



April 2009

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## Case Updates

### **Cuban Citizen Wins Political Opinion Claim, with the Help of Pro Bono Attorneys**

**Daniel Ahn**, of **Gibson, Dunn & Crutcher LLP** in Washington, DC represented Ms. L-C- before the Board of Immigration Appeals (BIA). Ms. L-C- was a Cuban teacher who fled her country illegally to move to the United States, and subsequently spoke out against Fidel Castro's government. She noted that she had known people in Cuba who endured imprisonment for voicing political opinions that critiqued the ruling regime. The Immigration Judge (IJ) found that Ms. L-C- established a well-founded fear of persecution because of her illegal departure. The Department of Homeland Security (DHS) appealed the decision. As a result of Mr. Ahn's excellent work before the BIA, the BIA dismissed the DHS appeal. It found that "given the potential for severe penalties for illegal departures in Cuba," it agreed with the IJ's finding "that the respondent established that a reasonable person in her circumstances would fear persecution upon return to Cuba."

CLINIC also is grateful to **Allison Wannamaker**, of **Thomason, Hendrix, Harvey, Johnson & Mitchell PLLC**, who represented Ms. L-C- when the IJ completed the final background check in this case. [\[E\]](#)

### **BIA Overturns IJ's Denial of Withholding of Removal**

Congratulations to **Elliot Gardner**, of **Dechert LLP** in Princeton, NJ, who represented Ms. C- before the BIA through the BIA Pro Bono Project. Ms. C- was a Colombian citizen who requested asylum following two attacks and several threats of harm by the Revolutionary Armed Forces of Colombia. After the IJ denied Ms. C-'s applications for relief, she appealed to the BIA. The pro bono attorney's brief convinced the BIA that DHS had "not met its burden of proof to rebut [Ms. C-'s] well-founded fear of persecution" under the applicable laws. The BIA ultimately granted Ms. C-'s application for withholding of removal to Colombia under INA § 241(b)(3). [\[E\]](#)


## April Photo: Vanderbilt University Law School Clinic




Do you have a photo that you would like to see in the BIA Pro Bono Project Update? E-mail it to Ann Atalla at [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org).

Vanderbilt University Law School's Appellate Litigation Clinic sending brief to Board of Immigration Appeals. *From left:* Ben Ford, Professor Alistair Newbern, Erin Carter, and Tory Lewis.

### Deferral of Removal Victory for Latham & Watkins Attorneys

Congratulations to **Andrea Ambrose** and **Susan Azad**, of **Latham & Watkins LLP** in Los Angeles, CA, for their capable representation of Mr. G- before the BIA. This case involved a Haitian citizen with a lifelong history of mental illness. The BIA dismissed the DHS appeal, after the IJ granted deferral of removal under the Convention Against Torture. In its decision, the BIA found that Mr. G-, a Haitian citizen, was "at particular risk of torture in the form of denial of medication," which he must take daily to treat his mental illness. The BIA added that the facts in this case were distinguishable from the circumstances in *Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006), because the IJ's factual findings were supported by specific, credible evidence of record and clearly demonstrate that Mr. G- would "more likely than not be tortured" if removed to Haiti by or with the consent or acquiescence of prison guards, who would act in an official capacity and would have the specific intent to inflict torture on him. 

### Remand and Withholding Victory for Guatemalan Citizen

CLINIC recognizes **Richard O'Connell** of **Yost & O'Connell** in Whitestone, NY for his success in obtaining a remand to the immigration court, and subsequently a withholding of removal grant, for Mr. L-P-. Mr. L-P- is a Guatemalan citizen who had been subject to severe abuse and life-threatening injuries by police officers in his hometown because of his open homosexuality. Due to the pro bono attorney's skillfully written brief, the BIA noted material deficiencies in the IJ's decision to deny asylum, withholding of removal under INA § 241(b)(3), and withholding and deferral of removal under the Convention Against Torture. The BIA remanded the case to the IJ, whom the BIA found had failed to make "sufficient findings of fact and conclusions of law" relating to whether he had committed a particularly serious crime under INA § 241(b)(3)(B), which would render him ineligible for withholding relief. On remand before the immigration court, the IJ granted withholding of removal under INA § 241(b)(3). DHS declined to file an appeal. 

## BIA Affirms IJ's Findings on Adjustment of Status

CLINIC recognizes **Kristin Baughman**, of **Perkins Coie** in Phoenix, AZ, for successfully representing Mr. A- before the BIA on an adjustment of status claim. DHS had appealed the immigration court's discretionary grant of relief, asserting that the IJ erred in failing to sustain removability under INA § 237(a)(2)(A)(iii). The BIA found that the IJ correctly weighed the compelling circumstances in this case. Specifically, it noted that Mr. A- lives with and supports his wife, daughter, and mother-in-law, and that his wife has a long history of severe mental illness. The BIA affirmed the IJ's decision and dismissed the appeal. 📄

## Reminders to Project Participants

- If you have received a decision on a BIA Project Case and have not forwarded it to CLINIC, please do so! E-mail decisions to [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org).
- Please forward a redacted version of your brief once it has been filed. Model briefs are extremely helpful to project participants with limited BIA practice.
- If you would like more information on appellate procedures before the BIA, the BIA Practice Manual is located at <http://www.usdoj.gov/eoir/vll/qapracmanual/apptmtn4.htm>

## BIA Upholds Cancellation of Removal Grants

Congratulations to **Ashley Garber**, of **VanNess Feldman** in Washington, DC, for her representation of Ms. S-L- following a Department of Homeland Security appeal to the Board of Immigration Appeals. The BIA found that the immigration judge had not erred in granting Ms. S-L- cancellation of removal, due to the significant positive equities in this case. These equities included Ms. S-L-'s 20-year residence in the United States and evidence that her two U.S. citizen daughters would suffer exceptional and extremely unusual hardship if their mother were removed. The BIA dismissed the government's appeal. 📄

CLINIC commends **Edward Bilich**, of **Jones Day** in Washington, DC, who represented Mr. L-C- before the BIA. Mr. Bilich secured a dismissal of the DHS appeal, following the IJ's grant of cancellation of removal. Mr. L-C-, who is a lawful permanent resident who has lived in the United States for more than 15 years, has a U.S. citizen wife and two U.S. citizen children who "would suffer as a result of his removal." The BIA concluded that based on the totality of the circumstances, Mr. L-C- merited cancellation of removal. 📄

CLINIC congratulates **Won Kidane**, former supervising professor at **Pennsylvania State's Dickinson School of Law's Refugee Clinic**, and now a Professor of Law at Seattle University School of Law, and the Pennsylvania State clinic's law students, who represented Mr. A- before the BIA. The clinic's dedication to this client prompted the BIA to find that the positive equities in this case, "particularly the respondent's numerous ties to the United States, his youth at the time of the commission of the offenses, and the minor nature of...his convictions," outweighed any negative equities. The BIA dismissed the DHS appeal and granted cancellation of removal. 📄

## BIA Upholds Cancellation of Removal Grants (Cont.)

CLINIC recognizes **Brynna Connolly**, of **Zuckerman Spaeder LLP** in Washington, DC, for her representation of Mr. C-P- before the BIA. Mr. C-P- is a lawful permanent resident of the United States who had moved to this country as an infant. The IJ had granted cancellation of removal, and DHS appealed, contending that the IJ erred in granting relief as a matter of discretion. The BIA, persuaded by Ms. Connolly's brief, found that Mr. C-P-'s 30-year residence in the United States, his U.S. citizen children, and the recommendations from friends and family outweighed the negative equities in this case. The BIA dismissed the DHS appeal and granted relief. 📄

Congratulations to **Professor Steven Goldblatt**, of **Georgetown University Law Center's Appellate Litigation Clinic** in Washington, DC, along with supervising attorney **Cecily E. Baskir** and student attorney **Jennifer Hojaiban**, for their representation of Mr. I-. Mr. I- is a Canadian citizen and lawful permanent resident of the United States who has lived in this country for 25 years, is close to his teenage son, has strong community ties, and recovered from a difficult period of drug addiction. The IJ had granted cancellation of removal, and DHS appealed. The BIA dismissed the DHS appeal, finding that the IJ's decision "reflects a reasonable balancing of the equities and adverse factors." 📄

CLINIC is grateful to student attorney **Girmai Kahsai** who, under the supervision of **Maurice Y. Hew, Jr.**, Assistant Professor of Law in the Administrative Law Clinic at **Texas Southern University's Thurgood Marshall School of Law** in Houston, TX, successfully represented Mr. S- before the BIA. Mr. S- is a citizen of Belarus who came to the United States at the age of 12. The IJ had granted him cancellation of removal after determining that his long residence in the United States; his support of his mother, father, siblings, and other extended family members; his rehabilitation from substance abuse; and letters of support from his employers outweighed his criminal record and violation of immigration laws. The BIA dismissed the DHS appeal, upholding the IJ's determination that Mr. S- merited relief. 📄



Please share information about the BIA Project with colleagues who might be interested in participating. Volunteers should contact Ann Atalla at CLINIC at (202) 756-5537 or [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org).



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## Thank You, BIA Project Screeners!

The BIA Project could not function without its committed team of screening attorneys. Screeners are experts in immigration law who volunteer their time with the Project to review cases at the BIA once a week. They create redacted summaries of the cases that are circulated to Project participants each week. We thank them for their time and dedication.

**Ofelia Calderon** – Calderon & Derwin, PLC

**Emily Creighton** – American Immigration Law Foundation

**Jason Dzubow** – Mensah, Shoemaker & Dzubow, PLLC

**Karen Grisez** – Fried Frank Harris Shriver & Jacobson, LLP

**Elizabeth McGrail** – Capital Area Immigrant Rights Coalition

**Melanie Nezer** – Hebrew Immigrant Aid Society

**Brittney Nystrom** – National Immigration Forum

**Xavier Racine** – Montagut Sobral, P.C.

**Paromita Shah** – National Immigration Project of the National Lawyer's Guild.

**Rachel Ullman** – Rachel Ullman, Attorney at Law



### About Our Project

The BIA Pro Bono Project is a collaborative effort of non-governmental agencies and the Executive Office for Immigration Review (EOIR). The Project is coordinated by the Catholic Legal Immigration Network, Inc. (CLINIC) and supported by the American Immigration Lawyers Association (AILA), the American Immigration Law Foundation (AILF), the National Immigration Project of the National Lawyers Guild (NIPNLG), and the Capital Area Immigrants' Rights (CAIR) Coalition.