ILLINOIS STATE BAR ASSOCIATION

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The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

Editor's comments

BY LEWIS F. MATUSZEWICH

Patrick Kinnally's article, *Consular reviewability: It is time for the main event*, represents his fourth article for *The Globe* for this ISBA year and his 100th article for ISBA section newsletters since 2000.

Ralph E. Guderian is new to the International and Immigration Law Section Council this year. An introduction to Ralph appears in this issue and is part of our ongoing series, *Meet the section council*.

Carrie O'Brien is with the Arizona-based law firm of Gust Rosenfeld P.L.C. which has offices in Phoenix, Wickenburg and Tucson, Arizona as well as Las Vegas, Nevada and Los Angeles, California. Her article, *New European Union regulations require review of how Arizona businesses collect and maintain data,* appeared recently in her firm's newsletter.

The United States Commercial Service, part of the International Trade Administration and the U.S. Department of Commerce provides extensive resources for international trade. Included in

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Consular reviewability: It is time for the main event

BY PATRICK M KINNALLY

Your client is a United States citizen. He wishes to submit a family based visa petition for his spouse and children who live in another country so they can immigrate to the United States. His family must undergo consular processing in the country where they live in order to obtain immigrant visas to enter the United States. Among other things, this requires not only personal interview(s) with a United States consular official, but also, most likely, complying with the biometric requirements of the Office of Biometric Identity Management. Also, the family members must not be inadmissible (*e.g.*, criminal, terrorist, *etc.*). If the family is refused an immigrant visa, does your client have a liberty interest in his family being permitted to enter the United States and live with him or her?

The Supreme Court has long acknowledged the importance of family and the tenet that marriage includes the right of spouses to live together and rear a family. This seems rudimentary.

Apparently, in the immigration arena, at least, where consular decision-making is involved, the answer is your client, a United States citizen, may not enjoy a cognizable legal liberty interest in his spouse's application for an immigrant visa.

The legal predicate for the ruling in

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Editor's comments

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this issue is information on webinars concerning European Nordics countries, Austria, Hungary, Czech Republic, Slovakia and the Baltic Countries of Estonia, Latvia, and Lithuania.

During 2018 the Illinois State Bar Association's E-clips cited many cases involving immigration law. A list of those cases pulled from the E-clips is included in this issue.

As always, thank you to our authors and contributors.■

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Consular reviewability: It is time for the main event

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Yafal and Ahmed v. Pompeo (*Yafal*) is based on *Kerry v. Din*, 135 S.Ct. 2128 (2015) (*Kerry*), and *Kleindienst v. Mandel* 408 U.S. 753 (1972) (*Mandel*). Basically, these opinions stand for the proposition that Congress has delegated the authority to the Executive Branch to ascertain who may enter the country; the judicial branch may not review visa decisions made by consular officials outside the United States, with minor exceptions.

The facts in *Kerry* are a good example of the topic. Fauzia Din (Din) was a United States citizen and resident. She filed a visa petition for her husband Kanishka Berashk (Berashk) who was residing in Afghanistan. That filing sought to classify him as an immediate relative so he could immigrate to the United States. The petition was approved. Berashk appeared for an interview at the U.S. Embassy in Islamabad, Pakistan. Thereafter, the United States denied Berashk's request for an immigrant visa and notified him he was inadmissible because of 8 USC 1182(b)(2)-(3) (a terrorism ground of inadmissibility). Berashk had served as a civil servant for the Taliban.

Din filed suit seeking a writ of mandamus to invalidate the United States Consulate decision. The district court dismissed the case. The 9th Circuit Court of Appeals reversed. It found a limited exception to the non-reviewability bar exists where the visa denial implicates a constitutional right of a United States citizen. Din's argument was the United States deprived her due process of law when, since, without a sufficient explanation as to why the visa was denied, the decision deprived her of the constitutional right to live in the United States with her spouse. The 9th circuit found that Din had a protected liberty interest in her marriage that allowed her to review the decision to deny her husband a visa to immigrate to the United States to live with her.

In a plurality opinion, the Untied States Supreme Court, reversed. A majority of the justices could not agree on whether a liberty interest such as Din's visa petition for her husband, under the Due Process Clause exists in the immigration context. The plurality found Din was not deprived of "life, liberty, or property." According to the plurality, Din could live anywhere in the world where she and her husband

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are permitted to reside. It found that Congress has the plenary power to regulate immigration, which it has exercised (by delegation to the Executive Branch) in a long practice of regulating spousal immigration.

In a concurring opinion, Justice Kennedy said the Supreme Court in *Din* need not decide whether a citizen has a protected liberty interest in the immigrant visa application of her spouse. A curious statement, since he assumed she did, for purposes of his concurrence.

He concluded, following *Mandel* that Din received all the process she was due because the United States had a facially legitimate and *bona fide* reason for the decision it made (*i.e.* the conclusion Berashk was a member of a terrorist organization). In Justice Kennedy's view, once that standard is met "courts will neither look behind the exercise of that discretion, nor test it by balancing its justification against" the constitutional interest of citizens the visa denial might implicate.

The dissenting opinion, authored by Justice Breyer, found that Din possessed a constitutional liberty interest in her husband's visa application based on their marriage. And, since she is seeking to protect a liberty interest she is entitled to fair procedures when the government tries to take away their interest in the exercise of such right. The dissent concluded that Ms. Din was entitled to a statement of reasons, some kind of explanation as to why the United States Consulate denied the visa for her husband.

The result in *Din* is unsatisfactory. It fails to decide whether Ms. Din has a recognized liberty interest in her husband's visa application requiring protection by the Due Process Clause. The Supreme Court has refused to make that decision outright. They should do so. Because they have not, we now have *Yafal*.

Moshin Yafal (Yafal) submitted a visa petition so his wife Zahoor Ahmed (*Ahmed*) and their children could immigrate to the United States. Yafal is a United States citizen. Ahmed lived in Yemen. The U.S. Consulate denied Ahmed's request to immigrate on the ground that she had sought to smuggle two of the family's children into the United States. Much like Fauzia Din, Yafal filed a complaint challenging the officer's decision. The district court dismissed the complaint and the 7th Circuit Court of Appeals affirmed. It did so because that consular decision, the court found, was facially legitimate and *bona fide*.

The consular official denied Ahmed and her children the right to immigrate because that officer determined that Ahmed had tried to smuggle two of their children into the United Sates. Yafal and Ahmed, through counsel, asked for reconsideration and submitted additional documents concerning the two children, since they both died due to a drowning accident.

A consular "fraud prevention manager" found Yafar and Ahmed did not testify credibly, had contradictory answers and found them basically to the unbelievable. Their request for reconsideration was denied.

Like *Din* the *Yafar* majority concluded the issue of whether a visa application filed by a United States citizen for a spouse may not trigger a constitutional right: namely Yafar's right to live in the United States with his spouse. Correctly, the *Yafar* majority stated the "status of this right is uncertain." It did not decide the issue since the *Din* majority was a plurality opinion and no majority of the Supreme Court found such a right exists. Because the consular officer's decision was facially legitimate and *bona fide*, it held it was not required to delve into the reasons behind the decision, even if, as it was in *Yafar*, to appear to rest on a credibility determination.

The dissent, authored by Circuit Judge Ripple, saw it differently. He concluded the court should consider whether Yafar had a liberty interest in the visa application of his wife based on his right to live in marital union with his spouse and family in the United States. He said it was incongruous to maintain that a United States citizen does not have an interest in a spouse's presence in the United States and that the only recourse open to that citizen if the government denies a spouse entry is to leave the United States. He agreed with the dissent in *Din* finding a liberty interest existed.

Circuit Judge Ripple felt the issue needed to be addressed and the Supreme Court and the 7th circuit had failed to do so even if they assumed the right existed. He opined that a citizen's right to live in this country is protected under the Due Process Clause, and that the constitution values the institution of marriage as fundamental to our very existence.

Also, Judge Ripple opined that in the visa application context, such as Yafar's, that the Government should assure the court by some evidence that it actually took into consideration the evidence presented by the visa applicant and provide some factual support for the consul's decision to discredit Yafar and Ahmed's evidence.

The undecided inquiry is whether or not a United States citizen has a right to petition the government so his spouse and family can live in this country; and if such right is denied, what process can a United States citizen seek as redress? What process is due? In the immigration arena is there such a right?

At this point in our history, we do not know. You need to be having this conversation with your clients when they are seeking to immigrate to the United States. Right now, a denied immigrant visa application such as Yafar's may not receive the judicial scrutiny it may deserve. Until the United States Supreme Court declares whether a liberty interest exists in such a context for a United States citizen and a spouse we do not know the answer.

The resolution of the question in the hierarchy of our constitutional interpretation is a significant undertaking. Merely because it is, does not denote our courts should not resolve the inquiry. Assumptions about whether or not such a liberty interest exists begs the question. Does a United States citizen and an immigrant spouse have a liberty interest requiring due process protection to live in the United States? Let's get to the main event. At this point in our history, it's time to make that call. Otherwise, as lawyers, we cannot counsel our clients as to what the outcome of a simple immigrant visa petition might be for United States

citizen spouses and children. We need to know, one way or the other. ■

Patrick Kinnally concentrates in general and commercial litigation, immigration and citizenship and administrative, environmental and local government law. Pat, immediate past Chair of the International and Immigration Law Section Council, can be reached at Kinnally Flaherty Krentz Loran Hodge & Masur PC by phone at (630) 907-0909 or by email to pkinnally@kfkllaw.com.

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1. *Meyer v. Nebraska* 262 U.S. 390 (1923); *Obergefell v. Hodges* 135 S. Ct. 2584, 2590 (2015).
2. *Yafal and Ahmed v. Pompeo*, 18-1205 (7th Cir. 2019).
3. *Din v. United States* 718 F. 3d 856 (9th Cir. 2013).
4. See *Kleindienst v. Mandel*, 408 U.S. 753, 768-770 (1972).
5. 8 U.S.C. 1182 (a)(6)(E).
6. See *Hazama v. Tillerson* 851 F. 3d 706 (7th Cir. 2017).
7. *Loving v. Virginia*, 388 U.S. 1 (1967); See Caldwell, *Deported by Marriage: Americans Forced to Choose Between Love and Country*, 82 Brooklyn L. Rev. 1 (2016).

Meet the section council

BY RALPH E. GUDERIAN

The International and Immigration Law Section Council brings to the ISBA a wide range of experiences and interests. Following is an introduction to Section Council Member Ralph E. Guderian:

Ralph E. Guderian is a member of the GMT Law Firm LLC, a general practice firm with focus in domestic relations, criminal, immigration, landlord/tenant, bankruptcy, employment, civil litigation, and probate law. Ralph focuses on all type of litigation, and for the past 20 years he has belonged to GMT and similar law firms that deal primarily with Hispanic clients. Before that he dealt with Polish and Russian clients.

Ralph received a bachelor of science in commerce degree and a master's in business administration degree from DePaul University, and a juris doctor degree from the John Marshall Law School in Chicago. He is also a certified public accountant.

For years Ralph was active in the ISBA's Standing Committee on Corrections and Sentencing. He remains active in the American Bar Association's Section of Litigation-Criminal Litigation-International Law Committee. He has written articles and organized seminars for those committees. Ralph is also a member of the National Association of Criminal Defense Lawyers and the Curriculum Advisory Committee for Law Enforcement at Oakton Community College in Des Plaines, Illinois.

Ralph's personal interests include popular piano playing, zumba, swimming, and all types of music. He also enjoys spending time with his two dogs. ■

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New European Union regulations require review of how Arizona businesses collect and maintain data

BY CARRIE O'BRIEN

Over the past few months, you've probably received several notices from companies that store data about you—such as Facebook, Instagram, Google, and Apple—to explain how their privacy practices are changing. These changes are due in large part to the European Union's General Data Privacy Regulation (GDPR) which became effective on May 25, 2018. The GDPR provides additional rights to consumers, giving them increased control over their data. Even though your company operates in Arizona, you may have new obligations under GDPR if you have data of persons who reside in the European Union (EU) or process data there.

Below are some useful tips to determine whether your privacy policy or practices

need revision.

1. **Conduct a data audit.** Determine what customer data you maintain electronically and on paper. If you do business in the EU or do business with persons in the EU, GDPR applies. An example of data you may maintain includes mailing lists with addresses and stored credit card numbers.
2. **Review your website privacy policy.** The GDPR requires that businesses that operate in the EU or who do business with persons who reside in the EU provide notice in a privacy policy regarding collection and maintenance of data and third-party sharing of data. Provide notice of changes to your privacy policy to all consumers. Many international companies have simply raised the bar for all consumers with privacy practices and notices to meet the requirements of the GDPR.
3. **Obtain affirmative consent of consumers before collecting personal data.** The GDPR requires, and it is a good privacy practice to obtain, the consent of consumers when collecting data from them. The GDPR considers the IP address and tracking cookies to be personal data requiring affirmative consent. Provide consumers with clear notice of how the data you collect will be used and obtain unambiguous consent. The GDPR also requires parental consent to collect or process personal data of children under 16 and additional consent should be obtained from a parent. If you maintain data of consumers in the EU, you should consider sending an email to obtain consent to ongoing maintenance of their data.
4. **Create a data breach plan.** Unfortunately, data breaches are becoming commonplace. The GDPR requires notification of a breach within 72 hours of its discovery. A data breach plan should include all essential stakeholders including executive leadership, legal counsel, public relations staff and information technology (IT) staff. Arizona law also requires that companies notify customers of a data breach and provide credit monitoring. Plan ahead and be prepared.
5. **Train employees on data privacy expectations.** The increased privacy requirements of the GDPR provide a good opportunity to train employees on expectations regarding data privacy. Data privacy is a shared responsibility, not just the responsibility of your IT Department. Employees should be encouraged and rewarded for reporting data privacy concerns—such a report could avoid a data breach. ■

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Carrie practices in the area of public law.

Doing business in Europe: United States Commercial Service webinars

The following information was taken from the announcement from the U.S. Commercial Service email announcement.

The U.S. Commercial Service of the U.S. Department of Commerce's International Trade Administration, has provided a webinar series on these subregions of Europe. The webinar series will provide an overview of each regional market, opportunities, trends, business opportunities, and key projects with practical advice from European experts.

Event: Doing Business in Nordics Webinar
Date: April 16, 2019
Time: 12:00 p.m. – 1:00 p.m. ET
Cost: $50
Description of Event: Denmark is a rich, modern society with state-of-the-art infrastructure and distribution systems. It has 5.7 million inhabitants and an advanced high-tech society. Denmark ranks as the most advanced digital country in the EU and is characterized by an extensive welfare system with a substantial trade and investment relationship with the U.S.

Finland's $250 billion economy and its immensely innovative culture ranks 3rd in the EU Digital Economy and Societal Index, 7th in the Global Innovation Index, and in the world's top 3 strongest health technology economies. Pioneering companies the world over meet here to spearhead the next generation in ICT (including 5G), eHealth, energy, cleantech, Smart Cities, and other knowledge-based growth industries.

Norway is a modern, energy-rich country with 5.3 million people. It is considered one of the world's wealthiest countries with a GDP per capita exceeding $72,000. Norway represents a highly digital and sophisticated market, including large-scale critical infrastructure tied to its leading industries, which are based on natural resources, energy, digitalization, defense, aerospace, and ocean technologies.

Sweden has over 1,300 U.S. companies and is the top location in the Nordics for regional coverage. The United States is Sweden's largest trading partner outside of the EU. In 2017, U.S. merchandise exports to Sweden were valued at $3.73 billion and imports were $10.74 billion. The U.S. exported $5.9 billion in services to Sweden in 2016 and imported $3.1 billion

The webinar will give an overview of each market with a question and answer session at

the end of the webinar.

Event: Doing Business in Austria and Hungary Webinar
Date: April 24, 2019
Time: 11:00 a.m. – 12:00 p.m. ET
Cost: $50
Description of Event: Austria is the 12th largest economy in Europe and continues to hold its economic standing among larger Central European countries. Austria has increased its imports and is the fourth largest trading partner with the United States.

Hungary is the 21st largest economy in Europe. Despite Hungary's size it is one of the largest growing economies in Europe and is the 13th largest trading partner with the United States. Hungary has steadily increased the number of American products it imports annually and continues to develop its economy and ensure an open market and solid trade relationships with American companies among different sectors

The webinar will give an overview of each market with a question and answer session at the end of each webinar.

Event: Doing Business in Czech Republic and Slovakia Webinar
Date: May 15, 2019
Time: 11:00 a.m. – 12:00 p.m. ET
Cost: $50
Description of Event:
The Czech Republic is the 17th largest economy in Europe, and while the Czech Republic is a medium sized country in Central Europe, it ranked number one in Central and Eastern Europe for business sophistication and efficiency enhancers, and number two for macroeconomic environment and innovation. The Czech Republic and its economy continues to innovate, making it receptive to U.S. products and technologies, promoting a strong trade relationship between Czech and American companies

Slovakia is the 23rd largest economy in Europe. Despite Slovakia's size it is one of the fastest growing economies in the E.U. Slovakia's current macroeconomic policies allow for U.S. companies to increase their exports, as the potential industries in Slovakia can be sourced from the U.S. Slovakia continues to innovate, encouraging trade-relationships with American companies from different sectors. Prospective Slovak markets for U.S. exporters consist of: agriculture, aircraft and spacecraft, electrical machinery and sound equipment, nuclear reactors, boilers, machinery and equipment, vehicle parts and components, and medical/surgical instruments

The webinar will give an overview of each market with a question and answer session at the end of each webinar.

Event: Doing Business in Baltics Webinar
Date: June 12, 2018
Time: 1:00 p.m. – 2:00 p.m. ET
Cost: $50
Description of Event:
Baltics has a regional GDP of over $121 billion, a GDP per capita on average of $20,000, strong infrastructure and ease of doing business. This region of just over 6 million people offers opportunities for American exporters.

Estonia hosts NATO's cyber-defense center and is a homeland for of Skype. As a result of its two-decade commitment to IT, Estonia is the world's most advanced digital society and recognized leader in digital skills, infrastructure and legislation. Estonia boasts a full digital ecosystem, world class cyber-security, and soon-to-be 5G infrastructure. Skype, Transferwise, GrabCAD, Skeleton, Lingvist are just a few of many successful technology startups born in Estonia.

Latvia is ranked 25th out of 189 countries in terms of ease of doing business. The Latvian government has adopted modern laws establishing copyrights, patents and trademarks and the means for enforcing their protection. Telecommunication services are modern and among the highest in quality in the EU. Many U.S. companies doing business in Latvia rate the business environment among the best in Central and Eastern Europe. The country provides an attractive market for American IT equipment and services, capital machinery and equipment, medical and consumer products, and energy products.

Lithuania is among the fastest growing EU economies and is a potentially attractive market for U.S. goods and services. Its excellent infrastructure, competitive costs, and availability of high-skilled, English-speaking workforce make Lithuania a great place for U.S. companies to do business. Dominant sectors include biotechnology, financial technology, electronics manufacturing, ICT, laser technology, energy, metal working, and transportation and logistics

The webinar will give an overview of each market with a question and answer session at the end of each webinar ■

2018 immigration case decisions

The following case summaries involving immigration law were reported in the ISBA E-Clips during 2018:

Fuller v. Sessions, No. 17-3176 (January 8, 2018) Petition for Review, Order of Bd. of Immigration Appeals Motion for stay of removal pending disposition of petition for review denied Ct. of Appeals denied alien's motion for stay of removal pending disposition of his appeal of Bd.'s denial of his second motion to reopen proceedings, under circumstances where Bd. had originally ordered alien's removal based on finding that: (1) alien's 2004 conviction for attempted criminal assault was "particularly serious crime" within meaning of 8 USC section 1231(b)(3)(B)(ii); and (2) for purposes of alien's request for deferral of removal that alien had not shown that he was bisexual or that Jamaican govt. would regard him as such. Ct. of Appeals had originally affirmed Bd.'s removal order, and although alien alleged in second motion to reopen that he would be killed because of his bisexuality if he was returned to Jamaica, stay of any removal proceedings was improper, especially where Bd.'s decision on motion to reopen is generally discretionary and unreviewable, and where Bd. had already considered and rejected alien's new evidence contained in his motion to reopen.

Perez-Montes v. Sessions, No. 17-2520 (January 24, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record contained sufficient evidence to support IJ's removal order, even though alien (citizen of Mexico) had entered U.S. in 1989 as lawful permanent resident, as well as had served in U.S. military and had been honorably discharged. Alien's 2010 conviction on cocaine offense was basis for removal, and said conviction made alien ineligible for most forms of relief. Moreover, IJ did not err in denying alien's application for deferral of removal under Convention Against Torture, even though alien claimed that return to Mexico placed him at risk for being tortured either from drug gangs (who wanted to recruit individuals with military experience) or from Mexican govt. (who tortured individuals who had served in U.S. military), where IJ could find that alien had failed to establish "substantial risk" that he would be targeted by gangs or Mexican govt. Ct. rejected alien's claim that IJ used improper "substantial risk" standard instead of "more likely than not" standard, where: (1) "substantial risk" standard was used by Ct. in Rodriguez-Molinero, 808 F.3d 1134; and (2) "substantial risk" standard was non-quantitative restatement of "more likely than not" standard.

Bernard v. Sessions, No. 17-2290 (February 8, 2018) Petition for Review, Order of Bd. Of Immigration Appeals Petition dismissed and denied in part. Ct. of Appeals lacked jurisdiction to consider portion of alien's appeal of Bd.'s order denying his application for withholding of removal, where said denial was based on Bd. determination that alien was ineligible for said relief due to his prior state-court conviction on domestic battery charge that Bd. viewed as "particularly serious" crime under 8 USC section 1231(b)(3)(B)(ii). Said determination was not reviewable under 8 USC section 1252(a)(2)(B)(ii), and alien otherwise raised only factual issues in asking Ct. of Appeals to reverse Bd.'s determination that said crime qualified as particularly serious crime. Also, ALJ could properly deny alien's application for deferral of removal under CAT, even though alien alleged that he would be subject to torture because of his bisexuality if forced to return to Jamaica. Instant denial was supported by substantial evidence, where: (1) alien could only recount decades-old experience in which others in Jamaica experienced violence because of their sexual orientation; (2) alien failed to present evidence that he specifically would be targeted for extreme violence in future from either public at large or his own family members; and (3) alien could only suppose that Jamaican official would acquiesce to any future torture.

Melesio-Rodriguez v. Sessions, No. 16-1781 (March 7, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition dismissed Ct. of Appeals lacked jurisdiction under 8 USC section 1252(a)(2)(C) to consider alien's appeal of Bd.'s denial of her motion to reconsider Bd.'s unappealed removal order, even though alien argued that she did not knowingly and intelligently waive her appeal rights. Basis of removal order was fact that defendant had incurred certain controlled-substance convictions and, as result, Ct. of Appeals could consider only legal issues on any appeal. Moreover, alien's challenge to Bd.'s finding that she had waived her right to appeal removal decision concerned only factual issues.

Perez v. Sessions, No. 17-1369 (May 2, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition granted Record failed to support Bd.'s denial of alien's application for deferred removal under CAT, where alien alleged that he would more likely be tortured by street gang with acquiescence of public official if forced to return to Honduras. Alien's testimony that he narrowly escaped torture from Honduran street gang on prior occasions represented strong evidence supporting prediction of torture should he be returned to Honduras, and alien should have been given opportunity to show that he would have experienced severe physical or mental pain but for his narrow escapes. Also, remand was required because Bd. had failed to consider all evidence relating to whether alien could safely relocate within Honduras when it only examined threat from same gang members who had previously confronted alien and failed to consider evidence that other gang members would endanger alien in other areas of Honduras.

Yahya v. Sessions, No. 17-1416 (May 3, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Bd.

did not err in denying alien's 2016 motion to reopen his removal proceedings that had resulted in 2003 entry of voluntary removal order. Applicable rules required that alien file said motion within 90 days of entry of removal order, and alien failed to qualify for exception to rule, since whatever changes had come to Indonesia since 2003 with respect to violent extremist groups alien had failed to establish that any changes were material to him and to his asylum claim that his moderate Islamic faith would make him target for radical Islamic groups in Indonesia. Moreover, alien's evidence did not show fundamental shift in safety and security of Indonesia for moderate Muslim population.

Ramos-Braga v. Sessions, No. 17-1998 (May 21, 2018) Petition for Review, Order of Immigration Appeals Petition denied Record contained sufficient evidence to support Bd.'s denial of alien's second motion to reopen proceedings on his application for special-rule cancellation of removal, withholding of removal and protection under CAT. Instant motion was both untimely and beyond numerical limits for filing said motion, since aliens can file only one such motion within 90 days of final removal order, and Bd. could properly reject alien's claim that both limits should be excused under doctrine of equitable tolling for ineffective assistance of counsel or for reasons based on changed country conditions in Brazil. Specifically, alien could not show any prejudice by counsel's representation, since he could not seek special-rule cancellation of removal relief based on claim that his spouse physically abused him, where he had been convicted of witness intimidation. Moreover, alien could not obtain relief under CAT, where he failed to show that any persecution in Brazil was on account of his family ties to his father's gang or that such torture was with acquiescence of public officials. Too, alien's proffered evidence of changed circumstances in Brazil was insufficient because it allegedly occurred prior to original 2014 removal hearing.

Melnik v. Sessions, Nos. 15-2212 et al. Cons. (May 26, 2018) Petition for Review, Orders of Bd. of Immigration Appeals Petitions denied Bd. did not err in denying aliens' (citizens of Ukraine) petitions for review of ALJ's denial of their applications for asylum and withholding of removal, alleging that certain "racketeers" in Ukraine subjected them to persecution and extortion based on their membership in social group consisting of small business owners in Ukraine. One alien's application for asylum was untimely, and said alien was unable to show existence of changed conditions in Ukraine that could excuse his delay in filing application. Moreover, IJ could properly deny both applications for asylum, since proffered social group was not cognizable under applicable statute since, under Orellana-Arias, 865 F.3d 476, aliens had not demonstrated that instant threats and demands for money that they experienced were made for any purpose other than enriching extortionists. Also, aliens failed to present evidence that small business owners are of any particular interest to extortionists other than being convenient target of criminal element looking for source of income.

Mendoza v. Sessions, No. 16-3568 (May 31, 2018) Petition for Review, Order of U.S. Dept. of Homeland Security Petition denied Deportation officer did not err in making determination that alien (Mexican citizen) had illegally reentered U.S. and was subject to reinstatement of prior 1993 removal order, where: (1) prior removal order prohibited alien from reentering U.S. for five years without prior permission from Attorney General to do so; and (2) within weeks of his removal, alien crossed border back into U.S. without previously obtaining consent from Attorney General. Record also showed that alien had been arrested in 2016 for aggravated D.U.I charge and was served at that time with Notice of Intent to Reinstate Prior Order of Removal. Moreover, while alien argued before deportation officer that he was not subject to reinstatement of removal order under section 1231(a)(5), because border guard had allowed him to reenter U.S., and thus his reentry was "procedurally regular," deportation officer could properly reject alien's claim, since alien's procedurally regular, but substantively unlawful reentry to U.S. was still "unlawful" for purposes of reinstating prior removal order. Also, alien was not entitled to full hearing before immigration judge prior to issuance of reinstatement of removal order.

Pereira v. Sessions, No. 17-459 (June 22, 2018) A putative notice sent to a nonpermanent resident to appear at a removal proceeding that fails to designate a specific time or place for that proceeding does not end the continuous residence period calculation necessary for possible cancellation of the individual's removal.

Singh v. Sessions, Nos. 17-1579 & 17-2852 Cons. (July 26, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Bd. did not err in affirming IJ's order removing alien on ground that alien had been convicted on state charge of deception, where said crime qualified as crime involving moral turpitude for which sentence was one year or longer. Fact that alien had gone back to state court and entered into agreement with prosecutor to vacate deception conviction in exchange for guilty plea on misdemeanor charge of possession of drug paraphernalia did not require different result or require that Bd. reopen removal proceedings, since alien could not show that vacatur of deception conviction was based on substantive or procedural defect. Also, fact that govt. had previously stated that deception conviction did not carry possible sentence of one year or longer did not preclude govt. from filing new charge during pendency of original charge that essentially alleged (correctly) that deception conviction carried possible sentence of one year and qualified as crime involving moral turpitude.

Galindo v. Sessions, No. 17-1253 (July 31, 2018) Petition for Review, Order of Bd. of Immigration Appeals Vacated and remanded Ct. of Appeals lacked jurisdiction to review Bd.'s determination that alien's drug-paraphernalia convictions qualified as removable controlled-substance offenses under circumstances where IJ originally found that said convictions did not qualify as removable offenses and had terminated removal proceedings, and where Bd. essentially reversed IJ's order and purported to enter removal order on its own. Bd.'s removal order was not final for purposes of conferring jurisdiction on Ct.

of Appeals to consider merits of Bd.'s order, since IJ never made requisite finding of removability. However, Ct. of Appeals had jurisdiction to find that Bd. lacked authority to issue removal order on its own, since 8 USC section 1229(a) expressly vests IJ (as opposed to Bd.) with authority to conduct removal proceedings in first instance. As such, remand was required to address Bd.'s jurisdictional error.

Sembhi v. Sessions, No. 17-2746 (July 31, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Bd. did not err in denying alien's fifth motion to reopen removal proceedings, as well as his third motion to reconsider denials of prior motions to reopen, where: (1) IJ had entered 2001 removal order against alien in absentia after alien had failed to appear at removal proceeding; and (2) IJ had denied alien's 2013 original motion to reopen removal proceedings, after rejecting alien's claim that he was unaware of hearing date for original removal proceeding, or that his original counsel was ineffective. Bd. could properly find that alien had not established exception to chronological and numerical limits that barred consideration of successive motions to either reopen or reconsider, and alien otherwise had failed to comply with requirement in instant motion to reopen that he provide notice to any of his prior counsel whom he alleged had rendered ineffective assistance of counsel so as to give them opportunity to respond to said allegations. Fact that alien had filed charge with ARDC against one of his prior counsel did not constitute requisite notice of his ineffective assistance of counsel claim in instant proceeding.

Bijan v. U.S. Citizenship & Immigration Services, No. 17-3545 (August 20, 2018) N.D. Ill., E. Div. Affirmed Record contained sufficient evidence to support USCIS's decision to deny alien's request to become naturalized citizen, as well as Dist. Ct.'s grant of summary judgment in favor of USCIS. Alien had stated on prior visa application that he was not married and had no children, and although there was triable question with respect to alien's marital status, which would preclude instant grant of summary judgment, Dist. Ct. could properly grant summary judgment, where record showed that alien had lied on visa application with respect to claim that he had no children. In this regard, record showed that he had two children at time of visa application, and that alien was aware of said misrepresentation. As such, denial of alien's naturalization application was appropriate, since alien had intended to obtain naturalization status by denying any prior misrepresentation to immigration officials.

Rivas-Pena v. Sessions, No. 18-1183 (August 21, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition granted Record failed to contain sufficient evidence to support IJ's denial of application for relief under Convention Against Torture, where alien (citizen of Mexico) sought deferral of his removal that was based on state-court conviction on drug trafficking offense, where said application was based on claim that return to Mexico would subject alien to torture from Los Zetas drug cartel members, who considered him responsible for loss of drugs and currency worth more than $500,000. Alien submitted report from expert who stated that lost drug contraband that was attributed to Los Zetas cartel at issue in alien's state-court conviction could be valued up to $900,000, that said cartel would hold alien responsible for said loss, and that there was high certainty that cartel would torture and kill alien as result of said loss. Remand was required, because IJ, in finding that claims of potential torture were too speculative, improperly failed to address expert's contrary claim of harm, and reasonable fact-finder would not dismiss as merely speculative alien's fear of harm under instant record.

Alvarenga-Flores v. Sessions, No. 17-2920 (August 28, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record contained sufficient evidence to support IJ's denial of application for asylum relief, as well as withholding of removal and CAT relief by alien-citizen of El Salvador, even though alien asserted that he had fear of future torture and persecution by gang members if forced to return to El Salvador. IJ could properly find that alien was not credible regarding his claims of future persecution, where IJ could find that alien was not credible with respect to two alleged incidents that formed basis of his claims for relief based on alien's inconsistent versions of said alleged incidents. Also, alien failed to explain said inconsistencies when given opportunity to do so at hearing. Moreover, alien tendered written statements in English from his parents in attempt to corroborate alien's version of events that he gave at hearing under circumstances where parents could not speak English. (Partial dissent filed.)

Plaza-Ramirez v. Sessions, No. 14-2828 (November 7, 2018) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record contained sufficient evidence to support IJ's denial of alien's application for withholding of removal, even though alien asserted that he faced threat of persecution by local gang if forced to return to Mexico. While alien argued that he was target for 1999 attack by members of Los Negros gang due to fact that his cousin belonged to rival gang, alien failed to show nexus between his 1999 attack and his family membership, where alien: (1) conceded that there were no threats against any of his other family members; and (2) admitted that he was attacked because he was mistakenly associated with rival gang. ■