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CLINIC Awards Law School Clinic with Annual Pro Bono Award at 2010 Convening



This year, CLINIC presented its annual pro bono award to the Clinical Legal Studies Program at Texas Southern University, Thurgood Marshall School of Law for their longstanding support of the Board of Immigration Appeals (or BIA) Pro Bono Project. Professor Maurice Hew, Jr. received the award on the clinic's behalf at an awards banquet at the June 2010 Annual Convening in New Orleans, LA. Dean Fernando Colon-Navarro, also from Thurgood Marshall School of Law, joined professor Hew at the Convening.

From left, CLINIC's Executive Director, Maria M. Odom; BIA Pro Bono Project Attorney, Ann Atalla; and Pro Bono Award recipient, Professor Maurice Hew, Jr.

Under the guidance of Professor Hew, the clinic has volunteered to take 12 cases through the Project since 2007. The student attorneys won each of their four most recent cases. You can read more about these victories on page 5.

The work of Texas Southern University represents the valued contribution law school clinics across the country make to the BIA Pro Bono Project. Student attorneys and professors from law school clinics make up a large proportion of CLINIC's BIA Pro Bono Project volunteers. We have found that student attorneys and their supervising professors do an outstanding job on their cases, with unparalleled dedication, energy, and skill. Over the past decade, CLINIC has worked with approximately 25 law school clinics, all of which have been exceptional.

Case Updates

Asylum Victory for Gambian Political Activist

Congratulations to **Sarah Mendola** from **Dechert, LLP** in New York, NY for her victory in an asylum case involving a Gambian man who was a political activist in his home country and an immigration attorney in the United States. After Mr. C- left Gambia, his father, who had been a political candidate, was arrested. The IJ found that Mr. C- had a well-founded fear of future persecution based on his actual and imputed political opinion, stemming from his advocacy against actions by the Gambian government. DHS appealed, and Ms. Mendola volunteered to represent Mr. C- before the BIA. The BIA dismissed the DHS appeal, finding that Mr. C- met his burden of proof.

Although the BIA did not rule on this issue, Mr. C- had noted that he feared his four-year-old U.S. citizen daughter would suffer female genital mutilation if she were to return to Gambia. Ms. Mendola's exceptional work on this case had positive implications not just for Mr. C-, but also for his immediate family. His daughter will now remain in the United States with her parents due to her father's successful asylum case.

Cornell Law School Helps Procure Relief for Nigerian Man

CLINIC commends **Professor Stephen W. Yale-Loehr** and student attorneys **Genay Mills** and **Justin Yi** at the Cornell University Law School Immigration Appellate Law and Advocacy Clinic in Ithaca, NY for their success in the challenging case of Mr. M-. Mr. M- is a Nigerian man who was shot in the leg during a fuel riot on his way to school. After the attack, he was hospitalized for six months, never returned to school, and only slowly recovered the ability to walk again. The IJ granted withholding of removal under INA § 241(b)(3), after finding that Mr. M- suffered past persecution on account of religion, based on his credible testimony and his father's prominent position in the Muslim community. DHS appealed, and Cornell Law School volunteered to represent Mr. M- on the appeal before the BIA. Thanks to the clinic's outstanding brief, the BIA upheld the IJ's finding that the client's religion was "one central reason" why he suffered harm during the fuel riot. The BIA remanded the case to the immigration court to decide whether Mr. M- could reasonably relocate within Nigeria. The **Pennsylvania Immigrant Resource Center** represented Mr. M- on remand. The IJ ultimately granted relief.

BIA Grants Deferral of Removal to Cuban Man

Congratulations to **Professor Stephen W. Yale-Loehr** and student attorneys **Michael Page** and **Ghazal Tajmiri** at the Cornell University Law School Immigration Appellate Law and Advocacy Clinic in Ithaca, NY for their victory before the BIA in a deferral of removal case involving a Cuban dissident. Mr. L-G- was arrested in 1968, due to his father's political affiliations, and imprisoned for 21 months. The Cuban regime subjected him to harsh conditions and a rehabilitation process that included brainwashing sessions. Mr. L-G- was active in politics after his release from prison, including protests against prison sentences for political prisoners and restrictions on journalistic freedom. Before he fled to the United States in 1993, he received a warning from a military captain that he should apply for refugee status or he would be taken into custody. Due to criminal convictions, Mr. L-G- was put into removal proceedings. The IJ found that in light of his prior imprisonment, his father's links to the former regime, and threats of detention in 1993, Mr. L-G- would be taken into custody and more likely than not tortured if he returned to Cuba. DHS appealed, and the Immigration Appellate Law and Advocacy Clinic represented Mr. L-G- before the BIA. The clinic was successful in convincing the BIA to dismiss the DHS appeal, after finding "no reason to disturb the [IJ]'s finding that Mr. L-G- was eligible for relief."

BIA Grants Convention Against Torture (“CAT”) Relief for Vanderbilt University Client

CLINIC recognizes **Professor Alistair Newbern** of the **Vanderbilt University Law School Appellate Litigation Clinic** in Nashville, TN, along with student attorneys **Erin Carter**, **Benjamin Ford**, and **Tory Lewis**, for their outstanding work on Mr. A-P-’s case. The Vanderbilt Appellate Litigation Clinic’s close attention to the facts in Mr. A-P-’s case, the country conditions in El Salvador, and the prevailing case law played a key role in their success in this challenging appeal.

In 2008, the IJ granted Mr. A-P-, a citizen of El Salvador, withholding of removal under the Convention Against Torture (“CAT”) after finding that the Salvadoran National Civilian Police Force (“PNC”) had tortured him due to his prior gang affiliation. DHS appealed the decision.

In its decision, the BIA relied heavily on the information in the Vanderbilt brief and ruled in Mr. A-P-’s favor. The BIA found that the IJ made no clear error in finding Mr. A-P- credible, and that the PNC inflicted serious bodily harm on him “due, at least in part, to his perceived status as a gang member.” The BIA indicated that the record established that Salvadoran authorities and the PNC more likely than not would be aware of Mr. A-P-’s presence in the country and his prior gang affiliation; that the officers involved in his attack likely still work for the PNC and have a motive for attacking him in the future; that the threat is nationwide; and that “the Salvadoran government has been unable to adequately address human rights abuses and other crimes committed by the PNC.”

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.
- 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>

Cuban Man Granted Deferral of Removal Under CAT

Congratulations to **Ellen S. Sheedy** from **Perkins Coie, LLP** in Portland, OR for securing Convention Against Torture (CAT) relief for her client. Mr. B -, a 45-year old Cuban citizen, had been an anti-Castro dissident who was imprisoned and tortured in Cuba in 1983. He was detained seven more times for several hours at a time and subjected to psychological abuse. Due to two criminal convictions in the United States, his only option for relief was deferral of removal under CAT. The IJ granted CAT deferral, finding it more likely than not that Mr. B- would be tortured if removed to Cuba. DHS appealed, and Ms. Sheedy volunteered to represent Mr. B - before the BIA. The BIA affirmed the IJ’s decision, finding that the torture Mr. B- endured, the continuing threats directed at him by Cuban government officials, and country reports showing “serious and flagrant violations of human rights in Cuba” helped Mr. B- meet his burden of proof for relief.

Termination Order Upheld for Nicaraguan Man

CLINIC commends **Sui Chung** of the **Immigration Law Litigation Group** in Miami, FL, for her outstanding brief before the BIA that resulted in termination of removal proceedings for a Nicaraguan man, Mr. G-. The IJ had found that Mr. G- was not deportable for committing two crimes of moral turpitude (CIMTs). DHS appealed, and the BIA dismissed the appeal. Specifically, the BIA found that Mr. G-'s battery conviction was not a CIMT because it did not involve tangible harm to a police officer, and that one of his theft offenses did not rise to the level of moral turpitude because it did not involve a permanent taking. The BIA concluded that although the offenses resulted in punishment through the criminal court system, they should not warrant deportation.

BIA Overturns IJ's Denial of Cancellation of Removal for Lawful Permanent Resident

CLINIC recognizes **Abiman Rajadurai** of **Perkins Coie Brown & Bain, P.A.** in Phoenix, AZ for his representation of Mr. E- before the BIA. Mr. E- is a lawful permanent resident of the United States who moved to this country from Haiti when he was five years old. The IJ denied cancellation of removal, and Mr. E- appealed. With the help of Mr. Rajadurai, Mr. E- argued that the IJ erred in finding that his sentence of house arrest was "imprisonment" which would have made him an aggravated felon. The BIA agreed and remanded the case to the IJ. Pro bono attorneys from the **Florida Immigrant Advocacy Center** represented Mr. E- before the IJ, who ultimately granted relief.

INA § 209(c) Relief Granted to Somalian Refugee

Congratulations to **Kristin A. Baughman** of **Perkins Coie Brown & Bain, P.A.** in Phoenix, AZ for her impressive win before the BIA. Her client, Mr. M-, was a Somalian refugee who had tried to adjust status to that of a lawful permanent resident under INA § 209(c). Due to misdemeanor criminal convictions, he had to seek a waiver of inadmissibility under INA § 209(c). The IJ had found that he deserved this waiver, since his convictions were outweighed by the hardships that would result if Mr. M- were removed to Somalia. DHS appealed, and Ms. Baughman represented Mr. M- before the BIA. The BIA upheld the IJ's decision on humanitarian grounds, due to the "volatile country conditions" in Somalia and to ensure family unity.

BIA Affirms Termination of Removal Proceedings

Congratulations to **Antonio Bugge**, of Athens, GA, and **Sui Chung** of the **Immigration Law and Litigation Group** in Miami, FL, for their victory in the case of Mr. A-P-, a Mexican citizen. Mr. A-P- was admitted to the United States in 1999 as a lawful permanent resident. DHS alleged that he was removable under INA § 237 for possession of a controlled substance, but failed to provide evidence of a conviction. The IJ provided DHS several weeks to submit evidence of the conviction. After DHS failed to meet the deadline and filed a motion to accept a late filing, the IJ terminated proceedings. DHS appealed. In their appellate brief, Mr. Bugge and Ms. Chung argued that the IJ had properly terminated proceedings because DHS failed to meet its burden of proof. The Board agreed, finding that the record contained no evidence in support of removability.

BIA Upholds Cancellation of Removal Grants

Congratulations to **Professor Maurice Hew, Jr.** and student attorney **Margaret Ozel** at the **Texas Southern University Clinical Legal Studies Program** in Houston, TX, for their representation of Ms. D-G-, a Mexican citizen, following a DHS appeal to the BIA. The clinic's exceptional work led the BIA to find that the positive equities in this case outweighed any negative considerations that would warrant removal from the United States. The positive equities included Ms. D-G-'s 15-year residence in the United States and the opportunities for her three children, two of whom suffer from asthma. The BIA found that the IJ's exercise of discretion in granting cancellation of removal was warranted, and dismissed the government's appeal.

CLINIC also recognizes **Professor Hew** and student attorneys **Hana Boston** and **Deola Shoyombo** for their successful representation of Mr. F-M-, for whom the IJ granted cancellation of removal for lawful permanent residents under INA § 240A(a). Mr. F-M-, a Mexican citizen, had been in the United States since he was one year old. The IJ noted that his steady work history, payment of taxes, graduation from high school in this country, and financial support of his ten-year-old daughter outweighed his criminal history. DHS appealed the IJ's decision, and, thanks to **Texas Southern University's** excellent brief, the BIA found insufficient grounds to reverse the judge's opinion.

The **Texas Southern University Clinical Legal Studies Program**, under Professor Hew's guidance, also won an appeal for Mr. F-G-, a Mexican man for whom an IJ granted cancellation of removal for non-lawful permanent residents. Mr. F-G- has lived in the United States since 1988, when he was 18 years old. The couple has three U.S. citizen children, the youngest of whom was born with a hole in his heart and has continuing medical problems. Mr. F-G-'s U.S. citizen wife suffers from diabetes and serious back problems that make it difficult for her to work. Mr. F-G- has a steady job as a truck driver and owns a home with his family. DHS appealed the IJ's decision to grant relief. Student attorneys **Wookyuk Ju** and **Hoan K. Trinh** wrote the appellate brief in this case. Thanks to the clinic's outstanding work, the BIA found no clear error in the IJ's decision and dismissed the DHS appeal.

Professor Hew and student attorneys at **Texas Southern University** also were victorious in the case involving Mr. M-A-, a Mexican citizen and lawful permanent resident of the United States who has lived in this country since 1982. Mr. M-A- has a U.S. citizen wife and three U.S. citizen children. He suffered substantial medical problems after surviving a 40-foot fall while working in 1999. He has undergone a number of operations and requires continuous medical care. The IJ had granted cancellation of removal, which DHS appealed due to Mr. M-A-'s criminal convictions. **Professor Hew** and student attorney **Taura Dailey Spates** represented Mr. M-A- in his appeal before the BIA. After reviewing the clinic's skillfully written brief, DHS ruled in favor of Mr. M-A-, finding that his medical issues and rehabilitation were discretionary factors that outweighed his prior convictions.

CLINIC is grateful to **Michael J. Lichtenstein** of **Shulman, Rogers, Gandal, Pordy & Ecker, P.A.** in Rockville, MD who secured a victory for Mr. T-C- before the BIA. Mr. T-C- is a citizen of Mexico who is in poor health and takes daily medications for diabetes and hypertension. He volunteers at his church and with the elderly in his neighborhood. The IJ granted him cancellation of removal after determining that his extensive and close ties with his family, lengthy residence in the United States, steady work history, and hardship to his family outweighed his criminal record and struggle with substance abuse. The BIA dismissed the DHS appeal, upholding the IJ's determination that Mr. T-C- merited relief.

Mr. Lichtenstein also won a cancellation of removal appeal for Mr. P-M-, a Mexican citizen who has been in the United States since 1989. The IJ granted Mr. P-M- cancellation of removal for non-permanent residents, and DHS appealed. Mr. Lichtenstein, who volunteered to take this case through the BIA Pro Bono Project, argued in his brief that Mr. P-M-'s removal would cause extreme and exceptionally unusual hardship to the man's five-year-old son, who suffers from severe emotional and learning disabilities and has manifested symptoms of autism. The BIA agreed, dismissing the DHS appeal and finding that the IJ's decision was correct.
(Cont. p. 6)

BIA Upholds Cancellation of Removal Grants (Cont.)

CLINIC is also thankful to **Mr. Lichtenstein** for his successful brief in the case of Mr. M-R-, a 52-year old Mexican citizen who has been a lawful permanent resident of the United States since he was 6 days old. Mr. M-R- is a caregiver for his disabled fiancée, has four U.S. citizen children, and has frequently contributed to charities. The IJ granted Mr. M-R-'s application for cancellation of removal for lawful permanent residents, finding that a 2006 conviction did not constitute a theft offense and that the positive equities in his case outweighed any negative considerations. DHS appealed, and Mr. Lichtenstein wrote an appellate brief on Mr. M-R-'s behalf. The BIA dismissed the appeal, finding no clear error in the IJ's factual findings and no ground to reverse the IJ's determination on the merits.

CLINIC recognizes **Professor Janet B. Beck** of the **University of Houston Law Center's Legal Aid Immigration Clinic** in Houston, TX and her student attorneys for their representation of Mr. T-. Mr. T- is a Nicaraguan citizen who lived in the United States since 1990 and has been a lawful permanent resident since 1991. The IJ had granted him cancellation of removal for lawful permanent residents, finding that his 19-year residence in the United States, steady work history, and rehabilitation from substance abuse outweighed his minimal criminal convictions. DHS appealed the decision, and the University of Houston clinic represented Mr. T- on his appeal before the BIA. Thanks to the clinic's exceptional work on this case, the BIA dismissed the appeal, noting that the IJ did not err in his discretionary rulings.

Congratulations to **Professor Elizabeth L. Young** and student attorney **Viet Tran** at the **University of Arkansas School of Law Immigration Clinic** for their victory before the BIA. Their client, Ms. C-, is a 50-year-old grandmother and a citizen of Jamaica. She was granted lawful permanent residence in 1966. Following her criminal convictions in 2007 and 2009, DHS put Ms. C- in removal proceedings. The IJ then granted her application for cancellation of removal for lawful permanent residents, finding significant favorable equities. The positive discretionary factors include the fact that Ms. C- moved to the United States at the age of 8 in 1966, has extended U.S. citizen family members in the United States, and has been receiving disability benefits following a serious car accident. DHS appealed the case, and Ms. C- won before the BIA, thanks to the University of Arkansas clinic's excellent brief.

CLINIC also notes that **University of Arkansas** student attorney **Nathan R. Bogart**, under the guidance of **Professor Young**, was successful in representing Mr. S-, a Mexican citizen. Mr. S- has lived in the United States since 1991 and has five U.S. citizen children. Two of the children are in a remedial program at school. The IJ granted Mr. S-'s application for cancellation of removal for non-lawful permanent residents after finding that the children would suffer extremely unusual economic and other hardship if Mr. S- were removed. DHS appealed, and Mr. Bogart represented Mr. S- on appeal. The BIA ultimately upheld the IJ's findings, resulting in another victory for the University of Arkansas.

CLINIC commends **Professors Janet B. Beck, Geoffrey A. Hoffman**, and their law students from the **University of Houston Law Center's Immigration Clinic** for their successful representation of Mr. O- on appeal before the BIA. Mr. O- is a 53-year-old citizen of Laos who came to the United States in 1979 as a refugee. He became a lawful permanent resident and has three U.S. citizen children. He also has two grandchildren and a sister in the United States. The IJ granted him cancellation of removal for lawful permanent residents, noting that his steady work history, close relationship with and support from his family, and absence of skills that would make him employable in Laos outweighed his criminal history. DHS appealed, and the Immigration Clinic wrote a brief for Mr. O- on appeal. Thanks to the Clinic's excellent work, the BIA dismissed the appeal, finding that the IJ had correctly weighed the discretionary factors in this case. (*Cont. p. 7*)

BIA Upholds Cancellation of Removal Grants (Cont.)

CLINIC is thankful to **Errol Carter** of Kensington, MD for his victory before the BIA in the case of Mr. M-. Mr. M- is a 51-year-old Jamaican citizen who has lived in the United States since 1992 and became a lawful permanent resident in 2004. The IJ granted him cancellation of removal for lawful permanent residents under INA § 240A(a), paying specific attention to his HIV-positive status and U.S. State Department country condition reports noting hardships for HIV-positive Jamaicans. DHS appealed the case, noting that Mr. M-'s criminal convictions should have prevented the IJ from granting relief. On appeal, Mr. Carter argued that the equities in Mr. M-'s case significantly outweighed his criminal record. The BIA agreed and dismissed the DHS appeal.

Congratulations to **Professor David J. Gottlieb** of the **University of Kansas School of Law Immigration/Asylum Law Clinic**, and law students **Benjamin Grother** and **Anne Gepford Smith**, for their victory before the BIA. Their client, Mr. P-, is a Haitian citizen who has been a lawful permanent resident of the United States since 2000. The IJ granted cancellation of removal in this case, find that DHS had not met its burden of proving that he had committed an aggravated felony and did not deserve discretionary relief. DHS appealed, and the University of Kansas clinic represented Mr. P- on appeal. Due to the clinic's well-written brief and dedication to the case, the BIA decided to dismiss the Government's appeal. In its decision, the BIA found that DHS did not provide enough information about Mr. P-'s criminal record to charge him as an aggravated felon. The BIA also did not contest the IJ's findings that Mr. P-'s long residence in the United States, his close family ties to U.S. citizens and lawful permanent residents, and the harsh conditions for criminal deportees in Haiti outweigh the severity of Mr. P-'s criminal history.

CLINIC congratulates **Joshua B. Smith** of **Skadden, Arps, Slate, Meagher & Flom, LLP** for securing relief for Mr. A-T- before the BIA. Mr. A-T- was a Mexican citizen who became a lawful permanent resident of the United States in 1995 when he was 14 years old. He worked in a vineyard, and later as a factory worker, paid his taxes, married, and has a U.S. citizen child. He filed immigrant petitions for his wife and two older children who were born in Mexico. Over the years, Mr. A-T- battled drug addiction, and was put in removal proceedings after a drug possession conviction in 2005. He has remained drug-free since 2005. The IJ granted cancellation of removal, due to Mr. A-T-'s significant positive factors. DHS appealed the case. Mr. Smith's brief persuaded the BIA to affirm the IJ's opinion and dismiss the appeal.

Congratulations to **Marcy Busch** of **Covington & Burling, LLP** in Washington, DC, for her representation of Mr. S-M- before the BIA. Mr. S-M- is a permanently disabled lawful permanent resident of the United States with chronic paranoid schizophrenia. The IJ granted cancellation of removal for lawful permanent residents, primarily due to Mr. S-M-'s medical condition and close family ties in this country. DHS appealed, and Ms. Busch represented Mr. S-M- on appeal. The BIA upheld the IJ's opinion, agreeing that Mr. S-M-'s serious medical problems, remorsefulness for his criminal conduct, and connection to his family in the United States warranted discretionary 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.



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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 Calderón – Marks, Calderón, Derwin, & Racine, PLC

Emily Creighton – American Immigration Council

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 – Marks, Calderón, Derwin, & Racine, PLC

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

Rachel Ullman – Yang & Ullman, P.C.

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 Council (AIC), the National Immigration Project of the National Lawyers Guild (NIPNLG), and the Capital Area Immigrants' Rights (CAIR) Coalition.