

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**

Asylum Procedures

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

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**

Bars to Asylum - § 208(b)(2)A)

- Has been denied asylum in the past as not eligible.
 - Except where changed conditions materially affect eligibility.
- Persecutor: Assisted in persecution based on race, religion, nationality, etc;
- Alien convicted of a particularly serious crime, or is a danger to the community of the U.S.;
 - An aggravated felony.
- There are “serious reasons for believing” that s/he committed a serious nonpolitical crime before entering the U.S.;
- Reasonable grounds to believe alien is a danger to security; or within security inadmissibility/deportability grounds;
- Aliens firmly resettled in a 3rd country prior to arriving

Frivolous Application - 208(d)(6)

- **If alien found to have knowingly made a frivolous application, then permanently ineligible for any benefit under the INA (except withholding of removal)**
- **8 CFR 209.20: Application is frivolous if any of its material elements is deliberately fabricated.**

Asylum: 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**

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.”**

INA · 235(b)

- Interview by Asylum Officer
- Credible fear of persecution”

What is “persecution?”

- Persecution means the infliction of harm upon those who differ (racially, religiously, politically, etc.) in a way regarded as offensive
- Extreme concept, but encompasses more than threats to life or freedom
- Matter of Chang

Persecution vs. Prosecution

- **Military conscription/desertion (*M.A.*)**
 - Refusal to serve Salvadoran military
- **Military court martial-**
 - Tagaga v. INS (9th Cir. 2000) (Fiji)

Who is the persecutor?

- **The persecutor must be either:**
- **(1) Government, or**
- **(2) persons the government “is unable or unwilling to control”**

Intent of Persecutor

- Intent of Persecutor need not be punitive
- *Pitcherskaia* (9th Cir. 1997)

Level of Risk – Standard of Proof

- *Cardoza-Fonseca* - Degree of threat
- 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).

“On account of”

- Nexus requirement—connection between persecution and 1 of 5 qualifying basis for asylum
- Single-motive or mixed-motive persecution? 2005 amendment to INA § 208(b)(1)(B)(i) requires the qualifying basis be “at least one central reason” for persecuting the applicant.

Political opinion

- **Elias-Zacarias**
- **Matter of Fuentes (not in book)**