The Green Card

Welcome to the Newsletter of the FBA's Immigration Law Section

Eileen Scofield, Chair

Quote of the Month

William Roper: So, now you give the Devil the benefit of law!
Sir Thomas More: Yes! What would you do? Cut a great road through the law to get after the Devil?
William Roper: Yes, I'd cut down every law in England to do that!
Sir Thomas More: Oh? And when the last law was down, and the Devil turned 'round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man's laws, not God's! And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

—Robert Bolt, *A Man for All Season* (1960)

PUBLISH IN THE GREEN CARD!

The Green Card always seeks news items and articles of all sorts. Have you formed a new firm, gotten promoted, or won a big case? Send me an article. I'm especially interested in hearing about Section activities (with photos!), such as luncheons, CLE's and Younger Lawyer activities. Here is your chance to gain the respect and admiration of your friends and colleagues!
Send your article to me at LBurman@aol.com in Word format. Photos should not be imbedded in the Word document. Please attach them as jpegs to your email.

Larry Burman, editor, The Green Card

In This Issue

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Section Board Members in the Media

MSNBC and Telemundo, together with Center for Investigative Reporting, interviewed Christine Lockhart Poarch for the documentary "Clash at the Border" ("Batalla en la Frontera") that aired in December 2015. Christine is an attorney at Poarch Law, a full service immigration law and adoption practice in southwestern Virginia. She is a Virginia Law Foundation Fellow and a member of the FBA-ILS governing board.

Check it out at youtu.be/NNnL-kzkwXM.

Margaret Stock, a leading advocate for immigration relief for the military, was interviewed by National Public Radio.

Here is the link to the story on NPR—listen to it, and spread it around as well. www.npr.org/2016/01/13/462372040/service-members-not-citizens-meet-the-veterans-who-have-been-deported.

Ms. Stock, a retired army officer, is an immigration attorney with Cascadia Cross-Border Law Group. She is listed in the Top 10 of International Who's Who of Corporate Immigration Lawyers (2014), and was named a 2013 MacArthur Foundation Fellow.

PUBLISH IN THE FEDERAL LAWYER!

The Federal Lawyer continues to accept submissions for feature articles of 3000 to 8000 words, as well as letters to the editor, book reviews and commentaries. Guidelines for submission can be found at the fedbar.org website under publications/federal lawyer. Deadlines fall on the first of each month from December 2015 through most of 2016. There is no immigration theme issue in 2016, but a general issue is scheduled for the end of the year, with article submissions due Aug. 1, 2016.

If authors wish to submit an article with the official endorsement of ILS, they can send their draft at least two weeks in advance of the FBA deadline to Dr. Alicia Triche at aliciatricheclc@gmail.com. She will consider whether ILS will endorse the submission and, if so, provide edits and submit on the author's behalf.

Dr. Alicia Triche is Chair of the Section's Publications Committee.

Immigration Rant

By Jason Dzubow

You Can Go Home Again (Sort of): Visiting Your Home Country After a Grant of Asylum

"If I am granted asylum, can I return to my home country?" I hear this question a lot.

The skeptic would argue that no legitimate asylum seeker should ever return home. Indeed, they might argue, asylum is reserved for people who cannot return due to the danger of persecution, and anyone willing to go back did not need asylum in the first place. I think this is wrong.

Many of my clients face long-term threats in their countries. For instance, I have clients from Afghanistan who have been threatened by the Taliban. These clients could return briefly to Afghanistan and remain relatively safe. However, to live there for any length of time would be extremely dangerous. Even where the threat comes from the government itself, clients can sometimes safely visit home for short periods of time. I've had Ethiopian clients who were wanted by their government, but who were able to return for a few weeks before the government realized that they were in the country. Ethiopia—like many developing countries—is not as adept at tracking people as the United States, and so it is possible to keep a low profile and avoid trouble, at least for a time.

And of course, there are valid reasons to return home. Most of my clients have left family members behind. Others have businesses or properties. Still others are political activists who wish to return home to promote democracy and human rights. There are all sorts of reasons people want to go to their home countries—when balanced against the danger, some reasons are better than others (and some people are more willing than others to take risks).

But what are the legal implications of a return trip for people with asylum? And does the calculus change if the person has a green card or is a U.S. citizen?

For an asylee (a person granted asylum), the U.S. government can terminate asylum status if it determines that the person has "voluntarily availed himself or herself of the protection of the country of nationality or last habitual residence by returning to such country." This means that asylum can be terminated if the person placed herself under the protection of her home government by returning to her country (or even by using the passport from her home country to travel to a third country). USCIS can also terminate asylum status if it determines that the person is no longer a refugee (for example, if country conditions have changed and it is now safe to return home) or if it determines that asylum was obtained fraudulently (there are other reasons for terminating asylum, as well). A return trip to the home country could trigger one (or more) of these bases for termination.

Even with a green card, USCIS can terminate asylum for the reasons listed above.

If you don't run into trouble when you return to the U.S. from your trip, you could have problems at the time you file for your citizenship. When you complete the naturalization form (the N-400), you need to list all the countries you visited, and so the government will know whether you went home (and if you omit your travels from the form, you run the risk that the government will know about them from its own sources).

For U.S. citizens who originally obtained their status based on asylum, the risk of a return trip is much less—but it is not zero. If the return trip causes the U.S. government to believe that asylum was obtained fraudulently, it could institute de-naturalization proceedings. I have heard of the U.S. government de-naturalizing citizens based on fraud, so it can happen, but all the case I know about involved aggravating factors, like criminal convictions or human rights abuses. Nevertheless, if USCIS knows about a fraud, it certainly could take action.

So how do you protect yourself if you have to travel back to your home country?

First, it is worthwhile to consult an attorney before you go. Don't go unless there is a very important reason for the trip. Also, keep the trip as short as possible. The less time you are in your country, the better. In addition, you should collect and save evidence about the return trip. If you went to visit a sick relative, get a letter from the doctor. If you returned home for only a short time, keep evidence about the length of your trip—passport stamps and plane tickets, for example. If you hid in your house and never went out, get some letters from family members who can attest to this. In other words, try to obtain evidence that you did not re-avail yourself of the protection of your home government and that you had a compelling reason to return home. That way, if USCIS ever asks for such evidence, you will be ready.

The safest course of action is to never return home after a grant of asylum. However, in life, this is not always possible. If you do have to go back, you should consult a lawyer and take steps to minimize the likelihood that your trip will impact your immigration status in the U.S.

I Hate Withholding of Removal. Here's Why.

I was in court recently for an asylum case where the DHS attorney offered my clients Withholding of Removal as a "courtesy" in lieu of asylum. DHS did not believe that my clients were legally eligible for asylum, but made the offer in order to settle the case. I negotiated as best I could for asylum, and I think the DHS attorney listened carefully, but ultimately, he was unmoved. When the Immigration Judge ("IJ") learned that DHS would agree to Withholding, he remarked that the offer was "generous," which I took as a sign that he wanted us to accept it. In the end, my clients did not agree to Withholding of Removal, and so the IJ reserved decision. We shall see what happens.

So what is Withholding of Removal? Why did the IJ view an offer of Withholding as generous? And why did my clients refuse this offer?

Withholding of Removal under INA § 241(b)(3) is a lesser form of relief than asylum. If a person has asylum, he can remain permanently in the U.S., obtain a travel document, petition to bring immediate relatives here, and become a lawful permanent resident and then a U.S. citizen.

A person with Withholding of Removal, on the other hand, has technically been ordered deported, but the deportation is "withheld" vis-à-vis the country of feared persecution. This means that the person cannot be deported to that country, but she could (theoretically) be deported to a third country. A person with Withholding of Removal is eligible for an employment authorization document ("EAD"), which must be renewed each year. However, unlike with asylum, she cannot leave the U.S. and return, she is not eligible to become a resident or citizen, and she cannot petition for family members. In addition, on occasion, ICE (Immigration and Customs Enforcement) attempts to deport the person to a third country. Normally, this consists of ICE ordering the person to apply to various countries for residency. This is essentially a futile exercise, and it usually involves hours of wasted time preparing applications and sitting around the ICE office. Maybe it is designed to intimidate the person into leaving, but at a minimum, it is another stressful hassle that the Withholding-of-Removal recipient must endure.

The bottom line for Withholding of Removal is that those who have it are never truly settled here. They risk losing their jobs and drivers' licenses if their EAD renewal is delayed (which it often is). They cannot qualify for certain jobs or certain government benefits. They usually cannot get in-state tuition for school. They can never travel outside the U.S. to visit relatives or friends, even those who are gravely ill. They are here, but not really here.

For me, Withholding of Removal is more appropriate for some recipients than others: One reason a person gets Withholding instead of asylum is that he has criminal convictions that make him ineligible for asylum. In the case of a convicted criminal, it is easier to justify denying the benefit of asylum, even if we do not want to send the person back to a country where he could be persecuted.

In other cases, it is more difficult to justify Withholding. If a person fails to file for asylum within one year of his arrival in the United States, he generally becomes ineligible for asylum. He remains eligible for Withholding, but downgrading his status from asylum to Withholding because he failed to file on time seems a harsh consequence for a relatively minor infraction. Other people—like my clients mentioned above—might be ineligible for asylum because the government believes they were resettled in a third country before they came to the U.S. "Firm resettlement" is a legal construct and it does not necessarily mean that the person can live in the third country now (my clients cannot).

Despite the limitations of Withholding of Removal, many IJs (and DHS attorneys) seem to view it as a generous benefit, and they encourage asylum applicants to accept Withholding as a way to settle removal cases. They also tend to take a dim view of applicants who refuse an offer of Withholding: If the person is so afraid of persecution in the home country, why won't she accept Withholding and avoid deportation to the place of feared persecution? I understand their perspective, but I think it fails to account for the very basic desire of people like my clients to make the U.S. their home. They don't want to live forever unsettled and uncertain. Having escaped danger, they want to live somewhere where they can make a life for themselves and—more importantly—for their children. Withholding does not give them that.

Frankly, I think that most IJs and DHS attorneys underestimate the difficulty of living in the U.S. with Withholding of Removal. And these difficulties are not limited to practical problems related to jobs and driver's licenses, attending and paying for school, and the indefinite separation from family members. For my clients at least, Withholding of Removal does not alleviate the stress of their situation. They have fled uncertainty only to find more uncertainty. Will they be deported to a third country? Will they lose their job if the EAD renewal is delayed? If their driver's license expires and they must drive anyway, will they be arrested? Can their children afford college? If they buy property and invest in life here, will they ultimately lose it all? Such uncertainty would be bad enough for the average person, but we are talking here about people who have already had to flee their homelands. Asylum is a balm to this wound; Withholding of Removal, in many cases, is an aggravating factor.

Perhaps if IJs and DHS attorneys knew more about the consequences of Withholding of Removal, they would be more understanding of asylum applicants who are reluctant to accept that form of relief, and they would be more generous about interpreting the law to allow for a grant of asylum whenever possible.

In Defense of Muslim Refugees

Since the vicious attack late last year by Muslim extrem-

From the Editor

Please send all news items to me at LBurman@aol.com. We really want to know what is happening in the Section, and in the professional lives of our members. We especially would appreciate photographs. Kindly send submissions in Word format.

Larry Burman, editor

ists in Paris, attention in the U.S. has focused on our country's refugee policy and President Obama's decision earlier this year to admit an additional 10,000 Syrian refugees (above the normal refugee ceiling of 70,000). More than half of the nation's governors have indicated that Syrian refugees are unwelcome in their states. Paul Ryan, the new Speaker of the House, is pushing legislation to hinder the admission of Syrian and Iraqi refugees. And most Republican presidential candidates have expressed their opposition to resettling Syrian or Muslim refugees in our country. Senator Ted Cruz has called the plan "absolute lunacy."

As an immigration attorney who specializes in political asylum, I represent clients whose lives have been profoundly disrupted by war and terrorism, who have been threatened or harmed by extremists, and who have lost loved ones to terrorist attacks. Many of my clients come from Muslim countries, such as Syria, Iraq, Afghanistan, and Egypt. These are people who have devoted their lives--and often risked their lives--to promote democracy, women's rights, and human rights. Many have served shoulder-to-shoulder with soldiers from the U.S. military in places like Afghanistan and Iraq. Indeed, I suspect that many of my Muslim clients have risked and sacrificed far more in the defense of liberty and in support of U.S. policy than the American commentators who routinely disparage them.

In the face of barbarism from ISIS and other extremists, we as Americans should not abandon our friends or shrink from our humanitarian commitments. As the leader of the Free World, we must lead not only with the sword. We must also lead by demonstrating our values, and by showing the world that we do not abandon those values in difficult times.

During the refugee crisis that followed World War II, the U.S. committed itself to assisting displaced persons. Since then, we've absorbed—and been enriched by—tens of thousands of refugees from Western Europe, the Soviet Union, Indochina, Africa, the Middle East, and the Americas. We are, to a great extent, defined by our generosity towards the dispossessed: "Give me your tired, your poor, your huddled masses yearning to breathe free."

Allowing ourselves to be intimidated into compromising these humanitarian values would be a victory for the terrorists. It would mean that we gave in to our fears. Great nations are not bullied by ignorant thugs. We already have strong safeguards in place to identify potential terrorists and criminals, and prevent them from coming to our country. Indeed, our asylum and refugee programs are probably more secure than any other aspect of our immigration system.

Also, many of the Muslims who have sought sanctuary in the U.S. are people who worked with the United States military or government, or who worked for international NGOs and companies in concert with our efforts (however imperfect) at nation-building. Such people risked their lives and trusted us. To abandon them would send a message that America does not stand by its friends. This is a message that we cannot afford to send. If we are not trustworthy, no one will cooperate with us going forward.

Finally, allowing terrorists to drive a wedge between our country and moderate Muslims would make the world more dangerous. There will be fewer bridges, not more. We need to keep strengthening ties between the West and the Muslim World. The terrorists want to cut those ties; we cannot let them.

In the aftermath of the Paris attack and the claim by ISIS that it will send infiltrators to the West disguised as asylum seekers, the desire to re-examine security procedures is understandable. But as we evaluate our humanitarian policies, we should keep in mind people like my clients and the many Muslims who have demonstrated their fealty to us in our fight against extremism.

We should not allow the evil deeds in France to cause us to retreat from our humanitarian obligations, which would compromise our principles, or to weaken our commitment to our Muslim allies, who are crucial in our battle against Islamic terrorists. Many people in the Muslim World want change. We saw that in the Arab Spring. We need to align ourselves with such people and give them our support. We need to stay engaged with the world and not retreat. When considering Muslim refugees and asylum seekers, we should be guided by our highest ideals, not by the dark vision of our enemies.

Some Good News from Asylum-Land

For those of us involved with refugees, 2015 was not a great year. Never-ending turmoil in Syria, Iraq, and Afghanistan have resulted in unprecedented numbers of people fleeing their homelands. The flow of asylum seekers arriving at the Southern border of the U.S. from Central American and Mexico has not let up. Our Asylum Offices and Immigration Courts are increasingly backlogged, and it's reached a point where the basic integrity of our humanitarian systems seem in jeopardy.

Sometimes I think that in order to continue working in this field, you have to be either freakishly optimistic or pathologically disassociated from reality. I'm not sure I fall into either category, yet I'm somehow still in the game.

In any event, one thing that helps is to remind ourselves of our successes. In that vein, I thought I'd look back at a few pieces of good news we've had in my office during the past year:

Particular Social Group (Sexual Orientation)/Rwanda - I've always had an interest in folklore and magic, and so when there is crossover with an asylum case, it piques my interest. This year I worked on the case of a young gay man from Rwanda, who was kidnapped by his family members and subjected to a bizarre and terrifying exorcism ritual. Rwanda is not a safe place for LGBT people in the best cases, and when your family is out to get you, it's even worse. The asylum office recognized that my client suffered past persecution and granted him asylum.

Political Opinion/Haiti - My client was a political activist who had worked closely with Paul Farmer, a world-renown physician who founded Partners in Health and who is the

RANT continued on page 12

The Convention Against Torture and Third-Party Abuse: When Does a Government Breach Its Duty?

By Lissette Eusebio

The international community has long regarded the concept of torture as inhumane and repugnant. In an attempt to combat the problem, nations, including the United States, came together in joining the Convention Against Torture (CAT). The CAT prohibits a party State from deporting any person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture. *See* United Nations Convention Against Torture and Other Inhumane or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, art. 3, 23 I.L.M. 1027, 1028. An applicant for protection under the CAT bears the burden of showing that it is more likely than not that he or she would be tortured if returned to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). Torture is defined by regulation as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purpose as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person action in an official capacity." 8 C.F.R. § 1208.18(a)(1).

Although generally the torture must be inflicted at the hands of the government, an applicant for protection under the CAT may obtain relief when such pain or suffering is inflicted by a private party with the consent or *acquiescence* of a public official. *See* 8 C.F.R. § 1208.18(a)(1) (emphasis added). The regulation states that a "public official acquiesces to torture when prior to the activity constituting torture, the public official has awareness of such activity and thereafter breaches his or her legal responsibility to intervene to prevent such activity." 8 C.F.R. § 1208.18(a)(7). Black's Law Dictionary defines acquiescence as, "To accept tacitly or passively; to give implied consent to (an act)." Black's Law Dictionary (9th Ed. 2009).

The issue of whether acquiescence has been demonstrated may arise in cases in which a person seeks protection from third-party violence in a country where the government appears to have the intent of protecting the person, but is unable to do so. Although most circuits now consider a government to acquiesce where it demonstrates "willful blindness," many are still undecided on whether a government acquiesces to torture when officials are aware of third-party abuse, but are unable to prevent it. This article will explore new developments in the circuit courts' interpretation of acquiescence and government action in the context of the CAT, updating and expanding upon our previous article and specifically addressing whether there is government acquiescence when the government is not only unwilling, but also *unable* to intervene to prevent the torture. *See* Brea C. Burgie, *The Convention Against Torture and Acquiesce: Willful Blindness or Willful Awareness?*, Immigration Law Advisor, Vol. 5, No. 4 (April 2011).

The issue of whether willful blindness amounts to acquiescence has continued to develop. In a previous article, we summarized the positions taken by the Board of Immigration Appeals and the Attorney General on acquiescence, and the circuits' reaction to *Matter of S-V-*, 22 I&N Dec. 1306, 1312 (BIA 2000) and *Matter of Y-L, A-G, & R-S-R*, 23 I&N Dec. 270, 283 (A.G. 2002). *See* Brea C. Burgie, *The Convention Against Torture and Acquiesce: Willful Blindness or Willful Awareness?*, Immigration Law Advisor, Vol. 5, No. 4, (April 2011). There, we concluded that the majority of the Circuits do not require actual knowledge of the third-party torture and that willful blindness suffices to establish acquiescence under the CAT. *Id.*

In *Matter of S-V-*, the Board took the position that a government's inability to control a group ought not lead to the conclusion that the government acquiesced to the group's activities. 22 I&N Dec. at 1312. Instead, the Board held that a respondent "must do more than show that the officials are aware of the activity constituting torture but are powerless to stop it." *Id.* The Board, however, acknowledged that actual knowledge is not required, and that acquiescence may be established through willful blindness.[1] *See id.* The Attorney General subsequently added that, "the relevant inquiry under the [CAT] is whether governmental authorities would approve or 'willfully accept' atrocities committed against persons in the respondent's position." *Matter of Y-L,*23 I&N Dec. at 283 (citation omitted).

As discussed in the prior article, the Second, Third, Fifth, Sixth, and Ninth Circuits appear to have rejected *Matter of S-V-* and adopted the "willful blindness" standard, finding that actual knowledge of the torture is not required. *See* Brea C. Burgie, *The Convention Against Torture and Acquiesce: Willful Blindness or Willful Awareness?*, Immigration Law Advisor, Vol. 5, No. 4, (April 2011). The Fourth, Seventh, and Eighth Circuits have also joined the majority adopting the "willful

blindness" standard. SEE. Although the majority of the Circuits have rejected the "willful acceptance" standard articulated in *Matter of Y-L-*, there does not appear to be unanimity as to whether there is acquiescence when the government has actual or inferred knowledge of the torture, but is *unable* to prevent it.

Circuits following the willful blindness standard that have suggested that a government's inability to oppose torture could amount to acquiescence.

The Seventh and the Ninth Circuits have suggested that government acquiescence occurs when a government has actual or inferred knowledge of third-party torture and is unable to protect the victims.

Without explicitly rejecting *Matter of S-V-*, the Seventh Circuit has concluded that the government's inability to protect against third-party-torture amounts to acquiescence. *See Sarhan v. Holder*, 658 F.3d 649, 657-58 (7th Cir. 2011). In *Sarhan*, the respondent argued that the Jordanian government could not and would not do anything to protect her from an honor killing by a third-party. The Seventh Circuit held that the evidence "permits no conclusion other than that the government is *ineffective* when it comes to providing protection to [potential victims of honor killings]." Id. at 657 (emphasis added). The court noted that "this showing satisfies both the standards for finding governmental action for purposes of withholding and also those under the CAT." *Id*. at 657-58. Thus, the Seventh Circuit has taken the position that a government's ineffective approach towards intervention may amount to a breach of the duty to prevent torture, thereby constituting acquiescence. *See id*.; *see also* 8 C.F.R. § 1208.18(a)(7) (stating that a public official acquiesces when he or she is aware of an activity constituting torture and thereafter breaches his or her legal responsibility to intervene to prevent such activity).

The Ninth Circuit, which rejected the "willful acceptance" standard in 2003, has observed that "acquiescence suggest passive assent because of *inability* or unwillingness to oppose." *Zheng v. Ashcroft*, 332 F.3d 1186, 1198 n.8 (9th Cir 2003). In *Ornelas-Chavez v. Gonzales*, the court cited to this footnote in stating that an alien seeking protection under the CAT may meet his or her burden where it is shown that "public officials could have inferred the alleged torture was taking place, remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it." 458 F.3d 1052, 1060 (9th Cir. 2006). Subsequent opinions from the Ninth Circuit have also stated that acquiescence exists where a government elects to stand by while torture occurs because the government is unable or unwilling to oppose it. *See, e.g., Oyeniran v. Holder*, 672 F.3d 800, 803 (9th Cir. 2012).

Circuits following the willful blindness standard that have rejected the premise that an inability to oppose third-party torture constitutes acquiescence.

The Fourth and Eighth Circuits have joined the majority in adopting the willful blindness over the "willful acceptance" standard. However, these Circuits, along with the Fifth, reject the assertion that a government's inability to oppose torture amounts to acquiescence.

In 2013, the Fourth Circuit joined the majority relying on *Zheng* and held that acquiescence may be shown where officials have actual knowledge of or turn a blind eye to torture. *See Suarez v. Holder*, 714 F.3d 241, 245-46 (4th Cir. 2013). In *Suarez*, the court noted that the Board's citation to *Matter of S-V-* suggested employment of the "willful acceptance" standard, but the court concluded that the Board's analysis was in fact consistent with the "willful blindness" standard. 714 F.3d at 246-47.

In addressing a government's ability to combat third-party abuse, the Fourth Circuit has concluded that acquiescence was not shown in a case where evidence indicated that the government of El Salvador was taking steps to deal with the "difficult problem" of gang violence. *See Martinez v. Holder,* 740 F.3d 902, 914 (4th Cir. 2014).

In *Mouawad v. Gonzales*, the Eighth Circuit stated that government acquiescence may be established through willful blindness, but noted that a government's inability to protect its citizens is not enough by itself to establish acquiescence. 485 F.3d 405, 413 (8th Cir. 2007). The court stated: "[The] inquiry centers upon the willfulness of a government's nonintervention. A government does not acquiesce in the torture of its citizens merely because it is aware of torture but powerless to stop it, but it does cross the line into acquiescence when it shows 'willful blindness towards the torture of citizens by third parties." *Id.* (internal quotations and citations omitted). In *Garcia v. Holder*, the Eighth Circuit cited the standard articulated in *Mouawad* in addressing whether the government of Guatemala was willfully blind to the problem of gang violence and the threat posed to the CAT applicant. 746 F.3d 869, 873 (8th Cir. 2014). The court concluded that record evidence suggested that the Guatemalan government was trying, with mixed success, to combat the problem. The court stated, "While the evidence may support the conclusion that the Guatemalan government is less than successful at preventing the torture of its citizens by gang members, the record does not compel the conclusion that the government is willfully blind toward it." *Id.* at 874. In contrast, the court in *Mouawad* concluded that remand was necessary for further analysis of whether the Lebanese government would acquiesce to the alien's mistreatment by a third-party.

Adhering to the willful blindness standard, the Fifth Circuit has also clarified that a government's inability to provide complete protection against acts by third parties does not amount to acquiescence. *See Chen v. Gonzales*, 470 F.3d 1131, 1141-43 (5th Cir. 2006). Citing to *Zheng* and *Khouzam*, the respondent in *Chen* argued that "the level of government involvement that constitutes acquiescence is not actual acceptance of torture but rather mere awareness or willful blindness of torture and failure to prevent it." *Id*. Thus, the respondent asserted that she was only

required to prove that the government is aware of the torture and fails to prevent it. *Id.* The court disagreed, concluding that evidence of governmental action in addressing corruption and third-party abuse had been properly considered in determining whether the government would be willfully blind to mistreatment of the respondent by human traffickers or money lenders. *Id.* at 1142-43; *see also Garcia v. Holder*, 756 F.3d 885, 892 (5th Cir. 2014) (noting that "potential instances of violence committed by non-governmental actors against citizens, together with speculation that the police might not prevent that violence, are generally insufficient to prove government acquiescence . . ."). However, with respect to the issue of official corruption, the Fifth Circuit has held that acts by corrupt officials operating "under color of law" in conjunction with third-parties may be sufficient to demonstrate government involvement or acquiescence to torture. *See Garcia v. Holder*, 756 F.3d at 892-93.

Circuits following willful blindness and finding that the government's inability to protect is not dispositive.

The Third Circuit has continued to employ the willful blindness standard, but has taken the position that a government's inability to protect against third-party-torture is not a dispositive factor in determining whether the government acquiesces to torture. *See Pieschacon-Villegas v. Att'y Gen. of U.S.*, 671 F.3d 303, 310 (3d Cir. 2011). In *Pieschacon-Villegas*, the respondent was involved in money laundering for a Colombian drug cartel and he later cooperated with the FBI in the prosecution of some members of the drug cartel. He feared torture at the hands of the drug cartel for assisting the FBI and claimed that the Colombian government would acquiesce to the torture. *Id.* at 306-08. The Third Circuit noted that the Board failed to consider the country report which indicated that a "number of government officials have been suspected of, or charged with, civil rights violations or involvement or paramilitary atrocities, including murder and forced disappearances, or that the Colombian government claims that all paramilitary organizations have demobilized despite abundant evidence to the contrary." *Id.* at 314. The Third Circuit held that government can still acquiesce through willful blindness, even when the government is unable to protect; and that simply because there is evidence of the government actively opposing the third party torture, it does not automatically prove the government is not turning a blind eye to it. *Id.* at 310, *see also Bhatt v. Att'y Gen. of U.S.*, 2015 WL 1477887 (3d Cir. April 2, 2015) (remanding proceedings to the Board to apply the proper acquiescence standard taking into consideration the Immigration Judge's finding that "despite its official policies, India remains 'apathetic to the point of maintaining a de facto policy of discrimination and violence against women.'").

The Second Circuit, which explicitly rejected *Matter of Y-L-*[2] and adopted the willful blindness standard, requested the Board issue a precedential opinion on whether as a matter of law, the government acquiesces to a person's torture when: (1) some officials attempt to prevent that torture; (2) while other officials are complicit; and (3) the government is admittedly unable to actually prevent the torture. *See De la Rosa v. Holder,* 598 F. 3d 103, 110-11 (2d Cir. 2010). In *De La Rosa*, the Respondent assisted federal prosecutors in the prosecution of a Dominican drug dealer and feared torture in the Dominican Republic at the hands of the drug dealer whose brother works in the Dominican government. *See id.* at 106. The Court reasoned that where some government officials would be complicit in torture, while that government as a whole is admittedly incapable of actually preventing that torture, the fact that some officials take action to prevent the torture "would seem neither inconsistent with a finding of government acquiescence nor necessarily responsive to the question of whether torture would be inflicted by or at the instigation of or with the consent or acquiescence of a public official." *Id.* at 110.

The Sixth and the Tenth Circuits, which have adopted the willful blindness standard, remain silent on the issue of whether the government's awareness but inability to prevent the third-party torture amounts to acquiescence.[3]

Circuits silent on willful blindness finding that inability to protect does not amount to acquiescence.

The First Circuit has neither explicitly adopted the "willful acceptance" standard, nor has it explicitly rejected the "willful blindness" standard. However, case law suggests that the government's inability to protect its citizens from third-party torture does not amount to acquiescence. *See Almicar-Orellana v. Mukasey*, 551 F.3d 86, 92 (1st Cir. 2008) (finding no acquiescence in respondent's claim that the Salvadoran government is unable to protect him from gang members seeking retribution when the country report suggests that the government is trying to eradicate the problem). The First Circuit also takes the position that acts of a few rogue agents do not amount to acquiescence by a state actor acting in an official capacity; although there was evidence of police abuse and impunity, there were also procedures in place to address police corruption). *See Costa v. Holder*, 733 F.3d 13, 16, 18 (1st Cir. 2013) (denying a CAT claim based on Brazilian police officers' threats due to the respondent's assistance in an officer's brother's arrest, because there is still a system in place for dealing with police misconduct).

Similarly, the Eleventh Circuit has neither rejected "willful acceptance," nor has it adopted the "willful blindness" standard. It is clear, however, that the government's inability to protect its citizens from third-party torture does not amount to acquiescence. In *Reyes-Sanchez v. Attorney General of the United States,* the Eleventh Circuit found no acquiescence where the respondent argued the government could not protect him against a Peruvian terrorist group, and the country report reflected that although *ineffectively*, the government had been actively combatting the group. 369 F.3d.1239, 1242-43 (11th Cir. 2004).

Conclusion

In sum, almost every Circuit has adopted the willful blindness standard. Although silent on the issue of willful blindness, the First and Eleventh Circuit hold that the

government's inability to intervene to protect from third-party torture is not sufficient to establish government action under the CAT. The Seventh and Ninth Circuits find that government acquiescence may be established through actual knowledge or willful blindness, and that it encompasses not only the government's unwillingness, but also the government's inability to intervene to prevent the third-party torture. The Fourth, Fifth, and Eighth Circuits, on the other hand, take the position that although acquiescence maybe established through willful blindness, the government's inability or ineffective protection from third-party torture does not amount to acquiescence. The Second, Third, and Sixth Circuit, while employing the willful blindness standard, do not find dispositive, the government's inability to protect its citizens from third-party torture in an acquiescence determination. ◆

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Endnotes

[1]"Willful blindness" is defined as "[d]eliberate avoidance of knowledge of a crime, esp. by failing to make a reasonable inquiry about suspected wrongdoing despite being aware that it is highly probable." Black's Law Dictionary 1737 (9th ed. 2009)

[2]*See Khouzam v. Ashcroft*, 361 F.3d 161, 170-71 (2d Cir. 2004) (establishing the willful blindness standard and explicitly rejecting the "consent or approval" requirement set forth in *Matter of Y-L-*).

[3]*See Amir v. Gonzalez*, 467 F.3d. 921, 927 (6th Cir. 2006) (explicitly finding Matter of S-V- contrary to the law and adopting the willful blindness standard); *Cruz-Fuenez v. Gonzales*, 406 F.3d 1187, 1192 (10th Cir. 2005) (establishing the willful blindness standard).

2016 Immigration Law Conference Preview

2016 Annual Immigration Law Section Conference • New Orleans • May 12-13 (Opening Reception the Evening of May 11)

Thirteen Immigration Judges, Three Federal District Court Judges, along with Department of State and CIS representatives will teach and update participants on the latest in immigration law, policies and procedures. The Conference will also feature attorneys from ICE, the Federal Public Defenders and US Attorney's Office.

This two day, three track conference will feature speakers from 37 states, Canada, Mexico, DC and Puerto Rico. One track will be devoted to litigation both in immigration courts and federal courts, another will feature family law panels and humanitarian law panels and the third will feature business immigration and consular panels. There will also be two dynamic ethics panels with representatives from the bar counsels of Maryland and Louisiana. Each hour long session will also have a breakout room so that participants may ask questions and discuss issues with panelists.

On Thursday May 12, we are excited to welcome journalist Todd Miller, who is the preeminent reporter on border issues along with the author of *Border Patrol Nation,* as a keynote speaker.

Along with both all day and evening hospitality suites in the Marriott, each evening will feature a fully complimentary reception with two being at offsite and easily walkable locations. These receptions which will include the annual ILS awards ceremony provide another great opportunity for participants to socialize and network.

This year the conference is also spotlighting the tremendous work of Eden House, a non profit which both houses human traficking victims and promotes awareness of human traficking. ILS board member and annual conference committee member Kara Van de Carr founded Eden House in 2011. Participants will be offered tours of Eden House and also a chance to contribute items from their wish list. We are also working on a service project for Eden House. Please read about the incredible work done by Eden House at www.edenhousenola.org.

Spread the word and register early. This conference has limited enrollment and we expect it to sell out. Please do not hesitate to contact me if you have any questions.

We look forward to seeing you in New Orleans!

Please register at www.fedbar.org/ImmLaw16. ◆

Mark J. Shmueli practices exclusively Immigration Law in Takoma Park, MD and is the chair of the 2016 ILS Annual Immigration Conference

FEDERAL BAR ASSOCIATION

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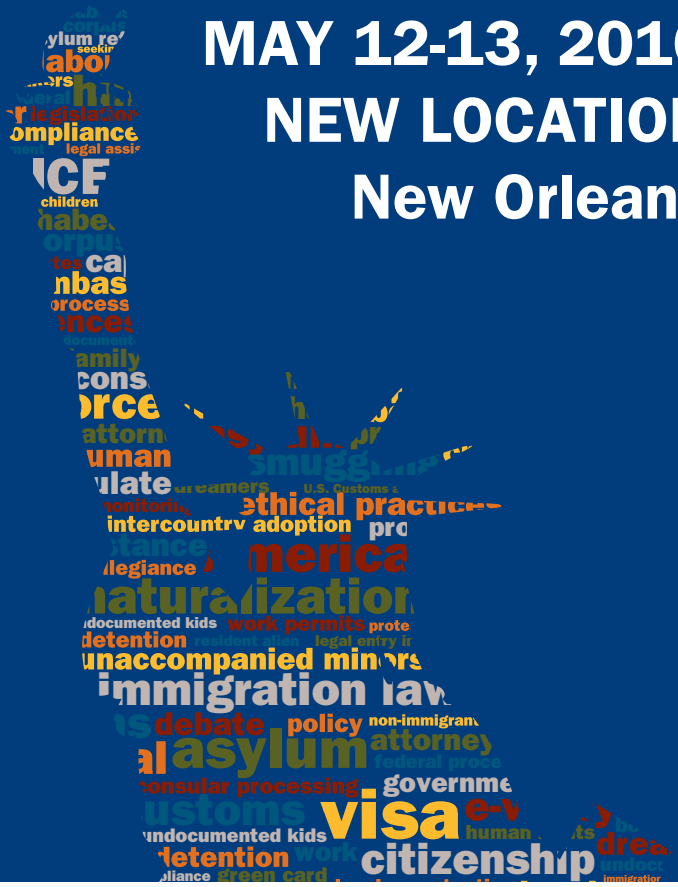
Immigration law and policy is changing rapidly in today's political environment. Now is the time to further the discussion, advocate for fair and reasonable policy, and take action to advance the quality of immigration law.

Join the FBA Immigration Law Section for a two-day event full of CLE sessions focused on recent developments and network with a large and dedicated community of immigration law practitioners.



Timothy McVeigh and the Refugee "Security" Vetting Process: a Primer

By Eileen Scofield

Post the Nov. 13, 2015 attacks on innocent children[1] and those freedoms which enable people of all faiths, ages and colors to peacefully live and prosper together, the world has been consumed by potential security risks associated with Syrian refugees. In Syria today there is a trifecta: civil war, blood –thirsty insurgents, and from above, well-intentioned bombs falling. Where or how would can one living in such a place seek refuge?

Most people, for many reasons, desire to live a safe and prosperous life in their home country—the country of their family, their language, their favorite foods and spices, their memories, their friends and relationships. "Refugee" status is for one seeking a safe haven from most dangerous circumstances. Refugees are generally people who are unable, or unwilling, to return home because they fear serious harm.

Typically, for a refugee, it is 3- 5 years between the time one's home country becomes dangerous until the day they might arrive in the U.S. as a refugee. Not all refugees come to the U.S. Refugees are "settled" not only in the U.S., but also in hundreds of countries throughout the world. The tragedies of WWII led to a universal "global" refugee process, established via the 1951 Refugee Convention In 1951. The United Nations treaty defined a refugee, the rights of a person in refugee status, and the protocols for placement of refugees. Once so identified, in addition to the U.N. protocols, each country that receives refugees has its own internal review and vetting process for each refugee it admits.

Under U.S. law, a refugee is someone who is located outside the Unites States, is of special humanitarian concern to the U.S., and demonstrates they were persecuted or fear persecution, due to their race, religion, nationality, political opinion, or membership to a particular social group. In order to be classified a refugee under U.S. law, one cannot be firmly resettled in another country and must be "admissible" to the United States. Anyone who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion is ineligible for refugee status in the U.S.[2] One who is a "terrorist" is not eligible for refugee status in the U.S.

Any displaced person outside the U.S., who may come to the U.S. as a refugee, must first receive a referral to the U.S. Refugee Admissions Program (USRAP). Annually, processing priorities determine which of the world's refugees are of special humanitarian concern to the United States. Fulfilling a processing priority enables a refugee applicant the opportunity to complete certain applications and eventual consideration for a potential interview with a representative of the U.S.

Under the U.S. process, once a person receives a USRAP referral, the person must complete a Form I-590, Registration for Classification as Refugee. The U.S. Department of State Resettlement Service Centers (RSCs) carry out most of the casework preparation for refugee eligibility interviews. The RSCs pre-screen applicants, help applicants to prepare their Form I-590 and other data for filing with the U.S. government, initiate background security checks, and eventually arrange medical examinations for those refugees approved by USCIS.[3] The USCIS interview may, or may not, result in confirmation of refugee status and the need for resettlement in the U.S. Only individuals deemed strong candidates (less than 1% of the global refugee population) will move forward after the interview.[4]

In addition, after the USRAP referral, enhanced interagency security checks are undertaken. These are conducted by the FBI, Homeland security, the State Department, and the National Counterterrorism Center. These checks look for indicators of security risk, association or connection to deemed "bad actors" and outstanding warrants and immigration or criminal violations. This screening process is repeated any time new information is provided.

Following the security checks, the applicant will undergo multiple interviews conducted by specially trained USCIS officers. This step also includes the collection of fingerprints in order to complete biometric security checks. Fingerprints are screened against FBI's database, the DHS database, and the U.S. Department of Defense database.[5] Anyone who fails any security clearance, or the interview, is determined to be "inadmissible" to the U.S.

When an applicant clears all interviews and security checks, a medical assessment occurs. While some communicable diseases are treatable, a refugee applicant may still be designated "inadmissible" to the U.S. because of certain medical conditions. All pending refugee applications continue to be run against security databases.

After approved for U.S. refugee status, but before departure for the U.S., applicants must attend cultural orientation classes provided by the Cultural Orientation Resource Center. Organizations within the U.S. will then determine the best resettlement location for the candidates. The International Organization for Migration (IOM) will make the travel arrangements for refugees. The refugee is subject

to screening from the U.S. Customs and Border Protection at the point of entry into the U.S.

The family members that may accompany an approved refugee applicant are the applicant's spouse and unmarried children under the age of 21. If the applicant's spouse or children were not with the applicant at the time of the refugee interview, they are generally eligible to apply to follow the refugee/applicant to the U.S. To do so each must file Form I-730, Refugee/Asylee Relative Petition and be subjected to the above noted security checks.[6]

Upon entry into the U.S., there are various nonprofit groups, such as the RRISA in Atlanta, that help refugees to settle in the United States. Volunteers assist refugees with finding a place to live, furnishings, school supplies, and jobs. Refugees are authorized to start working anywhere in the U.S. Within a year of their arrival in the U.S., all refugees are to apply for lawful permanent residence resident status ("LPR", commonly referred to as a "green card"). The "green-card" process requires fingerprints and additional security checks. If granted LPR status, the person may permanently live in the U.S., and within 5 years apply for U.S. citizenship.

Based on recent data, 70,000 refugees arrive in the U.S. annually, with projections of 85,000 refugees in 2016.[7] For security purposes though, how does the U.S. vet for theTimothy McVeigh's? ◆

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Endnotes

[1]All people are children of the earth, and to many, children of God.

[2]USCIS www.uscis.gov/humanitarian/refugees-asylum/refugees

[3]USCIS www.uscis.gov/humanitarian/refugees-asylum/refugees/questions-answers-refugees

[4]The White House www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states

[5]The White House www.whitehouse.gov/blog/2015/11/20/infographic-screening-process-refugee-entry-united-states

[6]USCIS www.uscis.gov/humanitarian/refugees-asylum/refugees/questions-answers-refugees

[7]U.S. Department of State www.state.gov/j/prm/releases/docsforcongress/247770.htm

RANT continued from page 5

subject of an award-winning biography, Mountains Beyond Mountains. Dr. Farmer wrote a two-page single-spaced letter describing my client's persecution. I figured that the letter--and a ton of other evidence, including photos with the former president of Haiti--would have been enough for a grant at the Asylum Office. But unfortunately, our Asylum Officer failed to question my client about his past persecution, and when we asked whether the client should discuss it, she told us that it was not necessary, as she read about it in the written statement. She then denied the case because we failed to demonstrate past persecution. Needless to say, I was not pleased. But earlier this year, we went to court where the DHS Trial Attorney did not understand why the case had been referred to the Immigration Judge. She and the Judge agreed that my client should get asylum, which he did. The court hearing took all of three minutes.

Refugee Waiver/Cameroon - My client had come to the U.S. and received asylum due to political persecution in Cameroon. Unfortunately, he fell in with the wrong crowd and got involved in a fraudulent check cashing scheme. As a result, he went to jail for two years and was then put into ICE custody for deportation. Fortunately for my client, there is a waiver available for refugees under INA § 209(c), which is very effective (a waiver is a legal mechanism for requesting forgiveness from the U.S. government in order to avoid deportation). The Immigration Judge granted relief, and after almost three year in detention, my client walked free that afternoon.

Political Opinion/Nepal - My client had been a local activist with his political party. As a result, Maoists guerrillas attacked him in his home and sent him to the hospital. He came to the U.S., but did not seek asylum within one year (as is required). After having spent half-a-dozen years in the U.S., the Maoists resurfaced and threatened his wife. We applied for asylum and claimed that the new threat constituted "changed circumstances," which is an exception to the one-year filing rule. Luckily for us, the Trial Attorney agreed that my client was entitled to an exception and asylum was granted.

Imputed Political Opinion/Syria - My client was affiliated with a man who the Syrian government deemed an enemy, and this was enough to cause him to fear return to his country. The problem was, he had to leave his wife and young child in a Gulf country because they could not get visas to the United States. After a long ordeal (thanks to the backlog) during which the child could not attend school or get medical treatment (thanks to the inhumane policies of the Gulf countries), we were finally able to get his case expedited. He was granted asylum and--after three years--he finally reunited with his family earlier this month.

Particular Social Group (Family)/El Salvador - My client was a young girl whose mother had testified against her former boyfriend, a member of the MS-13 gang. The ex-boyfriend and other gang members had been threatening the mother and my client from jail. My client's family feared that she would be harmed once the ex-boyfriend was free, and so

they sent her North. Because she was a minor, the Asylum Office (rather than the court) had jurisdiction over her case, and she was granted asylum. Now we're waiting for her mother's case, but since the daughter already received asylum on the same facts, we're optimistic about the mother's chances.

Religion/Afghanistan - My client was a well-known singer in his country. But since the Taliban are not fans of music and believe musicians are infidels, he ran into trouble. The Taliban threatened to kill him, and so he came to the U.S. for asylum. After a long delay, and a difficult separation from his family, the case was granted. We are now waiting for his family members to join him in the United States.

I rarely take time (or have time) to look back on completed cases, and it is encouraging to think about the people who have succeeded. I'll try to keep some of these happy thoughts in mind as we move on to new challenges in 2016. Happy New Year!

Jason Dzubow is one of the founders of Dzubow & Pilcher, PLLC. His practice focuses on immigration law, asylum, and appellate litigation. In 2011 and 2013, Washingtonian magazine recognized him as one of the best immigration lawyers in Washington, DC. He is an adjunct professor at George Washington University Law School in Washington, DC. His blog, the Asylumist, is the only blog in the U.S devoted exclusively to asylum law: www.asylumist.com.

Article

Board of Immigration Appeals Provides Safeguards For Asylum Applicant With Mental Competency Issues

By Cyrus D. Mehta

The Board of Immigration Appeal's decision in *Matter of J-R-R-A-*, 26 I&N Dec. 609 (BIA 2015) is a milestone decision in protecting an asylum applicant who presented competency issues that were not appropriately assessed by the Immigration Judge. It also untangles the ethical conundrum that a lawyer has when the client is unable to testify credibly due to a cognitive disability.

The respondent in *Matter of J-R-R-A-* was a native and citizen of Honduras, who claimed that he would be harmed upon his return to Honduras by a man who had murdered his brother 15 years ago. His testimony was characterized as confusing, disjointed and self-serving. He also laughed inappropriately during the hearing. Although the Immigration Judge observed that the respondent's behavior and testimony were unusual, the BIA found that the respondent's competency should have been assessed under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011). In the landmark *Matter of M-A-M-* decision, the BIA held that for a respondent to be competent to participate in an immigration proceeding, he or she must have a rational and factual understanding of the nature and object of the proceeding and a reasonable opportunity to exercise the core rights and privileges afforded by the law. As the respondent demonstrated various indicia of incompetence in *Matter of J-R-R-A-*, the BIA held that the IJ should have taken measures to determine whether the respondent was competent to participate in these proceedings in accordance with the guidelines in *Matter of M-A-M-*, and remanded the case back to the IJ.

The BIA could have stopped there and it would have still been a good decision, but the BIA went further and acknowledged that the respondent's testimony was not credible due to the respondent's diminished capacity, which prevented him from obtaining asylum. The IJ had denied the asylum claim by curtly opining that the respondent's cognitive difficulties are "not a license to give incredible testimony." A respondent presenting an asylum claim must establish a well-founded fear of persecution by demonstrating both a genuine subjective fear of persecution and by also presenting evidence establishing objectively that such a fear is reasonable. *See INS.v. Cardoza-Fonseca*, 480 U.S. 421 (1987). In light of such a standard, an asylum claimant must present credible testimony in order to establish his or her subjective fear of persecution, supported by objective evidence to establish that the fear is reasonable. A respondent with diminished capacity may not be capable of presenting credible testimony, and as in the case of the respondent in *Matter of J-R-R-A-*, may be at grave risk of being denied asylum even if he or she has a genuine fear of persecution.

One can also draw important lessons from this decision for the lawyer who represents a client with diminished capacity. A lawyer under the ethical rules of professional conduct cannot "offer evidence that the lawyer knows to be false." *See* ABA Model Rule 3.3(a)(3). Thus, when a lawyer observes a client presenting testimony knowing that it is false, the lawyer is under an ethical

obligation to not have the client offer it. If the client has already offered evidence that the lawyer knows is false, under ABA Model Rule 3.3(b), the lawyer is under an ethical duty to take reasonable remedial measures to rectify the fraudulent conduct, and if necessary, disclose it to the tribunal. ABA Model Rule 1.14 also instructs a lawyer to maintain a normal lawyer-client relationship as far as possible with a client who presents competency issues, and thus all the ethical rules that affect the lawyer-client relationship are applicable even when a lawyer represents a client with diminished capacity, including the lawyer's duty of candor to the tribunal. Still, Rule 1.14 allows a lawyer to take reasonably protective action when a client with diminished capacity is at risk of harm by either consulting with individuals or entities, and in appropriate cases, seek the appointment of a guardian or guardian ad litem.

The BIA in *Matter of J-R-R-A-* implicitly recognized the lawyer's ethical conundrum regarding her duty of candor to the tribunal, but held that a client with diminished capacity should be allowed to provide testimony that may not be believable so long as there is "no deliberate fabrication involved." In this way, the lawyer may allow the client to meet the subjective fear prong under the asylum standard even if the testimony is not true, and the IJ should then focus on whether the respondent met his burden of proof based on the objective evidence in the record. The BIA commendably recognized that "[t]his safeguard will enhance the fairness of the proceedings by foreclosing the possibility that a claim is denied solely on testimony that is unreliable on account of the applicant's competency issues, rather than any deliberate fabrication."

When I last blogged on mental competency issues in immigration practice, I noted that this area was a work in progress and there was much work that needs to be done to develop standards and provide clear guidance. *Matter of J-R-R-A-* goes a long way in filling this lacuna by recognizing the vulnerability of an asylum claimant with competency issues, and also reconciling the lawyer's ethical conflict regarding not offering false evidence to a tribunal. I also commend readers to the ABA's recent excellent publication entitled *Representing Detained Immigration Respondents of Diminished Capacity: Ethical Challenges and Best Practices*. Representing clients with mental competency issues in immigration matters presents great challenges as well as amazing rewards. Such clients are indeed the most vulnerable, especially when presenting complex asylum claims in immigration court. The lawyer plays a vital role in ensuring that the client is protected and is provided with the necessary safeguards, and can also gain tremendous satisfaction in being able to assist such a client navigate through the labyrinthine immigration system and emerging victorious.

At a time when politicians in the western world, swayed by public opinion, are showing increasing hostility toward asylum seekers fleeing persecution, and making it harder for them to assert claims that are accorded to them under law, we can only hope that decisions such as *Matter of J-R-R-A-* break the mold and provide necessary safeguards, especially when asylum claimants have diminished capacity. While this decision involved an adult with diminished capacity, minors inherently have diminished capacity, and should be equally protected under *Matter of J-R-R-A-* especially when they have undertaken hazardous journeys fleeing persecution, and some have also died tragically in pursuit of freedom. Although only an administrative decision, *Matter of J-R-R-A-* is a shining example of how law ought to develop and evolve in safeguarding the rights of a vulnerable population fleeing persecution, notwithstanding the political attitudes of the day. ◆

Cyrus D. Mehta, a graduate of Cambridge University and Columbia Law School, is the Managing Member of Cyrus D. Mehta & Associates, PLLC in New York City. He is the current Chair of AILA's Ethics Committee and former Chair of AILA's Pro Bono Committee. He is also the former Chair of the Board of Trustees of the American Immigration Council (2004–06) and Chair of the Committee on Immigration and Nationality Law (2000–03) of the New York City Bar Association. He is a frequent speaker and writer on various immigration-related issues, including on administrative remedies and ethics, and is also an adjunct associate professor of Law at Brooklyn Law School, where he teaches a course entitled "Immigration and Work." Mehta received the AILA 2011 Michael Maggio Memorial Award for his outstanding efforts in providing pro bono representation in the immigration field.

ILS-Younger Lawyers Division Raises Age Limit to 40

Following suit with the Younger Lawyers Division of the FBA, the Immigration Law Section's Younger Lawyers Division extended the age for members to include FBA ILS members who are (i) 40 years of age and under and (ii) practicing for ten years or less. For questions and more information about joining the FBA-ILS-YLD, please contact Robin Trangsrud at robin.trangsrud@gmail.com.

Denouncing the Unbeliever: Religious Intolerance In The Middle East And Hope For The Future

By Joseph K. Grieboski

Religious minorities across the Middle East face a systemic campaign of persecution and brutality from insurgent organizations and hostile governments. The victims are myriad: Christians, Baha'is, Yazidis, Mandaeans, Zoroastrians, Sunnis, and Shia Muslims have all been affected.

Those targeted and the severity of oppression varies from region to region, with minorities in Iraq and Syria subject to the harshest treatment. Mass execution, rape, torture, abduction, forced migration, human shields, and the use of child soldiers have all been reported tactics of the ISIS organization (Daesh) and the al-Qaeda affiliated al-Nusra Front. Daesh targets minority groups because they do not tolerate any deviation from their radical interpretation of Sunni Islam. Indeed, minorities are far from the only victims of Daesh extremists: hundreds of moderate Sunni dissidents have been killed. In fact, Daesh has caused the deaths of more Muslims than non-Muslims. Nonetheless, the future of religious minorities in these territories is in doubt. In the last two years, thousands of Christians were killed, their villages destroyed, and their churches razed. 85 percent of Mandaeans have been subject to execution or deportation, and the plight of the Yazidis is just as dire: more than 5,000 men have been murdered, and 7,000 Yazidi women were sold to militants as slaves since the conflict began.[1] [2]

Atrocities against minorities are not limited to Iraq and Syria, and have expanded to other countries inside and outside of the region. In February 2015, 21 Egyptian Coptic Christians were beheaded by a Daesh affiliate in Libya. They described their victims as "people of the cross, followers of the hostile Egyptian church."[3] In April 2014, Boko Haram abducted more than 250 Christian girls from school and sold them as slaves. 11 months later, they declared their loyalty to the Islamic State, and have continued targeting Christians, churches, and moderate Muslim detractors – more than 140 men, women, and children from three different mosques and Muslim villages were killed in the first days of July 2015.[4] Most recently, Boko Haram attacked Dalori village on January 31, 2016 shortly after evening prayers. CNN reports that at least 65 people were killed, and 136 were injured. The militants burned children alive in their homes, fired indiscriminately into fleeing crows, and detonated suicide vests.[5] These attacks on Sunni Muslims are important: they show with perfect clarity that fundamentalist groups like Daesh and Boko Haram consider all critics, especially fellow Sunnis, to be un-believers, to be minorities in their own society. This must be recognized, as it is crucial to formulating an effective response to these groups and the threats that they pose.

In addition to these existential threats, religious minorities face direct and indirect repression from many Middle Eastern governments. Non-Muslims and the Shia minority in Saudi Arabia face severe discrimination in education and employment, and non-Muslims are not permitted to practice their religion publicly. Blasphemy and apostasy are punishable by death, and a law forbidding "calling into question the Islamic religion" and "sowing discord in society" allows Riyadh to arbitrarily detain and execute any who disagree with the government or its policies.[6]

Religious liberty is similarly restricted in Iran. While the state officially recognizes Christianity, Judaism, and Zoroastrianism as acceptable minority religions, many are harassed, detained, tortured, and killed because of their faith. Shia dissidents are periodically arrested, and UN reports indicate that over 150 Sunnis are imprisoned for crimes related to their faith. Additionally, the United States Commission on International Religious Freedom (USCIRF) reports that "The government views Baha'is, who number at least 300,000, as 'heretics' and consequently they face repression on the grounds of apostasy."[7] Indeed, Human Rights Watch issued a report in May 2014 that condemned the arrest of 20 Baha'I in July 2012, and called for the immediate overturn of their sentences. Seven former Baha'i leaders have been sentenced to 20 years in prison, and 136 are believed to be detained on charges "solely on religious grounds."[8]

President Abdel Fatah al-Sisi has taken important steps to increase religious freedom in the past several years, but there is much to be done to protect minority groups in Egypt. In December 2015, President Sisi delivered a speech addressing Islamic scholars in the country. He affirmed that "God did not create the world for the ummah to be alone. [He didn't create it] for one community, but for communities. [He didn't create it] for one religion, but for religions… No one should define someone by their appearance or religion. We are all Egyptians."[9] Despite these statements of solidarity and an institutional commitment to the freedom of religion in the 2014 constitution, Egypt has failed to overturn blasphemy laws in recent years. As a result, religious-based imprisonment is not uncommon and the number of hate crimes targeting religious minorities has increased since Mubarak's fall in 2011.[10] Indeed, three Coptic Christian students are scheduled to stand trial on Thursday, February 4, 2016 for insulting the Islamic faith. A video circulated in April 2015 that depicted the students repeating Quranic

verses and kneeling, while another laughed and mimicked executing them. The students maintain that they did not intend to insult Islam, but rather Daesh militants. US News and World Report coverage suggests that they have faced repeated harassment and eviction since the video surfaced.[11]

Despite the current repression of religious minorities in the Middle East, there is some hope that the future might be different. From January 25-27 2016, Morocco hosted a conference titled "The Rights of Religious Minorities in Predominantly Muslim Lands: Legal Framework and a Call to Action, which was attended by nearly 300 Islamic scholars, jurists, muftis, and government officials from a range of countries including Iraq, Nigeria, Saudi Arabia, Iran, and Egypt. They produced a document called the "Marrakesh Declaration on the Rights of Religious Minorities in Predominantly Muslim Majority Communities." While this document is not legally binding, its importance should not be underestimated- the declaration represents an official endorsement from the religious establishment to provide equal protection under the law to minority communities. In the past, governments may have opposed reform due to objection from religious elders. From now on, they will be hard-pressed to ignore reforms on religious grounds. ◆

Joseph K. Grieboski is the founder and CEO of The INSTITUTE on Religion and Public Policy and Grieboski Global Strategies, an international strategic consulting firm that delivers a comprehensive and adaptable portfolio of services to nonprofit and government clients. He provides training to Immigration Judges, pursuant to the International Religious Freedom Act.

Endnotes

[1]Remarks by USCIRF Chair Dr. Katrina Lantos Swett at Hill event on Religious Minorities in the Middle East co-hosted by the International Religious Freedom Caucus and the Tom Lantos Human Rights Commission

[2]"The Isis Victims You Don't See- World Snoozes as Yazidis Massacred," *The Observer*, November 18, 2015, observer.com/2015/11/the-isis-victims-you-dont-see-world-snoozes-as-yazidis-massacred/.

[3]"Sisi warns of response after Islamic State kills 21 Egyptians in Libya," *Reuters*, February 15, 2015, www.reuters.com/article/us-mideast-crisis-libya-egypt-idUSKBN-0LJ10D20150215.

[4]"Boko Haram kills scores praying in Nigeria mosques," *Al Jazeera*, July 3, 2015, www.aljazeera.com/news/2015/07/muslims-massacred-boko-haram-sweep-nigera-150702191439658.html.

[5]"Boko Haram attackers set village ablaze, kill dozens in Nigeria," *CNN*, February 1, 2016, www.cnn.com/2016/01/31/africa/boko-haram-raid-dalori-village/.

[6]"Saudi Arabia 2014 International Religious Freedom Report," *U.S. Department of State,* October 14, 2015, www.state.gov/j/drl/rls/irf/2014/nea/238476.htm.

[7]"United States Commission on International Religious Freedom Annual Report 2015," *USCIRF*, April 30, 2015, www.uscirf.gov/sites/default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf.

[8]"Iran: Mounting Pressure on Baha'is," *Human Rights Watch*, May 19, 2014, www.hrw.org/news/2014/05/19/iran-mounting-pressure-bahais.

[9]Mohamed Khairat, "Egypt's President Sisi Urges Islamic Scholars to send Christmas Greetings, Calls for Reform," *Egyptian Streets*, December 24, 2015, egyptianstreets.com/2015/12/24/egypts-president-sisi-urges-islamic-scholars-to-send-christmas-greetings-calls-for-reform/.

[10]"United States Commission on International Religious Freedom Annual Report 2015," *USCIRF*, April 30, 2015, www.uscirf.gov/sites/default/files/USCIRF%20Annual%20Report%202015%20%282%29.pdf.

[11]"An Egyptian lawyer says three Christian students were charged with 'insulting Islam' after appearing in a video mocking Muslim prayers; the students' teacher was tried separately and sentenced in absentia to three years over the same charges," *U.S. News & World Report*, February 1, 2016, www.usnews.com/news/world/articles/2016-02-01/egyptian-christian-students-stand-trial-for-insulting-islam.