

For Immediate Release

Court Protects Immigrants' Right To Reopen Cases From Outside the U.S.

April 14, 2011

Washington D.C. - A federal appellate court [recently reversed](#) a Board of Immigration Appeals' (BIA) decision that would have prevented noncitizens from presenting new evidence in their removal cases – evidence that potentially could change the outcome – because they are outside the United States. As the Legal Action Center of the American Immigration Council and the National Immigration Project of the National Lawyers Guild argued in an amicus brief, Congress enacted laws that allow noncitizens to pursue their cases from outside the U.S. The decision from the U.S. Court of Appeals for the Ninth Circuit is the latest in a series of decisions rejecting the government's position that immigration judges and the BIA lack jurisdiction over such cases.

Federal law gives noncitizens 90 days to file a “motion to reopen,” a procedural mechanism for submitting new evidence after a removal order becomes final. But the BIA has long maintained that it cannot consider a motion to reopen if a foreign national is outside the United States. The court rejected the government’s position, emphasizing that allowing the immigration courts to refuse to hear motions in these cases enables the Department of Homeland Security to unilaterally restrict the opportunity to seek reopening by deporting a person before the deadline for filing a motion to reopen. As the court concluded, the government’s position “completely eviscerate[s] the statutory right to reopen provided by Congress.”

“Five appellate courts have found that the bar to motions to reopen from outside the U.S. is unlawful. It is past time for the government to withdraw this outdated regulation rather than proceed with costly litigation,” said Beth Werlin of the American Immigration Council’s Legal Action Center.

“This is a victory for those who care about a fair process to ensure that immigrants are not unlawfully separated from their families,” said Trina Realmuto of the National Immigration Project, who argued this case on behalf of amici curiae.

The American Immigration Council's Legal Action Center and the National Immigration Project of the National Lawyers Guild, which filed a joint amicus brief in the case, applaud the Ninth Circuit's ruling. The Legal Action Center and National Immigration Project have coordinated litigation on this issue nationwide and call on the BIA to abandon its misguided regulation barring review of motions filed by noncitizens outside the United States.

###

For press inquiries contact Wendy Sefsaf at (202) 507-7524 or wsefsaf@immcouncil.org.