



U.S. Department of Justice

Office of the Associate Attorney General

June 16, 2021

MEMORANDUM FOR THE CIVIL DIVISION

FROM: Vanita Gupta 
Associate Attorney General

RE: Impact of Attorney General decisions in Matter of L-E-A- and Matter of A-B-

Today, Attorney General Merrick Garland vacated the previous Attorney General decisions in Matter of L-E-A-, 27 I&N Dec. 581 (A.G. 2019) (“L-E-A- II”), Matter of A-B-, 27 I&N Dec. 316 (A.G. 2018) (“A-B- I”), and Matter of A-B-, 28 I&N Dec. 199 (A.G. 2021) (“A-B- II”). Attorney General Garland’s decisions instruct that Immigration Judges and the Board of Immigration Appeals should no longer follow the vacated decisions and should instead revert to prior precedent.

These decisions involve important questions about the meaning of our Nation’s asylum laws, which reflect America’s commitment to providing refuge to some of the world’s most vulnerable people. Congress has authorized grants of asylum to those who, among other things, can show that they are fleeing persecution on account of their membership in a “particular social group.” 8 U.S.C. § 1101(a)(42)(A); see 8 U.S.C. § 1158(b)(1)(A), (B)(i).

The now-vacated decisions in L-E-A- II, A-B- I, and A-B- II restricted the availability of asylum on that ground. For example, Matter of L-E-A- II departed from precedent by limiting the circumstances under which a family may qualify as a “particular social group.” And A-B- I broadly stated that “victims of private criminal activity”—such as domestic violence or gang violence—will not qualify for asylum except perhaps in “exceptional circumstances.” 27 I&N Dec. at 317.

Pursuant to the President’s Executive Order No. 14010, the Justice Department and the Department of Homeland Security are engaged in a joint rulemaking “addressing the circumstances in which a person should be considered a member of a ‘particular social group.’” Exec. Order No. 14010, § 4(c)(ii), 86 Fed. Reg. 8267, 8271 (Feb. 2, 2021). In today’s decisions, the Attorney General explains that he is vacating L-E-A- II, A-B- I, and A-B- II to return the law to its preexisting status pending the rulemaking process, which will allow these complex and important questions to be resolved with the benefit of full public comment. When the final rule is promulgated, it will govern these issues going forward.

The Civil Division’s Office of Immigration Litigation is responsible for defending the decisions of the Board of Immigration Appeals when they are challenged in the federal courts of appeals. Please review any pending cases that may be affected by the Attorney General’s vacatur of L-E-A- II, A-B- I, and A-B- II and take appropriate steps in light of that development, including seeking remands in appropriate cases to allow the Board to reconsider asylum claims based on this change in the law.

Thank you for your prompt attention to these matters, and for the Division's continuing work to ensure that all asylum claims—including those based on domestic violence, gang violence, or family relationships—are considered fairly, expeditiously, and in accordance with our Nation's laws.