

BIA Pro Bono Project Update

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the applicable standard of review the IJ's decision should be upheld. The BIA specifically found that Mr. H's history with Algerian authorities and the nature of his return as a criminal deportee would more likely than not subject Mr. H to further acts of torture at the hands of Algerian authorities. The BIA accordingly found Mr. H entitled to deferral of removal under the CAT and upheld the IJ's decision.

BIA Reverses Removal Order and Terminates Proceedings

David Klein of Heller Ehrman LLP and David Lubitz of Bingham McCutchen LLP represented Mr. O, a lawful permanent resident from the Dominican Republic, on appeal before the BIA and on Petition for Review before the Second Circuit Court of Appeals. The IJ found that Mr. O was removable on two grounds, both related to criminal activity. However, due to an IJ misinterpretation, Mr. O was found to be removable on one of the grounds based on a crime for which Mr. O was charged but never convicted. The IJ determined that Mr. O was statutorily ineligible for cancellation of removal.

The IJ certified his opinion to the BIA. Counsel for Mr. O successfully argued that Mr. O was not convicted of the crime underlying one of the charges of removability. The BIA agreed that the IJ had erred and reversed the IJ's finding that Mr. O was removable on that particular ground. Nevertheless, the BIA affirmed that Mr. O was removable on another ground. The BIA also upheld the IJ's finding that Mr. O was ineligible for cancellation of removal due to the stop-time rule, believing that he had committed a crime that had halted the accrual of continuous presence needed to qualify for relief. Mr. O filed a Petition for Review and Motion for Stay of Removal with the Second Circuit. Government counsel conceded that it could not meet its legal burden of proving that Mr. O was removable on either of the grounds charged, and agreed to have the Petition for Review granted. The case was remanded to the BIA with instructions to terminate removal proceedings against Mr. O.

BIA Upholds Cancellation of Removal Grant

Richard O'Connell of Yost & O'Connell represented Mr. M, a lawful permanent resident from Mexico, before the BIA. DHS charged Mr. M with a crime involving moral turpitude based on a misdemeanor conviction, and placed Mr. M in removal proceedings. The IJ sustained the charge of removal, but found Mr. M eligible for cancellation of removal. The IJ noted that Mr. M had many positive equities in his favor, including his successful completion of probation, attendance in counseling sessions, a positive employment record and two sons in the United States. After weighing the positive and negative factors in Mr. M's case, the IJ concluded that Mr. M merited a favorable exercise of discretion. On appeal, Mr. O'Connell was able to overcome DHS's argument that Mr. M did not deserve a favorable exercise of discretion and the BIA upheld Mr. M's grant of cancellation of removal.

BIA Reverses IJ and Grants Cancellation

Congratulations to Ray Bolourtschi of Cofman & Bolourtschi LLC for winning cancellation of removal for Mr. V, an LPR from Mexico. The IJ had originally denied Mr. V's request for cancellation of removal as a matter of discretion because Mr. V failed to reveal an old arrest for which he was not convicted during the immigration court proceedings. Mr. V subsequently filed a pro se Notice of Appeal to the BIA. Mr. Bolourtschi represented Mr. V on appeal and convinced the BIA that the favorable equities in Mr. V's case, including Mr. V's lawful permanent residency of 30 years, his two teenage U.S. citizen children, and his steady work experience outweighed the adverse factors. Although Mr. V did fail to mention a 1997 arrest, he was not convicted of that offense and understood that his record was "clean." The BIA therefore determined that Mr. V merited a grant of cancellation of removal as a matter of discretion.