

Legal Action Center Argues for Greater Federal Court Oversight of Immigration Decisions

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Washington D.C. - In a continuing effort to promote greater federal court oversight of immigration decision-making, the American Immigration Council's Legal Action Center (LAC) recently submitted amicus (friend of the court) briefs in two cases involving motions to reopen. For noncitizens facing removal from the United States, a motion to reopen (an opportunity to present new evidence in a case) may be the last and only way to pursue their claims for lawful residency in the United States. Failure to grant such a motion might prevent anyone - from an asylum seeker to a U.S. citizen's family member - from presenting new evidence that could prevent deportation. Yet, although the federal courts are the last chance for redress, they frequently refuse to hear claims that immigration courts and the Board of Immigration Appeals abuse their discretion when they deny motions to reopen.

The LAC argument is based on the U.S. Supreme Court's recent decision in *Kucana v. Holder* that the Board of Immigration Appeals cannot shield its decisions from judicial review by labeling these decisions "discretionary." Only Congress can limit court review of motions to reopen, and it has not done so.

Given the gravity of removal from the United States, the high volume of immigration court cases, and the reality that most noncitizens do not have lawyers (only 39% of noncitizens were represented in immigration court in 2009), federal court oversight is critical to ensure due process. For an immigration system that is widely understood to be plagued with errors, judicial checks and balances are especially critical.

The LAC's work on these cases builds on their successes in other oversight cases. Last month, for example, the LAC convinced the Fifth Circuit Court of Appeals to withdraw a precedent-setting decision that would have prevented federal courts from hearing cases challenging government delays in adjudicating immigration applications.

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