

CLINIC Advice for *L-E-A-* Challenges

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BIA Appeal Level

- Since the BIA does not have the authority to review the AG’s decision, whatever you say about *L-E-A-* will matter most for preserving the issue on appeal to the circuit level. CLINIC’s advice is that in BIA appeals, “practitioners should consider **limiting arguments that *L-E-A-* was wrongly decided to a single sentence in a brief or even a footnote, to preserve them for appeal.**”
- However, if we have a clear 3d circuit opinion that concludes that a family is a PSG, then practitioners can argue that the **circuit law is controlling despite AG’s decision.** (Ours is *S.E.R.L. v. Att’y Gen. U.S.*, 894 F.3d 535, 556 (3d Cir. 2018) (“Kinship, marital status, and domestic relationships can each be a defining characteristic of a particular social group, but that does not mean that adding two or more of these characteristics together necessarily establishes a cognizable particular social group.”)
 - [CLINIC footnote: “Although this decision is very negative for domestic violence-based claims, it does have good language on kinship.”]
- More viable argument to pursue here: “***L-E-A-* stands for the limited proposition that an asylum applicant must provide case-specific evidence of social distinction.**”
 - This is because the AG repeatedly states in this decision that each case should be reviewed individually, following the three-prong PSG analysis set forth in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014):
- **Immutability:**
 - The AG concedes that “many family relationships will be immutable” (27 &N Dec. at 593) (← so cite to this)
- **Particularity:**
 - Group’s boundaries: craft the PSG carefully to define the boundaries of the family. May be helpful to look at family law of asylum seeker’s country for its definition of family.
 - Quote from CLINIC (quoting *M-E-V-G-*):
Under *M-E-V-G-* the “‘particularity’ requirement relates to the group’s boundaries or, as earlier court decisions described it, the need to put ‘outer limits’ on the definition of a ‘particular social group.’” (26 I&N Dec. at 238)

- **Socially Distinct** (here's where you challenge AG's take)
 - Emphasize that AG's statements about what it means for a family group to be "distinct" are just dicta (e.g., "greater societal import," "recognizable by society at large") and cannot be the basis for denying claims.
 - The AG seems to imply that "distinction" for a family group means *notoriety or fame within the entire country*, but societal distinction *within a local community* would satisfy the INA definition as well.
 - Use affidavits from members of the relevant society that acknowledges that the family is known within their (local) society.
 - Faith leaders, neighbors
 - "Practitioners should consider making a detailed record of the ways in which a person's community and their country's legal structure treats *their* family as a group."
 - E.g., family name, inheritance of property, recognition in community groups (church, etc.), presumption of care for children of family members
 - Quote from MEVG:

[T]he 'social distinction' requirement considers whether those with a common immutable characteristic are set apart, or distinct, from other persons within the society in some significant way. In other words, if the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it. A viable particular social group should be perceived within the given society as a sufficiently distinct group. The members of a particular social group will generally understand their own affiliation with the grouping, as will other people in the particular society. (26 I&N Dec. at 238)

- CLINIC: "If the case is before an appellate tribunal, such as the BIA or a court of appeals, consider whether the applicant would benefit from a remand to further develop the record [re. those 3 prongs] in light of the attorney general's decision."

- CLINIC: "It is difficult to conceive of a PSG that meets the elements of immutability, particularity, and social distinction more clearly than a family group." Catholic Legal Immigration Network, Inc. 15 "Practice Pointer: *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019)" (2019)