UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Presented at:
45th Annual Conference on Immigration & Nationality Law
AT&T Conference Center
Austin, Texas

October 28-29, 2021

BIA and Federal Court Update

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BIA CASES

ARAMBULA-BRAVO, 28 I&N Dec. 388 (BIA 2021)

(1) A Notice to Appear that does not specify the time and place of a respondent's initial removal hearing does not deprive the Immigration Judge of jurisdiction over the respondent's removal proceedings. *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021), distinguished; *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), and *Matter of Rosales Vargas and Rosales Rosales*, 27 I&N Dec. 745 (BIA 2020), followed.

(2) A Notice to Appear that lacks the time and place of a respondent's initial removal hearing constitutes a "charging document" as defined in 8 C.F.R. § 1003.13 (2021), and is sufficient to terminate a noncitizen's grant of parole under 8 C.F.R. § 212.5(e)(2)(i) (2021).

N-V-G-, 28 I&N Dec. 380 (BIA 2021)

A person who enters the United States as a refugee and later adjusts in the United States to lawful permanent resident status is not precluded from establishing eligibility for a waiver of inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) (2018), based on a conviction for an aggravated felony, because he or she has not "previously been admitted to the United States as an alien lawfully admitted for permanent residence" under that provision.

HERNANDEZ-ROMERO, 28 I&N Dec. 374 (BIA 2021)

Section 240A(c)(6) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(c)(6) (2018), bars an applicant, who has previously been granted special rule cancellation of removal under the Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, tit. II, 111 Stat. 2160, 2193, 2198 (1997), *amended by* Pub. L. No. 105-139, 111 Stat. 2644 (1997), from applying for cancellation of removal under section 240A(a) or (b)(1) of the Act.

AGUILAR-BARAJAS, 28 I&N Dec. 354 (BIA 2021)

(1) The offense of aggravated statutory rape under section 39-13-506(c) of the Tennessee Code Annotated is categorically a "crime of child abuse" within the meaning of section 237(a)(2)(E)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1227(a)(2)(E)(i) (2018).

(2) The Supreme Court's holding that a statutory rape offense does not qualify as "sexual abuse of a minor" based solely on the age of the participants, unless it involves a victim under 16, does not affect our definition of a "crime of child abuse" in *Matter of Velazquez-Herrera*, 24 I&N Dec. 503 (BIA 2008), nor does it control whether the respondent's statutory rape offense falls within this definition. *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017), *distinguished*.

A-C-A-A-, 28 I&N Dec. 351 (A.G. 2021)

(1) *Matter of A-C-A-A-*, 28 I&N Dec. 84 (A.G. 2020) ("*A-C-A-A- I*"), is vacated in its entirety. Immigration j
Board should no longer follow *A-C-A-A- I* in pending or future cases and should conduct proceedings consist
opinion and the opinions in *Matter of L-E-A-*, 28 I&N Dec. 304 (A.G. 2021) ("*L-E-A- III*"), and *Matter of A-*
Dec. 307 (A.G. 2021) ("*A-B- III*").

(2) The Board's longstanding review practices that *A-C-A-A- I* apparently prohibited, including its case-by-ca
to rely on immigration court stipulations, are restored.

O-R-E-, 28 I&N Dec. 330 (BIA 2021)

(1) Immigration Judges and the Board lack the authority to recognize the equitable defense of laches in removal proceedings.

(2) The respondent's willful misrepresentations regarding his name, location of his residence, timing of his departure from Rwanda, and membership in political organizations on his Registration for Classification as Refugee (Form I-590) and supporting documents were "material" within the meaning of section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i) (2018), and he is therefore removable under section 237(a)(1)(A) of the Act, 8 U.S.C. § 1227(a)(1)(A) (2018).

(3) The evidence indicates that the respondent ordered, incited, assisted, or otherwise participated in the Rwandan genocide, and he did not produce sufficient countervailing evidence to demonstrate that he is not subject to the genocide bar at section 212(a)(3)(E)(ii) of the Act.

CRUZ-VALDEZ, 28 I&N Dec. 326 (A.G. 2021)

(1) *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), is overruled in its entirety.

(2) While rulemaking proceeds and except when a court of appeals has held otherwise, immigration judges and the Board should apply the standard for administrative closure set out in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), and *Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017).

S-L-H- & L-B-L-, 28 I&N Dec. 318 (BIA 2021)

(1) Immigration Judges may exercise their discretion to rescind an in absentia removal order and grant reopening where an alien has established through corroborating evidence that his or her late arrival at a removal hearing was due to "exceptional circumstances" under section 240(e)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1229a(e)(1) (2018), and, in doing so, should consider factors such as the extent of the alien's tardiness, whether the reasons for the alien's tardiness are appropriately exceptional, and any other relevant factors in the totality of the circumstances.

(2) Corroborating evidence may include, but is not limited to, affidavits, traffic and weather reports, medical records, verification of the alien's arrival time at the courtroom, and other documentation verifying the cause of the late arrival; however, general statements—without corroborative evidence documenting the cause of the tardiness—are insufficient to establish exceptional circumstances that would warrant reopening removal proceedings. *Matter of S-A-*, 21 I&N Dec. 1050 (BIA 1997), *reaffirmed and clarified*.

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First appeared as part of the conference materials for the
45th Annual Conference on Immigration and Nationality Law session
"BIA and Federal Court Update"