



ADVANCING A "SOCIAL GROUP PLUS" CLAIM AFTER MATTER OF A-B-

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In [*Matter of A-B-*](#), 27 I&N Dec. 227 (A.G. 2018), former Attorney General Jeff Sessions overruled a prior Board of Immigration Appeals (BIA) precedent, [*Matter of A-R-C-G-*](#), 26 I&N Dec. 388 (BIA 2014), which held that victims of domestic violence can qualify for asylum based on their particular social group (PSG) of "married women in Guatemala who are unable to leave their relationship." Although victims of domestic violence has been recognized as a particular social group in US asylum law as well as in the asylum laws of other countries like the [United Kingdom](#), [Canada](#) and [New Zealand](#), Sessions set aside *Matter of A-R-C-G* resulting in a setback for persons fleeing domestic violence.

There is [much commentary](#) revealing how the reasoning of *Matter of A-B* was dicta. The application of *Matter of A-B* has been successfully challenged in the context of credible fear claims in [*Grace v. Whitaker*](#). Therefore, despite *Matter of A-B*, an applicant must still assert membership in a particular social group when fleeing domestic violence. In *Matter of M-E-V-G-*, 26 I&N 227 (BIA 2014), the Board acknowledged that whether a particular social group exists is a case-by-case determination and the AG's decision should not be read to foreclose alternative particular social group formulations for victims of domestic violence where the facts of the case support it. *Matter of M-E-V-G-*, 26 I&N 227, 242 (BIA 2014); *Matter of A-B-*, 27 I&N Dec. 227, 319 (AG 2018) (noting that this decision is consistent with *Matter of M-E-V-G-*). It may however be prudent for an applicant fleeing domestic violence to assert other grounds of asylum in addition to membership in a particular social group.

As brief background, in order to be granted asylum, the applicant must show that they have suffered past persecution or have a well-founded fear of future

persecution on account of their race, religion, nationality, membership in a particular social group, or political opinion, and that he or she is unable or unwilling to return to, or avail himself or herself of the protection of, their country of origin owing to such persecution. [8 C.F.R. § 1208.13\(b\)\(1\) & \(2\)](#).

The agile immigration law practitioner must endeavor to invoke grounds in addition to particular social group when representing an asylum claimant fleeing domestic violence such as race, religion, nationality or political opinion. This is what I refer to as a "social group plus" claim. Often times, the additional ground can be blended and intertwined with the particular social group ground that would only strengthen this ground, and enable the client's claim to be readily distinguished from *Matter of A-B*.

Religion and Ethnicity

It may be worth exploring whether an applicant can claim asylum on account of race, religion or nationality. Many applicants may belong to ethnic backgrounds or religions whose members may face discrimination in the country. Hence, a victim of domestic violence who belongs to a religion or ethnic group that is disfavored may find it more difficult to seek the help of the authorities when seeking protection from domestic violence perpetrated by a private actor. Establishing this fact, based on the claimant being part of a disfavored group, will enable such a claim from overcoming the elevated concern of "private actor harm" in *Matter of A-B*. There are several decisions that have acknowledged persecution claims based on religion, ethnicity or both. In one decision, the Board held that the respondent faced anti-Semitic persecution on account of the respondent's Jewish nationality. Even if ethnicity is not part of the grounds for asylum, an ethnic group may fall under the "nationality" ground. It can thus be argued that ethnicity or religion can also constitute "nationality", such as Jewish nationality in the Ukraine, Armenian in Russia or Parsi Zoroastrian in a Muslim majority country. The following decisions support such an argument:

- *Pan v. Holder*, 777 F.3d 540 (2d Cir. 2015) (Korean ethnicity and evangelical Christian religion).
- *Shi v. AG*, 707 F.3d 1231 (11th 2013)(Christian religion in China).
- *Bracic v. Holder*, 603 F.3d 1027 (8th 2010) (Muslim religion and Albanian ethnicity).
- *Matter of O-Z and I-Z*, 22 I&N Dec. 23 (BIA 1998) (Jewish nationality).

- *Ahmed v. Keisler*, 504 F.3d 1183 (2007) (Bihari in Bangladesh was a disfavored group and respondent likely to be targeted as a result).

Moreover, as family qualifies as a social group under *Matter of L-E-A*, 29 I&N Dec. 40 (BIA 2017), an applicant can also distinguish ethnicity or religion of the family that stands out in the country or because it may be a vulnerable minority group. This can overcome the nexus barrier in *L-E-A*. Although former Acting Attorney General Whitaker [referred L-E-A to himself](#), *L-E-A* is still good law at present. There is also a long history of family units constituting particular social groups. See, e.g., *Crespin-Valladares v. Holder*, 632 F.3d 117, 128 (4th Cir. 2011); *Al-Ghorbani v. Holder*, 585 F.3d 980 (6th Cir. 2009); *Torres v. Mukasey*, 551 F.3d 616, 629 (7th Cir. 2008). The BIA has previously "explained that 'persecution on account of membership in a particular social group' refers to 'persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic...such as...kinship ties.'" *Matter of C-A-*, 23 I&N Dec. 951, 955 (BIA 2006) (quoting *Matter of Acosta*, 19 I&N Dec. 211, 233-34 (BIA 1985)). "It has been said that a group of family members constitutes the 'prototypical example' of a particular social group." INS, *Asylum Officer Basic Training Course: Eligibility Part III: Nexus 21* (Nov. 30, 2001) (quoting *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986)). "There can, in fact, be no plainer example of a social group based on common, identifiable and immutable characteristics than that of the nuclear family." *Gebremichael v. INS*, 10 F.3d 28, 36 (1st Cir. 1993).

Imputed Political Opinion

Imputed political opinion can also be developed in a domestic violence asylum case when the abusive spouse is politically powerful and uses the state apparatus to persecute defiant or feminist spouse or spouses who defy their husband's authority under an honor code such as Kanun in Albania. Long before there was any precedent decision, in 1996, I successfully represented a respondent claiming asylum who escaped domestic violence abuse perpetrated by her husband who was a powerful police officer in Bangladesh. He did not allow her to work or start her own business, and thus she was persecuted for expressing herself, which went against the mores of her family and society. She was unable to seek protection as her husband was a powerful police officer.

Around the same time, in another case where I had no involvement, an Immigration Judge granted asylum to Bangladeshi woman who had been

beaten by family on account of her role in the Jatiyo Mahila Party and because of her efforts to lead an independent life. *Matter of Sonia Sharmin* (A73 556 033, IJ New York, NY, Sept 30, 1996). In *Fatin v. INS*, 12 F.3d 1233 (3d Cir 1993), Judge Alito writing for the majority agreed that gender was an immutable characteristic and thus satisfying the particular social group definition, and in addition, the respondent's feminism or opposition to male dominance constituted political opinion. In a post *Matter of A-B-* decision, an Immigration Judge in San Francisco [granted asylum to a woman from Mexico](#) who suffered abuse from both her mother and her husband on account of both particular social group and her feminist political opinion.

There is also a nexus between gangs and the government in the Northern Triangle countries. Gangs may control the government, and in some cases they have become the ["de facto government" controlling significant areas of the country](#). This factor too can give rise to an alternative ground for asylum under political opinion.

Consider the following cases in advancing imputed political opinion in addition to membership in a particular social group for an asylum claimant fleeing domestic violence:

- *Al-Saheer v. INS*, 268 F.3d 1143 (9th 2001) (political opinion encompassed more than electoral politics or formal political ideology or action).
- *Sangha v. INS*, 103 F.3d 1482 (9th 1997) (political opinion can be an actual opinion held by the applicant or an opinion imputed to him/her by persecutor).
- *Ahmed v. Keisler, supra* (Bihari in Bangladesh who wants to be sent to Pakistan can show imputed political opinion in addition to membership in particular social group).
- *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1994) (membership in union can constitute social group, but if union is also opposed to the government in economic dispute, can impute political opinion to its member).

Matter of A-B was a cowardly decision based on Sessions's personal bias. He abused his authority as Attorney General to overturn an established precedent decision that has provided protection to thousands of victims of domestic violence in the United States. Although Sessions is no longer Attorney General, this is his dark legacy that must not be allowed to undermine the rights of

mainly women fleeing domestic violence. Immigration practitioners must use every strategy to both overcome and take down *Matter of A-B*.