

June 11, 2018

BRIEF ANALYSIS OF ATTORNEY GENERAL'S DECISION IN *MATTER OF A-B-*

The Tahirih Justice Center reviewed the decision in *Matter of A-B-* issued by the Attorney General on June 11, 2018. The following is a brief summary of the primary points of concern in the decision itself. Its technicality does not intend to understate the decision's tremendous, harmful impact on the asylum and immigration adjudication system, the women and children who may now have no pathway to safety, and the reputation of the United States as a beacon of hope.

- This decision overturns the BIA's decision in *Matter of A-B-* and sends the case back to the Immigration Judge to deny asylum to Ms. B.
- It overrules *Matter of A-R-C-G-*, the 2014 case that allowed for asylum to be granted based on domestic violence, and all other Board precedent "to the extent they are inconsistent with the legal conclusions set forth" in his decision in *Matter of A-B-*.
- Although the decision focuses on the domestic violence cases of *A-B-* and *A-R-C-G-*, the ruling is broad enough that anyone who has suffered persecution at the hands of a private actor, such as someone who has been persecuted on account of sexual orientation or religious affiliation, could be considered not to have been persecuted, and therefore could be deemed not eligible for asylum.
- It wrongly states that where the persecutor is a non-state actor, the harm must be "attributed to" to the government. This is a much higher standard and is not in line with legal standard set by the courts which require the government to be unwilling or unable to control the persecutor.
- It demonstrates a complete lack of understanding of the social dynamics of domestic violence in saying that "the mere fact that country may have problems effectively policing certain crimes – such as domestic violence or gang violence – or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim."
- The AG claims that prior judicial interpretations of the phrase "particular social group" are not relevant because Congress must have left it ambiguous so that the implementing agency could interpret. This is wrong. Congress dropped into statute the exact language from the international treaty governing the issue. In addition, this AG is going against the decisions of AGs before, including under Clinton, Bush, and Obama.
- It concludes that the Board should not have granted asylum in *A-R-C-G-*, and states one of its reasons as DHS conceding nearly all of the points in the case. This is because the case merited asylum, not because the Board erred. DHS was privy to the facts in that case and all the law from courts and agencies prior.
- The AG decides that social groups advanced for domestic violence claims, including those in *A-R-C-G-* and *A-B-*, amount to simply "a description of individuals sharing certain traits." In fact, they meet the test prescribed by law

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for distinction because society views and treats them a specific way, i.e. as belonging to their spouses/partners and therefore not offering them protection. He states that there is “significant room for doubt that Guatemalan society views these women... as members of a distinct group” but does not look at any of the facts and supportive evidence that was submitted to support this claim.

- The decision states that the harm in *A-R-C-G-* was not persecution because there was not enough evidence to support the finding that the government condoned the abuse. It states that “there may be many reasons why a particular crime is not successfully investigated and prosecuted” but does not reflect on what those reasons might be, such as widespread social beliefs that women do not have recourse to abuse from spouses and domestic partners that would leave victims of domestic violence without any government protection.
- Throughout, the decision relies on broad generalizations and does not express knowledge about facts or evidence provided in any of the cases it is overturning.

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