

## Case Summary: Immigration Law Advisor

U.S. Department of Justice, Executive Office for Immigration Review

<http://www.justice.gov/eoir/immigration-law-advisor>

In *Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015), the Board held that where an Immigration Judge finds that an applicant for asylum or withholding of removal has not provided reasonably available corroborating evidence, the Immigration Judge should first consider the applicant's explanation for the absence of such evidence and, if a continuance is requested, determine whether good cause exists to continue the proceedings for the applicant to obtain the evidence. Additionally, the Board determined that section 208(b)(1)(B)(ii) of the Act does not impose a requirement that the Immigration Judge identify the specific evidence necessary to meet the applicant's burden of proof and provide an automatic continuance for the purpose of obtaining evidence. The applicant applied for withholding of removal and protection under the Convention Against Torture, and the Immigration Judge denied the applications after finding that the applicant lacked credibility. Alternatively the Immigration Judge found that, even if the applicant were credible, the applicant's testimony was insufficient to satisfy his burden of proof and he did not provide adequate corroborating evidence to establish eligibility for the relief sought. On appeal, the applicant argued that section 208(b)(1)(B)(ii) of the Act requires an Immigration Judge to inform an applicant for asylum or withholding of removal during a merits hearing what specific corroborating evidence is required to meet the burden of proof, and to grant a continuance so the applicant can obtain the evidence. The Board reasoned that section 208(b)(1)(B)(ii) is ambiguous as to what steps must be taken when an applicant has not provided the corroborating evidence required by the Immigration Judge. Proceeding to a review of the statute as a whole and the legislative history, the Board observed that Congress enacted section 208(b)(1)(B)(ii) intending to codify the corroborating evidence standards outlined in *Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997). In that case, the Board held that irrespective of an applicant's credibility, he has the burden to corroborate the material elements of his claim where the evidence is reasonably obtainable, without advanced notice from the Immigration Judge.

The Board pointed out that an applicant is alerted to the possibility that corroborating evidence may be required, or its unavailability explained, in sections 208(b)(1)(B)(ii) and 241(b)(3)(C) of the Act; 8 C.F.R. §§ 1208.13(a) and 1208.16(b); and the Application for Asylum and Withholding of Removal (Form I-589). Additionally, it observed that the *Matter of S-M-J-* framework did not require identification at the merits hearing of the specific corroborating evidence that would be considered persuasive for the applicant to meet his burden of proof. Nor did it require the Immigration Judge to grant an automatic continuance for the applicant to present that evidence at a future hearing. The Board opined that Congress enacted section 208(b)(1)(B) of the Act so that Immigration Judges could follow commonsense standards in evaluating asylum claims without undue restrictions, but it did not intend to create additional procedural requirements for the submission and assessment of corroborating evidence. Noting that requiring advance notice of the need for specific corroborating evidence and granting an automatic continuance would contravene the normal Immigration Court hearing procedures, the Board explained that where an Immigration Judge determines at a merits hearing that specific corroborating evidence should have been submitted, the applicant should be

provided the opportunity to explain why the evidence could not reasonably be obtained. The Immigration Judge is obliged to ensure that the explanation is included in the record along with a statement of whether the explanation is sufficient. If the applicant requests a continuance to obtain additional corroborating evidence, the Immigration Judge should decide whether good cause has been shown to warrant a continuance. As an example, the Board explained that a continuance would be appropriate if an applicant was unaware of a unique piece of evidence that is essential to satisfying the burden of proof.

Additionally, the Board instructed that an Immigration Judge must not place undue weight on the absence of a particular piece of corroborating evidence while disregarding other corroborating evidence in the record. In determining whether an applicant has met his burden of proof, an Immigration Judge should weigh all of the evidence and consider the totality of the circumstances.

Rejecting the applicant's argument that the Immigration Judge was required to automatically continue his hearing so he could obtain corroborating evidence in accordance with *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011), the Board pointed out that the Ninth Circuit case is not binding because this case arose in the Fifth Circuit. The Board noted however that its approach is consistent with that adopted by the Second Circuit in *Liu v. Holder*, 575 F.3d 193, 198 (2d Cir. 2009), and the Seventh Circuit in *Rapheal v. Mukasey*, 533 F.3d 521, 530 (7th Cir. 2008). Concluding that the applicant had not provided sufficient corroborating evidence of key elements of his case, the Board determined that he had not met his burden of proof to establish eligibility for relief. The Board agreed with the Immigration Judge that the applicant had not demonstrated that the evidence could not reasonably have been obtained in advance of his merits hearing and held that the applicant had not shown good cause to warrant a continuance. Affirming the Immigration Judge's determination that the applicant also had not demonstrated eligibility for protection under the Convention Against Torture, the Board dismissed the appeal.