

LIST OF LEGAL ARGUMENTS FOR BIA APPEAL

Response to DHS-ICE Notice of Appeal (9.6.2019)

1. Family as PSG (1, 2-3)

- "The IJ erred in finding that the respondent met her burden of showing that 'family' is a cognizable social group, especially as the IJ ignored the binding precedent issued by the Attorney General four days before her decision." (1)
 - IJ decision: Aug. 2, 2019
 - AG decision: July 29, 2019
 - **"The respondent failed to meet her burden of showing that her specific family is distinct in El Salvadoran society."** (2)
 - **"The respondent has not shown that her family is set apart, distinct, or recognizable within El Salvadoran society."** (2)
 - From *L-E-A-*: **"some greater meaning in society"** (594)
 - Is particular family **"recognizable by society at large"**? (594)
 - **"The respondent presented no evidence that society recognizes her family or reacts to it in any way that makes it distinct or identifiable as a group."** (2)
 - **"...her family is not a distinct group in society, but rather some members of her family are victims of a single abuser in highly individualized circumstances."** (2)
- **NOTES:**
 - ICE attorney's final words (in green) pronounce a judgment that isn't supported one way or another yet by the record.
 - AG's definition of "distinct" in *L-E-A-* is ambiguous, and seems to imply that a family would only be "distinct" if it were famous or notorious throughout an entire country. (Will get you more details on that decision soon.)
 - The respondent COULDN'T have presented evidence refuting *L-E-A-*, or rising to its heightened standard for PSG, if that decision only came out four days before this hearing.
 - Despite the AG's implied definition of "distinct," there are plenty of ways the respondent COULD show that her family unit is distinct and recognized as such in her local community (also "society").
 - So this ought to be remanded, to give respondent a chance—since Barr's heightened bar came out AFTER briefs in this case were submitted. (Don't know if anti-retroactivity principles could apply here as well, because of the timing.)
 - Don't know if you'll need to interact heavily with the widespread circuit court case law re. family PSGs yet, because the timing issue in this particular case seems a strong argument by itself for a remand. Maybe a surgical strike, just using 3d Cir. cases?

- *Chavarria v. Gonzalez*, 446 F.3d 508, 518 (3d Cir. 2006)
 - *Citing Li v. Att’y Gen.*, 400 F.3d 157 (3d Cir. 2005)
 - “Ordinary criminal activity does not constitute persecution.”
 - *Gonzales-Posadas v. Att’y Gen.*, 781 F.3d 677, 685 (3d Cir. 2015) (cont’d →)
 - **NOTES:**
 - From IJ’s decision: several distinct instances of harm & threats; involvement of weapons; perpetrator’s involvement with gang; specific threats to harm and kill. (See IJ p.7-8 for case law)
- 6. **Nexus**
 - “The IJ erred in finding that the person the respondent fears targeted her on account of a protected ground.” (4)
 - He was after money; he was not motivated by her relationship to her daughter.
 - **“The respondent did not show that the individual she fears targeted her because she is a member of her proposed social groups, but rather because she was his former lover’s mother, not a broader collection of people whom he believed warranted the infliction of harm.”** (4).
 - **NOTES (on Nexus):**
 - ICE attorney just handed this one to you—she was persecuted because “she was his former lover’s mother”—which is exactly the PSG that is being proposed. (Atty apparently conflates the two proposed PSGs, since she refers to “a broader collection of people,” but the family one is completely sufficient here.)
 - The motivation for his actions **ABSOLUTELY** comes from her membership in the family that includes herself and her daughter and granddaughters.

Note from CLINIC practice pointer:

- You’ll want to preserve for appeal the issue that *L-E-A-* was wrongly decided, but since the BIA won’t be addressing this evaluation themselves, you only need a sentence or two for the record.