

Convention Against Torture

Where did this form of relief come from?

- Relief under the Convention Against Torture comes from Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Codified in 8 CFR 208.16, 208.18

How would you apply?

- Form I-589 has a section to apply for relief under CAT
- Check the box that states I want to apply for withholding of removal under the Convention Against Torture

Elements

- More likely than not (51% or greater) – note burden is on alien to prove
- Be tortured
- At the acquiescence or consent
- Of the
 - Government,
 - Public official, or
 - Person acting in official capacity

*Note there is a relocation caveat

What is torture?

- (i) The intentional infliction or threatened infliction of severe physical pain or suffering;
- (ii) The administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
- (iii) The threat of imminent death; or
- (iv) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the sense or personality.
- 8 CFR 208.18

Acquiescence or Consent

- (7) Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. 8 CFR 208.18
 - Awareness- need actual knowledge
 - Willful Blindness does not count
 - Matter of S-V-22 I. & N. Dec. 1306 (2000 BIA)
- Several Circuit have rejected that notion in Matter of S-V- and allowed the definition to include willful blindness in addition to actual knowledge
 - 2nd 3rd, 4th, 5th, 6th, 9th, and 11th
 - See *Silvia-Rengifo v. Attorney General* 473 F.3d 58,70 (3rd Cir. 2007); *Lopez-Soto v. Ashcroft* 383 F.3d 228, 240 (4th Cir. 2008); *Ontunez-Tursios v. Ashcroft*, 303 F.3d 341,354 (5th Cir. 2002); *Ali v. Reno*, 237 F.3d 591,597 (6th Cir. 2001); *Khouzam v. Ashcroft*, 361 F.3d 161,171 (2nd Cir. 2004); *Reyez-Sanchez v. Attorney General*, 369 F.3d 1239, 1242 (11th Cir. 2004); *Zheng v. Ashcroft*, 332 F.3d 1186, 1194-97 (9th Cir. 2003)



Examples of physical and mental torture!

Limitations

- Cannot be a rogue individual or a wholly private actor
- The actual knowledge requirement creates a high threshold for acquiescence
- No route to permanent status
- Does not allow for family members to come over or receive protection
- Can be terminated
- Allows for continued detention of individual in certain circumstances

Benefits

- Can have work authorization
- Not limited to the five protected grounds
- No limitations for crimes, persecutors, or terrorist

Two Types

- **Withholding of Removal under CAT**
 - Can only be terminated if DHS establishes that the alien is not likely to be tortured in that country
- **Deferral of Removal under CAT**
 - Granted to those who are ineligible for Withholding under CAT due to criminal background, being a persecutor, or terrorist
 - Terminated more easily for the above reason as well as a country assurance that the individual will not be tortured
- Information from the EOIR Factsheet about Asylum, Withholding and CAT

Matter of Y-L- & Matter of M-B-A

● Matter of Y-L-

- Showed no credible evidence that he would be tortured in Haiti. Political climate had changed, had voluntarily visited the country, and country condition report did not support it
- Rogue individual does not mean acquiescence of the government
- Last individual could not show government involvement

● Matter of M-B-A-

- Chain of assumptions cannot form the basis for CAT