



AMERICAN IMMIGRATION LAW FOUNDATION  
LEGAL ACTION CENTER  
LITIGATION CLEARINGHOUSE  
NEWSLETTER

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## CIRCUIT COURT CHALLENGES TO BIA PRECEDENT DECISIONS

To date, the BIA has issued 44 precedent decisions in 2007, far exceeding the 25 decisions issued in 2006 and the 18 decisions in 2005. Many of these precedents are being challenged through petitions for review in the circuit courts. The 2007 BIA precedents currently on appeal include:

*Matter of Lemus-Losa*, 24 I&N Dec. (BIA 2007); *Losa v. Mukasey*, No. 07-3942 (7th Cir. filed Dec. 7, 2007). Whether a person can adjust under INA § 245(i) if he or she is inadmissible under INA § 212(a)(9)(B)(i)(II).

*Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007); *N-A-M- v. Mukasey*, No. 07-9580 (10th Cir. filed Nov. 23, 2007). Whether only aggravated felonies qualify as particular serious crimes.

*Matter of A-T-*, 24 I&N Dec. 296 (BIA 2007) (motion to reopen is pending); *Traore v. Mukasey*, No. 07-2080 (4th Cir. filed Nov. 1, 2007) (petitioner filed a motion to hold briefing in abeyance pending outcome of motion to reopen). Whether a woman who had been forced to undergo female genital mutilation is eligible for asylum.

*Continued on following page*

## IDP ADVISORY ON MULTIPLE POSSESSION CONVICTIONS AND RECENT BIA DECISIONS

The New York State Defenders Association Immigrant Defense Project (IDP) issued a practice advisory examining the recent BIA decisions addressing multiple state possession convictions, *Matter of Carachuri-Rosendo*, 24 I&N Dec. 382 (BIA 2007), and *Matter of Thomas*, 24 I&N Dec. 416 (BIA 2007). The BIA said that in cases arising outside the Second, Fifth and Seventh Circuits, a noncitizen who was convicted more than once of state drug possession has not been convicted of an aggravated felony where the state prosecutors did not rely on a prior conviction

to charge and convict the individual as a recidivist. The advisory also provides arguments for individuals in the Second, Fifth and Seventh Circuits. It is available at <http://www.aifl.org/lac/PA-CARACHURI.pdf>.

## DURAN GONZALEZ Q&A

As reported in the last Litigation Clearinghouse Newsletter, on November 30, 2007, the Ninth Circuit ruled in favor of the government and vacated the preliminary injunction in *Duran Gonzalez v. DHS*. *Duran Gonzalez* is a circuit-wide class action challenging DHS' refusal to follow *Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Class counsel (including AILF) prepared a *Duran Gonzalez* Q&A to address issues that have arisen following the Ninth Circuit's adverse decision, including the effective date of the decision, qualifications for class membership, and strategies for class members and others affected by the decision. The Q&A is available at [http://www.aifl.org/lac/lac\\_lit\\_92806.shtml](http://www.aifl.org/lac/lac_lit_92806.shtml).

### NEW AT THE LAC ...

**Updated information regarding challenges to state and local law enforcement efforts.** AILF recently updated its Litigation Issue Page focusing on legal challenges to state and local laws targeting immigrants. These updates include recent developments in lawsuits challenging Arizona and Oklahoma laws. See [http://www.aifl.org/lac/lac\\_lit\\_index.shtml](http://www.aifl.org/lac/lac_lit_index.shtml) and click on Litigation Issue Pages.

**AILF files brief in case addressing termination of removal proceedings.** *Acosta Hidalgo v. Mukasey*, No. 07-2896 (2d Cir. amicus brief filed Dec. 19, 2007). This is a direct challenge to the BIA decision, *Matter of Acosta Hidalgo*, 24 I&N Dec. 103 (BIA 2007), interpreting 8 C.F.R. § 1239.2(f) as precluding IJs from assessing prima facie eligibility for naturalization for purposes of terminating removal proceedings. AILF argued that the BIA's interpretation is inconsistent with the plain language and purpose of the regulation.

## BIA Precedents Continued

*Matter of A-K-*, 24 I&N Dec. 275 (BIA 2007); *Kane v. Mukasey*, No. 07-60757 (5th Cir. filed Sept. 28, 2007). Asylum eligibility based on fear that United States citizen daughter will be forced to undergo FGM.

*Matter of Chavez-Martinez*, 24 I&N Dec. 272 (BIA 2007); *Chavez-Martinez v. Mukasey*, No. 07-3355 (7th Cir. filed Sept. 28, 2007) (argument scheduled for Jan. 22, 2008). For purposes of reopening, who has the burden of showing why a conviction was vacated and whether the underlying conviction still is valid for immigration purposes?

*Matter of Escobar*, 24 I&N Dec. 231 (BIA 2007); *Escobar v. Keisler*, No. 07-72843 (9th Cir. filed July 19, 2007). Whether a parent's LPR status can be imputed to a child for purposes of calculating the 5 years of residence for LPR cancellation of removal.

*Matter of Acosta Hidalgo*, 24 I&N Dec. 103 (BIA 2007); *Acosta Hidalgo v. Mukasey*, No. 07-2896 (2d Cir. filed July 5, 2007). Whether an IJ may only terminate proceedings under 8 C.F.R. § 1239.2(f) if DHS has presented affirmative evidence of prima facie eligibility for naturalization.

*Matter of Tejwani*, 24 I&N Dec. 97 (BIA 2007); *Tejwani v. Atty. Gen.*, 07-4132 (3d Cir. filed Oct. 24, 2007). Whether a state conviction for money laundering is a crime involving moral turpitude.

Numerous circuit court decisions have reversed precedential BIA decisions. These cases include: *Blake v. Carbone*, 489 F.3d 88 (2d Cir. 2007) (vacating *Matter of Blake*, 23 I&N Dec. 722 (BIA 2005)); *Silva-Rengifo v. Attorney General*, 473 F.3d 58 (3d Cir. 2007) (rejecting *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000)); *Perez-Vargas v. Gonzales*, 478 F.3d 191 (4th Cir. 2007) (vacating *Matter of Perez-Vargas*, 23 I&N Dec. 829 (BIA 2005)); *Pickering v. Gonzales*, 465 F.3d 263 (6th Cir. 2006) (vacating *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)); *Aremu v. Dept. of Homeland Security*, 450 F.3d 578 (4th Cir. 2006) (vacating *Matter of Shanu*, 23 I&N Dec. 754 (BIA 2005)); *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000) (vacating *Matter of Roldan-Santoyo*, 22 I&N Dec. 512 (BIA 1999)).

## RELIGIOUS WORKERS SUE TO FILE VISA PETITION AND ADJUSTMENT APPLICATIONS CONCURRENTLY

On November 21, 2007, religious workers with pending petitions (I-360s) filed a class action to challenge USCIS' policy of requiring religious workers to have an approved petition before they can file an adjustment of status application (I-485). Because religious workers cannot file concurrently, often their non-immigrant status expires before the I-360 is approved, and they are forced to leave the United States and their religious work. Plaintiffs allege that the USCIS policy violates the INA, the First Amendment, the Equal Protection Clause, and the Religious Freedom Restoration Act. Plaintiffs sought a TRO and defendants opposed, stating that plaintiffs "are not in imminent danger of becoming inadmissible and can continue to work for their petitioning employers until May of 2008, at the earliest." Plaintiffs responded by asking the court to schedule a hearing on their motion for a TRO for April 11, 2008, approximately six weeks before the first plaintiff may become ineligible for adjustment of status. The case is *Ruiz-Diaz v. USA*, No. 07-1881 (W.D. Wash. filed Nov. 21, 2007).

## NATZ DELAY CLASS ACTION FILED

Four lawful permanent residents filed a class action lawsuit on behalf of themselves and those similarly situated in the Central District of California challenging delays in the adjudication of their naturalization applications. The plaintiffs include applicants who have completed their naturalization interview and applicants who have not yet been interviewed. Plaintiffs claim that defendants' failure to complete the adjudication of their applications violates the timeliness requirements of the APA and 8 U.S.C. § 1447(b). Plaintiffs also raise due process claims and allege that defendants violated the notice-and-comment requirements of the APA because defendants' 2002 expansion of the FBI name check constituted a "rule" within the meaning of 5 U.S.C. § 551(4). The case is *Bavi v. Mukasey*, No. 07-1394 (C.D. Cal. filed Dec. 4, 2007). Read more about other natz delay litigation, including other class actions at AILF's Natz Delay Litigation Issue Page at [http://www.aifl.org/lac/natz\\_delay0806.shtml](http://www.aifl.org/lac/natz_delay0806.shtml).

### AILF Legal Action Center, Litigation Clearinghouse

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The Clearinghouse is a project of AILF's Legal Action Center. The Litigation Clearinghouse serves as a national point of contact for lawyers conducting or contemplating immigration litigation. The LAC encourages immigration attorneys to contact the Clearinghouse to share case information.

Litigation Clearinghouse Newsletters are posted on AILF's web page at [www.aifl.org/lac/litclearinghouse.shtml](http://www.aifl.org/lac/litclearinghouse.shtml).

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