MATTER OF AB: BACKGROUND AND ANALYSIS

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LEARNING OBJECTIVES

- Background of *Matter of A-B*
- Synopsis of *Matter of A-B-*
- Strategies & Practice Pointers post *Matter of A-B-*

MATTER OF A-B-

- On June 11, 2018, Attorney General Jeff Sessions issued a decision in *Matter of A-B-*, concerning the application for asylum of a woman from El Salvador who had been raped, abused, and nearly killed by her husband.
- *Matter of A-B-* overturns the 2016 Board of Immigration Appeals' (BIA) decision in favor of granting asylum to Ms. B.
- The AG also overturns the BIA's 2014 precedent-setting decision in *Matter of A-R-C-G-*, as well as the decisions of all other cases that disagree with his opinion in *A-B-*.

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WHAT DOES *A-B-* DO?

- Strictly, it overturns *A-R-C-G-* and "all other opinions inconsistent with the analysis in this opinion."
- Provides substantial dicta attempting to restrict asylum eligibility for domestic violence victims and victims of persecution by non-state actors
- Signals to immigration judges and officers to make adverse credibility findings and discount or give limited weight to country conditions evidence
- Assumes relocation within country is possible in most cases

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LEAKED GUIDANCE FROM USCIS

- See https://www.vox.com/policy-and-politics/2018/6/19/17476662/asylum-border-sessions

"When the harm is at the hands of a non-governmental actor, <u>the applicant must show that the government condoned the behavior or demonstrated a complete helplessness to protect the victim</u>... 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.

<u>Every asylum decision and CF/RF screening determination must consider and analyze whether internal relocation</u> would be reasonable, as provided for at 8 CFR 208."

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WHAT DOES *A-B-* <u>NOT</u> DO?

- Despite the dicta, A-B- does not and cannot
  - Change existing asylum law, regulations, or precedent law beyond *A-R-C-G-*
  - Change the requirements for particular social group
  - Touch other grounds for asylum
  - Change the statutory standard for failure of state protection

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JURISDICTIONAL ARGUMENT AGAINST APPLICATION OF *A-B-*

- The AG did not have the jurisdiction to certify the case to himself or to decide it in this manner. The case had been decided by the BIA and was pending before the immigration judge (IJ) for a final decision. The AG should not have taken a case off the desk of an IJ.

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ASYLUM CASE STRATEGIES

- Domestic violence and gender-rooted particular social groups
- Political Opinion
- Religion
- Race and/or National Origin

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PERSIST – AND EXPAND – YOUR PSGS

- Present your pre-*A-R-C-G-* arguments
- [Nationality] women who are unable to leave their marriage [or domestic relationship]
  - See DHS Brief in *Matter of R-A-,* available at www.cgrs.uchastings.edu
  - DHS did not oppose this formulation in *A-R-C-G-* or *A-B-*
  - Argue it *despite* the vacatur of *A-R-C-G-*
- [Nationality] women viewed as property by virtue of their position in a domestic relationship
  - See DHS Brief in *Matter of L-R-,* available at wwww.cgrs.uchastings.edu

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PERSIST – AND EXPAND – YOUR PSGS

- Gender + Nationality
- Nationality + Mother (?)
- Family membership PSGs
  - *Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011)
  - *Hernandez-Avalos v. Lynch*, 784 F.3d 944, 948 (4th Cir. 2015)
    - distinguishing from *Velasquez v. Sessions*, 866 F. 3d 188 (2017)

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THE BOTTOM LINE ON PSGS

- *A-B-* attempts, but should not, and cannot, stop the application of case law to your facts
- Back to basics
  - Immutable – *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985)
  - Particular – particular doesn't have to mean small!
  - Socially distinct – *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014)
- Be creative, be bold, and throw in the non-frivolous kitchen sink

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DON'T STOP AT PARTICULAR SOCIAL GROUP

- Unpack the domestic violence lived experience of your client
  - What was said? What was done? What was escalating violence in response to?
- Political Opinion
  - It's not just for activists and dissidents
  - Feminism is a political opinion – *Fatin v. I.N.S.*, 12 F.3d 1233, 1242 (3d Cir. 1993)
  - Symbolic acts -- *Saldarriaga v. Gonzalez*, 402 F.3d 461, 466 (4th Cir. 2005).
  - Right to work? Right to economic independence? Pro-choice? Pro-life? Right to go to school? Right of daughter(s) to go to school?

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DON'T STOP AT PARTICULAR SOCIAL GROUP

- Religion
    - Does her views of religion differ from her abuser?
    - Did she seek help and was rejected by her pastor/faith leader?
    - Did her husband force her to get pregnant or terminate a pregnancy against her religious beliefs?
    - *Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000)*
- Race or National Origen
    - Indigenous
    - Mixed race relationships

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UNWILLING OR UNABLE TO PROTECT

- Matter of AB states, "The applicant must show that the government condoned the private actions or demonstrated an inability to protect the victims."
- "Condoned" is not a legal standard. *See 8 USC 1101(a)(42)*
- How does the country approach protection of survivors of DV?
    - Does the country have a "whole of government" approach to protection
    - For example, in the US we have:
        - Federal/state/local funding to combat violence against women
        - National DV hotline
        - A survivor is able to get a protective order in any state and there is full and faith credit in all states
        - Survivors have shelter resources

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OTHER PRACTICE POINTERS

- Articulate during proceedings in the Immigration Court any and all social groups, along with all relevant facts
  - *Matter of W-Y-C- & H-O-B-, 27 I. & N. Dec. 189 (BIA 2018)*
- Be prepared with <u>at minimum</u> detailed answers to the Form I-589 questions or a declaration before the master calendar hearing
  - *Matter of E-F-H-L, 27 I&N Dec. 226 (AG 2018)*
- Credibility and the REAL ID Act
  - INA §208(b)(1)(B)(ii)
- Country Conditions and Distinguishing State Department Reports
- Address internal relocation

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Questions?