

United States Court of Appeals for the Eleventh Circuit

Rrustem Neza, A79-091-766 §
Nurie Neza, A79-091-767 §
Xheladin Neza, A79-091-768 §
Petitioners §
V. §
Alberto Gonzales, §
U.S. Attorney General §
Respondent §



Case No. 07-13989-H

**REPLY TO RESPONDENT’S OPPOSITION TO PETITIONERS’
AMENDED MOTION FOR STAY AND MOTION FOR REMAND,
AND PETITIONER’S MOTION TO ABATE BRIEFING**

RRUSTEM NEZA, NURIE NEZA, and XHELADIN NEZA file their *Reply to Respondent’s* Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing, respectfully showing the following:

The Respondent’s *Opposition* is replete with factual errors, and its legal argument is no more reliable. The Respondent begins by saying, “With the assistance of attorney Martin Roth, Mr. Neza filed an application for asylum, withholding of removal, and protection from torture. A.R. 475-82.”¹ In fact, they hired Ron Haber, an attorney in Miami employed by the partnership, Haber & Roth, to represent them, as the Respondent would have known if he had read the

¹ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 2. A.R. 475-82 are the asylum application the Petitioners filed with the immigration court, and on page 482 it is signed by Ronald Haber. Mr. Roth is nowhere mentioned in it.

sections of the Administrative Record he cites. Then, Respondent claims, “On January 30, 2002, after “asylum only” proceedings before an immigration judge, at which petitioners were represented by attorney Roth, the immigration judge denied the applications. A.R., 517, 569, 340-59.” In fact, there were no “applications” to deny. There was only one application. Moreover, the parts of the Administrative Record that the Respondent cites show that the Petitioners were represented at the hearing by Ron Haber, not by “attorney Roth.” Had the Respondents troubled themselves to read the transcript of the proceedings, they would have seen that not only did Haber fail to put into evidence the death certificates of Mr. Neza’s cousins, with whom he had been hiding in Albania, but Haber did not even know his client had them. It was only in response to questioning by the immigration judge that Haber learned his client had brought the death certificates with him to the immigration court. A.R. 399.

Mr. Roth was Mr. Haber’s partner, and he filed the appeal to the Board of Immigration Appeals. A.R. 491. He merely reproduced the arguments of his partner Mr. Haber. A.R. 302-309. Had Mr. Roth competently represented his client he would have embarrassed his partner by pointing out the abundance of evidence that Mr. Haber could have used, but did not, and which would have changed the outcome of the hearing. This discrepancy is the point of Mr. Neza’s

now pending *Motion to Reopen* at the BIA and his petition for review in this Court of Appeals.

Respondent's Opposition says that "On June 25, 2005, petitioners filed a motion to reopen asserting changed circumstances in Albania. A.R. 108-251." The Respondent credits Mr. Neza's new attorney, Melissa Desvarieux, for Cristophe and Associates, with more legal savvy than she is due. Changed circumstances in Albania would have been a proper basis for reopening, but the only changed circumstance Ms. Desvarieux asserts is that Mr. Neza's brothers have been granted asylum in the U.S. and she has acquired some more evidence of the old circumstances. A.R. 108-251. In fact, her motion would be laughable if it were not likely to cost her client his life. A.R. 69.

Still not having glanced at the Administrative Record, the Respondent writes that Petitioner's *Motion to Reconsider and Amended Motion to Reopen Pursuant to Matter of Lozada*, filed 11 July 2007 with the BIA, "asserted ineffective assistance by petitioners' original counsel before the immigration judge, Mr. Roth. A.R. 26-38. The denial of that *Motion* is the subject of the instant *Petition for Review* in this Court of Appeals. Respondent said, "The Board found that petitioners had not demonstrated due diligence with respect to counsel who represented them before the immigration judge in 2002 and before the Board in 2003." Respondent's insistence that the Board was not in error is particularly bizarre, since the

Respondent for all practical purposes stipulated that the Petitioners had in fact exercised due diligence: the Respondent, in its *Opposition to Motion for Stay of Removal*, filed in this Court of Appeals on or about 11 September 2007, says,

Even assuming the facts described by petitioners, they knew that their attorney had not prepared them adequately, and they knew they had been ordered removed as a result, and yet they did nothing to address their concerns about the effectiveness of that assistance for five years, **even though they had obtained several other counsel during that period.** *Opposition to Motion for Stay of Removal*, p. 7 (emphasis supplied)

Obviously, the Petitioners, who could not speak English and knew even less about the US legal system, did “address their concerns” during those five years because “they had obtained several other counsel during that period.” The Respondent seems to be arguing that the Petitioners failed to “demonstrate due diligence” because they “obtained several other counsel,” instead of galloping pro se into the swamp of immigration law.

The Respondent also writes, “In their Motions for Stay, Remand or Abatement, petitioners concede that the Court lacks jurisdiction over their petitions for review.”² One may prefer to suppose that the Respondent merely lacks familiarity with the English language, rather than that he wishes to deceive this Court of Appeals. What “petitioners concede” is precisely and unambiguously,

Obviously the Court of Appeals cannot determine whether such malpractice amounted to a denial of Mr. Neza’s Constitutional rights without

² *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 5.

an evaluation by someone of the evidence that he says his previous attorneys should have brought to the attention of the immigration judge and BIA. Although the Court of Appeals lacks jurisdiction to conduct such an examination, [citation omitted] the lack of jurisdiction to review the evidence de novo does not excuse this Court of Appeals from its duty to enforce the laws of the United States, including Mr. Neza's right to due process.³

Respondent then adds that “petitioners assert, with no citation to authority, that lack of jurisdiction does not excuse this Court of Appeals from its duty to enforce the laws of the United States, including Mr. Neza's right to due process.” Below is the same footnote that appeared on the page the Respondent says had “no citation to authority.” Perhaps the Respondent does not understand that the footnote below the text on a page is a citation of authority for the proposition in the text to which the little superscripted number corresponds. Or perhaps the Respondent does not regard Chief Justice Marshall as an authority.

Curiously, the Respondent also claims that the Court of Appeals has no jurisdiction to review the Constitutional and statutory questions the Petitioner raises in his petition for review of the denial of his motion to reopen. Ironically, Respondent says that is because “the Court's only jurisdiction is that provide by Congress...,” yet Congress specifically provided such jurisdiction:

Nothing in subparagraph (B) or (C) or in any other provision of this Act (other than this section) which limits or eliminates judicial review, shall be

³ “It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress. There are some injuries which can only be redressed by a writ of mandamus and others by a writ of prohibition. There must then be a jurisdiction somewhere competent to issue that kind of process.” *Marbury v. Madison*, 5 US 137, 147 (1803).

construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section. INA §242(a)(2)(D), 8 USC §1252(a)(2)(D).

In view of the specific grant of jurisdiction by statute, it is curious that the Respondent poo-poo's INA §242(a)(2)(D), 8 USC §1252(a)(2)(D) and *Marbury v. Madison*, 5 US 137, 147 (1803) as “abstract jurisdiction to ‘enforce the laws.’”⁴ Respondent then makes the Petitioner’s arguments for remand and to abate briefing until the proceedings now pending at the BIA are completed.

Respondent says, “The Court should deny petitioners’ motion to remand, first, because the Court’s jurisdiction to consider the issues in this case is explicitly limited to those issues presented in the administrative record on file with the Court.”⁵ The Respondent’s additional argument is, “The Court should deny petitioner’s motion to remand, second, because ... courts lack authority to consider extra-record evidence.”⁶ But those are precisely the two reasons why the Court must remand this case. The BIA refused to consider the evidence in the record because it held erroneously that it could not review the Petitioners’ *Motion to Reopen* on account of ineffective assistance of counsel. The deficiency in the record is the subject of this Petition for Review based on ineffective assistance of counsel in the first place. The Petitioner argues that he was denied a reasonable

⁴ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 6

⁵ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 6.

⁶ *Ibid*

opportunity to present his case because previous counsel did not place into evidence testimony and documents that were easily available to him and which would have resulted in a grant instead of a denial of his asylum application. Obviously there is no way to prove that prior counsel should have put on other evidence besides showing to the Court the evidence he should have put on. But the Appeals Court can only review the treatment of that evidence by the BIA. It lacks jurisdiction to review the evidence for the first time, as the Respondent, himself, argues.

Unaccountably, the Respondent also declares, “Thus in the instant case, 8 USC §1252(a)(1) prohibits the Court from adducing the extra-record labor certification and other evidence which petitioners attach to their remand motion....”⁷ One may scour the Administrative Record and all of the Petitioner’s pleadings forever, but one will find no labor certification, extra-record or otherwise. Perhaps the Respondent has confused Mr. Neza’s petition for review with somebody else’s. The Respondent also makes the ironic argument that “Petitioners concede that the court lacks jurisdiction and offer no authority that new evidence creates such jurisdiction.”⁸ As has been demonstrated, the Petitioners concede no such thing, but, if they did, there would be no reason for

⁷ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 7

⁸ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 9.

them to offer such authority. Of course, the Petitioners have not argued that “new evidence” creates jurisdiction. Perhaps the Respondent again has confused Mr. Neza’s case with another. Mr. Neza, however, is entitled to a decision based only on the facts and law applicable to his own case.

The Respondent also argues, “The only way for new evidence to come before a court is for petitioners to file a motion to reopen with the Board, which petitioners have done in this case.”⁹ And that is obviously why the briefing in this matter should be abated, as well as why the case should be remanded—so that the present petition for review can be decided together with review of the current motion pending at the BIA, if it is denied. If the BIA grants the now pending motion, which is possible, then this petition can be dismissed without further ado. Either way, the convenience of both parties and the economical use of this Court’s time and resources require that, at a minimum, these proceedings be abated until they can be combined with review of the now pending case; and, more reasonably, that this cause be remanded for consolidation by the BIA with the now pending case, so that, if the BIA denies Petitioners’ motions, both will arrive as one, neat package for review by the Court of Appeals.¹⁰

It is important to recognize that the right the Petitioners ask the BIA and this

⁹ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 7

¹⁰ It should be noted that Congressman Louie Gohmert has published a letter in the Lufkin Times, which is attached as Exhibit 1, and introduced two private bills on behalf of Petitioners, which are attached as Exhibit 2.

Court of Appeals to vindicate is not only one to which the due process clause of the Constitution entitles him, but one that also is guaranteed to him by statute. This Court will find the recent opinion of Judge Posner, in the Seventh Circuit, useful. It is not necessary to invoke the denial of due process that Mr. Neza's previous attorney obviously caused to Mr. Neza by his ineffective assistance. Mr. Neza is entitled by 8 USC §1229a(b)(4)(B) to the right of which the government continues to seek to deprive him:

There is no need to invoked the Constitution when the immigration statute itself guarantees a fair hearing. 8 USC §1229a(b)(4)(B) (the alien shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross examine witnesses presented by the Government") *Rehman v. Gonzales*, 441 F3d 506, 508 (7th Cir 2006) (aliens have both statutory, and regulatory, entitlements to present all material evidence at impartial hearings. Any proceeding that meets these requirements satisfies the Constitution as well." (citations omitted)). The specific statutory right with which the immigration judge interfered in this case was the alien's right to "a reasonable opportunity...to present evidence." *Kadia v. Gonzales*, slip opinion No. 06-1299 (7th Cir—7 September 2007).

The remedy Judge Posner supplied in that case was remand to the BIA, which is the appropriate remedy in Mr. Neza's case. The clearly established statutory right to "a reasonable opportunity...to present evidence" plainly was denied to Mr. Neza by the incompetence of Mr. Haber in preparation for and trial of removal proceedings, and in the appeal filed by Mr. Haber's partner Mr. Roth, whose main concern was to prevent embarrassment to Mr. Haber, rather than effective representation of Mr. Neza, as any lawyer can see by reading the transcript of the

hearing, A.R. 374-441, and the text of Mr. Roth’s seven-page brief, A.R. 302-309, and his *Motion to Reopen* to the BIA, A.R. 278-284. Plainly, INA §242(a)(2)(D), 8 USC §1252(a)(2)(D) grants this Court of Appeals the authority to determine the legal questions of whether Mr. Neza was denied a “reasonable opportunity...to present evidence.”

Even the Respondent appears to argue in favor of Petitioner’s request for a reasonable opportunity to present evidence. Respondent says, “‘There is a strong public interest in bringing litigation to a close as promptly as is consistent with the interest of giving the [litigants] (sic) a fair opportunity to develop and present their respective cases.’ *INS v. Abudu*, 485 US 94, 107; *Ali v. Attorney General*, 443 F3d 804, 808 (11th Cir 2006).”¹¹ The only thing Mr. Neza has requested from the BIA and from this Court of Appeals is a “fair opportunity to develop and present” his case. The ineffectiveness of previous counsel, who did not even sit down with his client to find out the basis for his asylum claim, but instead allowed his non-attorney employee to prepare the application by telephone, denied Mr. Neza that fair opportunity.

Although the Respondent’s tendency in his *Opposition* to confuse Mr. Neza’s case with a different one may be forgiven, his fabrication of accusations for which he has no evidence and which are, in fact, false, is more troubling.

¹¹ *Opposition to Petitioners’ Amended Motion for Stay and Motion for Remand and Petitioners’ Motion to Abate Briefing*, p. 9.

Government attorneys, not being subject to the disciplinary procedures applicable to the private bar, are perhaps less restrained in their willingness to misrepresent facts to the Court, but, whatever the reason for Respondent's deceptions, Mr. Neza should not be deported to his death on account of them. Respondent claims,

Moreover, the 'new evidence' in the present case [requesting a stay of deportation] appears to have been created by petitioners themselves for this purpose. For example, after the Board and this Court denied petitioners' motions for a stay of removal, petitioners apparently provided interviews to Dallas newspapers and then transmitted those articles under the byline of their present counsel to the Albanian "Korrieri" periodical. Any new or increased danger in Albania was created by the petitioners.¹²

The Respondent cannot even prevaricate properly. No "Dallas newspapers" were involved. There were two articles concerning Mr. Neza in the 5 September 2007 Korrieri, which Mr. Neza already provided to this Court of Appeals, in support of his request for a stay of removal. One of them was entirely the product of Korrieri journalists, as far as Mr. Neza and his counsel are aware, and one of them was a translation of a request Mr. Neza's counsel published in the on-line Texas Civil Rights Review, asking for help to foil the Respondent's plot to send Mr. Neza into the hands of the assassins he had identified in Albania. Korrieri did put the name of Mr. Neza's attorney in the byline, but it found, translated, and published the Texas Civil Rights Review article entirely without the knowledge or permission of Mr. Neza or his attorney. The information did not come from an interview with a

¹² *Opposition to Petitioners' Amended Motion for Stay and Motion for Remand and Petitioners' Motion to Abate Briefing*, p. 9.

Dallas newspaper as Respondent claims. Had the Respondent communicated with the Korrieri or otherwise exercised reasonable diligence to ascertain the facts, he would have known all this. Respondent's accusation that the Petitioners "transmitted those articles under the byline of their present counsel to the Albanian "Korrieri" periodical" is merely a misrepresentation of fact, but Respondent's misrepresentation of facts he easily could have ascertained is malicious.

Respondent's claim that "Petitioners' manipulation of the risk to themselves does not alter the validity of the Board's orders and provides no basis to stay removal under 8 USC §1252(f)(2)" is mere spite. Obviously, if Mr. Neza's life were not really in danger in Albania because he disclosed the identities of Azem Hajdari's killers, the Albanian Korrieri would have taken no interest in the Texas Civil Rights Review story. Instead, three newspapers published articles naming Rrustem Neza as a witness in the Hajdari murder investigation, and none of them interviewed, consulted, or otherwise communicated with Mr. Neza's attorney before publishing them. One of the articles cited the Associate Press, but only the Korrieri made use of counsel's letter to the Texas Civil Rights Review. None of the articles in any of the publications uses information supplied by Mr. Neza or his attorney. Neither Mr. Neza nor his attorney ever had any communication with any of the Albanian periodicals, and to this day still have not.

The Respondent's arguments for denying the Petitioners their day in court, a chance to present the facts of their case to a competent tribunal, which they were denied by previous counsel, "even though they had obtained several other counsel during that period," to quote Respondents,¹³ are careless and disingenuous. The Court of Appeals should at least abate proceedings, including briefing, in this matter until the Petitioners' now pending case in the BIA is concluded, and should remand this case to the BIA for analysis of the factual issues the BIA refused to address.

Respectfully submitted,

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By John Wheat Gibson
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ATTORNEY FOR PETITIONERS

CERTIFICATE OF SERVICE

I certify that a true copy of the above *Reply to Respondent's* Opposition to Petitioners' Amended Motion for Stay and Motion for Remand and Petitioners' Motion to Abate Briefing was served by certified mail, return receipt requested to Thomas W. Hussey, Director, Office of Immigration Litigation, U.S. Department of Justice Civil Division, 1331 Pennsylvania Avenue, N.W., Washington, D.C. 20004 on 9 October 2007.

¹³ *Opposition to Motion for Stay of Removal*, p. 7



LETTER: U.S. government's apathy presents largest hurdle in fight against man's deportation



Click-2-Listen

By LOUIE GOHMERT

U.S. representative

Tuesday, October 23, 2007

The situation with Rrustem Neza has been both intolerable and frustrating for more than eight months now as we have fought to assist him with our own unfeeling and, thus far, unyielding government. Our own federal laws regarding privacy have prevented me from coming forward with our efforts thus far, but Rrustem's family has encouraged me to respond and has approved this statement so that we do not say anything inappropriate.

Nonetheless, for me to be aware of the vast failures of the Citizenship and Immigration Services (CIS) and Immigration and Customs Enforcement (ICE) in their widespread allowance of illegal immigration only to have them remain relentless in the Nezas' case has only added to the frustration. The Executive Branch through the Department of Homeland Security, CIS, and ICE has authority to take the actions they are taking, but they should not have the right. Through our efforts on Rrustem's behalf, the best we got from CIS was that they would continue to consider our admonitions and pleas on the family's behalf and that IF there were to be a deportation, they would certainly let me know ahead of time. Imagine my absolute anger when we had to read about the outrageous attempt to deport Rrustem unsuccessfully, and they now want to sedate him in order to send him to what may well be his death.

As most people know, I am a strong believer in following the laws regarding Immigration. However, we have laws to allow people to remain here based on asylum and the need to protect their lives. Yes, as the CIS keeps pointing out, Rrustem apparently came in on an Italian passport which was not appropriate. However, when people came by subterfuge from Communist Cold War countries, we did not condemn them and send them back. We accepted them in a humanitarian spirit to save their lives. Rrustem was also not aware that the attorney they had hired had listed that he was a citizen in the application for a liquor license for their restaurant, but that is the other issue that CIS, ICE, and Homeland Security keep hurling back at us.

EXHIBIT 1

My office and I have and will continue to personally work with Xhemal Neza, Rrustem Neza's brother, to attempt to stop this travesty of justice. We are told that if we can find an alternative

country that will take him, our government will attempt to accommodate that request. However, they have more ability to help find such a country than anyone else and yet they have not been helpful in that effort so far.

When I found out about the effort to get an order for sedation, I immediately sent letters in the nature of Amicus Curiae submissions to U.S. District Judge Sam Cummings who presides over the effort of our Executive Branch to have Mr. Neza sedated while being sent back. I personally approached Secretary of State Condoleezza Rice face to face and have attempted to contact Secretary of Homeland Security Michael Chertoff who has had an assistant contacting me instead. So far, those efforts have not been fruitful, but the deportation order needs to be changed.

I have notified them more recently that if Rrustem is returned to Albania to meet his untimely death, as a Congressman I will not stop the hounding of those in our own government until they are out by using the actual names of those bureaucrats complicitous in his murder by their apathy and callousness. This would not be out of revenge, but out of my fervent desire for better people in our United States government. Hopefully, the thought of being held to ridicule indefinitely will give the bureaucrats cause for pause that the possible murder of Mr. Neza, unfortunately, has not.

H.L.C.

.....
(Original Signature of Member)

110TH CONGRESS

1ST SESSION H. R. 11

For the relief of Rustem Neza.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOHMERT introduced the following bill; which was referred to the
Committee on llllllllllll

A BILL

For the relief of Rustem Neza.

*Be it enacted by the Senate and House of Representa- 1
tives of the United States of America in Congress assembled, 2*

**SECTION 1. PERMANENT RESIDENT STATUS FOR RRUSTEM 3
NEZA. 4**

(a) IN GENERAL.—Notwithstanding subsections (a) 5
and (b) of section 201 of the Immigration and Nationality 6
Act, Rustem Neza shall be eligible for issuance of an im- 7
migrant visa or for adjustment of status to that of an alien 8
lawfully admitted for permanent residence upon filing an 9
application for issuance of an immigrant visa under sec- 10

November 1, 2007 (4:39 p.m.)

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tion 204 of such Act or for adjustment of status to lawful 1
permanent resident. 2

(b) ADJUSTMENT OF STATUS.—If Rustem Neza en- 3
ters the United States before the filing deadline specified 4
in subsection (c), he shall be considered to have entered 5
and remained lawfully and shall, if otherwise eligible, be 6
eligible for adjustment of status under section 245 of the 7
Immigration and Nationality Act as of the date of the en- 8
actment of this Act. 9

(c) WAIVER OF GROUNDS FOR REMOVAL OR DENIAL 10
OF ADMISSION.— 11

(1) IN GENERAL.—Notwithstanding sections 12
212(a) and 237(a) of the Immigration and Nation- 13
ality Act, Rustem Neza may not be removed from 14
the United States, denied admission to the United 15

EXHIBIT 2

States, or considered ineligible for lawful permanent residence in the United States, by reason of any ground for removal or denial of admission that is reflected in the records of the Department of Homeland Security or the Visa Office of the Department of State, on the date of the enactment of this Act.

(2) RESCISSION OF OUTSTANDING ORDER OF REMOVAL.—The Secretary of Homeland Security shall rescind any outstanding order of removal or deportation, or any finding of inadmissibility or de-

portability, that has been entered against Rrustem Neza by reason of any ground described in paragraph (1).

(d) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of the enactment of this Act.

(e) REDUCTION OF IMMIGRANT VISA NUMBER.—Upon the granting of an immigrant visa or permanent residence to Rrustem Neza, the Secretary of State shall instruct the proper officer to reduce by 1, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of the alien's birth under section 202(e) of such Act.

(f) DENIAL OF PREFERENTIAL IMMIGRATION TREATMENT FOR CERTAIN RELATIVES.—The natural parents, brothers, and sisters of Rrustem Neza shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

November 1, 2007 (4:39 p.m.)

H.L.C.

.....
(Original Signature of Member)

110TH CONGRESS

1ST SESSION **H. R. 11**

For the relief of Rustem Neza.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOHMERT introduced the following bill; which was referred to the
Committee on IIIIIIIIIIIII

A BILL

For the relief of Rustem Neza.

*Be it enacted by the Senate and House of Representa- 1
tives of the United States of America in Congress assembled, 2*

**SECTION 1. AUTHORIZATION TO REMAIN TEMPORARILY IN 3
THE UNITED STATES FOR RRUSTEM NEZA. 4**

(a) IN GENERAL.—The Secretary of Homeland Secu- 5
rity shall refrain from removing or deporting Rustem 6
Neza from the United States, and shall permit him to re- 7
main temporarily in the United States, notwithstanding 8
sections 212(a) and 237(a) of the Immigration and Na- 9
tionality Act. 10

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(b) APPLICATION TO PREVIOUSLY KNOWN 1
GROUND.—The stay of removal or deportation under 2
subsection (a) shall apply only to a ground for removal, 3
deportation, or denial of admission that is reflected in the 4
records of the Department of Homeland Security, or the 5
Visa Office of the Department of State, on the date of 6
the enactment of this Act. 7

(c) DURATION OF STAY.—The stay of removal or de- 8
portation under subsection (a) shall be effective during the 9
period beginning on the date of the enactment of this Act 10
and ending on the date that is 30 days after a final deci- 11
sion is rendered on the application described in subsection 12
(d)(4), including all administrative and judicial review au- 13
thorized by law, if such an application is filed during the 14
application period described in subsection (d)(5). If no 15
such application is timely filed, the effective period of such 16
stay of removal or deportation shall end 30 days after the 17
end of such application period. 18

(d) RELIEF.— 19

(1) REOPENING OF PROCEEDINGS.—The Board 20
of Immigration Appeals shall reopen proceedings 21
pursuant to section 240 of the Immigration and Na- 22
tionality Act against Rustem Neza based on ineffec- 23
tive assistance of counsel upon a motion filed by 24

November 1, 2007 (5:09 p.m.)

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Rustem Neza not later than 6 months after the 1
date of the enactment of this Act. 2

(2) RESCISSION OF OUTSTANDING ORDER OF 3
REMOVAL.— The Board of Immigration Appeals 4
shall rescind any order of removal, or any finding of 5
inadmissibility or deportability, that was entered 6
against Rustem Neza by reason of a ground de- 7
scribed in subsection (b) before the date of the en- 8
actment of this Act. 9

(3) OPPORTUNITY TO PRESENT CLAIMS.—The 10
Board of Immigration Appeals shall ensure that 11
Rustem Neza is provided the opportunity described 12
in paragraph (4). 13

(4) PRESENTATION OF CLAIMS.—Rustem Neza 14
shall be provided a full opportunity after the date of 15
the enactment of this Act to apply to an immigra- 16
tion judge for asylum, withholding of removal, or re- 17
lief under the United Nations Convention Against 18
Torture. Rustem Neza shall have all rights to ad- 19
ministrative and judicial review of any decision of 20
the immigration judge authorized by law. 21

(5) APPLICATION PERIOD.—The immigration 22
judge shall establish a reasonable application period 23
within which Rustem Neza may apply for relief 24
pursuant to paragraph (4). 25

November 1, 2007 (5:09 p.m.)