

## BIA Pro Bono Project Update

### *Leocal v. Ashcroft*: BIA Project Case Wins in U.S. Supreme Court!

Josue Leocal had resided lawfully in the United States for 20 years, mostly as a lawful permanent resident, when he received a conviction for driving under the influence of alcohol (DUI). As a result, Mr. Leocal was placed in removal proceedings. An Immigration Judge found that his conviction constituted a crime of violence and ordered him removed from the United States as an aggravated felon. Faced with the prospect of being permanently separated from his family, which included 4 U.S. citizen children, Mr. Leocal filed an appeal to the BIA and his case ultimately became part of the BIA Pro Bono Project.

Through the BIA Project, Leocal's case was matched with a team of pro bono attorneys at the law firm of King & Spalding LLP, which represented him before the BIA, the Eleventh Circuit Court of Appeals, and ultimately the U.S. Supreme Court. On November 9, 2004, the U.S. Supreme Court issued a unanimous decision in *Leocal v. Ashcroft*, finding that DUI convictions under statutes with an intent level of negligence or less are not crimes of violence, and therefore not aggravated felonies. CLINIC congratulates King & Spalding LLP on their tremendous victory! King & Spalding also worked

### BIA Grants Asylum to National of Sudan!!!

Mr. A, a national of Sudan, fled his homeland after he had been arrested and tortured for his involvement in a democratic party opposed to the Sudanese government. After several detentions at the hands of military officials, Mr. A fled to the United States, where his sister, an asylee, and brother, a lawful permanent resident resided. Mr. A appeared pro se before the Immigration Judge, who denied his asylum request, finding that (1) Mr. A had not suffered past persecution (2) that he was not credible because his written asylum application and oral testimony differed (3) that he failed to corroborate his claim through testimony or affidavits of his siblings, (4) that his sole fear of returning to Sudan revolved around forced military conscription, (5) and that he did not merit a favorable exercise of discretion due to his manner of entry into the United States (by


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tirelessly to facilitate Mr. Leocal's return to the United States early this year. On May 13<sup>th</sup>, CLINIC presented King & Spalding with its annual pro bono award at its convening in Portland, Oregon. ☐

*"Considering the complexity of immigration law, the law's severe penalties, and the fact that most immigrants lack the money to hire attorneys, anyone who is at risk of being removed from the U.S. should be able to secure legal representation. The Supreme Court's 9 – 0 ruling in favor of a man who would have been otherwise separated from his family clearly demonstrates that the system needs to take into account the potentially tragic consequences of denying immigrants legal representation."*

*--Don Kerwin, CLINIC's Executive Director*


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foot from Canada). The Board disagreed with the IJ on all of these points finding that (1) Mr. A established that he had suffered past persecution (2) his oral testimony was not inconsistent with his written application but merely augmented it, (3) that he informed the IJ that his sister was willing to travel across the United States to testify at his hearing and that another sibling residing in Canada was trying to find out how he could travel to the United States to testify on his behalf, (4) that while Mr. A may have feared military conscription, it was his political activities that made him a government target, and (5) that the IJ placed inordinate weight on Mr. A's manner of entry. The Board found that it could not justify the IJ's denial of asylum, and sustained Mr. A's appeal, granting asylum. 

***Congratulations to Anna Pohl, an attorney at Mehri & Skalet, PLLC in Washington, D.C., and to Emily Bradford, a 3L at George Washington University Law School who represented Mr. A before the BIA!!***

## BIA Upholds IJ Grant of CAT Protection to National of Colombia

Steve Yale-Loehr and two students from the Cornell Law School Asylum/CAT Appellate Clinic, Andowah Newton and Dorman Tong, represented Mr. S before the Board of Immigration Appeals. Mr. S, a national of Colombia, has resided in the United States since he was 4 years old. Due to a conviction for robbery, he was charged with removability as an aggravated felon. However, due to his father's work as an informant for various U.S. government agencies since the early 1970's, the IJ granted Mr. S deferral of removal under the Convention Against Torture (CAT). The DHS appealed, arguing that Mr. S failed to show that it would be more likely than not that he would be tortured in Colombia and that even if tortured upon return to Colombia it would not be with the acquiescence of the Colombian government. DHS also argued that Mr. S was basing his claim on facts that applied to his father and not to him. On appeal,

the students successfully argued that Mr. S was likely to be tortured in Colombia because the drug cartels and paramilitary groups his father had worked against would torture him for information regarding his father's work, and for retaliation. Additionally, the students argued that Mr. S would be tortured with the acquiescence of the Colombian government because there were ties between the Colombian government's security forces, the drug cartels and paramilitary groups, and that these ties demonstrated the government's awareness of torture. They argued that by not punishing members of paramilitary groups and security officers who commit torture, the Colombian government breached its legal responsibility to intervene to prevent torture. Due to their great work, the DHS appeal was dismissed. The students also successfully advocated for Mr. S' release prior to the issuance of the BIA decision. 

CLINIC applauds the excellent work and advocacy of Cornell Law School's Asylum and Convention Against Torture Appellate Clinic!!! During the 2005 Spring Semester, the clinic accepted three cases from the BIA Project. Started in 2003, through the clinic, teams of two students write appellate briefs (and where appropriate, motions to remand or reconsider) to the BIA on behalf of immigrant clients who have petitioned to remain in the United States because they fear persecution or face torture in their home countries.

According to Estelle McKee, one of the clinical instructors, "There is a good chance we would not be able to continue the clinic without the BIA Project to rely on for cases. The BIA Project is perfect for this, because attorneys/experts have already reviewed the files and determined that good issues exist, and we receive case descriptions that allow us to determine which cases would be the best pedagogically."

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

## DOJ Study Highlights BIA Project's Effectiveness!!!!

The Department of Justice recently issued an evaluation of the BIA Pro Bono Project. The study concluded that the BIA Project has been effective and successful in its goal to seek pro bono legal counsel for immigrants facing deportation, and that immigrants who had been provided representation through the program were up to four times more likely to win a favorable decision before the Board than those without legal counsel. The study is available at <http://www.usdoj.gov/eoir/probono/probonostats.htm>.

## BIA Upholds IJ Grant of Asylum to National of Albania!!

Jonathan Guy of Swidler Berlin LLP represented Mr. G before the BIA. The Immigration Judge found that Mr. G had a well-founded fear of persecution in Albania and granted him asylum. In Albania, Mr. G and his family shared a long and active history of demonstrating against the Communist and Socialist Parties in Albania, and faced ongoing persecution as a result of their activities. As a result of their activities, Mr. G, his brother and father endured many beatings, as well as constant threats and intimidation by Socialist Party agents. DHS filed an appeal of the IJ's decision arguing that the IJ placed undue weight on the documents presented by Mr. G in support of his claim, that the IJ failed to consider as a weighty negative factor Mr. G's inability to produce his passport, that the IJ erred in finding Mr. G credible, and that Mr. G's true motivation for coming to the United States was to evade military service. Thanks to Jonathan's great work, the BIA dismissed the DHS appeal and Mr. G is an asylee! ☺

*"I truly believe that God bless me through your organization. I am very happy with the final decision [of] the BIA. Thanks to you people who really care about others. God bless you with more wisdom, knowledge, and a long life."*

*--Detainee Represented through the BIA Project*

## BIA Upholds Multiple IJ Decisions to Grant LPR Cancellation!!

Charley Morgan of Inman & Associates represented Mr. M, an LPR to whom the Immigration Judge had granted cancellation of removal. The DHS appealed the IJ decision, arguing that Mr. M's "ordinary" equities did not outweigh the negative factors involved in the case. Mr. M, 28 years of age, has resided in the United States since he was 3 weeks old. He supports a U.S. citizen son as well as his ailing mother, who resides lawfully in the United States. Mr. M has several siblings who also reside in the United States and who testified on his behalf at the Immigration Court hearing. He has a strong employment history and has always filed his taxes. As negative factors the DHS highlighted a three-week suspension from high school, 2 domestic battery charges and one conviction for firearms possession. During his Immigration Court hearing Mr. M explained the circumstances behind these convictions, for which he received minimal or no jail time. He also demonstrated that he had successfully completed an anger management course, leaving the IJ to find that he had demonstrated rehabilitation and that his positive equities greatly outweighed any negative factors. Due to Charley's great appellate work, the BIA dismissed the DHS appeal and Mr. M retains his LPR status.

Working with a team of law students from the George Washington University Law School, Anna Pohl of Mehri & Skalet, PLLC represented an LPR from Mexico who was granted LPR cancellation of removal by the Immigration Judge. The DHS appealed the IJ's decision, arguing that because of his criminal convictions for domestic violence (which did not involve physical violence) and prostitution; he did not merit a favorable exercise of discretion. On appeal Ms. Pohl and her team argued that he did merit a favorable exercise of discretion, highlighting his lengthy residence in the United States, consistent work history, and strong support from his U.S. citizen children and ex-wife. Thanks to their great work, the BIA dismissed the DHS appeal. Congratulations and many thanks to Emily Bradford, Nick Suplina and Annie Champion, 3L's at the George Washington University Law School, and to Mona Raphael of Meri & Skalet, for their work on this case! ☺

## BIA Upholds IJ Decision to Terminate Proceedings!!

Students at Ave Maria School of Law in Ann Arbor, MI represented Mr. R, a national of Mexico, on appeal before the BIA. Mr. R was placed in removal proceedings after he filed an application to adjust status to lawful permanent resident based on an approved I-130 immigrant visa petition. The I-130 petition had been filed by Mr. R's U.S. citizen brother, but unbeknownst to Mr. R, an immigrant visa number was not yet available at the time he applied for adjustment of status. As a result, the application was denied and Mr. R was placed in removal proceedings. However, in 2001, while the adjustment application was pending, Mr. R returned to Mexico, where he continues to reside. Mr. R's sister-in-law, who resides in a border town in Texas, received his notice to appear at Immigration Court, and took it to Mr. R in Mexico. Mr. R wrote a letter to the Immigration Court informing them that he was in Mexico and could not attend the hearing. The Immigration Judge (IJ) terminated proceedings based upon this evidence. The DHS appealed the Immigration Judge's decision to terminate the case arguing that the letter was insufficient evidence to prove that R had departed the United States and that the IJ should have ordered Mr. R removed in absentia. Thanks to the great work of students at Ave Maria School of Law's Immigration Clinic, the BIA affirmed the IJ's decision and Mr. R will be able to consular process when an immigrant visa becomes available without having to worry about having an in absentia removal order on his record. Congratulations to Clinical instructor Bridgette Carr and her students! ☺

## Board Terminates Proceedings against LPR Finding No Crime of Violence

David Rugendorf of Mitchell Silberberg & Knupp LLP represented Mr. S, an LPR who had been granted cancellation by the Immigration Judge (IJ). The DHS appealed, arguing that the IJ abused his discretion in granting Mr. S cancellation of removal. Mr. S had a conviction for threatening or intimidating under an Arizona domestic violence statute and was charged as removable for having a conviction for a crime of domestic violence. On appeal, David argued that as per the U.S. Supreme Court's decision in *Leocal v. Ashcroft*, Mr. S' conviction was not a crime of violence and therefore was not a crime of domestic violence. As a result of David's great work, the Board dismissed the DHS appeal and terminated proceedings, leaving Mr. S' LPR status intact. ☺

## 212(c) Granted to BIA Project Client!!

Vikram Badrinath represented Mr. H, a lawful permanent resident (LPR) from Jamaica before the BIA. The Immigration Judge (IJ) had granted Mr. H 212(c) relief, but the DHS appealed, arguing that Mr. H's positive equities did not outweigh his negative equities. Ultimately, the BIA found that the IJ had failed to enter a finding of removability and to designate a country of removal and therefore remanded to the Immigration Court. Alison Pennington of the Pennsylvania Immigrant Resource Center (PIRC) represented Mr. H before the IJ, who again granted 212(c) relief. This time, the DHS did not appeal the 212(c) grant, and Mr. H was released. ☺

*If your BIA Project case was not highlighted in this newsletter, do not despair! We have recently received a slew of fantastic decisions and are already working on another newsletter!!!!*

**Please share information about the BIA Project with colleagues who might be interested in participating. We need more volunteers to take on cases! Volunteers should contact Molly McKenna at CLINIC at (202) 635-2567 or [mmckenna@cliniclegal.org](mailto:mmckenna@cliniclegal.org).**