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### LGBT Asylum Cases

#### **Matter of Toboso-Alfonso, 20 I&N Dec. 819 (B.I.A. 1990)**

The original case, designated as precedent in 1994, which established sexual orientation as "membership in a particular social group" and paved the way for asylum based on sexual orientation. Toboso-Alfonso was a gay man from Cuba who suffered various abuses at the hands of his government, including being forced to participate in a labor camp.

#### **Pitcherskaia v. INSI 118 F.3d 641, 645 (9th Circ. 1997)**

Finding that even if the abuser does not intend harm to the victim, if the victim experiences the abuse as harm, this can rise to the level of persecution. In this case, the applicant was a lesbian from Russia who, among other abuses, had been forced to undergo electroshock therapy to "cure" her of her homosexuality

#### **Hernandez-Montiel v. INS 225 F.3d 1088 (9th Cir. 2000)**

Finding that a gay man with a female sexual identity who suffered persecution in Mexico, largely because he was effeminate, qualified for asylum.

#### **Kvartenko v. Ashcroft, 33 Fed.Appx. 262 (9th Cir. 2002)**

Fact that private citizen cut homosexual's hair in Ukraine under threat of beating did not constitute persecution sufficient to warrant grant of asylum, absent evidence of government's inability or unwillingness to control such street thugs.

#### **Ford v. Bureau of Immigration and Customs Enforcement's Interim Field Office Director for Detention and Removal for Philadelphia Dist., 294 F.Supp.2d 655 (M.D.Pa. 2003)**

In response to a petition for a writ of habeas corpus, the district court found that the Board of Immigration Appeals (BIA) relied on sufficient evidence to support its decision that bisexual alien failed to meet his burden of proof for relief under Convention Against Torture (CAT); while Board acknowledged that the reports were clear evidence that some homosexuals experienced acts of torture in Jamaica, it found that the reports did not establish that a substantial portion of homosexuals in the country fell prey to that fate.

#### **Amanfi v. Ashcroft 328 F.3d 719 (3d Cir. 2003)**

Finding that it is possible to proceed with an asylum claim based on persecution on account of imputed membership in a particular social group, in this case sexual orientation, even if the applicant is not actually gay. In this case the applicant, a man from Ghana who feared he would be ritually sacrificed, engaged in a homosexual act with another man, knowing that this would lead to his being spared the sacrifice. After he was spared, however, he was mistreated because the authorities believed he was gay. The Court

recognized his imputed membership in a particular social group and remanded the case for further investigation on his claim of persecution.

**Zhen Xiung Lin v. Ashcroft, 81 Fed. Appx. 403 (3d Cir. 2003)**

An immigration judge's credibility determination, finding that an alien who claimed persecution for his homosexual activity in China had or would resort to his torture, was affirmed as supported by substantial evidence and asylum relief was denied.

**Parker v. Ashcroft, 112 Fed.Appx. 860 (3d Cir, 2004)**

Substantial evidence supported finding that alien failed to prove government authorities were unwilling or unable to protect him from persecution on account of his status as a homosexual man, and thus was not entitled to asylum; although his home country, Jamaica, had strict views against homosexuality, there was some evidence, including letter from police detective and country report, that officials recognized that violence against gays was unacceptable.

**Reyes-Reyes v. Ashcroft 384 F.3d 782 (9th Cir. 2004)**

Reaffirming that a "gay man with a female sexual identity" belongs to a particular social group, and finding that if a government willfully turns a blind eye to severe physical abuse inflicted by non-government actors this can rise to the level of government acquiescence in torture so as to qualify for relief under the Convention against Torture treaty. In this case Reyes-Reyes was a gay man with a female sexual identity from El Salvador who had been kidnapped, beaten and raped by non-government actors because of his sexual orientation. The Court remanded for further proceedings on his CAT and withholding claims.

**Molathwa v. Ashcroft 390 F.3d 551 (8th Cir. 2004)**

Holding that the federal court lacked jurisdiction to review his claimed exception to the one year filing deadline for asylum and that Molathwa had failed to demonstrate that it was more likely than not that he would be persecuted because of his gay sexual orientation in his native Botswana.

**Burog-Perez v. I.N.S., 95 Fed. Appx. 886 (9th Cir. 2004)**

Alien's allegations that she would not be able, if she returned to the Philippines, to find a job, given her appearance as a lesbian and the pattern or practice of economic persecution, enforcement of discriminatory dress and conduct rules, and harassment of homosexuals in that country, did not support a reasonable fear of persecution, as required to establish prima facie eligibility for asylum, even though alien's dental practice declined when her clients left for discriminatory reasons, and therefore denial of alien's motion to remand to permit her to file an asylum application was not an abuse of discretion.

**Cornejo-Merida v. Ashcroft, 116 Fed.Appx. 900 (9th Cir. 2004)**

Although alien's evidence established that there was overt discrimination against gays in Peru, he could not show that it was likely that he would be targeted for persecution or that persecution of gays in Peru was so rampant and severe that his mere membership in group of homosexual men sufficed to establish objective well-founded fear of future persecution, as required to support alien's application for asylum after he failed to establish past persecution.

**Abdul-Karim v. Ashcroft 102 Fed.Appx. 613 (9th Cir, 2004)**

Court found that substantial evidence supported denial of alien's application for lack of a well-founded fear of persecution on account of his membership in social group of Lebanese homosexual men. This evidence included report from State Department that prohibitions against homosexuality were not enforced and that evidence presented to the contrary did not contradict that finding.

**Uribe v. Ashcroft 105 Fed. Appx. 941 (9th Cir. 2004)**

An alien was not eligible for asylum where he failed to show that the government of Panama was the source of his persecution on account of his homosexuality or that the government of Panama was unable or unwilling to control his attackers.

**Kun Ko Lin v. Ashcroft 99 Fed. Appx. 810 (9th Cir. 2004)**

Substantial evidence supported IJ's adverse credibility finding where alien's inability to present consistent chronology of key events in relationship with male partner went to heart of asylum claim that police beat alien due to sexual orientation.

**Galicia v. Ashcroft 396 F.3d 446 (1st Cir. 2005)**

Gay Guatemalan man's petition for review was denied because he failed to show government involvement or lack of protection from past mistreatment he suffered by his neighbors.

**Safadi v. Gonzales, 148 Fed.Appx. 372 (6th Cir. 2005)**

Substantial evidence supported finding, in asylum proceeding, that alien was not credible as to his claim that he was homosexual and would be persecuted on that basis if returned to Jordan; alien had engaged in a sham marriage with a U.S. citizen to extend his residency, and there were inconsistencies between his asylum application and his own testimony, as well as between his testimony and that of his purported romantic partner.

**Ali v. Gonzales, 160 Fed.Appx. 485 (7th Cir. 2005)**

Algerian native's public admission that he was homosexual did not create "changed circumstances" in country of origin which would excuse untimely filing of motion to reopen his asylum case.

**Salkeld v. Gonzalez 420 F.3d 804 (8th Cir. 2005)**

Gay man from Peru who did not personally suffer past persecution and who did not meet a one year filing deadline exception, failed to prove a clear probability of future persecution and therefore did not meet the standard for withholding of removal. The Court found it significant that Salkeld himself had never experienced physical violence, there are no laws against homosexuality in Peru, and there are some regions in Peru which are relatively safer for gay people than others.

**Kimumwe v. Gonzalez 431 F.3d 319 (8th Cir. 2005)**

A gay man from Zimbabwe had not established past persecution although, among other things, he was jailed without charges for two months after having sex with another man at college. The Court found that he was jailed because of sexual misconduct, not homosexual identity. The Court also found that in spite of Mugabe's statements that homosexuals have no rights, and Zimbabwe's poor record on human rights, that Kimumwe had failed to prove a fear of future persecution.

**Badalian v. Gonzales, 148 Fed.Appx. 638 (9th Cir. 2005)**

Substantial evidence supported IJ's adverse credibility finding at asylum proceeding; alien's application omitted or was inconsistent with his testimony concerning several details that went to heart of his claim, including his intimacy with murdered leader of gay rights association, threats of a sexual nature made by police, six month period of hiding from police, and continual searches of his parents' home by police, and alien's testimony was internally inconsistent regarding whether or not he was charged by police for being homosexual, whether he was fired from his job for his sexual orientation, and whether he was openly gay.

**Boer-Sedano v. Gonzalez 418 F.3d 1082, (9th Cir. 2005)**

A gay Mexican man with AIDS who was sexually and physically abused by a Mexican police officer was statutorily eligible for asylum. The case also contains good language about the applicant's HIV status making internal relocation within Mexico impossible, as well as good language that return trips to the home country alone do not render an applicant ineligible for asylum.

**Comparan v. Gonzales, 144 Fed.Appx. 673 (9th Cir. 2005)**

Alien's status as a homosexual in Mexico established, for asylum purposes, his membership in "particular social group."

**Karouni v. Gonzalez 399 F.3d 1163 (9th Cir. 2005)**

Court held unequivocally that "all alien homosexuals are members of a "particular social group" and finding that Karouni, a gay, HIV positive man from Lebanon, had established a well founded fear of future persecution.

**Loya-Loya v. Gonzales, 153 Fed.Appx. 441 (9th Cir. 2005)**

Failing to address aliens' evidence and arguments regarding treatment of homosexuals in Mexico was abuse of Board of Immigration Appeals' (BIA) discretion in proceeding on applications for asylum, withholding of removal, and relief under the Convention Against Torture (CAT).

**Pena-Torres v. Gonzales, 128 Fed.Appx. 628 (9th Cir. 2005)**

Past persecution criterion was satisfied, in homosexual's asylum application, where police in alien's country of origin had detained him after seeing him leave gay bar, had asked if he was gay, had beaten him severely, and had threatened that they knew where he lived and would harm his family should he report them.

**Wei Yong Ni v. United States AG 157 Fed. Appx. 455 (2d Cir. 2005)**

Petition for review of IJ decision for a gay man in China who filed for asylum was denied on the grounds that the determination that the petitioner was not credible was supported by evidence. In addition, there was not enough evidence in the record to establish a well-founded fear of persecution based on sexual orientation in China, based on country condition evidence alone.

**Pozos v. Gonzales, 141 Fed. Appx. 629 (9th Cir. 2005)**

Petition for review was granted because the alien was statutorily eligible for asylum after suffering persecution at the hands of a police officer who perceived that the alien was a homosexual.

**Rico v. United States AG 154 Fed. Appx. 875 (11th Cir. 2005)**

Under 8 U.S.C.S. §§ 1101(a)(42)(A), 1158(a)(1), (b)(1), substantial evidence supported IJ's adverse credibility determination as, inter alia, alien failed to

mention in his asylum applications his claims of persecution based on his membership in political group, his status as gay and HIV-positive, and harassing phone calls by paramilitary group.

**Joaquin-Porras v. Gonzales, 435 F.3d 172 (2nd Cir. 2006)**

Detention by police in Costa Rica because he was gay did not establish a threat to life or freedom as required under the Convention Against Torture, because the detention was brief and he was released without harm.

**Satkauskas v. Attorney General of U.S., 2006 WL 1004880 (3d Cir. 2006)**

Board of Immigration Appeals' (BIA's) determination that alien had not met his burden of showing that he would be persecuted for being a homosexual upon return to Lithuania, so as to be eligible for asylum, was supported by substantial evidence.

**Maledonado v. United States AG 2006 U.S. App. Lexis 18010 (3d Cir. 2006)**

Multiple beatings and detention by police of a gay man in Argentina on twenty occasions after raids on gay night clubs constituted persecution, even though none of the detentions were for a sustained period of time and none of the beatings resulted in severe injuries. Because the record indicated that he was beaten on account of his sexual orientation and the record also indicated that Argentinean police had a history of mistreatment of homosexuals, his petition was granted.

**Jean-Pierre v. AG of the United States, 2006 U.S. App. LEXIS 14955 (3d Cir. 2006)**

The BIA's decision did not preclude the possibility of relief on the basis of imputed homosexuality or HIV-positive status in all cases; rather, it read the decision as finding that the alien did not establish that he would be persecuted on either basis if returned to Haiti. Without an objective finding, the alien's petition for review was denied.

**Morett v. Gonzales, 2006 U.S. App. Lexis 18152 (2d Cir. 2006)**

Alien's petition for review of order affirming denial of relief from removal was granted; immigration judge's findings that alien's rape and harassment by Venezuelan police did not constitute persecution was not supported by substantial evidence, and mistreatment due to sexual orientation could constitute persecution for purposes of refugee status.

**Tavera Lara v. United States AG 2006 U.S. App. LEXIS 16749 (11th Cir. 2006)**

Challenge to denial of asylum, 8 U.S.C.S. § 1158, failed; adverse credibility determination was supported by substantial evidence. Failure to include attack in application was properly considered in determining credibility; it was not unreasonable to infer from alien's return, under circumstances she described, that she did not fear for safety.

**Kibuuka v. Gonzales 2006 U.S. App. LEXIS 9364 (1st Cir. 2006)**

A district court did not abuse its discretion in denying a motion to reopen removal proceedings to introduce evidence that an alien was involved in a homosexual relationship on the date of his initial hearing because he admitted that the evidence was available at the hearing when he testified falsely that he

had no relationship.

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