

## ERWIN M. C. & *MATTER OF L-E-A-*

### Goal of legal argument:

- Show that Erwin’s family-based PSG meets the “social distinction” criterion of *M-E-V-G-* and *W-G-R-* (which is basically the holding of *L-E-A-*: i.e., no family based PSG unless you can show “social distinction.” Go ahead and try.)

### Prongs of legal argument:

- Each case must be considered on its individual merits re. the three criteria for a PSG:
  - Immutability
  - Particular (boundaries defined)
  - Socially distinct
  - *Matter of M-E-V-G-*, 26 I&N Dec. 227, 238 (BIA 2014); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 217 (BIA 2014).
- In *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019) the Attorney General narrowed the possibility of a nuclear family constituting a PSG to those families who “ha[ve] some greater meaning in society” and which possess “the kind of identifying characteristics that render the family socially distinct within the society in question.” *Matter of L-E-A-*, 27 I&N Dec. at 594 and 586.
- However, the A.G. did not define “greater meaning in society” or list “the kind of identifying characteristics” required for a determination of social distinction.
- Ordinary family membership may well qualify for both of the above criteria, as any society recognizes particular families as *legally* distinct for matters of taxation, permission to marry, custody of children, property ownership, and inheritance.
- It’s possible that the A.G. was thinking about *fame* being a factor in rendering a particular nuclear family “socially distinct.” Name recognition, power, and societal influence would then be weighed as elements for this prong of the PSG test. (Though this notion is ridiculous, and should be challenged in the courts.)
- If *fame* meets the requirement for “social distinction,” then *notoriety* would as well—that is, fame for negative reasons. In the present case, Erwin testifies to the effects of the notoriety of his drug-lord father in his society—both in the minds of other drug dealers and in the general impression community members had of this man who went from rags to riches in the blink of an eye on his return from the U.S. (Not much evidence beyond this testimony, though.)
- Details of underlying case in *L-E-A-*:
  - Respondent claimed persecution by criminal gangs because of his relationship to his father, who owned a store targeted by a local drug cartel. A.G. thinks this doesn’t render this particular nuclear family “socially distinct” enough to qualify as a PSG, since the only people who seemed to care about the connection were the persecutors.
  - **Distinguish:** Erwin is the son of a drug lord who was notorious in the community. This is a PSG where “social distinction” is established by crime!

Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019)

- “I conclude that an alien’s family-based group will not constitute a particular social group unless it has been shown to be socially distinct in the eyes of its society, not just those of its alleged persecutor.” *Matter of L-E-A-, 27 I&N Dec. 581, 582 (A.G. 2019)*
- “...to qualify under the statute and Board precedent, when an applicant proposes a group composed of a specific family unit, he must show that his proposed group has some greater meaning in society.” *Matter of L-E-A-, 27 I&N Dec. 581, 594 (A.G. 2019)*
- “This opinion does not bar all family-based social groups from qualifying for asylum. To the contrary, in some societies, an applicant may present specific kinship groups or clans that, based on the evidence in the applicant’s case, are particular and socially distinct.” *Matter of L-E-A-, 27 I&N Dec. 581, 595 (A.G. 2019)*
- “Here [in *L-E-A-*], the respondent argues that the immediate family of his father constitutes a particular social group because a local drug cartel had a dispute with his father, and the cartel chose to take that dispute out upon his family members. But the respondent did not show that anyone, other than perhaps the cartel, viewed the respondent’s family to be distinct in Mexican society. If cartels or other criminals created a cognizable family social group every time they victimized someone, then the social-distinction requirement would be effectively eliminated.” *Matter of L-E-A-, 27 I&N Dec. 581, 592 (A.G. 2019)*
- “If an applicant claims persecution based on membership in his father’s immediate family, then the adjudicator must ask whether *that* specific family is ‘set apart, or distinct, from other persons within the society in some significant way.’ *Matter of M-E-V-G-, 26 I&N Dec. 227, 238 (BIA 2014)*.” *Matter of L-E-A-, 27 I&N Dec. 581, 594 (A.G. 2019)*