



U.S. Citizenship
and Immigration
Services

MAR 2 2010

HQRAIO 120/16b

Memorandum

TO: All Asylum Office Staff

FROM: Joseph E. Langlois
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SUBJECT: Notification of *Ramos v. Holder*: Former Gang Membership as a Potential Particular Social Group in the Seventh Circuit

This memorandum provides notification to the Asylum Offices regarding the Seventh Circuit's recent decision in *Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009). The Seventh Circuit issued its decision in *Ramos* on December 15, 2009, holding that former gang membership can be the basis for a particular social group. The decision vacated the Board of Immigration Appeals' (Board's) decision and the case was remanded to the Board for reconsideration in light of the Seventh Circuit's opinion.

I. Background

Ramos involved a Salvadoran man who joined the Mara Salvatrucha in El Salvador at the age of 14. He remained a gang member until coming to the U.S. at the age of 23. Once in the U.S., he became a born-again Christian. He fears that if he were to return to El Salvador, the gang would kill him for refusing to rejoin.

In reaching its decision, the Seventh Circuit distinguished the line of cases involving what it described as current criminal activity, such as *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007), and *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992), from the situation at hand of a former gang member. Current gang membership, the court noted, is not the basis for a particular social group because "the term 'particular social groups' surely was not intended for the protection of members of the criminal class in this country." *Ramos*, 589 F.3d at 429 (citing *Bastanipour*, 980 F.2d at 1132). Additionally, the trait of current gang membership is not one that a person "cannot change, or should not be required to change." *Id.* (citing *Arteaga*, 511 F.3d at 945-46). In contrast, the court noted that former gang membership is similar to a line of other cases in which courts have held that former membership in a group can form a particular social group because former membership in a group is immutable.

The Seventh Circuit, in justifying its holding that former gang membership can be the basis of a particular social group, also distinguished its opinion from the Ninth Circuit's opinion in *Arteaga*. The Ninth Circuit in *Arteaga* held that former gang membership does not constitute a particular social group:

Arteaga's "shared past experience" includes violent criminal activity. We cannot conclude that Congress, in offering refugee protection for individuals facing potential persecution through social group status, intended to include violent street gangs who assault people and who traffic in drugs and commit theft....Accordingly, we hold that participation in such activity is not fundamental to gang members' individual identities or consciences, and they are therefore ineligible for protection as members of a particular social group...

511 F.3d at 945-46. Additionally, the Ninth Circuit rejected *Arteaga*'s argument that former gang membership is immutable.

Disassociating oneself from a group does not automatically put one in another group as group is meant in the law. One who disassociates himself from a group may fall analytically into a definable category, but the category of non-associated or disaffiliated persons in this context is far too unspecific and amorphous to be called a social group, whether that person is tattooed or not.

Id. at 946.

The Seventh Circuit, in contrast, stated that Congress did not intend to bar former gang members from constituting a particular social group. If it had wanted to, the court opined, Congress could have enacted mandatory bars for former gang members, as it had for persecutors, but it had not. To bar all former gang members from being eligible for asylum would be perverse, the opinion continued, as someone like Ramos would not quit a gang if he thought he would be sent back to El Salvador, and would instead now be forced "to abandon his Christian scruples and rejoin the gang" as his sole means of survival. *See Ramos*, 589 F.3d at 430. Additionally, in contrast to the Ninth Circuit opinion that former gang members are an amorphous group, the Seventh Circuit found that "Ramos was a member of a specific, well-recognized, indeed notorious gang....It is neither unspecific nor amorphous." *Id.* at 431. The court, in referring to "the external criterion," essentially found that former gang members are socially distinct. *Id.* at 430. The Seventh Circuit's interpretation appears to create tension with the Ninth Circuit, and we anticipate further developments in this area.

Finally, the Seventh Circuit noted that quite separate from whether Ramos is a member of a particular social group, he may be barred from asylum under the serious nonpolitical crime bar due to having committed violent acts while a gang member. Additionally, while the underlying application for review was for withholding of removal, if it were an asylum case, the government would have the ability to issue a discretionary denial. *Id.* at 431.

II. Field Guidance

A. Asylum Cases Arising Within the Seventh Circuit

The Seventh Circuit's decision is binding on those asylum cases arising within the jurisdiction of the Seventh Circuit. Within the Seventh Circuit, former gang membership may form a particular social group if the former membership is immutable and the group of former gang members is socially distinct. As with all cases where there is a nexus to persecution, asylum officers should evaluate whether the applicant can reasonably internally relocate and whether the government is unwilling or unable to protect the applicant. Asylum Offices adjudicating a case within the Seventh Circuit that involves a current or former gang member should contact HQASM TRAQ, by way of the Affirmative QA mailbox, prior to deciding the case.

B. Asylum Cases Arising Outside of the Seventh Circuit

For cases outside of the Seventh Circuit, Asylum Officers should keep in mind the USCIS memo, *Guidance on Matter of C-A-*: "the shared characteristic of terrorist, criminal or persecutory activity or association, past or present, cannot form the basis of a particular social group." Memorandum from Lynden Melmed, USCIS OCC, to Lori Scialabba, USCIS RAIO (Jan. 12, 2007). Asylum Officers should apply this guidance as articulated in the most recent AOBTC Lesson, Eligibility Part III: Nexus (March 12, 2009). If an Asylum Office would like guidance on the adjudication of a particular case, the office should reach out to HQASM TRAQ to discuss. If the office would like quality assurance review of the decision prior to issuance, the case should be submitted to HQASM TRAQ under the "Asylum Offices Requests for HQASM/QA Review" category.

Additionally, for the next four months, Asylum Office QA/Ts should review cases involving former or current gang members in order to monitor patterns. A discussion of the trends observed by QA/Ts will take place at a future QA/T conference call.

C. Guidance For All Asylum Offices

For all cases, whether within or outside of the Seventh Circuit's jurisdiction, Asylum Officers should evaluate whether the applicant is subject to any mandatory or discretionary bars to asylum. Past criminal activity while in a gang may give rise to several bars. In addition, where the applicant has established asylum eligibility, the Asylum Officer should balance positive and negative factors in order to evaluate whether a discretionary denial or referral of the asylum application is warranted. Past gang-related activity may serve as an adverse discretionary factor that is weighed against positive factors. See the AOBTC Lesson, Mandatory Bars to Asylum and Discretion (Mar. 25, 2009), at 34-35, for more guidance on weighing positive and negative factors.

HQASM TRAQ continues to examine issues related to the interpretation and application of *Ramos*, in order to update the Eligibility III lesson plan with more detailed guidance. In that respect, we note that there are still a number of interpretive issues that have yet to be addressed in the wake of this decision. We will keep you apprised of further developments in this case and others as they come to our attention. Should you have any questions pending the issuance of guidance in the lesson plan update, please contact Rebecca Tanner or others within HQASM TRAQ.