

Immigration Law

What Does Sessions' E-F-H-L- Order Mean?

Paul W. Schmidt, Mar. 6, 2018 - SESSIONS "GOES DEEP" TO UNDERMINE DUE PROCESS! – Matter of E-F-H-L, 27 I&N Dec. 226 (A.G. 2018)!

"Here is the AG decision:

[E-F-H-L-AG](#)

And here's the original BIA precedent he vacated:

[E-F-H-L-2014](#)

Sessions, on his own initiative, reaches back four years to vacate the BIA's precedent decision *Matter of E-F-H-L*, 26 I&N Dec. 319 (BIA 2014). That case held that an asylum or withholding applicant is entitled to a full hearing on his or her application. That hearing includes a chance to testify and present evidence to the Immigration Judge. The respondent is not required to present a "prima facie case" for an asylum grant to get a full hearing.

The "original" case had since been closed for I-130 adjudication, after the respondent withdrew his I-589 with prejudice. Sessions ordered that the case be restored to the Immigration Court's "active" docket and set for a hearing.

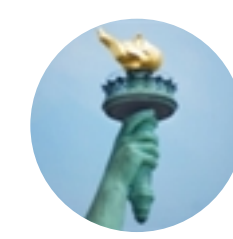
Session's decision was cryptic – without any explanation of why he chose this case and what he hoped to accomplish. However, a number of "preliminary theories" have surfaced, none of them good news for asylum seekers:

1. Sessions wants to do away with full hearings for asylum seekers and establish some type of "summary dismissal without hearing" process for those who fail to establish a "prima facie case" for asylum or withholding;
2. Sessions is using this case to attack administrative closing as a prelude to eliminating or severely restricting the Immigration Judges' authority to administratively close cases in *Matter of Castro-Tum*;
3. Sessions wants to send a message to Immigration Judges that every administrative closing will be subject to potential review and reversal from "on high," with potential "career limiting" consequences for the Judges, thereby discouraging administrative closing;
4. Sessions wishes to illustrate and eliminate the potential for lawyers to use "weak" asylum claims that they subsequently withdraw to manipulate the system to gain time to apply for other relief;
5. Sessions wants to establish that an Immigration Judge's authority upon BIA remand is limited to the "four corners" of the BIA's remand order and does not allow the respondent to seek or raise other remedies.
6. All five of the preceding."

[Paul W. Schmidt was appointed as an Immigration Judge at the U.S. Immigration Court in Arlington, Virginia, in May 2003 and retired from the bench on June 30, 2016. Prior to his appointment as an Immigration Judge, he served as a Board Member for the Board of Immigration Appeals, Executive Office for Immigration Review, in Falls Church, VA, since February 12, 1995. Judge Schmidt served as Board Chairman from February 12, 1995, until April 9, 2001, when he chose to step down as Chairman to adjudicate cases full-time. He authored the landmark decision *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996), extending asylum protection to victims of female genital mutilation. He received a Bachelor of Arts degree from Lawrence University in 1970 (cum laude), and a Juris Doctorate from the University of Wisconsin School of Law in 1973 (cum laude; Order of the Coif). While at the University of Wisconsin, he served as an editor of the Wisconsin Law Review. Judge Schmidt served as acting General Counsel of the former Immigration and Naturalization Service (INS) (1986-1987; 1979-1981), where he was instrumental in developing the rules and procedures to implement the Immigration Reform and Control Act of 1986. He also served as the Deputy General Counsel of INS for 10 years (1978-1987). He was the managing partner of the Washington, DC, office of Fragomen, Del Rey & Bernsen (1993-95), and also practiced business immigration law with the Washington, DC, office of Jones, Day, Reavis and Pogue from 1987-92 (partner, 1990-92). Judge Schmidt also served as an adjunct professor of law at George Mason University School of Law in 1989 and at Georgetown University Law Center (2012-14). He has authored numerous articles on immigration law, and has written extensively for the American Immigration Lawyers Association. Judge Schmidt is a member of the American Bar Association, the Federal Bar Association, and the Wisconsin and District of Columbia Bars. Judge Schmidt was one of the founding members of the International Association of Refugee Law Judges. In June 2010, Judge Schmidt received the Lucia R. Briggs Distinguished Achievement Award from the Lawrence University Alumni Association in recognition of his notable career achievements in the field of immigration law.]

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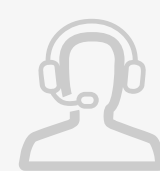
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