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LITIGATION HIGHLIGHTS

Inside

AG Vacates And Remands To BIA *Matter of A-T-*

BIA to determine operation of the past persecution presumption in cases of past FGM

On September 22, 2008, in *Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008), the Attorney General directed the Board of Immigration Appeals to refer to the Attorney General for consideration the Board's published decision, and unpublished denial of reconsideration, in *Matter of A-T-,* 24 I&N Dec. 296 (BIA 2007), in which the Board held that a woman who experienced past FGM as a child and claimed to fear a future family-arranged arranged marriage was not eligible for withholding of removal, because she did not establish a clear probability of future persecution. See *Matter of A-T-*, 24 I&N Dec. 617 (A.G. 2008). The Attorney General vacated the Board's decisions and remanded to consider several questions regarding the woman's eligiblity for withholding of removal in light of her past FGM, operation of the presumption, and assertion that having had FGM as a child she should be entitled to a presumption of future persecution as an adult consisting of an arranged marriage, which the Department of Homeland Security must rebut.

Prior to the order vacating and remanding *Matter of A-T-,* several senators wrote a bi-partisan letter asking the Attorney General to review the decision. Also, the Second Circuit earlier this year rejected a portion the decision in *Matter of A-T-* which holds that FGM is a one one-time event that cannot be repeated and that the procedure automatically rebuts any presumption of future persecution in the form of FGM.

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Government Seeks Rehearing En Banc In VWP Case

Calling it a "case of exceptional importance," the government on October 15, filed a petition for rehearing en banc in ***Bayo v. Chertoff***, 535 F.3d 749 (7th Cir. 2008), where a panel of the Seventh Circuit held that an alien who enters the United States under the Visa Waiver Program (VWP) is entitled to a hearing to determine whether the waiver of his constitutional rights under that program had been knowing and voluntary.

"The panel's decision rewrites the terms of the VWP and eviscerates the bargain at the heart of the program: streamlined entry in exchange for streamlined removal, if necessary," claims the government.

The petitioner in the case, Mohammed Bayo, a citizen of Guinea, entered the United States fraudulently using a stolen Belgian passport. He had no intention of departing within the allotted 90-day period under the VWP. Instead he settled in Indianapolis and eventually married a United States citizen. Based on that marriage, in 2006 Bayo applied for adjustment of status. When ICE investigators learned that he had entered the United States using a stolen Belgian

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FGM presumption before Board

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See Bah v. Mukasey, 529 F.3d 99, 103 (2d Cir. 2008). The Attorney General's order vacating and remanding *Matter of A-T-* vitiates review petitions pending in the Fourth Circuit in that case. OIL attorneys should assess their cases to determine if they have any review petitions affected by the vacatur and remand of *Matter of A-T-*.

The Board's Decision In *Matter of A-T-*

Matter of A-T- involves a woman from Mali who applied for withholding of removal, which requires her to prove that her life or freedom would be threatened on account of her race, religion, nationality, membership in a particular social group, or political opinion should she be returned to her home country. *See* 8 U.S.C. §1231(b)(3). Regulations provide that this requires the applicant to prove that she is more likely than not to be subject future persecution on account of one of the qualifying grounds. 8 C.F.R. § 1208.16. Regulations also provide that if an alien establishes past persecution on account of a qualifying ground, it "shall be presumed that the [alien's] life or freedom would be threatened in the future in the country of removal *on the basis of the original claim*." 8 C.F.R. § 1208.16(b)(1)(i) (emphasis added). The burden of proof then shifts to the Department of Homeland Security to rebut the presumption of future persecution, either by showing a "fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five [protected] grounds" or that the applicant reasonably could "avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal." *Id*. §§ 1208.16(b)(l)(i)(A)-(B), (ii). If, however, the "applicant's fear of future threat to life or freedom *is unrelated to the past persecution*," he or she "bears the burden of establishing that it is more likely than not that he or she would suffer [the future] harm [to life or freedom that he or she fears]." *Id*. § 1208.16(b)(1)(B)(iii) (emphasis added). The language providing that the presumption applies "on the basis of the original claim" and putting the burden on the alien if the asserted future persecution is "unrelated to the past persecution" was added to the regulations in 2000. The Department explained that this language preserves the Board's decision in *Matter of N-M-A-*, 22 I&N Dec. 312 (BIA 1998). *See* Asylum Procedures, 65 Fed. Reg. 76,121, 76,127 (Dec. 6, 2000). In *Matter of N-M-A-*. the Board explained that the past-persecution presumption is based on the logical assumption that a persecutor, once having shown an interest in persecuting an alien on account of a protected ground, may persecute the alien in the future on that same ground, should the alien again come within the persecutor's reach. *Id.* at 318. In adding the new limiting language to the regulations, the Department further explained that this language specifies that the past-persecution presumption applies "only to a fear of harm based on facts that give rise to the original persecution," or put another way, "only to a fear of future persecution based on the original persecution and not to a fear of persecution from a new source unrelated to the past persecution." Asylum Procedures, 65 Fed. Reg. at 76,121.

The Board reasoned that FGM is the type of harm that generally occurs only once, and thus the past infliction of FGM was by itself a "fundamental change in circumstances" that rebutted the regulatory presumption of future persecution.

Under this statutory and regulatory scheme A-T- applied for withholding of removal asserting that she experienced past persecution consisting of FGM as a young girl which she could not recall, and she feared that if she returned to Mali, was married, and had a daughter, the daughter would be subject to FGM. A-T- also claimed that it was her father's wish that she marry her first cousin and that if she refused, her father might harm her mother.

In *Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007), the Board affirmed the immigration judge's determination that A-T- failed to establish eligibility for withholding of removal. The Board distinguished A-T-'s case from *Matter of Kasinga*, 21 I&N Dec. 537 (BIA 1996), in which the Board granted asylum to a woman who had never experienced FGM and feared future FGM by her tribe, on the theory that FGM constitutes persecution to overcome "sexual characteristics of young women of the tribe who have not been . . . subjected to the practice," and in Kasinga's case would be inflicted on account of her membership in a social group consisting of her tribe. The Board distinguished A-T-'s case from *Kasinga* by reasoning that even assuming A-T- were to establish she was a member of a particular social group that suffered past persecution, there was no chance that she would be persecuted in the future by that procedure. The Board reasoned that FGM is the type of harm that generally occurs only once, and thus the past infliction of FGM was by itself a "fundamental change in circumstances" that rebutted the regulatory presumption of future persecution. The Board also held that A-T- could not establish eligibility for withholding of removal based on a theory that the past FGM should be treated as ongoing persecution amounting to future persecution in Mali upon her return. In so doing, the Board declined to extend a unique theory of ongoing persecution the Board created for the unique statutory context of forced sterilization claims outside that context. The Board concluded that A-T-'s fear of future FGM of any daughter she might have was too speculative to qualify for withholding of removal Finally, the Board deter-

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Matter of A-T-

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mined that A-T- failed to prove eligibility for withholding based on her assertion of future persecution consisting of an arranged marriage to her first cousin, because (1) she did not show a clear probability that she would be forced into the marriage against her will or would be persecuted for rejecting the marriage, and (2) was not entitled to the regulatory presumption of a clear probability of future persecution consisting of the arranged marriage, because the past FGM she experienced was unrelated to her the claim of future arranged marriage. In an unpublished order, the Board subsequently denied a motion to reconsider asserting new social group formulations as the motive for the past FGM and future arranged marriage.

Attorney General's Reasons For Vacating And Remanding

The Attorney General vacated *Matter of A-T-* and remanded for further consideration. The Attorney General found the Board's decision flawed to the extent that it ruled that a woman who has previously been subjected to FGM has no basis to fear future persecution consisting of that procedure, because her genitalia have already been mutilated, so that the past act of FGM is a "fundamental change in circumstances" that rebuts any presumption of future persecution. First, the Attorney General concluded that this ruling is based on a false factual premise that FGM is a "one-time" act that cannot be repeated on the same woman, citing several circuit court cases concluding, based on the records before them that FGM can be repeated.

Second, the Attorney General concluded that the Board was wrong to focus on whether the presumption of future persecution that is triggered by a finding of past persecution is limited to the same form of persecution — namely FGM — that was experienced in the past. The Attorney General quoted the regulatory language stating that the presumption of future persecution applies on the basis of the original claim, and concluded that this language refers to past and future persecution on account of the same statutory motive, not necessarily the same forms of persecution. The Attorney General described the original claim as past persecution (FGM) on account of an unspecified particular social group, and remanded the case to the Board to determine the following questions: (1) whether A-T- is entitled to the presumption of future persecution because she has established past persecution on account of membership in a particular social group; (2) what effect, if any, the regulatory provision putting the burden on an alien to prove a clear probability of future persecution that is "unrelated" to the past persecution has in this case; and (3) if the past persecution presumption applies, whether the Department of Homeland Security can rebut the presumption. The Attorney General also stated that he was not addressing that aspect of the Board's decision declining to extend its unique "ongoing persecution" theory in past forced sterilization cases to cases outside that statutory context.

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Rehearing sought in VWP case

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passport they arrested him. Bayo admitted that he was in the country illegally and handed over the Belgian passport. DHS administratively ordered his removal. Bayo then filed a petition for review.

Bayo claimed that he could not understand the VWP waiver because it was in English and he speaks only French. He also claimed that he had not completed high school, had not traveled internationally, and did not consult with an attorney before signing the waiver. A panel of the Seventh Circuit granted Bayo's petition holding that "waivers of rights under the VWP must be "knowing and voluntary." The court relied on *Boumediene v. Bush,* 128 S. Ct. 2229 (2008) – a case involving whether aliens detained by the United States in Cuba have habeas rights – for its conclusion that "Bayo, as an alien technically outside the country's border when he submitted his waiver to border agents, enjoyed some constitutional protections against arbitrary government action."

In its petition for rehearing , the government contends that "if left standing, the panel's decision will have significant practical consequences. Millions of people enter the United States each year under the VWP, and if even a small percentage of those visitors claimed they did not understand the form they signed and asserted a constitutional right to a removal proceeding, it would overload the system, particularly given that (as this Court well knows), agency proceedings are often only the first step in a long march through the federal court system."

> "The panel's decision "threatens national security, in that – as Congress recognized when designing the program – an expedited removal procedure for VWP visitors is necessary."

Additionally, the government contends that the panel's decision "threatens national security, in that – as Congress recognized when designing the program – an expedited removal procedure for VWP visitors is necessary given that they are not subjected to the prescreening that accompanies aliens requesting visas to enter the United States."

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FURTHER REVIEW PENDING: Update on Cases & Issues

Asylum — Persecutor Bar

On November 5 2008, the Supreme Court heard oral arguments in ***Negusie v. Gonzales***, 231 Fed. Appx. 325, No. 06-60193 (5th Cir. May 15, 2007) (per curiam), *cert. granted sub nom.* ***Negusie v. Mukasey***, No. 07-499, 2008 WL 695623 (U.S. Mar. 17, 2008). The question presented is: Does "persecutor exception" prohibit granting asylum to, and withholding of removal of a refugee who is compelled against his will by credible threats of death or torture to assist or participate in acts of persecution?

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GMC - Family Unity Waiver

On October 9, 2008, the Ninth circuit granted the government's petition for en banc rehearing in ***Sanchez v. Mukasey***, 521 F.3d 1106 (9th Cir. 2008), on the issue of whether the "family unity" alien-smuggling waiver of inadmissibility under 8 U.S.C. § 1182(d)(11) may also be applied to waive the good moral character requirement for cancellation of removal, where the alien would otherwise be barred from cancellation because of alien smuggling involving a spouse, child or parent.

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Coercive Family Planning Spouses — Lin/S-L-L- Issue

On May 28, 2008, the Third Circuit submitted ***Lin-Zheng v. Attorney General of the U.S.***, No. 07-2135, without oral argument to the en banc court. Prior to the Attorney General's decision in *Matter of J-S-*, 24 I&N Dec. 540 (A.G. 2008), the court had sua sponte ordered en banc hearing based on the issue of whether spouses of those subjected to forced sterilization or other family planning practices in China should be entitled to eligibility as refugees under 8 U.S.C. § 1101(a)(42)(B) for purposes of asylum, specifically including whether the court should adopt the reasoning of the Second Circuit in *Lin v. U.S. Dept. of Justice*, 494 F.3d 296 (2d Cir. 2007), which conflicts with *Chen v. Attorney General of the U.S.*, 491 F.3d 100 (3d Cir. 2007).

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Removal — Blake issue

The en banc Ninth Circuit heard oral argument March 25, 2008 in ***Abebe v. Gonzales***, 493 F.3d 1092 (9th Cir. 2007), *reh'g en banc granted sub nom.* ***Abebe v. Mukasey***, 514 F.3d 909 (2008) (also ordering that the panel decision cannot be cited as a precedent). The issue is whether an alien who is charged with deportability on a ground that does not have a comparable ground of inadmissibility is ineligible for § 212(c) relief. The BIA had held that the agency's long-standing "statutory counterpart" rule, as applied in *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005), rendered petitioner ineligible for § 212 (c) relief because there is no statutory counterpart in INA § 212(a) to the sexual abuse of a minor ground of deportability.

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Jurisdiction– Denial of Continuance

On June 26, 2008, the court granted petitioner's petition for rehearing en banc in ***Potdar v. Gonzales,*** __F.3d__, 2007 WL 2938378 (7th Cir. Oct. 10, 2007) (Ripple, Manion, Kanne) (*per curiam),* where the Seventh Circuit had held that petitioner's motion to reopen, based upon pending adjustment and legalization applications filed with the DHS was effectively a continuance motion, and the court accordingly dismissed the petition for lack of jurisdiction to review decisions on such motions. The government had acquiesced to the *en banc* petition. The court limited rehearing on the issue of whether it had jurisdiction to review a denial of a motion to reopen under *Subhan v. Ashcroft*, 383 F.3d 591 (7th Cir. 2004).

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VWP — Waiver, Due Process

On October 15, 2008, the government filed a petition for rehearing en banc in ***Bayo v. Chertoff***, 535 F.3d 749 (7th Cir. 2008). The question presented is whether a waiver of the right to contest removal proceedings under the Visa Waiver Program is valid only if entered into knowingly and voluntarily, and is the alien entitled to a hearing on whether the waiver was knowing and voluntary?

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Fourth Amendment Exclusionary Rule

On October 22, 2008, the government filed a petition for rehearing en banc in ***Lopez-Rodriguez v. Mukasey***, 536 F.3d 1012 (9th Cir. 2008). The question presented is: Must the exclusionary rule be applied in removal proceedings if the agents committed violations of the 4th Amendment deliberately or by conduct that a reasonable person should have known would violate the Constitution?

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Asylum Confidentiality: Disclosure of asylum related information to unauthorized third parties

This article discusses the courts of appeals' treatment of possible violations of regulations barring the government from disclosing to unauthorized third parties information contained in or pertaining to an asylum application.

Regulatory Background And USCIS Fact Sheet Interpreting The Regulations

The pertinent regulations concerning when asylum-related-information can be disclosed to a third party are set forth at 8 C.F.R. §§ 208.6 and 1208.6. Both regulations state that "[i]nformation contained in or pertaining to" an asylum application, credible fear interview, or records of any reasonable fear determination shall not be disclosed. The Asylum Division in the Office of Refugee, Asylum, and International Operations, U.S. Citizenship and Immigration Services ("USCIS") has produced an internal agency memorandum interpreting the operation of the regulations. *See* USCIS Fact Sheet on the Federal Regulations Protecting the Confidentiality of Asylum Applicants ("Fact Sheet on the Confidentiality Regulations" *available at* http://www.uscis.gov/files/pressrelease/FactSheetConf061505.pdf. According to the Fact Sheet on the Confidentiality Regulations, the regulation at 8 C.F.R § 208.6 applies only to the custodians of asylum-related-information in USCIS. This regulation does not apply to non-USCIS custodians of asylum-related- information. See Fact Sheet on the Confidentiality Regulations, question no. 5 and answer. The regulation at 8 C.F.R. § 1208.6 applies to the Executive Office of Immigration Review. The Fact Sheet advises that asylum-related-information may be disclosed within the Department of Homeland Security ("DHS") to Customs and Border Patrol and Immigration and Customs and Enforcement without violating the regulations, as these divisions are within DHS and therefore are not third parties.

There are exceptions in the regulations that permit disclosure outside of the traditional custodians of asylum-related-information. The asylum applicant may, by written consent, permit disclosure. 8 C.F.R. §§ 208.6(a), 1208.6(a). The Attorney General may exercise his discretion and allow for a disclosure to occur. *Id.* In 2002, the Attorney General authorized the disclosure of asylum-related - information to the Office of Refugee Resettlement of the Department of Health and Human Services. See Fact Sheet on the Confidentiality Regulations at 6-7, question no. 14 and answer. Additionally, asylum-related -information may be disclosed to government officials or contractors having a need to examine the information in connection for an explicit purpose that is stated under the regulations, such as adjudicating an asylum application. 8 C.F.R. §§ 208.6(c)(1), 1208.6(c)(1). Finally, a disclosure is permitted to any Federal, State, or local court in the United States considering a legal action arising from the adjudication of an asylum application. 8 C.F.R. §§ 208.6(c)(2), 1208.6(c)(2). DHS is also under an obligation to ensure that any asylum-related-information that is transmitted to an office of the Department of State in another country remains confidential. 8 C.F.R. §§ 208.6(b), 1208.6(b).

> There are exceptions in the regulations that permit disclosure outside of the traditional custodians of asylum-related information.

The Asylum Division advises in its Fact Sheet on the Confidentiality Regulations that there is a breach of the regulations when two events occur. First, information contained in or pertaining to the asylum application must be disclosed to an unauthorized third party. Second, the disclosed information must allow for the third party to know that either: (1) the applicant has applied for asylum, or (2) give rise to a reasonable inference that the applicant has applied for asylum. *See* Fact Sheet on the Confidentiality Regulations at 4-5, question no. 4 and answer.

Discussion

The Second, Fourth, and Eighth Circuits are the only courts to date that have issued published decisions addressing an asserted breach of the asylum confidentiality regulations. *See Anim v. Mukasey*, 535 F.3d 243 (4th Cir. 2008); *Rafiyev v. Mukasey,* 536 F.3d 853 (8th Cir. 2008); *Che v. Mukasey*, 532 F.3d 778 (8th Cir. 2008); *Corovic v. Mukasey*, 519 F.3d 90 (2d Cir. 2008); *Averianova v. Mukasey*, 509 F.3d 890 (8th Cir. 2007); *Abdel-Rahman v. Gonzales*, 493 F.3d 444 (4th Cir. 2007); *Zhen Nan Lin v. U.S. Dep't of Justice*, 459 F.3d 255 (2d Cir. 2006); *Fongwo v. Gonzales*, 430 F.3d 944 (8th Cir. 2005); *Ghasemimehr v. Gonzales*, 427 F.3d 1160 (8th Cir. 2005). In these cases, the facts usually involved the disclosure of the applicant's asylum-related-information in connection with a U.S. consular investigation into whether the applicant's documents were authentic. *See Anim*, 535 F.3d at 243; *Averianova*, 509 F.3d 899-900; *Zhen Nan Lin*, 459 F.3d at 262-68. However, in one case, the supposed disclosure took place during the procurement of travel documents in order to secure the applicant's removal. *See Ghasemimehr*, 427 F.3d at 1161.

The courts have predominantly

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examined these cases with a two-step approach in determining (1) whether the government breached the confidentiality regulations and (2) the remedy for the breach. First, the courts examine whether there was a breach of the regulations. If there was a breach, the courts then examine the remedy for the breach, but only if the Board of Immigration Appeals ("Board") has addressed the issue in the first instance.

In examining whether a breach of the asylum confidentiality regulations has occurred, the courts have relied on the statements of USCIS in the Fact Sheet on the Confidentiality Regulations concerning under what circumstances a breach might happen. Disclosure of an applicant's name, date of birth, or ethnicity that is in an asylum application appears to be insufficient, by themselves, to constitute a breach of the regulations. *See Averianova*, 509 F.3d at 899-900. Rather, the disclosed asylum-related-information must lead the third party to a reasonable inference that the individual has applied for asylum. *Id.; Zhen Nan Lin*, 459 F.3d at 270.

Whether a disclosure gives rise to a reasonable inference depends on the nature of the information or document that is revealed to the third party. For example, the Eighth Circuit has found that the mere inquiry by the U.S. consulate office in Uzbekistan into an applicant's birth records was not a breach of the violations. *Averianova*, 509 F.3d at 897-900; *Zhen Nan Lin*, 459 F.3d at 262-68. The investigation involved the U.S. consular officer revealing the applicant's name, birth date, and ethnicity to the Uzbekistan officers in order to verify the applicant's birth certificate document that was submitted with the asylum application. Id. at 892-94. The court agreed with the agency's finding that this inquiry did not give rise to a reasonable inference that the applicant had applied for asylum, because an investigation into a birth certificate could relate to several other immigration benefit applications, such as an adjustment of status application or visa petition. *Id.* at 899-900.

However, the Second and Fourth Circuits have determined that when the information or document that is disclosed is of the sort that is commonly known to form the basis of asylum claims in the United States, a breach of the regulations has probably occurred. *See Anim*, 535 F.3d at 254-56; *Zhen Nan Lin*, 459 F.3d at 262-68. In the Fourth Circuit case Anim, an investigator for the U.S. consulate in Cameroon presented an unredacted copy of a summons naming the asylum applicant to a member of the Cameroon government in order to authenticate the summons. *See Anim*, 535 F.3d at 254-56. The Fourth Circuit concluded that this was a breach as the document linked petitioner to the sort of document that is commonly known to be used for asylum claims in the United States. *Id.* at 255. The court supported its finding based on the facts that (1) the applicant's name was not redacted on the summons; (2) the summons related to a request for the applicant to appear at the police station in connection with events that underlined her claim for asylum; and (3) the possession of the summons by a U.S. consular investigator supported the inference that the applicant was in contact with the United States. *Id.*

Whether a disclosure gives rise to a reasonable inference depends on the nature of the information or document that is revealed to the third party.

Additionally, in the Second Circuit case *Zhen Nan Lin*, 459 F.3d at 262-68, the court concluded that a breach of the confidentiality regulations occurred when the U.S. consulate in the People's Republic of China ("PRC" or "China") presented a copy of the asylum applicant's certificate of release from prison to the Chinese government for authentication. The applicant's name, prisoner number, sex, age, and former residency in China was not redacted. Id. at 265. The certificate of release also indicated that the applicant was imprisoned for "'conspiracy of anti-revolution.'" *Id.* Like the Fourth Circuit, the Second Circuit concluded that the fact that the consular investigator was in possession of the certificate of release gave rise to the inference that the applicant was in contact with the U.S. government. *Id.*

Even if a breach of the regulations occurs, the courts have determined that this does not automatically invalidate the applicant's removal order. *See Averianova*, 509 F.3d at 899-900; *Abdel-Rahman*, 493 F.3d at 453; *Zhen Nan Lin*, 459 F.3d at 267-68. The confidentiality regulations do not provide a remedy for a breach. *See* 8 C.F.R. §§ 208.6, 1208.6. According to the courts, the relevant inquiry, once a breach occurs, is whether the disclosure gives rise to a new claim of asylum for the applicant that is independent of the original claim. *See Corovic*, 519 F.3d at 96; *Averianova*, 509 F.3d at 899-900; *Abdel-Rahman*, 493 F.3d at 453; *Zhen Nan Lin*, 459 F.3d at 268. The Second Circuit has remanded cases to the Board to determine this issue in the first instance after determining that there was a breach of the confidentiality regulations. *See Corovic*, 519 F.3d at 90; *Zhen Nan Lin*, 459 F.3d at 268.

The Fourth and Eighth Circuits have addressed this issue where the Board has already addressed the

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USCIS genealogy program

The USCIS recently announced the release of a new fee-for-service genealogy program designed to replace the old FOIA request process. Individuals can now turn to the USCIS for help in researching their family's immigration history using genealogy record request forms available on the agency's website. Fees for searches range from $20 to $35 depending on the record type. The USCIS maintains historical records documenting the arrival and naturalization of immigrants since the 1800s. According to the agency, there is a great interest in genealogy and, in the past four years alone, USCIS received more than 40,000 FOIA requests for historical records. To learn more go to http://www.uscis.gov/genealogy. Questions about the USCIS Genealogy Program may be sent to Genealogy.USCIS@dhs.gov.

USCIS Makes Major Strides During 2008

USCIS Acting Director Jonathan Scharfen has announced that more than one million new citizens took the Oath of Allegiance during fiscal year 2008.

Among other key accomplishments for the year USCIS:

■Completed more than 1.17 million naturalization applications, up more than 50 percent from FY07.

■Reduced naturalization application processing times to 9-10 months, down from the 16-18 months projected after the surge of applications in late FY07.

■Hired 1,600 new adjudications officers during FY08. Significantly revised and restructed the existing training curriculum and developed the BASIC training program at the USCIS Training Academy, preparing new officers to be "job-ready' upon completion of training.

■Worked with the FBI to effectively eliminate all name checks pending more than two years, and reduced the cases waiting for a name check final result from almost 350,000 in late FY07 to less than 37,000.

■Interviewed more than 100,000 refugee applicants and completed more than 47,000 asylum applications.

■Increased participation in E-Verify, the nation's preeminent employment eligibility verification system, by 260 percent over last year, resulting in the verification of more than 10 percent of the Nation's new hires.

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matter of a remedy for a breach of the regulations. *See Abdel-Rahman*, 493 F.3d at 453; *Ghasemimehr*, 427 F.3d at 1161-63. These courts have held that an applicant must support a new claim of asylum based on a breach of the confidentiality regulations with more than an assertion that a breach has occurred and that there is a new fear of persecution because of the breach. *Id.* The applicant will instead have to submit additional evidence to establish the new claim of asylum. *See Ghasemimehr*, 427 F.3d at 1161-63.

For example, in *Ghasemimehr*, the applicant filed a motion to reopen with the Board based on changed circumstances resulting from an alleged disclosure of asylum-related-information by DHS. Id. at 1162. The applicant alleged that DHS disclosed the immigration judge's memorandum of oral decision ("MOD") to the Iranian government when DHS obtained travel documents for the applicant. *Id.* at 1161-62. The Board found that reopening was unwarranted because the alien failed to meet his burden to show that there was a reasonable basis for the Iranian Government to believe he had applied for asylum. *Id.* at 1162. The Eighth Circuit determined that there probably was a breach of the confidentiality regulations, but agreed with the Board's decision that the applicant failed to meet his burden to show changed circumstances and a new risk of persecution. *Id.* 1162-63. The court reasoned that the applicant failed to submit evidence to show the Iranian reaction to the disclosure of his MOD, how he would be harmed based on the disclosure, or any other supporting documentary evidence such as affidavits showing that he is eligible for asylum. *Id.* The applicant's general and mere statement that he feared returning to Iran because of the disclosure of his asylum-related-information was insufficient to establish his new claim of persecution. *Id.; see also Abdel-Rahman*, 493 F.3d at 453.

Briefing Note:

The Second and Fourth Circuits have rejected the argument that an applicant may orally consent through counsel to the disclosure of asylum-related-information. *Anim*, 535 F.3d at 254; *Zhen Nan Lin*, 459 F.3d at 267. These courts have not deferred to the agency's interpretation of its regulations and have held that the regulations, unambiguously state that the applicant must provide written consent. The Eighth Circuit has left this issue open. Averianova, 509 F.3d at 898 n.5.

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Summaries Of Recent Federal Court Decisions

FIRST CIRCUIT

First Circuit Upholds Denial Of Asylum For Lack Of Corroborating Evidence

In ***Khan v. Mukasey***, __F.3d__, 2008 WL 4150045 (1st Cir. Sept. 10, 2008) (*Lynch*, Selya, Howard), the First Circuit upheld the denial of asylum, withholding of removal, and CAT protection. The petitioner, a citizen of Pakistan, entered the United States in 2001. He then traveled to Canada where he sought asylum. The Canadian Government confiscated his passport and denied asylum. Petitioner then returned to the United States, where he applied for asylum. He claimed that because he was a Shi'te Muslim he had been threatened by Sunni Muslims. The IJ denied asylum because petitioner had not established his identity presenting only a purported copy of his passport and that petitioner's testimony was no credible because of a lack of corroboration. The BIA affirmed, relying only on the lack of corroborating evidence.

The court held that the BIA "correctly recognized that a lack of corroborating evidence could be fatal to [an applicant's] claim." The court concluded that substantial evidence supported the BIA's conclusion that petitioner had failed to corroborate his testimony where he failed to provide a copy of the asylum application he filed in Canada and provided only a photocopy of his passport.

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First Circuit Upholds Denial Of Asylum And Rejects Due Process Claim

In ***Sok v. Mukasey***, __F.3d__, 2008 WL 4150014 (1st Cir. Sept. 10, 2008) (*Lynch*, Selya, Howard), the First Circuit upheld the Immigration Judge's decision denying asylum, withholding of removal, and CAT protection. The petitioner, a citizen of Cambodia, entered the United States in 2003, and overstayed her visa. When placed in removal proceedings she claimed persecution on account of her active involvement in an opposition party.

The court held that a single incident of a beating at a political protest and a speculative claim that her husband was murdered in a staged automobile accident was insufficient to establish past persecution. The court rejected the petitioner's claim that the Immigration Judge failed to consider her documentary evidence, noting that a fact-finder "is not required to dissect every piece of evidence presented." The court also rejected the petitioner's due process claim, determining that she failed to undermine the competence of the interpreter or establish that she was prejudiced by any alleged translation errors.

> A fact-finder "is not required to dissect every piece of evidence presented."

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First Circuit Holds That Immigration Judges Can Require Aliens To Produce Corroborative Evidence Even If Found Generally Credible In Their Testimony

In ***Chhay v. Mukasey***, 540 F.3d 1 (1st Cir. 2008) (Boudin, Dyk, *Selya*), the First Circuit held that under the REAL ID Act, Immigration Judges could require a credible applicant for withholding of removal to present readily obtainable corroborative evidence. "The alien has the burden of proof, and if her testimony is not itself compelling the absence of easily obtainable corroborating documentation can be the final straw," said the court citing to the REAL ID Act. The court further noted that a "reviewing court must accept the IJ's determinations with respect to the persuasiveness vel non of the alien's testimony, the availability of corroborating evidence, and the effect of non-production unless the record compels a contrary conclusion."

The court also held that it lacked jurisdiction to consider the alien's claim that she met the extraordinary or changed country conditions exception to the one-year filing deadline for an asylum application because she failed to exhaust that claim before the BIA.

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Asylum Denial Upheld Because Alien Failed To Establish Past Persecution Or A Well-Founded Fear Of Future Persecution

In ***Datau v. Mukasey***, 540 F.3d 37 (1st Cir. 2008) (Lynch, Tashima, *Lipez*), the First Circuit upheld the BIA's denial of asylum, withholding of removal, and CAT protection. The court held that the incidents of harassment which the asylum applicant claimed she experienced in Indonesia on account of her Christian religion and Chinese appearance were inadequate to establish the requisite level of harsh treatment constituting persecution.

The court also held that the State Department's 2005 Religious Freedom Report indicated that advances in inter-religious tolerance and cooperation have occurred in Indonesia and that petitioner had offered no evidence refuting the accuracy to the Report's findings.

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The court also concluded that the applicant's claims were further undermined by the fact that her family continued to live peacefully in Indonesia. "The fact that her close relatives continue to live peacefully in the alien's homeland undercuts the alien's claim that persecution awaits [her] return," said the court.

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■ **An Informal Custody Agreement Can Satisfy The Legal Custody Requirement For Citizenship Under The Child Citizenship Act Of 2000**

In ***Pina v. Mukasey***, __F.3d__, 2008 WL 4181694 (1st Cir. Sept. 12, 2008) (Boudin, Selya, *Dyk*), the First Circuit held that the BIA erred by ruling that petitioner's father did not have "legal custody" over him for purposes of deriving automatic citizenship through his father under the Child Citizenship Act of 2000 (CCA). The court held that Massachusetts state law did not require a parent of a child born out of wedlock to obtain a court order to be deemed as having legal custody over the child, concluding that the informal agreement between the alien's parents to share legal custody satisfied the "legal custody" requirement of the CCA.

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■ **First Circuit Holds That Alien Failed To Meet His Burden Of Proof For Withholding Of Removal But Remands For Further Determination On Firm Resettlement**

In ***Bonilla v. Mukasey***, 539 F.3d 72 (1st Cir. 2008) (Torruella, *Cudahy*, Lipez), the First Circuit remanded to the BIA for redetermination of asylum eligibility under the firm-resettlement rule, which bars asylum to an applicant who permanently resettled in a different country.

Petitioner, a Colombian national who had resided in Venezuela on and off since 1997, entered the United States about October 24, 2002, as a non-immigrant visitor from Venezuela. When his visa expired, Bonilla filed for asylum, withholding of removal, and CAT protection. DHS thereafter charged him with removability in May 2004. At the IJ hearing, Bonilla conceded removability, and testified to death threats and persecution he received in Colombia due to his political affiliation. On May 3, 2006, the IJ found his proof of "well-founded fear" lacking, and denied his applications since he had already "firmly resettled" in Venezuela. The BIA affirmed the IJ's decision, and upheld the IJ's finding that Bonilla was ineligible for withholding of removal.

Allowing an alien to file such an untimely motion would permit extensive "gaming of the system" and undermine the finality of immigration proceedings.

The First Circuit agreed with the agency's ruling, but remanded citing *Sultani v. Gonzales*, 455 F.3d 78 (8th Cir. 2006), and indicated that further investigation was needed to determine if petitioner's five-year Venezuelan residency stamp, and testimony that he could have legally remained in Venezuela, represented an offer of permanent resettlement when there was no evidence that petitioner ever lived in Venezuela.

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SECOND CIRCUIT

■ **Second Circuit Affirms *Matter of C-W-L-***

In ***Jin v. Mukasey***, 538 F.3d 143 (2d Cir. 2008) (Walker, Cabranes, Sack), the Second Circuit denied the petitions for review in *Jin v. Gonzales*, *Zheng v. BCIS*, *Chen v. United States Dep't of Justice*, and *Zeng v. BCIS*, which were argued in tandem. The court deferred to the BIA's precedent decision in *Matter of C-W-L*, 24 I&N Dec. 346 (BIA 2007), finding that the its "interpretation of the INA and its implementing regulations are reasonable, fully consistent with the relevant statutory and regulatory provisions, and comport with sound and well-established policy considerations." In *C-W-L* the BIA held that (1) an alien who has completed removal proceedings and is under a final order of removal, and who wishes to file a new asylum application, must do so in conjunction with a motion to reopen those proceedings; and (2) if such a motion is filed more than ninety days after entry of the final order, the motion must be denied unless the alien can establish changed country conditions.

Accordingly, the court held that an alien subject to a final order of removal who wishes to file a successive asylum application must do so in conjunction with a motion to reopen. The court also held that an alien may not pursue asylum based solely on changed personal circumstances if more than ninety days have passed after the entry of the final order, because allowing an alien to file such an untimely motion would permit extensive "gaming of the system" and undermine the finality of immigration proceedings.

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■ **Second Circuit Upholds Denial Of A Motion To Suppress Airport Statements**

In ***Pinto-Montoya v. Mukasey***, __F.3d__, 2008 WL 3903847 (2d Cir. Aug. 26, 2008) (Cabranes, Pooler, Sack) (*per curiam*), the Second Circuit upheld the BIA's denial of a motion to

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reconsider its prior order upholding the denial of a motion to suppress petitioners' airport statements. The petitioners had admitted their unlawful presence and had signed sworn statements conceding their immigration violations. In removal proceedings, they filed motions to suppress their airport statements, alleging that they had been unconstitutionally questioned and seized based on their race. Using Supreme Court precedent, the court found that petitioners had not been seized within the meaning of the Fourth Amendment because the airport questioning had been consensual. Consequently, the court had no need to address whether the stop and seizure had been egregious.

> Petitioners had not been seized within the meaning of the Fourth Amendment because the airport questioning had been consensual.

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■ **BIA Erred By Concluding That Categorical And Modified Categorical Approaches Did Not Apply To Determine Whether Alien's Crime Was Committed for Commercial Advantage**

In *Gertsenshteyn v. Mukasey*, __F.3d__, 2008 WL 4349233 (2d Cir. September 25, 2008) (*Calabresi*, B.D. Parker, Underhill), the Second Circuit ruled that the BIA committed reversible error in its precedent decision, *Matter of Gertsenshteyn*, 24 I&N Dec. 111 (BIA 2007), when the BIA held that it could consider evidence outside the record of conviction to conclude that the alien's offense of transportation for the purpose of prostitution was "committed for commercial advantage," and thus constituted an aggravated felony under INA § 101 (a)(43)(K)(ii).

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■ **Second Circuit Remands Lawful Resident Status Claim For Further Fact-Finding**

In *Sharkey v. Qurantillo*, __F.3d__, 2008 WL 4058317 (2d Cir. Sept. 3, 2008) (*Pooler*, Miner, Leval), the Second Circuit reversed a district court's judgment dismissing petitioner's complaint for lack of jurisdiction. The court reasoned that the district court should have exercised jurisdiction under the Administrative Procedure Act to review whether the petitioner had in fact been granted lawful resident status when an immigration officer allegedly stamped her passport indicating approval of her adjustment application despite her ineligibility. The court remanded the case to the district court for further fact-finding as to whether a decision was made, and whether the alien should have been issued a resident alien card or been placed into a formal administrative proceeding to rescind her immigration status.

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THIRD CIRCUIT

■ **Third Circuit Holds That Evidence Produced At Trial Insufficient To Support Harboring Conviction, But Upholds Other Counts**

In *United States v. Silveus*, __F.3d__, 2008 WL 4138460 (3d Cir. Sept. 9, 2008) (Rendell, *Fuentes*, Chagares), the Third Circuit held that given the totality of the circumstances, the facts available to law enforcement officer justified defendant's arrest and the search of her vehicle. The court further held that in viewing the evidence in a light most favorable to the prosecution, the government produced sufficient evidence for the rational juror to conclude that the defendant transported illegal aliens. The court then held that the jury would have to engage in speculation to find defendant guilty of harboring because there was insufficient evidence that defendant's conduct substantially facilitated the aliens' unlawful continued presence in the United States.

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FOURTH CIRCUIT

■ **Fourth Circuit Holds That Visa Petition Was Not Approvable When Filed**

In *Ogundipe v. Mukasey*, __F.3d__, 2008 WL 4052910 (4th Cir. Sept. 2, 2008) (*Shedd*, Gregory, Traxler), the Fourth Circuit upheld the Immigration Judge's determination that the petitioner did not qualify as a grandfathered alien under 8 C.F.R. § 1245.10 because his original special immigrant visa petition, which was filed before April 30, 2001, was not "approvable when filed." The court held that a visa petition must be "meritorious in fact," in light of the circumstances that existed at the time the visa petition was filed, for it to be approvable when filed.

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SIXTH CIRCUIT

■ **Sixth Circuit Holds That Assessment To Refer Is Not Sufficiently Reliable To Support Adverse Credibility Determination**

In *Koulibaly v. Mukasey*, __F.3d__, 2008 WL 4067479 (6th Cir. Sept. 4, 2008) (Kennedy, Gilman, and *Gibbons*), the Sixth Circuit held that the adverse credibility determination was not supported by

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substantial evidence where it was based on: an Assessment to Refer which was not shown to be reliable; a key factual mistake; and minor inconsistencies. The court held that the Assessment did not contain sufficient "indicia of reliability" where the asylum officer did not testify at the hearing and failed to provide detailed notes from the interview. The court also held that there was no record evidence of whether an oath was administered before the interview, nor evidence regarding the language in which the asylum office conducted the interview.

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SEVENTH CIRCUIT

■ **Res Judicata Does Not Bar Government From Initiating Removal Proceedings A Second Time Based On Same Conviction**

In ***Alvear-Velez v. Mukasey,*** 540 F.3d 672 (7th Cir. 2208) (Cudahy, *Ripple*, Rovner), the Seventh Circuit held that DHS could institute new proceedings against an alien previously found not removable for having been convicted of a crime involving moral turpitude. After the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), petitioner became removable because his earlier conviction was now classified as an aggravated felony.

The petitioner, a native and citizen of Colombia, entered the United States as a lawful permanent resident in October 1990. In 1993, he pled guilty to criminal sexual assault by a family member. The former INS commenced removal proceedings twice against petitioner, first in 1994 as an alien convicted of a crime involving moral turpitude within 5 years of entry. However, that proceeding was terminated because petitioner had not been sentenced to imprisonment or confined for more than one year. Consequently, the second removal proceeding was commenced in 1999, on the basis that petitioner's conviction constituted an aggravated felony, namely the sexual assault conviction, under the expanded IIRIRA definition. The BIA held that although both proceedings were based on the same 1993 conviction, IIRIRA had changed significantly thus the doctrine of *res judicata* could not preclude the INS from pursuing petitioner's removal.

The court held that the second proceeding was not barred by res judicata because the ground invoked by the government was unavailable to it in the first proceeding and thus could not have been asserted at that time. The court explained, that, "[u]nder these circumstances, the two immigration proceedings cannot be said to share an 'identity of the cause of action,' a required element of *res judicata*." The court also held that the change in law was statutory in nature and that the proceedings were administrative "requir[ing] a less rigid application of res judicata."

> The Seventh Circuit held that DHS could institute new proceedings against an alien previously found not removable for having been convicted of a crime involving moral turpitude.

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■ **Seventh Circuit Dismisses Factual Challenges Raised By Criminal Alien**

In ***Sharashidze v. Mukasey***, __F.3d__, 2008 WL 4120022 (7th Cir. Sept. 8, 2008) (Bauer, *Wood*, Williams), the Seventh Circuit held that criminal aliens cannot rely on the jurisdictional exception at 8 U.S.C. § 1252(a)(2)(D) to seek review of factual claims. The court held that the agency's determination that the alien failed to exercise the due diligence necessary to invoke equitable tolling of the deadline for filing a motion to reopen was unreviewable because the decision was factual in nature. The court also dismissed the alien's argument that he showed changed country conditions sufficient to excuse the fact that his motion to reopen was untimely because the argument rested on a challenge to the agency's factual findings, which were immune from review.

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■ **Aliens' Second State-Law Convictions For Simple Controlled Substance Possession Constituted Aggravated Felony Convictions**

In ***Fernandez v. Mukasey***, __F.3d__, 2008 WL 4193005 (*Manion*, Rovner, Sykes) (7th Cir. September 15, 2008), the Seventh Circuit held that the aliens' second state-law convictions for simple controlled substance possession offenses constituted aggravated felony convictions under the INA. Consequently, they were subject to removal and ineligible for cancellation of removal because a controlled substance possession conviction following a prior state-law conviction for any drug offense was punishable as a felony under the Controlled Substances Act.

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■ **Seventh Circuit Upholds Determination That Alien Was Removable For Failure To Comply With Terms Of Work Visa**

In ***Ali v. Mukasey***, __F.3d__, 2008 WL 4120027 (7th Cir. Sept. 8, 2008) (Manion, Rovner, *Williams*), the Seventh Circuit upheld the determination of the BIA that petitioner violated the terms of his H-1B visa by working for several months at a second job before that employer filed a work visa petition on his behalf. The court rejected petitioner's argument that a typographical error in a special agent's report as to

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the date the alien's employment at the second job commenced rendered the report unreliable because the agent testified as to the contents of the report and, in any event, the discrepancy in the report would not have affected the outcome of the case.

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■ **Seventh Circuit Remands Asylum Claim For Further Analysis**

In ***Kholyavskiy v. Mukasey***, 540 F.3d 555 (7th Cir. 2008) (Flaum, *Ripple*, Manion), the Seventh Circuit remanded the case for further consideration of the alien's claim that he suffered past persecution as a child in Russia.

Petitioner, a Russian citizen of Jewish faith and ethnicity, experienced extensive racial harassment throughout his youth, which led his family to seek and obtain, refugee status in the U.S. and later LPR status. The after-effects of the harassment caused Kholysvskiy to suffer anxiety attacks and other mental illness, and he lashed-out socially with criminal behavior such as trespassing, retail theft, battery, and unlawful possession of counterfeit prescription forms. His criminal record led to the commencement of removal proceedings in May 2001.

After the merits hearing which occurred, in part, in December 2004, January 2005, and February 2005, the IJ found the country expert who testified on Kholyavskiy's behalf to be biased, and found that although Kholyavskiy testified credibly, his fear of future mistreatment in Russia was exaggerated and misinformed. Additionally, the IJ determined that his status as a refugee ended when he received his LPR, so he was no longer entitled to a presumption of future persecution. The BIA affirmed the IJ decision, and rejected Kholyavskiys claim that e was denied a fair hearing because of the restrictions the expert's testimony.

The Seventh Circuit held that the BIA did not adequately consider the petitioner's age when he was persecuted for being Jewish. The court also remanded his humanitarian asylum claim because the BIA did not address past persecution or potential serious harm from inability to obtain the medication to control his mental illness in Russia. It held "there is evidence in the record to suggest . . . past persecution. Similarly, the record suggests that, if returned to Russia, Mr. Kolyavskiy would be . . . incapable of functioning on his own. . . . Debilitation and homelessness both would appear to constitute serious harms for purposes of 8 C.F.R. § 1208.13(b)(iii)(B)." The court concurrently rejected the alien's due process claims.

> We have held," said the court, "that immigrants who 'take the easy but dishonest path when a more honorable if more difficult one is open cannot insist on administrative lenity.'

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■ **Seventh Circuit Upholds Discretionary Denial Of Asylum Due To A Sham Marriage**

In ***Aioub v. Mukasey***, 540 F.3d 609 (7th Cir. 2008) (*Kanne*, Easterbrook, Wood), the Seventh Circuit upheld the Immigration Judge's decision denying asylum in the exercise of discretion due to petitioner's marriage fraud. The petitioner had filed an untimely asylum application claiming his jail house conversion to Christianity constituted a changed circumstance. The Immigration Judge did not decide whether he had actually converted, but denied the asylum application in the exercise of discretion. The alien had earlier claimed that he was legitimately married to a United States citizen, but the government established that he had paid his wife to marry him, and she actually lived in his apartment with her boyfriend with whom she had a baby during her marriage to the alien. "We have held," said the court, "that immigrants who 'take the easy but dishonest path when a more honorable if more difficult one is open cannot insist on administrative lenity.'" Accordingly, the court held that the Immigration Judge did not abuse his discretion in denying asylum.

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■ **Seventh Circuit Remands After Finding That BIA Failed To Apply Mixed Motives Doctrine**

In ***Ndonyi v. Mukasey***, 541 F.3d 702 (7th Cir. 2008) (*Kanne*, Posner, Sykes), the Seventh Circuit held that the BIA erred by concluding that the alien's arrest and rape had not been on account of her political activity on behalf of the Anglophone movement in Cameroon.

Petitioner, a citizen of Cameroon, entered the US in May 2000 by crossing the Canadian-Michigan border undetected in a Canadian family's car. In December 2000, Ndonyi filed for asylum, withholding of removal, and CAT protection, due to extreme physical torture and political persecution on account of being a Baptist Christian and English-speaking "Anglophone". An asylum officer declared her inadmissible, and removal proceedings were commenced in February 2001.

In September 2002, petitioner appeared with counsel before the IJ; however multiple continuances rendered her *pro se* for her cross-examination in December 2003. While, her testimony regarding her own torture was consistent, petitioner wavered on recalling precise numbers of group members at political rallies,

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and the government attorney capitalized on her use of such estimates. The IJ found petitioner not credible due to discrepancies between her direct testimony in 2002 and her cross-exam testimony in 2003, and held that the sexual torture she received was not due to her political opinion, which also failed to establish a well-founded fear of future persecution. The BIA adopted and affirmed the IJ's conclusions.

Ndonyi petitioned for review in April 2005, and the government filed an unopposed motion to remand the case to the BIA to reconsider the ruling. In August 2007, the BIA vacated its prior decision, and dismissed petitioner's appeal, holding that she merely failed to meet her burden of proof for relief. Petitioner filed a petition for review of that BIA decision in September 2007.

The Seventh Circuit held that the BIA erred by "completely ignor[ing] the doctrine of mixed motives . . . and also fail[ed] to consider the evidence as a whole," in context of the petitioner's arrest and mistreatment suffered on account of her religion. The court then held that internal relocation within Cameroon would not be reasonable, and that the BIA erroneously shifted the burden of proof to the alien.

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■ **Seventh Circuit Holds That It Lacks Jurisdiction Over The Agency's Purely Discretionary Denial Of Alien's Motion To Reopen Based On Ineffective Assistance Of Counsel**

In ***Jezierski v. Mukasey,*** __ F.3d __, 2008 WL 4149753 (7th Cir. Sept. 10, 2008) (*Posner*, Coffey, Manion), the Seventh Circuit held that it lacked jurisdiction over the BIA's denial of the alien's motion to reopen because the BIA's determination was purely discretionary and did not involve a question of law. The court reasoned that because an alien is not entitled to reopening and there is no rule requiring reopening, the decision to reopen is discretionary, and that the determination that the alien did not show prejudice based on ineffective assistance of her former counsel is likewise a discretionary determination, and not a legal ruling that would confer jurisdiction on the court.

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■ **Denial Of Cancellation Of Removal For LPR Upheld**

In ***Bakarian v. Mukasey,*** 541 F.3d 775 (7th Cir. 2008) (Evans, Flaum, *Manion*), the Seventh Circuit upheld the denial of cancellation of removal due to the alien's failure to establish seven years continuous residence after admission in any status. Based upon jurisdictional grounds and the underlying merits, the court additionally denied the alien's arguments regarding: (1) retroactive application of the stop-time rule for lack of jurisdiction; (2) whether the stop-time rule allows for the accrual of new periods of continuous residence for lack of merit; (3) the alien's eligibility for a waiver of removability under former section 212(c) for lack of merit; and (4) the alien's due process right to a fair hearing when the underlying application for relief was discretionary.

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■ **Seventh Circuit Holds That Burglary Of A Vehicle Is An Attempted Theft Offense**

In ***Vaca-Tellez v. Mukasey***, 540 F.3d 665 (7th Cir. 2008) (*Rovner*, Posner, Kanne), the Seventh Circuit rejected the alien's claims that the BIA erred in finding his conviction for "burglary with intent to commit theft" to be an aggravated felony.

> The court reasoned that "labels that individual states apply to crimes are irrelevant to our analysis under federal law."

Jose Vaca-Tellez, a citizen of Mexico who entered as a lawful permanent resident in 1978, committed a felony burglary in 2002. He pled guilty and received a reduced sentence of eighteen months probation, although six weeks later he violated his probation and was thereafter sentenced to the original punishment of three years imprisonment. One year later, removal proceedings were commenced for having being convicted of an aggravated felony. The IJ found him deportable as charged and cited *U.S. v. Martinez-Garcia*, 268 F.3d 360 (7th Cir. 2001), in holding that a burglary with intent to commit theft under the Illinois statute was an aggravated felony. The BIA agreed with the IJ's ruling, and also agreed that the three-year sentence for probation violation qualified as a sentence in excess of one year on the original conviction.

Finding no legal errors, the Seventh Circuit denied the petition. Preliminarily, the court found that notwithstanding IIRIRA's jurisdictional limitations, it had jurisdiction to determine whether as a matter of law the crime for which petitioner was convicted constituted an aggravated felony. The court noted that although the Illinois statute does not label petitioner's crime as "attempted theft," it does not preclude the IJ and BIA from assigning the more generic definition of attempted theft under the INA. The court reasoned that "labels that individual states apply to crimes are irrelevant to our analysis under federal law," and found that the petitioner's crime had met the INA's "intent plus substantial step" standard of a generic attempted theft offense.

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■ **Seventh Circuit Holds That Filipino Alien Who Feared Prosecution For Alleged Role In Government Corruption Scandal Failed To Meet Burden Of Proof For Asylum**

In ***Bolante v. Mukasey***, 539 F.3d 790 (7th Cir. 2008) (*Bauer*, Kanne, Williams), the Seventh Circuit affirmed the IJ's decision denying asylum and withholding of removal. The court held that the petitioner, a Filipino former political appointee who had been involved in an alleged government corruption scandal, failed to demonstrate a well-founded fear of persecution because he did not produce "enough specifics or details about the fear of persecution that he faces in the Philippines to carry his burden." The court suggested that the alien feared *prosecution* rather than persecution, and concluded that the record did not establish that he would experience any harm upon his return.

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■ **Seventh Circuit Upholds Agency Determination That Alien Who Reentered Country While Subject To Bar On Admissibility May Not Seek Retroactive Waiver**

In ***Borrego v. Mukasey***, 539 F.3d 689 (7th Cir. Aug. 25, 2008) (*Manion*, Bauer, Ripple), the Seventh Circuit held that an alien subject to a five-year bar on admission, based on falsely claiming to be a United States citizen in a previous attempt to gain entry, was ineligible for a retroactive waiver of her inadmissibility, pursuant to INA § 212(d)(3)(A)(ii). The petitioner, a Mexican citizen, used an alias when denied entry but in 2001 she secured a B-2 visa using her real name. On her visa application she responded "no" to the question asking whether she had ever attempted to enter the United States. After marrying a United States citizen, she sought a waiver of her inadmissibility to permit her to adjust her status. Both the IJ and the BIA held that the §212(d)(3) could not be granted retroactively.

The Seventh Circuit, reviewing the question de novo, held that the plain text of the statute spoke only in terms of aliens seeking admission, and that the BIA did not err in concluding that it cannot operate to waive inadmissibility once an alien is already admitted into the United States.

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■ **Seventh Circuit Holds That Alien Convicted Of Aggravated Felony Is Ineligible For Second 212(c) Waiver**

In ***Esquivel v. Mukasey***, __F.3d__, 2008 WL 4172878 (7th Cir. Sept. 11, 2008) (Bauer, *Coffey*, Rovner), the Seventh Circuit held that an alien was ineligible for a second 212(c) waiver where he failed to demonstrate eligibility for the waiver at the time of his conviction and reliance on the continued availability of 212(c). The court held that the alien's prior grant of a 212(c) waiver did not expunge his attempted murder conviction, and he remained convicted of an aggravated felony for which he served a term of imprisonment of five years or more.

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EIGHTH CIRCUIT

■ **Eighth Circuit Holds That Alien's Conviction For "Recklessly Caus[ing] Serious Physical Injury To Another Person" Is A Crime Involving Moral Turpitude**

In ***Godinez-Arroyo v. Mukasey***, 540 F.3d 848 (8th Cir. 2008) (*Melloy*, Colloton, Riley), the Eighth Circuit upheld the BIA's decision finding that the alien's conviction for second-degree assault for "recklessly caus [ing] serious physical injury to another person" under the divisible statute, Mo. Rev. Stat. § 565.060, was a crime involving moral turpitude within the meaning of INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i), because causing serious bodily injury constituted an "aggravating factor."

> The Eighth Circuit "generally defer[s] to reasonable BIA interpretations of gaps in statutes . . . because '[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency."

Petitioner was convicted of second-degree assault under a Missouri statute that encompassed numerous offenses, only some of which constituted moral turpitude. Based on that conviction, an IJ ordered his removal, and he appealed to the BIA arguing that his conviction for "recklessly caus[ing] serious physical injury to another" is not a crime of moral turpitude. The BIA dismissed his appeal, citing *Reyes-Morales v. Gonzales*, 435 F.3d 937 (8th Cir. 2006), that a crime involving mere recklessness could constitute a crime involving moral turpitude if an aggravating factor was present. The BIA determined that his actions resulting in serious physical injury to another constituted the necessary aggravating factor.

The Eighth Circuit accorded *Chevron* deference to the BIA and denied the petition for review, stating that it "generally defer[s] to reasonable BIA interpretations of gaps in statutes . . . because '[i]f Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency." The court held that, as proven here, the BIA in effect has given ambiguous statutory terms concrete meaning. The court added that even *if Chevron* deference were inappropriate because the BIA opinion was unpublished, the opinion would be eligible for a lesser form of deference under *Skidmore*.

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However, after noting that there is a conflict among the circuits on the issue of deference to unpublished BIA opinions, the court said that "this is an issue we leave for another day," because even under *Skidmore,* it would affirm the persuasive BIA decision.

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■ **Eighth Circuit Upholds Immigration Judge's Denial Of Asylum Based On Religious Persecution**

In ***Alanwoko v. Mukasey***, 538 F.3d 908 (8th Cir. 2008) (*Wollman*, Murphy, Smith), the Eighth Circuit denied two consolidated petitions for review, finding that the petitioner had failed to establish eligibility for asylum, withholding of removal, and CAT protection.

Petitioner, a Nigerian citizen, arrived in the U.S. as a non-immigrant business visitor on February 3, 2004. He failed to depart when his visa expired on February 23, 2004. He then filed for asylum and withholding of removal claiming that he had suffered persecution in Nigeria because of his Christian religion and that he had been specifically targeted by Muslim extremists because of his evangelism and leadership at church. The IJ found him to be generally credible regarding the Muslim-Christian hostilities asserted, but denied him the relief because he had arrived in the United States as as a professional soccer player, rather than as an alien fleeing persecution. The BIA affirmed, and also denied petitioner's subsequent motion to reopen.

The Eighth Circuit held that the record supported the IJ's determination that petitioner failed to meet his burden of proof. The court found that "the evidence in the record . . . [was] not so compelling . . . to find the requisite fear of persecution," and did not establish that the Nigerian authorities were unable or unwilling to protect him from religious persecution. The court further agreed that the alien was not fleeing persecution when he arrived in the United States because of his failure to seek refuge in any of the countries he had previously traveled through prior to arriving in the United States. The court also affirmed the denial of petitioner's motion to reopen, agreeing with the BIA that the newly presented evidence did not indicate a change in country conditions.

The court further agreed that the alien was not fleeing persecution when he arrived in the United States because of his failure to seek refuge in any of the countries he had previously traveled through prior to arriving in the United States.

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■ **Eighth Circuit Holds That Alien Failed To Establish A Particularized Risk Of Persecution Despite General Civil Unrest In Guatemala**

In ***Castro-Pu v. Mukasey***, 540 F.3d 864 (8th Cir. 2008) (*Loken*, Gibson, Melloy), the Eighth Circuit held that the asylum applicant failed to show a particularized risk of persecution despite conditions of general civil unrest in Guatemala. Petitioner, who had entered the United States without inspection in 1991, claimed persecution due to ethnicity and political opinion. The court found that petitioner was not harmed during or after the incidents in 1988 and 1991, his immediate family had remained in Guatemala unharmed, and he had "failed to rebut the substantial evidence that political and human rights conditions dramatically improved after he left the country."

The court also held that it lacked jurisdiction to review the BIA's decision to deny re-papering, a process by which petitioner could terminate the administrative proceedings and commence new removal proceedings to seek cancellation of removal. Finally, the court held that the petitioner's due process rights were not violated by the Immigration Judge's decision to exclude his expert witness from testifying because he failed to show prejudice from this exclusion.

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Eighth Circuit Remands After Finding BIA Failed To Adequately Explain Its Holding

In ***Badasa v. Mukasey***, 540 F.3d 909 (8th Cir. 2008) (Bye, Smith, *Colloton*), the Eighth Circuit remanded petitioner's case for further proceedings, because the BIA failed to adequately explain its conclusion that the alien did not establish her identity.

Petitioner entered the United States illegally using a fraudulent passport, and later applied for asylum and CAT protection. The IJ found her claims not credible since she had submitted fraudulent identification documents. On appeal, the BIA upheld the decision, but did not adopt the entirety of the IJ's reasoning, noting specifically that the IJ's reliance upon evidence from Wikipedia.com was not proper when rendering its determination that a foreign document could establish identity.

The Eighth Circuit remanded the case to the BIA, for failing to adequately explain its conclusion that petitioner had not established her identity. "The BIA here determined only that there was sufficient evidence, other than Wikipedia, to establish that the IJ's finding was not 'clear errors'" said the court.

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NINTH CIRCUIT

Ninth Circuit Overturns Adverse Credibility Finding In Religious Persecution Case As Based On Speculation And Conjecture

In *Cosa v. Mukasey*, __F.3d__, 2008 WL 4191999 (9th Cir. Sept. 15, 2008) (*McKeown*, Gould, Schiavelli), the Ninth Circuit held that the adverse credibility finding was based upon the IJ's speculation and conjecture and not supported by substantial evidence.

The petitioner, a citizen from Romania, claimed religious persecution in his country as a consequence of practicing the Millenist faith. The IJ denied asylum based on an adverse credibility finding and the BIA affirmed.

The court considered the case "infected" by the IJ's notions of how a Millenist should dress, act, and have knowledge of the tenets of her faith. The court noted that none of this evidence was in the record. It found that the IJ had "set up a Bible quiz and an academic trivia contest as the foundation for the adverse credibility finding." The court also held that corroboration could not be required where the reasons for doubting credibility were unsound.

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Ninth Circuit Holds Armenian Established Past Persecution And That Immigration Judge Should Have Granted Continuance

In *Karapetyan v. Mukasey*, __F.3d__, 2008 WL 4210543 (9th Cir. September 18, 2008) (*Pregerson*, Wardlaw, Archer), the Ninth Circuit held that the petitioner established that he had been persecuted in Armenia on account of his ethnicity and political opinion, and held that the IJ abused her discretion in denying the petitioner's request for a continuance so that he could submit fingerprints. The court found that the petitioner had been frustrated by the "legal uncertainties surrounding the fingerprint laws," and that the alien did not receive adequate notice regarding the fingerprint requirement.

Young men in El Salvador resisting gang violence do not constitute a particular social group for asylum purposes because the proposed group was "too loosely defined to meet the requirement for particularity" and lacked the requisite social visibility.

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Ninth Circuit Holds That Young Men In El Salvador Resisting Gang Violence Are Not A Particular Social Group

In *Santos-Lemus v. Mukasey*, __F.3d__, 2008 WL 4111900 (9th Cir. Sept. 8, 2008) (*Wallace*, Graber, Timlin), the Ninth Circuit held that young men in El Salvador resisting gang violence do not constitute a particular social group for asylum purposes because the proposed group was "too loosely defined to meet the requirement for particularity," and lacked the requisite social visibility necessary to constitute a social group. The court rejected the argument that the alien would be persecuted on account of membership in a social group composed of members of his family inasmuch as the alien's mother continued to reside safely in El Salvador. The court also held that being resistant to a gang's criminal activity did not constitute a political opinion that could support a grant of asylum.

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Ninth Circuit Affirms District Court's Finding Of No Jurisdiction Over Adjustment Denial

In *Hassan v. Chertoff*, 543 F.3d 564 (9th Cir. 2008) (Schroeder, Walker, Smith, JJ.) (*per curiam*), the Ninth Circuit held that the district court properly dismissed plaintiff's complaint because INA §§ 242(a)(2)(B)(i)-(ii) barred jurisdiction over plaintiff's challenge to the denial of his adjustment-of-status application and his challenge to the revocation of advance parole.

While his adjustment application was still pending, Hassan traveled outside the United States to Saudi Arabia. He received a travel document from the government, Form I-512, commonly referred to as an "advance parole." It granted him permission to return to the United States, so long as his application for adjustment remained pending. While Hassan was abroad, the government denied his adjustment application and revoked the advance parole. When he attempted to return to the United States, he was denied admission, placed in expedited removal proceedings, and removed. He then amended his complaint in this action to challenge the denial of status adjustment and revocation of advance parole.

The Ninth Circuit found that the district court lacked jurisdiction to decide constitutional issues arising from the adjustment denial, despite the fact that there was no administrative proceeding in which the alien could have raised the issue. The court distinguished Hassan's case – an appeal from district court – from the type of constitutional or question of law claim that INA § 242(a)(2)(D) would otherwise preserve in a petition for review filed in an appropriate court of appeals.

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Identification And Arrest For Falun Gong Practice Establishes Eligibility For Asylum When Combined With Evidence Of Continued Mistreatment Of Falun Gong Practitioners

In *Zhao v. Mukasey*, 540 F.3d

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1027 (9th Cir. 2008) (*Reinhardt*, Berzon, Miner), the Ninth Circuit held that substantial evidence did not support the BIA's conclusion that an alien husband and wife failed to show a well-founded fear of future persecution, where they were arrested and detained for four days in China on account of Falun Gong practice and required to report to police regularly after their arrest. The court also pointed to a State Department Country Report that described continued mistreatment of Falun Gong practitioners in China.

In particular, the court noted that "the fact that the couple obtained their passports by paying a large sum of money to an acquaintance and the fact that they risked violating their travel restriction in order to obtain a visa to the United States have no relevance to their risk of future harm."

"The fact that the couple obtained their passports by paying a large sum of money to an acquaintance and the fact that they risked violating their travel restriction in order to obtain a visa to the United States have no relevance to their risk of future harm."

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■ **Ninth Circuit Holds That Violation Of Order Issued To Prevent Domestic Violence Qualifies As Violation Of Protective Order Under INA § 237(a)(2)(E)(ii)**

In ***Alanis-Alvarado v. Mukasey***, __F.3d__, 2008 WL 4058568 (9th Cir. Sept. 3, 2008) (*Graber*, Alarcón, Rawlinson), the Ninth Circuit held that the alien's conviction under Cal. Pen. Code § 273.6 for violating a protective order issued to prevent domestic violence categorically qualified as a violation of a protective order under INA § 237(a)(2)(E)(ii). The court held that although the alien could have violated the state statute by simply telephoning his partner, such conduct fell within the INA's prohibition against violating a protective order that involves protection against violence, threats, or harassment.

Judge Rawlison dissented from the majority opinion. He would have concluded that under the modified categorical approach the documents in the case did not establish that petitioner pled guilty to violating a protection order.

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■ **Ninth Circuit Remands To Determine Whether Alien Is Eligible For A Discretionary Grant Of Asylum**

In ***Sowe v. Mukasey***, 538 F.3d 1281 (9th Cir. 2008) (*Alarcón*, Graber, Rawlinson), the Ninth Circuit remanded the case to the BIA to determine whether the alien is eligible for a discretionary grant of asylum on humanitarian grounds pursuant to 8 C.F.R. § 1208.13(b)(1)(iii)(A). After upholding the BIA's findings that the alien failed to establish eligibility for withholding of removal and CAT protection, the court concluded that the BIA erred by failing to determine whether the alien was eligible for a discretionary grant of asylum.

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■ **Ninth Circuit Holds That IJ's Used Wrong Hardship Standard And Failed To Consider Future Hardship**

In ***Figueroa v. Mukasey***, __F.3d__, 2008 WL 4149031 (9th Cir. Sept. 10, 2008) (*Tashima*, McKeown, Gould), the Ninth Circuit held that the Immigration Judge erred in requiring petitioners to show that their removal would result in an "unconscionable" hardship to their citizen-children. The court found that because the IJ had applied the wrong legal standard the court had jurisdiction over the discretionary denial of cancellation. The court further held that the alien had exhausted the issue before the BIA by stating that the "exceptional and extremely unusual hardship" standard did not require them to demonstrate that the hardship was "unconscionable." The court found that the law required the IJ to consider future hardship, not just present conditions.

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■ **Ninth Circuit Reverses District Court Order Which Required EOIR To Hold Bond Hearing For Alien Detained For 23 Months**

In ***Diouf v. Mukasey***, 542 F.3d 1222 (9th Cir. 2008) (Farris, Fisher, *Smith*), the Ninth Circuit held that the District Court for the Central District of California erred by granting an alien's writ of habeas corpus and that the preliminary injunction enjoining the Immigration Judge to conduct a bond hearing for the alien constituted an abuse of discretion. At the time the writ of habeas corpus was filed, the alien was in his twenty-third month of detention and awaiting judicial review of an order denying his request to reopen proceedings. The court held that the district court had erred in granting the writ of habeas corpus because the alien's detention was not "indefinite" and that the preliminary injunction constituted an abuse of discretion because it was issued on the erroneous premise that the detention was governed by INA § 236 which provides that the Attorney General with the discretion to release aliens on bond prior to the removal period, rather than § 241, 8 U.S.C. § 1231, which mandates detention during the removal period and grants the Attorney General discretionary authority to detain certain aliens "beyond" the removal period.

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■ **Ninth Circuit Reverses Prior Adverse Credibility Decision**

In *Martinez v. Mukasey,* __F.3d__, 2008 WL 4459090 (Pregerson, Noonan, *Trott*) (9th Cir. October 6, 2008), the Ninth Circuit reversed its prior decision, where it had remanded this case to the BIA because it had failed to provide cogent reasons in rejecting petitioner's explanation regarding the various inconsistencies in his asylum claims. Citing its material mistake regarding the basis for the BIA's prior decision and noting that to credit petitioner's false story would work a "manifest injustice," the court held that it would depart from its "law of the case" doctrine. The court then sustained the agency's adverse credibility finding, based upon petitioner's repeated lies under oath about the basis for his asylum claim. Judge Noonan filed a concurring opinion, while Judge Pregerson dissented.

The Ninth Circuit held that a crime can be designated as "particularly serious" by individual adjudication rather than by regulation.

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■ **Discretionary Designation Of A Non-Aggravated Felony As A Particularly Serious Crime May Be Done By Adjudication**

In *Delgado v. Mukasey,* __F.3d__, 2008 WL 4490613) (9th Cir. October 8, 2008) (Canby, Siler; Berzon, dissenting), the Ninth Circuit held that a crime can be designated as "particularly serious" by individual adjudication rather than by regulation. The BIA concluded that the alien's three felonies for driving under the influence were not aggravated felonies, but were "particularly serious crimes" barring the alien from eligibility for asylum and withholding of removal. The court held that it lacked jurisdiction to review the merits of the particularly serious crime designation because that determination was left to the Attorney General's unreviewable discretion. The court also held that the alien failed to establish entitlement on the merits of his claim for CAT protection.

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TENTH CIRCUIT

■ **Changed Conditions In Mauritania Overcame The Presumption Of Future Persecution**

In *Ba v. Mukasey*, __F.3d__, 2008 WL 4059783 (10th Cir. Sept. 3, 2008) (Holmes, Porfilio, *Anderson*), the Tenth Circuit held that the evidence supported the BIA's findings that the asylum applicant was persecuted and that substantial changes in Mauritania since the violent upheavals of 1989, rebutted the presumption of future persecution.

The petitioner, who entered the United States in 2003 bearing a Senegalese passport containing his photograph but issued under a different name, claimed that the White Moors in Mauritania had persecuted him and forced him to cross into Senegal where he lived until he left for the United States. The IJ denied asylum and the BIA affirmed on the basis that even if petitioner were credible and had been subject to past persecution, his fear of future persecution had been rebutted by evidence of changed country conditions.

The Tenth Circuit noted preliminarily that whether the materials in the record rebutted the presumptive inference of future persecution was a question of fact reviewed under the substantial evidence test, and therefore subject to reversal only where "the record compels us to conclude that it was wrong." The court then concluded that the BIA had addressed the specific concerns that were salient in petitioner's case and that the evidence did not compel a contrary finding.

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ELEVENTH CIRCUIT

■ **Eleventh Circuit Holds That District Court Lacked Jurisdiction To Review Denial Of Haitian Plaintiffs' HRIFA Applications**

In *Sicar v. Chertoff*, 541 F.3d 1055 (11th Cir. 2008) (*Black*, Marcus, Evans, JJ.), the Eleventh Circuit affirmed the order of the Southern District of Florida District Court, dismissing Haitian Ppaintiffs' complaint for lack of subject matter jurisdiction. Plaintiffs had been brought to the United States in 1994 and 1995 and were apprehended by the Border Patrol shortly after landing on a beach. They were released on their own recognizance under former INA § 242(a). When they applied to adjust their status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), the applications were denied because plaintiffs had not been paroled into the United States under INA § 212(d)(5). The district court dismissed the complaint based upon HRIFA § 902(f), which provides that decisions on HRIFA applications are not subject to judicial review in any court.

The court held that section 902 (f) divested the district court of jurisdiction to review Plaintiffs' claims that their paroles were misclassified when they were issued. The court also held it lacked jurisdiction over plaintiffs' equal protection and due process claims because they were not substantial.

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INSIDE OIL

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of Law in San Francisco, CA. Prior to joining OIL through the Attorney General's Honors Program, she worked for several immigration law firms, including Maggio & Kattar, specializing in employment-based and investor visas.

Jessica Segall is a graduate of the University of Miami and Brooklyn Law School, where she coordinated the law school's moot court competition and competed in the Jessup International Law moot court competition. Prior to joining OIL, she spent two years as a Staff Attorney at the Second Circuit Court of Appeals.

Jane Schaffner was an Attorney Advisor with the Board of Immigration Appeals prior to joining OIL. She also has worked in the Office of Special Counsel for Immigration-Related Unfair Employment Practices in the Civil Rights Division, where she served for several years both during and after her graduation from the Georgetown University Law Center.

Theo Nickerson is a graduate from the University of Arizona and earned his JD at the State University of New York at Buffalo (SUNY). Theo has worked at the Arizona State Senate as a legislative intern, served as a judicial law clerk at the U.S. Immigration Court in Buffalo, and has done human rights work for the Organization for Security and Cooperation in Europe's Mission in Kosovo.

Juria Jones graduated from Thomas Cooley Law School in 2001 (JD) and American University-WCL in 2003 (LLM). Prior to joining OIL, she worked at Fragomen, Del Rey, Bernsen and Lowey as a government relations associate and served as Chief Counsel for Constitutional Law, Courts, and Immigration for Senator Arlen Specter. Prior to her tenure with the Senate, she clerked for a circuit court judge in Lansing, Michigan.

Sherease Pratt is a graduate of Cornell University and Tulane University School of Law. Prior to joining OIL, Sherease worked as an attorney at the Pension Benefit Guaranty Corporation. She recently concluded a detail to the U.S. Attorney's Office for the District of Columbia, where she worked on immigration and prisoner litigation issues.

Dana Camilleri received a B.A. from the University of Rochester in Political Science and English. She is a graduate of Washington & Lee University School of Law. During law school, she interned with the Commonwealth Attorney's office in Roanoke, Virginia.

Stefanie Hennes received her JD from the University of Connecticut School of Law and her BA's in Political Science and American Studies from Fairfield University. During law school, Stefanie worked as an intern at the Hartford Immigration Court and participated in UC's Asylum & Human Rights Clinic.

Nick Harling is a 2001 graduate of Davidson College and received his JD from the Charleston School of Law in 2008. Prior to law school, he lived in Japan for four years where he taught English to junior high school students.

Geoff Forney graduated from Temple Law School in 2006. Prior to joining OIL, he worked as an immigration attorney for Klasko, Rulon, Stock & Seltzer and then for WolfBlock in Philadelphia. He focused on employment-based immigration and PERM labor certification cases, and handled removal defense and immigration litigation in federal court.

Susan Green worked for nineteen years as a career law clerk for Eighth Circuit Judge John R. Gibson, whose chambers are in Kansas City, Missouri. Before that, she was a litigator in private practice for three years in St. Louis. She graduated from Duke University School of Law.

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Andrew O'Malley graduated from The George Washington University Law School in May. Prior to law school, he received an undergraduate degree in American Studies from Pitzer College and a Master's degree in American History from the University of Virginia.

Theodore W. Atkinson is a former partner with Venable LLP, where he practiced litigation for nine years in the regulatory practice group.

INSIDE OIL

OIL welcomes onboard the following new attorneys :

John B. Holt comes to OIL from the Court of Appeals for the Armed Forces where for 16 years he was a Commissioner in the chambers of four judges. John graduated from the United States Naval Academy and Vanderbilt Law School. As a judge advocate in the Navy, he was a prosecutor and defense counsel both at trial and on appeal. John continues to teach trial practice at both George Washington Law School and Columbus School of Law.

William Silvis earned his JD from Case Western Reserve University and his undergraduate degree from the University of Michigan. Prior to joining OIL, Will was an associate at Crowell & Moring LLP and King Pagano Harrison. Will also served as a law clerk to Judge Victoria Roberts (ED Mich) and spent a summer at EOIR as a Summer Law Intern. Will joins the District Court Section.

Elizabeth Kurlan is a graduate of American University and received her JD from Golden Gate University School

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1st row (L-R): Cara Sims, Susan Green, Sherease Pratt, Judith O'Sullivan, Derek Julius, William Silvis
Middle row (L-R): Dana Camilleri, Theo Nickerson, Janette Allen, Linda Cheng, Elizabeth Kurlan, Jessica Segall, Stefanie Hennes
Top Row (L-R): Nick Harling, Jane Schaffner, John Holt, Geoff Forney, Jennifer Khouri, Jonathan Rolbin, Andrew O'Malley, Colin Kisor

The ***Immigration Litigation Bulletin*** is a monthly publication of the Office of Immigration Litigation, Civil Division, U.S. Department of Justice. This publication is intended to keep litigating attorneys within the Departments of Justice and Homeland Security informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice.

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