

Immigration Legal Updates

The following is a compilation of recent Board of Immigration Appeals and Ninth Circuit Court of Appeals decisions, last updated June 2018. The summaries were compiled and prepared by the Tahirih Justice Center and should not be used to replace an attorney's independent research.

Board of Immigration Appeals

Matter of A-B-, 27 I&N Dec. 316 (June 11, 2018)

Issue: Membership in a particular social group

Holding: (1) *Matter of A-R-C-G-*, 26 I&N Dec. 338 (BIA 2014) is overruled. That decision was wrongly decided and should not have been issued as a precedential decision.

(2) An applicant seeking to establish persecution on account of membership in a "particular social group" must demonstrate: (i) membership in a group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; and (ii) that membership in the group is a central reason for her persecution. When the alleged persecutor is someone unaffiliated with the government, the applicant must also show that her home government is unwilling or unable to protect her.

(3) An asylum applicant has the burden of showing her eligibility for asylum. The applicant must present facts that establish each element of the standard, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of those elements.

(4) If an asylum application is fatally flawed in one respect, an immigration judge or the Board need not examine the remaining elements of the asylum claim.

(5) The mere fact that a country may have problems effectively policing certain crimes or that certain populations are more likely to be victims of crime, cannot itself establish an asylum claim.

(6) To be cognizable, a particular social group must exist independently of the harm asserted in an application for asylum.

(7) An applicant seeking to establish persecution based on violent conduct of a private actor must show more than the government's difficulty controlling private behavior. The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims.

(8) An applicant seeking asylum based on membership in a particular social group must clearly indicate on the record the exact delineation of any proposed particular social group.

(9) The Board, immigration judges, and all asylum officers must consider, consistent with the regulations, whether internal relocation in the alien's home country presents a reasonable alternative before granting asylum.

Matter of A-C-M-, 27 I&N Dec. 303 (June 6, 2018)

Issue: Material support bar

Holding: (1) An alien provides "material support" to a terrorist organization if the act has a logical and reasonably foreseeable tendency to promote, sustain, or maintain the organization, even if only to a de minimis degree. (2) The respondent afforded material support to the guerillas in El Salvador in 1990 because the forced labor she provided in the form of cooking, cleaning, and washing their clothes aided them in continuing their mission of armed and violent opposition to the Salvadoran Government.

Matter of Marquez Conde, 27 I.&N. Dec. 251 (Apr. 6, 2018)

Issue: Vacated convictions (removability)

Holding: Reaffirmed holding in *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003) (rev'd on other grounds, *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006)), that the definition of a "conviction" includes convictions that have been vacated as a form of post-conviction relief, but convictions that have been vacated based on procedural and substantive defects in the underlying criminal proceeding are no longer valid for immigration purposes.

Matter of Jorge Isaac Sanchez-Lopez, 27 I. & N. Dec. 256 (Apr. 20, 2018)

Issue: Crime of stalking (removability)

Holding: A conviction under California Penal Code § 646.9 is not a crime of stalking under INA § 237(a)(2)(E)(i).

Matter of L-M-P-, 27 I. & N. Dec. 265 (Apr. 27, 2018)

Issue: Re-instatement and asylum

Holding: (1) DHS has the authority to file a motion to reconsider in Immigration Court. (2) An applicant in withholding of removal only proceedings who is subject to a reinstated order of removal pursuant to INA § 241(a)(5) is ineligible for asylum.

Ninth Circuit

Liu v. Sessions, No. 12-74077 (June 1, 2018)

Issue: Corroborating evidence requirement

Holding: The panel denied a petition for review of the Board of Immigration Appeals' denial of asylum and withholding of removal. The panel held that substantial evidence supported the Board's determination that Liu's testimony, even if credible, was not persuasive, did not sufficiently demonstrate eligibility for relief, and was therefore subject to the corroborating evidence requirement of 8 U.S.C. § 1158(b)(1)(B)(ii). The panel held that the immigration judge gave Liu sufficient notice that corroborating evidence would be required, and that the notice was specific enough to satisfy the requirements of *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011). Because Liu had sufficient notice and failed to provide any meaningful corroborating evidence, the panel denied the petition for review.

[Gomez-Sanchez v. Sessions, No. 14-72506 \(Apr. 6, 2018\)](#)

Issue: Particularly serious crime bar

Holding: In applying Chevron deference, the BIA's determination that mental health should not be considered in determining what constitutes a particularly serious crime is an unreasonable interpretation of the statute.

[Garcia-Martinez v. Sessions, No. 16-72940 \(Apr. 9, 2018\)](#)

Issue: CIMT, ex post facto application

Holding: (1) Though the BIA can change its rules retroactively through adjudication, its authority to do so is not unconstrained. In applying a non-exhaustive list of five factors to balance the reliance interests of those to whom the new rule will be applied against the mischief, if any, that would be caused if the rule is not so applied, the court finds that the changed rule should not have been applied retroactively in this case. Petition granted and case remanded.

[Yusuf v. Sessions, No. 15-70423 \(Apr. 25, 2018\)](#)

Issue: Persecution, nexus, state protection

Holding: (1) Substantial evidence does not support determination of the BIA that Petitioner failed to establish past persecution on the basis of his political opinion. (2) The only government that existed for Petitioner after fall of national government in Somali civil war was his tribal government, and thus the militia was the relevant government for Petitioner's claim. (3) Punishment for resisting conscription *can* constitute persecution on account of political or religious beliefs where a disproportionately severe punishment would result on account of those political or religious beliefs.

[Macias-Padilla v. Sessions, No. 15-71121 \(Apr. 5, 2018\) UNPUBLISHED](#)

Issue: Nexus, government acquiescence

Holding: The petition to review is denied because there is no evidence that the cartel targeted the petitioner and his family for any other reason than generalized crime. Further the CAT claim is denied because one incident where the police did not believe the petitioner that he was being targeted by gangs was not sufficient to show "consent or acquiescence."

[Yang v. Sessions, No. 15-71740 \(Apr. 13, 2018\) UNPUBLISHED](#)

Issue: Past persecution; rebuttable presumption of well-founded future fear

Holding: The harms suffered, taken as a whole, rise to persecution. The case is remanded for consideration as to whether the government can rebut the presumption of future persecution.

[Martin-Calmo v. Sessions, No. 13-74046 \(Apr. 12, 2018\) UNPUBLISHED](#)

Issue: Nexus

Holding: The “one central reason” test does not apply to withholding, only to asylum. Withholding is granted.

Restrepo-Perez v. Sessions, No. 15-71091 (Apr. 16, 2018) UNPUBLISHED

Issue: Can a respondent file an untimely motion to reopen removal proceedings in light of Matter of A----R----C----G----, 26 I. & N. Dec. 388 (BIA 2014)

Holding: The Board’s decision in A----R----C----G---- was not a fundamental change in the law justifying an exercise of its *sua sponte* authority to reopen proceedings. The BIA decision is upheld because the court lacks jurisdiction to review and reopening would be futile.

Ramirez-Garcia v. Sessions, No. 15-71480, 15-71809 (Apr. 16, 2018) UNPUBLISHED

Issue: Abandonment of claims; credibility; particularly serious offense; likelihood of persecution

Holding: (1) The court lacks jurisdiction to consider the claim that proceedings should have been terminated on the basis that she was entitled to United States citizenship because her father had become a citizen because she failed to develop the issue in her BIA appellate brief and thus abandoned appeal on the issue. (2) The BIA’s decision regarding Petitioner’s credibility is supported by substantial evidence. It properly noted the inconsistency in her stories regarding her involvement in the drug crime for which she had been convicted. (3) The BIA’s decision noted the amount of drugs involved and her pecuniary purpose. Thus, the BIA did not err when it determined that she had been convicted of a particularly serious crime, especially in light of the strong presumption that drug trafficking offenses are particularly serious crimes. (4) The evidence in the record does not compel a determination that it is more likely than not that Ramirez would be tortured in Mexico. (5) The BIA did not err when it determined that the IJ had properly denied the motion for reconsideration; as it indicated, the evidence she pointed to did not undermine the adverse determinations properly made by the IJ and the BIA in their original decisions.

Barrientos v. Sessions, No. 15-70544 (Apr. 16, 2018) UNPUBLISHED

Issue: Aggravated felony; nexus; acquiescence; unexhausted claims

Holding: (1) Petitioner’s conviction under California Health and Safety Code § 11351, for possession for sale of cocaine, is a drug trafficking aggravated felony under 8 U.S.C. § 1101(a)(43)(B), rendering her ineligible for asylum and NACARA cancellation. (2) Substantial evidence supports the BIA’s conclusion that Petitioner failed to establish she would be persecuted on account of a protected ground. (3) Substantial evidence also supports the BIA’s denial of CAT relief because Petitioner failed to show it is more likely than not that she would be tortured by the government of El Salvador, or with its consent or acquiescence. (4) The court lacks jurisdiction to consider Petitioner’s unexhausted contentions regarding a family based social group.

[Singh v. Sessions, No. 16-73853 \(Apr. 13, 2018\) UNPUBLISHED](#)

Issue: Credibility

Holding: Substantial evidence supports the agency's adverse credibility determination based on inconsistencies as to the details of the first attack against Singh, the number of phone threats Singh received, and which of Singh's family members attempted to file a police report on his behalf, and based on the omission from Singh's application of efforts by his alleged persecutors to find him after he departed from India. Singh's explanations do not compel a contrary conclusion. Singh's CAT claim fails because it is based on the same testimony the agency found not credible, and Singh does not point to any other evidence in the record that compels the conclusion that it is more likely than not he would be tortured by or with the consent or acquiescence of the government of India.

[Martin-Calmo v. Sessions, No. 13-74046 \(Apr. 12, 2018\) UNPUBLISHED](#)

Issue: Nexus

Holding: (1) Substantial evidence supports the BIA's denial of Petitioner's CAT claim. Petitioner failed to show that it was more likely than not that he would be tortured by or with the acquiescence of the Guatemalan government. (2) The BIA incorrectly applied "one central reason" test to his claim. (3) The BIA mischaracterized Petitioner's testimony about why he feared returning to Guatemala. Petitioner claimed that he was mocked and threatened because of his ethnicity—not that he feared gang violence or criminals. We thus grant the petition insofar as it pertains to the withholding claim.

[Clemente-Pacheco v. Sessions, No. 16-73082 \(Apr. 30, 2018\) UNPUBLISHED](#)

Issue: State protection; social distinction; PSG membership; nexus

Holding: (1) Substantial evidence supports the BIA's finding that the police were willing and able to control the abusive father because they always responded when called and detained the father in a mental health institution. (2) Petitioner's claimed PSG (indigent Mexicans without familial support and with chronic and perceptible mental illness involving psychosis and with mental disabilities) is not socially distinct. The record does not show that Mexican society in general perceives, considers, or recognizes persons sharing the particular characteristics to be a group. (3) Substantial evidence supports the BIA's determination that Clemente is not a member of his claimed PSG because he has familial support such that he will not be institutionalized. (4) Substantial evidence supports the BIA's determination that Clemente will not be harmed on account of his membership in his claimed PSG if returned to Mexico. Clemente complains of squalid institutional conditions that cause harm to all institutionalized persons, including many persons outside of his claimed PSG. This forecloses any conclusion that the group members were intentionally targeted. (5) Substantial evidence supports the BIA's determination that Clemente failed to show that it was more likely than not that he would be unable to obtain medication in Mexico. Specifically, Clemente's brother promised to provide some financial support, Clemente did not establish the cost of his medication, and Clemente is able to work and earn money if he remains medicated. Additionally, despite Clemente's argument to the contrary, the record does not indicate that one must be institutionalized to receive medication. (6) Substantial evidence supports the BIA's

determination that Clemente failed to show that it was more likely than not that he would be institutionalized if he was unable to obtain medication, given that only 10% of Mexicans with mental illnesses receive any form of mental health treatment, let alone become institutionalized.

(7) Substantial evidence supports the BIA's determination that Clemente failed to show that it was more likely than not that he would be overmedicated and physically restrained if institutionalized in Mexico.

(8) Substantial evidence supports the BIA's determination that the Mexican government does not specifically intend to inflict severe pain or suffering on its institutionalized population.

Nwadinobi v. Sessions, No. 15-73246 (Apr. 27, 2018) UNPUBLISHED

Issue: Credibility

Holding: (1) Although the IJ is allowed to exercise common sense in rejecting a petitioner's testimony, she cannot dismiss a petitioner's plausible explanation out of hand or arrive at a conclusion contrary to facts in the record. Because the Petitioner provided a plausible explanation for the discrepancy, the IJ must provide a specific, cogent reason for rejecting the evidence, and this reason must bear a legitimate nexus to that rejection. A statement that "respondent's explanation was not persuasive" without explanation is the sort of summary rejection we have previously held to be inadequate. The adverse credibility determination is reversed. (2) Petitioner has shown prejudice as to the effect of faulty translation on the questions of his identity and number of sexual partners, but has not as to the name of his friend. The petition is granted in part, denied in part, and remanded for further proceedings.

Abass v. Sessions, No. 16-74045 (Apr. 27, 2018) UNPUBLISHED

Issues: State protection; well-founded future fear

Holding: (1) the BIA disregarded and mischaracterized substantial evidence demonstrating that Ghanaian officials are unwilling to protect LGBT individuals. Given the overwhelming evidence compels the conclusion the Ghanaian government is unwilling to protect LGBT individuals, it is unnecessary for Petitioner to provide additional testimony on this point.

(2) The government did not present any evidence, either before the IJ or this panel, that country conditions have changed, nor did it argue that Petitioner may be able to relocate. Thus, we may determine whether the presumption is rebutted and if Petitioner is eligible for asylum. Petitioner testified that he is afraid of his father and the community because they will kill him for being gay. The IJ did not make any adverse credibility findings about his testimony.

Thus, his testimony regarding his fear of future persecution is sufficient to establish his claim on this ground. His fear is also objectively reasonable as the record reflects pervasively homophobic attitudes that often manifest in violence towards gay individuals and these attitudes show no signs of change. There is also nothing to suggest that certain areas of Ghana are more hospitable to gay individuals or that the police in certain parts of Ghana do not partake in extortion of gay persons.

Petitioner is statutorily eligible for asylum and the matter is remanded for a discretionary determination. Petitioner is granted withholding of removal under the Act and CAT protection.

[Cheng Xu v. Sessions, No. 15-72081 \(Apr. 17, 2018\) UNPUBLISHED](#)

Issue: Past persecution

Holding: A fifteen day detention including interrogation, an accusation of participating in an “evil cult,” and being slapped, punched, kicked to the ground, and beaten while on the ground, with release only after parents paid bond and agreement prohibiting him from speaking to anyone about this treatment in detention or contacting other members of the Christian fellowship and requirement to report to police regularly constitutes past persecution. Because Petitioner has established past persecution and he is entitled to a rebuttable presumption of a well-founded fear of future persecution. The matter is remanded for a determination of whether the Government can rebut the presumption.

[Ghousheh v. Sessions, No. 15-73386 \(Apr. 13, 2018\) UNPUBLISHED](#)

Issue: Terrorism bar

Holding: Nothing in the record suggests that, as it existed in 1982, the PLA in Lebanon met either of the other two statutory criteria for a terrorist organization. The government’s argument that although Petitioner received training “from” the PLA, his training was received “on behalf of the PLO,” but the BIA did not base its decision on this point. The petition is granted and remanded to the BIA so that it may consider whether Petitioner is subject to the terrorism bar for receiving training “on behalf of” a terrorist group.