



AMERICAN IMMIGRATION COUNCIL

For Immediate Release

**American Immigration Council Commends Latest Ruling
Allowing Immigration Judges to Consider Evidence of Hardship**

November 13, 2012

Washington, D.C.—Last Friday, the U.S. Court of Appeals for the Fourth Circuit issued a unanimous [ruling](#) that will allow Immigration Judges to exercise discretion in cases involving lawful permanent residents (LPRs) whose removal would cause extreme hardship to family members in the United States. The ruling is the latest opinion from a federal appellate court to reject a contrary decision of the Board of Immigration Appeals. The American Immigration Council’s Legal Action Center, which filed an *amicus* brief in the case and participated in the oral argument, applauds today’s ruling and repeats its call for the Board to overturn its decision in *Matter of Koljenovic*, 25 I&N Dec. 219 (2010).

The case involved a 1996 amendment to the Immigration and Nationality Act that prevents Immigration Judges from considering evidence of hardship in certain cases involving immigrants who were “admitted” to the United States as LPRs. For many LPRs facing removal, the ability to obtain such hardship waivers is the only means to avoid separation from U.S. family members. In its *amicus* brief, the Council argued that the Board ignored the plain language of the statute, which distinguishes between applicants who entered the country as LPRs and those who gained LPR status post-entry.

The beneficiary of today’s decision, Martin Mendoza Leiba, was granted LPR status in 1995. The Department of Homeland Security initiated removal proceedings against him in 2010 based on a criminal conviction for which he received no time in prison. Leiba was prevented from presenting evidence of hardship based on the Board’s decision in *Matter of Koljenovic*. By overruling *Matter of Koljenovic*, the Fourth Circuit’s ruling will allow Leiba to present evidence to an Immigration Judge demonstrating the hardship caused by his removal to his U.S. citizen wife and five U.S. citizen children.

The case is *Leiba v. Holder*, No. 11-1845. Xavier Racine of Calderon, Racine & Derwin in Arlington, Va., represented the petitioner.

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