



WHY MATTER OF L-E-A- COULD AFFECT THOUSANDS OF ASYLUM CASES

Currently under review by the attorney general, *Matter of L-E-A-* could potentially affect the cases of thousands of people who are seeking asylum because they are at risk in their home country based on their family membership.

What is *Matter of L-E-A-*?

Matter of L-E-A- is a decision by the Board of Immigration Appeals that upheld a longstanding principle under asylum law that persecution based on an individual's membership in a particular family could qualify the applicant for asylum, as they would belong to "a particular social group." Section § 101(a)(42)(A) of the Immigration and Nationality Act (INA) defines a refugee as an individual outside his or her country 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."

What is the history of this case?

Mr. L-E-A- fled Mexico after being threatened by a dangerous criminal cartel, La Familia Michoacana. The cartel had attempted to make Mr. L-E-A-'s

father pay extortion money, and when he refused, the cartel used Mr. L-E-A- to punish his father. The cartel falsely told Mr. L-E-A-'s father they had kidnapped the son. When Mr. L-E-A- returned to Mexico, the cartel fired gunshots in his vicinity and tried to kidnap him. Fearful for his life, Mr. L-E-A- fled to the United States and sought asylum.

The immigration judge denied Mr. L-E-A-'s case for asylum, and in 2017, the Board of Immigration Appeals (BIA), the administrative body which hears immigration court appeals, upheld that denial. However, in that precedential decision, the BIA also confirmed the legal principle that family membership can be considered a protected characteristic for asylum purposes. The BIA remanded Mr. L-E-A-'s case to the immigration court for further consideration of a different claim under the Convention Against Torture.

What did the acting attorney general do?

On Dec. 3, 2018, Acting Attorney General Matthew Whitaker referred *Matter of L-E-A-* to himself to review the question of "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.”

Can he do that?

Although the immigration regulations give the attorney general the authority to review BIA precedential decisions, prior administrations used that authority sparingly. In eight years of the Obama administration, the attorney general certified a case to him or herself only four times. By way of contrast, the former attorney general Jeff Sessions certified to himself eight immigration cases in the first ten months of 2018. As acting attorney general, Whitaker did so twice in four months.

Why should we be concerned about the attorney general’s adjudication of this case?

The protected characteristic of “particular social group” has come under attack by the current administration, which has taken numerous steps to curtail asylum seekers’ rights. Last summer, former Attorney General Jeff Sessions issued a decision, *Matter of A-B-*, overturning a precedential BIA case that had established “married women in Guatemala who are unable to leave their relationship” as a valid particular social group. After that decision, it became easier for domestic violence survivors to win asylum from

countries whose governments do not provide protection for those who face this harm. Although *Matter of A-B-* did not address asylum based on family membership, in a footnote to that decision, Sessions questioned whether asylum should be granted based on family membership.

The Trump administration has used the adjudicatory procedure of attorney general case review to rewrite both immigration court procedures and substantive asylum law. It is deeply troubling that political appointees are attempting to use this procedure to erase protections that have been in place for decades.

What are potential consequences if this decision is overturned?

The administration is also creating procedural hurdles to asylum, such as the new Remain in Mexico policy, which will force asylum seekers to wait for U.S. immigration court dates in Mexico. Family membership and kinship ties have been recognized by the BIA and federal courts as quintessential particular social groups for three decades. If the attorney general rewrites this precedent, countless vulnerable asylum seekers could be returned to harm’s way.

CLINIC is representing Mr. L-E-A- before the attorney general as co-counsel with Mei Fang Chen. Through its involvement in the case, CLINIC hopes to preserve this critical basis for asylum.

ABOUT CLINIC’S DEFENDING VULNERABLE POPULATIONS PROJECT

For more than 30 years, the Catholic Legal Immigration Network, Inc., has been on the cutting edge of training nonprofit immigration legal service providers to offer affordable, quality legal representation to immigrants. Today the network that started in 1988 with a handful of diocesan agencies includes about 360 organizations in 49 states.

CLINIC’s Defending Vulnerable Populations Project was created in 2017 in response to growing anti-immigrant sentiment and policy measures that hurt immigrant families. The project’s primary objective is to increase the number of fully accredited representatives and attorneys who are qualified to represent immigrants in immigration court proceedings. By increasing access to competent, affordable representation, the project focuses on protecting the most vulnerable immigrants—those at immediate risk of deportation.

The project offers a variety of written resources including practice advisories and guides on removal defense strategies, amicus briefs before the BIA and U.S. courts of appeal, pro se materials to empower the immigrant community and reports.