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PA 401

Professor Bryson

Unit 7 Assignment – Draft a Legal Memo

Memorandum of Law

To: Attorney

From: Paralegal

Date: September 14th 2010

Re: Jane's Asylum Case

Facts:

Jane, a fourteen-year-old Canadian citizen, lives with her father, John, in Quebec during the school year and with her mother, Anne, in New York on school breaks and holidays. After having some difficulty with her parents, Jane decided to go to California to live with her uncle, Billy. Since Jane left her parents each a message explaining her plans then immediately left for the airport, her mother went after her. However, her mother was killed in an automobile accident on the way to the airport. Now that her mother has passed away, Jane does not want to return to Canada to live with her father, as she claims that he is physically abusive and that in conjunction with his employment with an independent French-Canadian state, Jane will be used as a propaganda tool for the separatist movement.

Issues Presented:

Issue#1: Whether Jane's claims of physical abuse and use as a political and government propaganda tool are grounds for a petition for asylum.

Issue #2: Whether Billy, her uncle, a non-custodial adult, can file the petition for asylum on Jane's behalf.

Issue #3: Whether Jane, a minor, can file the petition for asylum on her own behalf.

Rules:

The rules of law that apply to this case include the Immigration and Nationality Act of 1996, 8 U.S.C.S. § 1101, and the Refugee Act of 1980, U.S.C.S. § 1158. The Immigration and Nationality Act of 1996 includes definitions and general provisions regarding immigrants to the United States. The Refugee Act of 1980 consists of the procedures and policies regarding petitions for asylum allowed by the United States. While these statutes outline that any alien may apply for asylum, the Immigration & Naturalization Services (INS) is required to consider the merits of all petitions and may be reviewed by the Secretary of Homeland Security and the Attorney General.

Analysis:

Jane is a minor whose parents are divorced and retained full custodial and parental rights. Upon the death of one parent, custody would shift to the surviving parent, so Jane would therefore need to live with her father in Canada. However, Jane wants to remain in the United States and does not want to live with her father because she claims that he is physically abusive and that she will be used as a propaganda tool for the separatist movement because of his employment with an independent French-Canadian state. However, Jane is not a citizen of the United States and only lived part of the year in the United States with her mother. In order to stay

in the United States, Jane is considering an application for asylum. In addition, her uncle, Billy, wants to help her and has offered to file a petition on her behalf.

The first issue in this case is whether Jane's merit for asylum is sufficient for the INS to approve her asylum petition. The Secretary of Homeland Security and the Attorney General may review petitions for asylum and will consider "the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made)" (8 U.S.C.S. § 1158). Jane may need to provide some proof of her claims of physical abuse and that her father's employment may cause her to be used as a political and government propaganda tool. The INS may interview possible witnesses and do other research to corroborate Jane's claims

The next issue is whether Billy, Jane's uncle and a non-custodial adult, may apply for asylum on her behalf. Asylum may be granted to "people who are already in the United States and are unable or unwilling to return to their home country because of persecution or a well-founded fear on account of race, religion, nationality, membership in a particular social group, or political opinion" (Immihelp.com). However, according to *Gonzalez v. Reno*, the court found that "neither plaintiff minor child, nor plaintiff's temporary legal custodian, could file for asylum on plaintiff minor child's behalf over the objections of his father" (215 F.3d 1243). Since the court interpreted that non-custodial adults, under the Immigration and Nationality Act of 1996, cannot apply for asylum on behalf of a minor without consent of the parent, even if Billy

obtained custody of Jane, he would not be able to apply for asylum on her behalf over her father's objections.

The final issue in this case is whether Jane can petition for asylum on her own. According to the Refugee Act of 1980, "Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section" (8 U.S.C.S. § 1158). However, *Gonzalez v. Reno* is again applicable, as the INS established that neither a minor nor a legal guardian can petition for asylum without the consent of a natural parent (215 F.3d 1243).

Since Jane may have difficulty applying for asylum in the United States due to her father's objections, the applicable federal laws and case precedent, Jane could attempt to prove that she is a legitimate refugee because staying in Canada with her father is at the risk of her safety. According to the Refugee Act of 1980, "(B)(i) In the case of a refugee child who is unaccompanied by a parent or other close adult relative (as defined by the Director), the services described in subparagraph (A) may be furnished until the month after the child attains eighteen years of age" and, "(ii) The Director shall attempt to arrange for the placement under the laws of the States of such unaccompanied refugee children, who have been accepted for admission to the United States, before (or as soon as possible after) their arrival in the United States" (8 U.S.C. § 1521). In addition, according to the U.S. Committee for Refugees and Immigrants, "Refugees, differ from other immigrants, in that they do not have the choice to remain in their home country. Refugees flee their country to save their lives. They run from war and persecution, often losing beloved family members along the way" (U.S. Committee for Refugees).

If Jane does not have merit to petition for asylum or refugee status, Jane could try to become emancipated from her father as she is claiming that his ties to a French-Canadian separatist movement puts her in danger. She could then apply for United States citizenship or a visa as she currently resides in the United States and lived with her mother, a United States citizen. “Visas are often difficult, but not impossible to obtain... Some asylum countries verify whether the applicant has really lived at a certain place in his country of origin” (AsylumLaw.org).

Conclusion:

Due to the legal issues presented and upon reviewing the applicable federal statutes and case precedent, it is not likely that Jane’s petition for asylum would be granted. As long as Jane’s father insists that she live with him in Canada, it is not recommended that Billy petition for Jane’s asylum even if he obtains legal guardianship. However, Jane does have some options to avoid living with her father and remain in the United States, including declaring refugee status, emancipation and applying for a visa.

References:

8 U.S.C.S. § 1101 (2010).

8 U.S.C. § 1521 (2010).

AsylumLaw.org. 2 August 2010. <<http://www.asylumlaw.org>>.

Gonzalez v. Reno, 215 F.3d 1243 (11th Cir. Fla. 2000).

“Introduction”. Immihelp.com. 2 August, 2010.

<<http://www.immihelp.com/gc/asylum.html#Introduction>>.

“Resettling Refugees in America”. U.S. Committee for Refugees. 31 July 2010.

<[http://www.refugees.org/article.aspx?id=1092&rid=1176&subm=40&area>About Refugees](http://www.refugees.org/article.aspx?id=1092&rid=1176&subm=40&area>AboutRefugees)>.