

4th Circ. Revives Asylum Case Over 'Discounted' Evidence

By Alyssa Aquino

Law360 (March 5, 2021, 8:30 PM EST) -- The Fourth Circuit breathed new life into a Honduran woman's asylum application, finding that an immigration appellate board "improperly discounted" affidavits detailing a local gang leader's retribution against her husband as insufficient or "self-interested."

The three-judge panel ruled Thursday that Maria del Refugio Arita-Deras had adequately established that she suffered past persecution in Honduras. Its published decision reversed the U.S. Board of Immigration Appeals' contention that, by failing to name the gang leader who threatened to kidnap and kill Arita-Deras and her son, her friends and family hadn't corroborated that she had been targeted.

"The identification of Ricardo [the alleged gang leader] by name was not necessary to establish any element of Arita-Deras' asylum claim," U.S. Circuit Judge Barbara Keenan wrote on behalf of the panel. "A person can suffer persecution without ever learning the names of the individuals who have subjected her to that persecution."

Arita-Deras sought asylum for herself and her son based on a Honduran gang's retribution against her husband. The gang was led by a man identified as Ricardo, who "grew jealous" of the apparent economic success Arita-Deras' husband, Luis Pineda-Vidal, the panel explained.

Ricardo threatened to kill Pineda-Vidal and his family on several occasions. Within two years, Ricardo killed Pineda-Vidal's father, brother and brother-in-law. After the death of his father, both Pineda-Vidal and a surviving brother fled to the U.S. Later on, another of his brothers escaped to the U.S. and had won asylum based on the same facts Arita-Deras would later detail, the panel said in a footnote.

Arita-Deras had initially tried to stay in Honduras with her son, but then sought protection in the U.S. following kidnapping and murder threats. An immigration judge had found her credible but sought corroborating evidence. In response, Arita-Deras provided affidavits from friends and family as well as other documents, according to the panel.

The judge rejected the affidavits, finding them "self-interested," and had discounted an affidavit from her husband after he failed to appear for live testimony. The judge then rejected the asylum application, finding that Arita-Deras couldn't prove she was being targeted because of her family. The BIA had backed the judge and adopted most of their legal analysis, the panel recounted.

But the Fourth Circuit on Thursday was skeptical of all of those decisions, stressing that the judge had

already found Arita-Deras credible. Only in cases where a judge had deemed an asylum-seeker not believable would it be appropriate to question affidavits from family members and friends, the panel explained.

Moreover, by rejecting Pineda-Vidal's affidavit over missing testimony, the immigration judge had "effectively" required Arita-Deras to provide corroborating testimony — more evidence than required by immigration law.

The Fourth Circuit further faulted the immigration judge for saying Arita-Deras hadn't shown a nexus between her persecution and her family. The evidence showed that Arita-Deras' marriage to Pineda-Vidal was "at least one central reason" for her persecution, if not the dominant reason, the panel said.

The Capital Area Immigrants' Rights Coalition's Sam Hsieh and Crowell & Moring LLP's Amanda Shafer Berman, attorneys for Arita-Deras, told Law360 on Friday that they were thrilled with the appellate decision.

"This precedential decision demonstrates that family membership continues to be a legitimate basis for asylum and that corroboration can only be required when reasonable and tied to the elements of a claim," said Hsieh.

Representatives for the government didn't respond to Friday requests for comment.

Judges Barbara Keenan, Roger Gregory and G. Steven Agee sat on the panel for the Fourth Circuit.

Arita-Deras is represented by Sam Hsieh and Adina Appelbaum of the Capital Area Immigrants' Rights Coalition, and Amanda Shafer Berman, Yao Mou, Clifton Elgarten and Tiana Russell of Crowell & Moring LLP.

The government is represented by R. Trent McCotter of the U.S. Department of Justice's Civil Division.

The case is Arita-Deras et al v. Wilkinson, case number 19-1978, in the U.S. Circuit Court for the Fourth Circuit.

--Editing by Adam LoBelia.