

## IMMIGRATION LAW

### JUDICIAL LAW

■ **Family membership not a central reason for persecution.** On 2/12/2020, the 8th Circuit Court of Appeals upheld the Board of Immigration Appeals' denial of withholding of removal under INA §241(b)(3)(A) to the petitioner, concluding there was substantial evidence to support the board's finding that her family membership was not a central reason for the persecution she feared in Guatemala. "On this record, a reasonable factfinder could conclude Silvestre-Giron's family membership is not a central reason for the threat posed by the extortionists but is only 'incidental or tangential to the [extortionists'] motivation—money." *Garcia-Moctezuma*, 879 F.3d at 868 (quoting *J-B-N- & S-M-*, 24 I & N Dec. at 213). Nor, for that matter, had the petitioner proven that it is more likely than not that she would be tortured if removed to Guatemala. *Silvestre-Giron v. Barr*, 949 F.3d 1114, 1118 (8th Cir. 2020).

■ **Inadmissibility and public charge grounds: An update.** On 8/14/2019, the Department of Homeland Security (DHS) published its final rule amending regulations addressing inadmissibility, on public charge grounds, of foreign nationals seeking admission or adjustment of status. The rule was scheduled to go into effect on 10/15/2019. **84 Fed. Reg., 41,292-508** (8/14/2019). <https://www.govinfo.gov/content/pkg/FR-2019-08-14/pdf/2019-17142.pdf>

As noted in the November 2019 issue of *Bench & Bar*, litigation ensued across the nation that involved various states (including Minnesota), organizations, and individual plaintiffs. On 10/11/2019, the U.S. District Court in the Southern District of New York issued a nationwide order enjoining and restraining the government from "enforcing, applying, or treating as effective, or allowing persons under their control to enforce, apply, or treat as effective, the Rule" until such time as the order is terminated and the rule goes into effect.

On 1/27/2020, the Supreme Court issued a stay of the 10/11/2019 nationwide injunction, thereby allowing the final rule to go into effect pending disposition of the appeal before the Court of Appeals for the 2nd Circuit Court. The sole exception was an injunction issued in the state of Illinois, which was allowed to remain in place. *Department of Homeland Security, et al. v. New York, et al.*, 589 U.S. \_\_\_\_ (2020). [https://www.supremecourt.gov/opinions/19pdf/19a785\\_j4ek.pdf](https://www.supremecourt.gov/opinions/19pdf/19a785_j4ek.pdf)

On 2/21/2020, the Supreme Court issued a stay of the 10/14/2019 injunction issued in the state of Illinois pending disposition of the government's appeal in the United States Court of Appeals for the 7th Circuit. *Wolf, et al. v. Cook County, Illinois, et al.*, 589 U.S. \_\_\_\_ (2020). [https://www.supremecourt.gov/opinions/19pdf/19a905\\_7m48.pdf](https://www.supremecourt.gov/opinions/19pdf/19a905_7m48.pdf)

On 2/22/2020, USCIS announced the final public charge rule would go into effect, including Illinois, for those relevant applications or petitions postmarked or electronically filed on or after 2/24/2020. <https://www.uscis.gov/news/news-releases/dhs-implement-inadmissibility-public-charge-grounds-final-rule-nationwide>

### ADMINISTRATIVE ACTION

■ **President Trump bans immigrants from the United States.** On 4/22/2020, President Trump issued a proclamation, in view of the covid-19 pandemic, suspending the entry of certain immigrants into the United States for 60 days. The proclamation (Suspension of Entry of Immigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak) went into effect on 4/23/2020 at 11:59pm (EDT). It affects those individuals seeking entry into the United States as immigrants who: 1) are outside the United States on the effective date of the proclamation; 2) do not have a valid immigrant visa on the effective date of the proclamation; and 3) do not have a valid official travel document other than a visa (such as a transportation letter, boarding foil, or advance parole document) on the effective date of the proclamation, or issued on any date thereafter, that permits travel to the United States to seek entry or admission.

The proclamation does not apply to the following: 1) lawful permanent residents of the United States; 2) individuals, and their spouses or unmarried children under the age of 21, seeking to enter the United States on an immigrant visa as a physician, nurse, or other healthcare professional; to perform medical research or other research intended to combat the spread of covid-19; or to perform work essential to combating, recovering from, or otherwise alleviating the effects of the covid-19 outbreak (as determined by the secretaries of State and Department of Homeland Security (DHS), or their respective designees); 3) individuals applying for a visa to enter the U.S. pursuant to the EB-5 Immigrant Investor Visa Program; 4) spouses of U.S. citizens; 5) children of U.S. citizens un-

der the age of 21 and prospective adoptees seeking to enter on an IR-4 or IH-4 visa; 6) individuals who would further important U.S. law enforcement objectives (as determined by the secretaries of DHS and State based on the recommendation of the Attorney General (AG), or their respective designees); 7) members of the U.S. Armed Forces and their spouses and children; 8) individuals and their spouses or children eligible for Special Immigrant Visas in the SI or SQ classification; 8) individuals whose entry would be in the national interest (as determined by the secretaries of State and DHS, or their respective designees).

Other key points: 1) Nonimmigrant visa holders are not affected by the proclamation but the proclamation requires that within 30 days of the effective date, the secretaries of Labor and DHS, in consultation with the Secretary of State, shall review nonimmigrant programs and recommend to the president other appropriate measures to stimulate the U.S. economy and ensure "the prioritization, hiring and employment" of U.S. workers. 2) The proclamation expires 60 days from its effective date but may be continued as necessary. Within 50 days from the effective date, the secretary of DHS shall, in consultation with the secretaries of State and Labor, recommend whether the president should continue or modify the proclamation. 3) The proclamation states that it does not limit the ability of individuals to apply for asylum, refugee status, withholding of removal, or protection under the Convention Against Torture. **85 Fed. Reg., 23,441-444** (4/27/2020). <https://www.govinfo.gov/content/pkg/FR-2020-04-27/pdf/2020-09068.pdf>



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## INDIAN LAW

### JUDICIAL LAW

■ **State court has jurisdiction over civil claims brought against a tribal-member-founded nonprofit corporation organized under Minnesota state law.** A non-tribal member former employee of Honor the Earth nonprofit corporation filed suit against the organization under the Minnesota Human Rights Act. The Minnesota Court of Appeals rejected the nonprofit's motion to dismiss for lack of subject matter jurisdiction, finding that because no tribal member was a party to the litigation and at least some of the allegations in the complaint occurred