

Final Report
Submitted to the Barbara McDowell and Gerald S. Hartman Foundation
July 2012

Introduction

The generous support of the Barbara McDowell and Gerald S. Hartman Foundation enabled the Heartland Alliance's National Immigrant Justice Center (NIJC) to impact the treatment of asylum claims involving "particular social groups" during the past year. NIJC succeeded in clearly articulating the legal basis of asylum for "particular social group" applicants in venues nationwide and laid the foundation for positive outcomes at all levels as litigation to expand protections for asylum seekers will likely increase. Additionally, NIJC facilitated the litigation efforts of attorneys nationwide by creating and sharing legal tools through our website. NIJC sought to refocus the way adjudicators view particular social group claims, notably those involving gender, NIJC succeeded in obtaining protection for individuals and crafted legal arguments that have the potential to yield positive decisions from the Board of Immigration Appeals (Board), the federal courts of appeals, and even the Supreme Court.

The law of asylum in the United States dictates that protection be granted to individuals seeking refugee status who present a well-founded fear of persecution based on race, religion, nationality, political opinion, or membership in a particular social group. This last category, "particular social group," has been eroded over the course of the past ten years. Current law articulated in the case of *Matter of Acosta* long defined a particular social group as a group of individuals who possess an immutable characteristic that they cannot or should not be required to change. However, in *Matter of C-A-*, the Board superimposed additional requirements, notably a requirement social group have "social visibility." Since its inception, this term has been ill-defined and unevenly applied by immigration courts, the Board, and federal courts of appeal.

During the course of this grant, NIJC identified cases at the Board and at the courts of appeals that present social visibility issues, and filed briefs in *Perdomo*, *Rodriguez Perez, K-C-*, *Rivera Barrientos*, and *Henriquez Rivas*. NIJC focused on identifying Board errors in adding social visibility and particularity requirements. In addition, NIJC argued that the adjudicator must analyze each asylum element separately and allow each to "do its work." NIJC explained the challenges faced by *pro se* applicants who are ill-equipped to articulate a particular social group that would meet the Board's current interpretation. NIJC ensured these cases were argued as effectively as possible, positioned them for success, and awaits the outcomes. Currently NIJC is drafting briefs for two additional "particular social group" cases.

U.S. Supreme Court

Most of the courts of appeals have now spoken on this issue, and we believe that the Supreme Court will decide the issue. NIJC filed *amicus* briefs aiming to keep the matter from reaching the Supreme Court prematurely. NIJC expects to be heavily involved as *amicus* if and when certiorari is granted on this issue. During the course of the grant, NIJC served as a national leader as various parties considered seeking review by the Supreme Court. NIJC convened a meeting with top Chicago litigators to discuss the type of case that might best present this issue. NIJC also participated in regular conversations with national partners on a review of this issue and strategized on framing particular social group issues for the Supreme Court.

The Board Considers Gender as a Particular Social Group

Despite exhaustive briefing by NIJC and others in support of Board recognition of gender as a particular social group (*In re Perdomo*, *Matter of C-R-P-* and *Matter of K-C-*), the Board has yet to issue a precedential decision recognizing this group. *In re Perdomo* was remanded to the Board from the Ninth Circuit and *Matter of C-R-P-* was remanded from the Eighth Circuit. In these two cases, NIJC submitted *amicus* brief arguing that this group meets the *Acosta* test. NIJC countered floodgates concerns by noting other requirements that an individual must meet to receive protection in the United States.

At the request of the Board in the case *Matter of K-C-*, NIJC provided additional briefing on the question of victims of domestic violence as a particular social group. NIJC co-counseled on a brief filed in response to this request and argued that, though domestic violence can form a particular social group, gender alone is also legally sufficient. This case, as well as *C-R-P-*, remains pending at the Board. *In re Perdomo* was remanded to the immigration court where any decision issued will not be precedential and will have no binding impact on other cases. The Board has indicated it may seek additional briefing in additional cases involving gender as a particular social group. This suggests the Board is still undecided and may be convinced by additional arguments set forth by NIJC and other advocates.

Moving Forward

NIJC continues to actively challenge overly restrictive interpretations of “particular social group” and the improper analysis of the link between persecution and the protected ground. In the coming year, NIJC will file an *amicus* brief *Validiviezo v. Holder*, which was remanded to the Board from the Court of Appeals for the Third Circuit. NIJC will also file an *amicus* brief in *Cece v. Holder*, a case being reheard *en banc* before the Court of Appeals for the Seventh Circuit. This case presents important issues related to gender as an element of a particular social group. In addition, NIJC will continue to actively coordinate with a group of allies to advance particular social group cases before the Board and federal courts. If the U.S. Supreme Court grants *certiorari* in a particular social group case, NIJC will work closely with this coalition. With these efforts, NIJC remains hopeful that the Board’s current restrictive interpretation of particular social group will be struck down nationwide and that U.S. asylum law will realign with international law standards to better protect individuals fleeing human rights abuses.