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Advocates Ask Sessions To Share BIA Decision Under Review

By Nicole Narea

Law360 (March 9, 2018, 7:39 PM EST) -- Advocates and former immigration judges, among others, penned a letter to U.S. Attorney General Jeff Sessions on Friday to express concern about his choice to refer himself a decision of the Board of Immigration Appeals in an unpublished asylum case, and to request that he share a copy of the underlying decision.

On Wednesday, Sessions referred himself the BIA's decision, which was never made publicly available, to review whether certain crime victims who seek asylum or withholding of removal qualify to be recognized as part of a "social group," the latest instance of his insertion into board matters. A copy of the letter obtained by Law360 alleged that he is required to publish the underlying decision or at least the alien registration number of the respondent and the date of the decision under the BIA's rules.

The letter's signatories, numbering more than 100, include immigrant advocacy groups Human Rights First, the American Immigration Council, Amnesty International USA and the National Immigrant Justice Center among others, as well as immigration scholars and former immigration judges and BIA members.

"[W]e write to express our concern at the lack of transparency of this process and request a copy of the underlying decision," the letter states. "Without a copy of the board's decision (redacted to avoid disclosing the identity of the asylum applicant), or even any means of reaching out to his or her counsel for a copy of the same, potential amici cannot know what is actually at issue or to participate usefully in its resolution."

Sessions wants both sides in the case of an immigrant identified only as A-B-, and any other interested parties on the matter, to weigh in on whether victims of "private criminal activity" who are seeking to remain in the United States can be deemed members of a "cognizable 'particular social group,'" according to his one-page filing.

The signatories alleged that Sessions' invitation for comments in the case was both "vast and unclear as formulated," questioning what exactly he meant by "private criminal activity" and the nature of the particular group at issue. They said the social group could range from individuals subject to assault, rape, robbery and other crimes on the basis of their sexual orientation to women trying to escape genital mutilation in countries where laws against it are not enforced.

The consequences of the case could therefore be "far-reaching," they claimed.

"The United States, which is committed by treaty to ensure that those who meet the refugee definition are not returned to persecution, has an interest in ensuring that those long-standing obligations are faithfully executed," they wrote. "It is also in the public interest to ensure that the procedures by which asylum and other immigration cases are debated and resolved are even-handed and transparent."

To take on the case, Sessions invoked a federal statute that allows attorneys general to refer BIA decisions to themselves for review, the third time since January and the second time this past week he has done so. On Monday, Sessions vacated a nearly four-year-old BIA precedent decision that held that immigrants applying for asylum or withholding of removal are entitled to a full hearing on their application.

--Editing by Nicole Bleier.

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