Taxation of costs; financial disparity between the parties. Judge Montgomery rejected the losing plaintiff's challenge to the clerk's entry of a cost judgment, finding that while the plaintiff's financial situation was "dire," his claim of "indigence" was "undercut" by the financial support he received from his parents. ***Radmer v. OS Salesco, Inc.***, 2017 WL 1157095 (D. Minn. 3/27/2017).

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IMMIGRATION LAW

JUDICIAL LAW

Asylum applicant's subjective fear was not objectively reasonable. The 8th Circuit Court of Appeals held the Guatemalan petitioner failed to demonstrate that his subjective fear of persecution was objectively reasonable, with substantial evidence supporting determinations by both the Immigration Judge and Board of Immigration Appeals (BIA) that he did not establish eligibility for asylum. "For an alien's fear of persecution to be objectively reasonable, the fear must have basis in reality and must be neither irrational nor so speculative or general as to lack credibility. *Perinpanathan v. INS*, 310 F.3d 594, 598 (8th Cir. 2002)." ***Lemus-Arita v. Sessions***, No. 16-1924, *slip op.* (8th Cir. 4/17/2017). *http://media.ca8.uscourts.gov/opndir/17/04/161924P.pdf*

No abuse of discretion in BIA's refusal to reopen petitioner's removal proceeding. The 8th Circuit Court of Appeals denied the petition for review, holding the petitioner failed to develop an argument explaining why his failure to appear was on account of 'exceptional circumstances' as outlined in INA §240(b)(5)(C) and (e)(1). 'Exceptional circumstances' refers to such events as "(battery or extreme cruelty to the alien [foreign national] or any child or parent of the alien [foreign national], serious illness of the alien [foreign national], or serious illness or death of the spouse, child, or parent of the alien [foreign national], but not including less compelling circumstances) beyond the control of the alien [foreign national]." ***Alvarado-Arenas v. Sessions***, No. 15-2987, *slip op.* (8th Cir. 3/22/2017). *http://media.ca8.uscourts.gov/opndir/17/03/152987P.pdf*

Asylum denied to Honduran woman abused by her former domestic partner. The 8th Circuit Court of Appeals held

the BIA did not err when concluding the petitioner had failed to establish she was a member of her proposed social group (Honduran women in 'domestic relationships' who are unable to leave their relationships) or the Honduran government would consent to or acquiesce in her mistreatment if she was removed to Honduras. The court observed that Fuentes "moved freely to different locations [in Honduras], had employment," and "had no contact voluntarily or not with [Santos after] she left him in 2009." ***Fuentes-Erazo v. Sessions***, No. 15-3149, *slip op.* (8th Cir. 2/16/2017). *http://media.ca8.uscourts.gov/opndir/17/02/153149P.pdf*

■ **Untimely motion to reopen denied given petitioner's failure to show changed country conditions in Guatemala.** The 8th Circuit Court of Appeals concluded the petitioner's claim that there was increased violence in Guatemala was insufficient to establish a material change in country conditions in Guatemala warranting reopening of his removal proceedings. Referencing 8 U.S.C. §1229a(c)(7)(C)(ii), the court notes, "Villatoro-Ochoa's motion to reopen was filed 11 months after the removal order and, thus, was untimely. The statute provides an exception to the 90-day filing deadline if an applicant seeks to apply for asylum or withholding of removal and he shows that his motion 'is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding.'" ***Villatoro-Ochoa v. Lynch***, No. 15-3103, *slip op.* (8th Cir. 1/4/2017). *http://media.ca8.uscourts.gov/opndir/17/01/153103P.pdf*

■ **Assisting in the persecution of another does not require a persecutory motive to make one subject to the persecutor bar.** On 5/5/2017, the Board of Immigration Appeals held that the persecutor bar found in INA §241(b)(3)(B)(i) applied to the respondent because he assisted or otherwise participated in the persecution of an individual on account of that individual's political opinion. "The proper focus is not on the motive of the alien [foreign national], but rather on the intent of the perpetrator of the underlying persecution. If the perpetrator is motivated by the victim's race, religion, nationality, membership in a particular social group, or political opinion, then the alien's [foreign national's] assistance invokes the persecutor bar, without regard to the personal motivation of the alien [foreign national] who assisted or otherwise participated in the persecution… The fact that the respondent joined the military for financial, as opposed to political, reasons does not preclude the application of the persecutor bar." ***Matter of Alvarado***, 27 I&N Dec. 27 (BIA 2017). *https://www.justice.gov/eoir/page/file/964491/download*

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INDIAN LAW

JUDICIAL LAW

■ **Red Lake Reservation not diminished by 1905 railroad-right-of-way act.** The United States charged the defendant with committing a felony in Indian country, specifically within the Red Lake Reservation. During an evidentiary hearing, the defendant argued that Congress diminished the reservation—removing the land on which the defendant committed the crime from the statutory definition of Indian country—in a 1905 act that provided land in the reservation to a railroad company. On appeal, the 8th Circuit Court of Appeals applied the well-established diminishment test, which attempts to discern congressional intent by looking first to the language of the purported diminishment act, then to the legislative history of the act, and, finally, to the historical context and subsequent treatment of the land. The court found that the language of the 1905 act, coupled with its legislative history, "leaned heavily" in favor of the conclusion that the 1905 act only expanded the railroad's right-of-way in the reservation, and did not diminish the reservation. Because the record regarding the historical context of the 1905 act and the subsequent history of the land was mixed, it could not overcome the statutory language, and the court concluded that that the 1905 act did not diminish the reservation. ***United States v. Jackson***, ___ F. Supp. 3d ___, 2017 WL 1228564 (8th Cir. 2017).

■ **Enrollment irrelevant to Indian status under Major Crimes Act.** The petitioner sought to have set aside his sentences for convictions in violation of the Major Crimes Act. He argued that new evidence cast doubt on whether he was an Indian—an essential element of crimes charged under that statute—because of certain documents suggesting that he may not be enrolled with the tribe that he claimed to be enrolled with. The court rejected this argument, noting that a defendant may be found to be an Indian "even if the defendant is not an enrolled member of a federally recognized tribe." "[T]he generally accepted test for determining Indian status is whether (1) the defendant has some Indian blood; and (2) is recognized as an Indian by a tribe or the federal government or both." ***Martin v. United States***, Nos. 12-206(1) (DWF/LIB), 15-2210 (DWF), 2017 WL 976928 (8th Cir. 3/13/2017).

■ **Tribal agencies presumptively immune from suit.** The plaintiff sued the White Earth Band for employment discrimination and violations of the U.S. Constitution and Indian Civil Rights Act. A magistrate judge recommended dismissal on immunity grounds, and the plaintiff objected, arguing, among other things, that "sovereign immunity should not apply because White Earth Tribal council ha[d] not come forward to invoke sovereign immunity." The district court rebuffed, noting that sovereign immunity extends to tribal agencies and that "tribes or tribal officials need not explicitly invoke sovereign immunity; instead, courts assume that the tribe is immune unless Congress has expressly abrogated that protection or the tribe has expressly waived its immunity." ***Harper v. White Earth Human Resource***, No. 16-1797 (JRT/LIB), 2017 WL 701354 (D. Minn. 2/22/2017).

■ **90-day response deadline for funding agreements under the ISDEAA subject to strict enforcement.** The Navajo Nation hand-delivered a proposal for funding for its judiciary under the Indian Self-Determination and Education Assistance Act. Under the ISDEAA, if the Department does not respond within 90 days after it receives the proposal, it is deemed approved. Here, the Department rejected the proposal after the 90-day deadline, claiming that it did not technically receive the proposal because the Nation hand-delivered it during a temporary federal-government shutdown to an employee who was present at the department for emergency services only. The Navajo Nation sued. On appeal from dismissal of the case, the District of Columbia Circuit Court of Appeals determined that the 90-day deadline commenced when the Navajo Nation delivered the letter. It reasoned that a Department agent's acceptance of the proposal fell within the plain meaning of the word "receipt." The court rejected the Department's