



November 2008

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## Announcements

### 2008 Pro Bono Award

Congratulations to Eric Singer, CLINIC's 2008 Pro Bono Award recipient! CLINIC commends Eric, who practices in Rockville, Maryland, for his outstanding work on Board appeals through the BIA's Pro Bono Project, and for his support of CLINIC over the year. Eric was presented the award at an awards banquet at the July 2008 National Migration Conference (co-sponsored by CLINIC) in Washington, DC.

### New CLINIC BIA Pro Bono Project Attorney

CLINIC welcomes Ann Atalla as its new BIA Pro Bono Project Attorney. She is a graduate of the University of Michigan and has a Master's degree in Middle Eastern Studies from New York University. Ann graduated from American University's Washington College of Law in 2006. After law school, she was selected into the Department of Justice Attorney General's Honors Program, and worked as the Arlington Immigration Court's Judicial Law Clerk and Attorney Advisor from 2006 to 2008. You may contact Ann at (202) 756-5537 or [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org).


## Case Updates

### BIA Victory and Precedent Case on Derivative Citizenship

Congratulations to **Raymond Bolourtchi**, of **Cofman & Bolourtchi, LLC**, who successfully represented Mr. Hines before the BIA. The BIA, which issued a precedent decision on the case in *Matter of Hines*, 24 I&N Dec. 544 (BIA 2008), dismissed the Government's appeal and terminated proceedings after finding that Mr. Hines derived U.S. citizenship through his mother.

The BIA held that because Mr. Hines was born in Jamaica of natural parents who never married, his

paternity was not established by "legitimation." Therefore, he was not disqualified from deriving U.S. citizenship under former section 321(a)(3) of the Immigration and Nationality Act (INA) through his mother's 1991 naturalization.

The BIA further held that under Jamaican law, the sole means of "legitimation" of a child born out of wedlock is the marriage of the child's natural parents. *Matter of Clabar*, 18 I&N Dec. 1 (BIA 1981), overruled. 

## Cornell Law School Clinic Defends Guatemalan Man's Due Process Rights

Congratulations to Cornell University Law School students **Kristen Echemendia** and **Heidi Craig**, under the supervision of **Sital Kalantry** and **Stephen Yale-Loehr** at **Cornell Law School's Asylum and Convention Against Torture Appellate Clinic**, for their fine work on an important asylum case before the BIA.


In the early 1990s, Mr. S- lived in a rural area of Guatemala during the country's civil war. At that time, military officers and guerillas vied for control of the region. Mr. S-'s father disappeared after guerillas accused him of spying for the government, and after the government accused the father of being a rebel commander. Government military officers then captured, interrogated, tortured, and raped Mr. S-, stating that they were looking for his father. Following Mr. S-'s release, government officials murdered two of his brothers.

In 1992, Mr. S- escaped to the United States, where he supported himself for 13 years. After the Department of Homeland Security put him in removal proceedings, Mr. S- requested asylum and Convention Against Torture relief. Mr. S- appeared before an Immigration Court in California without an attorney and lost his case.

At that point, the Cornell University Law School Clinic undertook representation of Mr. S- through the BIA Pro Bono Project. His new attorneys argued that the Immigration Judge (IJ) had violated Mr. S-'s constitutional due process rights.

The BIA agreed, finding that the respondent was confused about his obligation to present evidence to support his claim; that the IJ failed to use the applicable standards of proof; and that the respondent had no opportunity to examine and object to the submission of evidence against him. It also noted that the IJ incorrectly analyzed the DHS' allegation that Mr. S- committed a particularly serious crime, and that he did not use the correct standard in assessing the respondent's request for protection under the Convention Against Torture.

The BIA also noted that the IJ failed to consider crucial evidence in the case, including Mr. S-'s scars and a psychiatrist's report that he suffered from depression and psychosis as a result of sexual and physical abuse.

The BIA remanded the case to the Immigration Court for additional proceedings. **Kristi Hughes** of **O'Melveny & Myers** and **Judy London** of **Public Counsel**, a public interest law firm in Los Angeles, represented Mr. S- on remand. The IJ granted withholding of removal. 

## Attorney Successful in Political Opinion Claim

**Ilana Greenstein**, of **Kaplan, O'Sullivan, & Friedman**, represented Mr. P- before the BIA. Mr. P- was conscripted into the Yugoslav army at the age of 19, but later refused to serve due to his opposition over the government's war against the Albanian population in Kosovo. The IJ found Mr. P- credible, but denied his asylum claim because he believed that Mr. P- feared prosecution stemming from his desertion of the army rather than a well-founded fear of persecution on account of political opinion. Mr. P- appealed the IJ's decision.

As a result of Ilana's excellent representation before the BIA, the Board remanded the case to the IJ, noting that although a nation has the right to impose mandatory military service on its citizens, "desertion can constitute an expression of political opinion." The BIA added that "punishment for desertion may be regarded as persecution where, as is asserted in this case, the deserter wishes to avoid military action that is condemned by the international community as contrary to basic rules of human conduct." It noted that punishment for desertion in this case may be regarded as persecution. **Marisol Haro** at **Casa Cornelia** in San Diego, CA represented Mr. P- on remand. The Immigration Court reversed its initial decision and granted asylum. 🇺🇸

## Attorney Secures 212(c) Waiver on Appeal

**Robert Vyverberg**, of **Holland & Knight, LLP**, successfully represented Mr. N- before the BIA after the DHS appealed the IJ's decision to grant a former INA section 212(c) inadmissibility waiver. Mr. N- came to the United States from Vietnam at age 12, and became a lawful permanent resident.

Thanks to Robert's excellent brief, the BIA upheld the IJ's findings of fact and assessment of Mr. N-'s testimony, and found that the court's decision to grant 212(c) relief was not in error. 🇺🇸



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).

## BIA Affirms IJ's Findings on Derivative Citizenship

**Eric Singer**, of Rockville, MD, represented Mr. C- before the BIA, which affirmed the IJ's termination of proceedings based on a claim of derivative citizenship. The DHS had appealed the judge's determination that Mr. C- had met the legal and physical custody requirements of INA § 320(a)(3). The BIA dismissed the Government's appeal after finding no clear error in the IJ's determination that Mr. C- was in his father's legal and physical custody for approximately one year. [📄](#)

## BIA Upholds Adjustment Relief

CLINIC recognizes **Valentine Brown**, of Woodbury, NJ, for successfully representing Mr. E-R- before the BIA on an adjustment of status and INA § 212(h) waiver claim. The Government appealed the Immigration Court's grant of relief, asserting that the IJ erred in failing to sustain inadmissibility under INA § 212(a)(2)(C) in granting an INA § 212(h) waiver, and in finding Mr. E-R- discretionarily eligible for INA § 245(i) adjustment of status. The BIA found no clear error in this case and dismissed the appeal. [📄](#)


## Penn State Secures Termination of Removal Proceedings

Congratulations to **Won Kidane**, former supervising professor at **Pennsylvania State's Dickinson School of Law's Refugee Clinic**, now a Professor of Law at Seattle University School of Law, and law students **Katrina Hall** and **Corey Hall**, for their work on the BIA appeal for Mr. N-, resulting in termination of removal proceedings. In this case, the IJ had found Mr. N- was an aggravated felon and ordered him removed from the United States. Mr. N- appealed. The BIA disagreed with the IJ, finding that a burglary conviction under California Penal Code sections 459 and 460(b) does not constitute an aggravated felony because the statutory language for these offenses does not require an unlawful or unprivileged entry, and thus is broader than the Supreme Court's definition of burglary under *Taylor v. United States*, 495 U.S. 575 (1990). Additionally, the BIA found that the conviction record did not support the DHS' contention that Mr. N-'s offenses rose to the level of an aggravated felony under INA § 101(a)(43)(G). As a result of the Clinic's excellent brief, the BIA sustained Mr. N-'s appeal and terminated proceedings. [📄](#)



## Cornell University Law School Clinic Wins on Continuance Issue


CLINIC congratulates Cornell University Law Students **John Mills** and **Jaime Johns**, under the supervision of Professor **Stephen Yale-Loehr**, at **Cornell Law School's Asylum and Convention Against Torture Appellate Clinic**, for their success in representing Mr. S-.


The IJ had found that Mr. S- was not removable as an aggravated felon. The IJ terminated proceedings, and denied the DHS' request for a continuance to obtain plea transcripts relating to a former conviction. The DHS appealed the IJ's decision to deny its continuance request. The BIA dismissed the DHS' appeal, finding no reversible error in the IJ's determination, and noting that the DHS had more than four years to obtain the documents and two years to submit a full conviction record. 


### Reminder 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.

## Nevada, Arizona, and California Cases Terminated, Thanks to Pro Bono Counsel

**Richard O'Connell**, of Whitestone, NY, secured a victory for Mr. B-B- before the BIA. The BIA overturned the IJ's finding that burglary under Nev. Rev. Stat. § 205.060 categorically comprises a crime involving moral turpitude (CIMT). It noted that the statute criminalizes unlawful entry in a dwelling with an "intent to commit a crime," but the crime could include an offense that itself is not a CIMT. Applying the modified categorical approach, the BIA added that Mr. B-B-'s conviction records did not implicate him in the crime. Thanks to Mr. O'Connell's assistance, the BIA terminated removal proceedings against Mr. B-B-. 

CLINIC also commends **David Arkush**, of **Georgetown University Law Center's Appellate Litigation Program**, for his impressive work in representing Mr. M-R-. The BIA found that Mr. M-R-'s Arizona misdemeanor assault offense was not categorically a crime of violence under 18 U.S.C. § 16(a) because violent physical force transcending mere "touching" was not an element of the crime. It added that nothing in the conviction record called for overturning the IJ's decision. The BIA dismissed the DHS appeal and affirmed the IJ's termination of the case. 

Congratulations to **Eric Singer**, of Rockville, MD, for helping Mr. F-L- terminate his removal proceedings. The BIA dismissed the Government's appeal after finding that the IJ was correct in noting that respondent's 2004 California convictions could not be used as the sole factual basis for his more recent removal proceedings. Both convictions fell within the scope of a prior grant of cancellation of removal. The BIA cautioned that it did not want to create an "incentive...for the Government to withhold otherwise valid charges in order to exploit the fact that cancellation of removal can only be granted to an alien once." 

## BIA Upholds Cancellation of Removal Grants

CLINIC commends **Nadia Zakir**, of Washington, DC, for the favorable outcome at the BIA through her representation of Mr. M-. Mr. M- had appealed the IJ's decision to deny his application for cancellation of removal under INA § 240A(b) for failure to demonstrate good moral character. The BIA sustained the appeal and vacated the cancellation of removal denial. It noted that the IJ erred in finding that Mr. M- failed to demonstrate good moral character.

CLINIC congratulates **Michael Lichtenstein**, of **Shulman, Rogers, Gandal, Pordy & Ecker, P.A.**, who represented Mr. L- and Mr. C-V- before the BIA. His assistance resulted in an affirmation of the IJs' grants of cancellation of removal for the two lawful permanent residents. In these two decisions, the BIA noted that the IJ properly weighed Mr L-'s and Mr. C-V-'s negative and positive equities, and did not err in finding that Mr L- was "credible," "contrite," "sincere," and "remorseful." The BIA dismissed both Government appeals. [📄](#)

CLINIC also recognizes **George Washington University Law School** student attorney **Karlie Dunsky**, under the supervision of Professor **Elizabeth Young**, who represented Mr. B- before the BIA. The GWU Law School clinic secured a dismissal of the Government's appeal, following the IJ's grant of cancellation of removal. The BIA noted that the IJ did not err in finding that Mr. B-'s work history, family support, and credible testimony outweighed his struggles with substance abuse. The BIA dismissed the appeal. [📄](#)

Congratulations to **Stuart Goldberg**, of the **Law Offices of Jon E. Jessen, LLC**, who represented Mr. N-C- following a DHS appeal to the BIA. The BIA found that Mr. N-C- met his burden of establishing that he warranted cancellation of removal as a matter of discretion. The BIA found "substantial" positive equities in the respondent's case, including his arrival to the United States as a teenager, his steady work history, community service, and desire to rehabilitate. The BIA dismissed the appeal. [📄](#)

Congratulations to **Paul Orzea**, of **Dechert LLP**, for his representation of Mr. D- before the BIA. The BIA affirmed the IJ's grant of cancellation of removal. The BIA noted that the social and humane considerations presented on Mr. D-'s behalf, his family ties, and his employment history outweighed his criminal record. It noted that the most significant equity was his six-year-old U.S. citizen son and the hardship he would suffer as a result of his father's 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 law students **Rosa Gomez**, **Samantha Thomas**, **Sean Tran**, **Cameron Wilson**, **Brian Trelease**, and **Kimberly Bowers**, who represented Mr. G- and Mr. B- before the BIA. The Clinic's dedication to these cases secured dismissals of the Government's appeals, following the IJs' grants of cancellation of removal. The BIA found that DHS failed to show that Mr. G- committed an aggravated felony or that the IJ improperly weighed Mr. G-'s and Mr. B-'s positive equities in granting discretionary relief. [📄](#)



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## Screeners Needed!

The BIA Pro Bono Project is seeking experienced immigration attorneys willing to screen potential cases for the BIA Project. Screeners should:

- Be licensed attorneys with substantial immigration law experience in all forms of relief from removal (asylum, withholding, CAT, cancellation of removal, criminal waivers, etc.).
- Have significant experience in BIA practice.
- Have experience working on immigration cases with criminal issues.
- Be available to visit the BIA once every 8 to 10 weeks to screen cases. Cases are screened on Fridays or Mondays. Screeners should be prepared to spend one half day at the BIA when they are scheduled to screen.
- Commit to volunteering with BIA Project for a minimum of one year.

An existing screener will train new screeners in how to screen files and use the BIA Project computer program to create case summaries. Screeners will sign a non-disclosure agreement with the Executive Office for Immigration Review (EOIR), agreeing to uphold the confidentiality of the case files and transcripts screened at the BIA.

Interested immigration attorneys should contact: Ann Atalla, the BIA Pro Bono Project Attorney at CLINIC, at [aatalla@cliniclegal.org](mailto:aatalla@cliniclegal.org) or (202) 756-5537.

## 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

**Melanie Nezer** – Hebrew Immigrant Aid Society

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

**Nancy Jane Shestack, Esq.**

**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.