



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

BIA Asylum Case Sessions Referred To Himself Made Public

By Nicole Narea

Law360 (March 14, 2018, 8:23 PM EDT) -- A Board of Immigration Appeals decision in favor of a woman seeking asylum that U.S. Attorney General Jeff Sessions had referred to himself to review last week was made public on Tuesday after former immigration judges and advocates called for more transparency.

The December 2016 BIA decision, redacted and released by counsel, involves a respondent who appealed to the board after she was denied asylum over her claims of domestic abuse in her home country of El Salvador.

Sessions had **referred himself the case** to review whether certain crime victims who seek asylum or withholding of removal qualify to be recognized as part of a "social group." Advocates and former immigration judges, among others, **penned a letter** to Sessions on Friday to express concern about his choice to refer to himself the decision and to request that he share a copy of it.

"The record as a whole supports a finding that the respondent's membership in the particular social group ... is at least one central reason that her husband abused her," the decision states.

An immigration judge had denied the respondent's application for asylum, withholding of removal and protection under the Convention Against Torture in December 2015. The respondent, whose name is redacted from the filings, consequently appealed.

The BIA then determined in 2016 that the immigration judge had based the decision on a "clearly erroneous" finding that her testimony was not credible.

The BIA acknowledged that there were inconsistencies in her interview with an asylum officer and her written asylum statement as to when her ex-husband started abusing her, but asserted that they were reconciled by other documentation, including two protective orders and affidavits of her former neighbors. It also asserted that the fact that she failed to mention that her ex-husband allegedly raped her in 2014 in her written statement is insufficient to support an adverse credibility finding.

"There is no genuine dispute that the respondent's ex-husband physically and emotionally abused her for years," the decision states. "Thus, the identified discrepancies regarding the

dates and specific incidents of abuse do not undermine the respondent's credibility with respect to her overall claim that she suffered years of significant physical and emotional abuse by her ex-husband."

The board also found that she demonstrated she was targeted as part of a particular social group, namely, "El Salvadoran women who are unable to leave their domestic relationships where they have children in common," according to the decision. The board noted that she had moved away from her ex-husband and divorced him, but that he continued to "threaten and physically abuse the respondent after their separation," dismissing the immigration judge's finding that she could have escaped him.

The BIA also disagreed with the immigration judge's assertion that, even if the respondent could demonstrate that she was part of a particular social group, she could not show that she suffered abuse resulting from her membership in that group. The board found that her ex-husband used his position of authority as the father of her children to threaten and abuse her.

And finally, the board determined that the respondent had sufficiently proved that the government of El Salvador was not willing or able to protect her from domestic abuse. Though they had detained him briefly, the police often did not intervene when her neighbors called to report her ex-husband's abuse.

Paul Wickham Schmidt, a former immigration judge and BIA chairman, wrote in a blog post on Wednesday that if Sessions reverses the BIA's decision in the case, it is likely that it will go to an appeals court. It is considered to be a landmark decision and the result of a 15-year legal battle, he said.

"Rather than reinforcing the BIA's long-overdue 'reining in' of a wayward immigration judge, the attorney general appears to be aiming to upend well-settled asylum law and empower those immigration judges who already treat asylum applicants unfairly," he wrote.

Counsel for the respondent did not immediately respond to requests for comment. The government does not comment on pending litigation.

BIA members Ellen C. Liebowitz, Anne J. Greer and Marget M. O'Herron sat on the panel for the board.

The respondent is represented by Andres Lopez of the Lopez Law Firm PLLC.

Counsel information for the government was not available.

The case is Matter of A-B- before the Board of Immigration Appeals. The case number was redacted from the filings.

--Additional reporting by Kevin Penton. Editing by Jack Karp.