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Is the Internet "Voodoo"?: Evidentiary Weight of Internet-Based Material in Immigration Court

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INTRODUCTION

The Article examines how immigration courts, the Board of Immigration Appeals (hereinafter "BIA") and the circuit courts of appeals (in the immigration context) have treated Internet-based evidence pursuant to the Immigration and Nationality Act and the Code of Federal Regulations, the governing law in immigration cases. The Article further examines the Federal Rules of Evidence and the Immigration Court Practice Manual. While the federal district courts have actively defined the boundaries of "reliable" Internet-based evidence in the non-immigration context, the circuit courts of appeals have just begun to analyze the admissibility and reliability of Internet-based evidence in the immigration courts.

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I. THE AGE OF THE INTERNET AND THE RISE OF "VOODOO INFORMATION"

In a non-immigration context, the federal district court in *St. Clair v. Johnny's Oyster & Shrimp* excluded a printout of information obtained from the U.S. Coast Guard on-line vessel registry.[1] The print-out contained information relating to the ownership of a vessel where the personal injury at issue had occurred.[2] The court opined that information from the Internet was "voodoo information."[3] The court commented:

> While some look to the Internet as an innovative vehicle for communication, the Court continues to warily and wearily view it largely as one large catalyst for rumor, innuendo, and misinformation. So as to not mince words, the Court reiterates that this so-called Web provides no way of verifying the authenticity of the alleged contentions that Plaintiff wishes to rely upon in his Response to Defendant's Motion. There is no way Plaintiff can overcome the presumption that the information he discovered on the Internet is inherently untrustworthy. Anyone can put anything on the Internet. No web-site is monitored for accuracy and *nothing* contained therein is under oath or even subject to independent verification absent underlying documentation. Moreover, the Court holds no illusions that hackers can adulterate the content on *any* web-site from *any* location at *any* time. For these reasons, any evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules found in FED.R.CIV.P. 807.[4]

Despite this federal district court's reference to Internet data as "voodoo information[,]" and its subsequent caution against relying on it, other federal district courts have permitted Internet-based evidence.[5] Judicial rationale has shifted since the *St. Clair* court. The general public

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[1] St. Clair v. Johnny's Oyster & Shrimp, Inc., 76 F. Supp. 2d 773, 774 (S.D. Tex. 1999).

[2] *Id*.

[3] *Id*. at 775.

[4] *Id*. at 774–75.

[5] *See, e.g*., Fla. Conference Ass'n of Seventh-day Adventists v. Kyriakides, 151 F. Supp. 2d 1223, 1225 (C.D. Cal. 2001) (admitting Internet evidence printed off the Securities and Exchange Commission's homepage); Van Westrienen v. Americontinental Collection Corp., 94 F. Supp. 2d 1087, 1109 (D. Or. 2000) (permitting the plaintiff's use of statements discovered on the defendant's website as an exhibit because the website's contents were statements made by the party opponent, and admissible for the purposes of the summary judgment).

and courts have relied more on information retrieved from the Internet.[6] Further, interpretations of the Federal Rules of Evidence have been broadened to encompass the authenticity of Internet evidence.[7] For example, the Ninth Circuit determined that the admissibility of Internet "chat room" logs met the foundational requirement of authentication for evidence showing the matter in question was what the proponent claimed.[8] The Tenth Circuit took judicial notice of a website marking the yardage in front of a conference center.[9] The Fourth Circuit considered online dictionaries and websites,[10] and the Second Circuit consulted website evidence to determine the similarity of trademarks.[11]

II. FEDERAL RULES OF EVIDENCE AND THE DISCRETION OF THE IMMIGRATION JUDGE

In the immigration court setting, hearsay and authentication do not necessarily exclude evidence. The Federal Rules of Evidence do not apply in immigration proceedings, and immigration judges are not required to abide by such rules.[12] The Immigration judges possess broad discretion during hearings, and a "due process violation occurs only when the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case."[13] The parties are also not required to comply with the Federal Rules of Evidence when seeking to admit documentary evidence during a removal proceeding.[14] The REAL ID Act of 2005 provides that, "[w]here the trier of fact determines that the

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[6] *See generally* Anick Jesdanun, *Internet Influence Grew Sixfold Since 1996 Campaigns*, USA TODAY (Mar. 7, 2005), http://www.usatoday.com/news/bythenumbers/2005-03-07-poli-news-online_x.htm ("Reliance on the Internet for political news during [2004]'s presidential campaign grew sixfold from 1996, while the influence of newspapers dropped sharply. . . .").

[7] *See, e.g.*, Perfect 10, Inc. v. Cybernet Ventures, Inc., 213 F. Supp. 2d 1146, 1154 (C.D. Cal 2002) (admitting a website posting with circumstantial indicia of authenticity under FRE 901 in a non-immigration context). Electronic discovery was also the subject of a series of amendments to the Federal Rules of Civil Procedure in 2006. *See* Kenneth J. Withers, *Electronically Stored Information: The December 2006 Amendments to the Federal Rules of Civil Procedure*, 4.2 NW. J. TECH. & INTELL. PROP. 171, 191–200 (2006).

[8] United States v. Tank, 200 F.3d 627, 630–31 (9th Cir. 2000).

[9] Citizens for Peace in Space v. City of Colo. Springs, 477 F.3d 1212, 1218 n.2 (10th Cir. 2007).

[10] Retail Servs., Inc. v. Freebies Publ'g, 364 F.3d 535, 544, 545 (4th Cir. 2004).

[11] Savin Corp. v. Savin Grp., 391 F.3d 439, 453–54 (2d Cir. 2004).

[12] Singh v. Ashcroft, 398 F.3d 396, 406 (6th Cir. 2005). *See also* 8 C.F.R. § 1240.7(a) (2010) (granting immigration judges discretion to receive into evidence "any oral or written statement that is material and relevant"); Grijalva, 19 I. & N. Dec. 713, 721 (B.I.A. 1988) (stating that although police reports are "hearsay in nature" they are not inadmissible in deportation proceedings); Velasquez, 19 I. & N. Dec. 377, 380 (B.I.A. 1986) (noting that evidence, including hearsay, is admissible in immigration proceedings so long as it is relevant, probative, and its use fundamentally fair).

[13] Lin v. Holder, 565 F.3d 971, 979 (6th Cir. 2009) (internal quotations omitted).

[14] Lin v. U.S. Dep't of Justice, 459 F.3d 255, 268 (2d Cir. 2006).

applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence."[15] While credible testimony alone may be sufficient to carry an applicant's burden of proof, the applicant could still be required to provide reliable evidence to corroborate testimony. The immigration judge will require this when it is reasonable to expect corroboration or a satisfactory explanation can be provided for such absence.[16] The federal regulation allowed the BIA to take administrative notice of the contents in official documents, such as the annual country reports published by the U.S. Department of State.[17]

That being said, aliens in removal proceedings have a duty to corroborate their claims. This may be done by submitting news reports from verifiable news sources to corroborate country conditions and specific events. On the rare occasion of the BIA taking judicial notice of changed country conditions (*sua sponte* without a party submitting evidence into the record), the Second Circuit noted that taking judicial notice of commonly known, undisputed, verifiable facts was proper.[18] The Second Circuit further commented that the BIA's reliance on reports from Yahoo.com and the Internet websites of CNN and BBC was not error.[19] It is significant to note these are Internet websites of verifiable news sources.

III. TESTING THE INTERNET IN THE FEDERAL CIRCUIT COURTS

A. The Encyclopedia of Wikipedia – Unrestricted Editing & Authorship

Perhaps the most notable case involving Internet evidence in the immigration court is *Badasa v. Mukasey*.[20] The Eighth Circuit remanded the case to the BIA to reconsider whether the asylum seeker had proven his identity, a necessary element to an asylum claim.[21] At the merits hearing before the immigration court, the Department of Homeland Security (hereinafter "DHS") submitted several documents designed to explain the purpose of a *laissez-passer*. DHS argued that the document, the *laissez-*

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[15] 8 U.S.C. § 1158(b)(1)(B)(ii) (2006).

[16] § 1158(b)(1)(B)(i)–(iii); Sandie v. Att'y Gen., 562 F.3d 246, 252 & n.2 (3d Cir. 2009); Chukwu v. Att'y Gen., 484 F.3d. 185, 191–92 (3d Cir. 2007).

[17] Sheriff v. Att'y Gen., 587 F.3d 584, 592 (3d Cir. 2009) (citing 67 Fed. Reg. 54878, 54891 (Aug. 26, 2002)).

[18] Chherty v. U.S. Dep't of Justice, 490 F.3d 196, 200 (2d Cir. 2007).

[19] *Id*. at 199.

[20] Badasa v. Mukasey, 540 F.3d 909 (8th Cir. 2008). *See also* Amber Lynn Wagner, Comment, *Wikipedia Made Law?: The Federal Judicial Citation of Wikipedia*, 26 J. MARSHALL J. COMPUTER & INFO. L. 229 (2008).

[21] *Badasa*, 540 F.3d at 909.

passer, did not establish identity and nationality, but rather was "simply the granting of the authorization for an alien to travel to or from that country."[22] The BIA determined that "[a]fter considering evidence presented by the parties, including information submitted by the DHS from an Internet website known as Wikipedia, the [immigration judge] found that the *laissez-passer* is a single-use, one-way travel document that is issued based on information provided by the applicant."[23] Based on the definition the immigration judge established, the BIA concluded that "the Ethiopian government's issuance of the travel document did not change [the] prior decision regarding Badasa's failure to prove her identity . . . ."[24] The BIA dismissed Badasa's appeal, concluding that the immigration judge's determination that the *laissez-passer* travel document was insufficient to establish Badasa's identity was not clearly erroneous.[25]

The BIA stated that it did "not condone or encourage the use of resources such as Wikipedia.com in reaching pivotal decisions in immigration proceedings,"[26] and commented that the immigration judge's decision "may have appeared more solid had Wikipedia.com not been referenced."[27] The BIA declined, however, to find that Badasa was prejudiced because without considering Wikipedia, the BIA believed the immigration judge's conclusion "was supported by enough evidence to find no clear error."[28] The Eighth Circuit noted that:

> Wikipedia describes itself as "the free encyclopedia that anyone can edit," urges readers to "[f]ind something that can be improved, whether content, grammar or formatting, and make it better," and assures them that "[y]ou can't break Wikipedia," because "[a]nything can be fixed or improved later" . . . . Wikipedia's own "overview" explains that "many articles start out by giving one—perhaps not particularly evenhanded—view of the subject, and it is after a long process of discussion, debate, and argument that they gradually take on a consensus form" . . . . Other articles, the site acknowledges, "may become caught up in a heavily unbalanced viewpoint and can take some time—months perhaps—to regain a better-balanced

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[22] *Id*. at 909 (quoting the government's brief).
[23] *Id*.
[24] *Id*.
[25] *Id*. at 910.
[26] *Id*.(internal quotations omitted).
[27] Badasa v. Mukasey, 540 F.3d 909, 910 (8th Cir. 2008).
[28] *Id*.

consensus."[29]

Consequently, the court observed, the website's "radical openness means that any given article may be, at any given moment, in a bad state: for example, it could be in the middle of a large edit or it could have been recently vandalized."[30] Other circuit courts of appeals, in unpublished decisions, have echoed this rationale, specifically in the context of asylum claims.[31]

B. Falun Gong Websites – Stipulated Admission with No Appellate Review

In *Li v. Mukasey*, the Second Circuit found the immigration judge erred in concluding that the alien's testimony on her Falun Gong position was not credible since it was contradicted by information downloaded from a website.[32] However, the information on the website indicated that the Falun Gong does have a leadership structure, supporting the alien's

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[29] *Id*. (quoting *What is Wikipedia?*, WIKIPEDIA, http://en.wikipedia.org/wiki/Wikipedia:Introduction (last visited Dec. 12, 2010) and *Researching with Wikipedia*, WIKIPEDIA, http://en. wikipedia.org/wiki/Wikipedia:Researching_with_Wikipedia (last visited Dec. 12, 2010)).

[30] *Id*. (quoting explanatory language from the Wikipedia site). *See also* Campbell v. Sec'y of Health and Human Servs., 69 Fed. Cl. 775, 781 (2006) (observing that a "review of the Wikipedia website reveals a pervasive and, for our purposes, disturbing set of disclaimers"); R. Jason Richards, *Courting Wikipedia*, 44 TRIAL 62, 62 (2008) ("Since when did a Web site that any Internet surfer can edit become an authoritative source by which law students could write passing papers, experts could provide credible testimony, lawyers could craft legal arguments, and judges could issue precedents?").

One commentator writes:

> Pettiness, idiocy, and vulgarity are regular features of the site. Nothing about high-minded collaboration guarantees accuracy, and open editing invites abuse. Senators and congressmen have been caught tampering with their entries; the entire House of Representatives has been banned from Wikipedia several times. (It is not subtle to change Senator Robert Byrd's age from eighty-eight to a hundred and eighty. It is subtler to sanitize one's voting record in order to distance oneself from an unpopular President, or to delete broken campaign promises.)

See generally Stacy Schiff, *Know It All: Can Wikipedia Conquer Expertise?*, NEW YORKER, July 31, 2006, http://www.newyorker.com/archive/2006/07/31/060731fa_fact?. She continues: "Part of the problem is provenance. The bulk of Wikipedia's content originates not in the stacks but on the Web, which offers up everything from breaking news, spin, and gossip to proof that the moon landings never took place." *Id*. An exhaustive study examining every American judicial opinion citing Wikipedia through mid-2009 was compiled by Oklahoma City University of Law Associate Professor Lee F. Peoples. *See* Lee F. Peoples, *The Citation of Wikipedia in Judicial Opinions*, 12 YALE J.L. & TECH. 1 (2009).

[31] *See* Li v. Holder, No. 09-60551, 2010 WL 4368469, at *2 (5th Cir. Nov. 2, 2010) (noting as dicta that because Wikipedia is not sufficiently reliable, the immigration judge's partial reliance on differences between a Wikipedia article and petitioner's medical submissions as a basis for an adverse credibility determination was without merit); Ba v. Holder, Nos. 08-5197-ag, 08-5206-ag, 2010 WL 276727, at *1 (2d Cir. Jan. 26, 2010) (finding that the immigration judge did not err in declining to give weight to Wikipedia article describing the caste system).

[32] Li v. Mukasey, 529 F.3d 141, 148 (2d Cir. 2008).

assertion that Li held a local leadership position.[33] As "[t]he website statement cannot fairly be construed to contradict Li's testimony that she held an unpaid local leadership position . . . the extent the website states that all work within Falun Gong is done by 'volunteers,' it is consistent with Li's testimony that she served without remuneration."[34] However, the Second Circuit noted that since "the parties mutually agreed to the admission of this background evidence, we have no occasion to consider the reliability foundation appropriate to evaluation of information published on the Internet in proceedings not strictly controlled by the Federal Rules of Evidence."[35]

C. China Democratic Party Cases – Self-Published Articles

In *Liu v. Holder*, the Alien's petition was denied based on his failure to establish changed country conditions in China.[36] The alien sought to reopen the proceedings based on joining the China Democratic Party (hereinafter "CDP") in New York, more than one year after his U.S. arrival.[37] The Alien appealed the immigration judge's decision denying the motion to reopen.[38] The appeal included evidence of his involvement with the CDP in New York, and two articles the alien allegedly published on the CDP website.[39] The alien also cited to the recent arrest of Chinese dissidents, who had published political opinions on the Internet.[40] The BIA dismissed the alien's appeal, and, in part, found there was no evidence that anyone in China was aware of the alien's alleged CDP membership and activities.[41] The Sixth Circuit pointed out that "[t]he BIA searched—unsuccessfully—for Liu's articles on the Internet[,]" and even if the articles existed, the BIA still did not find evidence that anyone in China was aware of the alien's articles, or that anyone was inclined or able to harm the alien because of them.[42] The court was willing to consider the

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[33] *Id*. at 149.

[34] *Id*.

[35] *Id*. at 148 n.6.

[36] Liu v. Holder, 560 F.3d 485 (6th Cir. 2009).

[37] *Id*. at 487.

[38] *Id*. at 488.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] Liu v. Holder, 560 F.3d 485, 488 (6th Cir. 2009). Similarly, in Liu v. Att'y Gen., No. 09-2204, 2010 WL 1619266(3d Cir. Apr. 22, 2010), the circuit court upheld the denial of asylum for an alien who wrote articles in the United States for the CDP website. The evidence did not support the individual claim, nor was it sufficient to establish a pattern and practice of persecution of all persons who published articles on the CDP website. *Liu*, 2010 WL 1619266, at *3. As a rule, unpublished decisions are not authority, have no precedential weight and neither immigration judges nor the BIA

articles, had it found them.

D. News Articles from the Internet – Four Corners of the Article

In *Raza v. Gonzales*, the alien sought to reopen removal proceedings, but his motion to reopen was denied by the immigration judge, and his motions to reopen filed with the BIA were also denied.[43] The First Circuit did not find that the Internet articles regarding sporadic Sunni-Shiite violence established the alien's prima facie case for asylum.[44] The First Circuit explained that "[e]ven assuming that one accepts the petitioner's claim of conversion—and that claim is wholly uncorroborated—the fourteen articles that he has submitted refer generally to militant activity and episodic violence within Pakistan."[45] The First Circuit did not find the violence was widespread, but rather confined to one city and one province, and "[t]ellingly, the articles, taken as a group, make it pellucid that most of Pakistan's Sunnis and Shiites reside peacefully together."[46] The court additionally noted that "the religiously inspired unpleasantness described in the fourteen internet articles is, like the feared wrath of the petitioner's family members, unconnected to the Pakistani government."[47] In this situation, the court considered the article taken from the Internet.

E. Web Blogs & Internet Chat Rooms – Self-Serving Mechanisms

In the case of *In re Stevens* (a non-immigration case), the California Court of Appeals adopted the definition of a "blog" as "[a] Web site (or section of a Web site) where users can post a chronological, up-to-date e-journal entry of their thoughts."[48] Blogs can be anything the poster wants them to be. A blog can be an academic conversation,[49] a public scandalous

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are bound by them. *See, e.g.*, *In re* Arthur, 20 I. & N. Dec. 475, 479 (B.I.A. 1992); *In re* Velarde, 23 I. & N. Dec. 253, 257 (B.I.A. 2002); *In re* Medrano, 20 I. & N. Dec. 216, 220 (B.I.A. 1990, 1991).

[43] *Raza v. Gonzales*, 484 F.3d 125, 126–27 (1st Cir. 2007).

[44] *Id*. at 129.

[45] *Id*.

[46] *Id*.

[47] *Id*. *See also* Tandayu v. Mukasey, 521 F.3d 97, 99 (1st Cir. 2008) (considering, in part, two recent Internet articles to support a motion to reopen based on changed country conditions).

[48] *In re* Stevens, 15 Cal. Rptr. 3d 168, 173 n.3 (Cal. Ct. App. 2004) (quoting "Blog," NETLINGO: THE INTERNET DICTIONARY (June 11, 2004), *at* http://www.netlingo.com/dictionary/b.php). *See also generally* Thomas J. Johnson et al., *Every Blog Has Its Day: Politically-interested Internet Users' Perceptions of Blog Credibility*, 13 J. COMPUTER-MEDIATED COMM. 1 (2007), http://jcmc.indiana.edu/vol13/issue1/johnson.html.

[49] *See Economists' Blogs: The Invisible Hand on the Keyboard*, THE ECONOMIST, Aug. 5, 2006, at 67.

discussion of someone's sex life,[50] or anything in between. The issue for immigration courts is that blogs exist. They are on the Internet, and sometimes blog printouts are presented as background material to support a claimant's case, particularly in asylum claims. Blogs are not newspaper articles, but are opinions—random and unfiltered. Like Wikipedia.com, they can be changed or edited at a moment's notice, and they are completely unchecked.[51] On the other hand, in countries were traditional media forms are heavily censored, "blogging provides perhaps the only means by which journalists may exercise the free expression of ideas."[52]

In *Makhoul v. Ashcroft*, the alien testified that he expressed his opposition to Syrian occupation of Lebanon in Internet chat rooms.[53] He downloaded a brochure calling to oust Syrian forces featuring a picture of the exiled former Lebanese president, who was also the inspirational figurehead for the virtual protest movement.[54] The First Circuit denied and dismissed the alien's petition.[55] The First Circuit held there was absolutely no evidence that the alien even attracted the attention of Syrian occupiers, and "[a]s far as anyone can tell, both he and his activities in cyberspace have gone unnoticed."[56] The use of the Internet chat room does not appear to be enough in this case. Someone needs to be aware of what was posted to satisfy the standard to be granted asylum. The court noted that unnoticed activities in cyberspace are "not the stuff of which objectively reasonable fears of future persecution are constructed."[57]

F. The Immigration Judge's Internet Research

In *Ogayonne v. Mukasey*, the immigration judge introduced into evidence several documents from his own Internet research, which included a BBC article, an Amnesty International document, and three

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[50] *See* Steinbuch v. Cutler, 463 F. Supp. 2d 4, 6 (D.C. Cir. 2006) (defamation suit regarding the salacious site "Washingtonienne").

[51] Steven Keslowitz, *The Transformative Nature of Blogs and Their Effects on Legal Scholarship*, 2009 CARDOZO L. REV. 252, 262–63 (2009).

[52] Sunny Woan, *The Blogosphere: Past, Present, and Future. Preserving the Unfettered Development of Alternative Journalism*, 44 CAL. W. L. REV. 477, 478 (2008) (citing Julien Pain, *Bloggers, The New Heralds of Free Expression*, *in* HANDBOOK FOR BLOGGERS AND CYBER-DISSIDENTS 4, 5 (2005)). Woan's article also notes that in 2000 the Iranian regime "shut down almost all independent newspapers," thus making "online blogging the only alternative for political expression by many journalists." *Id*. at 178 n.4 (quoting *Blogs Lauded in "Freedom Awards,"* BBC NEWS, June 17, 2005, http://news.bbc.co.uk/2/hi/technology/4099802.stm).

[53] Makhoul v. Ashcroft, 387 F.3d 75, 78 (1st Cir. 2004).

[54] *Id*.

[55] *Id*. at 83.

[56] *Id*. at 82.

[57] *Id*.

articles from the United Nations Office for Coordination of Humanitarian Affairs.[58] Although the alien did not challenge the immigration judge's action, the Seventh Circuit did not find the immigration judge erred in introducing these particular documents because "they merely stated commonly acknowledged facts that were amenable to official notice."[59] Additionally, the Seventh Circuit was "not particularly troubled by the [immigration judge's] reliance on these documents because the relevant information was independently included in other properly admitted evidence."[60] It would be interesting to see what happens in the case where there is no corroborating, independent evidence.

G. The Board of Immigration Appeals' Reliance on the Internet Record

In *Chhetry v. U.S. Dep't of Justice*, the Second Circuit found that

> the *yahoo.com* website cited by the BIA contained a series of articles from reputable news organizations, all of which reported the same facts relied upon by the BIA—and Chhetry does not question the accuracy of those facts . . . . Thus, it was not error for the BIA to take administrative notice of the governmental changes in Nepal because these events were commonly known and undisputed."[61] The Second Circuit pointed out that the particular source relied upon "matters only to the question of accuracy or verifiability."[62]

In a reported decision relating to sterilization upon repatriation to the Peoples Republic of China after having two children born in the U.S., the BIA considered "numerous internet and newspaper articles regarding general country conditions and the population control policies in China[.]"[63] Ultimately, the BIA held that the evidence submitted by the respondent, considered in light of the State Department Country Reports, failed to support the claim.[64]

In an unreported case, the BIA reversed an immigration judge's decision to exclude for a bond hearing criminal conviction material

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[58] Ogayonne v. Mukasey, 530 F.3d 514, 518 (7th Cir. 2008).

[59] *Id*. at 520.

[60] *Id*. *See also In re* Ismail, No. A978 831 493, 2008 WL 1924658, at *1 (B.I.A. Apr. 8, 2008).

[61] Chhetry v. U.S. Dep't of Justice, 490 F.3d 196, 200 (2d Cir. 2007).

[62] *Id*.

[63] *In re* H-L-H- & Z-Y-Z, 25 I. & N. Dec. 209, 214 (B.I.A. 2010).

[64] *Id*. at 213.

obtained by Immigration and Customs Enforcement (hereinafter "ICE") counsel from a California state superior court website.[65] The BIA noted that the regulation providing for a qualifying standard for the authentication of electronically transmitted records of conviction does not bar admissibility of a document that bears adequate proof of what it purports to be.[66] The superior court website printout from the Internet reasonably established the existence of a criminal conviction for bond hearing purposes.[67]

IV. CREATING THE INTERNET PATH IN THE IMMIGRATION COURTS

The Immigration Court Practice Manual references materials obtained from the Internet.

A. Immigration Court Practice Manual

The Immigration Court Practice Manual describes procedures, requirements, and recommendations for practice before the immigration courts.[68] "The requirements set forth in th[e] manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case."[69]

In Chapter 3, the manual lays out procedures and requirements for publications and Internet publication:

> (ii) Publications as evidence – When a party submits published material as evidence, that material must be clearly marked with identifying information, including the precise title, date, and page numbers. If the publication is difficult to locate, the submitting party should identify where the publication can be found and authenticated.
>
> In all cases, the party should submit title pages containing identifying information for published material (e.g., author, year of publication). Where a title page is not available, identifying information should appear on the first page of the document. For example, when a newspaper article is submitted, the front page of the newspaper, including the name of the newspaper and date

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[65] *In re* Nuno-Sanchez, No. A41 833 905, 2007 WL 4707447, at *2 (B.I.A. Nov. 28, 2007).

[66] *Id*. at *1.

[67] *Id*. at *1–2.

[68] IMMIGR. CT. PRAC. MANUAL § 1.1 (2008), *available at* http://www.justice.gov/eoir/vll/OCIJPracManual/Chap01.pdf (last updated Apr. 1, 2008).

[69] *Id*. at § 1.1(b).

> of publication, should be submitted where available, and the page on which the article appears should be identified. If the front page is not available, the name of the newspaper and the publication date should be identified on the first page of the submission.
>
> Copies of State Department Country Reports on Human Rights Practices, as well as the State Department Annual Report on International Religious Freedom, must indicate the year of the particular report.
>
> (iii) Internet publications. — When a party submits an internet publication as evidence, the party should follow the guidelines in subsection (ii), above, as well as provide the complete internet address for the material.[70]

CONCLUSION

The admissibility of Internet evidence is apparent, but its reliability in the immigration context has yet to be defined. Immigration judges have the authority to create and control the records of proceedings and the discretion to accord weight to exhibits, including background material. Some linchpin issues regarding the value of material from the Internet are: the type of material; whether it is a news source or a blog; whether the information is common knowledge; and the commonsense time-proven concept of whether such material is more probative than prejudicial.

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[70] *Id*. at § 3.3(e)(ii)–(iii).