Cases that Question How the Proposed Criteria Will Be Applied

Case Identifier	IJ Decision and Statements	BIA Decision and Statements
A Iraq Asylum 1996	Denied. The BIA did not comment directly on the IJ opinion and the IJ opinion is not on file, however the BIA did report that "[t]he respondent has appealed from the decision to deny him asylum and withholding or deportation. The appeal will be sustained." B.I.A. at 1.	Granted. The BIA found that the record supported reasonable fear of persecution in Iraq because applicant was a Kuwaiti-born-and-raised Iraqi nationalist who opposed Saddam Hussein and his invasion of Kuwait, supported Kuwait during the Gulf War and tried to volunteer for the Kuwaiti forces. B.I.A. at 1-2. The BIA relied on reports of human rights abuses in Iraq against political enemies since there was no actual persecution in this case. B.I.A. at 2.
B Guatemala ABC 1994	Denied. Applicant was a registered member of the ABC Class settlement agreement. She had left the country and was apprehended and charged with deportability. She was asking in this case that her removal hearing be administratively closed pending her asylum request. B.I.A. at 1-2. "The immigration judge denied the motion on the grounds that it was supported only by a nonbinding unpublished decision of this Board." B.I.A. at 2.	Interlocutory Appeal Sustained/Administrative Closure The BIA concluded that there was a dispute in this case regarding the meaning of "apprehended at the time of entry" in the ABC agreement, but that "[w]e need not resolve this dispute… because under the terms of the ABC settlement agreement, the alien need only be a class member in order to be entitled to administrative closure upon appropriate request." B.I.A. at 2-3. The BIA explained that "the Government appears to be bound by the terms of the ABC settlement agreement to administratively close her case pending the outcome of her proceedings under the agreement." B.I.A. at 3. The BIA remanded with instructions to close pending the outcome of the asylum application. *Id.*

H China Unaccompanied Child + *Asylum Issues* 2001	Denied. Respondent was 15 years old when he was placed in removal proceedings and 16 years old when he appeared before the Immigration Judge, but the Immigration Judge "erroneously stated that the respondent was 18 years old, when the respondent was only 16 years old at the time." B.I.A. at 2. "During the second hearing, an attorney hired to represent the respondent appeared for the first time and asked to withdraw unless venue was changed. The Immigration Judge decided not to change venue and noted that the attorney had withdrawn…. [T]he Immigration Judge did not inquire whether the respondent would desire additional time to seek legal counsel or advice…. The Immigration Judge directed the respondent to plead to the charges of removability." B.I.A. at 2.	Remanded. "As the regulation set forth at 8 C.F.R. 240.10(c) prohibits the Immigration Judge from taking the admissions of the respondent, who was an unrepresented minor at that time, the record must be remanded for further proceedings." B.I.A. at 2. Given this reason for remand, the BIA did not address the issues on appeal, including that "the Immigration Judge failed to elicit the minor's testimony that he fears retaliation from the Chinese alien smugglers who brought him into the United States and against whom he testified in their criminal trials as a witness for the United States government." B.I.A. at 2.
HJ Unaccompanied Child 1991	Denied. Respondent was removed from his sister's home by state authorities because his sister was abusing him. Respondent was placed in a group home in state social services custody. B.I.A. 1-2. INS then removed respondent from his group home, interviewed him, and completed Forms I-274A and I-213, initialing for him and obtaining his signature next to the statement "I do not have an attorney in my immigration case." B.I.A. at 2. The child, through counsel, filed motions to suppress that the IJ denied. The IJ admitted: • " representations concerning respondent's alienage" because "these court documents had been made by the	Terminated Proceedings. The B.I.A. found "that any admissions or confessions allegedly made by an unaccompanied minor under 16 during his interview will be treated as inherently suspect." B.I.A. at 6. The BIA noted that the child: • "was 'very scared because (he) did not know what was happening.'" B.I.A. at 7 (quoting the transcript without citation). • "is an 11-year-old boy with only a third-grade education, who a short time before his interrogation by the Service, had been hospitalized due to the injuries he incurred when his sister, with whom he

	respondent's court-appointed temporary managing conservator, and, therefore, by inference, would be accepted as if the respondent himself had made them" and • evidence that the child argued was inauthentic, because "the respondent had failed to present evidence showing that the information contained in the court records was, in fact, inaccurate." As to the other exhibits, the BIA found the IJ's ruling and reliance on them unclear. B.I.A. at 3-4.	had been living, had physically beaten him. He had been removed from her home and placed in a group home with children who had been similarly abused." The BIA found these facts relevant to "the reliability of his admissions because they suggest that he may have been in a traumatized state at the time he allegedly answered the officer's questions." B.I.A. at 9. The BIA concluded that "admission of these hearsay declarations over the objection of the minor respondent in this case was fundamentally unfair." B.I.A. at 9. The BIA also found that the IJ erroneously told the respondent he had the burden to prove he had not entered illegally when the INS had not yet established alienage. B.I.A. at 10.
I Afghanistan Asylum 1990	Denied. "The immigration judge based his denial of the applicant's asylum request on two separate grounds," one of which was: that his fear of harm from the government for his support of the mujahedin "relates to 'an act of prosecution rather than an act of persecution for aiding groups in opposition in an attempt to overthrow the defacto government of Afghanistan.'" B.I.A. at 4-5 (quoting I.J. at 9).	Granted. The BIA disagreed, stating that "[t]he applicant established through his testimony that his brother was arrested, and not heard from again, because of his support for the mujahedin; the applicant further established that the authorities sought him out too because he had assisted the mujahedin." B.I.A. at 5. The BIA found "no basis in the record to conclude… that any punishment which the Afghan Government might impose on the applicant on account of his support for the mujahedin would be an example of a legitimate and internationally recognized government taking action to defend itself from an armed rebellion."

		B.I.A. at 6.
K Asylum 1993	Denied. Applicant suffered brutal treatment at the hands of soldiers because she was a supporter and employee of former President Aristide; she was gang-raped and severely beaten at her family home by soldiers who asked for her by her nickname and told her she was a supporter of a fanatic for Aristide. B.I.A. at 3 (citing Tr. at 18-20). The soldiers said that the other church member was dead and she was next. B.I.A. at 3 (citing Tr. at 31). The applicant's mother gave them a suitcase of American money and they left. B.I.A. at 3 (citing Tr. at 21-22). The applicant went into hiding. B.I.A. at 3 (citing Tr. at 26-28). "[T]he immigration judge found the applicant credible, [but] [n]evertheless, the immigration judge determined that the applicant had failed to demonstrate a well-founded fear of persecution on the basis of her political opinion because the evidence did not show her to be a prominent supporter of Aristide." B.I.A. at 3-4. The IJ found that "it was pure speculation on her part that the same attackers would rape and beat her again or kill her." B.I.A. at 4.	Granted. BIA instead found that the applicant had established that she had a well-funded fear of persecution based on her political opinion and religion, supported by her "direct and uncontradicted testimony establish[ing] that she has suffered grievous harm in direct retaliation for her support of and activities on behalf of Aristide." B.I.A. at 4. The BIA noted that the applicant was "clearly… an active member of the T.K.L. church group, which provided funds for projects endorsed by Aristide… [and] thus could be considered one of Aristide's activist supporters." B.I.A. at 4. Further, the BIA noted that "her attackers knew her by name and knew of her T.K.L. membership, targeted her previously because of her political and religious opinion and that they well might do so again if she were back in Haiti." B.I.A. at 4.
M Haiti Asylum 1990	Denied. Applicant claims he can't return because of his political activities with the Haitian Christian Democratic Party. He was supposed to watch the polls but the police stole the ballot boxes and fired shots and he fled. The police came to his home, arrested him, and detained him for 4 hours, questioning him at gun point regarding who he supported in the election. He was conditionally released but two months later, he was	Granted. BIA instead found a political belief that the govenrment seeks to punish the respondent and found continued political turmoil and oppression in Haiti, thus establishing eligibility for asylum. B.I.A. at 6-7.

	told by friend that the cops were looking for him and so he did not go home. A cousin who looks like him was shot and killed at his home, so he fled and hid for a fourteen months. His wife was arrested and questioned. B.I.A. at 1-4. IJ found no proof respondent's beliefs were such that a persecutor still in Haiti would hurt him. IJ concluded fears were pure conjecture because took place two years ago and the Haitian gov't has changed since. B.I.A. at 4.	