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INS PETITIONS NINTH CIRCUIT TO REHEAR EN BANC DETENTION CASE

Contending that "the decision is contrary to Supreme Court and Ninth Circuit precedents, and substantially impairs the enforcement of the nation's immigration laws," the INS has petitioned the Ninth Circuit to rehear *en banc* ***Lin Guo Xi v. U.S. I.N.S.***, __F.3d__, 2002 WL 1766307 (9th Cir. August 1, 2002). In that case, a panel of the Ninth Circuit (*McKeown*, Gould; Rymer (dissenting)), ruled in a split opinion, that an inadmissible Chinese alien apprehended at sea, was entitled to supervised release from INS custody six months after the issuance of his order of removal if he demonstrated that there was no significant likelihood of his removal to China in the reasonably foreseeable future.

The Ninth Circuit's decision "substantially impairs the enforcement of the nation's immigration laws."

The question presented in the petition is "whether the Attorney General is statutorily required to release into the United States an alien apprehended outside the United States and ordered removed, if the alien's government unreasonably delays or refuses his return."

Lin Guo Xi had been apprehended by the Coast Guard in June 1997, when he attempted to smuggle himself and five other individuals into United States territory near Agana, Guam. He was then charged with alien smuggling, convicted, and sentenced to approximately six months in prison. When placed in removal proceedings he applied for asylum, withholding of removal, and protection under CAT. An Immigration Judge denied these requests and the BIA subsequently dismissed the appeal because it had not been timely filed. On February 1, 2001, the INS served Mr. Lin with a notice of intent to toll the ninety-day removal period, as provided under INA § 241 (a)(1)(C), because of his refusal to complete an application for a travel document.

When Mr. Lin began to cooperate, the INS requested from the Consulate General of the Republic of China in San Francisco that a travel document be issued to enable his return to China.

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CITIZENSHIP GRANT TO CONVICTED TERRORISTS REVERSED

In ***United States v. Hovsepian and Yacoubian,*** __F.3d__, 2002 WL 31158145) (9th Cir. September 30, 2002) (*O'Scannlain*, Kleinfeld; D.W. Nelson (dissenting)), the Ninth Circuit, reversed district court orders enjoining the INS from commencing removal proceedings against two convicted Armenian bomb conspirators, sealing their criminal records, and granting them United States citizenship.

Hovsepian and Yacoubian are Lebanese citizens of Armenian descent and permanent residents of the United States, who were members of an Armenian terrorist group responsible for worldwide assassinations and bombings against Turkish officials and property. In 1982, the two conspired with others to bomb the Turkish Consul in Philadelphia, and a co-conspirator traveled

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OIL ATTORNEY APPOINTED TO NINTH CIRCUIT ADVISORY COMMITTEE ON APPELLATE RULES

On September 13, the Ninth Circuit appointed Mark Walters of the Civil Division's Office of Immigration Litigation to its Advisory Committee on Appellate Rules and Internal Operating Procedures. The Committee meets two or three times a year, and pursuant to 28 U.S.C. § 2077(b), makes recommendations to the court concerning court rules and procedures.

The appointment resulted from discussions between the Office of Immigration Litigation and the Ninth Circuit regarding procedures to deal with the unprecedented volume of immigration cases. Mr. Walters' appointment to the Committee will give the Department a better voice in the formal appellate rule-making process.

Highlights Inside

En Banc Rehearing Sought In Detention Of Inadmissible Alien Case

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While the request was pending, Mr. Lin filed a habeas petition which was denied. In reversing that denial, the Ninth Circuit panel majority held that because INA § 241(a)(6) draws no distinction between admitted and inadmissible aliens, the statute must be applied evenhandedly to both groups.

In the petition for rehearing, the INS argues that the panel majority misinterpreted *Zadvydas v. Davis*, 553 U.S. 678 (2001), where the Supreme Court invoked the principle of constitutional avoidance to construe INA § 241(a)(6), as imposing certain restrictions on the post-final order detention of a "deportable" alien. The INS points out that the Court reaffirmed the longstanding distinction between aliens who had entered the United States and those who were seeking admission. "The distinction between an alien who has effected an entry into the United States and one who has never entered runs throughout immigration law," said the Court. Consequently, the Supreme Court did not overrule its decision in *Schaughnessy v. Mezei, 345 U.S. 206 (1953)*, where it had held that the Attorney General had the constitutional authority to detain aliens denied admission indefinitely pending their repatriation unless they had a statutory right to enter the United States.

Indeed, following *Zadvydas*, the INS published regulations stating that that ruling "does not govern those aliens who are legally still at our borders . . . and their continued detention may be appropriate to accomplish the statutory purpose of preventing the entry of a person who has, in contemplation of the law, been stopped at the border." 66 Fed. Reg. 56967 (Nov. 14, 2001).

The INS also contends that the decision runs contrary to *Barrera-Echeverria v. Rison*, 44 F.3d 1441 (9th Cir.), *cert. denied*, 516 U.S. 976 (1995), where the Ninth Circuit *en banc* applied *Mezei*, to reject an argument that unlawful arrival at the border entitles an alien to release in the United States. The Seventh Circuit has also held that the Court's holding in *Mezei* remains unaffected by *Zadvydas*. *Hoyte-Mesa v. Ashcroft*, 272 F.3d 989 (7th Cir. 2001).

"The panel's decision significantly impairs the Attorney General's ability to control the nation's Western borders and territories against the systemic entry of undocumented and illegal aliens."

The INS further claims that the "the panel's decision significantly impairs the Attorney General's ability to control the nation's Western borders and territories against the systemic entry of undocumented and illegal aliens from nations that may not immediately accept their return." In particular, the petition notes that there are approximately 120 aliens who have been denied admission currently within the geographical limits of the Ninth Circuit and who have been detained by the INS for more than six months while awaiting their removal. The INS notes that a district court has already ordered the release of an excluded criminal Mariel Cuban alien. The INS expects that approximately 47 Mariel Cubans who are within the jurisdiction of the Ninth Circuit, will seek release under the new ruling. Moreover, according to INS statistics 79 per cent of the aliens who were removed from the United States in FY 2001 (177,196) were inadmissible or excludable.

The INS asks the Ninth Circuit to vacate the panel's opinion, rehear the case *en banc*, and affirm the denial of the petition for a writ of habeas corpus.

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CITIZENSHIP GRANT REVERSED

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across country in a commercial airliner with an unassembled bomb and five sticks of dynamite, which the FBI estimated would have killed or maimed thousands had it been detonated. Hovsepian and Yacoubian pled guilty to federal explosives offenses. District Court Judge Mariana Pfaelzer (Los Angeles) sentenced them as adults and invoked a (now repealed) procedure, a "judicial recommendation against deportation" (JRAD), which precluded INS from using those particular crimes as a basis of deportation.

When new grounds of deportation not subject to the JRAD were passed by Congress, INS attempted to begin deportation proceedings by placing a detainer on Yacoubian, but Judge Pfaelzer permanently enjoined INS from commencing deportation proceedings. The Ninth Circuit reversed that decision in *United States v. Yacoubian*, 24 F.3d 1 (9th Cir. 1994).

Judge Pfaelzer then announced that she would do whatever was necessary to prevent the INS from deporting Hovsepian and Yacoubian, denying the Government's motion to correct clerical errors in their conviction records, resentencing them as youthful offenders; "expunging" their convictions and ordering the FBI to remove their records from its files and to place them in separate facilities that could not be opened except for a bona fide criminal investigation; permanently enjoined INS from deporting Hovsepian on any ground that was not in existence as of 1985; and ordered the INS to naturalize them.

The Ninth Circuit held that the district court erred in resentencing Hovsepian as a youthful offender, erred in expunging both defendants' criminal records, had no jurisdiction to enjoin the INS from applying current law to deport them, and abused its discretion in ordering the INS to naturalize them.

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THE LIMITED ROLE OF HABEAS REGARDING SUFFICIENCY OF THE EVIDENCE

In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court permitted the use of habeas corpus by criminal aliens, contrary to the government's position that Congress' central intent in the 1996 reforms was to limit an alien's access to the federal courts and to expedite any such access. The purpose of this article is to familiarize attorneys with an understanding of the limits of habeas corpus, particularly in the evaluation of factual determinations by an administrative agency. Such review is limited only to an evaluation of the "constitutional sufficiency of the evidence" or the "some" evidence test. In order to understand this standard of review, it will be best to work in reverse chronological order. First, this article will briefly discuss the Supreme Court's decision in *INS v. St. Cyr*, which created a habeas renaissance in immigration cases. The article will then discuss the "modern" substantial evidence standard and contrast that with the "traditional" substantial evidence standard. Next, it will consider the historical use of habeas in reviewing factual determinations in the immigration context. Finally, the article will show why the "constitutional sufficiency of the evidence" claim may only be brought in the court of appeals.

The private bar has begun efforts to obtain review of factual determinations in the district courts pursuant to habeas corpus, and the district courts are misunderstanding their role.

The Supreme Court's Decision in INS v. St. Cyr

In *St. Cyr*, the Supreme Court held that Section 242 of the Immigration and Nationality Act ("INA") did not repeal the use of habeas corpus for the purpose of raising a pure question of law regarding discretionary relief, which could not be reviewed in the court of appeals. *St. Cyr*, 533 U.S. at 314. The Supreme Court stated that in order to argue the alien was barred from review of a pure question of law, the government would have to overcome two "strong" presumptions: (1) that administrative actions are generally reviewable; and (2) that repeals by implication of habeas are disfavored. *Id*. at 298-99. As a result, the Court held that INA § 242's failure to mention or cite habeas under 28 U.S.C. § 2241 did not expressly repeal recourse to the Great Writ. *Id.* at 299-314. However, the Supreme Court stated that if judicial review over the issue were available in the court of appeals, the government's arguments might have merit. *St. Cyr*, 533 U.S. at 314. Furthermore, the Supreme Court indicated that it was not suggesting that habeas review might exist to challenge a discretionary decision. *Id*. at 314 n.38. Moreover, the Supreme Court noted that habeas corpus is not as broad as review under the Administrative Procedures Act. *Id*.

Despite the Supreme Court's guidance in the area, some courts have declined to heed the High Court's admonitions. *See, e.g., Liu v. INS*, 293 F.3d 36 (2d Cir. 2002); *Chamakov v. Blackman*, 266 F.3d 210 (3d Cir. 2001). As a result, the private bar has begun efforts to obtain review of factual determinations in the district courts pursuant to habeas corpus, and the district courts are misunderstanding their role. *See Julmiste v. Ashcroft*, 212 F. Supp.2d 314 (D. N.J. 2002) (applying the substantial evidence test to an asylum application). Thus, the task falls upon the Department of Justice to educate the private bar and the courts as to the role and limits of habeas corpus in evaluating factual determinations by government agencies.

The "Modern" Substantial Evidence Test and Its "Traditional" Roots

Most of today's jurists and litigators are quite familiar with the "modern" substantial evidence test. Under this test, a court of competent jurisdiction reviews factual findings only to determine whether they are supported by "substantial evidence." *See INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). "Substantial evidence" is a term of art which carries with it a host of rules which define and limit a court's authority in favor of deference to the agency. First, "substantial evidence" means more than a "scintilla" of evidence. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477-78 (1951). Second, the review for such evidence looks to the "whole record." *Elias-Zacarias*, 502 U.S. at 481. Third, in order to afford deference, there is a switching of the burden of proof: the person challenging the decision may only succeed in having a court overturn the Board's finding of facts if the evidence presented was "such that a reasonable fact-finder would have to conclude that the requisite fear of persecution existed." *INS v. Elias-Zacarias*, 502 U.S. 478, 481 (1992). Put another way, the evidence presented by the alien must "compel the conclusion" that the alien is eligible for asylum. *Id*. at 483-484. Fourth, mere disagreement with the BIA's decision is not sufficient grounds for reversal. *Shirazi-Parsa v. INS*, 14 F.3d 1424, 1427 (9th Cir. 1994).

The substantial evidence test has not always existed in its modern form. The traditional standard was not applied by weighing the "whole record." *See Universal Camera*, 340 U.S. at 477-78 (review of evidence implied that sufficient evidence existed "when considered by itself" or "when viewed in isolation"). Indeed, the "whole record" review stems from a minority opinion in a 1941 report to Congress by a committee appointed by the Attorney General, suggesting a uniform standard for all agency review, suggesting that judicial review should extend to "findings, inferences, or conclusions of fact unsupported, upon the *whole record*, by sub-

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LIMITED ROLE OF HABEAS

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stantial evidence." *Id*. at 481-82 (emphasis added). While Congress did not expressly adopt this "whole record" review standard, it indicated that courts were to exact a higher standard in reviewing the "whole record," and that standard was subsequently adopted by the courts. *Id*.

The Historical Review Of Facts In Habeas

Understanding both the modern and traditional incarnations of the substantial evidence test, a review of habeas history is informative. The review of factual findings in habeas corpus is extremely limited, involving a set of rules limited almost exclusively to the Writ. As a starting point, it is important to note that an alien must raise a question of statutory or constitutional law, not merely allegations of fact in order to establish jurisdiction under the Writ. *Chin Yow v. United States*, 208 U.S. 8, 11-12 (1908) ("It must not be supposed that the mere allegation of the facts opens the merits of the case, whether those facts are proved or not. And, by way of caution, we may add that jurisdiction would not be established simply by proving that the commissioner and the Department of Commerce and Labor did not accept certain sworn statements as true, even though no contrary or impeaching testimony was adduced"); *see also United States ex rel. Tisi v. Tod*, 264 U.S. 131, 134 (1924) ("mere error, even if it consists in finding an essential fact without adequate supporting evidence, is not a denial of due process" giving rise to the writ). Moreover, an alien cannot raise a challenge to merely any fact; rather, it must be a "jurisdictional fact" or a fact "essential to the authority" to deport the alien. *See Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922); *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-54 (1923); *Zakonaite v. Wolf*, 226 U.S. 272, 274 (1908).

Once the habeas action is properly invoked, the role of the courts is limited. In habeas corpus, the conclusions of the agency are final and binding on the courts. *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953). The agency determination is not subject to review provided that there is "some" evidence to support the decision: "Upon a collateral review in habeas corpus proceedings, it is sufficient that there was some evidence from which the conclusion of the administrative tribunal could be deduced and that it committed no error so flagrant as to convince a court of the essential unfairness of the trial. *Tisi v. Tod, supra*." *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. 103, 106 (1927). Habeas does not contemplate review of the "whole record." *Heikkila v. Barber*, 345 U.S. 229, 236 (1953).

Indeed, the habeas-like limitations have persisted even into the modern Supreme Court's test for "constitutional sufficiency" of evidence. *See Superintendent, Massachusetts Correctional Institution, Walpole v. Hill*, 472 U.S. 445 (1985). In *Hill*, the Supreme Court determined that the procedures for the revocation of good time credit would not satisfy due process "unless the findings of the prison disciplinary board are supported by *some* evidence in the record." *Id*. at 454 (emphasis added). "Requiring a modicum of evidence to support a decision . . . will help to prevent arbitrary deprivations without threatening institutional interests or imposing undue administrative burdens." *Id*. at 455. The Court explained that "[i]n a variety of contexts, the Court has recognized that a governmental decision resulting in the loss of an important liberty violates due process if the decision is not supported by any evidence," citing *Vajtauer* as an example. *Id*. at 455. The Court explained the test:

> We hold that the requirements of due process are satisfied if some evidence supports the decision. . . . This standard is met if "there was some evidence from which the conclusion of the administrative tribunal could be deduced. . . ." *United States ex rel. Vajtauer v. Commissioner of Immigration*, 273 U.S. at 106, 47 S.Ct. at 304. Ascertaining whether this standard is satisfied does not require examination of the entire record, independent assessment of the credibility of witnesses, or weighing of the evidence. Instead, the relevant question is whether there is any evidence to support the conclusion reached by the disciplinary board.

Id. at 455-56 (citations omitted). Thus, the sufficiency of the evidence test is clearly less exacting than the modern substantial evidence test. Indeed, in light of the additional limitations, it is even less exacting than the traditional substantial evidence test.

The Locus of Review

Understanding the appropriate standard of review for habeas review of facts is important. However, that should not be taken as a suggestion that the district courts in habeas are the proper forum. Litigators should argue that a district court in habeas corpus lacks authority to conduct any factual review of a decision of the Board of Immigration Appeals because that review may be had in the court of appeals. Recall that the Supreme Court indicated that if review of a particular issue were available in the court of appeals, then the government's argument that habeas has been repealed for that issue may have merit.

The government has been making headway in establishing that, even for criminal aliens, review of substantial constitutional questions remains in the court of appeals. *See, e.g., Vaquez-Velezmoro v. U.S. INS*, 281 F.3d 693 (8th Cir. 2002). As a result, it may be argued that the due process' "sufficiency of the evidence" test may be heard in the court of appeals, and that under *St. Cyr*, there is no problem in arguing that habeas is unavailable.

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Summaries Of Recent BIA Decisions

Inadequacy of Immigration Judge's Decision Requires Remand

In ***Matter of S-H-***, 23 I&N Dec. 462 (BIA 2002), a unanimous Board panel sustained an INS appeal and remanded the case for further proceedings. The respondents are citizens of Iraq who were granted asylum by an immigration judge. The Board agreed with the INS that the judge's decision was "inadequate." 23 I&N Dec. at 463. It faulted the immigration judge for failing to make specific findings of fact, and an explicit credibility determination, and for failing to discuss the documentary evidence. In its first published decision since the regulation to reform the Board became final (but before its effective date of September 25, 2002), the panel discussed the impending changes to Board review of immigration judge decisions. Specifically, the Board noted the critical need for clear and comprehensive findings of fact and explicit credibility findings since the Board will have only limited fact-finding authority under the new regulation. Given the deficiencies in this case, the Board remanded the case. Two precedent decisions, *Matter of Vilanova-Gonzalez*, 13 I&N Dec. 399 (BIA 1969), and *Matter of Becerra-Miranda*, 12 I&N Dec. 358 (BIA 1967), were superceded.

Mother of Six Children Granted Cancellation Because Her Return To Mexico Would Cause Her Exceptional And Extremely Unusual Hardship

In ***Matter of Recinas***, 23 I&N Dec. 467 (BIA 2002), a unanimous *en banc* Board sustained the respondents' appeal and granted cancellation of removal pursuant to section 240A(b) of the INA. The adult respondent, a native and citizen of Mexico, is the divorced mother of six children, four of whom are United States citizens. Her other family members are either United States citizens or lawful permanent residents. Acknowledging that this was a close case and relying on its seminal precedents (*Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), and *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002)), the Board found that the respondents had proved exceptional and extremely unusual hardship. The Board focused on the following factors: "the heavy financial and familial burden on the adult respondent, the lack of support from the children's father, the United States citizen children's unfamiliarity with the Spanish language, the lawful residence in this country of all the respondent's immediate family, and the concomitant lack of family in Mexico . . ." 23 I&N Dec. at 472. The Board clearly limited the grant of cancellation in this case to its unusual facts.

Imprisonment Of Convicted Drug Dealer In Nigeria Not Torture

In ***Matter of M-B-A-***, 23 I&N Dec. 474 (BIA 2002), the *en banc* Board considered and granted an INS motion to reconsider its June 8, 2001, decision in the case. In that decision, a Board panel granted deferral of removal under the Convention Against Torture to a Nigerian woman who claimed that she would be tortured by prison guards if returned because Decree 33 of the Nigerian National Drug Enforcement Agency required the imprisonment for five years of Nigerians convicted of drug offenses abroad. The respondent was convicted of importation and possession with intent to distribute heroin in the United States.

The Board found that the respondent must present evidence on the current enforcement of Decree 33 if that was the basis for her claim. It noted that it was insufficient to rely on the decree's existence and the respondent's testimony of what happened to a friend seven years ago. "On the record before us, however, we find that the respondent's case is based on a chain of assumptions and a fear of what might happen, rather than evidence that meets her burden of demonstrating that it is *more likely than not* that she will be subjected to torture by, or with the acquiescence of, a public official or other person acting in an official capacity if she is returned to her home country." 23 I&N Dec. at 479-480. The Board granted the INS motion to reconsider, vacated its prior decision, and dismissed the respondent's appeal.

Board Member Rosenberg filed a concurring and dissenting opinion. A dissenting opinion was filed by Board Member Schmidt, joined by Guendelsberger, Brennan, Espenoza, and Osuna.

Third-degree Assault Under Connecticut Law Is An Aggravated Felony

In ***Matter of Martin***, 23 I&N Dec. 491 (BIA 2002), the *en banc* Board found that a conviction for misdemeanor third degree assault in violation of section 53a-61 of the Connecticut General Statutes was a crime of violence and, hence, an aggravated felony under section 101(a)(43)(F). The respondent received a one year sentence. Citing Second Circuit precedent, the Board noted that its analysis "must be made by reference to the statutory definition of the crime, as elucidated by the courts of the convicting jurisdiction." 23 I&N Dec. at 492. The Board analyzed the conviction to determine if it met the requirements of 18 U.S.C. § 16 (a), relying on legislative history for that provision, recent circuit court decisions, other federal statutes containing similar language, and Connecticut decisions. The Board concluded that the Connecticut provision required the intentional infliction of physical injury and that "the requisite injury must be 'caused' by an intentional 'use' of physical force." 23 I&N Dec. at 498. Two dissenting opinions were filed (Rosenberg, joined by Espenoza and Pauley, joined by Schmidt, Filppu, and Brennan).

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Recent Decisions In Criminal Prosecution Cases

■***United States v. Yoshida***, __F.3d__, 2002 WL 31027968 (9th Cir. Sept. 12, 2002) (Sufficient evidence was presented to warrant jury's conviction of alien for inducing aliens to enter the US illegally and bringing them in for financial gain; although evidence was not direct, the abundant circumstantial evidence presented regarding defendant's intent to encourage illegal immigration was sufficient to warrant the conviction)

■***United States v. Zheng***, __F.3d__, 2002 WL 31057021 (11th Cir. Sept. 17, 2002) (District Court improperly granted criminal defendants' motion for judgment of acquittal; sufficient evidence existed from which the jury could conclude that defendants, who were knowingly employing and providing lodging to underpaid illegal workers, were guilty of conspiring to conceal, harbor and shield from detection illegal aliens for the purpose of commercial advantage or private financial gain)

■***United States v. Sanchez-Milam***, __F.3d__, 2002 WL 2027357 (5th Cir. Sept. 5, 2002) (Government presented sufficient evidence to sustain alien's conviction for illegal reentry after deportation without the express consent of the Attorney General; government presented sworn evidence that alien's file contained no documentation indicating that he applied for or obtained such consent)

■***United States v. Gonzalez-Roque***, __F.3d__ 2002 WL 1902600 (2d Cir. Aug. 15, 2002) (District Court erred in dismissing indictment against alien accused of illegal reentry after having been convicted of an aggravated felony; IJ's refusal to give alien a fourth continuance in order to perfect his adjustment application was not a violation of alien's rights to due process and alien's failure to raise his due process, challenge to the Board precluded him from raising it to avoid his subsequent criminal prosecution for illegal reentry)

■***United States v. Fujii***, __F.3d__, 2002 WL 1902618 (7th Cir. Aug. 20, 2002) (District court properly admitted airline passenger records under the business record exception to the hearsay rule in a trial against an alien later convicted for alien smuggling and properly denied alien's motion for a judgment of acquittal as the government presented sufficient evidence from which the jury could reasonably conclude that alien was aware that his activities were illegal)

In illegal reentry case, prior deportation violated due process because in a group hearing it was not clear that the defendant had knowingly waived counsel.

■***United States v. Martinez-Martinez***, __F.3d__ (9th Cir. Jul. 15, 2002) (In illegal reentry case, defendant could not collaterally attack prior aggravated felony conviction based on a claim of no jurisdiction even for purposes of a downward departure)

■***United States v. Zaragoza***, __F.3d __ (9th Cir. Jul. 8, 2002) (alien's incriminating statement, made after he was briefly detained and handcuffed during a border inspection, was not the fruit of an unreasonable arrest or seizure under the Fourth Amendment)

■***United States v. Bravo***, __F.3d__ (9th Cir. Jul. 8, 2002) (Customs search was based on reasonable suspicion where the defendant's manner was excessively friendly and tool box appearance was unusual; although defendant was briefly handcuffed while the box was searched he was not in custody where the agent informed him he was not under arrest and he was released from the cuffs shortly)

■***United States v. Perez-Corona,*** 295 F.2d 996 (9th Cir. 2002) (Unlawful use of means of transportation under Arizona law was not an aggravated felony for sentencing purposes in an illegal reentry case)

■***United States v. Yanez-Saucedo***, 295 F.3d 991 (9th Cir. 2002) (In illegal reentry case, Washington state conviction for third degree rape is an aggravated felony)

■***United States v. Ahumada-Aguilar***, 295 F.3d 943 (9th Cir. 2002) (In illegal reentry case prior deportation violated due process because in a group hearing it was not clear that the defendant had knowingly waived counsel; prejudice was shown because he had a colorable constitutional issue which he ultimately lost, but the resulting delay would have made him eligible for a possible waiver under § 212(c))

■***United States v. Medrano***, 208 F. Supp.2d 681 (W.D. Tex. 2002) (Un-Mirandized statement given in Customs interview in response to a question which went beyond booking information was inadmissible while volunteered statement which was non-responsive was not; interrogation conducted after defendant was indicted was inadmissible for Sixth Amendment violation where agent knew she was represented by counsel on a previously dismissed criminal charge covering the same incident)

■***United States v. De Jesus Fuentes Monterrosa***, 208 F. Supp.2d 296 (E.D.N.Y. 2002) (Prosecution for being found in the United States was not barred on double jeopardy grounds because the defendant had previously been convicted of illegal entry because the two offenses required proof of different elements not included in the other offense)

■***United States v. Adame-Salgado***, 214 F. Supp.2d 853 (N.D. Ill. 2002) (Holding that alien could not challenge the indictment issued against him on the basis that his due process rights were violated when IJ allegedly failed to inform him of his rights to seek judicial review of the removal order)

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Summaries Of Recent Federal Court Decisions

ASYLUM

■Ninth Circuit Holds That Guatemalan Established Past Persecution Based On Menacing Threats, And That INS Did Not Meet Burden Of Establishing Possibility Of Internal Relocation

In ***Ruano v. Ashcroft,*** __F.3d__, 2002 WL 1980646 (9th Cir. August 29, 2002) (Schroeder, *D.W. Nelson*, Reinhardt), the Ninth Circuit reversed the BIA's denial of asylum and withholding of removal.

The petitioner had presented evidence that, while in Guatemala, he had received multiple death threats at his home and business from a guerrilla organization and had, over the course of several years, been followed by and narrowly escaped four armed men. He claimed that these threats occurred as a result of his involvement in a political organization which the guerrilla organization opposed. The petitioner testified that the police were unable to protect him, despite his notifying them of the situation. Both the BIA and the IJ found that, although petitioner was credible, his evidence of death threats and narrow escapes was not enough to establish that he suffered past persecution.

In reversing the BIA, the court found that since there were no adverse credibility findings, petitioner's testimony was credible. That testimony showed that the petitioner, a union member, left Guatemala after receiving nearly 30 written death threats from a guerilla group, was "closely confronted" by his persecutors, and was forced to quit his job, change vehicles, and stay with neighbors in response to the threats. The court then compared the facts in this case to those where it had , and had not, found past persecution and concluded that petitioner has suffered past persecution. The court also found that the country conditions report submitted by INS was insufficient to establish the possibility of internal relocation because the report provided no information specific to petitioner's individual situation. Based on its finding that petitioner was eligible for asylum, the court held that he was entitled to withholding of deportation because the INS had not sufficiently rebutted the presumption of future persecution.

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■Ninth Circuit Reverses BIA's Adverse Credibility And Failure To Corroborate Determinations

In ***Manimbao v. Ashcroft,*** __F.3d__, 2002 WL 1766372 (9th Cir. August 1, 2002) (Thomas, *Wardlaw;* Trott (dissenting)), the Ninth Circuit reversed the BIA's adverse credibility finding in an asylum case involving a citizen of the Philippines. The petitioner claimed that the New People's Army detained and beat him when seeking information about a pro-government group. The BIA found that the Immigration Judge implicitly questioned the veracity of the alien's story, that the alien fully briefed the credibility issue on appeal, and that the alien's vague and inconsistent testimony was incredible and uncorroborated.

"The IJ should not be allowed to dance around the question of credibility, leaving the BIA (and eventually this court) to resolve what is a quintessentially an issue for the trier of fact."

The court found that the BIA's adverse credibility finding violated due process because the immigration judge did not make a credibility determination which was legally sufficient to put the alien on notice that his credibility was in issue. The court took great care to explain that the "IJ is the decisionmaker best equipped to make factual determinations, especially as to credibility." It suggested that "the IJ should not be allowed to dance around the question of credibility, leaving the BIA (and eventually this court) to resolve what is a quintessentially issue for the trier of fact. It is the IJ who is in the best position to determine, conclusively and explicitly, whether or not the petitioner is to be believed."

Here, the court found that the alien's testimony was credible and that he had suffered past persecution. Accordingly, he was entitled to the presumption that he had a well-founded fear of future persecution. The court found that the BIA had improperly placed the burden of rebutting the presumption upon the petitioner. Moreover, it had also failed to provide the individual analysis required by the court to refute the presumption.

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■Ninth Circuit Sua Sponte Asks Parties Their Views On En Banc In Asylum/ Torture Convention Case Holding That Nuclear Family Is Particular Social Group

In ***Chen v. Ashcroft***, __F.3d__, 2002 WL 971784 (9th Cir. May 13, 2002) (Schroeder, *Noonan*, Fletcher), the Ninth Circuit held that the alien demonstrated well-founded fear of future persecution by the Chinese government on account of membership in a particular social group consisting of immediate family members, where his mother failed to repay a bank loan and, as a result, the government threatened to imprison the whole family. Petitioner's expert witnesses stated that upon his return the alien would be subject to government-sanctioned torture at the hands of the smuggling group that brought him to the United States for his failure to pay the smugglers. The Court has ordered both parties to give their views as to whether this case should be reheard *en banc*.

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■Third Circuit Holds That Immigration Judge Improperly Rested His Decision On A Credibility Determination That Was Not Supported By Substantial Evidence In The Record

In ***Gao v. Ashcroft***, __F.3d__, 2002 WL 1805566 (3d Cir. August 7, 2002 (Becker, Greenberg, Barzilay), the Third Circuit reversed the Immigration Judge's determination that petitioner's asylum narrative was not credible because it was inconsistent, implausible, and conflicted with some of her documentary evidence. The court held that petitioner's story was consistent, that the Immigration Judge failed to consider important documentary evidence that supported her claims that she was associated with the Falun Gong, and failed to demonstrate any foundation for his expressed doubts about petitioner's account of her escape. The court remanded the case to the BIA.

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■Ninth Circuit Finds That Somalian Was Deprived Of A Full And Fair Asylum Hearing

In ***Abdule v. Ashcroft,*** 2002 WL 31098471 (9th Cir. Sept. 19, 2002) (Ferguson, Reinhardt; *Graber* (dissenting)), the Ninth Circuit in an unpublished decision vacated the BIA's denial of asylum and withholding of removal and remanded with instructions to consider the merits of the alien's asylum claim. The court found that the BIA failed to address the merits of the alien's asylum claim after reversing the Immigration Judge's findings that petitioner was incredible and had filed a frivolous asylum application stemming from her submission of two fraudulent UN documents in support of her asylum application. The dissent noted that the majority decided the case on a ground that was neither raised nor briefed.

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■Ninth Circuit Holds That BIA's Adverse Credibility Determination Not Supported By Substantial Evidence.

In ***Singh v. Ashcroft,*** No. 01-70505 (Lay, *Ferguson*, Tallman) (9th Cir. August 27, 2002), the Ninth Circuit in an unpublished decision reversed the BIA's adverse credibility determination and remanded the case. Singh testified that he was arrested, beaten, and burned on the arm by the Punjab police after attending a political rally; he exhibited apparent burn marks on his arm and submitted a doctor's letter corroborating his hospitalization and noting injuries to his face and groin. The BIA cited the letter's omission of Singh's arm injuries and the inadequacy of Singh's explanation for this omission in finding him not credible. The court held that this was a minor inconsistency that revealed nothing about Singh's fear for his safety and that the BIA did not provide a legitimate basis to question Singh's credibility.

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CONVENTION AGAINST TORTURE

District Court Finds That Immigration Judge's Denial Of Relief Under the Convention Against Torture Was Not Supported By Substantial Evidence.

In ***Lawrence v. INS,*** No. 02-CV-861-IEG (S.D. Cal. August 14, 2002), the district court in an unpublished decision reversed the BIA's denial of protection under the CAT and remanded the case for further review. While the alien's original request for protection under CAT was pending, legislation and regulations implementing CAT were adopted. The BIA remanded the case for review consistent with the newly promulgated regulations. Petitioner challenged the constitutionality of relitigating her request, being precluded from presenting additional grounds for relief, and not being appointed counsel despite her alleged mental incompetency. Petitioner further claimed she was entitled to relief under the CAT as a matter of law. The court denied her first claim for relief and declined to reach her second and third claims. However, the court found that substantial evidence did not support the finding that petitioner was not entitled to relief under the CAT, because it appeared that finding was based solely upon the immigration judge's adverse credibility finding which was founded upon elements not essential to her CAT claim.

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CRIMES

■Ninth Circuit Holds That A Conviction Of Possession Of Stolen Mail Is An Aggravated Felony

In ***Randhawa v. Ashcroft*** 298 F.3d 1148 (9th Cir. 2002) (Schroeder, D. Nelson, Rawlinson), the Ninth Circuit held that possession of stolen mail pursuant to 18 U.S.C. § 1708, is categorically a "theft offense" within the meaning of the immigration statute, and therefore an aggravated felony. Consequently, the court concluded that a conviction under § 1708 constitutes a removable offense.

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DETENTION

■Fifth Circuit Stays District Court Decision Holding INA § 236(c) Unconstitutional

In ***Reyna-Montoya v. Trominski***, No. 02-41323 (5th Cir. Sept. 27, 2002), (Davis, Wiener, Garza), the Fifth Circuit granted the government's request for a stay of a district court decision which had certified a class consisting of all legal permanent residents who are or will be detained at the INS' Facility in Harlingen, Texas, pursuant to INA § 236(c). The district court had also declared the statute unconstitutional as applied to members of the class, had enjoined INS from detain-

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ing any member of the class pursuant to the statute; and had required the INS to provide individualized bond hearings by an immigration judge. In granting the stay, the Fifth Circuit noted that INA § 236(c) is before the Supreme Court in *Demore v. Kim*, 122 S. Ct. 2696 (2002).

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DUE PROCESS

■Eleventh Circuit Holds That Lack Of Notice To Criminal Alien About Legal Implications Of Advance Parole Is Not A Substantial Constitutional Question

In ***Balogun v. Ashcroft***, __F.3d__, 2002 WL 31026581 (11th Cir. September 10, 2002) (*Cudahy*, Birch, Marcus), the Eleventh Circuit held that it lacked jurisdiction over petitioner's appeal of a removal order based upon his conviction for two crimes involving moral turpitude. Petitioner argued that the INS' advance parole letter did not provide him with adequate notice of the potential consequences of his departure for Nigeria, which included the loss of his opportunity to complete the ten-year continuous physical presence requirement and to seek suspension of deportation or cancellation of removal. The court reasoned that petitioner's argument did not constitute a substantial constitutional question over which it had jurisdiction because aliens have no constitutionally protected rights to discretionary forms of relief and INS has no duty, constitutional or otherwise, to provide legal advice to aliens who seek advance parole.

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■District Court Bars Deportation Of Heroin Dealer As Substantive Due Process Violation

In ***Rosciano v. Sonchik***, No. CIV-01-472-PHX-FJM (D. Ariz. September 10, 2002) (Martone), the district court granted the habeas petition of a heroin dealer, holding that she had a substantive due process right not to be deported to Colombia where the record did not reflect that she had been a drug dealer before being approached by undercover officers, she later cooperated with the government, and federal prosecutors and the judge in her criminal conviction recommended against deportation because of danger that she would be killed in Colombia because of her cooperation. The court held that the government was constitutionally barred from placing any person in close proximity to an already existing danger, relying on the "danger creation" exception described in Ninth Circuit precedents.

The court held that the government was constitutionally barred from placing any person in close proximity to an already existing danger, relying on the "danger creation" exception described in Ninth Circuit precedents.

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IRCA - 1986

■Ninth Circuit Denies Plaintiffs' Petition For Rehearing And Suggestion For Rehearing En Banc In Legalization Case

In ***Zambrano v. INS***, __F.3d__ (Hug, Nelson, Hawkins), the Ninth Circuit on September 4, 2002 denied the plaintiffs' petition for rehearing and issued an amended decision. On March 7, 2002, the court held that a court may not reconsider the issue of subject-matter jurisdiction for purposes of awarding fees under the Equal Access to Justice Act when the underlying action had been previously dismissed for lack of subject matter jurisdiction, and that decision had become final. Plaintiffs argued that Congress had retroactively restored subject matter jurisdiction over the case with the Legal Immigration Family Equity Act ("LIFE") in December 2000. The court disagreed because Congress merely allowed eligible class applicants a new opportunity to submit new applications that must satisfy new requirements and if it had retroactively restored subject matter jurisdiction in the already concluded *Zambrano* class action, it would be unconstitutional. In its amended decision, the court clarified that the LIFE Act was intended to remove a jurisdictional obstacle to litigation over applications "pursuant to *both the IRCA* and the newly amended LIFE Act," (emphasis added), and added a footnote stating that, in issuing its ruling, it "make[s] no judgment" on whether a court may reinstate previously dismissed claims of substantial cause plaintiffs.

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■Ninth Circuit Affirms In Part And Remands In Part District Court's Decision To Reinstate Class Certification And Grant Preliminary Injunctive Relief In Fourteen-Year Old Legalization Case

In ***Immigrant Assistance Project of the Los Angeles County Federation of Labor v. INS,*** __F.3d__, 2002 WL 31109363 (9th Cir. September 24, 2002) (Hug, *Pregerson*, Ferguson), the Ninth Circuit affirmed the district court's reinstatement of class certification and grant of preliminary injunctive relief and remanded to the district court to allow the class and organizational plaintiffs to file a new amended complaint so they could attempt to articulate the jurisdictional facts necessary to pur-

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sue this fourteen-year old legalization case.

The Ninth Circuit rejected the government's arguments that the plaintiffs' second amended complaint, which was filed more than six years after the district court's denial of class certification, was untimely and that no plaintiff in the complaint had standing or could articulate a ripe claim for review. The court also rejected the government's arguments that that venue was improper in the District Court for the Western District of Washington, and, that class certification and the granting of preliminary injunctive relief were not warranted.

The Ninth Circuit remanded the case to the district court for the purpose of allowing the organizational plaintiffs and individual class members to file yet another complaint in which they could attempt to articulate the requisite jurisdictional facts necessary to survive dismissal of their claims.

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■District Court Denies Alien's Claim That He Is Entitled To Apply For Suspension Of Deportation, But Holds INS Failed To Notify Alien Of SAW Application Denial And Remands Case To INS

In ***Benitez v. Ashcroft***, No.__ (S. D. Cal. July 26, 2002) (Whelan), the district court in an unpublished decision granted the alien's petition for habeas corpus in part. The INS denied as untimely the alien's appeal of the initial denial of his application for Special Agricultural Worker (SAW) status, and the BIA denied his application for cancellation of removal. The alien did not appeal the BIA's decision to the Ninth Circuit, but filed a habeas petition. The district court preliminarily held that it had jurisdiction. It then found that the denial of petitioner's request to be placed into immigration proceedings so he could apply for suspension of deportation before the effective date of the new cancellation of removal provision did not violate due process. However, the court remanded the case to the INS to readjudicate the SAW application (because the INS failed to send its notice of intent to deny the application to the alien's address of record).

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JUVENILES

■District Court Grants Gov't Motion To Dismiss As Moot After INS Grants Child A T Visa

In ***Phanupong v. Ashcroft***, No. CV-00-4883-DT, the district court on September 9, 2002, granted the government's motion to dismiss as moot and denied plaintiffs' motion. Phanupong is a five-year-old Thai who was used as a decoy to smuggle a female alien into the United States. The district court enjoined the INS from removing Phanupong and made the court-appointed guardians ad litem his representatives before the INS. Attorney General Ashcroft granted Phanupong humanitarian parole and accepted his application for a T Visa (which protects smuggling victims); the INS granted the visa. The government moved to dismiss the case as moot, and plaintiffs moved for summary judgment. The court invited plaintiffs to file an application for attorneys fees.

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■Third Circuit Holds Attorney General Properly Denied Alien's Request To Have Dependency Status Determined By State Juvenile Court

In ***M.B. v. Quarantillo,*** 301 F.3d 109) (3d Cir. 2002) (Becker, Fuentes, *Weis*), the Third Circuit held that the Attorney General permissibly denied a juvenile alien's request to have his dependency status determined by a state juvenile court in order to apply for a special immigrant juvenile visa. Under the immigration statute, a juvenile alien may be granted a special immigrant juvenile visa if he can show that he was abused, neglected, or abandoned, and that returning to his home country would not be in his best interest. The INS District Director concluded that the alien was ineligible under state law for protection and so declined to consent to a state juvenile court determining his dependency status. The Third Circuit held that INS could consider state law statutory eligibility requirements in declining to consent.

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IN ABSENTIA

Ninth Circuit Orders Rescission Of *In Absentia* Removal Order Finding That The INS Failed To Establish Alien's Deportability By Clear, Unequivocal, And Convincing Evidence

In ***Torres v. Ashcroft,*** No.___ (9th Cir. August 19, 2002) (*Berzon*, Warlaw, Ishii), the Ninth Circuit in a unpublished decision found that the BIA abused its discretion when it found that petitioner was properly ordered removed *in absentia* after the INS had established her deportability by clear, unequivocal, and convincing evidence. The court concluded that a Record of Deportable Alien (I-213) submitted by the INS to meet its burden was insufficient both because the facts therein failed to establish petitioner as an overstay and because the document was partially based on an asylum application in violation of 8 C.F.R. § 240.11(e). The matter was remanded to the BIA for rescission of the *in absentia* order.

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MOTION TO REOPEN

■Ninth Circuit Tolls 180-Day Limitation Period On Motion To Reopen *In Absentia* Order Based On Alleged "Deceptive Actions" By Non-Attorney Representatives

In ***Fajardo v. INS,*** 300 F.3d 1018) (9th Cir. 2002) (*Lay*, Canby, Paez), the Ninth Circuit held that the untimeliness of the alien's motion to reopen before the BIA was excused because the alien relied on and was deceived by two non-attorney "immigration consultants." The court left to the BIA the question of whether the alien had shown "exceptional circumstances" necessary for rescission of the *in absentia* order.

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Ninth Circuit Finds No Jurisdiction To Review Denial Of Sua Sponte Reopening

In ***Ekimian v. INS***, __F.3d__, 2002 WL 31027970 (9th Cir. September 12, 2002) (*W. Fletcher*, T. Nelson; Bright (8th Cir., dissenting)), the Ninth Circuit in a published decision upheld the BIA's denial of reopening to seek adjustment of status on the basis of an approved employer visa petition. The BIA denied the motion as untimely under 8 C.F.R. § 3.2(c)(2), and declined to sua sponte reopen. The court rejected the alien's contention that the 90-day limit on reopening conflicts with the statutes allowing visa petitions and adjustment of status. The court found no sufficiently meaningful standard against which to judge the BIA's discretionary denial of the alien's request for sua sponte reopening, rejecting the contention that "exceptional" circumstances provided a standard for judging the BIA's refusal to do so.

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NOTICE OF APPEAL

■Ninth Circuit Rules That BIA May Not Summarily Dismiss Appeal For Failure To File Brief Where Notice Of Appeal Met Specificity Requirement

In ***Casas-Chavez v. INS***, __F.3d__, 2002 WL 1902246 (9th Cir. Aug. 20, 2002) (*Lay*, Tallman, Ferguson), the Ninth Circuit reversed the BIA's order summarily dismissing the aliens' appeal under 8 C.F.R. § 3.1(d)(i)(D), when the aliens failed to file a brief after indicating on the notice of appeal that they would do so. The petitioners, a husband and wife from Mexico, had unsuccessfully applied for suspension of deportation. The IJ denied their request because they had not met the seven consecutive years of physical presence and for failure to show extreme hardship. With the assistance of counsel they filed an appeal with the BIA. Counsel subsequently requested an extension to file a brief but never did so. The BIA then summarily dismissed the appeal under 8 C.F.R. § 3.1(d)(i)(D).

The court read the governing regulations as not requiring a brief "as long as sufficient notice is conveyed to the BIA for the reasons for the appeal." The court held that because the petitioners had stated specific reasons in their notice of appeal, the BIA had notice of their arguments and the regulations should not be interpreted to require a brief. The court noted that the government's interpretation of the regulation might violate the due process clause.

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TPS

Temporary Protected Status Class Action Settles

On September 24, 2002, a settlement agreement and dismissal order were filed in ***Orellana v. Ashcroft,*** No. 01-4949-MJJ (N.D. Cal.) (Judge Jenkins). The plaintiffs, three Hondurans claimed that they were prima facie eligible for benefits under the Temporary Protected Status (TPS) Program. They agreed to dismissal of the case after accepting the government's settlement offer, which provides that INS will issue a memorandum clarifying how TPS-eligible aliens are treated when seeking Employment Authorization Documents (EADs), all EAD adjudicators will be trained in handling applications filed by TPS-eligible aliens, government databases will be corrected to afford the aliens appropriate relief, and attorney's fees will be provided to plaintiffs' counsel.

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VISAS

Seventh Circuit Affirms Denial Of A A Writ Of Mandamus In A Diversity Visa Case

In ***Iddir v. INS***, __F.3d__, 2002 WL 17995408 (Flaum, Chief Judge, Bauer, Ripple) (7th Cir. August 6, 2002), the Seventh Circuit in a published decision, affirmed a district court decision denying petitions for writs of mandamus filed by aliens who were selected to compete in the Diversity Visa Lottery Program. The aliens sought to compel the INS to adjudicate their adjustment applications before the visas set aside under the Program expired at the end of the fiscal year.

The Seventh Circuit held that the statute did not require INS to adjudicate adjustment applications after the end of the fiscal year, and that the mandamus remedy was not appropriate.

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OIL's Eighth Annual Immigration Law Seminar will be held October 21-25, 2002, in Washington, D.C. The seminar is an introductory course designed for government attorneys who seek a basic knowledge of immigration law. The seminar is free, but seating is limited. To register, contact Francesco Isgro at 202-616-4877 or at francesco.isgro@usdoj.gov.

CASES SUMMARIZED IN THIS ISSUE

EIGHTH ANNUAL IMMIGRATION LAW SEMINAR
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INSIDE OIL

OIL welcomes back Trial Attorneys **Alison Igoe** and **Russ Verby.** Mr. Verby returns to OIL after a stint in private practice. Ms. Igoe returns to OIL after serving in the INS' Office of the General Counsel.

Welcome to new OIL Attorney **Luis E. Perez.** Mr. Perez is a graduate of the University of Puerto Rico, and the University of Puerto Rico School of Law. Before joining OIL, Mr. Perez served as a Judicial Law Clerk to the Honorable Jay A. Garcia, United States District Judge for the District of Puerto Rico.

OIL welcomes seven interns for the fall semester. Giovanni Davila Egipciaco and Denisse Criado Gracia are college seniors and will assist the team of paralegals and legal assistants. Giovanni studies Criminal Justice at Universidad Interamericana de Puerto Rico and Denisse studies Justice Systems at the University of the Sacred Heart in San Juan. Three of the five interns, Melissa Neiman-Kelting, Chelsea Grimmius, Jane Chiang, are law students at George Washington University. Two interns, Rosy Lor and Melissa Gillinov, are law students at American University.

OIL Attorney **Patrick Shen** (left) receives a Special Act Award from **Anthony S. Tangeman**, INS Deputy Executive Associate Commissioner. With this award, Mr. Tangeman recognized Mr. Shen's "outstanding contributions" to the INS during the past year, particularly Mr. Shen's close work with the INS Office of Detention and Removal Operations. That Office and Mr. Shen have worked tirelessly during the past year to implement the Attorney General's post-*Zadvydas*, detention-review regulations. Mr. Shen's award is particularly significant in light of the long and close relationship between OIL and the INS.

The goal of this monthly publication is to keep litigating attorneys within the Department of Justice informed about immigration litigation matters and to increase the sharing of information between the field offices and Main Justice. This publication is also available online at https://oil.aspensys.com. If you have any suggestions, or would like to submit a short article, please contact Francesco Isgro at 202-616-4877 or at francesco.isgro@usdoj.gov. The deadline for submission of materials is the 20th of each month. Please note that the views expressed in this publication do not necessarily represent the views of this Office or those of the United States Department of Justice.

Office of Immigration Litigation

"To defend and preserve the Attorney General's authority to administer the Immigration and Nationality laws of the United States"

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