

Pick a Type

Practice Pointers

Title

Matter of L-E-A-, 27 I&N Dec. 40 (BIA 2017) [Summary and Practice Pointers]

Court/Board

Topic

Asylum/WH--Misc

Body

(b)(5)

On May 24, 2017, the Board of Immigration Appeals' (Board or BIA) issued a precedent decision in Matter of L-E-A-, 27 I&N Dec. 40 (BIA 2017), dealing with the cognizability of family-based particular social groups (PSGs) and related nexus issues. The underlying factual scenario involved an applicant for asylum and statutory withholding of removal, [1] who was threatened by a drug cartel in an attempt to coerce him to sell contraband in his father's store after his father had refused to do so.

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Family-Based PSG Issue

In its decision, the Board made the following points with respect to whether putative family-based PSGs may be cognizable. First, the Board held that a determination of whether a putative family-based PSG is cognizable is analyzed under the same standards as any other putative PSG, i.e., on a case-by-case basis, focusing on the three requirements of a common, immutable characteristic, particularity, and

socially distinction. 26 I&N Dec. at 42. Second, and relatedly, the Board emphasized that not all putative PSGs that involve family members will meet the requirements of particularity and social distinction. Rather, "the inquiry in a claim based on family membership will depend on the nature and degree of the relationships involved and how those relationships are regarded by the society in question." *Id.* at 42-43.

In this regard, the Board found that members of an "immediate family" [3] may constitute a cognizable PSG, and, in fact, held that the "immediate family" of the subject respondent's father in the instant case so qualified. *Id.* at 42, 43. However, the Board emphasized that simply inserting the characteristic of "family" into a putative PSG formulation does not necessarily mean that it will be legally viable. *Id.* at 42-43 ("Not all social groups that involve family members meet the requirements of particularity and social distinction."). For example, citing *Matter of S-E-G*, 24 I&N Dec. 579, 585 (BIA 2008), the Board noted that a group composed of "family members of Salvadoran youth who have been subjected to recruitment efforts by MS-13 and who have rejected or resisted membership in the gang" is too "amorphous" to constitute a cognizable PSG, because it could include fathers, mothers, siblings, uncles, aunts, nieces, nephews, grandparents, and cousins.

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Nexus Issue

In *L-E-A*, the Board also made a number of important points concerning the appropriate nexus analysis to apply in the context of family-based PSG claims. As a primary matter, the Board observed that simply because an individual may belong to a cognizable family-based PSG does not necessarily mean that any harm inflicted or threatened will be on account of, or because of, such a protected ground. Rather, the requisite nexus must be independently established. 27 I&N Dec. at 43. In terms of its approach to assessing nexus, while the Board could have been more explicit, its decision is best read to synthesize two existing tests for assessing whether the “one central reason” standard has been met.[Z] (b)(5)

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Step One:

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Step Two:

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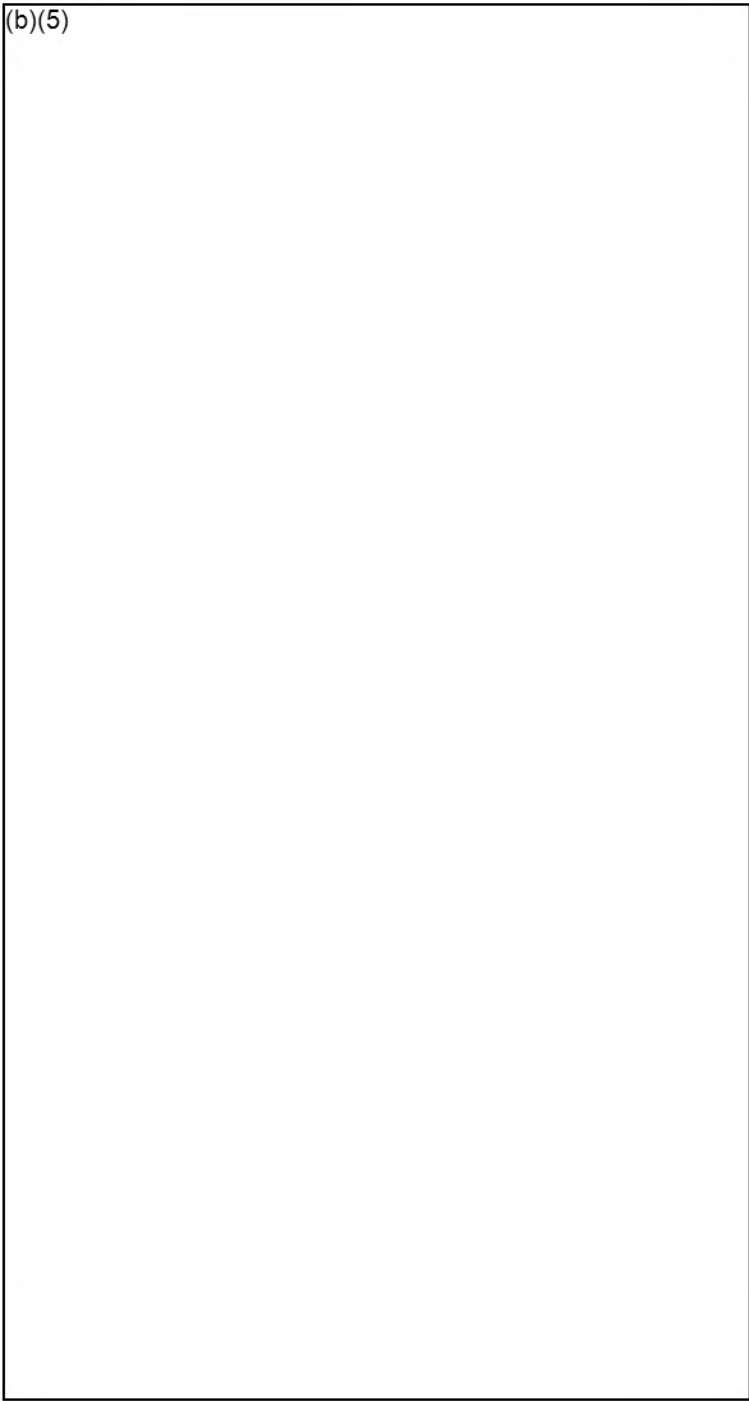
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"Persecution" and the Intent to "Overcome"

Finally, in a footnote, the Board's decision in *L-E-A* reaffirms the desire to "overcome" a protected trait is a requisite part of the concept of "persecution." 27 I&N Dec. at 44 n.2 (observing that "in *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996), we clarified that a punitive intent is not required and held, instead, that the focus is only whether the persecutor intended to 'overcome [the protected] characteristic of the victim.'" (bracketed language in the original)).

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Yes, we DO realize that this guidance is almost as long as the *L-E-A* decision itself, and, in fact, with this post-script, it is, in fact, now just as long, but we nevertheless hope you find it useful!

Should you have any questions about *Matter of L-E-A*, or protection law issues more generally, please do not hesitate to reach out to ILPD

via the ILPD-E or ILPD-W mailboxes.

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Practice Pointers

Effective Date

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