

Memorandum



BIA 05-05

Subject	Date
Expansion of Case Hold - <i>Matter of C-Y-Z</i> - Court of Appeals - Second Circuit	August 30, 2005

To Board Legal Staff

From Lori L. Scialabba, Chairman

The Court of Appeals for the Second Circuit has recently remanded three cases to the Board to explain our rationale in *Matter of C-Y-Z*, 21 I&N Dec. 915 (BIA 1997) (an alien whose spouse was forced to undergo an abortion or sterilization procedure can establish past persecution on account of political opinion and qualifies as a refugee within the definition of section 101(a)(42) of the Act), and to determine whether non-married partners may be eligible for asylum. See *Lin v. Gonzales*, 416 F.3d 184 (2nd Cir. 2005). Currently, cases which turn on the question of whether our holding in *Matter of C-Y-Z* extends to traditional or customary marriages are placed on HOLD (temporary suspension of the 90 day or 180 day adjudication clock). However, in light of the Court of Appeals remand, I am directing the expansion of the current hold to include cases arising out of the **Second Circuit** that involve the issue of whether an alien can establish past political persecution based upon forced abortion or sterilization of a spouse or non-married partner.

Please remember that if the case may be resolved without reaching the issue of *Matter of C-Y-Z* or its extension to traditional or customary marriages, the case is not subject to the hold. For example, cases where a proper adverse credibility determination has been made by the Immigration Judge and would be affirmed by the Board are not subject to the hold. Moreover, since the Court of Appeals for the Ninth Circuit currently recognizes traditional or customary marriages for purposes of establishing eligibility for asylum, cases arising out of the Ninth Circuit are also not subject to the hold. See *Ma v. Ashcroft*, 361 F3d 553 (9th Cir. 2004).

If you have or find a case subject to the *Matter of C-Y-Z* hold, it is essential that you bring the case to the attention of your team leader or SPA so that the adjudication clock may be stopped in CASE, and that the ROP may be placed in designated cabinets.