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9th Circuit loosens asylum standards

In reversing a denial, panel says appeals board must make individualized rulings

By John Roemer

A Guatemala man who persuaded his younger brother to defect from the feared and violent Mara Salvatrucha gang led a federal appellate panel on Wednesday to clarify how immigration authorities must deal with such cases.

Gang members severely beat Oliverto Pirir-Boc and threatened him with death. He fled to the U.S., still suffering from his injuries, where a San Francisco immigration judge granted him asylum only to be overruled by the Board of Immigration Appeals.

The 9th U.S. Circuit Court of Appeals panel faulted the immigration board for failing to consider strong evidence that the man belonged to a particular social group that merits relief under U.S. laws.

The panel reversed the Board of Immigration Appeals' asylum denial and ordered it to reconsider the case. *Pirir-Boc v. Holder*, 2014 DJDAR 5847.

It was the latest round in an ongoing wrestling match between the circuit and the BIA over the sometimes-nebulous social group category, the hardest to define of the five statutory grounds for asylum. The others require proof that applicants are likely to be persecuted in their homelands due to their race, religion, nationality or political opinion.

In recent years, friction has developed over whether social group categorization can include sexual orientation, domestic violence victimization and gang association.

Before 2006, the Board of Immigration Appeals - an administrative law arm of the U.S. Department of Justice - granted social group asylum status to such dissimilar factions as former members of the Salvadoran national police, homosexuals in Cuba forced to register with authorities, young Togo females who oppose genital mutilation and Filipinos of mixed Filipino-Chinese ancestry.

Recently, the BIA tightened its rules and now requires evidence that an asserted social group is recognized or "socially visible" within the culture from which the asylum applicant has fled.

That ruled out asylum for noncriminal drug informants working against the Cali cartel in Columbia, the BIA determined, and shut the door on El Salvador refugees who rejected Mara Salvatrucha recruitment efforts.

How to apply the BIA standard remains in flux and has led to a circuit split, with the 3rd and 7th circuits invalidating it. The 9th Circuit has called the standard ambiguous but has not flatly rejected it.

Last year, the 9th Circuit found in favor of asylum for an El Salvador girl who fingered gang members after they murdered her father. That en banc opinion was expected to expand asylum claims based on gang retaliation fears. *Henriquez-Rivas v. Holder*, 707 F.3rd 1083.

What Wednesday's opinion by Circuit Judge Stephen R. Reinhardt clarified was that the Board of Immigration Appeals is required to make evidence-based individualized determinations in each case, based on the facts presented in immigration court.

The BIA "failed to consider how Guatemalan society views the proposed group" of those, like asylum applicant Pirir-Boc, who are "directly in opposition to gang activities," Reinhardt wrote.

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Thursday, May 8, 2014

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Litigation

Former police advocacy firm to discuss settling litigation alleging fraud

Lawyers from the nation's largest police legal defense fund and the now-defunct police advocacy law firm Lackie Dammeier McGill & Ethir APLC will meet later this month to discuss settling litigation against the firm.

Law Practice

The death of the civil jury trial

Over the last several decades the right to a jury trial in civil cases has been silently and slowly eroded, coming closer and closer to the brink of extinction. By **Mark P. Robinson Jr.**

Litigation

Episcopal Diocese of Los Angeles wins property dispute

An Orange County Superior Court judge decided that the diocese should retain certain parish property even though the parish members split from the religious denomination.

Law Practice

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Fenwick & West LLP on Wednesday officially opened the satellite in Shanghai with six lawyers.

Government

State lawmakers back more court funding, with strings

Lawmakers are poised to back the judicial branch's pursuit of hundreds of millions of additional funding. But Gov. Jerry Brown could prove to be the main obstacle to the push for increased funding for court operations.

Bar Associations

Beverly Hills Bar Association joins hotel boycott over Brunei penal code

Beverly Hills Bar Association leaders will boycott the Beverly Hills Hotel over nation's harsh anti-gay laws. The association's Supreme Court event has been moved to the Montage.

Instead, the BIA appeared to lump gang cases from different countries together and reject them all.

The director of the Center for Gender & Refugee Studies at UC Hastings School of Law, Karen Musalo, said Wednesday's opinion was important because "now we have the 9th Circuit saying we can't throw all these cases into the same basket and sloppily say one is like the other."

"It almost seems like a reflexive reaction by the BIA that no gang cases will meet the legal requirement for social group status," she added.

Evidence from U.S. State Department country reports and other authoritative sources showed that there were concerted efforts in Guatemala to combat gang activity and that Pirir-Boc voluntarily associated himself with that group by opposing the Mara Salvatrucha, Reinhardt's opinion said.

"It's easy terminology to shorthand these as just gang cases, but one is struck by the moral courage and integrity of people like Pirir-Boc in these situations," said Musalo, who was not involved in the case.

"These are people of conscience we should want to protect with our asylum laws."

Pirir-Boc's lawyers at Green & Tsai in San Francisco could not be reached. A Board of Immigration Appeals spokeswoman declined to comment.

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A roundup of recent real estate activity and the lawyers involved.

Litigation

Experts: Sterling's potential attorney picks indicate possibility for big clash with NBA

The Clippers owner's decision to approach two high-profile litigators signals that he is likely to dig in his heels for a violent clash with the league over its decision to ban him from games and possibly force him to sell the team.

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Criminal

A judicial dead end for California's working poor

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Perspective

State's unmanned aerial vehicle bills 'drone' on

Even before Amazon announced that it was looking into using drones to deliver packages, the state Legislature was debating the future course of unmanned aerial vehicles, also known as "UAVs" or "drones." By **Steven Boranian, Lisa B. Kim and Sarah Woo**

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Tesla's federal showdown heating up

Three high-ranking FTC officials recently came out against what they called the "protectionist" network of laws in the U.S. that govern automotive dealers. **Jonathan Michaels**

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