

Fourth Circuit Court

Case: *Zavaleta Policiano v. Sessions*, 873 F.3d 241 (4th Cir. 2017)

Date: July 26, 2017

Adjudicated by: Gregory, Wilkinson, Davis

Opinion: Gregory

Tags: Immigration, asylum, PSG, family unit, nexus, El Salvador, family business, MS-13

Question Presented: Did respondent establish a nexus to a protected ground in her asylum claim?

Holdings: The IJ and BIA did a terrible job evaluating the evidence and missed the nexus right in front of their noses. Remanded.

Rationale: “When considering the unchallenged record evidence, we are compelled to conclude that Zavaleta Policiano’s familial relationship was ‘at least one central reason’ MS-13 targeted and threatened her.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 249 (4th Cir. 2017)

Facts: Respondent is daughter of well-known store owner in her home city in El Salvador. The MS-13 gang began to extort protection money and threatened the family members.

Procedural History:

- **IJ & BIA** denied asylum based on lack of nexus.
 - “Although the IJ recognized that family ties qualified as a protected ground, the IJ found that Zavaleta Policiano had ‘failed to produce evidence that she was threatened and harassed *because of* her relationship to her father.’ A.R. 51-52.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 246 (4th Cir. 2017).
 - “Most important here, the BIA upheld the IJ’s finding that Zavaleta Policiano failed to establish the gang’s threats were motivated by her family ties.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 246 (4th Cir. 2017).

Appeals to Statute & Precedent:

- *Crespin-Valladares v. Holder*, 643 F.3d 117 (4th Cir. 2011): family unit counts as a PSG.
- *Hernandez-Avalos v. Lynch*, 784 F.3d 944 (4th Cir. 2015): family unit counts as a PSG.

Discussion:

- “Both the IJ and the BIA properly recognized that family membership qualifies as a protected ground.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 247 (4th Cir. 2017).

- “We hold that the BIA abused its discretion in affirming the IJ’s clearly erroneous factual finding. To start, the IJ unjustifiably relied on the fact that the threatening notes themselves did not explain why Zavaleta Policiano was targeted. . . . It is unrealistic to expect that a gang would neatly explain in a note all the legally significant reasons it is targeting someone.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 248 (4th Cir. 2017).
- “[T]he IJ failed to address, or to assign any weight to, the significant body of un rebutted, indeed, undisputed, probative evidence giving meaning and context to the threatening notes . . . These are inexcusable omissions in the agency’s analysis.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 248 (4th Cir. 2017).
- “By stipulating to the credibility and veracity of the affidavit, the Government forwent the opportunity to probe and weaken the evidentiary basis of Zavaleta Policiano’s claims.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 249 (4th Cir. 2017).
- “And just as MS-13 threatened Zavaleta Barrientos and his children, the gang threatened Zavaleta Policiano and her children, suggesting a pattern of targeting nuclear family members. The totality of this undisputed evidence demonstrates that Zavaleta Policiano was persecuted on account of her family membership.” *Zavaleta Policiano v. Sessions*, 873 F.3d 241, 249 (4th Cir. 2017).