indonesia for Christians and other religious minorities. The court noted that it had "denied at least one other petition for review in a case where this same expert submitted a substantially similar and generalized affidavit in an attempt to show persecution of Christians in Indonesia."

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SECOND CIRCUIT

■ **Second Circuit Certifies Case to Connecticut Supreme Court to Determine the *Mens Rea* for the Lack of Consent Element to Fourth Degree Sexual Assault**

In ***Efstathiadis v. Holder***, __ F.3d __, 2014 WL 2055333 (2d Cir., May 20, 2014) (Straub, Hall, Livingston) (*per curiam*), the Second Circuit concluded that it could not determine whether the minimum conduct criminalized by the alien's statute of conviction, Conn. Gen. Stat. § 53a–73a (a)(2), involved moral turpitude. The court therefore certified the case to the Connecticut Supreme Court to determine whether sexual assault in the fourth degree was a strict liability offense regarding the victim's lack of consent or, if not, what level of *mens rea* was required to support a conviction.

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THIRD CIRCUIT

■ **Third Circuit Holds that Pennsylvania Conviction for Indecent Assault Constitutes an Aggravated Felony**

In ***Cadapan v. Att' Gen. of the U.S.***, __ F.3d __, 2014 WL 1064135 (3rd Cir., May 9, 2014) (*Rendell*,

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Smith, Hardiman), the Third Circuit held that petitioner's conviction under the Pennsylvania indecent assault statute, 18 Pa. Cons. Stat. § 3126(a)(7), constituted a conviction for an aggravated felony.

The petitioner, following a jury trial was convicted of three offenses: (1) indecent assault with a person less than 13 years of age, in violation of 18 Pa. Cons.Stat. § 3126(a)(7); (2) indecent assault without consent, in violation of 18 Pa. Cons.Stat. § 3126 (a)(1); and (3) corruption of minors.

Petitioner argued that the Pennsylvania statute for indecent assault encompassed conduct that could not be considered sexual abuse of a minor under the federal statute. The Third Circuit ruled that the BIA reasonably determined that the "indecent contact" referred to in the Pennsylvania statute categorically constituted molestation and, by extension, sexual abuse of a minor. The court followed its decision in *Restrepo v. Att'y Gen.*, 617 F.3d 787, 791 (3d Cir. 2010), where it had deferred to the BIA's approach *in Matter of Rodriguez–Rodriguez*, 22 I&N Dec. 991 (BIA 1999), as to what should be considered sexual abuse of a minor.

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SEVENTH CIRCUIT

■ **Seventh Circuit Upholds Conclusion that Alleged Bulgarian Roma Sex-Trafficking Victim Was Not Credible**

In ***Georgieva v. Holder***, __ F.3d __, 2014 WL 1778038 (7th Cir., May 6, 2014) (*Flaum*, Easterbrook, Rovner), the Seventh Circuit held that substantial evidence supported the determination that a Bulgarian Roma asylum applicant was not credible,

The petitioner and her husband were admitted to the United State on March 6, 2002. On March 5, 2003, petitioner filed an affirmative application for asylum, withholding, and CAT protection, and listed her husband as a derivative beneficiary. However, her case was referred to the immigration court because they had been admitted to the U.S. under the Visa Waiver Program. Petitioner submitted a six-page statement describing her experience in Bulgaria and how she became to be forced into sex trade and became active in politics. During the asylum hearing, the IJ determined that her story differed in several important areas. The IJ brought the discrepancies to petitioner's attention but she failed to address the central inconsistencies. The IJ acknowledged that inaccuracies in the initial applications are common, but noted that an attorney had assisted petitioner in completing that application. Consequently, the IJ determined that petitioner had not provided enough documentary evidence to corroborate her story, and so ordered her and her husband removed to Bulgaria.

Petitioner had not established that she would be singled out for persecution upon returning to Bulgaria, and that there was no pattern of persecution of the Roma in Bulgaria.

Petitioners then appealed their case to the BIA and also filed a motion to remand claiming ineffective assistance of counsel. The BIA found that the IJ's credibility finding was based on specific evidence and was adequately explained. The BIA also denied the request for a remand based on inadequate assistance, because it thought petitioners' counsel in the immigration proceedings competent.

The Seventh Circuit determined that the discrepancies underlying the IJ's incredibility finding, "go to the heart" of petitioner's claim. In particular, noted the court, petitioner had initially claimed to have been forced to have sex with multiple individuals over multiple nights but then testified to have escaped on her first night in Macedonia without having sex with anybody." The incident in Macedonia was central to her claim of past persecution," said the court. The court also noted that the IJ had given petitioner an opportunity to cure the inconsistencies but she did not do so. Petitioner also failed to corroborate her testimony and rehabilitate herself with documentary evidence. The court also determined that there was no evidence to show that petitioner had been persecuted because she is a Roma. Finally, the court found that petitioner had not established that she would be singled out for persecution upon returning to Bulgaria, and that there was no pattern of persecution of the Roma in Bulgaria.

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EIGHTH CIRCUIT

■ **Eighth Circuit Upholds Denial of Reopening Based on Birth of Three United States Citizen Children and Feared Future Persecution under China's One-Child Policy**

In ***Chen v. Holder***, __ F.3d __, 2014 WL 1887364 (8th Cir., May 13, 2014) (Wollman, Loken, *Kelly*), the Eighth Circuit held that the BIA acted within its discretion in denying petitioner's motion to reopen based on feared future persecution under China's one-child policy.

The court held that the birth of the petitioner's three United States citizen children was a change in her personal circumstances, and that she did not present new, material evidence, or a *prima facie* case of asylum eligibility. "She has not demonstrated the likely impact of

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any economic sanctions imposed for her violations of China's one-child policy or the probability that she would be subject to sterilization in her particular province," said the court.

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■ **Eighth Circuit Upholds Ruling that Petitioner Was Not Credible and Did Not Demonstrate that He Had Been Inspected or Admitted When He Entered the United States**

*In **Diaz-Perez v. Holder***, __ F.3d __, 2014 WL 1718912 (8th Cir. May 2, 2014) (*Riley*, Wollman, Loken), the Eighth Circuit held that the petitioner's I-213 record, which he conceded was accurate, provided strong evidence that the petitioner had entered the United States by foot without inspection or admission, rather than by car as petitioner and his witness had testified.

Petitioner contended that he had been inspected and admitted to the U.S. and thus eligible for adjustment of status based on his marriage to a U.S. citizen. Although he admitted all the facts recorded in the I-213, he claimed that he had he had had presented himself for inspection and admission when he entered the U.S. in 2004 as a passenger in the back seat of a red Ford Mustang driven by his mother-in-law, and with a family friend riding as a passenger. Petitioner's mother-in-law testified at the hearing but recalled some of the key details of the alleged border crossing differently. The IJ found those "discrepancies and contradictions in the evidence" to be significant and also found incredible petitioner's testimony that he had told the Border Patrol agent that he entered the U.S. in 2004 by car, rather than afoot. On appeal, the BIA upheld the IJ's decision.

The court found that the IJ and the BIA had articulated specific reasons to discredit petitioner's and his mother-in-law testimonies "based on 'discrepancies and contradictions' in their accounts of the pivotal issue of the border crossing, including who was driving, what questions were asked, and whether [the mother-in-law] knew of [petitioner's] immigration status at the time he entered the U.S." The court therefore determined that the petitioner was removable as charged and ineligible to adjust his status.

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■ **Eighth Circuit Holds That Reopening And Reconsideration Was Reasonably Denied To Alien Seeking Adjustment of Status**

In ***Mshihiri v. Holder***, __ F.3d __, 2014 WL 2210752 (8th Cir., May 29, 2014) (Colloton, Shepherd, *Kelly*), the Eighth Circuit held that the BIA's denial of reopening and reconsideration did not constitute an abuse of discretion. The court ruled that the petitioner's arguments in support of reconsideration related to the decision by USCIS to revoke its approval of an immediate-relative visa petition and failed to point to any legal or factual errors in the BIA's prior decision. Petitioner had argued that his prior marriage to a U.S. citizen had not been a sham, and that USCIS's revocation of an approved Form I–130 based on petitioner's subsequent marriage to another U.S. citizen had been in error.

The court also determined that the evidence submitted in support of reopening likewise pertained to the visa petition and did not establish eligibility for adjustment of status.

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The BIA was required to consider changed country conditions regarding persecution of Christians in Indonesia as they related to change in personal circumstances for petitioner.

NINTH CIRCUIT

■ **Ninth Circuit Holds that Changed Personal Circumstances Can Excuse an Untimely Motion to Reopen When They are Related to Changed Country Conditions**

In ***Chandra v. Holder***, __ F.3d __, 2014 WL 1876270 (9th Cir., May 12, 2014) (*Paez*, Nguyen, Motz (by designation)), the Ninth Circuit held that in assessing untimely motion to reopen removal proceedings on basis of changed country conditions, the BIA was required to consider changed country conditions regarding persecution of Christians in Indonesia as they related to change in personal circumstances for petitioner.

The petitioner, an Indonesian citizen of Chinese descent, had been ordered removed in 2003. The Ninth Circuit subsequently denied his petition for review denied Chandra's petition for review. *Chandra v. Gonzales*, 123 F. App'x 792 (9th Cir. 2005). Petitioner did not leave the country. Instead, he converted to Christianity and began to attend church on a regular basis. On March 9, 2009, he filed an untimely motion to reopen on the basis that religious persecution against Christians in Indonesia had worsened since his previous hearing. The BIA denied petitioner's motion, citing to 8 C.F.R. § 1003.2(c)(iii)(2) and explaining that "[c]hanges in the respondent's personal circumstances in the United States do not constitute sufficiently changed circumstances so as to allow for the untimely reopening of these proceedings."

The court first determined, as a matter of first impression, that "the plain language of 8 C.F.R. § 1003.2

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(c)(3)(ii) does not preclude an untimely motion where a change in the petitioner's personal circumstances is a necessary predicate to the success of the motion . . . If there is sufficient evidence of changed conditions in the receiving country, there is nothing in the plain language of the regulation that prevents a petitioner from referring to his personal circumstances to establish the materiality of that evidence." The court noted that several circuit courts of appeals have determined that the BIA must consider changed country conditions as they relate to a petitioner's change in personal circumstances.

The court then concluded that a petitioner's untimely motion to reopen may qualify under the changed conditions exception in 8 C.F.R. § 1003(c)(3)(ii), even if the changed country conditions are made relevant by a change in the petitioner's personal circumstances. Accordingly, it determined that the BIA had abused its discretion when it failed to assess petitioner's evidence that treatment of Christians in Indonesia had deteriorated since his 2002 removal hearing and committed legal error insofar as it determined that petitioner's post-removal conversion to Christianity rendered him ineligible to file an untimely motion under the changed conditions exception. The court remanded the case to the BIA for further proceedings.

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■ **BIA May Consider Sentencing Enhancements to Determine Whether an Alien Who Has Not Committed an Aggravated Felony Nonetheless Committed a Particularly Serious Crime**

In ***Konou v. Holder***, __ F.3d __, 2014 WL 1855660 (9th Cir., May 9, 2014) (Thomas, *Gilman*, Rawlinson), the Ninth Circuit held that the BIA did not abuse its discretion in concluding that the facts underlying the petitioner's conviction, including the sentencing enhancement, supported the finding that his assault and battery conviction constituted a particularly serious crime. In particular, the court said that in "citing the nature of the conviction, the circumstances and underlying facts of the conviction, and the type of sentence imposed, the IJ applied the correct legal standard," as had been articulated by the BIA in *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982), and by the court in *Delgado v. Holder*, 648 F.3d 1095, 1107 (9th Cir. 2011) (*en banc*). The court further concluded, as a matter of first impression, that in light of *Delgado*, the IJ had properly considered the two-year enhancement under the *Frentescu* factors. "An enhanced sentence by its plain language can be considered a type of sentence," said the court.

"An enhanced sentence by its plain language can be considered a type of sentence," said the court.

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■ **Evidence of Changed Country Conditions for Sikhs in India Rebutted Presumption of Future Persecution**

In ***Singh v. Holder***, __ F.3d __, 2014 WL 2109128 (9th Cir., May 21, 2014) (Wallace, *Bybee*, Gettleman), the Ninth Circuit held that substantial evidence supported BIA's decision that, by showing changed country conditions for Sikhs in India, the government overcame a presumption that petitioner faced future persecution for purpose of withholding of removal. The court noted, however, that "[T]he scope and precision of the country report evidence in the record distinguishes this case from the cases where we have deemed such evidence insufficient to support a determination that there has been a fundamental change in circumstances."

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■ **Ninth Circuit Reverses Adverse Credibility Finding And Rules that Alien Was Not Afforded Proper Notice of Need To Produce Corroborating Evidence**

In ***Zhi v. Holder***, __ F.3d __, 2014 WL 1917930 8 (Reinhardt, Thomas, *Paez*), the Ninth Circuit concluded that substantial evidence did not support the agency's adverse credibility finding given that record evidence corroborated the alien's explanation for discrepancies regarding the date local police closed his bookstore. The court also concluded that the agency failed to provide the alien with proper notice and a reasonable opportunity to produce corroborating evidence as required by *Ren v. Holder*, 649 F.3d 1079 (9th Cir. 2011).

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DISTRICT COURTS

■ **Canadian Removed Pursuant To Expedited Removal Statute May Not Challenge Removal In Habeas Proceedings**

In ***Zamora v. Johnson***, No. 14-CV-141 (D.N.M., May 22, 2014) (Skavdahl, J.), the court dismissed an APA challenge to an alien's expedited removal and to the expedited removal statute. The court held that the alien's claim was time-barred, and even if it were not, an arriving alien could not challenge the propriety of his expedited removal in district court.

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OIL 2014 Summer Interns

Julie Ahn graduated from the University of North Carolina at Chapel Hill with a major in Economics and minor in Music. She is a rising 3L at the University Of North Carolina School Of Law. She was an intern last summer at the Appellate Section of North Carolina Department of Justice.

Mike Brett graduated from Vanderbilt University with a double major in Philosophy and Spanish. He just finished his first year at Duke University School of Law.

Joshua Burday graduated from the University of Massachusetts Amherst with a major in Sport Management and is a rising 3L at the University Of Chicago Law School. He spent last summer working in the Police Accountability Clinic at the University of Chicago.

Danielle Drago graduated from the University of Alabama where she majored in Finance and Economics while concurrently obtaining a Master's in Finance. She completed her first year at Vanderbilt University Law School, where she is pursuing a JD/Ph.D in Law and Economics.

Mona Fang graduated from UC Berkeley with a major in Political Science and is a rising 2L at UC Berkeley, School of Law (Boalt Hall).

Rachel Feuer graduated from Florida State University with a dual major in International Affairs & German, and is a rising 3L at the Washington College of Law. She spent her spring semester at the Office of Special Counsel for Immigration-related Unfair Employment Practices.

Stephanie Forman graduated from Ithaca College, majoring in History with triple minors in Islamic Studies, Legal Studies, and Art History. She is a rising 3L at the Buffalo Law School.

Drew Grossman is a rising 2L at Cornell Law School and a new OIL intern. He graduated from Cornell University in 2011 with a Bachelor's degree in History and Asian Studies.

James Hekel is from Little Rock, Arkansas. He studied English at Central College in Pella, Iowa and now studies law at American University's Washington College of Law.

Richard Lin graduated from Rutgers University with a major in Physics, and from the Uniformed Police Training Program at the Federal Law Enforcement Training Center. He is a rising 2L at the Duke University School of Law.

Jaimie Lowen graduated from the University of Michigan with a double major in French Language & Literature and Political Science and is a rising 2L at Benjamin N. Cardozo School of Law.

Laeticia Mukala is attending Arizona Summit Law School in Phoenix, Arizona. She graduated from University of Texas at San Antonio with a major in General Business and a minor in Legal Studies.

Greg J. Nicosia, Jr. graduated from the University of Pittsburgh with Bachelors of Science in Psychology and is a rising third-year at the University of Pittsburgh School of Law.

Michael Rochford currently attends Amherst College where he studies Law, Jurisprudence and Social Thought. After college, he intends to pursue his J.D. and hopefully spend a few more summers working in the Washington D.C. area.

Kate Scanlan is a rising 3L at Boston College Law School. She graduated from Haverford College in 2009 with a major in Political Science. Last summer Kate was an intern at Greater Boston Legal Services where she worked on U Visa and VAWA applications.

Mary Scruggs graduated from the University of North Carolina at Chapel Hill with a major in English & Psychology, where she is also currently a rising 2L.

Kasper Schirer graduated from the University of Kansas with an M.A. in Linguistics. Before law school, he taught English in Shanghai for four years. He is a rising 3L at the University of Kansas Law School.

Kate Stillman graduated from Bates College with a double major in History with a focus on East Asia and Psychology. She is a rising 2L at Harvard Law School.

Jessica Strokus graduated from Wake Forest University with a double major in Politics & International Affairs and Spanish and is a rising 2L at Wake Forest University School of Law.

Ivan Tereschenko graduated from Western Connecticut State University with a major in Justice and Law Administration. He also holds a Master's degree in Justice Administration from Western Connecticut State University and is a rising 3L at the University of Connecticut School of Law.

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OIL SUMMER INTERNS

Front: Lindsay Donahue, Mary Stillman, Jessica Strokus, Julie Ahn, Fabienne Antoine; Middle: Greg Nicosia, Michael Rochford, Stephanie Forman, Jaimie Lowen, Mary Scruggs, Mona Fang, Rachel Feuer, Kate Scanlan; Back: Richard Lin, James Hekel, Danielle Drago, Mike Brett, Ivan Tereschenko, Laeticia Mukala, Drew Grossman, Kasper Shirer. Not pictured: Radka Nations, Saba Aziz, Joshua Burday.

The ***Immigration Litigation Bulletin*** is a monthly publication of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice. This publication is intended 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.

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.

If you have any suggestions, or would like to submit a short article, please contact Francesco Isgrò at 202-616-4877 or at francesco.isgro@usdoj.gov.

Office of Immigration Litigation

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

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