



American ideals. Universal values.

March 9, 2018

The Honorable Jefferson B. Sessions, III
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave.
Washington, D.C. 20530-0001

Re: Matter of A-B-, 27 I&N Dec. 227 (A.G. 2018)

Dear Mr. Attorney General:

On March 7, you referred to yourself a decision of the Board of Immigration Appeals in an unpublished asylum case and invited amicus briefing to assist you in your review, setting a deadline of April 6 for submission of briefs. As organizations concerned with the rights of refugees and asylum seekers in the United States, immigration scholars interested in participating as amici in this case, and former immigration judges and members of the Board of Immigration Appeals, we write to express our concern at the lack of transparency of this process and request a copy of the underlying decision.

While your decision referring the Board's decision to yourself for review was published, the underlying decision of the Board was not. The Board's own rules require parties referring to unpublished decisions of the Board to provide a copy of the decision or, at a minimum, the alien registration number of the respondent and the date of decision. *See, e.g.*, BIA Practice Manual, Chapter 1.4(d)(ii) (February 3, 2017). Your decision provides none of this information. The amicus coordinator at the Board has indicated that the respondent in this case is represented but refuses to provide the name and address of his or her counsel. While the identity of asylum seekers is confidential, the identity of their lawyers is not, and there is no justification for refusing to provide this information to interested amici.

In this case you have invited briefing on the question:

Whether, and under what circumstances, being a victim of private criminal activity constitutes a cognizable "particular social group" for purposes of an application for asylum or withholding of removal.

This question is both vast and unclear as formulated. What is "private criminal activity"? What exactly was the particular social group at issue in this case? Although in most circumstances it is not the fact of being a victim of persecution that defines a cognizable

“particular social group” for purposes of asylum or withholding of removal, many of the acts our law recognizes as persecution are also crimes even under the law of the country where they take place. A very broad range of applications for refugee protection long recognized as cognizable under U.S. and international refugee law could be framed in this fashion. These include the claims of battered women, of persons subjected to assault, rape, robbery and other crimes on account of their sexual orientation, of women and girls fleeing female genital cutting in countries where the state outlaws the practice but does not enforce its own laws, and of persons targeted by non-state actors for harm ranging from arson to attempted murder because of their religion, their race, or other protected characteristics, among others.

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. While your decision also invites briefs on other “points relevant to the disposition of this case,” we have no way of knowing what these might be. Indeed, without a copy of the Board’s decision we cannot even know what law applies, as this would depend on the circuit within which the immigration judge decided the case, and we do not have that information either.

Based on the little information publicly available, this case could have far-reaching consequences for refugees seeking asylum and withholding of removal in the United States. 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. 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.

In furtherance of these interests, we urge you to make a copy of the Board’s decision in Matter of A-B- immediately available to interested amici. Thank you.

Sincerely,

Organizations

ACLU
ACLU Minnesota
American Friends Service Committee
American Immigration Council
Amnesty International USA
Atlas: DIY
Capital Area Immigrants’ Rights Coalition
Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
Catholic Migration Services

Center for Gender & Refugee Studies
Central American Legal Assistance
East Bay Sanctuary Covenant
HIAS
Homies Unidos Inc.
Human Rights First
Immigrant Defenders Law Center
Interfaith Refugee and Immigration Service
International Refugee Assistance Project
Justice For Our Neighbors Michigan
Justice for Our Neighbors Northern Illinois
Justice For Our Neighbors Houston
Kids in Need of Defense (KIND)
Legal Aid Justice Center
Lutheran Immigration and Refugee Service
National Immigrant Justice Center
New York Immigration Coalition
Program for Torture Victims
Public Law Center
Sanctuary for Families
Tahirih Justice Center
The Door's Legal Services Center
The Florence Immigrant and Refugee Rights Project
The Legal Aid Society
Urban Justice Center Domestic Violence Project

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