

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Ramirez-Lopez v. Garland

No. 19-534, United States Court of Appeals for the Second Circuit (May 4, 2021)

SUMMARY

The Second Circuit granted a petition for review of a BIA decision denying asylum, withholding of removal, and CAT relief, holding that the BIA erred in finding that the petitioner failed to preserve his proposed particular social group of "eyewitnesses to gang murder and torture who publicly reported the crime to the police." The court found that the petitioner's brief before the Immigration Judge sufficiently delineated this narrower group, and the IJ should have sought clarification if any ambiguity existed. The case was remanded for the agency to assess the legal viability of the proposed social group, which the court noted was non-frivolous. Key topics: asylum, particular social group, issue preservation, duty to clarify, witnesses reporting crime.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Pierre N. Leval; Robert A. Katzmann; Gerard E. Lynch
JURISDICTION	Federal
DECIDED	May 4, 2021
DOCKET	19-534
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for review of a Board of Immigration Appeals decision affirming an Immigration Judge's denial of asylum, withholding of removal, and relief under the Convention Against Torture.
STANDARD OF REVIEW	Factual findings reviewed for substantial evidence; questions of law, including whether a proposed social group is cognizable, reviewed de novo. Nexus determination reviewed for substantial evidence.
PRECEDENTIAL VALUE	unpublished
PARTIES	Elmer Obeniel Ramirez-Lopez v. Merrick B. Garland, United States Attorney General

TOPICS

[immigration](#)[asylum](#)[removal proceedings](#)[appellate procedure](#)[preservation of error](#)

PRACTICE AREAS

Immigration Law

Asylum

QUESTIONS PRESENTED

1. Whether the BIA erred in concluding that Ramirez-Lopez failed to preserve his proposed particular social group of witnesses to gang murder who publicly reported the crime to the police.
2. Whether the Immigration Judge should have sought clarification of the proposed social group if it was ambiguous.

HOLDINGS

1. The BIA erred in concluding that the proposed social group was not preserved. Ramirez-Lopez fairly presented the narrower proposed group to the IJ through his brief, which consistently described his involvement in reporting the crime. The IJ should have sought clarification if there was any ambiguity.

KEY QUOTATIONS

“Mr. Ramirez is a member of a 'particular social group'. [sic] Mr. Ramirez has the immutable characteristic of having witnessed torture and murder perpetrated by a gang and he helped his friend report the crime to the police. This characteristic cannot be changed because it happened in the past. Mr. Ramirez brought his friend to the police station and the gang killed Mr. Ramirez's friend the next day and sent Mr. Ramirez a threatening note.” (at 3)

“If an applicant is not clear as to the exact delineation of the proposed social group, the Immigration Judge should seek clarification.” (at 4)

“Because Ramirez-Lopez met his burden to delineate his proposed social group, the IJ was obligated to assess its legal viability, and the BIA's refusal to consider it on the ground that the proposed group had not been properly presented to the IJ was error.” (at 5)

FACTUAL BACKGROUND

Ramirez-Lopez, a native and citizen of Guatemala, witnessed a gang murder and torture. He helped his friend report the crime to the police. As a result, the gang killed his friend the next day and sent him a threatening note. He filed an application for asylum, withholding of removal, and CAT relief, claiming a well-founded fear of persecution based on his membership in a particular social group: witnesses to gang murder who publicly reported the crime to the police.

PROCEDURAL HISTORY

The IJ denied Ramirez-Lopez's application for asylum, withholding of removal, and CAT relief on December 11, 2017. The BIA affirmed the IJ's decision on February 1, 2019. Ramirez-Lopez then petitioned for review to the Second Circuit.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

For further proceedings consistent with the order, specifically to consider whether Ramirez-Lopez's proposed social group is cognizable and whether his actions were sufficient to place him within that group.

CASES CITED

- Yan Chen v. Gonzales, 417 F.3d 268 (2d Cir. 2005)
- Paloka v. Holder, 762 F.3d 191 (2d Cir. 2014)
- Gjolaj v. Bureau of Citizenship & Immigration Servs., 468 F.3d 140 (2d Cir. 2006)
- Matter of C-T-L-, 25 I. & N. Dec. 341 (BIA 2010)
- Matter of M-E-V-G-, 26 I. & N. Dec. 227 (BIA 2014)
- Matter of Acosta, 19 I. & N. Dec. 211 (BIA 1985)
- Matter of W-Y-C- & H-O-B-, 27 I. & N. Dec. 189 (BIA 2018)
- Gashi v. Holder, 702 F.3d 130 (2d Cir. 2012)
- Yucra-Santi v. Lynch, 660 F. App'x 78 (2d Cir. 2016)