

REFUGEE AND ASYLUM LAW

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Legal History

- ▶ United Nations
- ▶ United Nations High Commissioner for Refugees
- ▶ 1951 Convention Relating to the Status of Refugees
- ▶ 1967 U.N. Protocol Relating to the Status of Refugees
- ▶ Refugee Act of 1980
- ▶ Immigration and Nationality Act

History of Refugees in the US

- ▶ 1940 - Europe
- ▶ 1960 - Cuba
- ▶ 1960 - East Germany
- ▶ 1970 - Southeast Asia
- ▶ 1980 - Central America
- ▶ 1990 - Europe: Bosnia
- ▶ 2000 - Africa
- ▶ 2010 - Middle East

Refugee Admissions Overview

- ▶ # of persons admitted as refugees each year are determined by President & Congress
- ▶ 2016 - 85,000 ceiling
- ▶ 2015 - 70,000 ceiling
- ▶ Top Refugee Countries of Origin - Syria, Afghanistan, Somalia
- ▶ Top Refugee Host Countries - Turkey, Pakistan, Lebanon

U.S. Definition of “Refugee”

The Immigration and Nationality Act, Section 101(a)(42), defines “refugee” as:

- ▶ “any person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion...” 8 U.S.C. 1102(42)(a).

Refugee vs. Asylee

Refugee

- ▶ Applies for protection from outside of the U.S.
- ▶ Meets the “refugee” definition

Asylee

- ▶ Applies for protection within the U.S.
- ▶ Meets the “refugee” definition

Refugee Admissions Process

- ▶ 1. Refugee applicants identify themselves to the U.N. Refugee Agency, UNHCR
- ▶ 2. Applicants are received by a Resettlement Support Center (RSC)
- ▶ 3. Biographic Security Checks

Refugee Admissions Process, Cont'd

- ▶ 4. Department of Homeland Security (DHS)/USCIS Interview
- ▶ 5. Biometric Security Checks
- ▶ 6. Medical Check
- ▶ 7. Cultural Orientation and Assignment to Domestic Resettlement Locations

Refugee Admissions Process, Cont'd

- ▶ 8. Travel
- ▶ 9. U.S. Arrival

Legal Authority

- ▶ **STATUTE:** Immigration and Nationality Act -INA Section 208
- ▶ **REGULATIONS:** Code of Federal Regulations - 8 CFR Section 208.13
- ▶ **CASE LAW:**
 - ▶ Board of Immigration Appeals (BIA) precedent decisions
 - ▶ U.S. Courts of Appeals (in applicable jurisdiction) precedent decisions
 - ▶ U.S. Supreme Court decisions
 - ▶ DHS General Counsel Opinions and USCIS Chief Counsel's Opinions
- ▶ **PERSUASIVE AUTHORITIES:**
 - ▶ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (UNHCR Handbook)
 - ▶ International Law

Affirmative Asylum vs. Defensive Asylum

- ▶ An asylum seeker may be eligible for affirmative asylum if he is not in removal proceedings (deportation)
- ▶ An asylum seeker is only eligible for defensive asylum if he is in removal proceedings
- ▶ If affirmative asylum case is not approved and applicant does not have a legal immigration status, he will be issued a Notice to Appear, and his case will be referred to an Immigration Judge (judge will conduct a “de novo” hearing of the asylum case)

Legal Standard

Asylum applicant must prove:

1. He or she is outside his or her country of nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided
2. He or she is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country
3. Because of persecution or well-founded fear of persecution
4. “On account of” of or more of the five enumerated grounds

What is “Persecution”?

- ▶ To establish persecution, an asylum seeker must show that the harm that he or she experienced or fears is sufficiently serious to amount to persecution.
- ▶ The Board of Immigration Appeals (BIA) defines “persecution” as:
“The infliction of harm or suffering by a government, or persons a government is unable or unwilling to control.” *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996).
- ▶ The fear must be subjectively real and objectively reasonable

Persecution, cont'd

A subjective, punitive, or malignant intent is not required in order for the harm inflicted to constitute persecution. However, the definition does not include:

- ▶ Treatment that our society may consider unfair, unjust, or even unlawful or unconstitutional. *See Fatin v. INS*, 12 F.3d 1233, 1240 (3rd Cir. 1993).
- ▶ Harm solely arising out of civil strife or anarchy. *See Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985).

Persecutors

- ▶ Government, or
- ▶ Group that government is unwilling or unable to control

“Well-Founded Fear”

- ▶ Objective Component:
 - ▶ Must show that a reasonable person would experience a fear of persecution under the same circumstances as the applicant. *Matter of Mogharrabi*, Int. Dec. No 3028 (BIA 1987).
- ▶ Subjective Component:
 - ▶ Must show that the applicant has a genuine fear of returning to his or her country of origin. *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

The “Nexus” Requirement

- ▶ Applicant must show that at least one central reason for the persecutor’s motivation to persecute the applicant must be the applicant’s possession or imputed possession of at least one of these 5 grounds in order to establish the required “nexus” (or connection):
 1. Race
 2. Religion
 3. Nationality
 4. Membership in a Particular Social Group
 5. Political Opinion
- ▶ Applicant is not required to provide direct proof of the persecutor’s motivation, but the applicant must provide “some evidence, direct or circumstantial.” *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

Enumerated Ground - Race

- ▶ Should be interpreted in a broad sense that include all kinds of ethnic groups. *See United Nation High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status*, para. 68 (UNHCR Handbook)
- ▶ Mere membership in a racial group is not normally sufficient to prove eligibility for asylum, but a persecutor's treatment of that group as a whole, may in itself be sufficient ground to fear persecution. *See UNHCR Handbook*, para 70.

Enumerated Ground - Religion

- ▶ Freedom and right to manifest one's religion through teaching, practice, worship, or observation, in public or private. UNHCR Handbook, para 71.
- ▶ Forms of Religious Persecution
 - ▶ Prohibition of membership in a religious community
 - ▶ Prohibition of worship in private or in public
 - ▶ Prohibition of religious instruction
 - ▶ Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community. UNHCR Handbook, para 72.
- ▶ Mere membership in a religious community will not, in most cases, be enough.
- ▶ Can include imputed religious beliefs.

Enumerated Ground - Nationality

- ▶ Nationality includes citizenship but refers also to membership of an ethnic group or linguistic group and may occasionally overlap with the term “race.” UNHCR Handbook, para. 74.
- ▶ “Persecution may consist of adverse attitudes and measures directed against a national (ethnic, linguistic) minority.” UNHCR Handbook, para. 74.
- ▶ Sometimes a “person belonging to a majority group may fear persecution by a dominant minority.” UNHCR Handbook, para. 76.

Enumerated Ground - Membership in a Particular Social Group

- ▶ The BIA defines “Particular Social Group” as:
 1. Group of persons who share a “common, immutable characteristic”
 2. The shared characteristic may be “an innate one such as sex, color, kinship ties, or in some circumstances...a shared past experience.”
 3. The shared characteristic must be one “that the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.”

Matter of Acosta, 19 I&N Dec. 211, 233-4 (BIA 1985).

Enumerated Ground - Political Opinion

- ▶ Does not mean expression of allegiance to a political ideology. It has a broader meaning and may be expressed through actions rather than words.
- ▶ In determining fear based on political opinion, the Adjudicator must look to the victim's political opinion that is at issue. See *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).
- ▶ A political opinion may be “imputed” by the persecutor. See *Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 (9th Cir. 1985); see also *Mulanga v. Ashcroft*, 349 F.3d 123, 133 n.7 (3rd Cir. 2003).

Bars to Asylum Eligibility

- ▶ Several statutory bars will lead to a denial of an asylum application including:
 - ▶ Applicants who were persecutors
 - ▶ Applicants who had firmly resettled in a third country
 - ▶ Applicants who have been convicted of an aggravated felony or a particularly serious crime
 - ▶ Applicants who pose a security risk to the United States
 - ▶ Applicants who previously applied and were denied asylum (unless there are changed circumstances)
- ▶ Applicants must file within one year of arrival in the United States:
 - ▶ Unless extraordinary circumstances prevented filing, or
 - ▶ Circumstances have significantly changed in the home country

The Affirmative Asylum Process

1. Arrive in the United States
2. Apply for Asylum (File Form I-589)
3. Receive Receipt Notice and Biometrics Appointment Notice
4. Attend Biometrics Appointment (Fingerprinting)
5. Receive Interview Notice
6. Attend Interview
7. Wait for Decision
8. Receive Decision

Initial Meeting with Client

- ▶ Build Rapport
- ▶ Manage Expectations
- ▶ Determine Best Language
- ▶ Schedule Follow Up Meetings

Preparing the Asylum Application (Form I-589)

- ▶ Form I-589 is used to apply for asylum in the United States - *See uscis.gov/forms*
- ▶ Basic Parts of the Form
 - ▶ Part A.I. Information About You
 - ▶ Part A.II. Spouse and Children
 - ▶ Part A.III. Information About Your Background
 - ▶ Part B. Information About Your Application
 - ▶ Part C. Additional Information About Your Application
 - ▶ Part D. Your Signature
 - ▶ Part E. Signature of Person Preparing Form, If Other Than You

Preparing Form I-589

- ▶ Always refer to the USCIS website for the most recent form instructions and forms (uscis.gov)
- ▶ Type or print answers in black ink.
- ▶ If a question does not apply to the applicant or if he or she does not know the information requested, answer “none,” “not applicable,” or “unknown.”
- ▶ Put the applicant’s Alien Registration Number (A-Number)(if any), name, and signature on each supplemental sheet and on the cover page of any supporting documents
- ▶ There is no fee for filing this application
- ▶ Include a cover page, describing each item included in the application

Determining the Applicant's Asylum Claim

Questions to Ask the Applicant:

1. Why did he leave his country?
2. Who is he afraid of?
3. Why is he afraid of them?
4. Why do they want to harm him or others like him?
5. What does he think they will do to him if he returns to his home country?
6. How does he think they will know that he is back in his home country?
7. Who else are they threatening and mistreating now? Are they people like him? How does he know this?

Form I-589 - Part B and Part C

- ▶ Part B and Part C are likely the most important parts of your application because it relates to your asylum claim.
- ▶ Fear of Return
 - ▶ Explain why the applicant is afraid to return to his or her country.
 - ▶ Remember to say if he or she is afraid because of his or her race, religion, nationality, political opinion, or social group
 - ▶ Identify specifically what the applicant is afraid of and what will happen to the applicant if he or she returns to his or her home country
- ▶ Arrests in his or her home country and the United States
 - ▶ Include both specific problems the applicant has had in his or her home country (the mistreatment or abuse suffered), as well as any criminal history he or she has in the U.S.
- ▶ Legal Status in Another Country
 - ▶ If the applicant has received permanent refugee status in another country, that information must be included

Required Documents to Be Included in the Asylum Application

- ▶ 1 Completed, signed original Form I-589 with the original supplementary sheets and original supplementary statements
- ▶ 2 additional copies of Form I-589 with the supplementary sheets and supplementary statements
- ▶ 1 passport-style photograph of the applicant
- ▶ 3 copies of all passport or other travel documents (cover to cover) in the applicant's possession
- ▶ 3 copies of any U.S. immigration documents, such as Form I-94, of the applicant
- ▶ 3 copies of other identification documents such as birth certificate, military or national ID card, driver's license, etc.
- ▶ Certified English translations for any document containing foreign language

Additional Evidence that May be Submitted with the Asylum Application

- ▶ Supporting evidence may include but is not limited to the following:
 - ▶ Personal Statement of Applicant
 - ▶ Statements from family members or members of the same group
 - ▶ Newspaper articles
 - ▶ Affidavits of witnesses or experts
 - ▶ Medical and/or psychological records
 - ▶ Doctors' statements
 - ▶ Periodicals, Journals, Book excerpts, Country Condition Reports
 - ▶ Photographs
 - ▶ Official documents

Applicants Who Are Including Family Members in the Application

- ▶ 1 additional copy of Form I-589 with the supplementary sheets and supplementary statements for each family member listed in Part A.II. whom you want to have included in your application.
- ▶ 3 copies of primary or secondary evidence of familial relationship (e.g. birth or school records of children, marriage certificate, or proof of termination of marriage, for each family member.

Affirmative Asylum Interview Process

- ▶ An asylum applicant must attend an interview conducted by an asylum officer
- ▶ The interview is non-adversarial and private
- ▶ Components of an Affirmative Asylum Interview:
 1. Introduction
 2. Oath
 3. Verification of Basic Biographic and Entry Information
 4. Testimony
 5. Closing Statement/Comment/Questions by Applicant and/or Representative
 6. Conclusion

Preparing Your Applicant for the Interview

- ▶ Ask the applicant to think about specific experiences that he has had that are related to his claim
- ▶ Information the Applicant Should Know for the Interview
 - ▶ What happened to the applicant?
 - ▶ Who did it to the applicant?
 - ▶ Why were they threatening or mistreating the applicant
 - ▶ Why did they say they were threatening or hurting the applicant
 - ▶ How does the applicant know they were specifically targeting him
 - ▶ For which of the five grounds did they target the applicant?
 - ▶ Who else did they threaten or mistreat?

Interview Preparation

- ▶ Schedule several prep sessions
- ▶ Go over complete submission
- ▶ Go over any changes to the application
- ▶ Mock interview - practice with interpreter
- ▶ Draw a timeline
- ▶ Prepare closing remarks
- ▶ Print out map and talk about logistics

Types of Asylum Decisions

- ▶ Grant of Asylum
- ▶ Referral to an Immigration Court
- ▶ Recommended Approval
- ▶ Notice of Intent to Deny
- ▶ Final Denial

Asylum Statistics

- ▶ In 2013, United States received 88,400 asylum applications.
- ▶ In 2013, 15,266 individuals were granted affirmative asylum while 9,933 were granted asylum defensively. Total number granted was 25,199.
- ▶ In 2013, the leading countries of nationality for person granted asylum in the U.S. were China, Egypt, and Ethiopia.
- ▶ In 2013, Germany, United States, and France received the most asylum applications.

Pro Bono Organizations

- ▶ Catholic Charities - <http://www.catholiccharities.org/>
- ▶ YMCA International Services - <https://www.ymcahouston.org/ymca-international/>
- ▶ Kids in Need of Defense - <https://supportkind.org/>
- ▶ Human Rights First - <http://www.humanrightsfirst.org/houston>

THANK YOU

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