

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: February 19, 2020

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No: 19-0002-S189
Assignment No: 20-01-0055

SUBJECT: Resolution (Martinez-Cedillo) relative to the Board of Immigration Appeals.

CLA RECOMMENDATION: Adopt the attached Resolution to include in the City's 2019-2020 Federal Legislative Program, SUPPORT of legislation and/or administrative action that reinstates the Board of Immigration Appeals decision that recognizes domestic violence as a basis for asylum.

SUMMARY

On November 27, 2019, a Resolution (Martinez-Cedillo) was introduced to support federal legislation to reinstate the Board of Immigration Appeals decision that recognizes domestic violence as a basis for asylum.

The Resolution states that the City Council has a proud legacy of advancing women's rights combating gender-based violence, and protecting immigrant communities by condemning actions that target immigrant and asylum-seeking residents, including those under the Trump Administration. The Resolution states that on June 11, 2018, the former U.S. Attorney General issued a decision in the asylum case Matter of A-B which eliminated a prior Board of Immigration Appeals (BIA) decision that recognized domestic violence as a basis for asylum and, as a result, claims based on domestic violence no longer qualify for asylum relief. According to the Resolution, in 2018, the U.S. District Court for the District of Columbia found that the action issued by the Attorney General was inconsistent with existing legal precedents and congressional intent behind the Refugee Act of 1980, holding that there could be no blanket rule barring domestic violence asylum claims.

The Resolution states that the U.S. Department of Homeland Security (DHS) and the U.S. Department of Justice (DOJ) have undermined the court ruling and instructed adjudicators that Matter of A-B must continue to be used in determining asylum claims on their merits.

The Resolution emphasizes that the majority of the women and girls seeking asylum at the U.S. southern border come from El Salvador, Guatemala, and Honduras, which are currently experiencing high levels of violence, including widespread domestic violence and high rates of femicide. The United Nations has asserted that the Matter of A-B policy change stands at odds with the United States obligations by creating a high barrier to women fleeing domestic violence. The Resolution notes that the Matter of A-B does not reflect the values of spirit of Los Angeles or the United States and must be reversed at the earliest possible opportunity. Therefore, it is recommended that the Resolution be approved.

BACKGROUND

The U.S. Immigration and Naturalization Act (INA) defines the term "refugee" as "any person who is outside any country of such person's nationality, or in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."¹ Applicants for asylum based on this definition must show that they are or have been persecuted in their home country by the government or by persons the government is unwilling or unable to control.

¹ Women Whose Governments Are Unable or Unwilling to Provide Reasonable Protection From Domestic Violence May Qualify as Refugees Under United States Asylum Law – Deborah Anker, Lauren Gilbert, and Nancy Kelly.

Experts in the field have found that the criteria “membership in a particular social group” is ambiguous and has led to inconsistent rulings by immigration judges and the BIA. Furthermore, federal law provides the Attorney General with the ability to unilaterally examine or consider any cases after the BIA has issued a ruling.

Immigration Judge Decision and BIA Reversal

- In 1995, Rodi Alvarado, a national of Guatemala requested asylum and withholding of deportation before an immigration judge based on the severe domestic violence she suffered in Guatemala at the hands of her husband and on her fear that such violence would continue if she were to return. The immigration judge found Ms. Alvarado’s case credible and granted asylum. However, the Immigration and Naturalization Service (INS) appealed the immigration judge’s decision to the Board of Immigration Appeals (BIA).
- In 1999, the BIA agreed that Ms. Alvarado’s testimony was credible, but concluded that the harm at issue in this case failed to meet the statutory requirements for a grant of asylum. The BIA reversed the immigration judge’s decision, denied asylum, and granted 30 days voluntary departure. The BIA’s conclusion was based on the argument that the immigration judge had essentially defined the “particular social group” by the harm the applicant feared. The BIA stated that this type of circular reasoning did not establish the existence of a particular social group for purposes of asylum law.

U.S. Attorney General Decisions

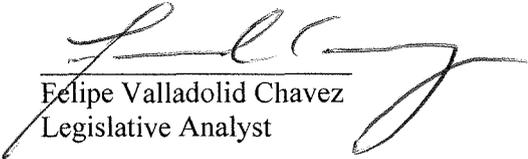
- Subsequently, the INS re-examined the case and concluded that the Board’s analysis and conclusion was problematic. In 2001, Attorney General Janet Reno vacated the BIA’s decision pending final publication of proposed regulations that would have clarified the definitions of “persecution” and membership in a “particular social group,” but those regulations were never finalized. The Attorney General remanded the case to the BIA with instructions to decide it after the rule was finalized.
- In February 2004, DHS submitted a memo to Attorney General Ashcroft conceding that “married women in Guatemala who are unable to leave a relationship” is a viable “particular social group.” In the memo, DHS asked the Attorney General to remand the case to the BIA with instructions to grant asylum without an opinion or to postpone issuing a precedent decision until a rule was finalized.
- In 2009, an immigration judge heard a case in which a woman from Guatemala suffered severe abuse by her husband. The immigration judge found that the victim did not demonstrate that she had suffered past persecution or had a well-founded fear of future persecution on account of a “particular social group” comprised of “married women in Guatemala who are unable to leave their relationship.” The immigration judge determined that there was inadequate evidence and that the abuse was the result of “criminal acts, not persecution.” The immigration judge found that the woman did not demonstrate eligibility for asylum or withholding of removal under the INA Act. This decision was appealed and in 2014, DHS conceded that the victim established that she had suffered past harm arising to the level of persecution and that persecution was on account of a particular social group comprised of “married women in Guatemala who are unable to leave their relationship.”
- Immigration law permits the Attorney General to unilaterally reverse BIA decisions. Attorney General Jeff Sessions reviewed the previous BIA decision and exercised this authority in order to address whether being a victim of private criminal activity constitutes a particular social group for asylum and withholding of removal. In June 2018, the Attorney General declared that “the asylum statute does not provide redress for all misfortune,” and ruled that the BIA had erroneously recognized an expansive new category of “particular social groups” based on private violence. The Attorney General determined that “generally, claims by aliens pertaining to domestic violence or gang violence perpetrated by non-governmental actors will not qualify for asylum,” or meet the “credible fear” standard to warrant consideration of an asylum application.
- In 2018, the U.S. District Court of Washington D.C. ruled that the action implemented by former U.S. Attorney General Jeff Sessions was “arbitrary and capricious” and conflicted with the INA. Accordingly, the court placed a permanent injunction and enjoined USCIS from applying these policies with respect to

the court placed a permanent injunction and enjoined USCIS from applying these policies with respect to credible fear determinations. Nonetheless, the DHS and DOJ have instructed federal adjudicators to continue to disqualify applications for asylum based on domestic violence.

Human Rights First

According to Human Rights First, an independent advocacy organization that lobbies for human rights, the percentage of asylum seekers granted protection from El Salvador, Guatemala, and Honduras was 13.6 percent in 2010 and 26.7 percent in 2016. The increase is attributed to dangerous conditions in the Central American region, including gangs that control the territory, and high levels of gender-based violence. Human Rights First reports that this increase was reversed with the Trump Administration.

On December 6, 2019, the City Council approved a Resolution (Blumenfield-O'Farrell-Rodriguez) through which the City reaffirms its commitment to welcoming refugees and its opposition to the Trump Administration drastic cuts on the number of refugees admitted to the United States. Approval of the attached Resolution is consistent with the City's intent to protect those who are most vulnerable and are victims of domestic violence.



Felipe Valladolid Chavez
Legislative Analyst

SMT:fv

Attachment: Resolution (Martinez-Cedillo)

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, the Los Angeles City Council has a proud legacy of advancing women's rights, combating gender-based violence, and protecting immigrant communities by condemning actions of that target immigrant and asylum-seeking residents, including under those under the Trump Administration; and

WHEREAS, on June 11, 2018, the former U.S. Attorney General issued a decision in the asylum case Matter of A-B- which eliminated a prior Board of Immigration Appeals (BIA) decision that recognized domestic violence as a basis for asylum and, as a result, claims based on domestic violence would no longer qualify for asylum relief; and

WHEREAS, in 2018, the U.S. District Court for the District of Columbia found that the action issued by the Attorney General was inconsistent with existing legal precedents and congressional intent behind the Refugee Act of 1980, holding that there can be no blanket rule barring domestic violence asylum claims; and

WHEREAS, the U.S. Department of Homeland Security and the U.S. Department of Justice have undermined the Court and instructed adjudicators that Matter of A-B- must continue to be used in determining asylum claims on their merits; and

WHEREAS, the majority of women and girls seeking asylum at the U.S. southern border come from El Salvador, Guatemala, and Honduras which are currently experiencing high levels of violence, including widespread domestic violence and high rates of femicide; and

WHEREAS, United Nations guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met and has asserted that the Matter of A-B- ruling stands at odds with the United States obligations by creating a high barrier to women fleeing domestic violence; and

WHEREAS, In 2018, 84 members of Congress cosponsored H.R 987 (Schakowsky) (D-Ill.) condemning the former Attorney General's decision in Matter of A-B-, including Los Angeles area representatives; and

WHEREAS, The Matter of A-B- decision does not reflect the values or spirit of Los Angeles or the United States and must be reversed at the earliest possible opportunity;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, that the City of Los Angeles hereby includes in the 2019-2020 Federal Legislative Program, SUPPORT of legislation and/or administrative action that reinstates the Board of Immigration Appeals decision that recognizes domestic violence as a basis for asylum.

PRESENTED BY _____
NURY MARTINEZ
Councilwoman, 6th District

SECONDED BY _____

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