RECENT ADJUDICATION

ASYLUM LAW — PARTICULAR SOCIAL GROUP — ATTORNEY GENERAL OVERRULES FINDING OF FAMILY AS A SOCIAL GROUP. — *Matter of L-E-A-*, 27 I. & N. Dec. 581 (Att'y Gen. 2019).

To be eligible for asylum in the United States, migrants must meet the definition of "refugee" as laid out in the Immigration and Nationality Act[1] (INA). This determination requires a finding that the asylum applicant has been persecuted or has "a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[2] For decades, the Board of Immigration Appeals[3] (BIA) and U.S. courts of appeals have consistently found that a family unit can constitute a particular social group.[4] Recently, in *Matter of L-E-A-*[5] (*L-E-A- II*), Attorney General William Barr overturned the BIA's finding that the immediate family of the respondent's father constituted a particular social group.[6] In doing so, he contradicted decades of precedent and made sweeping claims that, if followed, would undermine long-established principles of asylum law.

The respondent in *Matter of L-E-A-* was a Mexican citizen who applied for asylum in the United States after facing threats from cartel members in Mexico.[7] The respondent first entered the United States in 1998 and left under a grant of voluntary departure in May 2011 following the initiation of removal proceedings.[8] Prior to his return to Mexico, members of a Mexican drug cartel, La Familia Michoacana, had asked the respondent's father if they could sell drugs in his neighborhood store.[9] The respondent's father refused.[10] In the weeks after the respondent returned to Mexico, he was approached multiple times by

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1 Pub. L. No. 89-236, 79 Stat. 911 (1965) (codified as amended in scattered sections of 8 U.S.C.); *see* 8 U.S.C. §§ 1101(a)(42), 1158(b)(1) (2018). The language defining "refugee" stems from international law. *See* Convention Relating to the Status of Refugees, art. 1, July 28, 1951, 19 U.S.T. 6259; Protocol Relating to the Status of Refugees, art. 1, Jan. 31, 1967, 19 U.S.T. 6223.

2 8 U.S.C. § 1101(a)(42)(A).

3 The BIA is housed in the Department of Justice and hears appeals from decisions by immigration judges throughout the country. *See Board of Immigration Appeals*, U.S. DEP'T JUST. (Oct. 15, 2018), https://www.justice.gov/eoir/board-of-immigration-appeals [https://perma.cc/L8CE-FVLH]. BIA decisions may be reviewed by the Attorney General and by federal courts. *Id.*

4 *See, e.g.*, Matter of Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985); *see also* Gebremichael v. INS, 10 F.3d 28, 36 (1st Cir. 1993).

5 27 I. & N. Dec. 581 (Att'y Gen. 2019).

6 *Id.* at 582.

7 Matter of L-E-A- (*L-E-A- I*), 27 I. & N. Dec. 40, 40–41 (B.I.A. 2017).

8 *L-E-A- II*, 27 I. & N. Dec. at 583. Voluntary departure allows individuals to depart the United States within a certain time period on their own instead of under a removal order. *See* 8 U.S.C. § 1229c (2018).

9 *L-E-A- I*, 27 I. & N. Dec. at 41.

10 *Id.*

members of La Familia Michoacana, who fired shots from a car, asked him if he would sell drugs for them at his father's store, and attempted to kidnap him.[11] Shortly after these incidents, the respondent again entered the United States.[12] The cartel members continued to contact his father, who ultimately began paying "rent" to La Familia Michoacana.[13] The respondent was apprehended in the United States and requested asylum, claiming that he was persecuted in Mexico based on his "membership in the particular social group comprised of his father's family members."[14]

The immigration judge denied asylum.[15] The judge determined that La Familia Michoacana targeted the respondent because of its interest in distributing drugs at the store, rather than out of a desire to harm the respondent's family.[16] The events at issue thus failed the nexus requirement for asylum.[17] The respondent appealed his case to the BIA.[18]

The BIA dismissed the respondent's appeal as it related to asylum.[19] It found that, although the respondent's immediate family did constitute a particular social group,[20] the respondent had not established that his membership in that group was "at least one central reason" for the events he experienced.[21] On the respondent's Convention Against Torture claims, however, the BIA found that the immigration judge "did not make complete findings of fact."[22] It therefore remanded the record for further proceedings on that issue.[23]

The Attorney General has broad discretion to review immigration decisions and may certify any BIA decision to himself.[24] On December 3, 2018, Acting Attorney General Matthew Whitaker directed the BIA to refer its decision to him for review, inviting briefs on "[w]hether, and under what circumstances, an alien may establish persecution on account of membership in a 'particular social group' . . . based on the alien's membership in a family unit."[25]

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11 *See id.*
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id.*
17 *See id.*
18 *Id.*
19 *Id.* at 47.
20 *Id.* at 43 ("In consideration of the facts of this case and the agreement of the parties, we have no difficulty identifying the respondent, a son residing in his father's home, as being a member of the particular social group comprised of his father's immediate family.").
21 *Id.* at 47.
22 *Id.* The respondent had requested protection under the Convention Against Torture in addition to seeking asylum. *See id.* at 40.
23 *Id.* at 47.
24 8 C.F.R. § 1003.1(h) (2019). BIA and Attorney General decisions can also be subject to review in the federal court system. *Board of Immigration Appeals*, *supra* note 3.
25 Matter of L-E-A-, 27 I. & N. Dec. 494, 494 (Att'y Gen. 2018) (quoting 8 U.S.C.

Attorney General William Barr (Whitaker's successor) then issued a decision on July 29, 2019.[26] In the decision, he overruled the portion of the BIA's decision recognizing the respondent's family as a particular social group and affirmed the remainder of the opinion.[27] Before reaching the merits, the Attorney General addressed "several threshold arguments" about his authority to review the case.[28] First, he concluded that his office could certify the matter for review — even though the BIA had remanded the case to the immigration judge for further proceedings — because "[n]othing in the INA or the implementing regulations" prevented him from doing so.[29] Attorney General Barr also rejected the argument that his prior statements on asylum would "prevent [him] from acting as an unbiased adjudicator," because his statements did not concern the facts of the case and he had no "personal interest" in the proceedings' outcome.[30] Finally, the Attorney General rejected the argument that the immigration judge never had jurisdiction because the original notice to appear had not included the time or place of the hearing as required by the INA and 8 C.F.R. § 1003.15.[31] In dismissing this argument, he cited a recent BIA decision holding that "similar notices are adequate to establish jurisdiction, so long as subsequent notices provide that information."[32]

Following his finding that he had authority to review the case, the Attorney General went on to address the extensive precedent from the BIA and courts of appeals recognizing family as a particular social group.[33] He argued that such holdings relied on outdated dicta or failed

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§ 1101(a)(42)(A) (2018)).

[26] *L-E-A- II*, 27 I. & N. Dec. at 581.

[27] *Id.* at 596–97.

[28] *Id.* at 585.

[29] *Id.* (alteration in original) (quoting Matter of A-B-, 27 I. & N. Dec. 316, 324 (Att'y Gen. 2018)). 8 C.F.R. § 1003.1(h) establishes that "[t]he Board shall refer to the Attorney General for review of its decision all cases that . . . [t]he Attorney General directs the Board to refer to him." 8 C.F.R. § 1003.1(h). The respondents in this case and in *Matter of A-B-* argued that the Attorney General did not have jurisdiction to review the BIA's decision because the cases had been remanded and were no longer before the BIA. *L-E-A- II*, 27 I. & N. Dec. at 585; *Matter of A-B-*, 27 I. & N. Dec. at 323.

[30] *L-E-A- II*, 27 I. & N. Dec. at 585 (quoting *Matter of A-B-*, 27 I. & N. Dec. at 325). The respondent also argued that Acting Attorney General Whitaker did not have authority to refer the case "because he was not properly appointed to his position." *Id.* Attorney General Barr argued that the Acting Attorney General's appointment was valid and that, even if it was not, he could now certify the case himself (which he then did). *Id.*

[31] *Id.* at 585–86; *see* 8 U.S.C. § 1229(a) (2018); 8 C.F.R. § 1003.15.

[32] *L-E-A- II*, 27 I. & N. Dec. at 586 (citing Matter of Bermudez-Cota, 27 I. & N. Dec. 441 (B.I.A. 2018)).

[33] *Id.* at 587–92; *see, e.g.*, Villalta-Martinez v. Sessions, 882 F.3d 20, 26 (1st Cir. 2018) ("[I]t is well established that the nuclear family constitutes a recognizable social group . . . ."); Velasquez v. Sessions, 866 F.3d 188, 194 (4th Cir. 2017) ("We have recognized that an individual's membership in her nuclear family is a particular social group."); Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015) ("[T]he family remains the quintessential particular social group."); Torres v. Mukasey, 551 F.3d 616, 629 (7th Cir. 2008) ("Our prior opinions make it clear that we consider family to be a cognizable social group . . . .").

to apply the recently revised social group framework from *Matter of M-E-V-G-*[34] and *Matter of W-G-R-*,[35] which required that a group be "(1) composed of members who share a common immutable characteristic; (2) defined with particularity; and (3) socially distinct within the society in question."[36] Alternatively, he argued, some courts may have been willing to accept the recognition of family as a particular social group because they ultimately denied asylum on other grounds, so those conclusions should not be given much weight.[37] Additionally, to the extent that any court of appeals decision could be interpreted as adopting a categorical rule regarding nuclear families, the Attorney General wrote that he believed "such a holding [would be] inconsistent with both the asylum laws and the long-standing precedents of the Board," which have emphasized that a "particular social group" finding must involve a fact-specific inquiry.[38] He concluded the section on precedent by arguing that the Attorney General has primary responsibility for construing and applying immigration law provisions and that his interpretation of "particular social group" should be given deference under *Chevron*[39] and other Supreme Court precedent.[40]

The Attorney General then provided his own interpretation of the term "particular social group" as it applies to family.[41] He argued that both the absence of "family ties" in the refugee definition and the fact that "almost every alien is a member of a family of some kind" weighed against the recognition of nuclear family as a particular social group.[42] He found no evidence that Congress intended the term to "cast so wide a net."[43] Applying the three-part test of immutability, particularity, and social distinction, he wrote that, though many family relationships will be immutable, some may be too vague or amorphous to meet the particularity requirement, and many will have trouble qualifying as socially

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[34] 26 I. & N. Dec. 227 (B.I.A. 2014).

[35] 26 I. & N. Dec. 208 (B.I.A. 2014).

[36] *L-E-A- II*, 27 I. & N. Dec. at 588 (quoting *M-E-V-G-*, 26 I. & N. Dec. at 237); *see also W-G-R-*, 26 I. & N. Dec. at 217.

[37] *L-E-A- II*, 27 I. & N. Dec. at 589.

[38] *Id.* at 591 (comparing Matter of Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985), and *In re* C-A-, 23 I. & N. Dec. 951, 955 (B.I.A. 2006), with *M-E-V-G-*, 26 I. & N. Dec. at 231, and *W-G-R-*, 26 I. & N. Dec. at 210).

[39] Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984).

[40] *See L-E-A- II*, 27 I. & N. Dec. at 591–92.

[41] *Id.* at 592–96.

[42] *Id.* at 593. Notably, many or all individuals can claim they fall under one of the other protected grounds of asylum (such as race and nationality). *See* 8 U.S.C. § 1101(a)(42)(A) (2018). Even if individuals who have been persecuted establish membership in a social group, they still must prove they were persecuted *on account of* that membership to qualify for asylum. *Id.*; *see also* DEBORAH E. ANKER, LAW OF ASYLUM IN THE UNITED STATES § 5:44 (2019 ed.). The BIA in *L-E-A- I* found that the respondent fell short on this nexus requirement. *See L-E-A- I*, 27 I. & N. Dec. 40, 46–47 (B.I.A. 2017).

[43] *L-E-A- II*, 27 I. & N. Dec. at 593.

distinct.[44] On this third concept, he noted that evidence that "nuclear families" generally have societal importance "says nothing about whether a *specific* nuclear family would be 'recognizable by society at large,'" adding that the "average family . . . is unlikely to be so recognized."[45]

The Attorney General concluded that the BIA had not performed the required fact-based inquiry to make that determination; instead, it had based its conclusions on the parties' agreement that the respondent's proposed family group did qualify as a particular social group.[46] Therefore, he reasoned, the BIA's summary conclusions had to be reversed.[47]

The Attorney General's decision in *L-E-A- II* represents a sharp break with circuit court and BIA precedent, improperly dismissing decades of case law and contributing to continued efforts to erode the original definition of "particular social group."[48] Since the 1980s, the "particular social group" definition has readily included immediate families, even in light of recent changes to that definition.[49] As happened in *L-E-A- I*, family-based claims may be denied due to the lack of a nexus between persecution and family membership,[50] but courts have agreed in case after case that nuclear families *do* constitute social groups.[51] In *L-E-A- II*, the Attorney General disclaimed that longstanding precedent, both by overruling the decision at hand and by making sweeping claims that, if followed, would undermine decades of asylum protections.[52]

The BIA and federal circuit courts have repeatedly affirmed that family can constitute a particular social group. In its original definition of the term in *Matter of Acosta*[53] in 1985, the BIA determined that a particular social

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[44] *Id.* at 593–94.

[45] *Id.* at 594 (quoting Matter of A-B-, 27 I. & N. Dec. 316, 336 (Att'y Gen. 2018)).

[46] *Id.* at 586.

[47] *Id.*

[48] The definition of "particular social group" has developed almost exclusively through case law. The language stems from international conventions that never defined the term, and Congress similarly did not elaborate on the definition when incorporating it into U.S. law in the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (codified as amended in scattered sections of 8 and 22 U.S.C.). *See* JAMES C. HATHAWAY & MICHELLE FOSTER, THE LAW OF REFUGEE STATUS 423–24 (Cambridge Univ. Press 2d ed. 2014) (1991); *see also* Valdiviezo-Galdamez v. Att'y Gen., 663 F.3d 582, 594 (3d Cir. 2011) ("The concept [of a 'particular social group'] is even more elusive because there is no clear evidence of legislative intent."); Fatin v. INS, 12 F.3d 1233, 1238 (3d Cir. 1993) ("Read in its broadest literal sense, the phrase is almost completely open-ended. Virtually any set including more than one person could be described as a 'particular social group.'").

[49] *See* Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015) ("Even under this refined framework, the family remains the quintessential particular social group."); Jillian Blake, *Protection for Families: New Standards Developing in Asylum Law*, 111 NW. U. L. REV. ONLINE 49, 51–52 (2016).

[50] *L-E-A- I*, 27 I. & N. Dec. 40, 46–47 (B.I.A. 2017); *see also* Cruz-Guzman v. Barr, 920 F.3d 1033, 1037 (6th Cir. 2019); Bernal-Rendon v. Gonzales, 419 F.3d 877, 881 (8th Cir. 2005).

[51] *See infra* notes 53–65 and accompanying text.

[52] *See L-E-A- II*, 27 I. & N. Dec. at 593–96.

[53] 19 I. & N. Dec. 211 (B.I.A. 1985).

group consists of members who "share a common, immutable characteristic[,] . . . such as sex, color, or *kinship ties*."[54] Circuit courts have followed the BIA's lead. The Ninth Circuit has called family the "quintessential particular social group";[55] the Fourth has called it "prototypical";[56] the First has said there can be "no plainer example of a social group" than the nuclear family;[57] and every other U.S. court of appeals to reach the issue has similarly determined that family can constitute a particular social group.[58]

This consistency has persisted even after recent changes in the "particular social group" test. In the past decade,[59] the BIA has added the requirements of "social distinction" and "particularity" to the "social group" definition.[60] "Particularity" requires that the group be defined "by characteristics that provide a clear benchmark for determining who falls within the group,"[61] while "social distinction" requires evidence that a group sharing a certain characteristic is perceived as a group by society.[62] Although these new standards have been criticized for narrowing and complicating the definition of "particular social group,"[63] nuclear families have still qualified in case after case.[64] Even in the decisions best known for fleshing out this framework, the BIA approvingly cited decisions recognizing family as easily perceived by others as a social group.[65]

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[54] *Id.* at 233 (emphasis added).

[55] Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015).

[56] Crespin-Valladares v. Holder, 632 F.3d 117, 125 (4th Cir. 2011) (citation omitted).

[57] Gebremichael v. INS, 10 F.3d 28, 36 (1st Cir. 1993).

[58] *See, e.g.*, Gonzalez Ruano v. Barr, 922 F.3d 346, 353 (7th Cir. 2019); S.E.R.L. v. Att'y Gen., 894 F.3d 535, 556 (3d Cir. 2018); Aguinada-Lopez v. Lynch, 825 F.3d 407, 409 (8th Cir. 2016); Vanegas-Ramirez v. Holder, 768 F.3d 226, 237 (2d Cir. 2014); Al-Ghorbani v. Holder, 585 F.3d 980, 995 (6th Cir. 2009); Torres v. Mukasey, 551 F.3d 616, 629 (7th Cir. 2008).

[59] *See* Ariel Lieberman, Note, *What is a "Particular Social Group"?:* Henriquez-Rivas *Provides a Possible Solution to Circuit Courts' Confusion*, 28 GEO. IMMIGR. L.J. 455, 459–60 (2014) (explaining the development of the "particularity" and "social visibility" standards in cases from 2006 and 2008).

[60] Matter of M-E-V-G-, 26 I. & N. Dec. 227, 237 (B.I.A. 2014); Matter of W-G-R-, 26 I. & N. Dec. 208, 212 (B.I.A. 2014); *see also* Matter of S-E-G-, 24 I. & N. Dec. 579, 582 (B.I.A. 2008); *In re* C-A-, 23 I. & N. Dec. 951, 959–60 (B.I.A. 2006).

[61] *M-E-V-G-*, 26 I. & N. Dec. at 239.

[62] *W-G-R-*, 26 I. & N. Dec. at 217. This new formulation has been adopted by most courts of appeals, but the Seventh Circuit has rejected the new requirements and continues to apply the *Acosta* immutability standard. *See* Gatimi v. Holder, 578 F.3d 611, 615 (7th Cir. 2009) (writing that the social visibility analysis "cannot be squared" with precedent and "makes no sense").

[63] *See, e.g.*, Helen P. Grant, *Survival of Only the Fittest Social Groups: The Evolutionary Impact of Social Distinction and Particularity*, 38 U. PA. J. INT'L L. 895, 938 (2017) ("The clear purpose of the new test is to limit the potential types and size of groups that can find protection within the United States."); Nicholas R. Bednar, Note, *Social Group Semantics: The Evidentiary Requirements of "Particularity" and "Social Distinction" in Pro Se Asylum Adjudications*, 100 MINN. L. REV. 355, 357–58 (2015).

[64] *See, e.g.*, Villalta-Martinez v. Sessions, 882 F.3d 20, 26 (1st Cir. 2018) ("[I]t is well established that the nuclear family constitutes a recognizable social group."); Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015); *see also* Gonzalez Ruano v. Barr, 922 F.3d 346, 353 (7th Cir. 2019); Velasquez v. Sessions, 866 F.3d 188, 194 (4th Cir. 2017); Aguinada-Lopez v. Lynch, 825 F.3d 407, 409 (8th Cir. 2016); Hernandez-Avalos v. Lynch, 784 F.3d 944, 949 (4th Cir. 2015); Torres v. Mukasey, 551 F.3d 616, 629 (7th Cir. 2008).

[65] *W-G-R-*, 26 I. & N. Dec. at 216 ("[C]lan membership is a 'highly recognizable' characteristic

In *L-E-A- II*, however, the Attorney General departed sharply from this precedent in two key ways while claiming to adhere to this test. Firstly, his decision to overrule the BIA's finding that the respondent's nuclear family constituted a particular social group created a new threshold for factual analysis. The Attorney General's reasoning for overruling the decision was that the BIA "did not perform the required fact-based inquiry" and instead based its decision on the parties' stipulation.[66] But as the Attorney General himself later noted, the BIA *did* look at the facts, writing that it made its decision "[i]n consideration of the facts of this case and the agreement of the parties" and noting that the respondent was a "son residing in his father's home."[67] While this was admittedly a sparse explanation, it was no less thorough than many circuit court cases reaching similar conclusions.[68] Circuit court decisions are "binding on the BIA when it considers cases arising in that jurisdiction,"[69] but the Attorney General argued that such decisions could not be read as establishing a categorical rule because asylum claims must be adjudicated on a "case-by-case" basis.[70] Even under this framework, however, these precedents have shown that courts can make that determination with relative ease when it comes to family, because there are "few groups more readily identifiable than the family."[71] The Attorney General, by finding that the BIA's brief discussion of the facts was insufficient, created a new threshold for the level of factual analysis required.

Attorney General Barr's second major departure from precedent was requiring a new level of social distinction for a family to qualify as a particular social group. Despite his insistence that social groups must be determined on a case-by-case basis,[72] the Attorney General made sweeping statements about when family can qualify, writing that the

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that is 'inextricably linked to family ties.'" (quoting Matter of H-, 21 I. & N. Dec. 337, 342 (B.I.A. 1996))); *M-E-V-G-*, 26 I. & N. Dec. at 240, 246 ("[S]ocial groups based on innate characteristics such as sex or family relationship are generally easily recognizable and understood by others to constitute social groups." (quoting *C-A-*, 23 I. & N. Dec. at 959)).

66 *L-E-A- II*, 27 I. & N. Dec. at 586.

67 *L-E-A- I*, 27 I. & N. Dec. 40, 43 (B.I.A. 2017).

68 *See* cases cited *supra* notes 58, 64.

69 Lieberman, *supra* note 59, at 460 (citing NLRB v. Ashkenazy Prop. Mgmt. Corp., 817 F.2d 74, 75 (9th Cir. 1987)); *see also* Matter of Anselmo, 20 I. & N. Dec. 25, 31 (B.I.A. 1989) ("Where we disagree with a court's position on a given issue, we decline to follow it outside the court's circuit. But, we have historically followed a court's precedent in cases arising in that circuit."). L-E-A-'s case arose in the Ninth Circuit, which has specifically found that, even under the revised framework, family "remains the quintessential particular social group." *Rios*, 807 F.3d at 1128; *see* CATHOLIC LEGAL IMMIGRATION NETWORK, INC., PRACTICE POINTER: MATTER OF L-E-A- 8 (2019), https://cliniclegal.org/sites/default/files/resources/defending-vulnerable-popluations/Litigation/L-E-A-Practice-Pointer-8-2-2019-Final.pdf [https://perma.cc/379R-EG38].

70 *L-E-A- II*, 27 I. & N. Dec. at 591 (quoting Pirir-Boc v. Holder, 750 F.3d 1077, 1084 (9th Cir. 2014)).

71 Crespin-Valladares v. Holder, 632 F.3d 117, 126 (4th Cir. 2011).

72 *L-E-A- II*, 27 I. & N. Dec. at 582, 584, 587, 588, 591.

average family is unlikely to be "recognizable by society at large."[73] This reasoning failed to consider that specific family units generally *are* recognizable by society at large, through a host of laws and social structures like marriage,[74] inheritance law,[75] and even zoning laws.[76] The Attorney General's formulation would ignore this type of social distinction and require a new level of societal fame, despite the fact that courts have consistently found this widespread societal recognition of families to suffice.[77] Although properly classified as dicta,[78] the Attorney General's statements thus pose the danger of creating a new, unreasonable threshold for individuals pursuing family-based asylum claims.

While claiming to adhere to the social distinction and particularity tests, the Attorney General in *L-E-A- II* attempted to eviscerate an entire category of social group that has been upheld for decades. This opinion stretches the bounds of even the social distinction and particularity tests, which supposedly merely "refined the standard for identifying social groups."[79] But the Attorney General's decision would have been outright impossible under the *Acosta* immutability standard formulated in 1985, which expressly included "kinship ties" as one example of an immutable characteristic.[80] The Attorney General's opinion thus demonstrates the danger of the ambiguity introduced by the social distinction and particularity tests and illustrates the potential for this revised framework to undercut long-established principles of asylum law.

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[73] *Id.* at 594 (quoting Matter of A-B-, 27 I. & N. Dec. 316, 336 (Att'y Gen. 2018)).

[74] *See, e.g.*, Obergefell v. Hodges, 135 S. Ct. 2584, 2601 (2015) ("[M]arriage is 'the foundation of the family and of society, without which there would be neither civilization nor progress.'" (quoting Maynard v. Hill, 125 U.S. 190, 211 (1888))).

[75] *See, e.g.*, Anne L. Alstott, Commentary, *Family Values, Inheritance Law, and Inheritance Taxation*, 63 TAX L. REV. 123, 124 (2009) ("[I]nheritance law is intimately bound up with ideals about the family . . . , one of the key institutions for transmitting assets, knowledge, and values across generations . . . .").

[76] *See, e.g.*, Village of Belle Terre v. Boraas, 416 U.S. 1, 7 (1974) (upholding an ordinance distinguishing between related and unrelated families in defining who can live in single-family dwellings); Kate Redburn, *Why Are Zoning Laws Defining What Constitutes a Family?*, CITYLAB (June 17, 2019), https://www.citylab.com/perspective/2019/06/zoning-ordiances-formal-family-code-housing-discrimination/591427/ [https://perma.cc/Z2UN-U332].

[77] *See, e.g.*, Rios v. Lynch, 807 F.3d 1123, 1128 (9th Cir. 2015); Crespin-Valladares v. Holder, 632 F.3d 117, 126 (4th Cir. 2011).

[78] The holding of this case is arguably limited to the Attorney General's decision to overrule the BIA's finding that this specific respondent's family constituted a particular social group because the BIA did not perform the required fact-based inquiry. *L-E-A- II*, 27 I. & N. Dec. at 586; *see also* Enamorado-Rodriguez v. Barr, No. 19-1084, 2019 WL 5588751, at *6 n.2 (1st Cir. Oct. 30, 2019) (distinguishing *L-E-A- II* on the grounds that "the government in this case left it to Enamorado to establish the validity of his [particular social group], which he did"). The rest of the discussion concerning when and whether family may constitute a social group was not essential to this holding, so it would properly be characterized as nonbinding dicta. *See* Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 STAN. L. REV. 953, 1065 (2005) (defining a holding as consisting of propositions that "(1) are actually decided, (2) are based upon the facts of the case, and (3) lead to the judgment").

[79] *L-E-A- II*, 27 I. & N. Dec. at 588.

[80] Matter of Acosta, 19 I. & N. Dec. 211, 233 (B.I.A. 1985).