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Firm Secures Lifeline for Haitian Asylum Seeker

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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May 27, 2021 – Hughes Hubbard, as co-counsel with The Legal Aid Society, obtained a key ruling before a federal appellate court on behalf of a Haitian man seeking asylum in the U.S. to escape persecution in his native country.

On March 18, a three-judge panel of the U.S. Court of Appeals for the Second Circuit granted HHR and Legal Aid’s petition for review of a Board of Immigration Appeals (BIA) decision affirming a New York Immigration Judge’s (IJ) prior order denying Jode Alexandre’s application for asylum.

In February 2018, the IJ rejected Alexandre’s application for asylum on the ground of inconsistencies between some of Alexandre’s statements and testimony. In finding Alexandre not credible, the IJ relied on his border interview statement that he was coming to the U.S. to find work and did not fear returning to Haiti.

Alexandre did not dispute making this statement, but explained that he was told by an individual “who works that route” not to disclose his fear of return at the border as doing so would make him “eligible for immediate deportation.” The IJ dismissed Alexandre’s explanation, stating that he found it “more likely” that Alexandre later fabricated his asylum claim.

The IJ also found Alexandre’s credibility undermined by his inability to remember the month or time of year in 2013 when his mother told him over the phone that his sister had died.

In August 2018, following BIA’s affirmance of the IJ’s decision, HHR received a request from Legal Aid to assist with Alexandre’s appeal.

In reversing the BIA’s decision, the Second Circuit panel noted they could not conclude that the IJ’s adverse credibility findings were supported by substantial evidence. “Absent some explanation as to why the IJ thought Alexandre likely fabricated his asylum claim, a due process issue arises as to whether the IJ relied on the Department of Homeland Security’s (DHS) assertion – unsubstantiated in the record – that Haitians have a pattern of fabricating asylum claims,” the panel wrote.

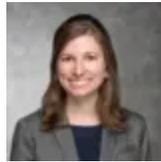
The court added that Alexandre’s lack of detail regarding the timing of his sister’s death concerns an event unrelated to the former’s own past persecution, though supportive of his professed continuing fear if returned. “In his brief to this Court, Alexandre submits that his inability to pinpoint the season is less telling of credibility because he was living in the Dominican Republic where there is little seasonal variation,” the panel concluded. “We do not ourselves assess this explanation but, instead, leave it for agency determination on remand.”

Hagit Elul represented Alexandre before the Second Circuit alongside Elizabeth Rieser-Murphy of Legal Aid, which will continue to counsel the client on remand. Carolyn Harbus and HHR alum Olivia Bensinger also worked on the matter.

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