

PROTECTION FROM PERSECUTION

- **International Framework**
- **U.S. Pre-1968 -- Ad-hoc legislation**
- **1968-1980 – Accession 1951 UN Protocol
-- UN Convention Refugee -Art 33**
- **1980-1996 -- 1980 Refugee Act**
- **1996-2005 – IIRIRA reforms –**
 - **Resistance to coercive population control amendment**
- **2005-Present – REAL ID Act reforms**

Protection from persecution or torture

- § 101(a)(42) – Defines refugee
- § 207 – Admission of refugees
- § 208 – Asylum/procedures
- § 235(b) – Credible fear
- § 241(b)(3) – Restriction of removal
- CAT 8 C.F.R. § 208.18

“Refugees” & “Asylees”

- Refugee: Applicant is outside the U.S.
- Asylee: Applicant is inside the U.S.
- Both may be adjusted to LPR status after one year. Adjustment is under INA § 209, & they are eligible even if they entered without inspection or parole.

§ 101(a)(42)(A) “Refugee”

- 1) Any person who is outside the country of such person’s nationality who is unable or unwilling to return to that country
- 2a) because of persecution
or
- 2b) a well-founded fear of persecution
- 3) on account of
- 4) race; religion; nationality; membership in a particular social group; or political opinion.”

INA § 101(a)(42)

- Excludes persecutors—
- The term “refugee” does not include any person who assisted in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

1996 amendment to 101(a)(42)

- “[A] person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure ...shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure . . . Shall be deemed to have a well founded fear of persecution on account of political opinion.”

INA · 207

- **Admission of refugees**
- **USCIS Refugee Officers (jobs!)**

INA § 208 - Asylum Procedure

- **Any alien physically present in the U.S. irrespective of such alien's status may apply for asylum. INA ' 208(a).**
- **Asylum may be granted if such alien is a refugee within the meaning of ' 101(a)(42)(A).**

Asylum Procedures

- **Exceptions**
- **Who can obtain asylum?**
- **Procedures for applying?**
- **Where do you apply?**
- **Procedures before AOs**
- **Hearing before IJ**

INA § 241(b)(3): Withholding of removal

- **Non-discretionary relief**
- **Gov't “may not remove an alien to a country if”**
- **“that alien’s life or freedom would be threatened”**
- **“because of**
- **the alien’s race, religion, nationality, membership in a particular social group, or political opinion.”**

Asylum vs. Withholding of Removal

- Standards of proof/Level of Risk
- Sec. 241(b)(3) Withholding of Removal. – Applicant must show a “clear probability of future persecution,” meaning it is that the alien “would be subject to persecution.” (objective test)
- Sec. 208 Asylum Applicant must show a “well-founded fear of persecution,” meaning a
 - (1) Reasonable person in his circumstances would fear persecution (objective component) +
 - (2) applicant genuinely persecution (subjective component).

“Derivatives” spouse or child

- **Asylum: If applicant is granted asylum his spouse or child may qualify as a derivative beneficiary of the asylum grant. CSPA prevents “aging out.”**
- **Withholding: no derivatives**

Asylum is discretionary, 8 CFR 208.13

- Applicant may qualify as a refugee either because he suffered
 - (1) past persecution or because of a
 - (2) well-founded fear of future persecution
- Asylum is chiefly protection against future harm

Presumption of Future Persecution

- **Future fear is based on original claim of persecution**
- **If applicant proves past persecution, then presumed to have a “WFFFP”**
- **DHS can rebut presumption by showing**
 - (1) fundamental change in circumstances such that applicant no longer has a WFFFP. E.g. change in country conditions
 - (2) the risk is not country-wide, i.e. applicant could relocate to another part of the country & avoid persecution

Time limit for applying

- **1 year time for applying for asylum; no time limit for withholding of removal**
- **Exceptions:**
 - **Changed circumstances which materially affect an alien's eligibility, or**
 - **Extraordinary circumstances relating to the delay**