

**From:** (b)(6)  
**To:** OPLA HQ Personnel; OPLA Field Personnel  
**Subject:** Broadcast Message: Updated Guidance -- Matter of Negusie, 28 I&N Dec. 399 (A.G. 2021)  
**Date:** Thursday, December 16, 2021 3:35:17 PM

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*Disseminated on behalf of Ken Padilla and Adam V. Loiacono . . .*

On October 12, 2021, Attorney General (AG) Garland directed the Board of Immigration Appeals (BIA or Board) to refer to him for review its unpublished decision in Daniel Ghirmay Negusie, A015 575 924 (BIA Mar. 16, 2021), which AG Garland stayed pending his review. *See Matter of Negusie*, 28 I&N Dec. 399 (A.G. 2021). This case has a long history, including a decision by the U.S. Supreme Court, which held that the Immigration and Nationality Act (INA) is ambiguous with respect to whether duress and coercion are relevant in applying the persecutor bar and remanded for the BIA to make a “determination of the statutory interpretation question and its application to this case” in the first instance. *See Negusie v. Holder*, 555 U.S. 511, 524 (2009). On June 28, 2018, the BIA published a decision in which it recognized a “narrow duress exception” to the persecutor bar, created a five-part test for a duress defense, and found that the respondent did not satisfy that test but was nevertheless eligible for deferral of removal under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture (CAT), to which the persecutor bar is inapplicable. *See Matter of Negusie*, 27 I&N Dec. 347, 353, 363 (BIA 2018). On November 5, 2020, then-AG Barr vacated the BIA’s decision, ruling that there is no exception for coercion or duress implied in the persecutor bar and remanding for the BIA to receive updated background checks. *See Matter of Negusie*, 28 I&N Dec. 120, 155 (A.G. 2020). On March 16, 2021, the BIA dismissed the respondent’s appeal and affirmed the immigration judge’s grant of deferral of removal under the CAT. AG Garland’s referral stays only the BIA’s unpublished decision in that case, leaving former AG Barr’s decision in *Matter of Negusie*, 28 I&N Dec. 120 (A.G. 2020), as applicable precedent at this time.

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OPLA attorneys should consider the updated *Negusie* practice pointers below. A more detailed summary of the case and practice pointers can be found [here](#).

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This message includes internal guidance provided for internal OPLA use only and is not intended for public disclosure. Please ensure that it is treated consistent with applicable guidance. If you have questions about this guidance, or *Negusie*-related issues arise your case, please contact HRVLD or ILPD (ILPD-E or ILPD-W), as appropriate.

Thank you,

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