

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
WASHINGTON, D.C.

In the Matter of:

L-E-A-

Respondent

§
§
§
§
§
§
§

Raed Gonzalez, Esq.
GONZALEZ OLIVIERI, LLC
2200 Southwest Freeway, Suite 550
Houston, TX 77098
Phone: (713) 481-3040
Fax: (713) 588-8683

Amanda Waterhouse, Esq.
GONZALEZ OLIVIERI, LLC
2200 Southwest Freeway, Suite 550
Houston, TX 77098
Phone: (713) 481-3040
Fax: (713) 588-8683

Alexandre Afanassiev, Esq.
GONZALEZ OLIVIERI, LLC
2200 Southwest Freeway, Suite 550
Houston, TX 77098
Phone: (713) 481-3040
Fax: (713) 588-8683

AMICUS CURIAE BRIEF OF GONZALEZ OLIVIERI, LLC

ISSUE PRESENTED

On December 3, 2018, the Acting Attorney General (“AG”), Matthew G. Whitaker, issued an invitation for the submission of additional briefs from interested parties to assist in the review of determining “whether, and under what circumstances, an alien may establish persecution on account of membership in a “particular social group” under 8 U.S.C. § 1101(a)(42)(A) based on the alien’s membership in a family unit.”

INTEREST OF *AMICUS CURIAE*

Amicus curiae, Gonzalez Olivieri, LLC, is a law firm engaged in representing immigrants and advocating for their rights and privileges under the laws of the United States. It represents a large number of aliens who request asylum in the United States because they have been, or will be, persecuted in their home countries on account of their familial relationships. Thus, the question posed by the Acting AG in *Matter of L-E-A-*, is quite significant to the undersigned *amicus curiae*.

The expertise and familiarity of the undersigned *amicus* with the situations of various immigrants who request asylum, either with the United States Citizenship and Immigration Services (“USCIS”) or in immigration court proceedings, will most certainly assist the Acting AG in resolving this matter, one that is of great import to the administration of this nation’s asylum laws. Accordingly, proposed *amicus curiae* respectfully requests leave of the Acting AG to file the present brief.

ARGUMENT

Undersigned *amicus* moves the Acting AG to conclude that an alien may establish past or future persecution on account of membership in a particular social group based on family membership in situations where one of the central reasons for the persecution is the alien’s

immediate relationship to members of his family, just as the Board of Immigration Appeals (“BIA” or “Board”) held in *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017).

1. Particular Social Groups Based on Family Membership Are Cognizable

Under 8 U.S.C. § 1101(a)(42)(A), the term “refugee” means “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, 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.”

In order to demonstrate whether an alien has been subjected to past persecution, or whether the alien has a well-founded fear of future persecution, *on account of membership in a particular social group*, the social group itself must be considered cognizable under the INA.

Undersigned *amicus* wishes to first note that the majority of federal circuit courts, in binding precedential decisions, have recognized, and continue to recognize, that groups based on immediate or nuclear family ties are cognizable under the INA. *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (finding that the family provides “a prototypical example of a ‘particular social group’”); *Aldana-Ramos v. Holder*, 757 F.3d 9, 12 (1st Cir. 2014); *Vumi v. Gonzales*, 502 F.3d 150, 155 (2d Cir. 2007); *Lopez-Soto v. Ashcroft*, 383 F.3d 228, 235 (4th Cir. 2004); *Ramirez-Mejia v. Lynch*, 794 F.3d 485, 492–93 (5th Cir. 2015); *Al-Ghorbani v. Holder*, 585 F.3d 980, 983 (6th Cir. 2009); *Iliev v. INS*, 127 F.3d 638, 642 (7th Cir. 1997).

Undersigned *amicus* therefore moves the Acting AG to follow the precedential decisions of these federal circuit courts and hold, just like the Board did in *Matter of L-E-A-*, *supra*, that particular social groups based on family membership are valid.

Furthermore, even if the Acting AG decides not to follow the aforementioned federal court decisions, undersigned *amicus* asserts that a social group based on family membership is a cognizable social group because it meets all 3 elements to be considered valid under the framework outlined by the BIA in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014).

In *Matter of M-E-V-G-*, the Board held that for a particular social group to be considered cognizable, the alien must demonstrate that the group is: “(1) composed of members who share a common immutable characteristic that members of the group cannot change or should not be required to change; (2) defined with particularity; and (3) socially distinct within the society in question.” 26 I&N Dec. at 237.

A common characteristic is one that defines the group and “it must be one that the members of the group either cannot change or should not be required to change because it is fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985). Such shared characteristics can include things like “sex, color or kinship ties,” or it can include situations where members of the group have shared past experiences.” *Id.*

Social distinction is determined by “the extent to which members of a society perceive those with the characteristic in question as members of a social group.” *Matter of E-A-G-*, 24 I&N Dec. 591, 594 (BIA 2008). Social visibility does not require “on-sight” visibility but is determined by whether the group is understood or perceived by others to be a social group, that is, whether the group is “generally recognizable” by others. *Henriquez-Rivas v. Holder*, 707 F.3d 1081, 1088 (9th Cir. 2013).

Further, even if the social visibility of a group is not visible to society at large, one can show the existence of social visibility if it is perceived by the persecutors that the group is socially visible. *Id.* at 1089-90.

Particularity is determined by “whether the proposed group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *Matter of S-E-G-*, 24 I&N Dec. 579, 584 (BIA 2008). Basically, the group must have definable boundaries to delimit its membership and cannot be “amorphous, overbroad, diffuse or subjective.” *Matter of M-E-V-G-*, 26 I&N Dec. at 239.

If the proposed social group meets the three aforementioned requirements, then it must be considered a cognizable social group under the INA. Undersigned *amicus* contends that a particular social group based on family membership is such a group.

First, the nuclear family possesses common, immutable characteristics that establish it as a social group because family membership is a certainly characteristic that members “either cannot change or should not be required to change because it is fundamental to their individual identities or consciences.” *Matter of Acosta*, 19 I&N Dec. at 233 (noting that the shared characteristic between group members can be “an innate one such as...kinship ties...”); *see also*, *Crespin-Valladares v. Holder*, 632 F.3d 117, 124 (affirming *Acosta* and finding that the group of family is “paradigmatically immutable”).

Second, the nuclear family is, without question, socially distinct because it is one that is readily identifiable and generally recognizable in virtually every society. *Matter of C-A-*, 23 I&N Dec. 951, 959 (BIA 2006) (“Social groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups.”); *see also*, *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985) (noting that the nuclear family is “a small, readily identifiable group”).

Finally, a particular social group based on immediate family membership is defined with particularity because it generally provides a “clear benchmark for determining who falls within the

group” and is “discrete” with “definable boundaries.” *M-E-V-G-*, 26 I&N Dec. at 239; *see also, Crespin-Valladares*, 632 F.3d at 124–25 (noting that a group based on immediate family membership “possesses boundaries that are at least as ‘particular and well-defined’ as other groups whose members have qualified for asylum.”).

Specifically, those members who are immediately related to the individual upon whom the group is based, i.e., a parent, child or sibling, would certainly fall within the limits of the group while those who are non-relatives would fall squarely outside of the group’s boundaries. Accordingly, it is reasonable to conclude that a family-based particular social groups are sufficiently particular under the standard set out in *Matter of M-E-V-G-*, *supra*.

For the aforementioned reasons, undersigned *amicus* moves the Acting AG to find, like the Board and a majority of Circuit Courts have found, that a particular social group based on immediate family membership should be considered a viable social group under the INA.

2. Nexus Between the Persecution and the Family Particular Social Group

Once an alien has made the showing that the alien’s particular social group meets the necessary requirements under *M-E-V-G-*, *supra*, the alien must also show that he or she was persecuted, or will suffer persecution, “on account of” such membership, i.e., that there was some nexus or connection between the persecution and the asserted social group. *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341, 344 (5th Cir. 2002); *Matter of S-E-G-*, *supra* at 582.

Persecution on the account of membership in a particular social group does not mean persecution solely for that reason. Rather, group membership simply must be *at least one of the central motives* for the claimed persecution. 8 U.S.C. § 1158(b)(1)(B)(i); INA § 208(b)(1)(B)(i); *see also Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007).

Effectively, this means that the protected trait “cannot be incidental, tangential, superficial,

or subordinate to another reason for harm.” *Id.* at 214.

In order to help assist in the “central reason for harm” analysis, the BIA has noted that an applicant for asylum “must demonstrate that the persecutor would not have harmed the applicant if the protected trait did not exist.” *Matter of N-M-*, 25 I&N Dec. 526, 530 (BIA 2011).

With respect to the particular social group of immediate family members, the Board previously stated in *Matter of L-E-A-*, that a clear nexus between the harm and the protected family-based particular social group would exist when “a persecutor is seeking to harm the family members because of an animus against the family itself.” 27 I&N Dec. at 44. Thus, “nexus is not established simply because a particular social group of family members exists and the family members experience harm.” *Id.* at 45.

In some cases, it is obvious when the reason for the harm is a personal animus against the family itself. For instance, in *Gebremichael v. INS*, the petitioner was an Ethiopian national who aided his brother in escaping further imprisonment and torture at the hands of the government. 10 F.3d 28, 30-31 (1st Cir. 1993). The petitioner himself was then arrested, interrogated, and tortured because the authorities wanted to find the whereabouts of his brother, whom they deemed an enemy of the state. *Id.* at 31. Fearing further mistreatment and harm, the petitioner fled the country and thereafter sought asylum in the United States. *Id.* at 32.

The First Circuit Court determined that there was a “manifest” link between the persecution that the petitioner suffered and his family membership because the record made it clear that Ethiopian security forces terrorized and tortured one family member [petitioner] in an attempt to extract information on the whereabouts of another [petitioner’s brother]. *Id.* at 36. Accordingly, the Court was “compelled to conclude that no reasonable factfinder could fail to find that petitioner was singled out for mistreatment because of his relationship to his brother.” *Id.*

The aforementioned case is perhaps one of the most clear-cut examples of when persecution on account of family membership exists in an asylum case. In other cases, however, whether the harm is motivated by membership in a particular family is far less clear, such as in cases whether the harm is caused to a family member who is targeted because another family member was targeted on account of a non-protected ground, such as gang-recruitment. However, the undersigned *amicus* respectfully maintains that even in these situations, a clear nexus is established, just as the Fourth Circuit Court of Appeals found in *Hernandez-Avalos*, 784 F.3d 944 (4th Cir. 2015).

In *Hernandez-Avalos*, the Fourth Circuit Court held that threats made by gang members towards the alien were made on account of her membership in the particular social group of her nuclear family where the gang members tried to recruit her son into the gang. 784 F.3d at 949-50. The reason for this holding offered by the Fourth Circuit was straightforward: the alien's "relationship [to] her son was a *central reason* for her persecution, because that relationship was the reason 'why she, and not another person, was threatened.'" *Id.* In other words, there was no evidence the alien petitioner in *Hernandez-Avalos* would have been selected as a recipient of death threats absent the familial connection with her son. This indicated to the Fourth Circuit that a nexus existed between the harm to the applicant, i.e. mother of the individual being targeted for gang's recruitment, and the asserted nuclear family social group. *Id.*; see also *Velasquez v. Sessions*, 866 F.3d 188, 191 (4th Cir. 2017); *Cruz v. Sessions*, 853 F.3d 122, 129 (4th Cir. 2017) ("The full record before us compels a conclusion that Avila's [gang-related] threats were motivated, in at least one central respect, by Cantillano Cruz's membership in Martinez's nuclear family").

Based on the Fourth Circuit Court's holding, undersigned *amicus* asserts that in situations where an alien is targeted due to her immediate relationship with a family member, even if that

family member is threatened on account of a non-protected group, such as gang-membership or gang-recruitment, a sufficient nexus exists between the harm suffered and the protected family-based social group because the family membership is the only reason why the alien, and not some other person, would have been persecuted.

It matters not, in the opinion of *amicus*, that the family member, on whom the alien is basing her social group on, was targeted for another reason because the inquiry must focus on whether “[the applicant] would have been selected as the recipient of those threats absent that familial connection.” *Hernandez-Avalos*, 784 F.3d at 950, n.7.

Undersigned *amicus* is aware that the BIA has held that an alien cannot base his or her asylum claim on the fact that they suffered persecution on account of a familial relationship if the person upon whom the particular social group is based was not targeted for reasons not protected under the INA. *Matter of L-E-A-*, 27 I&N Dec. at 45 (noting that the “fact that a persecutor targets a family member simply as a means to an end is not, by itself, sufficient to establish a claim, especially if the end is not connected to another protected ground.”). Nevertheless, undersigned *amicus* moves this Court to find the Board’s reasoning in *Matter of L-E-A-*, *supra*, on this point, to be legally erroneous because the analysis for an asylum claim based on persecution on account of a protected ground, such as nuclear family, requires looking at the alien “herself as the applicant and ask[ing] whether [she] was targeted because of her membership in the social group consisting of her immediate family.” *Villatoro v. Sessions*, 680 F. App’x 212, 221-22 (4th Cir. 2017).

It does not, as noted above, require both the asylum applicant and the person on whom the particular social group is based on, to be persecuted on account of a protected ground.

Accordingly, the Acting AG should find, just like the Fourth Circuit did, that a nexus between the persecution and the particular social group exists even if the alien applying for asylum

is basing his or her family social group on a family member who was not targeted on account of a protected ground.

CONCLUSION

In sum, *amicus curiae* prays that the Acting AG finds that a particular social group based on family membership is cognizable under the INA, just like the BIA and virtually every Circuit Court have found, and that an alien may establish persecution on account of said family membership, if the alien demonstrates the one central reason for the harm suffered is his or her familial relationship, even if the person who forms the basis for the family membership was not targeted on account of a protected ground.

Respectfully submitted,

GONZALEZ OLIVIERI, LLC

Date: January 16, 2018

/s/ Raed Gonzalez

Raed Gonzalez, Esq.
GONZALEZ OLIVIERI, LLC
2200 Southwest Freeway, Suite 550
Houston, TX 77098
Phone: (713) 481-3040
Fax: (713) 588-8683

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and complete copy of the foregoing Amicus Brief was duly served upon the Office of the Attorney General by mail on January 16, 2018 to the following address:

____ United States Department of Justice
Office of the Attorney General, Room 5114
950 Pennsylvania Avenue, NW
Washington, DC 20530

/s/ Raed Gonzalez

Raed Gonzalez, Esq.
GONZALEZ OLIVIERI, LLC
2200 Southwest Freeway, Suite 550
Houston, TX 77098
Phone: (713) 481-3040
Fax: (713) 588-8683

ORIGIN ID: HOUA (713) 481-3040
RAED GONZALEZ
RAED GONZALEZ
2200 SOUTHWEST FHWY, SUITE 550
HOUSTON, TX 77098
UNITED STATES US

SHIP DATE: 16 JAN 19
ACTWGT: 1.00 LB
CAD: 103915897MNET4040
BILL SENDER

TO UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
950 PENNSYLVANIA AVENUE, NW RM 5114

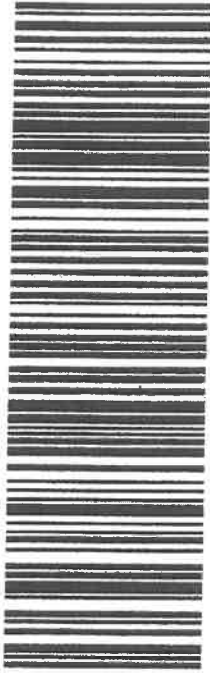
WASHINGTON DC 20530
REF: (713) 481-3040
PO: INV: DEPT:



TRK# 7742 1183 6989
0201

THU - 17 JAN 10:30A
PRIORITY OVERNIGHT

XC RDVA 20530
DC-US IAD



552.0/D74C/DC/A5

After printing this label:

1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.

Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com. FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.