



*Presents*

# **Assisting Border Migrants Seeking Asylum**

February 8, 2024

5:30 pm – 7:30 pm

Presenters: Gerald Karkari, Esq  
Carmelia Taylor, Esq.

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# Assisting Border Migrants Seeking Asylum

WBASNY IMMIGRATION COMMITTEE

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2024

# About Presenter



**Carmelia Taylor, Esq.**  
Moderator/Presenter

## Education

Carmelia Taylor grew up in Long Island, New York, but was raised in Barbados during her primary years. She is a graduate of the State University of Binghamton and Vanderbilt University School of Law. Since graduation, she has handled immigration matters working at public interest organizations and in private practice for 20 plus years. Her area of focus is asylum law and removal defense. She served as an Adjunct Professor at Lehman College.

## Memberships & Leadership Experience

She served on several boards and held numerous positions therein. Most notably, she served in numerous roles within Jack & Jill of America, Inc., including chapter president of the Queens chapter; Parliamentarian and Bylaws chair in the Links, Incorporated; and as the National representative and United Nations NGO representative for the Links, Incorporated. She is a member of Delta Sigma Theta Sorority, Incorporated and the American Immigration Lawyers Association (AILA). And currently serves as co-chair of WBASNY's Immigration Committee.



# About Presenter



**GERALD KARIKARI, Esq.**  
**PRESENTER**

## BIO

Gerald Karikari manages a successful real estate and immigration law practice, Karikari & Associates, P.C. in New York City and Guangzhou, China. He is admitted to practice law in the states of New York and New Jersey, as well as in the United States Court of Appeals for the First, Second Third and Fourth Circuits. He holds a law degree from John's University School of Law and a Bachelor of Science in accounting from the City University of New York at York College. Mr. Karikari emigrated to the United States from Ghana, West Africa, as a young child. He has lived in Brooklyn and in Southeast Queens. It is in Queens where Mr. Karikari worked for Rev. Congressman Floyd Flake, Councilwoman Juanita Watkins and Borough President Claire Schulman. It is through these experiences that Mr. Karikari began fighting for working class people, community youth, immigrants, and senior citizens, groups that he remains deeply concerned and committed to serving. For 16 years, Mr. Karikari has been happily married to his wife, Barbara (Smith), who is also a highly accomplished attorney, human resources professional and his business partner. Together they are parents of two dynamic children (Gerald, Jr. and Grace).

In addition to his extensive professional experience, Mr. Karikari has served on numerous non-profit Boards, and he is the outgoing Board Chairman of *Merrick Academy Charter School*, Executive Vice President of the *Rosedale Jets Football Association*, a tenured member of the *Success Educational Consultancy Group*.





# Legal Authorities

- **Statutes**
  - Immigration and Nationality Act (INA), Title 8 of the U.S. Code
- **Regulations**
  - Title 8 of the Code of Federal Regulations (8 C.F.R.)
- **Board of Immigration Appeals (BIA or the Board) precedent decisions**
- **Attorney General (AG) precedent decisions**
- **Federal court decisions**
- **UNHCR Handbook**
- **Kurzban's Immigration Law Sourcebook**



# What Asylum is and is not:

## The applicant files defensively or affirmatively when :



### PROTECTION FROM

- A foreign national can apply affirmatively with USCIS-United States Citizen and Immigration Services-if they are not in removal proceedings
- Unaccompanied minors may apply affirmatively with USCIS even if in removal proceedings



### A PATHWAY TO PERMANENT RESIDENCE

A foreign national in removal proceedings is said to apply defensively when s/he files with the Immigration Court (Executive Office of Immigration Review, Office of the Immigration Court)

### Note

Affirmative asylum applications not granted at the USCIS Asylum Office are generally referred to the Immigration Court for a 2<sup>nd</sup> bite of the apple; However, if the asylum application is not granted by the Immigration Judge, the applicant will be ordered removed but may appeal to the Board of Immigration Appeals.



**PREPARING THE I-589**

**ASYLUM APPLICATION**



# Page 1 of the I-589 DECEIVINGLY SIMPLE

**CONVENTION AGATINST TORTURE:** Speak to your client about the implications of Convention Against Torture relief if granted. If the client agrees, check off this box. You may err on the side of caution by selecting it and then later on withdrawing the request if the client so desires

**ALL ENTRIES INTO THE USA:** Make sure to obtain and provide on the I-589 entry into the United States. If there are several prior to the last entry, do inquire why they did not seek asylum during their last visit(s)

**ALL COUNTRIES OF CLAIMED CITIZENSHIP:** The applicant may have acquired or derived citizenship in more than one country. If there another country of citizenship apart from the one the s/he seeks refuge, the other country may be deemed a safe haven.

**BEST LANGUAGE:** Ensure that you know what the client’s best language is. For example, indigenous individuals may seemingly speak and understand the native language of the country s/he from which s/he fled, but it may not be her/his best language.

START HERE - Type or print in black ink. See the instructions for information about eligibility and how to complete and file this application. There is no filing fee for this application.

NOTE: ☐ Check this box if you also want to apply for withholding of removal under the Convention Against Torture.

Part A.I. Information About You					
1. Alien Registration Number(s) (A-Number) (if any)		2. U.S. Social Security Number (if any)		3. USCIS Online Account Number (if any)	
4. Complete Last Name		5. First Name		6. Middle Name	
7. What other names have you used (include maiden name and aliases)?					
8. Residence in the U.S. (where you physically reside)					
Street Number and Name				Apt. Number	
City		State		Zip Code	Telephone Number ( )
(NOTE: You must be residing in the United States to submit this form.)					
9. Mailing Address in the U.S. (if different than the address in Item Number 8)					
In Care Of (if applicable):				Telephone Number ( )	
Street Number and Name				Apt. Number	
City		State		Zip Code	
10. Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		11. Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Divorced <input type="checkbox"/> Widowed			
12. Date of Birth (mm/dd/yyyy)		13. City and Country of Birth			
14. Present Nationality (Citizenship)		15. Nationality at Birth		16. Race, Ethnic, or Tribal Group	
				17. Religion	
18. Check the box, a through c, that applies: a. <input type="checkbox"/> I have never been in Immigration Court proceedings.					
b. <input type="checkbox"/> I am now in Immigration Court proceedings. c. <input type="checkbox"/> I am not now in Immigration Court proceedings, but I have been in the past.					
19. Complete 19 a through c.					
a. When did you last leave your country? (mm/dd/yyyy) b. What is your current I-94 Number, if any?					
c. List each entry into the U.S. beginning with your most recent entry. List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)					
Date		Place		Status	Date Status Expires
Date		Place		Status	
Date		Place		Status	
20. What country issued your last passport or travel document?		21. Passport Number		22. Expiration Date (mm/dd/yyyy)	
		Travel Document Number			
23. What is your native language (include dialect, if applicable)?		24. Are you fluent in English?		25. What other languages do you speak fluently?	
		<input type="checkbox"/> Yes <input type="checkbox"/> No			
For EOIR use only.		For USCIS use only.		Action: Interview Date: Decision: Approval Date:	
		Asylum Officer ID No.:		Denial Date:	

# Page 2 of the I-589

## CONFIRM RELATIONSHIPS

**CHILDREN:** List all children regardless of their age. However, for a child to be included in the application, you must check the box to include him/her, and the child must meet the definition of “child” upon filing. The INA defines “child” as biological children, adopted children (defined by INA 101(b), and stepchildren so long as the marriage occurred before the child turned 18.

**SPOUSES:** Ensure that the relationship meets the definition of marriage, as some cultures refer to common-law partners as “husband” & “wife”.

**CONFIRM WHETHER MARRIAGE TO SPOUSE CONFERRED A CLAIM TO CITIZENSHIP IN ANOTHER COUNTRY:** If the applicant’s spouse is from a different country, confirm the the impact if any on her/his claim to citizenship

**NOT APPLICABLE:** Fill out all boxes on this form. It is appropriate to indicate “Not Applicable”, “N/A” ‘Unknown”, or “Don’t Know”.

### Part A.II. Information About Your Spouse and Children

Your spouse

☐ I am not married. (Skip to **Your Children** below.)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Date of Birth (mm/dd/yyyy)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Other names used (include maiden name and aliases)
9. Date of Marriage (mm/dd/yyyy)	10. Place of Marriage	11. City and Country of Birth	
12. Nationality (Citizenship)	13. Race, Ethnic, or Tribal Group	14. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
15. Is this person in the U.S.? <input type="checkbox"/> Yes (Complete Blocks 16 to 24.) <input type="checkbox"/> No (Specify location):			
16. Place of last entry into the U.S.	17. Date of last entry into the U.S. (mm/dd/yyyy)	18. I-94 Number (if any)	19. Status when last admitted (Visa type, if any)
20. What is your spouse's current status?	21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	22. Is your spouse in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	23. If previously in the U.S., date of previous arrival (mm/dd/yyyy)
24. If in the U.S., is your spouse to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes <input type="checkbox"/> No			

Your Children. List all of your children, regardless of age, location, or marital status.

☐ I do not have any children. (Skip to Part A.III., Information about your background.)

☐ I have children. Total number of children:

(NOTE: Use Form I-589 Supplement A or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A-Number) (if any)	2. Passport/ID Card Number (if any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (if any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic, or Tribal Group	12. Gender <input type="checkbox"/> Male <input type="checkbox"/> Female
13. Is this child in the U.S. ? <input type="checkbox"/> Yes (Complete Blocks 14 to 21.) <input type="checkbox"/> No (Specify location):			
14. Place of last entry into the U.S.	15. Date of last entry into the U.S. (mm/dd/yyyy)	16. I-94 Number (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? <input type="checkbox"/> Yes <input type="checkbox"/> No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) <input type="checkbox"/> Yes <input type="checkbox"/> No			



# Page 4 of the I-589 CONFLICT TRAPS

**LAST ADDRESS:** The last address before leaving may be important. You may want to include any address where the applicant lived while in hiding.

**EDUCATION:** Take note that education or lack of education carries social and economic implications it that may assist your argument for asylum or harm it.

**DATE & PLACE:** Be wary of date and place conflicts. Ensure that the applicant's story/statement does not conflict with these details. It goes to credibility.

**FAMILY TIES:** The existence of parents and siblings may raise questions about why they are not being harmed if they still live in the town and country of origin or if in the US, could raise questions about why they have yet to file for asylum.

## Part A.III. Information About Your Background

1. List your last address where you lived before coming to the United States. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)

2. Provide the following information about your residences during the past 5 years. List your present address first.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province, or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)

3. Provide the following information about your education, beginning with the most recent school that you attended.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)

4. Provide the following information about your employment during the past 5 years. List your present employment first.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.  
(NOTE: Use Form I-589 Supplement B, or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother		<input type="checkbox"/> Deceased
Father		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased
Sibling		<input type="checkbox"/> Deceased

# Page 5 of the I-589: THE CLAIM

**CHECK OFF AS MANY GROUNDS THAT MAY APPLY:** Choose the applicable reason(s) for persecution—Membership in a Particular Social Group, Nationality, Political Opinion, Race, Religion. More than 1 ground is ok. However, PSG may require a brief/statement on nexus.

**1<sup>ST</sup> PERSON:** Where it asks whether you or a family member experienced harm, it should be written in 1<sup>st</sup> person, from the applicant's point of view.

**BE DETAILED:** If you plan to file a separate statement detailing the past harm, you should provide sufficient details to describe the harm. Many practitioners have varying strategies, while the response box appears small the form has a continuation addendum space. **CAVEAT: Being overly detailed can be problematic.** For instance, say “many officers hit me” as opposed to “7 hit me”. Client may later misstate the number.

**AVOID INDICATING “SEE ATTACHED STATEMENT”:** Try your best to provide as many details as immigration judges may have unexpected special preferences.

## Part B. Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture), you must provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places, and descriptions about each event or action described. You must attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, explain why in your responses to the following questions.

Refer to Instructions, Part I: Filing Instructions, Section II, “Basis of Eligibility,” Parts A - D, Section V, “Completing the Form,” Part B, and Section VII, “Additional Evidence That You Should Submit,” for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below.

I am seeking asylum or withholding of removal based on:

- |                                      |                                                                  |
|--------------------------------------|------------------------------------------------------------------|
| <input type="checkbox"/> Race        | <input type="checkbox"/> Political opinion                       |
| <input type="checkbox"/> Religion    | <input type="checkbox"/> Membership in a particular social group |
| <input type="checkbox"/> Nationality | <input type="checkbox"/> Torture Convention                      |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☐ Yes

If “Yes,” explain in detail:

1. What happened;
2. When the harm or mistreatment or threats occurred;
3. Who caused the harm or mistreatment or threats; and
4. Why you believe the harm or mistreatment or threats occurred.

- B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☐ Yes

If “Yes,” explain in detail:

1. What harm or mistreatment you fear;
2. Who you believe would harm or mistreat you; and
3. Why you believe you would or could be harmed or mistreated.

# Page 6 of the I-589: THE CLAIM

**QUESTION ABOUT DETENTIONS, INTERROGATION, ARRESTS:** Make sure to mention each instance of the above-mentioned. Failure to mention can result in a credibility issue. Background checks can reveal foreign arrests and convictions, if not now at a later stage. CAVEAT: Some crimes may subject applicant to a bar from asylum.

**MEMBERSHIPS IN ORGANIZATIONS, STUDENT GROUPS & POLITICAL PARTIES:** Mention all that apply. If you run out of space, use the addendum on the last page of the form. Also include dates of membership.

**FAMILY MEMBERS WHO CONTINUE TO PARTICIPATE IN GROUPS MENTIONED:** Be prepared to respond at some point why family members who continue to be members of the groups remain safe while the applicant fled.

**ARE YOU AFRAID OF BEING TORTURED:** Answer using the standard for Convention of Torture relief in mind.

## Part C. Additional Information About Your Application (Continued)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☐ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No ☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V, "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation)?

☐ No ☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

# Page 7 of the I-589: THE CLAIM

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## HAS ANY FAMILY MEMBER EVER APPLIED FOR ASYLUM IN THE US:

BEWARE that the Government has access to applications filed by family members. This may be an opportunity for government to cross check. It might make sense to request applicant obtain copies of family applications

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**COUNTRIES TRAVELED THROUGH:** Mention all countries that they may have traveled through. You may also need to ask the applicant for later purposes why s/he did not apply for asylum in one of these countries.

---

## ANYONE IN THE FAMILY APPLIED FOR LEGAL STATUS SOMEWHERE ELSE:

**CAVEAT:** Having had received legal status could be an indication that the applicant obtained status in another safe country. It could raise questions about whether the applicant firmly resettled or whether s/he has a safe haven.

---

**ORDERED OR INCITED PERSECUTION:** This question begs whether the applicant is a persecutor and subject to a bar of asylum.

## Part C. Additional Information About Your Application

(NOTE: Use Form I-589 Supplement B, or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U.S. Government for refugee status, asylum, or withholding of removal?

☐ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents, or your siblings received as a result of that decision. Indicate whether or not you were included in a parent or spouse's application. If so, include your parent or spouse's A-number in your response. If you have been denied asylum by an immigration judge or the Board of Immigration Appeals, describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

- 2.A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States?

☐ No ☐ Yes

- 2.B. Have you, your spouse, your child(ren), or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☐ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☐ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's, or your child(ren)'s involvement.

# Page 8 of the I-589: THE CLAIM

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## **DID YOU RETURN TO THE COUNTRY YOU FEAR HARM:**

**CAVEAT:** a post-persecution visit to one's country raises credibility issues.

---

**ARE YOU FILING MORE THAN ONE YEAR:** Make sure to indicate any exceptions to filing after one year of entry, if it applies.

---

**APPLICATIONS FILED AFTER 1 YEAR:** The asylum often sends notices inquiring whether applicants would want to waive their asylum office interviews.

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**HAVE YOU OR ANYONE INCLUDED IN THE APPLICATION BEEN ARRESTED?** All arrests will be revealed after background checks are run. Ask applicants to be truthful in their responses.

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## **Part C. Additional Information About Your Application (Continued)**

4. After you left the country where you were harmed or fear harm, did you return to that country?

☐ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s), and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than 1 year after your last arrival in the United States?

☐ No ☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You must be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part 1: Filing Instructions, Section V, "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted, or sentenced for any crimes in the United States (including for an immigration law violation)?

☐ No ☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application, and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.



# Preparing the Asylum statement



## Method for preparing

- Detailed statement is recommended; however, a lack of detailed specificity/omissions should not result in a negative credibility finding.
- Submit proof of nationality of country from which applicant and dependents seek asylum
- Prepare all spaces on the form thoroughly. Responses should be well thought out.
- Barebones application is okay when time is of the essence to meet the one-year deadline. Try to update it with more details as soon as possible accompanying an affidavit explaining why all details were not provided at initially.
- Amending the asylum application is possible, but the method for amending will depend on whether it was filed defensively or affirmatively

# WHAT INFORMATION SHOULD BE INCLUDED IN THE STATEMENT?

## WHAT INFORMATION TO INCLUDE: Who, What, When, Where, How!

1. Include background establishing level of education, size of town applicant is from, type of work engaged in before leaving native country
2. Chronological Order
3. When the persecution began
4. Why the applicant believes they were targeted.
5. Plausible explanations for delayed departure to counteract the question of lack of immediate departure
6. LGBTQ cases: Include what age & how they realized their sexual orientation, their awareness of legal protection
7. Specific dates are preferable; however, it may be best to state approximations to maintain consistency.
8. Include any medical treatment sought
9. Include any reports made to authorities
10. Include any reasons why the authorities might not want to protect the applicant and why or why not they did or did not report
11. Include why they can't relocate within the country
12. What finally triggered their departure
13. Summarize what they believe will happen if they return

# How do you file an Asylum Application?

U.S. Immigration

I-589, Application for Asylum and for Withholding of Removal

print in black ink. See the instructions for information about eligibility and how to complete and file this application.

if you also want to apply for withholding of removal under the Convention Against Torture.

4. First Name

5. Middle Name

2. U.S. Social Security Number (if any)

Information About You

number(s) (A-Number) (if any)

and aliases)?

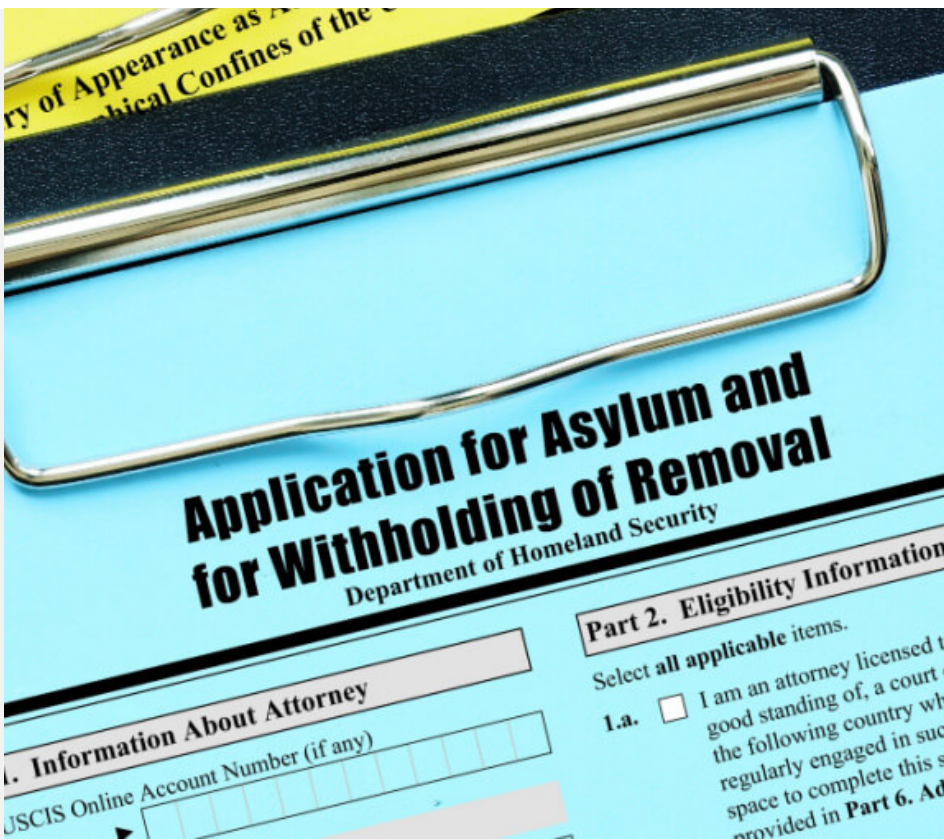
Apt. Number



## FORM I-589

- Applicant files an I-589 application with USCIS or with the Immigration Court **within one year of entering the United States (see exceptions slide)**
- If the applicant will be represented by legal counsel, Form **G-28 Notice of Appearance as Attorney** should accompany the application
- **Corroborating Evidence** should be filed with application.
- A **biometrics appointment** at an Application Support Center will be generated after the filing of the form. Must attend or application can be denied/pretermitted as a result.

# Where do you file an Asylum Application?



## FORM I-589 FILING METHODS

- **MAIL** to a USCIS Lockbox address found on USCIS.gov
- **ONLINE** on USCIS.gov
- **ASYLUM VETTING CENTER** in Atlanta
- **UNACCOMPANIED MINORS** have a special mailing address



# FILING THE ASYLUM APPLICATION WITH IMMIGRATION COURT

- All documents must be 2-hole punched and secured by staple or 2-hole punch fastener with tabs prior to submission to the Immigration Court:
- Submission requirements:
  1. Cover Page for submission
  2. Table of Contents
  3. Signed Asylum Application
  4. Proof of Nationality from which the applicant seeks asylum (passport, cedula, birth certificate)
  5. Certificate of Service

Documents were traditionally filed by mail or submitted in person at clerk's window until COVID and the implementation of an e-filing system. Some cases are still paper-filed and require mail/in person filing.






# EOIR COURTS & APPEALS SYSTEM (ECAS)

- EOIR Courts & Appeals System (ECAS) is the new electronic filing system that will eventually replace the paper filing system, widely expanded as a result of COVID. The record of proceeding is maintained here for viewing and uploading once assigned as attorney of record.
- An attorney must register with the Office of Executive Office for Immigration Review and be assigned an EOIR number to represent clients before the immigration court and to participate in the filing system. No “firm” registration allowed.
- Cases originating during and after COVID cannot be submitted by mail or in person, as they are subject to e-filing requirements.
- Many cases originating before COVID remain paper-filed cases.






U.S. Department of Justice  
Executive Office for  
Immigration Review

**ECAS**  
EOIR Courts & Appeals System

Case Portal  
Upload Court-Related Documents



1

To search for a specific case, enter the A-Number or name on the Case Portal homepage (**Welcome to EOIR Case Portal**) and click **Search**. For a list of all persons you represent, click **View All**.

You will only see cases for which you have an approved Form EOIR-27 or EOIR-28 on file. To file a new Form EOIR-27 or EOIR-28, use the “Appearances” link at the top of the screen.



## CERTIFICATE OF SERVICE

\_\_\_\_\_  
(Name of alien(s) in proceedings)

\_\_\_\_\_  
(A-Number of alien(s) in proceedings)

### CERTIFICATE OF SERVICE

On \_\_\_\_\_, I, \_\_\_\_\_,  
(date) (printed name of person signing below)

served a copy of this \_\_\_\_\_  
(type of document)

and any attached pages to \_\_\_\_\_  
(name of party served)

at the following address: \_\_\_\_\_  
(address of party served)

\_\_\_\_\_  
(address of party served)

by: \_\_\_\_\_  
(method of service – for example, overnight courier, hand-delivery, first-class mail, ICE  
OPLA eService)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)



## CERTIFICATE OF SERVICE

### CERTIFICATE OF TRANSLATION

I, \_\_\_\_\_, am competent to translate from  
*(name of translator)*

\_\_\_\_\_ language into English and certify that the translation of  
*(language)*

\_\_\_\_\_ *(names of documents)*

is true and accurate to the best of my abilities.

\_\_\_\_\_ *(signature of translator)*

\_\_\_\_\_ *(typed/printed name of translator)*

\_\_\_\_\_ *(address of translator)*

\_\_\_\_\_ *(address of translator)*

\_\_\_\_\_ *(telephone number of translator)*

# ASYLUM 1-YEAR DEADLINE



## Asylum Applications must be filed within 1 year of applicant's arrival in the US

8 CFR § 208.4

(a)(2) One-year filing deadline.

(i) For purposes of section 208(a)(2)(B) of the Act, an applicant has the burden of proving:

(A) By clear and convincing evidence that the application has been filed within 1 year of the date of the alien's arrival in the United States, or

(B) To the satisfaction of the asylum officer, the immigration judge, or the Board that he or she qualifies for an exception to the 1-year deadline.

# EXCEPTIONS TO THE 1-YEAR FILING DEADLINE

## EXCEPTION TO THE RULES



- **Changed Circumstances** If an applicant files an asylum application within a reasonable period of time after changed circumstances
  - Material change in applicable US law
  - Changed country conditions that effect eligibility
- **Extraordinary circumstances** prevented filing within one year:
  1. Serious illness, mental or physical disability
  2. Legal Disability
  3. Ineffective Assistance of Counsel
  4. The applicant maintained Temporary Protected Status, lawful immigrant or nonimmigrant status, or was given parole, until a reasonable period before the filing of the asylum [application](#);
  5. The applicant filed an asylum [application](#) prior to the expiration of the 1-year deadline, but that [application](#) was rejected by the [Service](#) as not properly filed, was returned to the applicant for corrections, and was refiled within a reasonable period thereafter
  6. The death or serious illness or incapacity of the applicant's legal [representative](#) or a member of the applicant's immediate family





# ELEMENTS OF ASYLUM

# Applicant must meet the definition of Refugee



The burden of proof is on the asylum seeker to show they are a “refugee” as statutorily defined:

- a person who is outside of their home country or where they last habitually resided
- and who is unable or unwilling to return to, and is unable or unwilling to avail themselves of the protection of, that country
- because of **persecution or a well-founded fear of future persecution**
- on account of a protected ground—race, religion, nationality, membership in a particular social group, or political opinion.

# Applicant must meet the definition of Refugee(Cont.)



Show that there was:

- **Past Persecution and/or**
- **a Well-Founded Fear of Future Persecution**

**Must meet 5 elements:**

- **(1) harm constituting persecution**
- **(2) a protected ground,**
- **(3) nexus, and**
- **(4) state action**
- **(5) discretion**

# Road map to win asylum

- 01** Harm Constituting Persecution  
Or Well-founded fear of Future  
Persecution
- 02** A Protected Ground,
- 03** Nexus
- 04** State Action
- 05** Discretion





# A. PROVING PAST PERSECUTION



# Asylum Element 01: Harm Constituting Persecution

## What is persecution?

- **Severe harm or suffering inflicted upon an individual in order to punish him for possessing a belief or characteristic the persecutor seeks to overcome.**

- **Physical violence**

Examples: Beatings, Rape, Genital mutilation

- **Non-physical violence**

Examples of non-physical violent persecution may include severe psychological or economic harm or restriction of liberty, food, housing, employment, or education, such as denial of passport, constant surveillance, property confiscation, detentions



**References:** • Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), modified on other grounds by Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987) • Matter of T-Z-, 24 I&N Dec. 163 (BIA 2007)

# What is NOT Persecution?

## What is not persecution?

- Fear of General Conditions of Violence
- Mild and not Severe Discrimination
- Fear of Military Recruitment



**References:** • Matter of Acosta, 19 I&N Dec. 211 (BIA 1985); Matter of Vigil, 19 I&N Dec.572 (BIA 1988)



A group of people, mostly of Latin American descent, are gathered at night for a protest or vigil. They are holding lit candles and signs. One sign clearly shows a portrait of a man with the word "TRAIDOR" (Traitor) below it. Another sign partially visible says "SAN P... AYO... TRAI...". A person in the foreground is holding a small Argentine flag. The scene is dimly lit, with the primary light source being the candles and some ambient light from the background.

# B. PROVING WELL-FOUNDED FEAR OF PERSECUTION

**Once Past Persecution is established, Well-Founded Fear of future persecution is presumed unless DHS successfully rebuts by establishing:**

- Safe, reasonable internal relocation is possible.

**OR**

- Fundamental change in country conditions has occurred.



## How Reasonable would Internal Relocation be for the Applicant?

**If the government is the persecutor then relocation is deemed unreasonable. However, the government can rebut the presumption by a preponderance of the evidence**



**On the other hand, If the persecutor is a private actor, internal relocation is not presumed reasonable and the applicant must prove by a preponderance that is unreasonable.**



# If Well-Founded Fear of Persecution is successfully rebutted, now what?

**Argue that Humanitarian Asylum grounds apply, warranting a grant of asylum.**



# If Well-Founded Fear of Return is not rebutted by the Government, now what?

**The Immigration Judge can still deny the asylum claim on discretionary grounds.**



# What happens when an applicant cannot demonstrate past persecution?

**S/he must demonstrate a well-founded fear of persecution in order to meet the definition of refugee.**





To establish well-founded fear of persecution, applicant must establish

Subjectively genuine and objectively reasonable fear of harm. INS v. Cardoza-Fonseca, 480 U.S. 421 (1987).



# SUBJECTIVE & OBJECTIVE COMPONENTS OF WELL-FOUNDED FEAR DETERMINATION

**The subjective component:** present credible testimony that applicant genuinely fears future persecution.

**The objective component:** present credible, direct, specific testimony and evidence in the record that of facts that would support a reasonable fear of persecution.

**Applicant only needs to show at least 10% chance of persecution.**





# It's a Reasonable Person standard

**If a reasonable person in a similar circumstances would fear persecution upon return to the native country, then well-founded fear has been established. Matter of Mogharrabi, I&N Dec. 439 (BIA 1987)**



# To establish that there is a reasonable fear of persecution, show:

The country's origins, its laws, and the experience of others is relevant. Bolanos-Hernandez v INS, 767 F.2d 1277(9<sup>th</sup> Cir 1984)

Individual Targeting: For examples, acts against family members and friends. Korablina v INS, 158 F.3d 1038 (9<sup>th</sup> Cir. 1998)

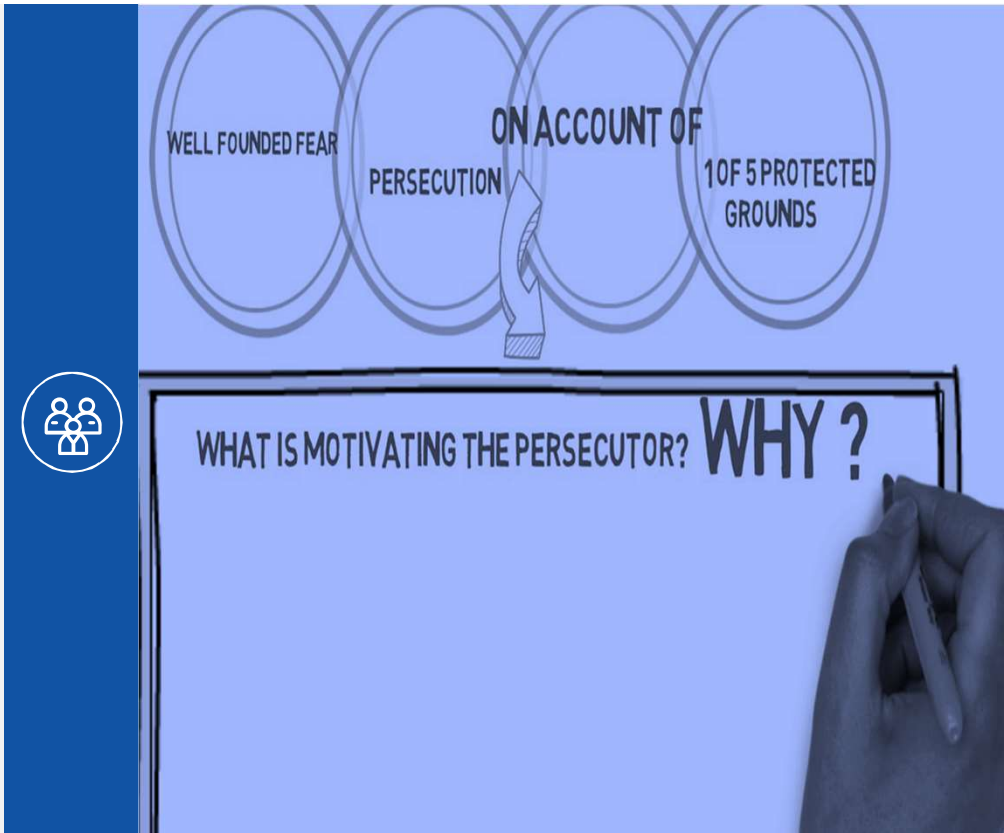
Pattern & Practice: Acts of violence in the country create a practice of persecution closely tied to the applicant. Arriaga-Barrientos v INS, 937 F.2d at 411(9<sup>th</sup> Cir. 1991)



## A Protected Ground

The harm suffered must be on account of one of the five protected grounds:

- 1 Race
- 2 Religion
- 3 Nationality
- 4 Political Opinion
- 5 Membership in a Particular Social Group (PSG).



# Asylum Element #2: A Protected Ground

## 1. Race

- Not a strict definition of race; May include

- Specific race
- Tribes
- Indigenous groups
- Examples of Race Groups:

Mayan, Aztec, Zapotec, Tzotzil (Mexico); K'iche' (Guatemala); Tutsi & Hutu of Rwanda and Congo; Garifuna (Honduras); Amhara & Oromo (Ethiopia); People of African descent (Mauritania) Aymara, Guayanos (Bolivia)

## 3. Nationality

- Related to the national origin of the applicant
- Broad definition; It can include ethnic or linguistic identity, which may differ from country of birth or citizenship
- Can overlap with Race

## 2. Religion

- Examples of Religion as a protected ground:

- Applicant is harmed for practicing a specific religion
- Applicant suffers serious discrimination or criminal penalties imposed for practicing a certain religion
- Examples of Religious Groups:

Bahai, Shia, Christians, Uyghurs, Sikh, Jehovah's Witnesses, Seventh-Day Adventists, Evangelists, Rohingya (Muslim minority group in Myanmar), Falun Gong, Muslims of Eritrea.





# Asylum Element : A Protected Ground (Cont'd)



## 4. Political Opinion

- Affirmative political opinion
  - An applicant has a sincere political opinion and
  - The persecutor wants to eradicate that opinion.
  
- Imputed political opinion
  - A persecutor's believes that the applicant has a particular political opinion for whatever reason the persecutor decides.

**References:** • INS v. Elias-Zacarias, 502 U.S. 478 (1992); Lukwago v. Ashcroft, 329 F.3d 157 (3d Cir. 2003); Chang v. INS, 119 F.3d 1055 (3d Cir.1997); Matter of N-M-, 25 I&N Dec. 526 (BIA 2011)



# Asylum Element: A Protected Ground (Cont'd)

## 5. Membership in a Particular Social Group

- Applicant must establish membership in the group alleged.  
The group must:
  - Share a common, immutable characteristic that they cannot change or should not be required to change,
  - Be defined with particularity, and be recognized as socially distinct within the society in question.
  - The applicant must delineate the proposed group or groups to the court. Matter of W-Y-C- & H-O-B-

### Examples of PSG

- Gay Honduran males; Women in relationships they are unable to leave; Former government employees; Witnesses to gang crimes; Honduran males who have opposed gang recruitment; Children who lack familial protection.



References: Matter of Acosta, 19 I&N Dec. 211 (BIA 1987); Matter of M-E-V-G-, 26 I&N Dec. 227 (BIA 2014); Matter of W-Y-C- & H-O-B-, 27 I&N Dec. 189 (BIA 2018)

# Asylum Element 03: Nexus



- An Asylum applicant must show that the harm suffered was on account of one of the five protected grounds.
- This is often referred to as the **"nexus."**
  - Nexus: a connection between the harm and one of the protected grounds.
- A protected ground need not have been the sole reason for the inflicted harm but must have been **"at least one central reason."**

# Asylum Element 04 : State Action

To be eligible for Asylum, an applicant must fear harm from:

The home country's government, for example:

- Police officers acting in their official capacity
- Members of the military
- Elected officials

OR

A private person or group that the government is unable or unwilling to control.

- The government's action or inaction is considered in the aggregate





# Asylum Element 05 : Discretion



- A grant of asylum is discretionary. Discretion requires the balancing of both positive and negative factors
- The BIA has emphasized that the facts should be weighed in favor of granting asylum, as "the danger of persecution should generally outweigh all but the most egregious of adverse factors." Matter of Pula
- Discretion may consider the following factors like family ties in the US, the likely impact of return, criminal history, applicant's safe haven in a third country, a totality of the circumstances.
- Immigration Judges and Asylum officers can technically deny asylum under the guise of discretion to avoid making a more precise, and likely more difficult, statutory determinations.

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# Credibility is Required for a Grant of Asylum



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**The applicant must be credible to win asylum**

---

- Applicants' whose testimony is plausible, detailed, internally consistent with their application for relief, and unembellished despite probing on cross examination.
-



# Credibility Factors

The Board of Immigration Appeals and the Immigration & Nationality Act provide several factors in making a credibility finding:

1

Detailed

2

Demeanor & Candor

3

Internal Consistency  
between the testimony &  
the written Asylum  
Application

4

Responsiveness in Testimony

5

Plausible

6

Totality of the  
Circumstances

## Real ID Act of 2005: Corroborating Evidence Generally required



**Real ID Act** was signed into law as an attachment to the **Emergency Supplemental Spending bill** in May 2005.

- Generally, the REAL ID Act states that the trier of fact may weigh the credible testimony along with other evidence of record. Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.
- Therefore, the applicant can meet her burden of proof through testimony alone, but only if an IJ determines that the testimony "is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee."

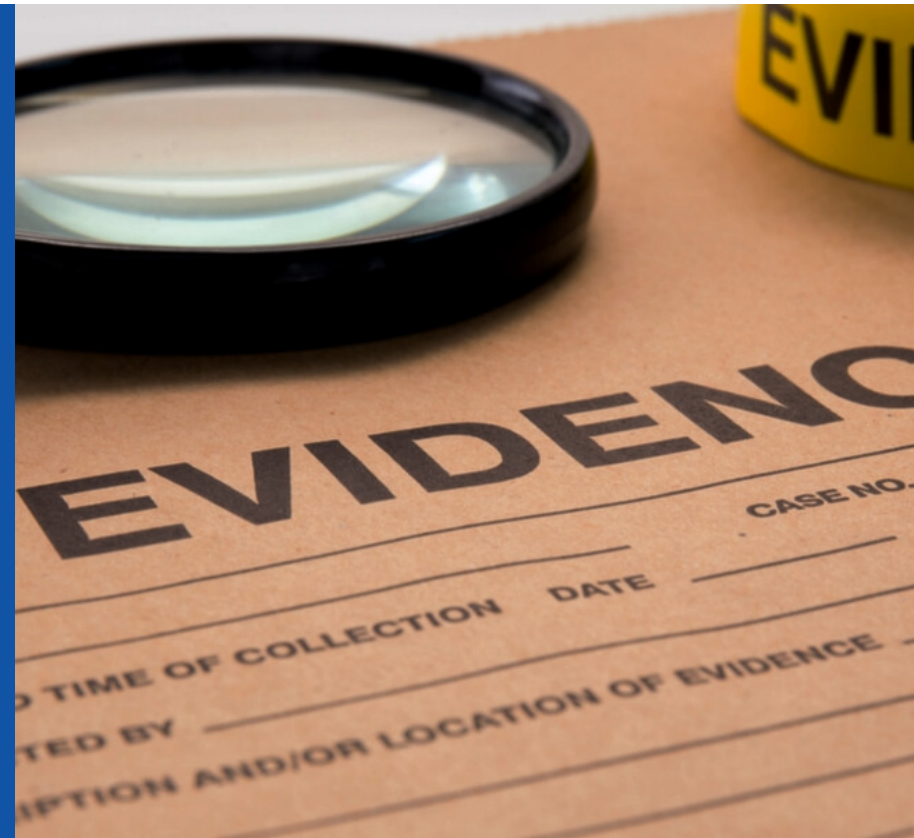
# TYPES OF EVIDENCE

- **Proof of Nationality**
  - Birth Certificates (translated); Cédulas; Nationality cards; Passports
- **Proof of Harm**
  - Pictures, hospital records; Evaluations of wounds
- **Affidavits/Letters** from witnesses who are aware
- **Police reports/Reports to government entities and their responses**
- **Background/Country Conditions Corroborating similar activities**
- **Expert Witness Affidavits & Testimony**
- **Political Party Membership Cards**  
**Proof of claimed Nationality or Race**  
**Proof of Religious membership—baptismal certificate**
- **Psychological Evaluations**



## TYPES OF EVIDENCE continued

- Newspaper articles
- Proof of political activities
- Photographs of your participation
- Employment Records
- School Records
  - Professional Degrees attained
- Business ownership or records
  - Proof of claimed Nationality or Race
  - Proof of Religious membership—baptismal certificate
- Death certificates







## CERTIFICATE OF TRANSLATION

### CERTIFICATE OF TRANSLATION

I, \_\_\_\_\_, am competent to translate from  
(name of translator)

\_\_\_\_\_ language into English and certify that the translation of  
(language)

\_\_\_\_\_  
(names of documents)

is true and accurate to the best of my abilities.

\_\_\_\_\_  
(signature of translator)

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(typed/printed name of translator)

\_\_\_\_\_  
(address of translator)

\_\_\_\_\_  
(address of translator)

\_\_\_\_\_  
(telephone number of translator)

# Asylum Element 5: Exercise of Discretion



- Asylum is a discretionary immigration benefit.

This is often referred to as the “**nexus.**”

- - Nexus: a link between the harm and a protected ground.

- A protected ground need not have been the sole reason for the inflicted harm but must have been “**at least one central reason.**”

# Humanitarian Asylum



A discretionary form of relief that may be available when Past persecution is established, but when Well founded fear is rebutted by the Government.

In this instance, one must show :

"Compelling reasons" arising out of severity of past persecution

- Harm suffered must be "atrocious," and
- Must be related to a protected ground

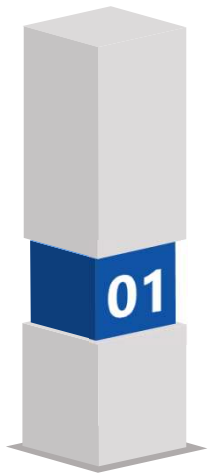
OR

There is a "reasonable possibility" of other serious harm

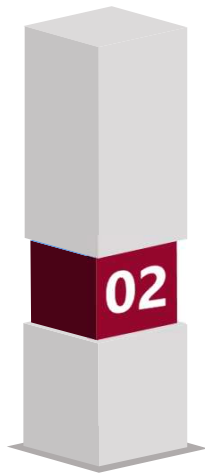
- Must be at least as severe as persecution
- Does NOT have to be related to a protected ground

# Bars to Asylum

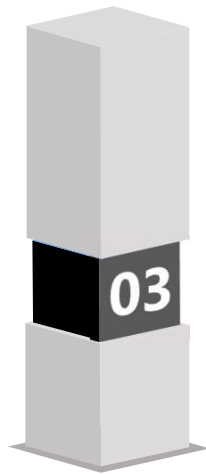
Several "bars" render a noncitizen ineligible for Asylum:



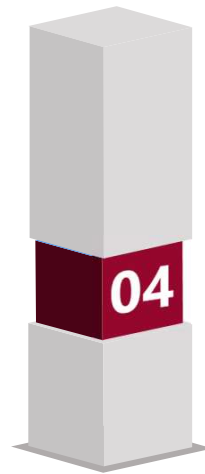
**One-year bar**



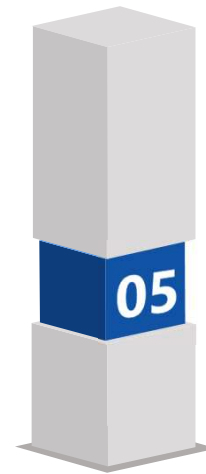
**Firm  
resettlement bar**



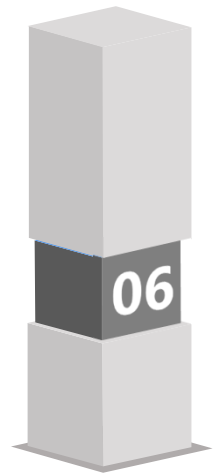
**Aggravated  
felony bar**



**Frivolous Asylum  
claim**



**Previously filed  
Asylum  
application**



**Reinstated  
removal order**



A photograph showing four people from behind, holding a large rainbow flag. They are standing in front of a makeshift shelter with a corrugated metal roof and mud-brick walls. The ground is dirt, and there is some debris and a blue plastic chair nearby. The text "ELEMENTS OF WITHHOLDING OF REMOVAL" is overlaid in large white letters.

# ELEMENTS OF WITHHOLDING OF REMOVAL

# How do you qualify for Withholding of Removal under the INA?

## Elements

1

It is more likely than not that they will face a future threat to their life or freedom; (HIGHER BURDEN THAN ASYLUM)

2

On account of;

3

One of the five protected grounds;

4

By the government or a private actor that the government is unwilling or unable to control.



**References: 241(b)(3) of the Immigration and Nationality Act (INA) ; 8 CFR § 208.16**  
*INS v. Stevic*, 467 U.S. 407 (1984).



# Road map to win Withholding of Removal

01

It is more likely than not that person will face a future threat to their life or freedom

02

On Account of

03

Race, Religion, Nationality, Political Opinion, Membership in a Particular Social Group

04

By the government or a private actor that the government is unwilling or unable to control

03

04

02

01

# WITHHOLDING OF REMOVAL STANDARD

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1. A finding of past persecution warrants a presumption of future persecution sufficient to establish withholding of removal eligibility. 8 CFR 208.16(b)(1)(i). Acts of persecution must have occurred in the US. See *Gonzalez-Medina v. Holder*, 641 F.3d 333 (9<sup>th</sup> Cir. 2011)

---

2. Where the applicant establishes past persecution, the government bears the burden of showing safe relocation or changed country conditions. If the government is successful, the applicant bears the burden to prove that relocation within the proposed country is unreasonable. 8 CFR 208.16(b)(1)(ii).

---

3. Where the applicant argues that relocation is unreasonable, Judge considers whether serious harm is possible in suggested relocation area, administrative, economic, judicial infrastructure, geographical limitations, social and cultural restraints to determine reasonability of relocation.

---

## WHEN PAST PERSECUTION IS NOT ESTABLISHED

Applicant must show that it is more likely than not that s/he would be persecuted on one of the 5 grounds and that it would be unreasonable to relocate within the country of persecution.





# WITHHOLDING OF REMOVAL STANDARD OF REVIEW

An alien must establish a clear probability of persecution to avoid deportation: A preponderance of the evidence:

more likely than not.

—51% chance of persecution.

**INS v. Stevic, 467 U.S. 407  
(1984)**



# WHAT HAPPENS WHEN GRANTED WITHHOLDING OF REMOVAL? Applicant is Forever in Limbo



Applicant is ordered removed and the Immigration Judge withholds removal, ordering government to not deport;

Applicant may not obtain travel permission; If the applicant leaves the US, s/he will self deport.

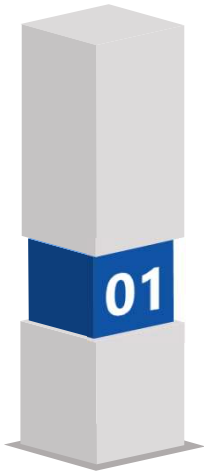
No pathway to permanent residence or citizenship.

Cannot petition or provide derivative status to family members

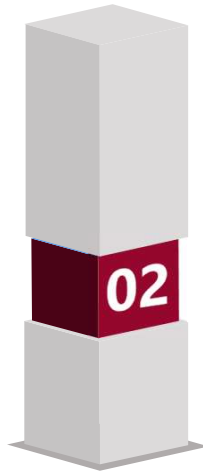
References: INS v. Stevic, 467 U.S. 407 (1984); Matter of I-S- and C-S-, 24 I&N Dec. 432 (BIA 2008)

# Bars to Asylum and Withholding of Removal

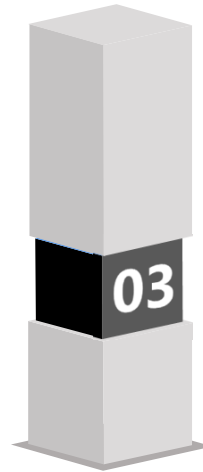
These bars render a noncitizen ineligible for Asylum and Withholding of Removal under the INA:



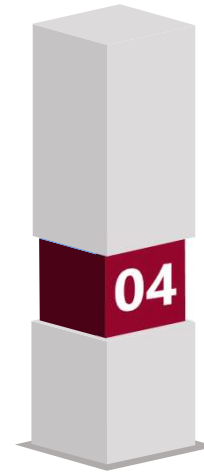
**Persecutor bar**



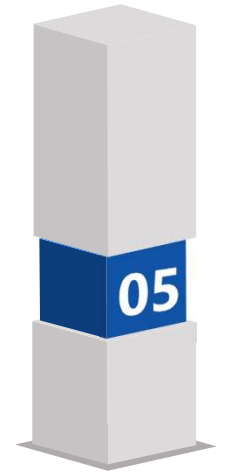
**Particularly  
serious crime bar**



**Serious  
nonpolitical  
crime bar**



**Security threat  
bar**



**Terrorist bar**

**However, the noncitizen may still be eligible for protection under the CAT.**

*Matter of S-S-*, Int. Dec. 3374 (BIA 1999) and *Matter of Frentescu*, 19 I. & N. Dec. 244 (BIA 1982) Descamps v. United States, 133 S. Ct. 2276 (2013); Moncrieffe v. Holder, 133 S. Ct. 1678 (2013) INA §241(b)(3)(B)



**STOP  
FGM**

# **ELEMENTS OF CONVENTION AGAINST TORTURE (CAT)**



# The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT)

## ON THIS DAY IN HUMAN RIGHTS HISTORY

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Torture Convention") entered into force on 26 June 1987.

### What is the Convention Against Torture

- United States signed on to the Convention in 1988 and ratified by Congress in a 1994 treaty:
- Each signatory nation must not "expel, return . . . or extradite" a person to a country where there are "substantial grounds for believing that he would be in danger of being subjected to torture."

### What is the benefit:

- Entitled to protection from removal and work authorization
- BUT**
- It is not a pathway to permanent residency like Asylum).
- Deferral of Removal if granted

# How do you qualify for protection under the Convention Against Torture?

## The applicant must establish that:



**It is more likely than not they would be tortured if returned to their home country.**

- More likely than not = Greater than a 50% chance of torture
- High bar—Higher than asylum's "well-founded fear"



**The torture must be** at the hands of a public official or other person acting in an official capacity or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

# Differences between 2 types of CAT Protection:

## The applicant must establish that:



### Withholding of Removal under CAT

- S/he has not been convicted of a "particularly serious crime" or an aggravated felony for which the term of imprisonment was five years or more;
- Cannot have been engaged in the persecution of others;
- Cannot have committed a serious non-political crime outside of the U.S, and/or been deemed a danger to the security of the United States



### Deferral of Removal under CAT

- Where s/he is ineligible for Withholding of Removal under CAT because of the above-mentioned disqualifiers.

The government can terminate Deferral of Removal under CAT much easier than Withholding of Removal under CAT.

# PUBLIC OFFICIAL IS DEFINED AS



## EXAMPLES & EXPLANATION OF PUBLIC OFFICIAL

- An elected official
- An on-duty police officer
- An on-duty military officer
- If the official is NOT acting in an official capacity (i.e., not acting under color of law) – applicant cannot win a CAT claim
- It can also include any person who is acting outside of the official scope or duties of their position
- Conduct by an official who is not acting in an official capacity is not covered. Matter of O-F-A-S-, 28 I&N Dec. 35 (A.G. 2020)
- The test for when an official is “in an official capacity” for purposes of CAT eligibility is whether the official was able to engage in the conduct because of his or her government position, or whether the official could have done so without connection to the government. Matter of J-G-R, 28 I&N Dec. 733 (BIA 2023)



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## Can CAT protection be denied for Discretionary reasons?



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**CAT protection does NOT have a discretionary component. And, therefore, cannot be denied based upon discretion. 8 CFR § 1208.16(c)(4)**

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# How is TORTURE defined

## TORTURE IS :



**Acts specifically intended to inflict severe physical or mental pain and suffering;**

- Intentional and NOT negligent infliction of harm.

Matter of J-R-G-P; Matter of J-E-: **Need specific intent to cause pain and suffering.**

- Must be for the purpose of coercing information or seeking a confession, to intimidate for any reason



- By or at the instigation of or with the consent or acquiescence of a public official who has custody or physical control of the victim;
- Not arising from lawful sanctions.

**References:** In re J-E-, 23 I&N Dec. 291 (BIA 2002);

# Instigation of or with the Consent or Acquiescence of...



The standard used is whether the acts were “under the color of law”.  
See: *Matter of Y-L-, A-G- & R-S-R*, 23 I&N Dec. 270 (A.G. 2002)

## ➤ Acts by Lower Level Employees of the Government

BIA: Rogue Officers do not act under the color of law  
See *Matter of O-F-A-S-*, 28 I&N Dec. 35 (A.G. 2020)

## ➤ Acquiescence: Torture by an individual or group of individuals not officially part of the government.

- In half of the federal circuits, acquiescence does not require actual knowledge or willful acceptance.
- BIA: Rejects willful blindness; instead, officials are willfully accepting of the . . . torturous activities. Rejected by 2<sup>nd</sup> Circuit.

## ➤ Government taking steps to curb the behavior On-duty military officer

- Taking steps to address the activities of private actors does not rule out acquiescence. 2<sup>nd</sup> Cir BIA: Inability to control a group doesn't le *De La Rosa v. Holder*, 598 F.3d 103 (2d Cir. 2010) & *Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004)
- *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000) protection does not extend to persons who fear entities that a government is unable to control.



[www.wbasny.org](http://www.wbasny.org)

The background of the slide is a close-up, slightly blurred photograph of a bronze statue of Lady Justice. The statue is blindfolded with a cloth and holds a pair of scales of justice in her raised right hand. The lighting is dramatic, highlighting the texture of the bronze and the folds of the scales.

# Thank You for Attending