



HOLWELL SHUSTER & GOLDBERG WINS FIFTH CIRCUIT APPEAL ON BEHALF OF CUBAN ASYLUM SEEKER

06.17.2021

Court Vacates BIA Decision for Ignoring Important Evidence

New York—Holwell Shuster & Goldberg LLP secured a significant pro bono victory for Alexander Gutierrez Acosta, an asylee from Cuba, convincing the U.S. Court of Appeals for the Fifth Circuit to revive his asylum application.

Noting ample evidence supporting the possibility that the Cuban police targeted Gutierrez Acosta for his political beliefs, the Fifth Circuit vacated a U.S. Board of Immigration Appeals decision and ordered the BIA to rehear the case. In remanding the case back to the BIA, the three-judge panel stated that the BIA failed to properly review an Immigration Judge’s decision rejecting the asylum claim, by both declining to review the IJ’s determination of Gutierrez Acosta’s credibility, and at the same time ignoring Gutierrez Acosta’s testimony and evidence in support of his claim.

“This is a major step in the right direction to securing the protections of asylum that our client is entitled to based on his experience in Cuba,” said Daniel M. Horowitz, associate at HSG and counsel to Gutierrez Acosta. “The court’s decision should ensure that the BIA look closely at the IJ’s flawed credibility determination and consider the overwhelming evidence supporting the asylum claim.”

In early 2019, Gutierrez Acosta was harassed, beaten, and had his personal property taken by Cuban police after a policeman overheard him criticizing the Cuban government in a conversation with visiting American tourists. He was immediately fired from his job and over the course of the next year, the police arbitrarily detained and beat him based on false accusations of running an illegal tourism business. The situation became so dire that he fled the country with hopes of being granted asylum in the United States.

HSG took on Gutierrez Acosta’s case after an IJ rejected his claim for asylum and related relief. With the firm’s assistance, Gutierrez Acosta successfully appealed the first denial to the BIA, but upon remand, the IJ again rejected the claim, concluding that Gutierrez Acosta’s testimony was not credible and finding that there were legitimate, nonpolitical reasons for his firing and subsequent arrest. This time, the BIA affirmed the IJ’s decision, despite declining to review the adverse credibility finding.

But the Fifth Circuit, in sending the case back to the BIA, adopted HSG’s arguments that (1) it is not enough that there *could have* been a non-political basis for persecution; and (2) having expressly declined to review the immigration judge’s credibility determination, the BIA erred in disregarding Gutierrez Acosta’s testimony that, *in fact*, his political opinion was *actually* the reason he was persecuted. And the Fifth Circuit went even further, noting “there is ample evidence in the record supporting the possibility that an illegitimate motivation was present here.”

Gutierrez Acosta's case, including the Fifth Circuit appeal, has been led by Horowitz. HSG associate Sarah Coco was a crucial member of the team as well; while the appeal was pending, Coco began a term as a judicial law clerk on the U.S. Court of Appeals for the Second Circuit. HSG staff attorney Angela Gil and assistant managing clerk Patrick McGrath contributed pivotal translation services.

ATTORNEYS

Angela Gil

Daniel M. Horowitz