ILLINOIS STATE BAR ASSOCIATION

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The Globe

The newsletter of the Illinois State Bar Association's Section on International & Immigration Law

Editor's Comments

BY LEWIS F. MATUSZEWICH

Welcome to the new officers of the International and Immigration Law Section Council for the ISBA 2019-2020 year. The chair, David Aubrey, is with Gori Julian & Associates PC in Edwardsville, the vice-chair is Meaghan Vander Schaaf with Barnes Richardson & Colburn in Chicago, and Susan Goldberg, secretary, is with UAW Legal Services in Belvidere. Last year's chair, Shama Patari of Barrington is ex-officio.

David Aubrey's message from the chair is included in this issue.

Section Council member Patrick Kinnally has provided over 100 articles for various ISBA publications. In this issue is his article, "A Certificate of Citizenship, Derivation, and Naturalization-How are they Different?"

Continued on next page

Message From the Chair

BY RALPH E. GUDERIAN

As the new chair of this council, I wish to thank Shama Patari, immediate past chair, and the other members of the International and Immigration Law Section Council for their work this past year. Special thanks go to Juliet Boyd and Lewis Matuszewich for continuing their responsibilities for the CLE programs and editing our newsletter, *The Globe*, respectively. Last, I thank David B. Sosin, President of the Illinois State Bar Association for my appointment as Chair to this Section Council.

I believe firmly that this Section Council can be the vanguard for promoting justice in Illinois and our nation, because both traditional conceptions of immigration law and international law are being challenged from the most powerful offices of our nation. For example, on January 27, 2017, when a ban on entry for Muslims was enforced, lawyers volunteered at ports of entry across the nation to help victims of injustice. This was a moment where our practice acted as first responders—running toward a crisis—rather than away from it. Likewise, in the context of international trade law, as years of tariffs continue, Illinois farmers watch soybeans waste away in grain mills. I hope our group generates creative solutions to problems, such as these.

Thus, I hope the information in *The Globe* and the ISBA's CLE programs provide Illinois attorneys with practical help for these subject areas. I also hope to build upon our outreach to law students in order to build the membership of our group for the future. Please feel free to email me if you have any suggestions or thoughts toward these goals.■

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Message From the Chair

CONTINUED FROM PAGE 1

"Special Immigrant Juvenile Status" by Hillary Richardson, a supervising attorney with the National Immigrant Justice Center's Asylum Project in Chicago and Meredith Turner-Woolley, an attorney with Hughes Socol Piers Resnick & Dym, Ltd. Is included in this issue, and first appeared in the ISBA's *Child Law* newsletter. They have updated their article pointing out that the Governor has signed into law House Bill 1553 which is now included as the last paragraph in their article.

The Illinois State Bar Association's E-clips have cited many cases involving immigration law. A list of those cases pulled from the E-clips since the beginning of 2019 is included in this issue.

As always, thank you to all of our authors and contributors. ■

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Certificates of Citizenship, Derivation, & Naturalization: How Are They Different?

BY PATRICK M. KINNALLY

In today's United States immigration polity, it may seem what has been ordained can be taken away by the stroke of a pen by a government official.[1] And, with the current administration's desire to undo citizenship,[2] for those who are naturalized, we need an understanding of the distinction between the naturalization process and what constitutes a certificate of citizenship.[3] Thankfully, immigration advocacy abounds across our nation: circumspection may be more paramount. Sometimes, a fox maybe more important than a lion.

A person seeking United States Citizenship through naturalization may file an application (N-400) if he or she is at least 18 years old and meets certain requirements. Among other qualifications, these include continuous residence, physical presence, good moral character, and lawful permanent status. Take a look at the form. Currently, it spans about twenty pages. Read it to your clients. Let them answer, not you. If the application is approved the applicant takes an oath of fealty. A certificate of naturalization will be issued by United States Citizenship and Immigration Services (USCIS), an administrative agency.[4]

Today the naturalization process is investigated administratively. It's opportune; its efficient. Be wary. Yes, federal district judges preside over oath ceremonies and their speeches are welcome and compelling. Attend one some time. You will be moved. But that is the frosting on the cake.

Historically, new citizens were naturalized in courts, not bureaucratic agencies. That changed in 1990 when Congress shifted the power to naturalize from federal district courts to what was then called the

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Immigration and Naturalization Service (now USCIS). Today the "sole authority to naturalize persons as citizens of the United States is conferred upon the Attorney General.[5] You should ask why.[6] One may wonder whether in doing this Congress has discharged its Constitutional duty to establish a Uniform Rule of Naturalization.[7] That may be a debate, citizens and elected representatives should promote.

To be clear no regulatory actor has the authority to revoke the citizenship of a naturalized American citizen. That may only be accomplished where a U.S. attorney files a petition in a United States district court seeking to do so. For a naturalized citizen this makes a lot of sense. Citizenship is the bulwark that protects life, liberty, and property from arbitrary deprivation. It provides a legacy that a citizen can pass onto our children. It is one of the most valuable rights we have.

But citizenship can be claimed in methods other than the being born in the United States subject to the jurisdiction thereof.[8] This can occur through acquisition at birth or derivation. Under the former the child is born outside the United States to one or both parents whom are United States citizens. And, different rules apply based on the date of birth of the child, residence or physical presence of the parent and even if the parents of the child were, or were not married.[9] Under the latter, derivation may transpire where the child is born outside the United States and may become a citizen as a matter of law by virtue of his/her parent or parents' birth or naturalization.

Sessions v. Morales is a good example of the different criteria Congress has imposed in derivation cases. Take a look at its variety, which have occurred over the years. The issue presented was whether Luis Morales acquired United States citizenship at birth. His father was a United States citizen based on his birth in Puerto Rico. His mother was not. They married after Luis was born. And Luis's father, Jose, was placed on the birth certificate of his son. Luis was born in the Dominican Republic.

After his father's death, Luis moved to New York. Later, he was placed in a removal hearing due to criminal convictions, which arguably made him removable. Luis claimed he was a United States citizen. He lost that claim in the removal hearing and before the Board of Immigration Appeals (BIA). The Supreme Court reversed that decision and affirmed the court of appeals.[10] Both did so on a constitutional challenge based on a gender-based differential between unwed U.S. citizen fathers and unwed U.S. citizen mothers.

The point here, however, is not the court's decision, but the standard that Congress prescribed under which Jose could transmit U.S. citizenship to his son, Luis. These rules vary depending on when the birth occurred and other factors. The main rule 8 U.S.C. 1401(a)(7), at issue in *Morales* mandates a period of physical presence in the United States for the U.S. citizen parent prior to the child's birth in order to transmit citizenship at birth. The requirement was ten years physical presence prior to the child's birth. Jose was 20 days short of meeting the physical presence standard when he moved to the Dominican Republic to take a job as a mechanic.

Ultimately, the court struck down the law, concluding it violated equal protection, as stated, by treating the off spring of unwed United States citizen fathers differently than unwed United States citizen mothers. It did not say what the physical presence requirement should be, correctly, it left that determination to congress.

In this context, the children of United States citizens may be considered for a Certificate of Citizenship (N-600). Again, the qualifications are many and include the child being in the United States pursuant to a lawful admission, the child is under 18 years of age and other residence and custody conditions. Certificates of Citizenship are issued by USCIS, often after an interview. These Certificates are not citizenship, but evidence of the government's view. Much like a surveyor who fathoms metes and bounds in his/her opinion. Hence, one can still claim to be a derivative citizen at birth without the certificate since citizenship, if derived, occurs as a matter of law. 8 U.S.C. 1401(g) states, that derivative citizens are "nationals and citizens of the United States at birth". In other words, the rights and privileges of citizenship attach then. It does not depend on some decision by a government official.[11] It may, and it may be wrong.

In *Zhang* the issue was whether Zhang who purchased a certificate of Naturalization (N-550) from a USCIS official could maintain he was a United States citizen. The USCIS official was later convicted of selling such certificates. Correctly, the government contended Zhang did not complete the naturalization process to merit the issuance of the certificate.

Zhang argued the government lacked the authority to cancel his certificate of naturalization. But the revocation of a naturalization certificate and denaturalization are different propositions. The latter requires a complaint filed in District Court and a judicial decision as to the merits of such complaint. On the other hand, the administrative cancellation of a certificate of naturalization illegally or fraudulently obtained is permitted.[12] This is because a certificate of naturalization does not confer citizenship status; it is only evidence of it.[13]

In *Matter of Falodun*, Bright Falodun obtained lawful permanent resident status as the stepchild of a United States citizen who was married to his alleged adoptive father. In a removal hearing he argued he derived United States citizenship from the naturalization of his putative father in 1995. In 1998 he was issued a certificate of citizenship. Bright's plea was that because he was a United States citizen the removal hearing should be terminated. In a removal hearing, because Bright was born outside of the United States, the burden shifted to him to demonstrate through evidence that he was in fact a United States citizen.[14] That is a significant fact, which as practitioners, we must be mindful. It shifts the burden of proof from the government to the person in the removal proceeding to show he is a United States citizen. That can be outcome determinative.

The evidence in Bright's removal hearing included a USCIS Notice of Intent to Cancel Bright's Certificate of Citizenship. The notice claimed that after a federal criminal investigation, Bright's alleged naturalized USC father was actually his biological brother. Next, although Bright claimed his true father had died in 1983, the investigation revealed he was living

in Nigeria. Finally, it was alleged Bright had submitted a fraudulent adoption certificate. USCIS canceled the Certificate of Citizenship.

Bright argued before the Board of Immigration Appeals (BIA) that the cancellation of his certificate of citizenship did not alter his claim to actually be a United States citizen. The BIA observed, correctly, that a certificate of citizenship is only evidence of United States citizenship of persons whom claim to have obtained that status derivatively. Said another way, the issuance of the certificate of citizenship, akin to a United States passport, is merely an indicia of citizenship; it is not a grant of that status. Because Bright's Certificate was based on fraud it was void from inception.

The BIA went on to observe a government regulator, in this case USCIS, had the statutory authority to cancel the certificate.[15] This statute says that cancellation of the certificate does not affect the citizenship status of the person in whose name the document was issued. This fact did not help Bright since he was not entitled to derivative citizenship originally.

But a different procedure is required where a person lawfully applies for Naturalization (N-400) and completes, precisely, the entire naturalization process including the oath of allegiance.[16] Under that stencil the certificate of naturalization maybe canceled but only after the person's citizenship is revoked. And such abrogation can occur only after a complaint is filed in federal district court by a United States attorney in a civil proceeding and judgment obtained; or by a criminal conviction for naturalization fraud.[17] Remember the difference.

Revocation of citizenship or denaturalization is a serious matter. In order to obtain such a result, the government must afford the person who obtained that citizenship status as a naturalized citizen all the due process rights he obtained in getting it, in order to take it away. Applying for naturalization as a United States citizen, if performed correctly, is an earned, valuable right. It cannot be usurped by administrative fiat. Capitalize on that in your advocacy. ■

Patrick Kinnally concentrates in general and commercial litigation, immigration and citizenship and administrative, environmental and local government law. Pat, a current Member and past Chair of the International and Immigration Law Section Council, can be reached at Kinnally Flaherty Krentz Loran Hodge & Masur PC by phone at (630) 907-0909 or by email to pkinnally@kfkllaw.com.

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1. *Matter of Zhang*, (BIA 2019) 27 I&N Dec. 569.
2. https://www.theroot.com/trump-creates-denaturalization-task-force.
3. See *Matter of Falodun*, 272 I&N Dec. 52 (BIA 2017).
4. See generally 8 CFR 334-338.
5. 8 U.S.C. § 1421 (a); 8 U.S.C. § 1451(a).
6. See *Gorbach v. Reno* (9th Cir. 2000) 219 F.3d 1087.
7. U.S. Const. art. I, § 8.
8. U.S. Const. amend. XIV.
9. See *Sessions v. Morales Santana*, 137 S. Ct 1678 (2017).
10. 804 F.3d 520 (2d Cir. 2015).
11. *United States v. Smith-Balither*, 424 F.3d 913 (9th Cir. 2005).
12. 8 U.S.C. § 1453.
13. See *Gorbach*, *supra* note 6.
14. *Matter of Tijerina-Villareal*, 13 I&N Dec. 327, 330 (1969).
15. 8 U.S.C. § 1453.
16. *Fedorenko v. United States*, 449 U.S. 490)1981).
17. 8 U.S.C. § 1451 (e); See *Maslenjak v. United States* 137 S. Ct. 1918 (2017).

Special Immigrant Juvenile Status: Protecting Abused, Abandoned, or Neglected Immigrant Children

BY HILLARY RICHARDSON

In light of recent increased immigration raids and enforcement, it is more important than ever for immigrant families to have competent legal screenings to assess for relief from deportation. This article will address one such form of relief, known as Special Immigrant Juvenile Status, or SIJS.

Carlos' father abandoned his family when Carlos was only six years old. When Carlos was eight, his mother came to the United States to work, leaving Carlos with his grandmother in Honduras. Carlos' mother sent him money every week for food and school supplies, but Carlos's grandmother treated him badly. She hit him with sticks and cables and often forced him to stay home from school and work, keeping the money for herself. She threatened to hurt him even more if he told his mother what was happening. Without his father around to intervene, Carlos had no one in Honduras to protect him from his grandmother's abuse. By the time Carlos turned 13, he decided he could no longer take the abuse and he fled Honduras to join his mother in the United States.

Carlos' story is unfortunately not unusual for children fleeing the area known as the Northern Triangle of Central America – composed of Honduras, El Salvador, and Guatemala. In addition to poverty and brutal

gang violence, factors causing children to flee their countries include child abuse, gender-based violence, and sexual assault. When these children come to the United States alone or with an adult who is not their parent, they are classified as "unaccompanied minors". In 2016, over 59,000 fleeing children were apprehended at the southern border and classified as unaccompanied. These children are detained in centers run by the Office of Refugee Resettlement ("ORR") and placed into deportation proceedings. If they have a parent or relative living in the United States, ORR will try to arrange the child's release to that person's custody while their immigration court case is pending. If no appropriate guardian is available, the child will have to remain detained until an immigration judge decides whether or not he/she will be deported. Although many of these children are eligible for forms of legal relief from deportation, they are not entitled to court-appointed counsel, meaning that if their families cannot afford a private attorney or find free legal help, the children are left to navigate their deportation hearings on their own.

Immigration law has been compared to the tax code in its complexity and proceedings are adversarial, meaning the children are facing an experienced immigration prosecutor in court. For a child with few resources and limited to no English, this can be an insurmountable barrier to legal protection. In this area, competent representation is crucial - although only about a third of unaccompanied minors are represented in immigration court, of those represented, 73 percent were ultimately allowed to remain in the United States, versus only 15 percent of unrepresented children.

One unique form of immigration relief available to children like Carlos is Special Immigrant Juvenile Status, or "SIJS". SIJS is meant to protect immigrant children who have been abused, abandoned, or neglected by one or both parents – and if granted can lead to permanent residency and eventual U.S. citizenship. The SIJS statute [found at 8 USC § 1101(a)(27)(J)] first requires that a child be under 21, unmarried, and present in the United States. Additionally, a "juvenile court" must have 1) declared the child dependent on the court, or placed them under the custody of an individual or state agency; 2) determined that the child's reunification with one or both parents is not viable due to abuse, neglect, abandonment, or similar basis under state law; and 3) determined that it would not be in the child's best interest to return to their home country.

As detailed above the federal statute creates a two-step process: First the child must obtain an order with the aforementioned required findings from a state court, and only then can the child apply for relief from the immigration authorities. Although the statute refers to "juvenile court," the regulations clarify that this term includes any U.S. court with jurisdiction to make determinations about the custody and care of juveniles. Common courts in which these special orders are obtained have included divorce, parentage, guardianship, and adoption courts—in addition to child welfare and juvenile delinquency proceedings.

Due to the complexity and intricacies of immigration law, it is critical that an experienced immigration law practitioner screen the child for SIJS before the family pursues the state court order (and then provide representation on the immigration side of the SIJS process). There is, however, a glaring need for attorneys with family law experience to represent the family in state court. Family law practitioners typically work with minor children and their parent or guardian to obtain the necessary predicate order, although practitioners in a variety of backgrounds may learn to handle these cases.

These predicate orders are obtained as a result of similar types of cases typically handled in guardianship, adoption or domestic relations courts. Although the final order must contain the aforementioned three essential findings under 8 U.S.C. § 1101(a)(27)(J), said findings cannot be the sole basis for filing the case. As such, it is essential that practitioners carefully interview clients and discuss various options with the child's immigration attorney in order to select the most appropriate route. Practitioners must provide clients with realistic expectations as there is no guarantee that the predicate order will be granted or that the desired immigration outcome will be successful.

These cases may also give rise to complications with jurisdiction or service of process. In the most optimal circumstances, service can be efficiently effectuated by publication or consent and waiver. The parent who abandoned the child may not be located and can be served by publication or, if their whereabouts are known, they may consent to service. But the sad fact is that many cases are much more complex service-wise—for example, children may not know the address of the parent that abandoned, abused or neglected them, or that parent may not be willing to consent to service or admit to their prior actions. This may necessitate service on a party that resides out of state or (more realistically) out of the country. Depending on the home country of the child, this may involve service of process through The Hague Convention or the Inter-American Convention on Letters Rogatory & Additional Protocol (IACAP). Each of these processes can be lengthy and expensive, so complications of service and time constraints related to the age of the child must be considered before filing. These cases are often initiated when a child is 16 or 17, so service issues alone may disqualify a child from this relief if the predicate order cannot be obtained in a timely manner.

As an added complication, given the recent increase in enforcement against all undocumented people living in the U.S., many parents and family members are afraid to come forward to seek relief on behalf of their children. For example, previously an undocumented mother filing a custody case (or an uncle seeking guardianship over his nephew) would simply access the state courts and face minimal risk of immigration enforcement. Now, however, some family members may be forced to make a heartbreaking choice—risk exposing themselves or watch their child be deported due to a lack of a state court order for SIJS.

It is important to note that immigration enforcement against a parent or guardian is simply a risk, not a guarantee, and a majority of family members who choose to pursue SIJS on behalf of their children

are able to navigate the state court system without immigration consequences to themselves. However, the extremely harsh rhetoric adopted by this administration has had its intended effect of preventing immigrant families from seeking the legal protections for which they are eligible. Particularly in light of the recent rescission of the Deferred Action for Childhood Arrivals (DACA) program (which eliminated a form of protection and stability for hundreds of thousands of immigrant youth), it is more important than ever for families to receive accurate legal advice and pro bono representation wherever possible.■

The National Immigrant Justice Center (NIJC) screens children for eligibility for SIJS, along with other immigration remedies, and works with experienced family law attorneys to obtain SIJS predicate orders in state courts. NIJC also provides regular trainings and technical support for family law attorneys and attorneys from other areas of law who are willing to bring these cases in state court to benefit immigrant minors.

For more information about unaccompanied immigrant children generally, visit http://www.immigrantjustice.org/resources/resources-attorneys-representing-unaccompanied-immigrant-children. For details about the SIJS and the predicate order process, contact NIJC attorney Hillary Richardson at hrichardson@heartlandalliance.org, and attorney Meredith Turner-Woolley of Hughes Socol Piers Resnick & Dym at mturner-woolley@hsplegal.com.

1. https://www.acf.hhs.gov/orr/about/ucs/facts-and-data#Incoming%20Referrals.
2. http://trac.syr.edu/immigration/reports/359/.
3. 8 C.F.R. § 204.11(a).

Recent Immigration Case Decisions

The following case summaries involving immigration law appeared during the first half of 2019 in the ISBA E-Clips:

Yafai v. Pompeo, No. 18-1205 (January 4, 2019) N.D. Ill., E. Div. Affirmed Dist. Ct. did not err in dismissing on consular nonreviewability grounds plaintiffs' action under Administrative Procedure Act and Declaratory Judgment Act, seeking review of consular officer's decision to reject alien's visa application. Basis for denial was officer's finding that alien had sought to smuggle her two children into U.S., which rendered alien inadmissible under 8 USC section 1182(a)(6)(E), and record otherwise showed that doctrine of consular nonreviewability precluded review of officer's visa denial by Dist. Ct., since officer's decision was facially legitimate and bona fide, where officer cited to valid statutory basis and factual predicate for said visa denial. Moreover, while alien attempted to invoke bad faith exception to said doctrine by presenting evidence that alien could not have attempted to smuggle her children into U.S. because they were deceased, alien had failed to make affirmative showing of officer's bad faith, where record showed that officer simply did not believe alien's claims, which by itself, was insufficient to show that officer was dishonest or had illicit motive. (Dissent filed.)

Fuller v. Whitacker, No. 17-3176 (January 23, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition granted Alien was entitled to remand for Bd.'s reconsideration of his motion to reopen his removal proceeding so that he could present new evidence in form of certain letters in support of his request to defer his removal to Jamaica under Convention Against Torture (CAT). Record showed that Bd. had previously sustained IJ's finding that alien was not entitled to CAT relief because he was not credible in his allegations that he was bisexual and that he would face torture because of his sexual orientation. However, record also showed that Bd. had misapprehended basis for alien's request to reopen matter by stating in contravention to substance of alien's motion that alien did not contest Bd.'s prior conclusions regarding alien's credibility or his eligibility for deferral of removal. As such, although Ct. of Appeals lacked jurisdiction to consider merits of Bd.'s denial, Ct. of Appeals could remand matter for reconsideration of alien's motion due to Bd.'s legal error in misapprehending alien's request for relief.

Ruderman v. Whitacker, No. 17-1689 (January 29, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition granted IJ did not err in finding that alien (native of Belarus) was statutorily inadmissible due to his prior conviction on charge of homicide by negligent operation of vehicle, where said conviction qualified as "particularly serious crime" under 8 USC sections 1158(b)(2)(A) (iii), and 1231(b)(3)(B)(ii). Moreover, Bd. did not err in finding that alien did not qualify for CAT protection, even though alien presented evidence that he was bullied and assaulted by others because of his Jewish religion, where record contained some evidence supporting IJ's finding that alien failed to establish that there was substantial risk that he would be subject to future torture inflicted by or with consent of Belarus officials. However, remand was required, where Bd. erroneously concluded that alien had not raised any meaningful challenge to his inadmissibility in his pro se brief, even though his counsel had conceded that alien was inadmissible in later-filed brief. Also, IJ erred in using wrong legal standard, i.e., alien's failure to show that removal would cause extreme hardship to his citizen-wife, when finding that alien was statutorily ineligible for waiver of inadmissibility, when IJ should have applied less stringent standard that allowed waiver for humanitarian purposes.

Barry v. Barr, No. 18-2334 (February 22, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record contained sufficient evidence to support IJ's denial of alien's application for

deferral of removal under CAT, even though alien claimed that there was likelihood that he would be tortured on account of his political and familial associations, as well as his bisexual sexual orientation if forced to return to Guinea. While alien asserted that he was assaulted over 20 years ago by members of ruling political party that was in opposition to his father's political party, plaintiff failed to establish how he would be targeted for future persecution due to number of years following said assault, as well as lack of evidence that Guinean officials are still looking for alien's father or for alien, and fact that different political party is now in power in Guinea. Also, plaintiff's evidence regarding violence towards same-sex sexual conduct allegedly occurred over 20 years ago, and plaintiff failed to show that Guinea actually prosecutes homosexual acts under its laws prohibiting homosexual conduct.

Nielsen v. Preap, No. 16-1363 (March 19, 2019) The Ninth Circuit's judgments—that respondents, who are deportable for certain specified crimes, are not subject to 8 U. S. C. §1226(c)(2)'s mandatory-detention requirement because they were not arrested by immigration officials as soon as they were released from jail—are reversed, and the cases are remanded.

Ruano v. Barr, No. 18-2337 (April 24, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition granted I.J. erred in denying alien's asylum claim based on his contention that he had been tortured and persecuted by members of Mexican drug cartel. While IJ found that alien was credible in his claim that members of cartel had previously been kidnapped, tortured and threatened with death, after he refused cartel's demand that alien surrender his wife to cartel members, I.J. erred in finding that alien had failed to link said torture/ persecution to his membership in "particular social group," which Ct. of Appeals found was alien's membership in his wife's family. Ct. further noted that any arguable personal vendetta against alien was due to his relationship with his wife and rejected govt. claim that torture of alien was based on mere personal dispute involving love triangle involving alien, his wife and member of cartel. As such, Ct. found that alien had established his eligibility for asylum relief.

Serrano v. Barr, No.18-2886 (May 9, 2019) Petition for Review, Order of U.S. Dept. of Homeland Security Petition dismissed In proceeding to reinstate 2005 removal order after alien had been discovered in U.S. by immigration officials after his removal, Ct. of Appeals lacked jurisdiction to consider alien's claim that 2005 removal order was void because it had never been properly initiated. Under 8 USC section 1231(a)(5), Attorney General may reinstate prior removal order where, as here, there was finding that alien had entered U.S. illegally after having previously been removed, and prior removal order cannot be reopened or reviewed by Ct. of Appeals. Moreover, alien had other remedies available to him in 2005 to challenge 2005 removal order, but had failed to take advantage of them.

Ortiz-Santiago v. Barr, No. 18-3251 (May 20, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Ct. of Appeals rejected alien's claim that failure of DHS to include statutorily-required time and date information for his removal hearing in his initial Notice to Appear (although he subsequently received said information in Notice of Hearing) deprived Immigration Court of jurisdiction to rule on instant removal proceedings. While DHS should have provided alien with time and date information in his Notice to Appear and filed said Notice with Immigration Court, said failure to follow instant claim-processing rule was not jurisdictional flaw. Moreover, alien did not timely object to said failure and was not prejudiced by being issued non-compliant Notice to Appear.

Najera-Rodriguez v. Barr, No. 18-2416 (June 4, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition granted Bd. erred in finding that alien's Illinois state court conviction on charge of unlawful possession of Xanax pills without prescription was crime "relating to controlled substance" that made alien removable under 8 USC section 1227(a)(2)(B)(i). Relevant Illinois statute covered substances that were not controlled substances under federal law, and said statute was not divisible for purpose of applying modified categorical approach to determine whether elements of defendant's conviction triggered alien's removal. As such, alien's conviction did not render him removable.

Toure v. Barr, No.18-3634 (June 7, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied IJ did not err in denying alien's request for continuance of removal hearing so that alien could pursue second I-751 petition to remove condition of alien's marriage to U.S. citizen with respect to his permanent resident status and to avoid his removal. Alien made continuance request on day of removal hearing, even though IJ had required that any continuance request be made at least 15 days prior to said hearing, and alien had waited over 2.5 years after his divorce from wife to file I-751 application. Also, alien's hope that USCIS would grant his I-751 petition was speculative, where USCIS had repeatedly found in first I-751 joint petition that alien's marriage had been sham. Fact that govt. had consented to alien's continuance request did not require that IJ grant said request.

Doe v. McAleenan, No. 17-3521 (June 17, 2019) N.D. Ill., E. Div. Affirmed Dist. Ct. did not err in dismissing for lack of jurisdiction alien's action under Administrative Procedure Act that challenged USCIS's revocation of alien's I-526 petition for conditional permanent residency, where alien sought visa for immigrants who invest in new job-creating enterprises. Alien filed said petition based on his and others' investment in assisted living facility, and Dist. Ct. could properly find that it lacked jurisdiction under 8 USC section 1252(a)(2)(B)(ii) to review USCIS's discretionary revocation of alien's visa petition. Ct. further rejected alien's claim that Dist. Ct. had jurisdiction because he had raised procedural challenge, since: (1) alien's claim was essentially contention that USCIS had committed violation by overlooking favorable evidence; and (2) alien's action was actually challenge to agency's substantive decision to deny alien's petition.

Arrazabal v. Barr, No.17-2969 (July 3, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition granted Record failed to support Bd.'s denial of alien's applications for withholding of removal and protection under CAT, where alien alleged that he faced likelihood of continued persecution and torture if forced to return to El Salvador because of his former association with MS-13 gang and his refusal to rejoin said gang. While IJ could properly find that alien was not credible with certain aspects of his testimony, IJ overlooked certain corroborative evidence provided by third-parties, such as beating alien received from current MS-13 gang members and demands made by said gang members, as well as improperly discounted testimony from other witnesses due only to fact that said individuals were friends or relatives of

alien. As such, remand was required to allow IJ and Bd. to factor said corroborative evidence when making overall evaluation of alien's applications.

Doe v. McAleenan, No.17-2040 (July 3, 2019) N.D. Ill., E. Div. Affirmed Dist. Ct. did not err in finding that United States Citizenship and Immigration Services (USCIS) was not arbitrary or capricious in denying alien's petition to remove conditions of his EB-5 permanent residency status that alien had obtained through visa program requiring that alien invest at least $500,000 in new commercial enterprise that created fulltime employment for minimum of 10 qualified employees. USCIS could reasonably conclude enterprise's single $1.1 million purchase of land to locate enterprise was not legitimate, where alien could not explain circumstances of intermediate buyer's purchase of said land for $630,000 on same day that said buyer sold land to alien's enterprise. As such, USCIS could conclude that alien failed to show that said land purchase truly placed full value of his investment "at risk" for purposes of job creation in his proposed enterprise

Gamero v. Barr, Nos. 17-3198 & 18-1104 (July 3, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Bd. could properly find that alien's two state-court convictions for possession with intent to deliver cocaine and marijuana qualified as aggravated felonies under 8 USC section 1101(a)(43)(B), which in turn supported Bd.'s finding that alien was removable. Also, record contained substantial evidence to support Bd.'s denial of alien's request under CAT for deferral of removal to Mexico based on alien's claim that said removal placed him at risk of torture and persecution from Mexican drug cartel. Bd. could properly conclude that alien failed to present corroborating evidence to support handful of alleged incidents occurring over five-year period. Moreover, alien and his witnesses could only speculate that drug cartel was involved in said incidents. Also, Bd. did not err in denying alien's motion to reopen proceedings based on new evidence that drug cartel kidnapped alien's brother-in-law and nephew, where alien had failed to link said kidnappings to his own circumstances.

Vyloha v. Barr, Nos. 18-2290 & 18-3298 Cons. (July 10, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Bd. did not abuse its discretion in affirming IJ's denial of alien's motion to rescind removal in absentia order, where instant request to rescind came 10 years after removal order. While alien argued that he had no notice of removal hearing because of language barrier, IJ found that: (1) alien had been personally served with notice of removal hearing both orally and in writing; and (2) alien was not diligent in seeking to reopen case, where said motion was filed 10 years after removal order. Ct. rejected alien's claim that he never understood notice of hearing, where IJ found that alien was comfortable speaking English at hearing when alien received oral and written notice of removal hearing. Also, alien's claim that Bd. and IJ lacked subject-matter jurisdiction because original notice lacked specific date and time for removal hearing was untimely, since alien could have raised said claim prior to Pereira, 138 S.Ct. 2105, and alien otherwise could not show prejudice where he had been personally served with notice of time and date of removal hearing.

N.Y.C.C. v. Barr, No.18-2618 (July 19, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record supported IJ's denial of asylum application filed by alien (citizen of Mexico) in her claim that she experienced past persecution from her former boyfriend and member of Mexican gang and would experience future persecution from him if forced to return to Mexico. While alien insisted that boyfriend made threat to do physical violence to her and her child if she refused to return to him, IJ could properly find that said threat did not qualify as persecution where boyfriend failed to take additional steps to create substantial risk for alien. Also, alien failed to establish that she would be unable to relocate to another part of Mexico given her restaurant skills and given lack of evidence that former boyfriend's conduct would escalate in future.

Hernandez-Garcia v. Barr, No. 18-3297 (July 22, 2019) Petition for Review, Order of Bd. of Immigration Appeals Petition denied Record supported IJ's denial of alien's applications for asylum, withholding of removal and CAT relief, even though alien argued that she left Guatemala with her two children after she began receiving series of anonymous notes asking for money and threatening her and her children if she refused to pay. Alien failed to establish nexus between instant threats and any alleged protected grounds, i.e., single females with no male head-of-household or well-to-do persons opposed to gangs. Moreover, record contained no evidence that risk faced by alien was distinct because of her opposition to gangs or her status as single female with no male head of household. Fact that there is general level of violence against females in Guatemala was not sufficient by itself to support alien's claim that she was singled out for persecution.

U.S. v. Valenzuela, No. 18-2789 (July 26, 2019) N.D. Ill., E. Div. Affirmed Dist. Ct. did not err in granting judgment on pleadings to plaintiff-govt. in govt.'s complaint seeking to revoke defendant's naturalized citizenship and cancel his certificate of naturalization under 8 USC section 1451(a) based on: (1) defendant's Illinois conviction on charge of aggravated criminal sexual abuse of minor who was family member; and (2) govt.'s claim that said conviction, which occurred shortly after defendant's naturalization, but concerned conduct that occurred during 4-year period prior to defendant's naturalization, was crime of moral turpitude within 5-year statutory period preceding defendant's application for citizenship. Defendant conceded that said conviction was crime of moral turpitude, and Ct. rejected defendant's contention that govt. was guilty of latches for waiting 17 years after said conviction to file instant complaint, where defendant could not show any prejudice arising out of said delay. Moreover, defendant could not establish any selective prosecution defense, where defendant failed to show that decision to prosecute him was based on race, religion or other arbitrary classifications. ■