

**Sixth Circuit Court**

**Case:** *Chiroy-Melchor v. Barr*, No. 18-3564 [UNPUBLISHED]

**Judge:** McKeague, Griffin, Nalbandian

**Date:** Feb. 15, 2019

**Tags:** Asylum, PSG, nexus, Guatemala

**Gravamen/Question(s) at issue:** Should BIA's rejection of asylum appeal be reversed?

**Holdings:** BIA's decision to deny asylum appeal should stand.

**Rationale:** Relevant issues were not preserved and are deemed abandoned.

**Facts:** Citizen of Guatemala, entered U.S. in 2014 without papers. Claimed sexual assaults by brothers-in-law and fear of rape and murder if she returned. **Claimed PSG of "(1) the Chiroy-Melchor family and (2) Guatemalan women who lack effective familial protection."** (2)

**History of Case:**

- **IJ:** denied application; did not recognize PSG as claimed, did not think b-i-ls' behavior constituted persecution. Applicant also failed to explain why she couldn't relocate in the country.
- **BIA:** dismissed appeal: determined that the issue of the PSGs was abandoned, because "**Chiroy-Melchor did not 'meaningfully contest the IJ's conclusion that neither of these proffered particular social groups is cognizable'**" (3).
  - "without a nexus to a protected ground, Chiroy-Melchor could not demonstrate past persecution or a well-founded fear of persecution on account of a protected ground and therefore could not satisfy her burden of proof for asylum or the more stringent standard for withholding of removal." (3)
  - Also refused to address NEW PSGs proposed at this level.

**Appeals to Statute & Precedent:**

- **8 U.S.C. § 1182(a)(7)(A)(i)(I):** Re. immigrant aliens not possessing valid documents
- **8 U.S.C. § 1252(b)(4)(B):** review decisions for substantial evidence, only reverse if reasonable adjudicator would be compelled to conclude the contrary
- **8 U.S.C. § 1252(d)(1):** Judicial review of removal proceedings: only if alien has exhausted all rightful administrative remedies
- ***INS v. Orlando Ventura*, 537 U.S. 12, 16-17 (2002) (per curiam):** CA limited to reviewing issues decided by the BIA (rather than the IJ).
- ***Shkabari v. Gonzales*, 427 F.3d 324, 327 n.1 (6<sup>th</sup> Cir. 2005):** If you don't raise the claims before the CA, you can't challenge the agency's denial of those claims.

- ***Ramaj v. Gonzales*, 46 F.3d 520, 527 (6<sup>th</sup> Cir. 2006)**: Review agency’s factual findings for substantial evidence
- ***Lin v. Holder*, 565 F.3d 971, 978 (6<sup>th</sup> Cir. 2009)**: CA lacks jurisdiction to review issues that were not brought up in BIA appeal.
- ***Harmon v. Holder*, 758 F.3d 728, 732 (6<sup>th</sup> Cir. 2014)**: If BIA issues own decision rather than just affirming IJ, then BIA decision is final agency decision and gets reviewed, while IJ’s decision is reviewed only insofar as BIA’s opinion addressed it.

**Attorneys’ Arguments:**

- PSGs asserted before IJ:
  - the Chiroy-Melchor family
  - Guatemalan women who lack effective familial protection
- PSGs asserted before BIA:
  - Gender
  - Status as indigenous Achi Mayan in Guatemala

**Commentary:**

- This seems mainly to be about what Chiroy-Melchor’s lawyer(s) failed to do:
  - In BIA appeal: failed to “‘meaningfully contest the IJ’s conclusion that neither of these proffered particular social groups is cognizable’” (2). “...failed to assert this [PSG] in her appeal to the BIA” (4). (So if applicant did not address an issue at the BIA level, she can’t return to it now on appeal because 6<sup>th</sup> Circuit lacks jurisdiction to deal with stuff that happened at the IJ level.)
  - In 6<sup>th</sup> Circuit appeal: Failed to address withholding of removal or CAT protection, so forfeited opportunity to challenge those dismissals by the BIA.
  - Also in 6<sup>th</sup> Circuit: failed to argue anything about the nexus issue, which was dispositive for the BIA. Argued other things instead.
  - Also in 6<sup>th</sup> Circuit: failed to address the other PSGs she thought up for the IJ and BIA, so these issues can’t be reviewed now either.
  - “Given that Chiroy-Melchor failed to exhaust her administrative remedies and also forfeited arguments with respect to defining a particular social group and establishing a nexus between the alleged persecution and her membership in a cognizable social group, the record does not compel the conclusion that she is eligible for asylum.” (5)