

## BIA Pro Bono Project Update

### BIA Reverses IJ's Aggravated Felony Finding and Grants LPR Cancellation of Removal!

Congratulations to **Vikram Badrinath of Tucson, AZ**, who represented Mr. F, a lawful permanent resident (LPR) of the United States, under the BIA Project. The Immigration Judge (IJ) had denied Mr. F cancellation of removal, finding that his conviction for unlawful taking of a vehicle under California law was an aggravated felony. The IJ based his aggravated felony finding on the transcript of Mr. F's plea colloquy and a probation report. The IJ found that the information in these documents was sufficient to establish that Mr. F was the principal rather than an accessory to the crime, and that the offense was therefore an aggravated felony. The BIA disagreed, questioning the reliability of the probation report as a portion of the record of conviction because it had not been directly referenced in the plea colloquy. In addition, the BIA found that the information in the report did not establish that Mr. F was a principal in the crime. The BIA therefore reversed the IJ's aggravated felony finding. The BIA agreed with the IJ's previous alternate ruling that in the absence of the aggravated felony finding, Mr. F merited cancellation of removal. The BIA remanded the record to the IJ solely for purposes of updating security checks and the entry of an order granting LPR cancellation of removal. ☐

### CAT Protection Granted to National of Ethiopia!

Congratulations to **Thomas Tousley, a practitioner in Alexandria, VA**, who represented Mr. D before the BIA and subsequently the IJ, to obtain a grant of protection under the Convention Against Torture (CAT). When he initially appeared pro se before the IJ, Mr. D, a national of Ethiopia, was denied asylum, withholding, and CAT protection. Mr. D filed a pro se notice of appeal and his case became part of the BIA Project. The BIA ultimately remanded the case to the IJ for several reasons. The Board found that the IJ had failed to articulate the reasons for which he determined Mr. D's criminal conviction to be particularly serious. The Board also found that several of the IJ's conclusions were not supported by the evidence in the record or the law applicable to the case. The BIA found that Mr. D's testimony, which the IJ had found credible, documented his past torture at the hands of Ethiopian government officials and outlined the basis of his fear of torture at the hands of the present Ethiopian government. The BIA also found that the IJ's dismissal of Mr. D's fear of torture from the present government as 'speculative and conjectural' was undermined by Mr. D's credible testimony that his family members had been visited by Ethiopian security forces, that one family member had been taken to the police

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The BIA Pro Bono Project is a collaborative effort of four non-governmental agencies and the Executive Office for Immigration Review. The Project is coordinated by the Catholic Legal Immigration Network, Inc. (CLINIC) and supported by the American Immigration Law Foundation (AILF), the National Immigration Project of the National Lawyers Guild (NIPNLG) and the Capital Area Immigrants' Rights (CAIR) Coalition.

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station and beaten, and that other members of his family had fled Ethiopia after suffering abuse at the hands of Ethiopian security forces. For these and several other reasons, the BIA remanded the case to the IJ so that the IJ could revisit several issues highlighted on appeal by Mr. D. Tom traveled from his home in Virginia to Arizona to represent Mr. D before the IJ, who as a result of Tom's great work, granted deferral of removal under the Convention Against Torture. ☞

## BIA Remands Case of Mentally-Ill Asylum-Seeker to the IJ

Elizabeth McGrail of the Capital Area Immigrants Rights (CAIR) Coalition represented Mr. R, an Egyptian asylum-seeker, before the BIA. Mr. R had appeared pro se before the IJ and provided medical evidence of his diagnosis of schizo-affective disorder to the IJ. Despite this, the IJ failed to conduct a competency determination and ordered Mr. R removed. The BIA remanded the record to the IJ instructing him to conduct a competency hearing and to assess Mr. R's eligibility for any forms of relief. Mr. R is currently awaiting a merit hearing, at which he will be represented by pro bono counsel from Immigration Equality. ☞

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## BIA Upholds CAT Grants!

Byron Mobley of Walker Brown & Brown, P.A. represented Mr. S under the BIA Project. Mr. S, a national of the Sudan, was granted CAT protection by the IJ. In Sudan, Mr. S suffered torture at the hands of government officials as a result of his ethnicity, religion, political activity, and work with non-governmental groups and refugees. As a result of the torture he sustained, he abandoned his government job. The government appealed the CAT grant, arguing that the violence in the Sudan was subsiding and furthermore, was limited to one area of the country. The BIA disagreed with the DHS' arguments and dismissed its appeal, finding that it was more likely than not that he would face torture if returned to the Sudan.

Tom Tousley represented Mr. M before the BIA. The IJ had granted Mr. M deferral of removal under the CAT from Israel (the occupied territories). The government appealed the decision to the BIA. Before the BIA, Tom argued that Mr. M was at a high risk of torture by the Palestinian Authority security forces, and by extremist groups freely operating within the occupied territories. He argued that Mr. M would be readily identified as a collaborator of Israel and of the United States based on his baptism as a Christian in Ramallah, his total acculturation in the United States, his inability to speak and write Arabic, and the visible tattoos on his arms that revealed his former service in the United States Army, were he to be returned from the United States. The BIA dismissed the DHS appeal, finding that the IJ's conclusion that it was more likely than not that Mr. M would suffer harm amounting to torture was not clearly erroneous. ☞

## Several LPR Cancellation of Removal Grants Upheld by the BIA!

**Jeffrey Blackman** represented Mr. A under the BIA Project. Mr. A., who had resided in the United States as a lawful permanent resident (LPR) since the age of 3, was granted LPR cancellation of removal by the IJ. DHS appealed the IJ's grant, arguing that Mr. A's equities did not outweigh his criminal convictions for assault and burglary. Relying upon Mr. A's lengthy residence in the United States, his financial and emotional support to his U.S. citizen spouse and their three children, his stable employment history, and the financial support he provides for his U.S. citizen parents by contributing nearly half of their monthly mortgage payment, Jeffrey successfully argued otherwise before the BIA. The BIA found that the IJ properly considered all relevant evidence and factors in the case and determined that she made no error in her factual findings or in her decision to favorably exercise discretion. The BIA upheld the IJ's decision and after spending one year in ICE custody, Mr. A was released from detention and has finally been reunited with his family.

Under the supervision of **Steven Goldblatt and Alis-tair Newbern, Sabahat Chaudhary and Johanna Hickman, students at Georgetown University's Appellate Litigation Clinic,** represented Mr. D under the BIA Project. The Immigration Judge had granted Mr. D LPR cancellation of removal, finding that Mr. D's lengthy residence (more than 40 years) in the United States, good reputation in and service to his community, strong employment history, lack of family ties in his home country, and the fairly diminutive nature of his misdemeanor convictions merited a grant of cancellation of removal. The DHS

appealed, arguing that the IJ abused his discretion in determining that the positive factors outweighed the negative factors in the case. The BIA dismissed the DHS appeal, finding no reversible error in the IJ's decision.

**John Clark of Sonnenschein Nath & Rosenthal, LLP** represented Mr. R under the BIA Project. The IJ had granted Mr. R LPR cancellation of removal. The DHS appealed the grant. On appeal, John argued that Mr. R's numerous favorable factors, including his lengthy residence (18 years) in the United States, strong tax-paying and work history, close family ties, and support to his disabled father, outweighed the only negative factor in his case, a single criminal conviction for drug possession. The BIA agreed with John's arguments and dismissed the DHS' appeal, finding insufficient reasons to reverse the IJ's determination that Mr. R merited LPR cancellation of removal.

*In a letter to CLINIC, Jeffrey Blackman's client Mr. A wrote:*

"My sincere appreciation to you and your organization. There is nothing more that I could have asked for and I am so grateful for what you have done...You allowed me to be reunited with my family and once again I have the opportunity to be a part of their lives. Thank you very much and may we continue to have contact with each other so that people like you I will never forget."

**Tom Tousley** represented Mr. J, a lawful permanent resident who had been granted cancellation of removal by the IJ, before the BIA. The government appealed the IJ's cancellation grant, arguing that the adverse factors in his case, including a prior drug possession conviction, outweighed the positive factors. The BIA dismissed the DHS appeal and upheld the IJ's decision. As positive factors the BIA cited Mr. J's lengthy residence in the United States (22 years), substantial family ties to the United States, his role as a primary care-taker for his elderly U.S. citizen parents, the hardship his absence would cause his parents and remaining siblings, his rehabilitation, discontinued use

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of drugs, church attendance, and regular payment of taxes.

Tom also represented Mr. N under the BIA Project. The IJ granted Mr. N LPR cancellation of removal. DHS appealed, arguing that Mr. N's reduced sentence for burglary was not valid for immigration law purposes. The BIA dismissed the DHS' appeal citing *Matter of Cota-Vargas*, which held that a trial court's decision to modify or reduce an alien's criminal sentence nunc pro tunc was entitled to full faith and credit by Immigration Judges and the BIA. ☒

## Other BIA Victories!

**Thomas Lotterman of Bingham McCutchen LLP (formerly Swidler Berlin Shereff Friedman, LLP)** represented Mr. I under the BIA Project. Mr. I is a lawful permanent resident of 25 years. While visiting Mexico, his country of his birth, he was assaulted and his immigration documents, shoes, and shirt were stolen two blocks from the U.S. border. Under severe distress, Mr. I crossed the border at the closest point to him and sought assistance from U.S. immigration authorities. Immigration authorities watched him cross the border, told him to turn back, arrested him, charged him with being present without admission or parole, and placed him in removal proceedings. The IJ admitted Mr. I as a returning LPR and terminated removal proceedings. The government appealed, arguing that the IJ did not have the authority to admit Mr. I to the United States or to waive document requirements for returning residents. The BIA dismissed the government's appeal in an affirmance without opinion decision.

**Ted Cox** represented Mr. B, a native of Nigeria, before the BIA. The IJ had granted Mr. B withholding of removal under the INA based on his outspoken opposition, as a Christian, to Islamic Law being applied to Christians in Nigeria. The DHS had appealed the IJ's grant, arguing that the IJ erred in finding Mr. B credible. The Board found no reason to disturb the IJ's grant and dismissed the DHS' appeal. ☒

## The BIA Pro Bono Project Seeks Mentors!

Don't have time to write another brief - but want to support the BIA Pro Bono Project? Sign up to be a mentor!

The BIA Project works to increase the level of pro bono representation to immigrants who are detained and without representation before the BIA. BIA Project cases typically involve claims for asylum, withholding, protection under the Convention Against Torture, cancellation of removal, and citizenship.

To better engage law firms with limited immigration practices in the BIA Project, the Project conducts trainings and pairs individual attorneys with seasoned immigration practitioners. The Project needs experienced immigration practitioners to mentor eager pro bono attorneys with limited immigration backgrounds. Mentors might help develop case strategy, answer substantive legal questions, point attorneys in the right direction in terms of research, and/or review briefs prior to submission to the BIA.

If you are able to help in this capacity, please contact Molly McKenna at CLINIC at [mmckenna@cliniclegal.org](mailto:mmckenna@cliniclegal.org) or (202) 635-2567.

*This newsletter was created by  
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