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COVER STORY

Latham Associates Help Get Asylum for El Salvador Mother

By Chase DiFelicantonio
Daily Journal Staff Writer

For most associates, a typical case usually does not involve helping to rescue a young mother and her child from a violent gang in a foreign country. But that was exactly the task facing Boston Schwarz, James Walker and Gil Ofir of Latham & Watkins LLP's Menlo Park office.

Overseen by partner Kathleen Wells, the three were assigned a case the firm had been handling pro bono that involved a 24-year-old mother seeking asylum in the U.S. She arrived in Texas along with her 5-year-old son. She said she had been kidnapped and abused by one of the largest gangs in her native El Salvador after her brother witnessed a murder committed by the gang, which then began to harass her family.

The attorneys prevailed last month.

Walker said that when their team took on the case in January, the hearing before an immigration judge was scheduled for April.

While another group of Latham attorneys handling the case since early last year made headway in interviewing the client and petitioning the U.S. and Salvadoran government for information, they had not begun to craft a legal argument that would allow their client to remain in the United States.

After an unexpected delay in which the immigration judge pushed back the date of the hearing, the three began the work of interviewing and ultimately befriending their client.

"We met with the client about



Sam Attal / Special to the Daily Journal

From left, Latham & Watkins associates James Walker, Gil Ofir, Boston Schwarz, paralegal Judy Nguyen, and associate Richard Andrews.

every other week, really getting as many details as we could," Schwarz said. "These were things that were very difficult for her to talk about so it took quite a while to gain the trust and have her open up and tell us about the most traumatic parts of her life."

The process was central in putting together their final argument before a judge, Walker said.

"Part of the process of getting the declaration going was connecting the dots," he said. "It's not just the harm that's caused. We needed to iron out the wrinkles in the order of things, the potential reason for things."

The team did significant legal research to determine what would be their strongest arguments. Ofir said. "She suffered all this persecution but how does it fit into the legal asylum framework?" Ofir said.

After looking at gender-based asylum claims and family-based

asylum claims on an individual basis, their review of immigration case law showed that their client's best chance of success lay in a claim proving a gang is targeting a particular family.

Ofir said they had to show that their client was part of a particular social group being targeted by gangs, in this case, her family.

"The facts of our client's case obviously lent themselves very nicely to that argument given that her entire family was targeted systematically for a number of months and years even," Ofir said.

They settled on the approach in part because many gang-based asylum claims are rejected as too broad, Walker said. "A whole country might experience gang violence and so an individual claiming asylum based on that is not different enough," he said.

The threshold for such a claim was still high, according to Ofir. "There is a requirement that the

[home] government is unable or unwilling to assist," she said. "The case was not so much that the gang was persecuting her but also that the Salvadoran government was unable to protect her."

Since many of these facts had to be established through their client's testimony, the team's interviews with her became more in depth as they gained her trust.

"By the end, when we were conducting trial preparations, our client was able to discuss some of these difficult issues in a pretty calm manner," Walker said, adding it was a testament to her determination and toughness.

"The judge said that given the merits and the briefs, she qualified for the requirements for asylum but the main point of the hearing was to establish her credibility," Ofir said.

After the judge questioned their client during direct examination to determine her story was true, the U.S. Department of Homeland Security attorney declined a cross-examination.

"We knew what was going to happen from there," Walker said. The judge read the order in English and Spanish and granted their client asylum. "Whatever the actual rules of court are, you kind of ignore them at that moment in order to give your client who you've worked with for eight months a hug."

"It was one of the more rewarding days of my young career," Schwarz said. "The corporate work that we do has value but you're not really impacting one person's life in such a dramatic way."