



PERSECUTION ON ACCOUNT OF “POLITICAL OPINION”



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“PARTICULAR SOCIAL GROUP”

Matter of Acosta (1985)

- Persecution on account of membership in a PSG means persecution directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic.
- Taxi Driver Cooperative Is Not PSG
Rationale: Being Taxi Driver Is Not Immutable Or Fundamental Characteristic

Matter of Acosta

- Eiusdem generis principle: like other 4 grounds in the statute PSG refers to:
 - group of persons who share either
 - a common immutable (unchangeable) characteristic or
 - a common characteristic that if changeable, is so fundamental to individual identity or conscience it should not be required to be changed
- See page 898 of casebook.

Matter of Acosta

- ❑ Acosta dicta suggested examples of an immutable (unchangeable) characteristic:
 - ❑ An innate characteristic, like sex or kinship ties
 - ❑ A former experience, like past military membership or past *landownership*
- ❑ Fuentes (BIA 1986) (Suggested In Dicta That under appropriate circumstances former members of Military or police may be a PSG because immutable)

BIA Revised Approach

- ❑ PSG is not a “catch all”
- ❑ Reaffirms Acosta but explains “immutable or fundamental characteristic” requirement is the “starting point” but not the “ending point” for a PSG
- ❑ A past individual experience that is shared by others is not sufficient to establish a PSG

Visibility + Particularity + Existence

- ❑ **PSG must meet a “social visibility” requirement: discrete recognizable characteristics / “perceived as a group” by relevant society (See Aleinkoff p. 901)**
- ❑ **PSG must meet a “particularity” requirement: well-defined boundaries that are not subjective, amorphous, inchoate, or indeterminate**
- ❑ **Independent existence principle: PSG also cannot be defined exclusively by the persecution (no circular social group claims)**

Federal Courts Approach

- Some Courts have followed *Acosta* “immutable Or fundamental characteristic” requirement (CTA 1, 3, 6, 8, 9, 10)
- CTA 9 used either “voluntary association” Or “immutable / fundamental characteristic”

What Is Current Status In Circuits?

- Most Federal Courts of Appeals have accorded deference to “Social Visibility” and/or “particularity”
- **7th & 3rd Cir.**— rejected “social visibility”

Cases

- ***Matter of H*** (the Somali subclan)
- ***Fatin*** (Westernized Iranian woman)
- ***Matter of Kasinga*** (FGM in Togo)
- ***Matter of R-A-*** (Withdrawn – (“Guatemalan women involved with men who believe women are to live under male domination”))
- ***Matter of S-E-G-*** (refusing to join gang)

Convention Against Torture (CAT)

- An applicant must show that if returned to his homeland, it would be more likely than not that he would be subjected to “act[s] by which **severe pain or suffering**, whether **physical or mental**, is **intentionally inflicted** on [him] for such purposes as obtaining from him . . . or a third person information or a confession, punishing him . . . for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him . . . or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is **inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.**” 8 C.F.R. § 1208.18(a)(1).