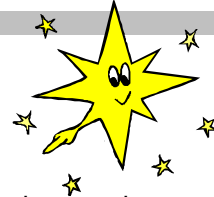


November 2003

Board of Immigration Appeals (BIA) Pro Bono Project Update

-- BIA Project Attorneys Assist Over 250
Immigrants Since the Start of the Project! --

BIA Project Superstars!



The BIA Project extends a special thank you to all the volunteers who have taken a case in 2003. This project would not be possible without such an excellent group of volunteers. We appreciate your dedication to this Project and the time and effort you spend defending the rights of immigrants. We would also like to give special recognition to the law firms, law schools and private practitioners that have taken multiple cases this year.

- THANK YOU -

Law firms: **Swidler Berlin Shereff Friedman (9) & Holland & Knight (4)**

Law Schools: **Cornell Law School (3) & Georgetown Law School (2)**

Private Practitioners: **Vikram Badrinath (3) & Byron Mobley (3)**

Also - the great work of: **Several Law Students Supervised by Tom Hutchins at the Immigrant and Refugee Appellate Center, LLC (6)**

Update! BIA Project Expands: In May of 2003, the BIA Project expanded its capacity to serve non-detained immigrants. The BIA Project recognized the same absence of affordable, quality legal services for non-detained immigrants that the Project seeks to address for detained immigrants. Due in part to increased attorney participation, the Project now screens and matches cases for non-detained immigrants.

The BIA 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.

Mentors Needed!!!

CLINIC and the BIA Project's NGO Partners (the American Immigration Law Foundation, The National Immigration Project of the National Lawyers Guild and the Capital Area Immigrant Rights Coalition) are working hard to engage more private law firms in the Project, many of whom do not necessarily specialize in immigration. In order to involve this population, the Project has offered trainings to firms who promise to take on Project cases. The Project needs experienced BIA practitioners to serve as mentors to these attorneys. If you are able to serve as a mentor please contact Molly McKenna at CLINIC at mmckenna@cliniclegal.org or (202) 635-2567.

Carrie Fredericks, a private practitioner in Sausalito, CA represented a lawful permanent resident from Haiti who sought protection under the Convention Against Torture (CAT). Carrie's representation of her client did not end when she received an adverse BIA decision. She pursued her client's CAT claim in Federal Court, and after his removal from the United States, helped to facilitate his release from a Haitian prison. Her zealous efforts to protect his life and dignity both in the United States and in Haiti are especially notable.

In Immigration Court, Mr. P- had testified that his father was imprisoned in Haiti for having worked for the former Duvalier administration. Mr. P- feared that upon removal to Haiti, his father's political opinion would be imputed to him and result in his own imprisonment. Mr. P- also feared that he would be imprisoned as a Haitian deportee with a criminal conviction from the United States, and that he would not receive adequate medical care in prison (Mr. P- is an insulin-dependent diabetic). The Immigration Judge denied Mr. P-'s CAT claim and his case became part of the BIA Project. Ultimately, the BIA adopted

the decision of the Immigration Judge and dismissed his appeal.

Carrie filed a petition for a writ of habeas corpus and a stay of removal in the Northern District of Florida. As Mr. P- was sitting on a plane bound for Haiti, the District Court granted a temporary 10-day stay, and Mr. P- was removed from the flight just moments before it departed for Haiti.

Ultimately, the District Court found that it had jurisdiction to review the habeas petition, but denied it finding that the substandard medical care that Mr. P- would endure in Haitian prisons did not constitute "torture" under the CAT as it has been implemented in the United States. At that time, the District Court lifted his stay, and shortly thereafter, Mr. P- was removed to Haiti.

Despite her client's removal from the United States, Carrie did not stop pursuing his best interests. Fearing that her client would die in a Haitian prison, she contacted a priest affiliated with a non-profit organization called Caribbean U-Turn.

Caribbean U-Turn coordinates an addiction prevention and education project for at-risk Haitian youth in the United States and recently established a transitional home in Haiti to work with Haitian youth deported from the United States. Caribbean U-Turn director, Reverend Mombleur, frequently travels to Haiti to assist deported Haitians find training and work, employing some in the transitional home that supplies shelter and food services.

After being alerted to Mr. P-'s situation, Reverend Mombleur's staff in Haiti spent one week contacting local police, jail officials, and government agencies trying to locate him. After finding Mr. P- in a Haitian

prison, they contacted members of his family in Haiti and together, after two and one-half weeks, successfully convinced the Ministry of the Interior to release Mr. P- due to his medical condition and low security threat. Caribbean U-Turn and his family members signed papers stating their willingness to support him once released. While Mr. P- was in prison, Caribbean U-Turn and his family supplied food for meals and a life-saving supply of insulin. With Carrie's continued support, Reverend Mombleur's group has also been able to provide him with a limited insulin supply that he would otherwise not have access to. Mr. P- currently is living with his family in the countryside, grateful for the assistance and care of Carrie Fredericks and Caribbean U-Turn.

District Court Permanently Enjoins DHS from Removing Colombian National!

Steven Goldblatt and several students at Georgetown University Law Center's Appellate Litigation Clinic worked tirelessly to prevent the removal of a Colombian asylum-seeker from the United States. While in the United States, Mr. X provided substantial assistance to the U.S. government and testified against two Colombian drug traffickers, which according to the U.S. Attorney prosecuting the drug traffickers, was essential to their convictions. An Immigration Judge granted Mr. X withholding of removal and the government appealed. The BIA sustained the government's appeal and entered a removal order. During these proceedings Mr. X's sister and brother were murdered in separate execution-style incidents in Colombia. GULC filed a habeas petition on behalf of Mr. X in the Middle District of Pennsylvania. The habeas was granted, and the judge permanently enjoined then-INS from removing Mr. X to Colombia.

In his decision, the judge rejected a CAT argument based on the theory that the drug cartel in Colombia responsible for the deaths of Mr. X's siblings functions as the government in the part of Colombia where Mr. X and his family lived. However, the judge accepted the theory that substantive due process bars the government from placing Mr. X in a state-created danger by deporting him to Colombia. The government requested that the judge's order be amended, arguing that Mr. X's claim had no merit and that the injunctive relief was excessive as to time and geographic scope. The court held that it would not alter the order, finding no clear error of law or manifest injustice in the relief that was granted. The court further found that because the government failed to oppose the relief that the court granted while the petition was being considered, they could not do so now. The clinical instructors and students at GULC went above and beyond their commitment under the BIA Project, and their work and perseverance is extremely noteworthy!

BIA Upholds Several Withholding and CAT Grants!!!

Michael Lichtenstein of Swidler Berlin Shereff Friedman, LLP represented a national of the Dominican Republic who had been granted protection under the CAT by an Immigration Judge. The IJ found that the respondent, who had been a member of a group critical of the government's policies called the April 24th Movement, and who had been arrested, detained and tortured twice prior to fleeing the Dominican Republic in 1990, merited CAT protection. The IJ found that despite his lack of significant documentary evidence, his written application and oral testimony were sufficiently detailed, and consistent with government reports. The DHS appealed, arguing that the respondent was not credible. The BIA upheld the IJ's decision and dismissed the DHS appeal.

Under the supervision of **Steven Yale-Loehr** and **Estelle McKee**, students at **Cornell law school** represented a Libyan LPR before the BIA. In this case, the IJ had granted the respondent protection under the Convention Against Torture, finding that he would be imprisoned and tortured in Libya because he deserted the Libyan Army and had a criminal conviction in the United States. The DHS appealed, and the BIA dismissed the DHS appeal.

Valentine Brown, a private practitioner in Woodbury, New Jersey represented a national of Nicaragua who had been involved in special forces services for the Sandinistas. After witnessing murders committed by the Sandinistas, the respondent began to voice complaints. In retaliation, Sandinistas killed the respondent's brother, tortured his father, and detained and tortured the respondent. After escaping from detention, the

respondent was threatened at his home and was repeatedly accused of being anti-Sandinista. The DHS argued that the respondent was not credible and that he would not be tortured if returned to Nicaragua. The BIA disagreed with the DHS's contentions and upheld the IJ's grant of withholding of removal and protection under the CAT.

After **David Chapman of Fargo, ND** filed a brief to the BIA on behalf of a national of Jamaica who had been granted withholding of removal by the IJ, the DHS withdrew its appeal. In Jamaica, the respondent was politically active in the Jamaican Labor Party. Members of the opposition People's National Party killed his brother, and brutally attacked the respondent with a machete. After spending two weeks in the hospital recovering from the attack, the respondent went into hiding for eight years before he was able to flee to the United States. In this case, a briefing schedule was set in May 2002. David filed his brief in August 2002. Remarkably, not until April of 2003, did the DHS withdraw its appeal and the BIA issue an order. The DHS did not provide any reasons for its withdrawal.

Candida Quinn of Helena Montana represented a national of Haiti who had been granted CAT relief by the IJ. The IJ found that the respondent would be imprisoned upon his removal from the United States as a criminal deportee, and would have no access to medication that he relied upon to control his schizophrenia. The DHS appealed the IJ decision, arguing that the IJ failed to adequately distinguish the respondent's case from

Matter of J-E-, a precedent BIA decision that found that the indefinite detention of criminal deportees by Haitian authorities did not constitute torture. The BIA found that poor conditions in Haitian prisons, including a lack of medical care, did not, by themselves rise to the level of torture. Instead of entering a removal order, the BIA remanded the case to the IJ, with instructions for the IJ to develop a more complete record for the IJ to determine how Haitian officials might respond to a person with the respondent's medical condition. **Ian Bratlie, an attorney with the Pennsylvania Immigrant Resource Center (PIRC)** represented the respondent before the IJ. Thanks to Ian's great preparation, the IJ granted CAT again. Stayed tuned though, the DHS has filed another appeal, which is currently pending.

LPR Cancellation Grant Upheld by BIA!!

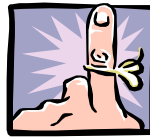
Wendy McGraw of Swidler Berlin Shereff Friedman, LLP represented an LPR from Mexico who had been granted cancellation of removal by the IJ. The DHS appealed the IJ's decision, arguing that in granting cancellation, the IJ focused overwhelmingly on the potential hardship to the respondent's children, and not on her fraudulent conduct (alien smuggling and shoplifting). The BIA dismissed the DHS appeal and upheld the cancellation grant!

IJ Decision to Terminate Proceedings Upheld by BIA!

Daniel Poteet, a law student at the University of Iowa College of Law, successfully defended before the Board an IJ's decision to terminate removal proceedings against a lawful permanent resident. The IJ held that the respondent had received an accessory conviction in the context of harboring which did not lead to removability. DHS argued on appeal that because the respondent's offense level was the same offense level that one could receive for harboring aliens, the respondent must have actually been convicted of harboring aliens, and therefore he was removable as an aggravated felon. On appeal, Daniel argued that the sentencing guidelines that the DHS had appended to its brief showed that an accessory's offense level was six-levels lower than that of the accessorized offense. The guidelines also showed that an offense level of 18 was possible for harboring aliens, which minus six for an accessory offense, would have been 12. Daniel also relied upon the language of the criminal charges and convictions to clarify that the underlying offense was not alien harboring. The BIA agreed with Daniel's arguments and dismissed the DHS appeal. Daniel handled the case as a summer intern at the **Immigrant and Refugee Appellate Center**, working under the supervision of **Thomas Hutchins, Esq.**

DHS Withdraws Appeal after Pro Bono Counsel Enter appearance!

An IJ granted asylum to a transgender individual from Mexico, finding that gay men and transsexuals are a particular social group worthy of protection under the refugee definition. The government filed a notice of appeal in this case, arguing that the respondent could have safely relocated within Mexico. The case became part of the BIA Project and attorneys from **Arnold & Porter, John Batten, Courtney Alban, and Michael Lee** prepared to represent the respondent before the BIA. Shortly after they entered a notice of appearance before the BIA, the DHS withdrew their appeal.



If you have received a decision on a BIA Project case and have not forwarded it to CLINIC, please do! Also, 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.

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.

