

Pick a Type Practice Pointers

Title Matter of Negusie, 28 I&N Dec. 120 (A.G. 2020) [Summary and Practice Pointers]

Court/Board AG

Topic Asylum/WH--Bars

Body 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Attorney General (AG) Garland directed the Board of Immigration Appeals (BIA or Board) to refer to him for review its unpublished decision in Daniel Ghirmay Negusie, A015 575 924 (BIA Mar. 16, 2021), which AG Garland stayed pending his review.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). The fact of referral, per se, does not affect the AG decision issued on November 5, 2020, in *Matter of Negusie*, 28 I&N Dec. 120 (A.G. 2020), where the former AG vacated the prior decision of the Board at 27 I&N Dec. 347 (BIA 2018) and held that the Immigration and Nationality Act's (INA) persecutor bar to asylum and withholding of removal does not include an exception for coercion or duress, see INA §§ 101(a)(42), 208(b)(2)(A)(i), 241(b)(3)(B)(i). The 2020 decision also clarified that the burden of proof applicable to the persecutor bar does not require the Department of Homeland Security (DHS) to present prima facie evidence that an applicant assisted or otherwise participated in persecution before the 8 C.F.R. § 1240.8(d) regulatory requirement that the applicant prove by a preponderance of the evidence that the bar does not apply is triggered. *Negusie*, 28 I&N Dec. at 154.

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

(b)(5)

Practice Pointers

The *Updated OPLA Guidance: Matter of Negusie*, 28 I&N Dec. 120 (A.G. 2020), issued on December 8, 2020, is rescinded.

- (b)(5)

(b)(5)

- o (b)(5)
- o

- (b)(5)



(b)(5)

- (b)(5)
- 
-

(b)(5)

- The AG’s 2020 decision applies to the persecutor bar to asylum, statutory withholding of removal, and Convention Against Torture (CAT) withholding of removal. *Negusie*, 28 I&N Dec. at 155. There is no persecutor bar to CAT deferral of removal. 8 U.S.C. §§ 1208.16(c)(4), 1208.17(a).

• (b)(5)

(b)(5)

- AG Barr expressly rejected the notion that voluntariness or duress is a factor to be assessed in determining whether conduct constitutes assistance in persecution, sometimes framed by courts as a “totality of the relevant conduct” approach. *See id.* at 145 n.22 (citing *Hernandez v. Reno*, 258 F.3d 806, 814 (8th Cir. 2001), and *Matter of A-H-*, 23 I&N Dec. 774, 785 (A.G. 2005)).

- (b)(5)

- (b)(5)

Effective Date 12/16/2021

Reviewed

Expires

Rating (0-5) ☆☆☆☆☆ | 0

Created at 12/16/2021 11:11 AM by (b)(6); (b)(7)(C)

Last modified at 12/16/2021 5:49 PM by (b)(6); (b)(7)(C)

Close