**Matter of L-E-A-: The BIA’s Missed Opportunity**

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On May 24, the Board of Immigration Appeals published its long-anticipated precedent addressing family as a particular social group, *Matter of L-E-A-*, 27 I&N Dec. 40 (BIA 2017). Thirteen amicus briefs were received by the Board addressing the issue of whether a “double nexus” is required in claims based on the particular social group of family. The good news is that the Board did not create a "double nexus" requirement for family-based PSG claims. In other words, the decision does not require an asylum applicant to prove both their inclusion in the social group of X's family, and then also establish that X's own fear is on account of a separate protected ground.

Nevertheless, the resulting decision was highly unsatisfying. The Board was provided a golden opportunity to adopt the interpretation of the U.S. Court of Appeals for the Fourth Circuit, which has held persecution to be "on account of" one's membership in the particular social group consisting of family where the applicant would not have been targeted *if not for* their familial relationship. Such approach clearly satisfies the statutory requirement that the membership in the particular social group be “at least one central reason for persecuting the applicant.” If the asylum seeker would not have been targeted if not for the familial relationship, how could such relationship not be at least one central reason for the harm?  *L-E-A-* rejected this interpretation, and instead adopted a much more restrictive "means to an end" test. Under *L-E-A-*, even though the respondent would not be targeted but for her familial relationship to her murdered husband, she would not be found to have established a nexus because the gangsters she fears do not wish to harm her because of an independent animus against her husband's family. Rather, targeting her would be a means to the end of self-preservation by attempting to silencing her to avoid their own criminal prosecution.

Under the fact patterns we commonly see from Mexico and the “northern triangle” countries of Central America, claims based on family as a particular social group will continue to be denied, as such fears will inevitably be deemed to be a means to some criminal motive of gangs and cartels (i.e. to obtain money through extortion or as ransom; to increase their ranks; to avoid arrest) as opposed to a desire to punish the family itself. Applying the same logic to political opinion, a popular political opponent of a brutal dictator could be denied asylum, as the dictator’s real motive in seeking to imprison or kill the political opponent could be viewed as self-preservation (i.e. avoiding losing power in a free and fair election, and then being imprisoned and tried for human rights violations), as opposed to a true desire to overcome the applicant’s actual opinions on philosophical grounds.

Sadly, the approach of *L-E-A-* is consistent with that employed in a line of claims based on political opinion 20 years ago (see *Matter of C-A-L*-, 21 I&N Dec. 754 (BIA 1997); *Matter of T-M-B-*, 21 I&N Dec. 775 (BIA 1997); *Matter of V-T-S-*, 21 I&N Dec. 792 (BIA 1997)) in which attempted guerrilla recruitment, kidnaping, and criminal extortion carried out by armed political groups were not recognized as persecution where the perpetrator’s motive was to further a goal of his/her political organization as opposed to punishing the asylum applicant because of his/her own political opinion.

Nearly a decade earlier, an extreme application of this "logic" resulted in the most absurd Board result of to date. In *Matter of Maldonado-Cruz*, 19 I&N Dec. 509 (BIA 1988), the Board actually held that a deserter from an illegal guerrilla army's fear of being executed by a death squad lacked a nexus to a protected ground, because the employment of death squads by said illegal guerrilla army was "part of a military policy of that group, inherent in the nature of the organization, and a tool of discipline," (to quote from the headnotes). After three decades of following the course of such clearly result-oriented decision making, the Board missed an opportunity to right its course.

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