Third Circuit Court

Case: ***Pllumi v. Attorney General*, 642 F.3d 155 (2011)**

Judge: Jordan*, Greenaway, Stapleton **Date:** Feb. 7, 2011

Tags: Humanitarian Asylum, Albania, changed country conditions, health care, *sua sponte* reopening, other serious harm

Gravamen/Question(s) at issue: Are healthcare concerns a basis for asylum?

Holdings: Remanded so that BIA can decide (with proper legal understanding) whether or not to *sua sponte* reopen this case, now that the 3d Circuit has explained that health care concerns are not off the table in asylum claims.

Rationale:

- BIA's denial of *sua sponte* reopening "can be read as disclaiming any power to reopen immigration proceedings if the argument for reopening bears on the adequacy of healthcare in the country of removal. If that is what the BIA meant, it has misapprehended the breadth of its own authority." (161-162)
- "Just as debilitation and homelessness resulting from the unavailability of specific medications arguably fall within the ambit of 'other serious harm,' it is conceivable that, in extreme circumstances, harm resulting from the unavailability of necessary medical care could constitute 'other serious harm' under 8 C.F.R. §1208.13(b)(1)(iii)(B)." (162)
- "…it is within the BIA's authority to consider health concerns and associated 'harms' resulting from deportation when it exercises its discretion in deciding whether to grant humanitarian asylum." (163)

Facts: Albanian citizen entered U.S. illegally; found deportable. Had suffered persecution because he supported Albania's Democratic Party and because he is Catholic.

History of the Case:

- **2005:** Found removable by IJ
- **2007:** BIA affirmed; said he didn't meet either (iii)(A) (not severe enough persecution) or (iii)(B) (didn't establish "other serious harm"—his concerns about healthcare were deemed irrelevant)
- **2009:** BIA declined to reopen his case
- Appealed to Third Circuit

Appeals to Statute & Precedent:

- ***Kholyavskiy v. Mukasey*, 540 F.3d 555, 577 (7th Cir. 2008):** debilitation and homelessness count as "other serious harm" if person is returned to a country without adequate medical supports for his mental illness
- ***Mahmood v. Holder*, 570 F.3d 466, 469 (2d Cir. 2009):** although CAs can scrutinize BIA decisions for errors, a *sua sponte* decision is beyond the CA's jurisdiction. However, as per this case, "there is jurisdiction to remand to the BIA for reconsideration when the BIA's decision to decline to exercise its *sua sponte* authority is based on a misperception of the relevant law." (159)

Dicta:

- "As we noted earlier, we typically cannot review a BIA decision to deny *sua sponte* reopening. That jurisdictional limitation is a product of precedent noting that there is simply no meaningful standard against which such a decision can be judged, because the BIA can make the decision for practically any reason at all; its discretion is essentially complete." (160)

- "If the reasoning given for a decision not to reopen *sua sponte* reflects an error of law, we have the power and responsibility to point out the problem, even though ultimately it is up to the BIA to decide whether it will exercise its discretion to reopen." (160)

- Here, it appears that the BIA may indeed have misperceived the relevant law." (160)

- "We hasten to add and to emphasize that we are not suggesting that differing standards of healthcare around the world are, in themselves, a basis for asylum. We are only holding that the issue of health care is not off the table in the asylum context, as the BIA seemed to say…" (163)

Commentary:

- **Motion to Reconsider:** must be filed within 30 days of the entry of a final order of removal (**8 U.S.C. §1229a(c)(6)(B)**)
- **Motion to Reopen:** must be filed within 90 days of the entry of the final administrative order of removal. (**8 U.S.C. §1229a(c)(7)(C)(i)**) – but time limit does not apply "if the motion relates to an asylum application and is based upon changed country conditions proved by evidence that is material and was not available and could not have been discovered or presented at the previous proceeding" (161).