

11/16/11

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

Asylum Procedures

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

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 US
 - An aggravated felony
- There are serious reasons for believing that (s)he committed a serious nonpolitical crime before entering the US
- 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

§ 241(B)(3): Withholding of Removal (Restriction)

-Nondiscretionary 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

-Withholding vs. Asylum

-Asylum grants derivative status to family members and a path towards citizenship

§ 235(b)

-Interview by Asylum Officer

Persecution

Not defined in INA

§ 101(a)(42); § 235(b)(1)(B)

Different definitions:

-“...an extreme concept, marked by the infliction of suffering or harm in a way that is regarded as offensive.” [Li v. Ashcroft]

-“...covers a range of acts and harm and the determination that actions rise to the level of persecution is very fact-dependent.” [Cordon-Garcia v. INS]

-“Minor disadvantages or trivial inconveniences do not rise to the level of persecution.” [Kovac v. INS]

-“Cumulative effect of harms and abuse that might not individually rise to the level of persecution may support asylum claim.” [Korablina v. INS]

-“Harm can constitute persecution even if the persecutor had an entirely rational and strategic purpose behind it.” [Montecino v. INS]

Must prove persecution on basis on one of five established grounds

Must rise above level of harassment

Cannot be a personal dispute

Burden of proving well-founded fear is on the alien

Must present a subjectively genuine and an objectively reasonable fear

“The infliction of harm upon those who differ (racially, religiously, politically, etc) in a way regarded as offensive”

Draft evaders are generally treated as persons punished under lawful sanctions; however where wars are unjust, persecution based on political opinion may be viable

Who is the persecutor?

-The persecutor must be either:

1) Government, or

2) Group/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

-§ 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 standard)

-§ 208 Asylum Applicant must show a well-founded fear of persecution, meaning

(1) Reasonable person in circumstances would fear persecution (objective component), and

[applicant’s testimony alone is generally not enough to establish an objective fear of persecution]

(2) Applicant genuinely fears persecution (subjective component)

On Account Of

-Nexus requirement – connection between persecution and 1 of 5 qualifying basis for asylum

Sexual Orientation – Asylum and Withholding of Removal Claims - student presentation

-“social group” status

-[Matter of Tobosco-Alfonso](#), 20 I&N Dec. 819 (BIA 1990)

-first establishing that homosexual individuals are members of a particular social group for purposes of asylum and withholding of removal

-[Karouni v. Gonzales](#), 399 F.3d 1163 (9th Cir. 2005)

-court rejected any distinction between persecution for homosexual status and persecution for homosexual acts, ruling that to require the respondent to abstain from sex if he wished to avoid persecution would effectively force him to change a fundamental aspect of his human identity

-[Hernandez-Montiel v. INS](#), 225 F.3d 1084 (9th Cir. 2000)

-[Amanfi v. Ashcroft](#), 328 F.3d 719 (3d Cir. 2003)

-In establishing membership, courts may require corroborating evidence of sexual orientation

-Established understanding that sexual orientation may be hidden for a variety of reasons

-Reliance on stereotypes should be avoided

-Evidence of country persecution obtained from [Human Rights Reports](#)

Asylum & Arranged Marriages - student presentation

-courts generally see such disputes as domestic disputes to be handled by alien’s country of origin

-whether a person’s fear that stems from the anticipated mistreatment at the hands of the future spouse, qualifies that person as a refugee to be eligible for asylum in the US

-[Gao v. Gonzales](#), 440 F.3d 62 (2d Cir. 2006)

-[Xin Yun Chen v. Gonzales](#), 229 Fed. Appx.413; 2007 U.S. App.