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## Case Updates

### **BIA Pro Bono Project Volunteer and University of California, Davis Assist Elderly Lawful Permanent Resident**

CLINIC congratulates Karen Burke, of **O’Toole, Rothwell, Nassau & Steinbach**, and Professor Raha Jorjani and student attorneys Genevieve Roman, Janet Kim, and Diem Tran from the **University of California, Davis School of Law** Immigration Law Clinic, for their successful representation of Mr. M-L- before the Board of Immigration Appeals (“BIA”) and the immigration court.

Mr. M-L- is an 80-year-old lawful permanent resident from Mexico who lives in California. He has serious health problems, including Alzheimer’s disease and severe arthritis that has left him wheelchair-bound. When his case first came to the BIA Pro Bono Project, Mr. M-L- had difficulty speaking for himself and relied on care from family members.

Mr. M-L- entered removal proceedings due to an alleged controlled substance possession conviction that was not present in the immigration court records. He did not have an attorney and appeared on his own before the Immigration Judge (“IJ”). The IJ found that Mr. M-L- was not admissible to the United States based on a statement he had made about the conviction to a Customs and Border Protection Officer. (The statement, however, was made in English and without an interpreter.) The IJ ordered him removed, and Mr. M-L- appealed the case to the BIA.

BIA Pro Bono Project volunteer Karen Burke represented Mr. M-L- in his appeal. Ms. Burke’s skillfully written brief convinced the BIA to send the case back to the immigration court. “Because I’m particularly interested in the rights of aliens with mental health issues, it was great to be able to help with a case with such obviously sympathetic facts,” said Ms. Burke.

In its decision, the BIA noted that Mr. M-L- had no opportunity to accept or deny the charge in his case, and that he appeared to have psychological problems that affected his mental competency. The BIA also wrote that the Department of Homeland Security (“DHS”) had not provided any official documents to confirm that he in fact had a criminal conviction. The BIA sent the case back to the immigration judge for a new hearing.

After hearing about the case from Ms. Burke, who practices more than 2000 miles away from Mr. M-L- in Washington, D.C., the University of California, Davis Immigration Law Clinic volunteered to represent Mr. M-L- before the (*cont. p.2*)

## **BIA Pro Bono Project Volunteer and University of California, Davis Assist Elderly Lawful Permanent Resident (Cont.)**

immigration court in California. According to Ms. Burke, “[i]t was...extremely satisfying to find the Respondent legal representation at the immigration court level and to connect with the competent, imaginative, and zealous pro bono lawyers at U.C. Davis.”

U.C. Davis student attorney Janet Kim observed that the case was difficult. “We confronted a number of challenges that arose from unusual circumstances. Minor errors in the previous criminal case and current removal proceedings transformed into frustrating dangers to our client. Thanks to our persistent and committed team of advocates, we were able to overcome these injustices and renew our client’s immigration status.”

When it turned out that Mr. M-L- did have a minor criminal conviction, the clinic contacted a local pro bono criminal defense attorney, Wes Hamilton, who helped get Mr. M-L-’s conviction expunged. Because there was no more basis for Mr. M-L-’s deportation, the clinic attorneys convinced the immigration judge to terminate the case and allow Mr. M-L- to stay in the United States.

“Fortunately, many people who came across this case were able to jump through numerous procedural hoops to ensure that our client was not unjustly deported,” said U.C. Davis student attorney Diem Tran. “Despite the troubling circumstances, I’m glad that our client gained closure to an unnecessarily prolonged case and retained his lawful permanent resident status.”

U.C. Davis student attorney Genevieve Roman added, “[w]orking on this case helped me realize that since immigrants are not entitled to representation in deportation matters, lower court errors and legal complexities can result in egregious violations of their rights. Without the BIA Pro Bono Project, he would have probably been wrongly deported by now.”

“This case was a perfect example of the importance of having pro bono counsel available to indigent respondents in removal proceedings,” wrote U.C. Davis Professor Raha Jorjani, who supervised the student attorneys working on this case. “This case also highlights the increasingly complex nature of many removal cases, as it required combined knowledge in both immigration and post-conviction remedies in order to secure our client’s ability to remain in the U.S., where he has resided for nearly two decades.”

CLINIC is grateful to the devotion and extraordinary efforts of the attorneys and law students who worked on Mr. M-L-’s case. His case demonstrates the success that can result when immigrants like Mr. M-L- are fortunate enough to be matched with volunteer attorneys.

## Precedent Case from BIA Pro Bono Project

The Board of Immigration Appeals published a precedent-setting decision in one of CLINIC's BIA Pro Bono Project cases.

In this case, *Matter of Moreno-Escobosa*, Mr. Moreno-Escobosa had pled guilty to an offense in 1991, but was not sentenced until 2005. The IJ decided that Mr. Moreno-Escobosa was ineligible for an INA § 212(c) inadmissibility waiver. The INA § 212(c) waiver typically is not available to an immigrant unless his or her plea agreement was made before April 24, 1996. The immigration judge found that because the 2005 sentencing occurred after 1996, Mr. Moreno-Escobosa was not eligible for the waiver and was removable from the United States.

CLINIC matched Mr. Moreno-Escobosa's case with **Candida Quinn**, from Helena, Montana. Thanks to Ms. Quinn's persuasive appellate brief, the BIA disagreed with the IJ's reasoning and found that the 1991 plea agreement date, not the 2005 sentencing date, should count in deciding INA § 212(c) waiver eligibility. This case is important to CLINIC and other immigrant advocates because the BIA's calculation potentially makes the INA § 212(c) waiver available to more immigrants.

## Cuban Man Granted Withholding of Removal Under INA § 241(b)(3)

CLINIC is thankful for the work of **Eliot Walker, Esq.** from **Dechert, LLP** in Austin, TX for his representation of Mr. M-P- before the BIA. Mr. M-P- is a Cuban citizen who supported and financed the Liberal Party, a Cuban political party that opposes the ruling party platform. Cuban officials arrested him in 2002, interrogated him, and threatened to imprison him if he continued his activities. Mr. M-P- built a boat and fled to Florida with other Cubans. The IJ granted him withholding of removal under INA § 241(b)(3) after finding that he more likely than not would be imprisoned by Cuban authorities for his political opinions if he returned. DHS appealed, alleging that he was not credible and had not shown that he deserved relief. Mr. Walker volunteered to represent Mr. M-P- and convinced the BIA to dismiss the DHS appeal. The BIA found that the IJ had made no clear error in his credibility determination and had correctly assessed his likelihood of future persecution.

## 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.
- 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>

## Asylum Victory for Zimbabwean Political Activist

Congratulations to **Timothy J. Franks, Esq.**, from **Perkins Coie Brown & Bain, P.A.** in Phoenix, AZ for his victory in an asylum case involving a 32-year-old woman from Zimbabwe. Ms. C- had spent six years in the United States, where she joined the Movement for Democratic Change (“MDC”), a group that criticized ruling Zimbabwean political policy. She returned to Zimbabwe in 2006 to reclaim family-owned land. Before she reached the property, government authorities detained and interrogated her at the airport for three hours. She denied party membership and was released. The police later confirmed her political party affiliation, looked for her at her home in Zimbabwe, searched her home, and beat her husband, who was also an MDC member.

Ms. C- returned to the United States, where she filed for asylum and won her case before the IJ. DHS appealed, arguing that Ms. C- had not met her burden of showing a well-founded fear of political persecution in Zimbabwe based on her MDC membership. The BIA dismissed the appeal and upheld the IJ’s decision. In its opinion, the BIA found that the Ms. C-’s credible testimony and the background materials in the record support her claim that the arbitrary arrest and detention by Zimbabwean authorities constituted past persecution on account of her suspected MDC membership. The BIA also found that specific acts by the authorities and the current political climate in Zimbabwe would put Ms. C- in danger of future persecution.

## Paul Hastings Attorneys Secure Withholding of Removal for Guatemalan Man

Congratulations to **Rebecca McGuire**, of **Paul, Hastings, Janofsky & Walker, LLP** in San Diego, CA for her impressive representation of Mr. L-L-, a pro bono client from Guatemala, whose family was killed in that country’s civil war when he was a child and who continued to suffer severe persecution stemming from his family’s role in the civil war. The client’s application to stay in the United States under the Convention Against Torture (“CAT”) was denied at the trial level. Ms. McGuire became involved at the appellate stage, and argued that the judge who denied Mr. L-L-’s CAT claim did not sufficiently support his ruling. The BIA agreed, and remanded the case for a new trial. In the weeks leading up to the new trial, Ms. McGuire located a Guatemalan civil war expert who was able to speak to the client and obtain information that was crucial for the case. Ms. McGuire, with considerable help from her Paul Hastings colleague **Haley Morrison**, filed a brief requesting withholding of removal under INA § 241(b) (3). The client had not raised this request in his original hearing, but Ms. McGuire and Ms. Morrison convinced the IJ to hear the argument. The IJ granted Mr. L-L-’s request for withholding of removal, and the DHS attorney did not appeal the decision. The client was released from custody and reunited with family in Oregon. CLINIC very much appreciates Paul Hastings’ exceptional dedication to this case.

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).

## Withholding of Removal Victory for Vanderbilt University Client

CLINIC is thankful for the hard work of **Vanderbilt University Law School's Appellate Litigation Clinic** in Nashville, TN, for its successful representation of Mr. N-, a Tutsi from Burundi, who obtained withholding of removal after months of litigation. **Professor Alistair Newbern**, along with student attorneys **Jonathan Misk, Gregory Pugh, Adam Benitez, and Victoria Langton**, volunteered to take the case after DHS appealed Mr. N-'s victory before the immigration court. In 1997, Hutu rebels attacked Mr. N- with knives and stabbed him in the eye. DHS agreed with the immigration judge that the attack rose to the level of persecution, but argued that the persecution was not sanctioned by the government, as required under the immigration laws.

Thanks to the Vanderbilt Clinic's outstanding brief, the BIA dismissed the DHS appeal. In its decision, the BIA agreed with the Vanderbilt Clinic's argument that the government in Burundi was unable to control the Hutu rebels due to the ongoing tension and violence between Hutu rebels and Tutsis. The BIA also agreed that country conditions have not changed in Burundi to the degree that Mr. N- would be able to avoid a future threat to his life, and that Mr. N- would not be able to prevent a future threat by moving to a different part of Burundi.

## Pro Bono Attorneys Secure Voluntary Departure for Clients

CLINIC commends **David S. Rugendorf**, of **Mitchell Silberberg & Knupp, LLP** in Los Angeles, CA, who represented Mr. B- before the BIA. Mr. Rugendorf secured an affirmation of the IJ's grant of voluntary departure, following a DHS appeal. Mr. B- is a Canadian citizen who arrived in the United States at the age of 14, and subsequently committed criminal offenses, about which he has expressed remorse. The IJ had found that Mr. B- warranted discretionary relief because he committed his key offenses when he was a juvenile and sincerely wished to move on and change his life. Thanks to Mr. Rugendorf's persuasive brief, the BIA affirmed the IJ's decision without opinion.

CLINIC is grateful to **Professor Janet Beck** and her students at the **University of Houston Law Center Legal Aid Immigration Clinic** for their excellent work in representing Mr. Q-, a Mexican man who has been in the United States since he was 13. The IJ granted his request for voluntary departure, which would have allowed him to leave the United States without the negative impact of deportation, and DHS appealed. The University of Houston Law Center Immigration Clinic volunteered to represent Mr. Q- on appeal. In their brief, Professor Beck and her students argued that the IJ did not abuse her discretion in granting voluntary departure, and that Mr. Q-'s criminal record was not substantial enough to be a significant negative factor. The BIA agreed and upheld the voluntary departure order.



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