HEARTLAND ALLIANCE National Immigrant Justice Center

Interim Report
Submitted to the Barbara McDowell and Gerald S. Hartman Foundation
March 30, 2012

Introduction

With the support of the Barbara McDowell and Gerald S. Hartman Foundation, Heartland Alliance's National Immigrant Justice Center (NIJC) has made important strides in challenging the federal government's narrow interpretation of refugee law. During the past few years, the Board of Immigration Appeals (Board) has added criteria it requires potential refugees to meet. This shift has required extensive federal litigation to ensure refugees, particularly individuals who suffer gender-based persecution, retain access to protection.

Under current law in the United States, an individual seeking refugee status must establish a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group. International refugee law defines a particular social group as "a group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.[1] Contrary to well established domestic law and international law, the Board has attempted to limit the definition of a particular social group, denying *bona fide* refugees the opportunity to remain lawfully in the United States.[2] This conflicts with the Board's seminal 1985 decision, *Matter of Acosta*.[3] *Matter of Acosta* established that a particular social group is a group of individuals who share a characteristic that is either immutable or so central to the identity of group members that they should not be required to change it.

NIJC seeks to preserve the integrity of the *Acosta* particular social group definition. NIJC advocates directly with the Board to encourage it to re-adopt a pure reading of *Acosta*. Additionally, NIJC argues – often as *amicus* – for the application of the Board's original definition of a particular social group, to comport with international law.

This interim report provides an update on NIJC's accomplishments to date:

U.S. Supreme Court

Several Courts of Appeals have now rejected the Board's new rules for asylum cases, but other circuits have deferred to the Board's rules.[4] On this basis, some individuals have asked the U.S. Supreme Court to resolve the issue. However, NIJC would prefer that this issue be resolved by the executive branch as opposed to the Court. NIJC has been closely monitoring several cases at the Supreme Court, and filed an *amicus* brief in one case, *Demiraj v. Holder*, urging the Court to remand the case to the Board for a more reasoned, logical decision. In *Demiraj*, an Albanian father was

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[1] GUIDELINES ON INTERNATIONAL PROTECTION:"Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees; http://www.unhcr.org/3d58de2da.html

[2] *Matter of S-E-G-*, 24 I. & N. Dec. 579, 582 (B.I.A. 2008)

[3] *Matter of Acosta,* 19 I. & N. Dec. 211 (BIA 1985)

[4] *Benitez Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009); *Gatimi v. Holder*, 578 F.3d 611 (7th Cir. 2009); *Valdiviezo–Galdamez v. Attorney General of the United States*, 663 F.3d 582 (3rd Cir. 2011); *cf. Scatambuli v. Holder*, 558 F.3d 53 (1st Cir. 2009); *Davila–Mejia v. Mukasey*, 531 F.3d 624 (8th Cir. 2008); *Rivera–Barrientos v. Holder*, 658 F.3d 1222 (10th Cir. 2011)

kidnapped, beaten, and shot by a human trafficker in his home country. He was granted protection as a refugee in the United States, however, his wife and child were denied protection on the basis that the family unit does not constitute a particular social group. NIJC's *amicus* brief focuses on the inconsistent adjudication of the Demiraj family cases.

The Board Considers Particular Social Group Cases on Remand from the Federal Courts of Appeals

The Board is currently considering gender as the basis for a particular social group in a pair of cases on remand from federal courts of appeals. *In re Perdomo* was remanded from the Ninth Circuit and *Matter of C-R-P-* was remanded from the Eighth Circuit. In these two cases, NIJC submitted *amicus* briefs arguing that "Guatemalan women" constitute a particular social group and are targeted for persecution precisely because they are women.[5] In its briefs, NIJC argues that this group meets the *Acosta* test. NIJC counters floodgates concerns by noting that establishing membership in a particular social group is only one element of asylum and that other requirements in the refugee definition limit who ultimately receives protection in the United States.

NIJC provided additional briefing at the request of the Board on the question of victims of domestic violence as a particular social group in the case *Matter of K-C-*.[6] NIJC co-counseled on a brief filed in response to this request and argued that, though domestic violence can form a particular social group, gender alone is also legally sufficient. This case, as well as in *In re Perdomo* and *C-R-P-,* remains pending at the Board.

Moving Forward

NIJC is actively challenging the Board's overly restrictive interpretation of a particular social group and its improper analysis of the link between persecution and the protected ground. NIJC is coordinating with a group of allies to try to advance particular social group cases before the Board and federal courts. NIJC also intervenes where it can help influence favorable outcomes. Although there are efforts to have the U.S. Supreme Court decide this issue, NIJC is encouraged by court decisions in the Seventh and Third Circuits, and awaits a precedent decision from the Board to reverse this restrictive interpretation which is inconsistent with international law standards and fails to protect individuals fleeing human rights abuses.

[5] NIJC brief in *Perdomo*: http://immigrantjustice.org/sites/immigrantjustice.org/files/2011%205%2023%20Perdomo%20NIJC%20Amicus%20Brief.pdf; NIJC brief in C-R-P-: http://immigrantjustice.org/sites/immigrantjustice.org/files/CRP_AMICUS_FINAL_Redacted_0.pdf

[6] A***-***-408