Immigration Court: BIA

Case: *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014) **Date:** June 12, 2014

******VACATED by *Matter of E-F-H-L-*, 27 I&N Dec. 226 (AG 2018)******

(See commentary note below for more.)

Adjudicated by: Greer, Wendtland*, Donovan

Tags: Asylum, withholding of removal, evidentiary hearing, due process, prima facie eligibility,

Question Presented: Did IJ err in adjudicating case without evidentiary hearing?

Holdings: Yes, IJ erred in deciding case without allowing petitioner a full evidentiary hearing with oral testimony and other evidence presented. Remanded because IJ's decision legally erroneous.

Rationale:

- "…we conclude that [the IJ's] authority to control the scope of an evidentiary hearing in the interests of efficiency, including by limiting testimony and focusing issues, is necessarily premised on the existence of an evidentiary hearing, which, at a minimum, must include an opportunity for the respondent to present evidence and witnesses in his or her own behalf." (321)
- "The IJ's ruling was not premised on a mandatory bar to asylum or withholding of removal, and significant factual issues remained in dispute." (321)
- Although the law has changed since *Matter of Fefe* (1989), the expectations are essentially the same; "[w]e therefore see no reason to disturb our conclusion in *Fefe*, which, in turn, provides strong support for concluding that a full evidentiary hearing is ordinarily required prior to the entry of a decision on the merits of an application for asylum," etc. (323)

Facts: Citizen of Honduras, entered U.S. without inspection June 2011. Asylum application claimed that uncle was murdered because of a land dispute, then parents of murderer were also murdered. Murderer believed that family hired hit man. Death threats, barn burned down, shot at. IJ declined to hear case on merits, stating that petitioner had failed to establish PSG.

History of the Case:

- **IJ (2012):** Denied applications because "IJ found that the respondent's written asylum application and prehearing brief did not demonstrate his prima facie eligibility for relief and determined that he was therefore not entitled to a hearing on the merits" (319).
- **BIA (2014):** De novo review, remanded because resolution was legally erroneous.

Appeals to Statute & Precedent:

- **8 U.S.C. § 1229a(b)(4)(B) / 240(b)(4)(B):** governing procedures in removal proceedings. Respondent "shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government."
- **240(c)(4)(B):** IJ should judge whether witness testimony is credible, and weigh it along with any other evidence presented.
- **8 C.F.R. § 1240.11(c)(3):** IJ should make decision AFTER evidentiary hearing; can close it when it's apparent that a mandatory denial is in order.
- ***Matter of Fefe*, 20 I&N Dec. 116, 118 (BIA 1989):** re. "procedural requisites for adjudication of an application for relief from removal." At the time, this meant making sure applicant was questioned under oath (at minimum), and ordinarily that a full oral examination was appropriate in order to meet burden of proof for asylum. Also, contradictions or corroborations between oral and written testimony can be seen.
- ***Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987):** articulating a burden of proof for asylum.
- ***Matter of Interiano-Rosa*, 25 I&N Dec. 264, 266 (BIA 2010):** "an applicant's failure to file certain documentary evidence by a deadline set by the IJ may warrant exclusion of the specific untimely docs from the evidentiary record, but it cannot support a decision by the IJ to deem the timely filed underlying application to be abandoned without a full evidentiary hearing on the merits." (*Matter of E-F-H-L-* at 323)
- ***Oshodi v. Holder*, 729 F.3d 883, 889-93 (9th Cir. 2013) (en banc):** Due process rights violated when alien is denied full and fair hearing; IJ did not let alien testify.

Quotes:

- "…the Board and the circuit courts have recognized that in certain circumstances, the facts underlying an application for relief from removal may continue to develop up to the time of, and even during, the final individual hearing on the merits." (322)

Relevant U.S./Immigration Law History:

- Sessions referred this one to himself for review four years later: the petitioner had withdrawn his asylum/withholding applications and was waiting on a relative visa decision instead, which was the sole reason he gave in his one-page opinion for vacating this decision. But in canceling *E-F-H-L-*, the AG struck down a precedential decision guaranteeing that evidentiary hearing to asylum seekers. Now all that's left is *Fefe* again, which is based on obsolete statutory language; also, the current BIA would be unlikely to replicate the holding of the 2014 panel. *See Matter of E-F-H-L-*, 27 I&N Dec. 226 (AG 2018).