



ILW Teleconference – August 16, 2007
Citation List for Participants
Elizabeth Barna

My husband punched me

R-A-, 23 I&N Dec. [694](#) (A.G. 2005)

The Attorney General remanded the record to the BIA for reconsideration of its decision in *Matter of R-A-*, 22 I&N Dec. 906 (A.G. 2001; BIA 1999), following final publication of the proposed rule published at 65 Fed. Reg. 76,588 (Dec. 7, 2000).

Matter of R-A-, 22 I&N Dec. [906](#) (BIA 1999)

12/7/00 Immigration and Naturalization Service Proposed Rule 65 Fed. Reg. 76,588:

http://frwebgate.access.gpo.gov/cgi-bin/getpage.cgi?dbname=2000_register&position=all&page=76588

The 2/19/04 DHS brief in *Matter of R-A-* “Alvarado fears abuse on account of her membership in a particular social group of ‘married women in Guatemala who are unable to leave the relationship.’”

http://cgrs.uchastings.edu/documents/legal/dhs_brief_ra.pdf

Gao v. Gonsales, 440 F.3d 62 (2d Cir. 2006)

Women who have been sold into marriage and who live in a feudal community in China where forced marriage is condoned. The woman in this case was beaten by the man she was to marry.

http://www.ca2.uscourts.gov:8080/isysnative/RDpcT3BpbnNcT1BOXDA0L TE4NzQtYWdfb3BuLnBkZg==/04-1874-ag_opn.pdf#xml=http://10.213.23.111:8080/isysquery/irl9e14/4/hilite

S-A-, 22 I&N Dec. [1328](#) (BIA 2000)

A woman with liberal Muslim beliefs established by credible evidence that she suffered past persecution and has a well-founded fear of future persecution at the hands of her father on account of her religious beliefs, which differ from her father’s orthodox Muslim views concerning the proper role of women in Moroccan society.

Jose

See Juveniles section below.

Recruitment by a gang

INS v. Elias-Zacarias, 502 U.S. 478 (1992)

Persecution, and specifically recruitment into a guerilla force, must be on account of the victim's political opinion, not the persecutor's.

A-M-E & J-G-U-, 24 I&N Dec. 69 (BIA 2007)

Factors to be considered in determining whether a particular social group exists include whether the group's shared characteristic gives the members the requisite social visibility to make them readily identifiable in society and whether the group can be defined with sufficient particularity to delimit its membership.

<http://www.usdoj.gov/eoir/vll/intdec/vol24/3550.pdf>

Order of the Immigration Judge, Paul Schmidt, Arlington, VA, May 3, 2007

IJ found that the male respondent belongs to a particular social group of young Salvadorian students who expressly oppose gang ("MS-13") practices and values and wish to protect their family against such practices. The IJ found that he, who challenged the gang as a young student was socially visible and readily identifiable within his community. The IJ also found that his sister belongs to a particular social group of young female students who are related to an individual who opposes gang practices and values.

http://www.refugees.org/uploadedFiles/Participate/National_Center/Resource_Library/05.03.07%20Order_Decision.pdf

C-A-, 23 I&N Dec. 951 (BIA 2006)

"Former noncriminal drug informants" was found not to be a social group. It's finding that "the social visibility of the members of a claimed social

group is an important consideration in identifying the existence of a “particular social group” for the purpose of determining whether a person qualifies as a refugee,” is used in determining whether recruitment by a gang may be a basis for asylum.)

<http://www.usdoj.gov/eoir/vll/intdec/vol23/3535.pdf>

Michelle Thomas

Brief of the Office of the United Nations High Commissioner for Refugees
1/25/07

(there is no requirement that a particular social group be readily visible to society at large)

http://cgrs.uchastings.edu/documents/legal/unhcr_thomas.pdf

U.S. Committee for Refugees and Immigrants Resource Library

<http://www.refugees.org/article.aspx?id=1556&subm=75&area=Participate&ssm=118>

(The [Asylum Case Law Research](#) section contains research and sources/links on gangs including experts, briefs, affidavits and decisions). The following are examples of El Salvador cases. It also has separate listings for [Honduras](#), [Guatemala](#), [Pakistan](#), and [China](#).

EL SALVADOR

Juan Alvarez

Immigration Judge, Arlington, VA
Memorandum of Law in Support of Asylum Application of Juan Alvarez
ASYLUM GRANTED

Notes: Respondent is a member of the social group of current and former Salvadoran law enforcement officers and holds a pro-rule of law anti-gang political opinion. As a protection officer with National Civilian Police Respondent was persecuted and targeted by the Maras 18 gang. The government's under trained, understaffed and under-funded police are unable to protect him.

J.J.R.

Immigration Judge, Chicago, Illinois, May 5, 2000
Memorandum of Law and Facts
ASYLUM GRANTED ON RELIGIOUS GROUNDS

Notes: Respondent was a known member of the Mara Salvatrucha gang.

He fears persecution by the Sombra Negra, an extra-judicial death squad that targets young criminals. Respondent claims that he is the member of the social group of Salvadoran street gang members. At age 16, respondent wanted to leave the gang, but could not for fear of reprisals. Respondent argues that his former gang membership is a characteristic that he cannot alter. Further, Respondent argues fear of persecution at the hands of the Sombra Negra death squad and his the Mara Salvatrucha gang, both groups that the Salvadoran government is unable or unwilling to control.

Melvin

Oral Decision of the Immigration Judge, Harlington, Texas. March 1, 2001
ASYLUM GRANTED

Notes: Respondent's father became involved with the girlfriend of the leader of MS. For this reason, the MS verbally and physically assaulted the respondent, his father and grandmother. The Court finds that the respondent's persecution by the MS was a result of his membership in the particular social group of his immediate nuclear family. His father's association with the MS gang caused them to be persecuted by that group. The Court found also that the MS is a group that the Salvadorian government is unable or unwilling to control.

Immigration Judge Burkhart, Harlingen, Texas, December 11, 2002
Transcription of Immigration Proceedings
ASYLUM GRANTED

Notes: Transcription records of immigration proceedings in which the respondent claimed to have suffered persecution based on his membership in the social group of potential gang members who opposed recruitment and have a negative political opinion of gangs. The Court found that he was indeed eligible for asylum based on membership in a particular social group and political opinion concluding that Respondent is "a member of a recognizable group, and member of the MS have been known to persecute that particular group because of their characteristics . . . the only way [Respondent] would be able to change said characteristics would be to actually join the MS, which this Court does not believe he should be forced to do."

Sandra Lorena Menjivar V. Alberto Gonzalez, United States Court of Appeals for the Eighth Circuit, Opinion, Circuit Judge COLLOTON, July 29, 2005

PETITION FOR REVIEW DENIED

Notes: Respondent claimed she was harassed for refusing to be the girlfriend of gang member. The court upheld the lower court denial of asylum, concluding that Menjivar's harassment was due to "personal problems" and not her "membership in a protected social group." The Court found that the gang member's actions did not qualify as

“persecution” because the El Salvadoran police conducted a thorough investigation of his activities.

Order of the Immigration Judge, Arlington, Virginia, July 22, 2004

ASYLUM DENIED, Applicant ordered removed

Notes: Respondent claimed that he was a victim of persecution in El Salvador because of his religion, political opinion and membership in a particular social group. The social group was “refusal to join MS gang because of his moral and religious opposition to the gang’s criminal activities.” The MS gang recruited and threatened him, but he kept the situation a secret from his family because he felt that they could not help him. The Court found that the respondent failed to present evidence that the MS gang was a political organization, targeting him for his political or religious beliefs. “A guerilla organization’s coercive efforts to recruit an individual to fill its ranks do not constitute persecution unless that applicant can demonstrate that ‘the guerillas will persecute him because of that political opinion, rather than because of his refusal to fight with them.’” INS v. Elias-Zacarias, 502 U.S. at 482-83. The Court found the MS gang to be analogous to a guerilla group.

Jose

See Juveniles section below.

Juveniles

U.S. Committee for Refugees and Immigrants Resource Library

<http://www.refugees.org/article.aspx?id=1556&subm=75&area=Participate&ssm=118>

Jose

Oral Decision of Immigration Judge Polly Webber, February 12, 2003

ASYLUM GRANTED

Notes: The court granted asylum based on a well-founded fear of persecution by the father, who had systematically abused his family in the past. This abuse made the respondent a member of the social group child victims of domestic violence in El Salvador. The state of El Salvador was unable to provide the respondent protection from his father. The respondent submitted articles demonstrating the official tolerance of domestic violence in El Salvador. The respondent also cited the pervasive influence of gangs in El Salvador as another reason he feared returning to his country.

5/22/07 David Neal, Chief Immigration Judge issued Operating Policies and Memorandum: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children. OPPM 07-01

<http://www.usdoj.gov/eoir/efoia/ocij/oppm07/07-01.pdf>

CRS Report for Congress, Unaccompanied Alien Children: Policies and Issues
March 1, 2007

http://opencrs.cdt.org/rpts/RL33896_20070301.pdf

The American Bar Association Children's Rights Litigation Committee of the Section of Litigation, Commission on Immigration, and the ABA Center for Continuing Legal Education Present Child Clients Are Different: Best Practices for Representing Unaccompanied Minors

<http://www.abanet.org/child/legalrep-10.pdf>

"Seeking Asylum from Gang-Based Violence in Central America: A Resource Manual," CAIR Coalition, Updated August 2007

The Capital Area Immigrants' Rights (CAIR) Coalition released its updated manual this week, and may appear on its website in the future.

<http://www.caircoalition.org>

Special Immigrant Juvenile Status (SIJS)

INA § 101(A)(27)(J)
INA § 245(h)
8 C.F.R. § 204.11

U.S. Committee for Refugees and Immigrants Resource Library, Special Immigrant Juvenile Status (SIJS) Resources

<http://www.refugees.org/article.aspx?id=1559&subm=75&area=Participate&ssm=118>