

IJ Soper | Arlington Immigration Court – Asylum Decision Notes – 3/27/19

Background: Respondent is a 60-year old indigenous Guatemalan woman. Came to the US in 2014, had CFI, filed for asylum in 2016. She fled Guatemala after suffering eight years of horrific DV from brother and partner. Case was quite well documented – medical records from abuse, police complaint, letter from mayor, letter from neighbors, psych records from U.S., country conditions, etc. Prior to ICH, I moved for a M-A-M- competency hearing due to her lack of understanding/disorientation, PTSD, depression, memory issues, complete illiteracy, etc. IJ granted the motion so we did a competency hearing at the beginning of the ICH. IJ found she was not competent and added safeguards – limited testimony, leading questions, breaks, etc. DHS stipulated to one year, discretion. We focused testimony on PSG/nexus only. I proposed “Women in Guatemala”/“Guatemalan women” and “Women in Guatemala Viewed as Property.”

During closing arguments, DHS argued that AB “controls” and that PSGs neither socially distinct nor particular. After some pushback from IJ, DHS conceded social distinction (women are viewed as different in society) and only argued not particular and stated that women was overly broad/amorphous and encompasses different kinds of women. They also argued no nexus and tried to argue men harmed b/c of alcoholism/money. And that government was able to protect her b/c they at least took the complaint so it looks like they did something. DHS did not argue safe internal relocation or changed circumstances.

IJ stated he was planning to grant for following reasons (from my notes, mostly verbatim):

- Respondent was credible, application timely under *Mendez Rojas*
- Past harm rising to persecution (AR: my client was regularly beaten, raped, threatened with death, etc., so this wasn't really in dispute)
- Matter of AB: DHS argues that this controls, but it does not change this case in any way. It only overturns ARCG. I don't want to minimize the case, but that's really all it does. It doesn't change cognizability, on account of protected ground, or unwilling/unable. This was the view of the gov't in *Grace v. Whitaker*. They referred to the gov't brief that it only vacates ARCG, rest is non-binding dicta. So that's the government's position that it doesn't change the law.
- Unwilling/unable: Respondent has showing gov't unable or unwilling to protect her. Plenty of docs in the record to show gov't provides no meaningful protection. Fact that she is indigenous means it is more likely she will not get protection. Defense counsel is right that it is not required to seek help to show gov't unable or unwilling but here the fact that she did seek help and gov't did not help her strengthens argument that gov't cannot protect her.

CALDERÓN SEGUIN PLC

- Respondent demonstrated past persecution on account of status as woman in Guatemala.
 - Immutable: gender generally doesn't change but more importantly no one should have to change
 - Socially distinct: MEVG, society in Guatemala makes meaningful distinctions b/t men and women. Every society does, and I don't believe that's a controversial statement.
 - Particular:
 - MEVG, boundaries, outer limits, specifically precise, boundaries must be delineated and identifiable; women are in the group and men are not; no ambiguity here; that's the key question. It's very clearly defined. It's large but per SEG, key question is not how big but whether there is an adequate benchmark and we have that here.
 - DHS argues group too internally diverse. Women of different ages, wealth, etc. But in Matter of CA, which is an older case, BIA stated no cohesiveness or homogeneity is required. As examples, clan membership which has been found to be a PSG is diverse – all ages, races, education. etc. But the best example is LGBT – extremely diverse with races, education, gender, ages, etc.
 - Nexus: on account of. Might be a mixed motives case. Family members who harmed her may have had more than one motive. So need at least one central reason and she has demonstrated that. Both men made derogatory remarks about her being woman. Stronger with partner. Her status as a woman was why she was even in the relationship with him. Alcoholism and men wanting her money may have been other reasons, but all we need is her status as women being A central reason. It could even be that there are three central reasons in this case, but her status as a woman was A central reason.
- No discretionary issues and DHS did not rebut WFF.

DHS waives appeal. IJ issues final order.

