## IMMIGRATION LAW

### JUDICIAL LAW

■ **Courts may review factual challenges to a CAT order.** On 6/1/2020, the United States Supreme Court reversed the 11th Circuit Court of Appeals when it found that while 8 U.S.C. §§1252(a)(2)(C) and (D) preclude judicial review of a noncitizen's factual challenges to a "final order of removal," they do not preclude judicial review of factual challenges to an order denying relief under the Convention Against Torture (CAT). The Court found that a CAT order (a form of relief protecting noncitizens from removal to a country where they would likely face torture) is distinct from a "final order of removal" that concludes a foreign national is deportable or orders his/her deportation under 8 U.S.C. §1101(a)(47)(A). "An order granting CAT relief means only that, notwithstanding the order of removal, the noncitizen may not be removed to the designated country of removal, at least until conditions change in that country." Notwithstanding this finding, the Court noted that judicial review of factual challenges to CAT orders are highly deferential, subject to the substantial evidence standard. That is, findings of fact are conclusive unless a reasonable adjudicator is compelled to conclude otherwise. The Court deferred a decision on the applicability of its holding to statutory withholding of removal under 8 U.S.C. §1231(b)(3)(A) to another day (i.e., preventing the removal of a noncitizen to a country where the noncitizen's "life or freedom would be threatened" because of the noncitizen's "race, religion, nationality, membership in a particular social group, or political opinion."). ***Nasrallah v. Barr***, 590 U.S. ____, No. 18-1432, *slip op.* at 8, 13 (2020). *https://www.supremecourt.gov/opinions/19pdf/18-1432_e2pg.pdf*

■ **Lack of evidence supporting a claim of persecution based on opposition to joining gang.** On 5/28/2020, the 8th Circuit Court of Appeals found the Board of Immigration Appeals' denial of asylum to the Salvadoran petitioner, claiming persecution on account of his opposition to becoming a member of the Mara 18 gang, was supported by substantial evidence in the record. "Although the Mara 18 gang may have some political motivations, the record here supports a finding that Prieto-Pineda was harassed for refusing to provide rides, not for any political opposition to the gang." ***Prieto-Pineda v. Barr***, No. 19-1347, *slip op.* (8th Cir. 5/28/2020). *https://ecf.ca8.uscourts.gov/opndir/20/05/191347P.pdf*

■ **No persecution on account of social group membership composed of family members of son kidnapped and murdered by drug cartel.** On 4/23/2020, the 8th Circuit Court of Appeals held substantial evidence supported the Board of Immigration Appeals' determination that the Mexican petitioner did not suffer past persecution or have a well-founded fear of future persecution on account of membership in a social group consisting of "immediate family members" of her son. "In any case, Meza failed to present any evidence to suggest that this alleged persecution of [her son] Alberto was on account of his family relationship, 'as opposed to the fact that, as [a business owner], [he was an] obvious target[] for extortionate demands.' *Cambara-Cambara v. Lynch*, 837 F.3d 822, 826 (8th Cir. 2016)." ***Meza Cano v. Barr***, No. 19-1506, *slip op.* (8th Cir. 4/23/2020). *https://ecf.ca8.uscourts.gov/opndir/20/04/191506P.pdf*

■ **No persecution based on membership in the social group, "individuals with schizophrenia exhibiting erratic behavior."** On 3/9/2020, the 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' denial of the petitioner's application for asylum based on his claim that he was a member of the particular social group, "individuals with schizophrenia who exhibit erratic behavior." The court concluded "the evidence that the Mexican government persecutes certain mentally-ill citizens on account of group membership is not so substantial as to compel remand." ***Perez-Rodriguez v. Barr***, No. 18-3269, *slip op.* (8th Cir. 3/9/2020). *https://ecf.ca8.uscourts.gov/opndir/20/03/183269P.pdf*

### ADMINISTRATIVE ACTION

■ **President Trump suspends entry of certain Chinese national students.** On 5/29/2020, President Trump signed a proclamation suspending entry of certain Chinese nationals seeking entry into the United States on a J or F visa to study or carry out research in the United States (with the exception of those students seeking to pursue undergraduate study) who either receive funding from or are currently employed by, study at, or conduct research at or on behalf of, or have been employed by, studied at, or conducted research at or on behalf of, an entity in the People's Republic of China (PRC) that implements or supports the PRC's "military-civil fusion strategy." The suspension does not apply to the following:

any lawful permanent resident of the United States;

(ii) any alien who is the spouse of a United States citizen or lawful permanent resident;

(iii) any alien who is a member of the United States Armed Forces and any alien who is a spouse or child of a member of the United States Armed Forces;

(iv) any alien whose travel falls within the scope of section 11 of the United Nations Headquarters Agreement or who would otherwise be allowed entry into the United States pursuant to United States obligations under applicable international agreements;

(v) any alien who is studying or conducting research in a field involving information that would not contribute to the PRC's military-civil fusion strategy, as determined by the Secretary of State and the Secretary of Homeland Security, in consultation with the appropriate executive departments and agencies (agencies);

(vi) any alien whose entry would further important United States law enforcement objectives, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees, based on a recommendation of the Attorney General or his designee; or

(vii) any alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their respective designees.

The proclamation went into effect on 6/1/2020 at 12:00pm (EDT). **85 Fed. Reg., 34,353-55** (6/4/2020). *https://www.govinfo.gov/content/pkg/FR-2020-06-04/pdf/2020-12217.pdf*

■ **Liberian Refugee Immigration Fairness (LRIF): An update.** On 4/20/2020, U.S. Citizenship and Immigration Services (USCIS) announced additional instructions regarding eligibility requirements for applicants (and their family members), grounds of inadmissibility, and the filing and adjudication of permanent residence applications—all based on the Liberian Refugee Immigration Fairness provision of the National Defense Authorization Act for Fiscal Year 2020 that was signed into existence on 12/20/2019. The application period runs to 12/20/2020. Further information about LRIF and the process may be found at the webpage set up by USCIS. *https://www.uscis.gov/green-card/other-ways-get-green-card/liberian-refugee-immigration-fairness*

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## REAL PROPERTY

### JUDICIAL LAW

■ **Tax court affirmed.** Medline, the owner of a 300,000 square foot warehouse, appealed a tax court decision that reduced $15 million valuations for two years by $274,000 and $315,000. The tax court rejected the county's appraiser's opinion concerning the highest and best use of the property, but then relied on other portions of his analysis. The Supreme Court held that doing so was not erroneous given that the usage opinion did not fatally damage his other opinions and the court did not overly rely on any of his opinions. Of the comparable sales relied on by the parties' appraisers, the tax court chose four comparable sales and did not rely on the property owner's primary comparable, a sale that occurred after the valuation date. The Supreme Court held that the tax court's decision not to rely on one sale, particularly when it explained that all post-valuation-date sales were entitled to less weight and did not demonstrate that it improperly refused to consider that sale. The tax court also refused to use the property owner's capitalization rate and instead applied two different rates closer to that offered by the county. The Supreme Court held that the capitalization rate analysis was not erroneous because it was within the range used by the parties' competing experts. The Supreme Court also rejected other arguments by the property owner, holding that the tax court's decisions were within its discretion. ***Medline Indus., Inc. v. County of Hennepin***, 941 N.W.2d 127 (Minn. 2020) (*https://mn.gov/law-library-stat/archive/supct/2020/OPA191420-040120.pdf*).

■ **County's decision denying conditional use permit application affirmed.** An owner of a five-acre parcel on Long Lake in Hubbard County sought a conditional use permit to build and operate a 14-site RV park. After receiving materials from the applicant, a county staff report listing prior environmental violations on the property, a report and testimony from the DNR with recommendations to avoid lake-bottom damages and aquaculture damage, and public testimony in opposition to the application, the County Planning Commission voted 3-2 to recommend approval of the CUP, with 22 conditions. The County Board of Commissioners, however, voted 3-2 to deny the application. On appeal, the landowner asserted that the board erred in denying the application on the basis of its alleged lack of compatibility with adjacent land uses when such a standard was not stated within the shoreland management ordinance and that the use was not incompatible given the planned placement of the RVs and a boundary fence. The owner also alleged that the county erred in finding that the lake was not suited to the proposed use and was unable to accommodate it, and that the decision unlawfully interfered with his riparian rights.

The court of appeals affirmed, holding that the county was able to consider adjacent uses of land even though the ordinance did not include such a standard and that sufficient evidence supported the county's finding of incompatible land uses. Further, it held that adequate evidence supported the county's findings concerning the likely impacts of the proposed use on the lake. Finally, it held that the county's decision to deny the application despite the owner's riparian rights was not arbitrary and capricious because the ordinance did not prohibit the building of a dock on the property and the denial of the application was based on reasonable concerns relating to the likely impacts of the proposed use on the lake. ***Matter of Bolton***, No. A19-1208, 2020 WL 211073 (Minn. App. 5/4/2020).

■ **Anti-transfer provision in contract for deed triggered by TODD.** Husband and wife Krumries sold their family farm on a contract for deed to their then-son-in law Jeffrey Woodard. The contract contained an anti-transfer provision. Twenty-four years later, shortly before he died, Jeffrey signed a transfer-on-death deed transferring his interest in the contract to his son, Skyler. Krumries served a notice of cancellation. Skyler brought suit, seeking to enjoin the cancellation of the contract for deed. Skyler lost on summary judgment. On appeal, he argued that the TODD did not violate the anti-transfer clause, that it was not a material breach, that the Krumries did not follow the statutory procedure for cancellation, and that equity supported his claims. In affirming the district court, the court of appeals held that a TODD is a transfer of an interest in the property, and that the contract for deed was breached. It held further that the breach was material, noting that the anti-transfer provision was one of only two additions to a standard contract for deed form. The court found that the Krumries had complied with the statutory cancellation procedure, even though the default could not be cured, and that the equities did not need to be considered when a written contract controls. ***Woodward v. Krumrie***, A19-