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AG Barr ruling puts asylum seek at deadly risk

BY NATALIE NANASI, OPINION CONTRIBUTOR — 07/31/19 02:00 PM EDT
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The Trump administration's relentless attacks on asylum seekers continued Monday, when Attorney General William Barr singlehandedly upended decades of precedent by [declaring](#) that immediate family members no longer constitute a "particular social group" eligible for asylum protection in the United States. Barr's order in "Matter of L-E-A" continues the erosion of already beleaguered legal remedies for asylum seekers, and needlessly places the lives of the most vulnerable migrants at risk.

Being from a particular social group is one of five grounds for asylum in the U.S. (the other four are race, religion, national origin and political opinion). When the asylum system was created in the aftermath of World War II, other reasons for asylum had not been considered (in relation to the current political climate). Those include: intimate partner abuse, gang-based violence and persecution of LGBTQ individuals. In over a decade of representing asylum seekers, I have seen firsthand the lifesaving refuge the particular social group ground can provide.

Courts have long described family as the "[quintessential](#)" or "[prototypical](#)" particular social group. When the Board of Immigration Appeals (BIA) first defined the phrase in the seminal case of [Matter of Acosta](#) in 1985, it listed "kinship ties" as an example of a characteristic possessed by a valid group. Eleven years later, the BIA issued a [precedent decision](#) affirming clan membership as a valid particular social group. The AG's order thus constitutes a stunning reversal of long-held and firmly established precedent, as along with the BIA, nearly every federal court

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that has considered the question has recognized family membership as a basis for asylum in the U.S.

Matter of L-E-A involves the son of a Mexican grocer who refused to allow a criminal cartel to sell drugs in his store. After the cartel attempted to kidnap him, Mr. L-E-A sought asylum in the United States. The BIA concluded that it had “no difficulty identifying the respondent, a son residing in his father’s home, as being a member of the particular social group comprised of his father’s immediate family.” Barr disagreed and overruled the decision.

The attorney general’s order echoes — and cites extensively — the flawed decision of former Attorney General Jeff Sessions in Matter of A-B, which overruled a case that established the right to asylum for survivors of domestic violence. Like Sessions, Barr claims that the BIA’s decision included insufficient analysis because of stipulations made by the Department of Homeland Security. Yet, because the family-based particular social group was such firmly settled precedent, such stipulations were routine and had been offered countless times, even as administrations changed.

Barr’s order also says that most families are likely not a valid particular social group because they are not sufficiently distinct from others in society, as required by recent caselaw. He said only families with “societal import” should be eligible for asylum, an unsurprising view from an administration that has consistently demonized immigrants from less affluent, and predominantly non-white, countries.

Barr does note that his order will “not bar all family-based social groups from qualifying for asylum.” Eligibility for asylum is still, as it has always been, determined on a case-by-case basis, with judges free to recognize particular social groups based on family membership and intimate partner violence even in the absence of BIA precedent. However, as a result of the orders in Matter of A-B and Matter of L-E-A, future decisions will lack predictability and consistency.

More troubling, after listing the myriad ways in which one can suffer violence in a foreign land, the AG opinion approvingly quotes Sessions’ statement in Matter of A-B that “the asylum statute does not provide redress for all misfortune.”

This callous declaration ignores the fact that Trump’s Justice Department has, in just a few years, gutted U.S. asylum law, including invalidating all the particular social groups recognized by the BIA under existing jurisprudence. For the few asylum seekers who are able to successfully navigate the seemingly endless hurdles instituted by the Trump administration, this draconian rewriting of the law will undoubtedly lead to grave or even deadly consequences for those seeking refuge in the United States.

Fortunately, Congress has the power to restore critical protections for asylum seekers. The House and Senate should once again take up the Refugee Protection Act, which would create a statutory definition of particular social group that that protects families.

Additionally, both Matter of L-E-A and Matter of A-B were decided after Barr and Sessions removed the cases from the immigration court system through the process of “self-referral.”

A recent ABA investigation found that Trump’s attorneys general have, in just over two years, referred more cases to themselves than all of Obama and Clinton’s attorneys general combined. Congress can end the

politicization of justice by using its power to establish an independent immigration court system and restore the rule of law to the U.S. asylum system.

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