


## BIA Pro Bono Project Update

### Asylum-Seeker's Appeal Sustained, Remanded to IJ, and Asylum Granted

Students at Cornell Law School and Amy Oliver of Perkins Coie LLP represented an asylum-seeker from Mexico. Mr. R had been detained, brutally beaten, monitored, and harassed throughout Mexico by the Mexican military, who accused him of being a Zapatista guerrilla sympathizer. Appearing pro se before the Immigration Judge (IJ), Mr. R was found credible but denied asylum, withholding and protection under the Convention Against Torture (CAT).

Mr. R filed a pro se notice of appeal to the BIA and his case was matched with Steve Yale-Loehr and students at Cornell Law School's Asylum and CAT Appellate Clinic. As a result of their representation before the BIA, the Board found that Mr. R's experiences with the Mexican military, especially the politically-motivated detention without charge and physical abuse that he suffered at their hands, rose to the level of past persecution under Ninth Circuit Law. The BIA therefore found that Mr. R was entitled to rebuttable presumption of a well-founded fear of future persecution, and remanded the case to the IJ so that DHS could have a chance to rebut this presumption. Amy Oliver from Perkins Coie LLP represented Mr. R before the IJ, who granted Mr. R asylum. 

### Cornell Law School's Asylum and CAT Appellate Clinic Teams Up with Catholic Charities Attorney to Secure CAT Protection for a National of Haiti

Students at Cornell Law School's Asylum and CAT Appellate Clinic, and Ann Marie Mulcahy, an attorney with Catholic Charities Legal Services in Lauderdale Lakes, FL represented Ms. F before the BIA and the Immigration Judge. Their representation and advocacy resulted in a grant of protection for Ms. F. Ms. F, a lawful permanent resident (LPR) from Haiti, was placed in removal proceedings as a result of a controlled substance conviction. Ms. F suffered from mental illness and appeared unrepresented before the IJ where she applied for protection under the Convention Against Torture (CAT). She feared that if returned to Haiti, she might be killed or beaten by individuals associated with the president. The IJ denied her CAT claim and Ms. F filed a pro se notice of appeal to the BIA. Her case became part of the BIA Project and was matched with pro bono counsel Steven Yale-Loehr and students at the Cornell Law School Asylum and CAT Appellate Clinic. The BIA initially dismissed Ms. F's appeal, but after much advocacy and hard work, the Cornell law students obtained Ms. F's medical records and filed a motion to

(story continues on page 2)

continued from page 1:

reopen her case before the BIA. The medical records had previously been unavailable and were critical to the crux of Ms. F's CAT claim. The Board granted the motion and remanded the case to the IJ, finding that as a result of Ms. F's medical condition, the IJ should have inquired into and placed his conclusions about her competency on the record. The Board also noted that Ms. F's case was distinguishable from Matter of J-E-. The Board stated, "Medical treatment in Haiti is simply not available in many areas of the country, certainly not in prison; Respondent cannot be expected to obtain and take medication in Haiti; therefore, it is foreseeable that her illness, when combined with prison conditions, may result in her being able to show it is more likely than not she will suffer torture at the hands or with the acquiescence of a public official, if she is returned to Haiti."

Ann Marie Mulcahy of Catholic Charities Legal Services in Lauderdale Lakes, FL represented Ms. F before the IJ, who granted Ms. F CAT protection. The IJ found that Ms. F would suffer torture if returned to Haiti as she would be detained, receive minimal medical treatment, and be considered a threat by prison officials. The DHS appealed the decision, arguing that Ms. F failed to show that it was more likely than not that the Haitian government "intentionally subjects individuals with medical conditions to torture." Ann Marie represented Ms. F before the Board, which ultimately upheld the IJ's decision. ☐

Welcome to Maura Collins! Maura Collins has recently moved from CLINIC's Framingham, MA office to work with CLINIC's Division of Public Education & Advocacy in Washington, DC. Maura will be involved with BIA Project volunteers and can be reached at [mcollins@cliniclegal.org](mailto:mcollins@cliniclegal.org) or (202) 635-5812.

## Iranian CAT Grant

Jeffrey Blackman represented Mr. M, a national of Iran, before the BIA. The Immigration Judge had granted Mr. M protection under the CAT, finding that as a result of his political activism and criticism of the Iranian government, in which he engaged both while living in Iran and in the United States, he would be tortured if returned to Iran. The BIA dismissed the DHS' appeal finding no error with the IJ's decision. ☐

## Honduran Gang-Based CAT Grant Upheld by BIA

Rajesh James of Davis, Polk & Wardwell represented Mr. G, a national of Honduras, before the BIA. The Immigration Judge had granted withholding of removal under the INA and protection under the CAT to Mr. G, based on his past persecution and fear of future persecution if deported to Honduras as a result of his former U.S.-based gang affiliation. The DHS appealed the IJ's grants, arguing that Mr. G was not a member of a particular social group, that the IJ failed to require Mr. G to corroborate certain aspects of his testimony, and that Mr. G was not credible. As a result of Rajesh's representation, the BIA upheld the withholding and CAT grants, finding that the DHS had raised no arguments on appeal that merited reversal of the IJ decision. ☐

CLINIC and its BIA Project partners extend a special thanks to the many law schools who participate in the BIA Project. During the 2004-2005 academic year students from Cornell Law School, George Washington University Law School, Loyola University New Orleans School of Law, Pace University School of Law, Southern New England School of Law, the University of Mississippi Law School, and Ave Maria School of Law participated in the BIA Project. A few of their victories are highlighted below.

### Liberian Asylum Grant

Marc Harrold and students at the University of Mississippi Law School represented Mr. L, an asylum-seeker from Liberia, before the BIA. The IJ had granted Mr. L asylum, finding that he had suffered past persecution on account of imputed political opinion at the hands of rebels associated with Liberians United for Reconciliation and Democracy (LURD). Mr. L's uncle had been a magistrate judge under the Charles Taylor government, where he presided over a trial of LURD rebels, who unsuccessfully tried to bribe Mr. L's uncle. LURD rebels ultimately killed Mr. L's uncle for his refusal to accept their bribe, as well as his immediate family, and two of Mr. L's brothers. The rebels also attempted to kill Mr. L and his father, stabbing them both and throwing acid in Mr. L's father's face. The DHS appealed the IJ's grant of asylum. Some of DHS' arguments were (1) Mr. L did not provide sufficient evidence of his identity or corroborating evidence of his claim, (2) that conditions in Liberia had changed to the extent that Mr. L would no longer be in danger, and (3) that because of his manner of entry into the United States as a stowaway he did not merit asylum as a matter of discretion. Emphasizing that the

IJ had found Mr. L credible, that Mr. L had limited resources, that his failure to submit identity documents was not detrimental to his claim of past persecution, and that the country conditions had not changed so substantially that Mr. L would no longer fear returning to Liberia, the BIA upheld the asylum grant and dismissed the DHS appeal. [\[1\]](#)

### BIA Upholds Cancellation of Removal Grant

Marc Harrold and students at the University of Mississippi Law School represented Mr. C, an LPR, before the BIA. The IJ had granted Mr. C cancellation of removal, finding that Mr. C's NY state assault conviction was neither a crime of moral turpitude nor an aggravated felony. The BIA upheld the IJ's decision. Although the DHS later filed a motion to reconsider, the BIA denied the motion. After advocating with DHS, Mr. C was released from detention. [\[2\]](#)

### Voluntary Departure

Joe Cavaco, a student participating in Southern New England School of Law's Immigration Clinic and Janet Miranda (a volunteer attorney with the clinic) represented Mr. J before the BIA. The Immigration Judge had granted Mr. J voluntary departure to the Philippines, but DHS appealed, arguing that the IJ abused his discretion because Mr. J had a criminal conviction and because the Philippines was known to have organizations on the list of designated terrorist organizations. The BIA dismissed the DHS appeal and affirmed the IJ's grant of voluntary departure. [\[3\]](#)

## BIA Upholds IJ's Derivative USC Finding

Under the supervision of Vanessa Merton, Associate Dean for Clinical Education and Professor of Law at Pace University School of Law, students Debbie Feldman and Angelina Heimel represented Mr. L before the BIA. The IJ had found that Mr. L, an LPR with a criminal conviction that made him removable, had derived U.S. citizenship from his mother and terminated removal proceedings. Section 321(a) of the Immigration and Nationality Act (INA) allows a naturalized parent to confer citizenship on a child less than eighteen years of age if s/he is legally separated from the child's other parent and has legal custody. DHS did not dispute that Mr. L's mother met these requirements, but rather argued that her naturalization had to have taken place after she separated and obtained sole custody of Mr. L. The Immigration Judge found that INA § 321(a) and its case law progeny did not require a sequential order of events, since all of the statutory elements were met prior to Mr. L's eighteenth birthday. The BIA agreed with the IJ and dismissed the DHS appeal. [\[13\]](#)

## BIA Terminates Removal Proceedings

Students at Cornell Law School's Asylum and CAT Appeals CLINIC represented Mr. N before the BIA. Mr. N, a lawful permanent resident from Cuba, was placed in removal proceedings after receiving a conviction for DUI property damage and manslaughter. The IJ found that Mr. N had been convicted of an aggravated felony, denied CAT protection and

ordered him removed from the United States. Mr. N appealed the IJ's decision to the BIA, and his case became part of the BIA Project. Ultimately, the BIA terminated his removal proceedings finding that he was not removable. The BIA found that the statute under which Mr. N was convicted did not require a particular mental state, and therefore as per the U.S. Supreme Court's recent decision in *Leocal v. Ashcroft*, Mr. N's conviction was neither a crime of violence nor an aggravated felony. [\[14\]](#)

### Thank You BIA Project Screeners!

The BIA Project could not function without its committed team of screening attorneys. Screeners are experts in immigration law who volunteer their time with the Project to review cases at the BIA once per week. They create the redacted summaries of the cases that are circulated to Project participants each week. We thank them for their time and dedication.

Dan Kesselbrenner - National Immigration Project of the National Lawyer's Guild

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

Mary Kenney - American Immigration Law Foundation

Beth Werlin - American Immigration Law Foundation

Nadine Wettstein - American Immigration Law Foundation

Liz McGrail - Capital Area Immigrants' Rights (CAIR) Coalition

Carolyn Waller - CAIR Coalition Member

Brian Mezger - CAIR Coalition Member

Rachel Ullman - CAIR Coalition Member

James Roberts - CAIR Coalition Member


Karen Grisez - Fried Frank Harris Shriver & Jacobson, LLP

Irena Lieberman - American Bar Association

Melanie Nezer - Hebrew Immigrant Aid Society


Denise Gilman - Washington Lawyers' Committee (formerly)

## BIA Upholds IJ's Adjustment of Status Grant

Vincenzo Franco, Andrea Hudson, and Mustafa Ostrander of Van Ness Feldman, P.C. represented Mr. A before the BIA. Mr. A, born in Mexico, was brought to the United States in 1983 by his mother when he was just two months old. Mr. A has resided in the United States since that time; is currently pursuing an associate degree in business, communications and real estate; and has been an active member of the community, participating in several youth volunteer programs and his church. In 2001, Mr. A was placed in removal proceedings for being present without admission or parole, but shortly thereafter became eligible to adjust status to lawful permanent resident as a child following to join his mother, who was eligible to adjust status as the spouse of a lawful permanent resident. In early 2004, the Immigration Judge granted adjustment of status to Mr. A, but the DHS appealed, arguing that Mr. A failed to establish his relationship to his mother, and that Mr. A could not adjust status without a waiver under section 212(h) of the Immigration and Nationality Act due to his juvenile convictions. The DHS also argued that Mr. A did not merit adjustment of status in an exercise of discretion. The BIA dismissed the DHS appeal finding that although Mr. A did not submit a birth certificate, the testimony and evidence submitted before the Immigration Court, including his mother's sworn statement that she had not registered his birth in Mexico and therefore had no birth certificate, were sufficient. The BIA further found that Mr. A was not required to submit a 212(h) waiver because his juvenile offenses were not considered crimes for immigration purposes and that the IJ did not err in finding Mr. A eligible for adjustment of status as a matter of discretion. 

## Two Cancellation of Removal Grants Upheld by BIA

Gretchen Liersaph and Saralyn Cohen of Shearman & Sterling LLP represented Ms. N before the BIA. Ms. N came to the United States as a refugee from the Congo when she was seven years old. After obtaining LPR status, Ms. N received a controlled substance conviction and was placed in removal proceedings. The Immigration Judge granted her cancellation of removal, finding that her lengthy residence in the United States beginning at an early age, lack of contact with relatives in the Congo, lack of felony convictions, and significant social and family ties to the United States outweighed the negative factors in her case. The BIA upheld the IJ's decision, finding that the DHS' arguments (that her criminal record was significant and that she had not established sufficient rehabilitation) were not persuasive enough to cause the Board to find that the IJ had erred in his decision.

Regan Beck of Orrick, Harrington & Sutcliffe, LLP represented Mr. B, a lawful permanent resident of the United States for more than 20 years, before the BIA. Mr. B, who suffered from schizophrenia, was placed in removal proceedings as a result of marijuana possession. Mr. B appeared pro se before the Immigration Judge, who granted him LPR cancellation of removal. The IJ found that Mr. B had a supportive and extensive family network in the United States, did not pose a danger to society, that his mental illness was treatable and controllable in a supportive environment which was available to him upon his release from detention, and that return to his homeland would cause him significant hardship. The DHS appealed the IJ's decision, arguing that Mr. B was a danger to society and that his removal would not create significant hardship because he had family in Jamaica. As a result of Reagan's representation, the BIA upheld the IJ's decision, finding no clear error in the IJ's factual findings, and dismissed the DHS appeal. Mr. B has been released from detention and is happy to be reunited with his family. 

## Mentors Needed!

The BIA Project needs experienced BIA practitioners to mentor pro bono attorneys new to immigration law. Mentoring involves strategizing with pro bono counsel on legal arguments, and possibly reviewing parts of a brief upon the volunteer's request. If you are interested in mentoring a BIA Project participant, please contact Molly McKenna at [mmckenna@cliniclegal.org](mailto:mmckenna@cliniclegal.org) or (202) 635-2567. We extend a special note of thanks to the individuals below, who have been particularly active mentors during the past year. Their participation and support of the BIA Project has enabled it to continue to grow by involving new attorneys and firms in the Project.

Lisa Brodyaga, Esq.

Clare Cherkasky, Esq.

Jim Feroli, Immigrant Refugee Appellate Center, LLC

Denise Gilman, Washington Lawyers' Committee (formerly)

Karen Grisez, Fried Frank Harris Shriver & Jacobson, LLP

Barbara Hines, University of Texas School of Law

Mary Holper, CAIR Coalition/CLINIC

Thomas Hutchins, Immigrant Refugee Appellate Center, LLC

Mary Kenney, American Immigration Law Foundation

Dan Kesselbrenner, National Immigration Project of the National Lawyers Guild

Hiroko Kusuda, CLINIC/Loyola University New Orleans School of Law

Liz McGrail, CAIR Coalition

Victoria Nielson, Immigration Equality

Christopher Nugent, Holland & Knight LLP

Paromita Shah, National Immigration Project of the National Lawyers Guild

Becky Sharpless, Florida Immigrant Advocacy Center

Jill Sheldon, CLINIC

Manny Vargas, NY State Defenders Association, Defending Immigrants Partnership

Beth Werlin, American Immigration Law Foundation

Nadine Wettstein, American Immigration Law Foundation

---

### REMINDER TO PROJECT PARTICIPANTS:

If you have received a decision on a BIA Project case and have not forwarded it to CLINIC, please do! Also, please forward a redacted version of your brief once it has been filed. Model briefs are extremely helpful to Project participants with limited BIA practice.