

If at first you don't succeed, file an appeal

Tales from the Arena



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REMOVABLE proceedings for detained aliens are perhaps the most difficult cases to handle, not because of the complexity of the issues involved though that may be true in most detention cases, but mainly because of the unrelenting stress on the alien that tests the limits of his fortitude and his optimism. Aliens who have been convicted of certain types of criminal offenses are subject to mandatory detention. Immigration and Customs Enforcement (ICE) takes custody of these aliens as soon as they are released from prison and keeps them in immigration detention centers while their removal proceedings are pending. Most of these detention centers are located in remote places which makes it difficult for family members to visit.

Aliens subject to mandatory detention cannot be released even with a bond. However, not all detained aliens are subject to mandatory detention. Most detainees apply for a bond with ICE. If ICE denies the bond, these detainees could request the Immigration Judge (IJ) for a bond redetermination. The bond proceedings before the IJ are separate from the removal proceedings.

In February 2011, I flew to Texas for what I anticipated to be a fairly straightforward bond hearing. My client had only one criminal conviction. The law was in her favor. The case law of the Ninth Circuit Court of Appeals, where the conviction occurred,

indicates that her conviction cannot be classified as a crime involving moral turpitude (CIMT). Without going into the details of the law, my client should qualify for a bond if we could show that her conviction was not a CIMT. Texas is under the Fifth Circuit. It has a different case law but not different enough to alter the force of our arguments.

That's what I thought but Shakespeare was right when he wrote in Hamlet that "there are more things in heaven and earth than are dreamt of in our philosophy". There are indeed more things in the court room than we can possibly anticipate in our legal strategies.

First, the Government counsel informed the court that the background checks revealed another conviction for my client. My client never told me about this other conviction. All of a sudden, I had to justify why these two convictions would not disqualify my client from getting a bond. Then, the IJ ruled that the first conviction at issue, which was the subject of our preparations, was a CIMT despite our arguments to the contrary. The IJ denied bond. We appealed to the Board of Immigration Appeals (BIA).

My client lingered in detention for another two months while the appeal was pending. Meanwhile, there was little hope in her removal proceedings. The second conviction, which was revealed in the bond hearing, disqualified my client from relief. Her only hope was to obtain post-conviction relief for this second conviction but her chances of doing so while in detention were slim. She had to get out, not just to tend to her sick children, but also to clean her criminal records in order

to get a green card. However, time was not on her side. The IJ scheduled her trial in August 2011. We could do nothing but wait for the BIA to decide. In May 2011, the BIA did decide but our triumph was incomplete. The BIA sustained our appeal but it remanded the case to the IJ for further hearings to allow the IJ to clarify the basis of his decision. It gave us new hope but time was quickly running out. The IJ was able to conduct a new hearing in July 2011 but it was inconclusive. There was another hearing and we were prepared for the worst. If the IJ denied bond again, we would have to go back to the BIA. However, another appeal was a luxury we could not afford because my client's trial was fast approaching. Surprisingly, the IJ granted bond. My client was finally released after 8 months in detention. Her case was transferred to the non-detained docket and her trial was postponed indefinitely.

Looking back, there was nothing that could have been done to avoid the initial setback before the IJ. The law never changed. Our arguments were the same but we kept repeating the same arguments until they had the force to persuade. Sometimes, persistence matters. Sometimes, it is unwise to give up easily. While the time wasted in detention is lost forever, for some the chance to obtain a green card is far more important.

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