Jessica Arco
COVINGTON & BURLING LLP
One City Center
850 Tenth Street NW
Washington, DC 20001
(202) 662-6000

Simon Sandoval-Moshenberg
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike
Suite 520
Falls Church, Virginia 22041
(703) 720-5605

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:

Amicus Invitation No. 16-01-11

BRIEF FOR AMICUS CURIAE
LEGAL AID JUSTICE CENTER

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INTEREST OF AMICUS CURIAE

Amicus, the Legal Aid Justice Center ("LAJC"), submits this brief addressing the issues presented by Amicus Invitation No. 16-01-11 of the Board of Immigration Appeals (the "Board" or "BIA"), drawing on LAJC's first-hand knowledge of the factual context, particularly with respect to the threat posed by gangs in Central American countries. Amicus is a non-profit legal aid organization that provides legal advice, referrals, and direct legal representation to thousands of low-income individuals each year who cannot afford private counsel in civil practice areas such as employment, consumer protection, landlord-tenant, and immigration. As part of LAJC's emergency response to the recent wave of women and children fleeing persecution by gangs and drug cartels in Central America, LAJC attorneys have carried out 179 full intake interviews and many more brief intake interviews, providing advice and counsel to all interviewees and ultimately accepting 108 cases for full representation since January 2014. Amicus thus has a substantial interest in preserving the availability of asylum to immigrant families who face persecution by gangs in their home countries.

The Board has invited amici to address two issues: (1) whether an asylum applicant has satisfied the nexus requirement, without further analysis, where he or she has demonstrated persecution because of his or her membership in a particular social group comprised of the applicant's family; or (2) whether the family constitutes a particular social group only if the defining family member[1] also was targeted on account of another protected ground. Amicus is concerned that, should the Board interpret the Immigration and Nationality Act ("INA") as

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[1] Although not defined in the amicus invitation, LAJC understands "defining family member" to mean, in this context, the family member whose behavior a gang intends to influence or punish with acts of violence or intimidation directed at other family members. To illustrate, in a case where members of Mara 18 attempt to recruit a young male to join their ranks, and threaten to kill his mother if she stands in their way, the young male would be the defining family member of the mother's family-based particular social group claim. *See generally Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015).

dictating the latter, the objectives of Congress in enacting the asylum provisions of the INA would be frustrated. As such, amicus urges the Board to hold that the family constitutes a particular social group under the INA, and to reject a rule requiring that the defining family member of a family-based particular social group claim have been targeted on account of another protected ground.

SUMMARY OF THE ARGUMENT

To qualify for asylum, an applicant must demonstrate that she (1) "is unable or unwilling to return to ... [her native] country"; (2) because she suffered past persecution or "has a well-founded fear of persecution"; (3) "on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). The issues presented by the amicus invitation concern only the third element, which requires an applicant to establish a nexus between the feared persecution and one or more of the statutorily protected grounds. In light of the extensively documented and routine practice of gang retaliation against family members of targeted individuals, the Board's interpretations of the statute, and the consensus of the courts of appeals on the issue, the Board should hold that the family constitutes a particular social group under the INA. Consequently, where an asylum applicant has demonstrated persecution because of his or her membership in a particular social group comprised of the applicant's family, the nexus requirement of the statute has been fulfilled and no further analysis is necessary. Because a rule requiring the defining family member of a family-based particular social group claim to have been targeted on account of another protected ground has no basis in the statute and finds no support in the case law, the Board should reject it.

ARGUMENT

LAJC has provided legal advice and representation to dozens of individuals targeted by gangs, particularly those based in Central America, due to their family relationship with

individuals who were perceived to have slighted the gangs in some way. As the Board well knows, a significant proportion of asylum claims based on family membership arise from threats and acts of violence perpetrated by gangs in Central American countries. Consequently, LAJC believes that its first-hand insight of the factual context concerning gang persecution in Central America as well as its extensive experience with asylum claims will be helpful to the Board in addressing the issues presented in the amicus invitation.

I. Gang Retaliation Against Family Members Is a Widespread and Routine Practice in Certain Central American Countries.

> "Gang members are quick to engage in violence or use deadly force if resisted. . . . Police sources claim that the *families of gang members often face the same risks of being killed or disappearing as the gang members themselves.*"—El Salvador Travel Warning, U.S. State Department[2]

Extreme violence perpetrated by gangs is an unfortunate reality of everyday life in several countries, particularly in the "northern Central American triangle" consisting of El Salvador, Honduras, and Guatemala.[3] To pursue their criminal objectives and deter any who may oppose them, gangs regularly commit horrific acts, including kidnapping, rape, and murder.[4] Any attempt to challenge the gangs' authority or frustrate their objectives is typically answered with retaliation.[5] Gang retaliation, however, is not limited to the offending individual; rather, it frequently extends to members of that individual's family.[6]

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[2] *El Salvador Travel Warning*, U.S. Dep't of State, https://travel.state.gov/content/passports/en/alertswarnings/el-salvador-travel-warning.html (last updated Jan. 15, 2016).

[3] Danielle Renwick, *Central America's Violent Northern Triangle*, Council on Foreign Relations, http://www.cfr.org/transnational-crime/central-americas-violent-northern-triangle/p37286 (last updated Jan. 19, 2016).

[4] *E.g.*, Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, Honduras 2014 Human Rights Report 5 (2014), *available at* http://www.state.gov/ documents/organization/236910.pdf; Michael Boulton, U.N. High Comm'r For Refugees (UNHCR), Living in a World Of Violence: An Introduction to the Gang Phenomenon 16 (2011), *available at* http://www.unhcr.org/4e3269629.pdf.

[5] Boulton, *supra* note 4, at 17.

[6] Boulton, *supra* note 4, at 17–18.

Reports on the current situation in Central America describe a landscape in which increasingly organized and dangerous gangs have gained control over entire communities as government and law enforcement institutions fall apart.[7] Central American gangs such as *Mara Salvatrucha* (also known as MS-13) and *Barrio Dieciocho* (also known as 18th Street) represent classic examples of "third-generation gangs," groups defined as having an advanced degree of sophistication and politicization as well as international reach and high numbers of members.[8] As the Office of the United Nations High Commissioner for Refugees ("UNHCR") has recognized, gangs in Central America "are effectively in control of swaths of territory and the state's capacity to fulfill basic functions of governance has been eroded to the point of making legitimate institutions largely irrelevant."[9] Put simply, gangs have their own code of conduct, exercise their own justice, and demand certain behavior from the population under their domain that lacks the protection of the state.[10]

The conditions faced by those living in countries afflicted by gangs is not news to the United States government. The State Department's most recent Human Rights Reports on Guatemala,[11] El Salvador,[12] and Honduras[13] all recognized the problems caused by the gang

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[7] Wash. Office on Latin Am. (WOLA), Central American Gang-Related Asylum: A Resource Guide 2 (2008), *available at* http://www.wola.org/sites/default/files/downloadable/Central%20America/past/CA%20Gang-Related%20Asylum.pdf.

[8] Hal Brands, Strategic Studies Inst., Crime, Violence, and the Crisis in Guatemala: A Case Study in the Erosion of the State 7 (2010), *available at* http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB986.pdf. While first generations gangs are considered traditional street gangs with a turf orientation, and second generations gangs are considered entrepreneurial and drug-centered organizations, third generation gangs operate at the global end of the spectrum, using sophisticated means to garner political power. *See* John P. Sullivan & Robert J. Bunker, *Third Generation Gang Studies: An Introduction*, 14.4 J. Gang Res. 3 (2007), *available at* http://scholarship.claremont.edu/cgi/viewcontent.cgi?article=1137&context=cgu_fac_pub.

[9] Boulton, *supra* note 4, at 11.

[10] Boulton, *supra* note 4, at 28. "Citizens and representatives from civil society report that for all practical purposes there is no meaningful police presence in many gang-affected neighbourhoods and that when contacted, police either do not respond or they fail to take action or engage in any investigative activities." *Id.*

[11] Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, Guatemala 2014 Human Rights Report 1 (2014), *available at* http://www.state.gov/ documents/organization/236904.pdf.

phenomenon in those countries. In some Central American communities, homicide rates approach *one hundred* persons per 100,000 residents.[14] To put this figure into perspective, the homicide rate of Baltimore, Maryland, which had the highest murder rate of large cities in the United States last year, was fifty-five per 100,000 residents in 2015.[15]

This violent backdrop has led to an increasing number of asylum claims in the United States by Central Americans who fear persecution by gangs, many of whom are family members not involved in gang activity themselves but who fear that they will become the targets of retaliation.[16] Every year since 2009, thousands of individuals have left Central America to seek asylum.[17] Between 2009 and 2013, the United States registered a *sevenfold* increase in asylum seekers at its southern border, 70% of whom came from the "northern Central American triangle."[18] In 2014, the number of unaccompanied children seeking entrance to the United States from Central American countries with endemic gang violence nearly tripled from the previous year,[19] leading President Obama to declare the surge a "humanitarian crisis."[20]

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[12] Bureau of Democracy, Human Rights & Labor, U.S. Dep't of State, El Salvador 2014 Human Rights Report 10 (2014), *available at* http://www.state.gov/ documents/organization/236900.pdf.
[13] Bureau of Democracy, Human Rights & Labor, *supra* note 4, at 5.
[14] World Bank, Crime and Violence in Central America: A Development Challenge 3 (2011), *available at* http://siteresources.worldbank.org/INTLAC/Resources/FINAL_ VOLUME_I_ENGLISH_CrimeAndViolence.pdf. In fact, El Salvador's homicide rates reached ninety per 100,000 in 2015, making it the world's most violent country not at war. Renwick, *supra* note 3.
[15] Max Ehrenfreund & Denise Lu, *More People Were Murdered Last Year than in 2014, and No One's Sure Why*, Wash. Post, Jan. 27, 2016, https://www.washingtonpost.com/graphics/national/2015-homicides/?tid=a_inl.
[16] U.N. High Comm'r for Refugees (UNHCR), Guidance Note on Refugee Claims Relating to Victims of Organized Gangs 2 (2010), *available at* http://www.refworld.org/pdfid/4bb21fa02.pdf.
[17] U.N. High Comm'r for Refugees, Asylum Trends 2014: Levels and Trends in Industrialized Countries Table 3 (2015), http://www.unhcr.org/551128679.html; U.N. High Comm'r for Refugees, Asylum Trends 2012: Levels and Trends in Industrialized Countries Tbl. 23 (2013), http://unhcr.org/asylumtrends/ UNHCR%20ASYLUM%20TRENDS%202012_WEB.pdf; U.N. High Comm'r for Refugees, Asylum Levels and Trends in Industrialized Countries 2010 35 (2011), http://www.unhcr.org/4d8c5b109.html.
[18] Renwick, *supra* note 3.
[19] *United States Border Patrol Southwest Family Unit Subject and Unaccompanied Alien Children Apprehensions Fiscal Year 2016*, U.S. Customs & Border Protection, http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016.

As the Board is well aware, a significant number of gang-related asylum applications by Central Americans in recent years have involved claims of membership in a family as a particular social group meriting protection under the INA.[21] These claims stem from the fact that gangs routinely use threats and violence against family members of targeted individuals to achieve their objectives. In many cases, gangs use such tactics to force recruitment of new members.[22] Indeed, gangs like Mara 18 and MS-13 "rely heavily on forced recruitment to expand and maintain their membership."[23] In addition to threatening potential recruits with violence or even death,[24] gangs coerce recruitment by extending these threats to "the victim's family and threat[ening to] rape … female members of the resistor's family . . . . A refusal to join the gang or 'clika' will result in actual violence directed towards the gang resistor and his/her family as the norm."[25]

To illustrate, consider the stories of a few LAJC clients.[26] LAJC currently represents a woman from El Salvador whose younger brother had childhood friends who eventually joined MS-13. These individuals asked the brother to serve as a lookout, letting them know when police arrived in the neighborhood. Out of fear for his personal safety, the brother refused. Shortly thereafter, he disappeared and his body was found a few days later. Forensics determined that he had been buried alive. Upon discovery of the body, the gang threatened to kill amicus's client and the rest of her siblings as punishment for her brother's refusal to aid

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[20] Tom Dart, *Child Migrants at Texas Border: An Immigration Crisis That's Hardly New*, The Guardian, July 9, 2014, http://www.theguardian.com/world/2014/jul/09/us-immigration-undocumented-children-texas.
[21] *See infra* Part II and accompanying footnotes.
[22] Boulton, *supra* note 4, at 16.
[23] UNHCR, *supra* note 16, at 2.
[24] Boulton, *supra* note 4, at 16.
[25] Boulton, *supra* note 4, at 16.
[26] The subsequent anecdotes describe the asylum claims of current and former LAJC clients. Pursuant to the disclosure rules under 8 C.F.R. § 208.6, amicus may not cite to any documents associated with these cases, which may not be entered into the public record.

them. She was able to hold off the gang for a period of time by making extortion payments, but when her money ran out, she fled the country in fear of her life.

Amicus represents another Salvadoran family that was similarly targeted for retaliation by a gang as part of its forced recruitment efforts. The local gang persistently harassed the fourteen year old son at school in an attempt to recruit him, so much so that his mother felt it necessary to pull him out of school. The gang also made several threatening phone calls to the family home. One day, the fourteen year old and his ten year old brother were attacked by gang members in a drive-by shooting while walking near their home. The older brother took off running. The gang members caught up to the younger brother, put a gun to his head, and asked him, "is that your brother?" He said no and was let go. The gang members then called the house again. The mother answered and was told by the gang members that she had twenty four hours to disappear or she and her children would all be dead. The whole family fled to the United States.

Resistance to extortion likewise leads to retaliation not only against the resistor, but against his or her family.[27] For example, many business owners and public transportation staff have been pressured by gangs to pay "renta" (a tax) and other extortionate demands.[28] To illustrate, a member of MS-13 known as *El Flaco*, who is said to have murdered at least 22 people, described the cruel means used by MS-13 to extort money from wealthy Guatemalans:

> We have a saying: If you don't pay, we won't hurt the father, sadly, it's the children who'll pay . . . . We send them a letter. Then we surveil their kids. We ask for $5,000 to $13,000, depending on the kind of business he's in. If he doesn't pay, we kidnap his wife or a child, and we kill them. Then we send him

[27] UNHCR, *supra* note 16, at 6.
[28] UNHCR, *supra* note 16, at 14.

> body parts showing him we mean business, and we keep kidnapping family members until he pays.[29]

Such tactics are not at all uncommon. Amicus has provided legal advice and representation to dozens of individuals with similar accounts of persecution by gangs due to their family relationship with individuals who were perceived to have slighted the gangs in some way. Amicus represented two sisters, aged 11 and 13, who lived in Guatemala near the Mexican border. One day, a local drug cartel decided it wanted a tire repair shop owned by the girls' uncle to use as a drug way station. The uncle refused to give up the shop, as it was his only means of livelihood. The girls' uncle and his family were subsequently found shot to death in their car. Not long thereafter, bullets were fired at the home where the two sisters were living with their grandparents (the uncle's parents). Following this incident, the two sisters fled to the United States.

Gangs' frequent use of violence against family members as a means of intimidation or retaliation has led the Washington Office on Latin America ("WOLA") to define one category of gang-related asylum cases as involving individuals who "are not personally involved in gangs but have family members who are, or they live in areas where they are unable to avoid gangs and have fled their home country due to persecution by the gangs."[30] In amicus' experience, it is clear as a factual matter that large numbers of asylum applicants with cases before U.S. immigration courts have been targeted by gangs for persecution on account of their family membership. As argued below, universally accepted notions of the family as the basic unit of society combined with the plain text of the INA lead inevitably to the conclusion that these

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[29] John Burnett, *Private Assassins Target Gangs in Guatemala*, Nat'l Pub. Radio (Dec. 22, 2008, 12:23 PM), www.npr.org/templates/story/story.php?storyId=98593139.

[30] WOLA, *supra* note 7, at 5.

individuals are members of a "particular social group" deserving of protection under U.S. asylum law.

II. Under the Board's Own Precedents as Well as That of the Majority of the Courts of Appeals, the Family Constitutes a Particular Social Group Under the INA.

To establish eligibility for asylum, an applicant must show that the persecution she fears was "on account of" a protected ground, such as "membership in a particular social group." 8 U.S.C. § 1101(a)(42)(A). In the landmark case addressing particular social group claims, the Board held that, to form the basis of an asylum claim, a "particular social group" must consist of "persons all of whom share a common, immutable characteristic, … such as … kinship ties." *Matter of Acosta*, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), *overruled on other grounds, Matter of Mogharrabi*, 19 I. & N. Dec. 439 (B.I.A. 1987). Since *Acosta*, the Board has repeatedly recognized that family ties may form the basis of a particular social group claim. *E.g.*, *Matter of H-*, 21 I. & N. Dec. 337, 342 (B.I.A. 1996) (holding that the Marehan subclan was a particular social group after finding that "clan membership is a highly recognizable, immutable characteristic that is acquired at birth and *is inextricably linked to family ties*" (emphasis added) (citations omitted)).

In 2006, the Board introduced two additional elements of the particular social group analysis: social visibility and particularity. *See, e.g.*, *Matter of C-A-*, 23 I. & N. Dec. 951 (B.I.A. 2006) (holding that "noncriminal drug informants" did not constitute a particular social group due to their "lack of social visibility" and because the proposed group was "too loosely defined to meet the requirement of particularity"). The Board has since clarified, however, that the social visibility requirement does not require that the proposed group "be seen by society; rather, it must be *perceived as a group by society*." *Matter of M-E-V-G-*, 26 I. & N. Dec. 227, 240 (B.I.A. 2014) (emphasis added); *see also Matter of W-G-R-*, 26 I. & N. Dec. 208, 217 (B.I.A. 2014)

("Our precedents have collectively focused on the extent to which the group is *understood to exist as a recognized component of the society in question*." (emphasis added)). In doing so, the Board "recast the 'social visibility' requirement as one of 'social distinction.'" *Flores-Rios v. Lynch*, 807 F.3d 1123, 1127 (9th Cir. 2015) (quoting *Matter of M-E-V-G-*, 26 I. & N. Dec. at 240).

Given that the Board has consistently stated that "kinship ties" represent "a common, immutable characteristic," the family easily satisfies the first prong of the particular social group analysis. *E.g.*, *Matter of Acosta*, 19 I. & N. Dec. at 233. As to the social distinction requirement, the Board's own prior pronouncements establish that the family is "perceived as a group by society." *Matter of M-E-V-G-*, 26 I. & N. Dec. at 240, 247 (citing *Matter of H-*, a case where the Marehan subclan was held to be a particular social group based in part on the fact that "clan membership is ... inextricably linked to family ties," as example of case where social distinction requirement was met); *Matter of C-A-*, 23 I. & N. Dec. 951, 959 (B.I.A. 2006) (stating that "[s]ocial groups based on ... family relationship are generally easily recognizable and *understood by others to constitute social groups*" (emphasis added)). Similarly, the American Convention on Human Rights, to which the United States is a signatory, describes the family as "the natural and fundamental group unit of society." Organization of American States, American Convention on Human Rights art. 17(1), Nov. 22. 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123. Indeed, one can think of no social group more universal or more fundamental to the human identity than the family.

As amicus can attest, the fact that family members are perceived as a social group by others is *precisely why* families in Central America are routinely targeted for retaliation by gangs to punish them for the acts of family members. As described above in Part I, *supra*, amicus

represented a Salvadoran family that was located at their home, shot at, and threatened with death by gang members in efforts to intimidate and forcibly recruit the family's teenage son. Furthermore, as exemplified by the statement of *El Flaco*, gangs regularly coerce extortion payments by identifying and targeting the family of the individual: "If he doesn't pay, we kidnap his wife or a child, and we kill them. Then we send him body parts showing him we mean business, and we keep kidnapping family members until he pays." John Burnett, *Private Assassins Target Gangs in Guatemala*, Nat'l Public Radio (Dec. 22, 2008, 12:23 PM), www.npr.org/templates/story/story.php?storyId=98593139.

With respect to the element of particularity, families are undoubtedly "'recognizable' as a discrete group by others in the society, and … have well-defined boundaries." *Matter of M-E-V-G-*, 26 I. & N. Dec. at 240. Family relationships are based on ties of blood or legal relationships, such as marriage or adoption, that are subject to objective determination, unlike, for example, the purported particular social group comprised of "wealthy" Guatemalans rejected by the Board in *Matter of A-M-E- & J-G-U-*, 24 I & N Dec. 69, 74–76 (B.I.A. 2007). Unlike family relationships, "wealth" fails the test of particularity because it is a relative term that is ultimately dependent on subjective determination. *See id.* (holding that "wealthy" Guatemalans did not constitute a particular social group because the term "wealthy" was "too amorphous to provide an adequate benchmark for determining group membership").

The analysis does not change merely because the boundaries of what is perceived as "family" may vary with geographical location, depending on the extent to which local custom values extended family relationships, because even those relationships remain grounded on objective factors of blood ties and legal recognition. The U.S. government and immigration courts are capable of adapting the definition of family in any given case to the prevailing social

mores in an applicant's country of origin. For example, recognizing the varying breadth of kinship ties, the U.S. Citizenship and Immigration Services instructs asylum officers to analyze the issue of family membership "in light of … the relevant social attitudes towards family relationships." U.S. Citizenship & Immigration Servs., Asylum Officer Basic Training Course, Eligibility Part III: Nexus 23, 33–34 (2009), *available at* http://www.uscis.gov/USCIS/Humanitarian/Refugees%20&%20Asylum/Asylum/AOBTC%20Lesson%20Plans/Nexus-the-Five-Protected-Characteristics-31aug10.pdf.

Immigration judges likewise regularly determine whether an asylum applicant is within or outside of the proposed family by engaging in this type of inquiry. Thus, in many Western communities, a family consisting of parents, grandparents, children, aunts, uncles, and cousins is understood as a "discrete group by others in the society." *See Matter of M-E-V-G-*, 26 I. & N. Dec. at 240; *Cordova v. Holder*, 759 F.3d 332, 334–39 (4th Cir. 2014) (remanding to BIA for failing to consider family-based particular social group claim where "MS–13 gang members repeatedly threatened and attacked petitioner Aquino … because they believed his cousin and uncle were members of a rival gang"). In non-Western societies, by contrast, a clan composed of distant family members has been held to constitute a particular social group. *Matter of H-*, 21 I & N Dec. at 342; *see also Malonga v. Mukasey* (*Malonga I*), 546 F.3d 546, 553–54 (8th Cir. 2008) (holding that Lari ethnic group of Kongo tribe is a particular social group because its members share a common dialect and accent, and are identifiable by their surnames). Under its own precedents, then, the Board should have no difficulty finding that "the family provides a prototypical example of a particular social group." *Crespin-Valladares v. Holder*, 632 F.3d 117, 125 (4th Cir. 2011) (citation and internal quotation marks omitted); *accord Flores-Rios v. Lynch*,

807 F.3d at 1128 ("Even under [*Matter of M-E-V-G-*'s] refined framework, the family remains the quintessential particular social group.").

Furthermore, as the Board knows, Congress drafted the asylum provision of the INA to comply with the United States' obligations under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 436–37 (1987). The Supreme Court has thus looked to the pronouncements of the UNHCR, the UN entity charged with "supervising the application" of the refugee treaties, to "provide[] significant guidance in construing the Protocol, to which Congress sought to conform." *Id.* at 437–39; Protocol Relating to the Status of Refugees art. II, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267. Accordingly, significant weight should be given to the UNHCR's conclusion, though not binding, that an asylum applicant's "'family' may be regarded as a relevant particular social group" in cases where the applicant "is a family member of a 'gang resister' (or gang member) … persecuted for reasons of his/her family membership." UNHCR, Guidance Note on Refugee Claims Relating to Victims of Organized Gangs 14 (2010), *available at* http://www.refworld.org/pdfid/4bb21fa02.pdf.

In light of the above, and to facilitate the fair and consistent application of the INA by immigration judges and courts across the country, the Board should adopt a rule stating that the family is a particular social group under the INA. Such a rule is supported by a clear majority of the courts of appeals. *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993) ("There can, in fact, be no plainer example of a social group based on common identifiable and immutable characteristics than that of the nuclear family."); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004) ("We join our sister circuits in holding that 'family' constitutes a 'particular social group.'"); *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008) ("Our prior opinions make it

clear that we consider family to be a cognizable social group within the meaning of the immigration law."); *Lin v. Ashcroft*, 377 F.3d 1014, 1028 (9th Cir. 2004) ("Like our sister circuits, we recognize that a family is a social group.").[31]

Although the Eleventh Circuit's interpretation of a particular social group falls outside the above consensus, it is based upon an outdated interpretation of the social visibility requirement that has since been emphatically rejected by the Board. In an unpublished decision, the Eleventh Circuit upheld the Board's finding "that there was no evidence showing that the Perkeci family, as targets of a blood feud, were *sufficiently visible to Albanian society as a whole* to constitute a 'particular social group' under the INA." *Perkeci v. U.S. Att'y Gen.*, 446 F. App'x 236, 239 (11th Cir. 2011); *see also id.* at 237 (stating that BIA found "no evidence indicat[ing] that any segment of Albanian society other than the Ndrecca family *viewed* the Perkeci family *as visible*" (emphasis added)). This interpretation of social visibility, however, predates the Board's more recent clarification of the social visibility factor as relating to social distinction rather than physical manifestation. *See Matter of M-E-V-G-*, 26 I. & N. Dec. at 240 (clarifying that the term "social visibility" was "never meant to be read literally" and "does not mean 'ocular' visibility"). If faced with the issue today, the Eleventh Circuit likely would not dispute that a family is "perceived as a group by society." *Id.*

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[31] For additional support, see *Vumi v. Gonzales*, 502 F.3d 150, 154–55 (2d Cir. 2007) (remanding to the BIA to consider applicant's claim of persecution on account of her membership in a particular social group comprised of her husband's family); *Fatin v. INS*, 12 F.3d 1233, 1238–40 (3d Cir. 1993) (adopting the Board's interpretation in *Acosta* that a particular social group consists of individuals "all of whom share a common, immutable characteristic," such as "kinship ties"); *Toma v. Gonzales*, 179 F. App'x 320, 324–25 (6th Cir. 2006) (holding that immigration judge "wrongly concluded that Toma's family did not constitute a 'particular social group'" where the persecution of the applicant and her family resulted "at least in part because of their immutable kinship ties to family members who were politically active in the Iraqi resistance"); *Bernal-Rendon v. Gonzales*, 419 F.3d 877, 881 (8th Cir. 2005) (noting that "petitioners correctly contend that a nuclear family can constitute a social group," but finding that they had failed to prove persecution on account of their familial relationship).

Therefore, under the Board's own precedents, and in light of the consensus of the courts of appeals on the issue, the Board should hold that the family constitutes a particular social group under the INA.

III. Where an Asylum Applicant Has Demonstrated Persecution Because of His or Her Membership in a Particular Social Group Comprised of the Applicant's Family, the Nexus Requirement Has Been Fulfilled and Further Analysis Is Unnecessary.

According to the plain language of the INA, and assuming that the family is a "particular social group" within the meaning of that statute, the circumstances posed by the Board in the amicus invitation fulfill each element of the nexus requirement, rendering further analysis unnecessary.[32] To establish his or her eligibility for asylum, an applicant must demonstrate: (1) "[past] persecution or a well-founded fear of persecution"; (2) "on account of"; (3) "race, religion, nationality, membership in a particular social group, or political opinion." 8 U.S.C. § 1101(a)(42)(A). This language has been construed as the "nexus" requirement. *E.g., Torres*, 551 F.3d at 629 ("An applicant for asylum must demonstrate a nexus between his alleged persecution and one of five protected grounds.").

The scenario outlined in the amicus invitation clearly fulfills the nexus requirement because it tracks, in almost identical fashion, the language of the asylum statute. Because the "applicant has demonstrated persecution," the first element of the nexus requirement has been fulfilled. Bd. Immigration Appeals, Amicus Invitation No. 16-01-11 (2016), *available at* https://www.justice.gov/eoir/file/811976/download. The applicant has also satisfied the second

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[32] There is, of course, the additional requirement under the statute that the applicant demonstrate that he is "is unable or unwilling to return to, and is unable or unwilling to avail himself ... of the protection of, [his native] country." 8 U.S.C. § 1101(a)(42)(A). This language has been interpreted as requiring the applicant to show that he was persecuted "by the government of a country or by persons or an organization that the government was unable or unwilling to control." *E.g., Bracic v. Holder*, 603 F.3d 1027, 1034 (8th Cir. 2010); *accord Matter of O-Z- & I-Z-*, 22 I. & N. Dec. 23, 26 (B.I.A. 1998). Because this issue exceeds the scope of the amicus invitation, LAJC will not address it.

element because he or she "has demonstrated persecution *because of* his or her membership in a particular social group . . . ." *Id.* (emphasis added). "Because of" and "on account of" are, of course, synonymous phrases, and have been construed as such by the Supreme Court. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992) (holding that petitioner was required to show that "he has a 'well-founded fear' that the guerrillas will persecute him *because of* that political opinion" (emphasis in original)); *Parussimova v. Mukasey*, 555 F.3d 734, 739 (9th Cir. 2009) ("As the Supreme Court held in *Elias–Zacarias*, the term 'on account of' in § 1101(a)(42)(A) requires an asylum applicant to prove that she was persecuted '*because of*' a protected ground.").

As discussed in Part II, *supra*, under the Board's own precedents as well as that of the overwhelming majority of the courts of appeals, a family constitutes a particular social group. As a result, because the applicant has claimed asylum on the basis of "his or her membership in a particular social group comprised of the applicant's family," the third and final element of the nexus requirement—"membership in a particular social group"—has been met. Bd. Immigration Appeals, Amicus Invitation No. 16-01-11; 8 U.S.C. § 1101(a)(42)(A).

In sum, under the circumstances posed by the Board in the amicus invitation, the applicant has satisfied the nexus requirement of the asylum statute according to its plain language. Further analysis is thus unnecessary.

IV. A Requirement that the Defining Family Member of a Family-Based Particular Social Group Claim Be Targeted on Account of Another Protected Ground Has No Basis in the INA and Is Not Supported by the Case Law.

One of the issues presented in the amicus invitation is whether "the family constitute[s] a particular social group only if the defining family member also was targeted on account of another protected ground." Bd. Immigration Appeals, Amicus Invitation No. 16-01-11. Because such a rule has no basis in the statute and finds no support in the case law, the Board should reject it.

A. There Is No Defining Family Member Requirement in the INA.

To require that the defining family member of a family-based particular social group claim be targeted on account of another protected ground would improperly graft an additional element to the asylum statute where none now exists. Under the plain language canon of statutory construction, a court's "inquiry must cease if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). "The plainness or ambiguity of statutory language is determined by reference to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole." *Id.* at 341. There exists an exception, however, to this rule, which provides that if the statutory construction produces a result that is "both absurd and palpably unjust, … the exercise of judgment dictates a departure from the literal text in order to be faithful to the legislative will." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 586 (1982).

The plain language of the INA in no way intimates a defining family member requirement. Nowhere does the statute require that an applicant must show persecution on account of "membership in a particular social group, so long as the defining member of that group was also persecuted on account of another protected ground." Rather, the statute requires an asylum applicant to show that she was persecuted "on account of … membership in a particular social group"—period. 8 U.S.C. § 1101(a)(42)(A). The asylum provision contains no ambiguities to resolve and therefore any attempt to read a defining family member requirement into the statute has no basis.

More importantly, the creation of a defining family member requirement would frustrate the intent of Congress. *See Griffin*, 458 U.S. at 586. On numerous occasions, the Supreme Court has emphasized that a central concern of the INA is to preserve family ties. *E.g.*, *INS v. Errico*, 385 U.S. 214, 224 (1966) ("The fundamental purpose of [the 1957 amendment to the

INA] was to unite families."); *see also id.* at 220 ("Congress felt that, in many circumstances, it was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country."). Thus, taking into account "the broader context of the statute as a whole," it is clear that Congress did not intend for individuals persecuted on account of their family ties to be excluded from protection under the asylum provisions of the INA. *See Robinson*, 519 U.S. at 341.

Consider the unfortunately recurring scenario of a family targeted for violence by a gang because a family member has resisted the gang's recruitment efforts. In *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015), for example, members of the gang Mara 18 came to the petitioner's home to recruit her twelve-year old son into their ranks. *Id.* at 947. When she told them that she would not let them near her son, the members pointed a gun to her head and stated that they would force him to join. *Id.* She responded that "she did not want her son to be like them, but instead wanted him to study and to be a good person," at which point the gang members said that "she had one day to turn her son over to the gang or she would be killed." *Id.*

The death threats against the petitioner supported her family-based particular social group claim in the Fourth Circuit, as it would in the majority of the courts of appeals. *Id.* at 950; *see also supra* Part II. The defining family member in this case, the petitioner's minor son, however, would likely not have a viable asylum claim under BIA and Fourth Circuit precedent, even if the gang's threats had been directed towards him. *See Matter of M-E-V-G-*, 26 I. & N. Dec. at 228 (holding "Honduran youth who have been actively recruited by gangs but who have refused to join because they oppose the gangs" was not a particular social group); *see also Zelaya v. Holder*, 668 F.3d 159, 165–66 (4th Cir. 2012) (rejecting petitioner's proposed social group of

"young Honduran males who refuse to join MS–13" in part because "[r]esisting gang recruitment is … amorphous" and thus particularity requirement was not met). A defining family member requirement would thus render the petitioner ineligible for asylum despite being persecuted on account of membership in a family, the "prototypical example of a particular social group." *Crespin-Valladares*, 632 F.3d at 125 (citation and internal quotation marks omitted).

Furthermore, to the extent that any ambiguity exists, the creation of a defining family member rule violates "the longstanding principle of construing any lingering ambiguities in deportation statutes in favor of the alien." *Cardoza-Fonseca*, 480 U.S. at 449. This principle, developed due to the "drastic" nature of deportation, instructs courts to refrain from "assum[ing] that Congress meant to trench on [an alien's] freedom beyond that which is required by the narrowest of several possible meanings of the words used." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948). Accordingly, because the plain language of the INA does not support a defining family member requirement and because any ambiguities must be construed in favor of the individual challenging deportation, the Board should hold that there is no defining family member requirement for family-based particular social group claims.

B. A Defining Family Member Requirement Has No Support in the Case Law.

A requirement that the defining family member of a family-based particular social group claim also be targeted on account of another protected ground has no support in the case law. Although many successful family-based claims have revolved around a family member who was targeted on account of his or her political beliefs, the courts of appeals have not held that such factual circumstances were *required*. *See Zhang v. Gonzales*, 154 F. App'x 520, 522 (7th Cir. 2005) ("We have suggested that an immediate family qualifies as a social group, but

typically such a situation involves the family in question being targeted for a reason that is also a protected ground." (citation omitted)).

To the contrary, several courts of appeals have held that a family constituted a particular social group *without* determining that the defining family member had also been persecuted on account of another protected ground. *E.g.*, *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008) (holding family constituted a particular social group where petitioner was persecuted on account of his relationship to his three brothers, all of whom had deserted the military after being abused by their superiors). In fact, the First Circuit recently made this point explicitly, stating that "[t]he law in this circuit and others is clear that a family may be a particular social group simply by virtue of its kinship ties, without requiring anything more." *Aldana-Ramos v. Holder*, 757 F.3d 9, 15 (1st Cir. 2014), *as amended* (Aug. 8, 2014) (collecting cases).

For instance, in *Flores-Rios v. Lynch*, the Ninth Circuit held that the petitioner's family constituted a particular social group despite the fact that his persecution resulted from his family's "opposition to a local gang," a characteristic which the Ninth Circuit had previously deemed insufficient to support a particular social group claim. 807 F.3d at 1125–27; *accord* *Santos-Lemus v. Mukasey*, 542 F.3d 738, 745–46 (9th Cir. 2008), *abrogated on other grounds by* *Henriquez-Rivas v. Holder*, 707 F.3d 1081 (9th Cir. 2013) (rejecting proposed social group of "young men in El Salvador resisting gang violence" as "too loosely defined to meet the requirement for particularity"); *see also Hernandez-Avalos*, 784 F.3d at 947–49.

Although the amicus invitation characterizes three cases from the courts of appeals as potentially supporting a defining family member requirement, a close reading of these decisions reveals that this is not so. In *Lin v. Holder*, 411 F. App'x 901 (7th Cir. 2011), for instance, the petitioner claimed asylum based on his membership in a particular social group comprised of

"family members of known Chinese debtors who fear punishment from creditors for outstanding debt." *Id.* at 905. In denying his claim, the Seventh Circuit acknowledged that "the family unit can constitute a social group," but held that in this case, the petitioner had "not demonstrated that his family ties *motivated* the alleged persecution." *Id.* (emphasis added). The court found that "creditors … detained Lin *as a means of tracking down his father*," rather than to punish him or retaliate against him *because of* his family ties. *See id.* (emphasis added). In other words, the petitioner failed to establish the requisite nexus between his persecution and a protected ground. Although the court alluded to Lin's father's lack of a viable asylum claim by stating that "debtors who fear creditors do not qualify for social-group membership," this statement is properly regarded as dicta and thus should not be afforded any weight. *Id.* at 906; *accord Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 738 (2007) (stating that dicta is not binding and therefore "not entitled to the weight the dissent would give it"). In light of the foregoing, the Seventh Circuit's unpublished decision in *Lin* should not be read to sanction a defining family member requirement for family-based particular social group claims.

Similarly, in *Ramirez-Mejia v. Lynch*, 794 F.3d 485 (5th Cir. 2015), the Fifth Circuit held that the petitioner had failed to "establish that she was persecuted 'on account of' her membership in her family." *Id.* at 492. This conclusion was premised upon the fact that "[t]he primary purpose of the threats was to obtain information Ramirez-Mejia's brother had supposedly given her," rather than to punish the petitioner for her family ties. *Id.* Significantly, the court engaged in no discussion whatsoever of whether the petitioner's brother had been persecuted on account of a protected ground, and explicitly declined to address whether her family constituted a particular social group. *Id.* Because the Fifth Circuit failed to address, either directly or indirectly, whether a defining family member must have been targeted on

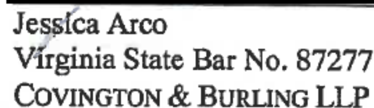
account of a protected ground for a family to be considered a particular social group, *Ramirez-Mejia* lends no support to a defining family member requirement.

The Eighth Circuit's decision in *Malonga v. Holder* (*Malonga II*), 621 F.3d 757 (8th Cir. 2010), likewise fails to promote such a rule. To begin with, the petitioner, the Board, and the Eighth Circuit all addressed the proposed social group in this case as one of *ethnicity*—family membership was not mentioned. Nevertheless, even assuming that family membership was an implicit basis for asylum, the Eighth Circuit unambiguously "conclude[d] that the Lari ethnic group of the Kongo tribe is a particular social group for purposes of withholding of removal." *Malonga I*, 546 F.3d 546, 554 (8th Cir. 2008); *accord Malonga II*, 621 F.3d at 763. It is evident from these opinions that the court did not rely upon a defining family member's persecution on account of another protected ground to hold that the petitioner's family or ethnic group constituted a particular social group. In sum, none of the cases cited in the amicus invitation as supporting a defining family member requirement actually stand for that proposition. Accordingly, the Board should join the majority of the courts of appeals and hold that there is no defining family member requirement for family-based particular social group claims.

CONCLUSION

For the foregoing reasons, the Board should join the majority of the courts of appeals and hold that the family constitutes a particular social group under the INA, and that there is no defining family member requirement for family-based particular social group claims.

Respectfully submitted,



Jessica Arco
Virginia State Bar No. 87277
COVINGTON & BURLING LLP

One City Center
850 Tenth Street NW
Washington, DC 20001
(202) 662-6000
jarco@cov.com

Simon Sandoval-Moshenberg
Virginia State Bar No. 77110
EOIR ID No. QB725995
LEGAL AID JUSTICE CENTER
6066 Leesburg Pike
Suite 520
Falls Church, Virginia 22041
(703) 720-5605
simon@justice4all.org

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Counsel for Amicus Curiae
Legal Aid Justice Center

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See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Ninth Circuit Rule 36-3. (Find CTA9 Rule 36-3)
United States Court of Appeals,
Ninth Circuit.

Miriam Jannet GONZALEZ-PINEDA, Petitioner,
v.
John ASHCROFT, Attorney General, Respondent.

No. 03-71124.
|
Agency No. A77-849-351.
|
Submitted Sept. 13, 2004. *
|
Decided Sept. 22, 2004.

Synopsis

Background: Alien petitioned for review of an order of the Board of Immigration Appeals (BIA) which denied her applications for asylum and withholding of removal.

[Holding:] The Court of Appeals held that alien's testimony demonstrated that it was more likely than not that she would be persecuted based on imputed political opinion if removed to her native country, entitling her to withholding of removal.

Petition dismissed in part, granted in part; remanded.

West Headnotes (2)

[1] **Aliens, Immigration, and Citizenship**
Jurisdiction and Venue

Court of Appeals lacked jurisdiction to review determination by Board of Immigration Appeals (BIA) that alien was ineligible for asylum because she failed to apply within one year of arriving in the United States. Immigration and Nationality Act, § 208(a)(3), as amended, 8 U.S.C.A. § 1158(a)(3).

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Political Opinion in General

Alien's testimony that her cousins were in the army and killed innocent people in that capacity, that many of her family members were murdered in revenge for her cousins' actions, and that family members were murdered by guerillas because of her family's support of political party, demonstrated that it was more likely than not that she would be persecuted based on an imputed political opinion if removed to her native country, entitling her to withholding of removal.

Cases that cite this headnote

Attorneys and Law Firms

*914 Stephen Shaiken, Law Offices of Stephen Shaiken, San Francisco, CA, for Petitioner.

Regional Counsel, Western Region Immigration & Naturalization Service, Laguna Niguel, CA, Virginia Lum, Anthony W. Norwood, U.S. Department of Justice Civil Div./ Office of Immigration Lit., for Respondent.

On Petition for Review of an Order of the Board of Immigration Appeals.

Before PREGERSON, T.G. NELSON and GRABER, Circuit Judges.

MEMORANDUM **

**1 [1] Miriam Jannet Gonzalez-Pineda, a native and citizen of Guatemala, petitions *915 for review of the denial by the Board of Immigration Appeals ("BIA") of her claims for asylum and withholding of removal. We lack jurisdiction to review the BIA's determination that Gonzalez-Pindea is ineligible for asylum because she failed to apply within one year of arriving in the United States. *See* 8 U.S.C. § 1158(a)(3); *Hakeem v. INS*, 273 F.3d 812, 815 (9th Cir.2001). Under

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8 U.S.C. § 1252, we have jurisdiction to review the BIA's denial of withholding of removal. We review for substantial evidence, *see id.* at 816, and we dismiss the petition in part, and grant it in part.

[2] Gonzalez-Pineda must show that the evidence would compel a reasonable factfinder to conclude that she would more likely than not be persecuted on account of a political opinion or imputed political opinion if she were removed to Guatemala. *See Hakeem,* 273 F.3d at 816. Gonzalez-Pineda need not provide direct evidence that her persecutors were motivated by political opinion, but need only introduce "some" evidence of the persecutor's motive, direct or circumstantial. *See Navas v. INS,* 217 F.3d 646, 656-57 (9th Cir.2000).

Based on Gonzalez-Pineda's credible testimony, she has shown that it is more likely than not that she will be persecuted based on an imputed political opinion. She testified that her cousins were in the Guatemalan Army and killed innocent people in that capacity, and that many of her family members were murdered in revenge for her cousins' actions. Also, Gonzalez-Pineda testified that her family supported the Christian Democracy, which is the party of the Guatemalan government, and that family members were murdered by guerillas because of this political opinion. She testified that as a result of these political opinions, at least seven of her family members were shot, her brother was kidnaped, she suffered an attempted rape, and her family continues to receive death threats.

Most importantly, Gonzalez-Pineda testified that one cousin was killed because he was a body guard for a member of the government. She also testified that another cousin was killed because he did not want to join the guerillas. Finally, her aunt received a death threat because her cousins were members of the military, and had killed so many people.

Gonzalez-Pineda has therefore shown "some evidence," *see Navas,* 217 F.3d at 656-57, that the persecutors were motivated by a political opinion and that she would more likely than not be persecuted if returned to Guatemala. *See Rodriguez v. INS,* 841 F.2d 865, 870-71 (9th Cir.1987) (showing clear probability of persecution where guerillas killed six family members in retaliation against family's association with the government-supported rural militia); *Lopez-Galarza v. INS,* 99 F.3d 954, 959-60 (9th Cir.1996) (finding persecution "on account of" imputed political opinion where neighbor accused alien of being a counter-revolutionary contra supporter and father was officer in the National Guard); *Ramirez Rivas,* 899 F.2d at 873 (finding imputed political opinion where alien was not politically active, father was politically neutral but provided food to some people who may have been guerillas, and other family members were guerillas). The petition for review is granted and remanded to the BIA to grant the application for withholding of removal. *See id.*

****2 PETITION FOR REVIEW DISMISSED IN PART, GRANTED IN PART; REMANDED.**

All Citations

109 Fed.Appx. 914, 2004 WL 2163372

Footnotes

* This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R.App. P. 34(a)(2).

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

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411 Fed.Appx. 901
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Seventh Circuit Rule 32.1. (Find CTA7 Rule 32.1)
United States Court of Appeals,
Seventh Circuit.

YIN GUAN LIN, Petitioner,
v.
Eric H. HOLDER, Jr., Attorney General of the United States, Respondent.

No. 10–1760.
|
Argued Oct. 6, 2010.
|
Decided March 7, 2011.

Synopsis

Background: Chinese applicant petitioned for review of Board of Immigration Appeals' (BIA) denial of his application for asylum.

Holdings: The Court of Appeals held that:

[1] applicant's conflicting testimony about alleged persecution supported denial by BIA of applicant's asylum based on adverse credibility finding, and

[2] substantial evidence supported determination by BIA that applicant did not establish membership in particular social group.

Petition denied.

West Headnotes (3)

[1] **Aliens, Immigration, and Citizenship**
Adverse credibility determinations in general

Substantial evidence, including Chinese applicant's statement to asylum officer that his family was not politically active, and neither he nor any member of his family had been threatened, harmed, or detained by Chinese officials, and his statement in application that he had been persecuted by local government because of his father's default on loan, supported Board of Immigration Appeals' (BIA) denial of applicant's asylum based on adverse credibility finding.

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Presentation and preservation of questions at administrative level

Chinese applicant waived argument on appeal of Board of Immigration Appeals' (BIA) denial of his application for asylum, that immigration judge (IJ) erroneously buttressed her adverse credibility finding with information from applicant's credible-fear interview at airport, where applicant failed to raise argument before either IJ or BIA.

Cases that cite this headnote

[3] **Aliens, Immigration, and Citizenship**
Membership in social group

Substantial evidence supported Board of Immigration Appeals' (BIA) determination that Chinese applicant, who defined his social group as family members of known Chinese debtors who feared punishment from creditors for outstanding debt, did not establish membership in particular social group, so as to support his eligibility for asylum; applicant did not demonstrate that his family ties motivated alleged persecution, rather, record indicated that creditors, supported by local officials, detained applicant as means of tracking down his father, and any harm that applicant faced arose from personal dispute between his father and his father's creditors.

Cases that cite this headnote

*902 Petition for Review of an Order of the Board of Immigration Appeals. No. A097–329–858.

Attorneys and Law Firms

Guoping Zhu, Attorney, Law Office of Guoping Zhu, Chicago, IL, for Petitioner.

Kathryn Deangelis, Attorney, Department of Justice, OIL, Attorney, Department of Justice, Washington, DC, for Respondent.

Before FRANK H. EASTERBROOK, Chief Judge, DIANE P. WOOD, Circuit Judge, and TERENCE T. EVANS, Circuit Judge.

ORDER

**1 Yin Guan Lin, a native of Fujian province, China, petitions for review of an order of the Board of Immigration Appeals upholding the denial of his application for asylum. He contends that he faces likely persecution from his father's creditors if he is returned to China. An immigration judge denied Lin's application on the grounds that Lin lacked credible evidence of persecution and, furthermore, could not trace the alleged persecution to any cognizable ground for asylum. We conclude that the record supports these rulings and thus deny the petition for review.

***903 I**

Lin arrived at Chicago's O'Hare International Airport without proper entry documents. There, after telling an immigration official that he feared returning to China, he was referred to an asylum officer for a credible-fear interview. At the interview, which was conducted in Fukienese with help from a translator, he spoke of an unpaid debt to a local government official named Sun Chen, whom he feared would harm him if he returned home. The asylum officer probed Lin for additional reasons he might fear returning, but Lin said only that he feared the legal consequences of leaving China without permission. According to his statements in the interview, his family was not politically active, and neither he nor any member of his family had been threatened, harmed, or detained by officials in China.

The Department of Homeland Security charged Lin with removability, and he requested asylum, see 8 U.S.C. § 1158, as well as other forms of relief not relevant to this petition. A year later Lin appeared before an immigration judge, admitted removability, and filed a new application for asylum. This time his story was different. Lin, the son of two dairy farmers, testified that his father had borrowed money from the local government and invested the capital in the family farm. When the farm failed and his father defaulted on the loan, debt collectors came looking for money. Lin described the ensuing run-ins with the collectors as traumatizing and violent, enough to cause his father to flee. In his father's absence, the collectors targeted Lin. Lin refused to disclose his father's whereabouts, and so officials from the Public Security Bureau detained him. Lin said that he remained in a detention facility for two months and was beaten on several occasions. Thanks to the "carelessness" of his captors, however, he managed to escape. He left China with the help of professional smugglers, known as "snakeheads," and entered the United States. At this point, Lin is supporting his claim for asylum solely on the ground that he has been persecuted because of his membership in a particular social group, namely, family members of known debtors.

The IJ pressed Lin on some of the finer points of his story, but he was not able to furnish many specifics. He could not identify where his father was, nor why his story had changed between his airport interview and his removal hearing. In addition to his testimony, Lin offered several documents to corroborate his claim that he was persecuted in China. He submitted a business license issued by the local government for a dairy farm and a payment demand from a local credit cooperative. He also introduced a letter, purportedly from his father, confirming the thrust of his story. This letter, however, attributed Lin's detention to an altercation with local officials that Lin had never mentioned. Lin also submitted a "detention certificate" reflecting the local Public Security Bureau's plan to detain him in 2003 for refusing to repay a loan.

**2 The IJ found Lin's account of his last months in China unworthy of belief for several reasons. First, Lin gave two materially different accounts of his family's indebtedness. At his airport interview, Lin said that *he* had borrowed the money and denied having been detained or harmed while in China. But in his written application for asylum and again in his removal hearing, he said that it was his father who had incurred the debt and that his father's delinquency was the reason for his detention. The IJ dismissed Lin's attempt to explain the discrepancy as "nonsensical." Second, the IJ was

troubled that Lin knew so little about his father's whereabouts, in light of the fact that Lin *904 had just spoken with him by phone. The IJ also found "particularly confusing" Lin's fear of return, given his father's ability to relocate himself without trouble. Third, the IJ noted Lin's "exceptionally vague and confusing" testimony about his escape from custody.

The IJ also assigned little weight to Lin's documentary evidence, because she had no information about its authenticity or reliability. As for the purported letter from Lin's father, Lin could not explain why the letter contradicted his testimony that he was detained as a means of locating his father. According to the letter, it was not until Lin made a disparaging remark about capitalism that he became "the focus of the case." Moreover, the letter was not attached to an envelope, and so the record contained no objective proof of the letter's source.

The IJ also found that even if Lin's testimony was credited, it was still not enough to establish past persecution or a well-founded fear of future persecution. Lin was "very vague and unspecific" in describing the beating he received during his detention. And even if Lin could show persecution, the IJ continued, Lin had not demonstrated that the persecution was based on a statutorily protected ground. The IJ explained that family ties could be a basis for asylum only when there was a "protected ground tying the family membership to the basis for fear of persecution." Owing money, the IJ observed, was not a protected ground, and so Lin could not rely on his father's status as a debtor as the basis for group membership. The BIA adopted and affirmed the IJ's opinion, and so this court reviews the decision of the IJ as supplemented by the BIA. See *Irasoc v. Mukasey*, 522 F.3d 727, 729 (7th Cir.2008). We review credibility determinations with deference under the familiar "substantial evidence" standard, reversing only if the evidence compels a contrary conclusion. See *Krishnapillai v. Holder*, 563 F.3d 606, 615 (7th Cir.2009).

II

Lin argues in his petition that the IJ failed to provide a cogent basis for the credibility ruling. But, shifting ground a bit, he urges that the IJ's underlying error was her failure to consider his testimony in light of "country conditions"—the current economic and political circumstances in China. Had she done so, Lin says, she would have found his testimony believable.

**3 [1] The IJ did not err in her treatment of country conditions. Lin is correct that country conditions may inform the judge's assessment of credibility, see 8 U.S.C. § 1158(b)(1)(B)(iii); *Musollari v. Mukasey*, 545 F.3d 505, 509 (7th Cir.2008), but he is wrong to suggest that country conditions *must* factor into every credibility analysis. The IJ had no need to rely on the subtle influence of country conditions when Lin's case was marred by such glaring inconsistencies. Lin gave two materially different accounts regarding his reasons for seeking asylum. No background facts about China were going to resolve those damaging discrepancies, which were enough by themselves to constitute substantial evidence supporting the IJ's conclusion. See *Xiao v. Mukasey*, 547 F.3d 712, 717 (7th Cir.2008) (single material discrepancy between airport interview and removal hearing sufficient to support adverse credibility ruling); *Chatta v. Mukasey*, 523 F.3d 748, 752 (7th Cir.2008) (material inconsistencies between airport interview and later testimony sufficient to support adverse credibility ruling); *Balogun v. Ashcroft*, 374 F.3d 492, 501 (7th Cir.2004).

[2] For the first time on appeal, Lin criticizes the IJ for buttressing the adverse *905 credibility finding with information from his credible-fear interview at the airport. He contends that the IJ should have overlooked these statements, which he says he made out of fear of repercussions from Chinese authorities were they to learn about his assertions of past persecution. He also says that he was unfamiliar with America's judicial process and thus was unaware of the legal consequences that would attach to these statements. Because Lin failed to raise this argument before either the IJ or the BIA, this court may not consider it here. See *Ghani v. Holder*, 557 F.3d 836, 839 (7th Cir.2009). We note as well that we see nothing in the record that suggests that the IJ should have disregarded this evidence. See *Jamal–Daoud v. Gonzales*, 403 F.3d 918, 923 (7th Cir.2005) (listing factors); *Balogun*, 374 F.3d at 505.

Lin also attacks the IJ's decision on a number of other grounds. We touch on only those arguments that merit brief attention. First, Lin complains that the IJ should have given greater weight to his documentary evidence, including the letter from his father. But the IJ was justified in refusing to assign weight to that letter. Corroboration is required when an applicant's testimony cannot be accepted at face value. *Balogun*, 374 F.3d at 502. The IJ reasonably concluded that the letter did not corroborate Lin's story: the letter asserts that Lin's detention arose from an altercation between him and local authorities, contradicting Lin's testimony that he

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was detained solely on suspicion that he knew of his father's whereabouts.

Next, Lin contends that the IJ wrongly refused to consider the detention certificate on the ground that it was not authenticated. The IJ correctly observed that the document had not been certified in accordance with immigration regulations. See 8 C.F.R. § 1287.6. And while failure to authenticate is not by itself reason to reject an otherwise relevant document, *Shtaro v. Gonzales,* 435 F.3d 711, 717 (7th Cir.2006), the IJ did not rely exclusively on that ground. The document failed to overcome the material discrepancies in Lin's testimony. See *Song Wang v. Keisler,* 505 F.3d 615, 622 (7th Cir.2007) (adverse credibility finding proper where documentary evidence failed to resolve inconsistencies). It does not prove that Lin was detained; it reflects only that authorities had *planned* to detain him. Nor does the document reconcile the discrepancies at the heart of the credibility ruling (was it Lin or his father who took out the loan? was Lin really detained in China before he arrived in the United States?).

4 [3] Finally, Lin argues that the IJ erred in concluding that he did not establish membership in a particular social group. Relying on *Lwin v. INS,* 144 F.3d 505, 512 (7th Cir.1998), he defines his social group as family members of known Chinese debtors who fear punishment from creditors for outstanding debt. But this alleged group does not satisfy the criteria under the statute. To qualify for social-group membership, an applicant must establish that he belongs to a group whose common characteristic "cannot change, or should not be required to change because it is fundamental to their individual identities or consciences." See *Benitez Ramos v. Holder,* 589 F.3d 426, 428 (7th Cir.2009) (internal citation omitted). It is true that the family unit can constitute a social group, see *Hassan v. Holder,* 571 F.3d 631, 641–42 (7th Cir.2009); *Mema v. Gonzales,* 474 F.3d 412, 416–17 (7th Cir.2007), but Lin has not demonstrated that his family ties motivated the alleged persecution. Rather, the record shows that creditors, supported by local officials, detained Lin as a means of tracking down his father. Any harm that ***906 Lin faced arose from a personal dispute between his father and his father's creditors. Debtors who fear creditors do not qualify for social-group membership. See *Gatimi v. Holder,* 578 F.3d 611, 616 (7th Cir.2009); *Jan v. Holder,* 576 F.3d 455, 458–59 (7th Cir.2009); *Cruz–Funez v. Gonzales,* 406 F.3d 1187, 1191–92 (10th Cir.2005).

The petition for review is DENIED.

All Citations

411 Fed.Appx. 901, 2011 WL 791774

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446 Fed.Appx. 236
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3)
United States Court of Appeals, Eleventh Circuit.

Floreshe PERKECI, Aldo Perkeci, Kristjana Perkeci, Ndue Perkeci, Petitioners,

v.

U.S. ATTORNEY GENERAL, Respondent.

No. 11–11381
|
Non–Argument Calendar.
|
Nov. 8, 2011.

Synopsis

Background: Applicant, a citizen of Albania, petitioned for review of decision of Board of Immigration Appeals (BIA) denying asylum and withholding of removal.

[Holding:] The Court of Appeals held that members of Albanian family did not constitute a particular social group by virtue of fact that they were target of blood feud.

Petition denied.

West Headnotes (2)

[1] **Aliens, Immigration, and Citizenship**
Presentation of questions in brief or petition

Asylum applicant abandoned claim that Board of Immigration Appeals (BIA) improperly denied her motion to remand her case to Immigration Judge (IJ) for consideration of new documents, and her claim for relief under Convention Against Torture (CAT), where she did not challenge denial of her CAT claim at all, and only mentioned the new documents she sought to introduce once, claiming that BIA "ignored" them.

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Membership in social group

Board of Immigration Appeals (BIA) reasonably construed Immigration and Nationality Act (INA) in concluding that members of Albanian family did not constitute a particular social group, upon which an asylum claim could be based, by virtue of fact that they were target of blood feud perpetrated by neighboring family, where BIA based its decision on finding that there was no evidence showing that members of family, as targets of blood feud, were sufficiently visible to Albanian society as a whole to constitute a "particular social group," and its reasoning that recognizing family as a particular social group would be tantamount to defining group by instance of harm that was inflicted against it. Immigration and Nationality Act, § 101(a)(42)(A), 8 U.S.C.A. § 1101(a)(42)(A).

Cases that cite this headnote

Attorneys and Law Firms

*236 David R. Fletcher, David R. Fletcher, PA, Jacksonville, FL, for Petitioners.

Dara Smith, David Bernal, Krystal Samuels, U.S. Department of Justice–Office of Immigration Litigation, Eric Holder, Jr., U.S. Attorney General's Office, Washington, DC, Nicole Guzman, DHS, Office of Chief Counsel, Orlando, FL, for Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals. Agency No. A077–509–649.

Before CARNES, WILSON and KRAVITCH, Circuit Judges.

Opinion

*237 PER CURIAM:

**1 [1] Petitioner Floreshe Perkeci [1] seeks review of the Board of Immigration Appeals's (BIA's) final order affirming the Immigration Judge's (IJ's) denial of her application for asylum and withholding of removal. [2] After review, we deny Perkeci's petition.

I.

Perkeci, a citizen of Albania, entered the United States with her family in 1999 without a valid visa. In 2000, she filed an application with the Department of Homeland Security seeking asylum, withholding of removal under the Immigration and Nationality Act (INA), and relief under the United Nations Convention Against Torture (CAT), based on membership in a particular social group, religion, and political opinion. [3] Perkeci alleged that her family had a well-founded fear of persecution in Albania because the family was the target of a "blood feud." According to Perkeci, in Albanian culture, if a person kills another, the victim's family has the right to kill a male member of the perpetrator's family.

At a hearing before an IJ in 2004, Perkeci testified that her husband and son were at risk of being killed in Albania because of an ongoing blood feud that began in 1940 when a member of a neighboring family, Gjet Ndrecca, killed a member of Perkeci's husband's family. She testified that in 1997 she and her husband received threats from the Ndrecca family and reported the situation to the police, which did nothing. She also reported the threats to the Albanian Committee for Reconciliation, which could not persuade the Ndrecca family to agree to a resolution. The IJ found Perkeci's testimony credible and granted her asylum application, concluding that she had a well-founded fear of future persecution if she returned to Albania because her family constituted a particular social group targeted by the blood feud.

In 2009, the BIA reversed the IJ's decision, concluding that although a "family may, in some contexts, constitute a particular social group" because family membership is an immutable characteristic that indicates a close bond, the Perkeci family did not constitute a particular social group because no evidence indicated that any segment of Albanian society other than the Ndrecca family viewed the Perkeci family as visible or cohesive or sought to harm its members. The BIA remanded the case to an IJ to permit Perkeci to apply for voluntary departure and "any other relief" for which she was eligible.

On remand, Perkeci again asserted asylum, withholding of removal, and CAT claims for relief, arguing that circumstances *238 had changed and that now women and girls were targeted in blood feuds. In an oral decision, the IJ relied on the reasoning in the BIA's 2009 decision and denied Perkeci's applications. Perkeci appealed to the BIA, and the BIA adopted and affirmed the IJ's decision denying Perkeci's application for relief. This petition followed.

II.

"We review only the [BIA]'s decision, except to the extent that it expressly adopts the IJ's opinion." *Najjar v. Ashcroft,* 257 F.3d 1262, 1284 (11th Cir.2001). Here, the BIA expressly adopted the IJ's opinion, so we review the IJ's decision as well. We review the IJ's and the BIA's legal conclusions *de novo* and review factual determinations under the highly deferential substantial evidence test, affirming the decision "if it is supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Id.* at 1283–84. We will only reverse a finding of fact where the record compels it, and not where it merely supports a contrary conclusion. *Kazemzadeh v. U.S. Att'y Gen.,* 577 F.3d 1341, 1351 (11th Cir.2009).

**2 An asylum applicant must meet the INA's definition of "refugee", 8 U.S.C. § 1158(b)(1), which includes:

> any person who is outside any country of such person's nationality ... and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

8 U.S.C. § 1101(a)(42)(A). Thus, to meet the definition of "refugee," the applicant must, "with specific and credible evidence, demonstrate (1) past persecution on account of a statutorily listed factor, or (2) a well-founded fear that the

statutorily listed factor will cause future persecution." *Ruiz v. U.S. Att'y Gen.*, 440 F.3d 1247, 1257 (11th Cir.2006) (quotation marks omitted).

Further, to receive withholding of removal, an alien "must show that his life or freedom would be threatened on account of" one of the statutory factors. *Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1287 (11th Cir.2003). "An alien bears the burden of demonstrating that he more-likely-than-not would be persecuted or tortured upon his return to the country in question." *Id.* This standard is more stringent than the well-founded fear standard for asylum; thus, if an applicant is unable to meet the well-founded fear standard he is unable to qualify for withholding of removal. *Najjar*, 257 F.3d at 1292–93.

III.

We conclude that the record does not compel reversal of the IJ's and BIA's conclusions that Perkeci failed to show a well-founded fear of future persecution on account of her membership in a "particular social group." Whether a group constitutes a "particular social group" under the INA is a question of law, which we review *de novo*, but we also give deference to the BIA's reasonable interpretation of the INA. *I.N.S. v. Aguirre–Aguirre*, 526 U.S. 415, 424–25, 119 S.Ct. 1439, 143 L.Ed.2d 590 (1999). We must ask whether the INA "is silent or ambiguous with respect to the specific issue" at hand and, if so, we must determine "whether the agency's answer is based on a permissible construction of the statute." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

***239 [2]** The INA is silent as to whether a family targeted by a blood feud may constitute a "particular social group" eligible for relief. Thus, we must determine whether the BIA reasonably construed the INA to conclude that the Perkeci family, as targets of a blood feud, did not constitute a "particular social group." *Chevron*, 467 U.S. at 843, 104 S.Ct. 2778. We hold that the BIA's construction was reasonable.

In *Castillo–Arias v. United States Attorney General*, 446 F.3d 1190, 1196–97 (11th Cir.2006), we adopted the BIA's formulation of "particular social group" set forth in *Matter of Acosta*, 19 I. & N. Dec. 211 (B.I.A.1985). *Acosta*, as construed by *Castillo–Arias*, mandates two considerations in determining whether a group constitutes a "particular social group": immutability and social visibility among the country's society at large. *Castillo–Arias*, 446 F.3d at 1194, 1197–98. We emphasized that the category "should not be a 'catch all' for all persons alleging persecution who do not fit elsewhere," noting that the intent of Congress was not to permit individuals to obtain relief "by defining their own 'particular social group.' " *Id.* at 1198.

****3** The BIA's decision in this case is a reasonable application of the principles set out in *Acosta* and *Castillo–Arias*. The BIA found that there was no evidence showing that the Perkeci family, as targets of a blood feud, were sufficiently visible to Albanian society as a whole to constitute a "particular social group" under the INA. The BIA also emphasized that recognizing the Perkeci family as a particular social group "would be tantamount to defining the group by the instance of harm that is inflicted against it," reflecting the same concerns articulated in *Castillo–Arias*. Because the BIA applied the principles set forth in Castillo–Arias and Acosta, we find that the board's construction of the INA was permissible. Accordingly, we deny Perkeci's petition.

PETITION DENIED.

All Citations

446 Fed.Appx. 236, 2011 WL 5375057

Footnotes

1 The applications of Ndue, Kristjana, and Aldo Perkeci, Perkeci's husband and children, are derivative of Perkeci's asylum application. Accordingly, any discussion of Perkeci's claims is also applicable to those of her family members.

2 The BIA also denied Perkeci's motion to remand her case to the IJ for consideration of new documents, and her application for relief under the Convention Against Torture (CAT). Perkeci does not challenge the denial of her CAT claim at all, and she only mentions the new documents she sought to introduce once, claiming that the BIA "ignored" them. Because Perkeci does not clearly assert these challenges before this court, she has abandoned these claims. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005) (noting that passing references to issues are insufficient to raise a claim for appeal).

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3 Perkeci did not raise religion or political opinion before the IJ or BIA and does not raise them here. She has therefore abandoned these arguments. *Sepulveda*, 401 F.3d at 1228 n. 2.

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179 Fed.Appx. 320
This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter
See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Sixth Circuit Rule 28. (Find CTA6 Rule 28)
United States Court of Appeals,
Sixth Circuit.

Jamila Isho TOMA, Petitioner,
v.
Alberto R. GONZALES, Respondent.

No. 04-4310.
|
May 4, 2006.

Synopsis

Background: Alien, an Iraqi citizen, petitioned for review of an order of the Board of Immigration Appeals (BIA) which affirmed an IJ's denial of asylum, withholding of removal, and relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Holdings: The Court of Appeals, Julia Smith Gibbons, Circuit Judge, held that:

[1] substantial evidence supported IJ's determination that changed country conditions in Iraq rebutted alien's presumption of future political persecution, and

[2] alien demonstrated that her family constituted a "particular social group," for asylum purposes.

Petition denied.

West Headnotes (3)

[1] **Aliens, Immigration, and Citizenship**
Past persecution

Substantial evidence supported IJ's determination at asylum proceeding that changed country conditions in alien's native country of Iraq rebutted alien's presumption of future political persecution; alien, a Chaldean Christian, suffered past persecution solely at hands of political party officials for political reasons, such officials had been overthrown, alien admitted that she no longer feared persecution by the government, and new Iraqi regime would recognize the country's multi-religious society.

4 Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Weight and Sufficiency

Substantial evidence supported IJ's finding at asylum proceeding that alien, a Chaldean Christian and citizen of Iraq, failed to show individualized, well-founded fear of future political persecution; individuals who had previously persecuted alien were no longer in power and did not pose threat to alien any longer, and alien introduced no evidence showing that she would be specifically targeted for future persecution by acts other than those previously in power.

3 Cases that cite this headnote

[3] **Aliens, Immigration, and Citizenship**
Membership in social group

Alien demonstrated that her family constituted a "particular social group," for asylum purposes, by showing that she belonged to known family in minority ethnic group of Assyrian Party that had suffered persecution in the form of detention and torture, at least in part because of their immutable kinship ties to family members who were politically active in Iraqi resistance.

3 Cases that cite this headnote

*321 On Petition from an Order of the Board of Immigration Appeals.

Attorneys and Law Firms

Nabih H. Ayad, Dearborn Heights, MI, for Petitioner.

Emily A. Radford, Dennis J. Dimsey, Angela M. Miller, U.S. Department of Justice, Washington, DC, for Respondent.

Before: GIBBONS and COOK, Circuit Judges; and SCHWARZER, Senior District Judge. *

Opinion

JULIA SMITH GIBBONS, Circuit Judge.

**1 Petitioner Jamila Isho Toma, a Chaldean Christian and Iraqi citizen, appeals from the denial by the Board of Immigration Appeals ("BIA") of her petition for asylum pursuant to section 208 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1158, voluntary withholding of removal pursuant to section 241(b)(3) of the Act, 8 U.S.C. § 1231(b)(3)(A), and withholding of removal pursuant to the United Nations Convention Against Torture ("CAT"), 8 C.F.R. § 1208.16. The BIA affirmed denial of asylum by an immigration judge ("IJ"), who held that Toma had been persecuted in the past due to her political views and religious identity but that she had no valid fear of future persecution because the overthrow of the Iraqi Ba'athist regime fundamentally altered the conditions in Iraq. For the following reasons, we deny the petition for review.

Toma is a fifty-five year old Iraqi citizen who entered the United States on a tourist visa on March 21, 2001. Toma has suffered abuses due to her affiliation with the Assyrian Democratic Movement and her family's participation in the Kurdistan Democratic Party ("KDP"). Toma alleges that she and other family members [1] were *322 persecuted on several occasions. On March 14, 1977, two policemen and the mayor of her city entered Toma's home, beat Toma's husband, and handcuffed, blindfolded, and dragged Toma into their vehicle. She was transferred to the Iraqi security forces and held with four other prisoners in a small cell. After ten days, she was interrogated and accused of participation in the KDP. While imprisoned, Toma testified that she was raped by one man while being held down by two others, and that she was tortured, beaten, and hanged on a rotating ceiling fan.

On October 3, 1991, Toma and her husband were again arrested and accused of instigating Toma's coworkers and recruiting them into the KDP. Though specifics are lacking, Toma alleges that her treatment was equally poor during this detention, which lasted four months. Toma was arrested most recently on July 17, 1997, after her sister applied for asylum in the United States. Her 1997 detention lasted for three months and again included humiliating treatment. She was ultimately released when her husband paid a bribe to her captors.

In March 2001, Toma was able to procure a false passport and used it to flee to Jordan. From there, she flew to the United States on a tourist visa, leaving her husband and four children behind. Toma's husband was arrested two months later and has not been heard from since.

The Immigration and Nationalization Service ("INS") initiated removal proceedings against Toma. In response, she filed an initial administrative application for asylum on September 20, 2001. After several continuances, the IJ conducted an evidentiary hearing on June 19, 2003, to determine whether to grant the requested relief. After the hearing, the IJ issued an oral decision and order denying asylum, withholding of removal, and protection under the CAT. Toma appealed to the BIA, which affirmed the IJ decision without opinion. Toma now seeks review of the denial of asylum and withholding of removal but concedes that she is not protected by the CAT.

**2 The INA grants this court jurisdiction to review final orders of removal. 8 U.S.C. § 1252(b). As the Board affirmed the IJ's decision without opinion, the IJ decision is considered the final agency determination. *Hasan v. Ashcroft*, 397 F.3d 417, 419 (6th Cir.2005) (citing 8 C.F.R. § 1003.1(e)(4)(ii)). We review the agency's factual findings for substantial evidence. *Yu v. Ashcroft*, 364 F.3d 700, 702 (6th Cir.2004). Under this standard, the denial of asylum by the BIA for failure to qualify as a refugee is "conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B). "It can be reversed only if the evidence presented by [the petitioner] was such that a reasonable factfinder would have to conclude that the requisite fear of persecution existed." *I.N.S. v. Elias-Zacarias*, 502 U.S. 478, 481, 112 S.Ct. 812, 117 L.Ed.2d 38 (1992). Where discretionary, the agency's decision as to whether an applicant is eligible for relief is "conclusive unless manifestly contrary to law." 8 U.S.C. § 1252(b)(4)(C).

Section 208(a) of the INA empowers the Attorney General, in his discretion, to grant asylum to refugees. 8 U.S.C. § 1158(b). "Refugee" is defined by the INA as an alien who is unable or unwilling to return to her home country due to "persecution or a well-founded fear of persecution on account

of race, religion, nationality, membership in a particular social group, or political opinion." *Id.* § 1101(a)(42)(A). A "particular social group" is one whose members are bound by a "common, immutable characteristic." ***323** *Castellano-Chacon v. I.N.S.,* 341 F.3d 533, 546–47 (6th Cir.2003). The alien bears the burden of establishing eligibility for asylum either due to past persecution or based on a well-founded fear of future persecution. 8 C.F.R. § 208.13(a). To establish a well-founded fear of persecution, an applicant must establish that:

> (1) he or she has a fear of persecution in his or her country on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if he or she were to return to that country; and (3) he or she is unable or unwilling to return to that country because of such fear.

Mikhailevitch v. I.N.S., 146 F.3d 384, 389 (6th Cir.1998). The fear of persecution must be both subjectively genuine and objectively reasonable. *Perkovic v. I.N.S.,* 33 F.3d 615, 620-21 (6th Cir.1994). Persecution "requires more than a few isolated incidents of verbal harassment or intimidation, unaccompanied by any physical punishment, infliction of harm, or significant deprivation of liberty." *Mikhailevitch,* 146 F.3d at 390.

Once an alien has established past persecution, she enjoys a presumption of a well-founded fear of future persecution. 8 C.F.R. § 208.13(b)(1). The burden then shifts to the INS to rebut the presumption by showing that conditions in the applicant's country have changed to such an extent that the applicant no longer has a well-founded fear of being persecuted if she were to return. *Id.* § 208.13(b)(1)(i)(A). "The INS must do more than show that circumstances in the country have fundamentally changed; the INS must also show that such change negates the particular applicant's well-founded fear of persecution." *Ouda v. I.N.S.,* 324 F.3d 445, 452 (6th Cir.2003).

****3** If the presumption is successfully rebutted, the applicant may still be eligible for asylum based purely on past persecution by demonstrating "compelling reasons for being unwilling or unable to return to the country arising out of the severity of the past persecution." 8 C.F.R. § 208.13(b)(1)(iii)(A). "[A] person who-or whose family-has suffered under atrocious forms of persecution should not be expected to repatriate. Even though there may have been a change of regime in his country, this may not always produce a complete change in the attitude of the population, nor, in view of his past experiences, in the mind of the refugee." *Matter of Chen,* 20 I. & N. Dec. 16, 19, 1989 WL 331860 (B.I.A.1989) (internal quotation and citation omitted); *see also Neli v. Ashcroft,* 85 Fed.Appx. 433, 437 (6th Cir.2003) (adopting *Chen*' s language and reasoning).

In order for an alien to be entitled to a withholding of removal, she must show that there is a clear probability that if she returns to her home country she will be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 C.F.R. § 208.16(b). The burden of proof for withholding of removal is more exacting than that for asylum. *Mikhailevitch,* 146 F.3d at 391. Thus, an alien who does not qualify for asylum cannot meet the higher standard for withholding of removal. *Id.; Yu,* 364 F.3d at 703 n. 3.

[1] In this case, the IJ rejected Toma's asylum and withholding claims even though she established past persecution via her arrests, rape, and torture, thereby establishing a presumption of future persecution. Relying on the overthrow of the Iraqi regime and Toma's admission that she no longer fears the government, but rather fears persecution by fundamentalist insurgents, the court held that the government successfully rebutted the presumption ***324** by showing that the conditions in Iraq had changed so as to negate Toma's fear of future persecution. Next, the IJ held-while not discussing the evidence with any particularity-that Toma could not show an independent, well-founded fear of future persecution either as an individual or due to her membership in a particular social group. Finally, while acknowledging the closeness of this case, the IJ denied Toma a discretionary grant of asylum based on the severity of her past persecution because she lived in Iraq and worked from her home between 1997 and 2001 without apparent difficulty. [2]

Toma argues that the government failed to rebut the presumption of future persecution. Her argument cannot succeed. Substantial evidence supports the IJ's determination that the changed conditions in Iraq successfully rebutted Toma's presumption of future persecution. As this court stated in *Khora v. Gonzales,* which also denied asylum to a Chaldean Christian, "Given that Khora's past persecution was at the hands of the security forces of the Hussein government, the

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immigration judge's conclusion that the change of power negated Khora's presumed fear based on past persecution was not unreasonable." 172 Fed.Appx. 634, 638 (6th Cir.2006). Here, Toma also suffered persecution solely at the hands of Ba'ath party officials for political reasons; these officials have been overthrown, and Toma admits that she no longer fears persecution by the government. Given these factors, and the government's evidence showing that the new Iraqi regime will recognize the country's multi-religious society, the IJ's holding that the government successfully rebutted the presumption was supported by substantial evidence.

**4 [2] Having found changed conditions, the IJ moved to the next step in the analysis by determining whether Toma could show a well-founded fear of future persecution, either as part of a "particular social group" or for herself specifically. The IJ found that Toma failed to show an individualized, well-founded fear of future persecution. This finding is supported by substantial evidence because the Ba'athists are no longer in power and therefore no longer pose a threat to her. Toma has introduced no evidence showing that she would be specifically targeted for future persecution by actors other than the Ba'athists. While Iraq is undoubtedly violent, the threat of violence that Toma will face upon her return does not constitute persecution. The IJ's decision as to Toma's fear of future persecution was therefore based on substantial evidence.

[3] The IJ also found that Toma was not a member of a particular social group, but provided no reasoning to support its conclusion. Toma argues that this determination was incorrect because her family constitutes a group subject to persecution. This court has previously noted that "kinship ties" are an immutable characteristic falling within the definition of "particular social group." *Castellano-Chacon,* 341 F.3d at 547 (quoting *Matter of Acosta,* 19 I. & N. Dec. 211, 233-34, 1985 WL 56042 (B.I.A.1985)). Toma has shown that she belongs to a "known family in the minority ethnic group of the Assyrian Party" that has suffered persecution; her husband, her children, and she have all been detained *325 and tortured, at least in part because of their immutable kinship ties to family members who were politically active in the Iraqi resistance. As a result, the IJ wrongly concluded that Toma's family did not constitute a "particular social group."

Toma, however, has presented no evidence showing that her family faces a well-founded threat of future persecution different from her own. Toma's husband was arrested after she fled Iraq and remains missing, but his arrest was at the hands of the Ba'athist regime. The fact that he has not since reappeared cannot, without some evidentiary support, be construed as evidence of persecution by the *new* Iraqi regime. In addition, the remnants of her family have by all accounts lived in peace since the invasion. Toma has thus provided no objective evidence of persecution of her family since the overthrow[3] and has not shown that her family is subject to a fear of persecution that differs from her personal fear. As a result, Toma's fear of future persecution is not well-founded regardless of whether it is individual or as part of her family group, and the IJ properly denied Toma's petition for asylum and withholding of removal.

The petition for review is denied.

All Citations

179 Fed.Appx. 320, 2006 WL 1208075, 2006 Fed.App. 0310N

Footnotes

* The Honorable William W Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

1 In addition to the allegations about her own detention, Toma testified that her father and brothers were detained in both 1973 and 1976 for association with the Kurdistan Party. When her family members were released in 1976 after a six month detention, they were unable to walk, and were bruised and cut in multiple places. Two of Toma's daughters were also arrested and detained for two weeks, in 1993 and 1995 respectively, for failure to join the Ba'ath Party.

2 Toma does not challenge the IJ's holding denying the *Chen* humanitarian exception and has therefore waived this argument. *Dixon v. Ashcroft,* 392 F.3d 212, 217 (6th Cir.2004). We note, however, that the evidence relied upon by the IJ for the denial of the discretionary grant of asylum bears little relation to the reasons for the humanitarian exception as noted in *Matter of Chen*-that is, the fact that Toma remained in Iraq for some time after the persecution is unrelated to the severity of that persecution.

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3 The only record evidence of persecution during this time period is a single newspaper article describing threats to Chaldean Christians by Iraqi Muslims. Toma does not assert that she is eligible for asylum based on her race, so this evidence is not probative for this inquiry.

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This case was not selected for publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Seventh Circuit Rule 32.1. (Find CTA7 Rule 32.1)
United States Court of Appeals, Seventh Circuit.

Zheng ZHANG, Petitioner,
v.
Alberto GONZALES, Respondent.

No. 04-4226.
|
Submitted Nov. 10, 2005.*
|
Decided Nov. 15, 2005.

Synopsis

Background: Alien petitioned for review of order of Board of Immigration Appeals denying her asylum application.

Holdings: The Court of Appeals held that:

[1] evidence did not compel a finding that alien had been persecuted in China, and

[2] alien failed to show that immigration judge's conduct in frequently interrupting alien's attorney and restricting attorney's questioning violated alien's due process rights.

Petition denied.

West Headnotes (2)

[1] **Aliens, Immigration, and Citizenship**
Weight and Sufficiency

Evidence in support of asylum application did not compel a finding that alien had been persecuted in China, as required to overturn immigration judge's finding that treatment of alien did not rise to level of persecution; alien claimed that her father's creditors, accompanied by government officials, came to family home looking for him, bound alien's hands and arms, punched her in the face, kicked her, pulled her hair, and roughly dragged her away by the arm leaving a scar, then officials kept her in prison for three days while denying her food, and threatened her with imprisonment if her father was not found.

Cases that cite this headnote

[2] **Aliens, Immigration, and Citizenship**
Conduct of Hearing; Fairness in General

Constitutional Law
Asylum, Refugees, and Withholding of Removal

Alien failed to show that immigration judge's (IJ) conduct in frequently interrupting her attorney and ultimately allowing attorney to ask only a few questions during direct examination of alien prejudiced alien by potentially affected outcome of her asylum case, as required to establish due process violation; alien said only that the IJ's interruptions intimidated her, and prevented her attorney from presenting the case in way they had planned, but she did not specify what additional evidence she would have offered or what she would have done differently if IJ had not interrupted. U.S.C.A. Const.Amend. 5.

Cases that cite this headnote

*521 Petition for Review of an Order of the Board of Immigration Appeals. No. A77-993-888.

Attorneys and Law Firms

Marian S. Ming, Chicago, IL, for Petitioner.

George P. Katsivalis, Department of Homeland Security Office of the District Counsel, Chicago, IL, Song Park, Department of Justice Civil Division, Immigration Litigation, Washington, DC, for Respondent.

Before KANNE, EVANS, and SYKES, Circuit Judges.

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ORDER

**1 Zheng Zhang, a Chinese citizen, applied for asylum in August 2002, claiming that she had a well-founded fear of persecution on account of her membership in a particular social group. Specifically, she claimed that her father's creditors, acting with the assistance of the government, detained and assaulted her as a means of tracking down her father and that she is at risk due to her family relationship with him. An immigration judge denied her relief, and the Board of Immigration Appeals affirmed. Since we conclude that the record does not compel a finding of past persecution or future persecution, we deny the petition for review.

Zhang, who is 24 years old, is from Fujian province in China. In August 2000, her father took out a loan to invest in a company and was unable to make repayments. Zhang claims that her father's creditors, accompanied by government officials, came to the family home looking for him. He was not there, having already fled the town with his wife. In an effort to track down her father, Zhang says the creditors and officials bound her hands and arms, punched her in the face, kicked her, pulled her hair, and roughly dragged her away by the arm leaving some kind of scar. Zhang also says that the officials kept her in prison for three days, denied her food, and threatened her with imprisonment if her father was not found. She says she was released when she promised to locate her parents, but that the officials continued to trail her after her release. Fearing for her safety, she left China for the United States the following January.

The IJ denied Zhang's applications for asylum, withholding of removal, and protection under the Convention Against Torture. The IJ found her testimony "vague and confusing." For example, the IJ found that Zhang gave conflicting answers regarding whether her father's debt was owed to the government or private creditors. The IJ also found that some of Zhang's corroborative evidence "added *522 more confusion" to her story because it suggested that her father's debt was not even due until months after she was detained. Finally, the IJ found that Zhang's brief detention was not serious enough to rise to the level of persecution, and that, in any case, she failed to show she was persecuted on account of her membership in a particular social group. Zhang appealed all of those findings and also argued that the IJ denied her due process by improperly interfering with the direct exam in her hearing. The BIA adopted and affirmed the IJ's decision, observing only that the IJ was not biased and did not deprive Zhang of due process.

Zhang's brief is somewhat unclear, but she seems to argue that, contrary to what the IJ found, being beaten and detained for three days without food by government officials was serious enough to constitute past persecution. Zhang further argues that, because she has proven past persecution, she is entitled to a presumption that she has a well-founded fear of future persecution. *Dandan v. Ashcroft,* 339 F.3d 567, 573 (7th Cir.2003).

**2 [1] We have generally defined persecution as harm that rises above the level of mere harassment. *Asani v. I.N.S.,* 154 F.3d 719, 723 (7th Cir.1998). Furthermore, we have determined that treatment similar to what Zhang experienced does not compel a finding of persecution. *Prela v. Ashcroft,* 394 F.3d 515, 518 (7th Cir.2005) (interrogations, 24-hour detention, and beating causing injury to petitioner's hands); *Liu v. Ashcroft,* 380 F.3d 307, 313 (7th Cir.2004) (two-day detention, pushing, and hair pulling); *Dandan,* 339 F.3d at 573-74 (three-day detention without food and beaten until face became swollen). We have also said that an applicant must provide specific information about the severity of her treatment in order to show that the evidence compels a finding of persecution. *Dandan,* 339 F.3d. at 574. Other than testifying that officials left a scar on her arm when they dragged her away, Zhang did not detail the severity of the beating she received, and we do not think that a non-specific allegation of a scar is serious enough to compel a finding of persecution, *Id.* at 572.

We also note that it is unclear whether Zhang has shown that the treatment she suffered was on account of a protected ground. Zhang argues that the IJ should have found that she was persecuted on account of her membership in a particular social group-specifically her family relationship to her father. A characteristic that defines a social group is one that a person either cannot change or, as a matter of conscience, should not be required to change. *Tapiero de Orejuela v. Gonzales,* 423 F.3d 666, 672 (7th Cir.2005). We have suggested that an immediate family qualifies as a social group, *Iliev v. I.N.S.,* 127 F.3d 638, 642 (7th Cir.1997), but typically such a situation involves the family in question being targeted for a reason that is also a protected ground. *See id.* at 639-40 (family with anti-communist views); *Tzankov v. I.N.S.,* 107 F.3d 516, 519 (7th Cir.1997) (same); *Najafi v. I.N.S.,* 104 F.3d 943, 945, 947 (7th Cir.1997) (family supported the Shah). Zhang's family was targeted because her father owes money,

and "individuals who owe money" is almost certainly not a protected group since owing money is not a characteristic a person cannot change or should not be required to change. *See Cruz-Funez v. Gonzales*, 406 F.3d 1187, 1191-92 (10th Cir.2005). In any event, we need not reach this issue because we have already determined that Zhang's evidence does not compel a finding that she was persecuted for any reason.

[2] Finally Zhang argues that the IJ violated her due process rights by frequently interrupting her attorney and ultimately allowing her attorney to ask only a ***523** few questions during the direct exam of Zhang. However, to make out a due process claim, Zhang must show that she was "prejudiced" by the IJ's conduct-in other words that the IJ's conduct potentially affected the outcome of the case. *Hamid v. Gonzales*, 417 F.3d 642, 645-46 (7th Cir.2005); *Roman v. I.N.S.*, 233 F.3d 1027, 1033 (7th Cir.2000). Zhang has said only that the IJ's interruptions "intimidated" her, and prevented her attorney from presenting the case in the way they had planned, but she has not specified what additional evidence she would have offered or what she would have done differently if the IJ had not interrupted.

****3** For the foregoing reasons we DENY the petition for review.

All Citations

154 Fed.Appx. 520, 2005 WL 3046275

Footnotes

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* Fed. R.App. P. 34(a)(2).

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