



**U.S. Citizenship and
Immigration Services**

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MEMORANDUM TO: Lori Scialabba
Associate Director
Refugee, Asylum and International Operations

FROM: Lynden D. Melmed
Chief Counsel

A handwritten signature in black ink, appearing to read "L. Melmed", written over the printed name of the Chief Counsel.

SUBJECT: Guidance on Matter of C-A-

On June 15, 2006, the Board of Immigration Appeals published Matter of C-A-, 23 I&N Dec. 951 (BIA 2006), aff'd, Castillo-Arias v. U.S. Att'y Gen., 446 F.3d 1190 (11th Cir. 2006), which addresses the meaning of the particular social group ground for purposes of establishing eligibility for asylum and provides new factors to consider when analyzing such claims. The purpose of this memorandum is to provide guidance to asylum officers on the application of this decision.

In Matter of C-A-, the Board considered the asylum application of a Colombian national who feared harm by the Cali drug cartel on account of his having informed the Colombian national police of cartel activities. The applicant claimed to have gained significant information about the operation of the Cali drug cartel through an acquaintance, without any criminal involvement on the applicant's part, and to have passed this information on to a local authority who was investigating and prosecuting drug traffickers in Cali, Colombia. The applicant claimed that the drug cartel learned of his cooperation with authorities and that he was at risk of persecution by the cartel for this reason.

The Board denied asylum and determined that neither "noncriminal informants" nor any of the other possible social group formulations under the facts of this case (e.g., "former noncriminal informants" and "noncriminal informants working against the Cali cartel") constituted a particular social group for purposes of INA section 101(a)(42)(A). This memorandum explains how the reasoning of this decision applies to the analysis of particular social group claims, particularly with respect to the questions of whether a particular social group exists, and, if so, whether the claimed harm is imposed on account of membership in that group.

I. Particular Social Group Analysis

A. The “Immutable or Fundamental Characteristic” Test

1. *Generally*

In Matter of C-A-, the Board first reaffirmed the reasoning of Matter of Acosta, 19 I&N Dec. 211 (BIA 1985), modified on other grounds, Matter of Mogharrabi, 19 I&N Dec. 439 (BIA 1987), as the starting point for social group analysis. See 23 I&N Dec. at 955. In Acosta, the Board required that members of a particular social group share a common, immutable characteristic. The Board explained that:

The shared characteristic might be an innate one such as sex, color, or kinship ties, or in some circumstances it might be a shared past experience such as former military leadership.... [W]hatever the common characteristic... it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.

19 I&N Dec. at 233 (rejecting claimed social group of “taxi drivers” because characteristics that defined taxi drivers were not immutable; the drivers could change jobs); see also Matter of H-, 21 I&N Dec. 337 (BIA 1996) (holding that the Marehan subclan of Somalia, the members of which share ties of kinship and linguistic commonalities, are members of a particular social group).

The Board clarified in Matter of C-A-, however, that while an immutable or fundamental characteristic is a requirement for a particular social group to exist, not all groups that meet this test are particular social groups. 23 I&N Dec. at 958. According to the Board, an applicant must also establish social perception or “visibility” of the group. The Board’s guidance on this aspect of social group analysis is discussed in more detail in section I.B. below.

2. *Past Experience as “Immutable Characteristic”*

In Matter of C-A-, the Board addressed the applicability of the “immutable or fundamental characteristic” test to groups defined by a past experience commonly shared by its members. The Board made clear that such groups satisfy this test. 23 I&N Dec. at 958 (“A past experience is, by its very nature, immutable, as it has already occurred and cannot be undone.”); see also Matter of Fuentes, 19 I&N Dec. 658, 662 (BIA 1988) (observing that alien’s status as former member of national police was immutable characteristic because it was beyond capacity of alien to change it). An alleged group of aliens sharing a past experience, however, may fail to constitute a particular social group if it fails to meet the social distinction test outlined below. In addition, as discussed below, in cases involving the shared past experience of having been a police officer, a soldier, or a government informant, the “on account of” or “nexus” element may require close examination.

3. *“Fundamental” Characteristic*

Although the issue was not discussed in Matter of C-A-, it is important to bear in mind that even if the common characteristic is one that the applicant can change, it can still form the basis for a particular social group under Acosta if it is so fundamental to identity or conscience that group

members should not be required to change it. This aspect of the Acosta test is not well developed in the case law.¹ The general rule is that occupations are not immutable or fundamental, as individuals are generally free to change professions or occupations, and “the internationally accepted concept of a refugee . . . does not guarantee an individual a right to work in the job of his choice.” Matter of Acosta, 19 I&N Dec. at 234 (citing 1 A. Grahl--Madsen, The Status of Refugees in International Law 214 (1966)). Depending on the facts, however, it is possible that an applicant could, under some circumstances, establish that a profession or occupation is so fundamental to his or her identity or conscience as to meet the Acosta standard. One factor bearing upon “fundamentality” is the degree to which requiring the group members to abandon or change the shared, alterable trait would contravene their most fundamental human rights.

The fact that group members voluntarily assumed an extraordinary risk of serious harm in taking on the trait that defines the group may in some cases be evidence of such fundamentality. The Board in Matter of C-A- discussed voluntary assumption of risk as a factor that likened that case to the unsuccessful claim of a police officer or soldier as described in Matter of Fuentes. It is important to keep in mind, however, that an applicant’s decision to assume group membership in spite of significant risks could, in some cases, provide evidence that it is so fundamental to his or her identity that he or she should not be required to change it. The relevance of an applicant’s voluntary assumption of risk will depend, of course, on the facts of the case. In some cases, by contrast, an applicant might assume risks solely for material reward, which would not support a claim of fundamentality.

Neither Matter of Fuentes nor Matter of C-A- should be read to add any “per se” “assumption of the risk” theory to asylum law. The fact that an applicant assumed a risk in engaging in activity or associations that placed the applicant at risk of persecution does not, in itself, render an applicant ineligible for asylum. For example, people throughout history have taken enormous risks to both themselves and family members to practice a particular religion or express a political view. This is no different for particular social group cases. The Board in Matter of C-A- noted that a person who agrees to serve as a government informant in return for compensation “takes a calculated risk and is not in a position to claim refugee status should such risks materialize.” 23 I&N Dec. at 958. But this decision should not necessarily be read as placing a government informant who acts out of a sense of civic duty or conscience into the same category. Rather, under facts like those involved in Matter of C-A-, it will ordinarily be the case that uncompensated government informants who act out of a sense of civic duty or responsibility, without more, do not qualify as a particular social group because they lack “social visibility.” It is conceivable, however, under different types of fact patterns, that such a group might so qualify if it satisfied additional criteria discussed by the Board, including “social visibility.”

Whether a shared, alterable trait or characteristic is so fundamental to the group members’ identities or consciences that they should not be required to change it or disassociate to avoid persecution is often a difficult, fact-intensive determination. When such issues arise and are important to the adjudication of a particular social group-based application, asylum officers should consult with their respective supervisors.

¹ The Board in Matter of Kasinga, 21 I&N Dec 357, 366 (BIA 1996) (en banc), found the characteristic of having intact genitalia is so fundamental that a young woman should not be required to change it.

B. Social “Visibility” or “Distinction”

While either immutability or fundamentality is required of any particular social group, the fact that a characteristic is immutable or fundamental does not alone mean that those who share it are necessarily members of a particular social group. See Matter of C-A-, 23 I&N Dec. at 958 (observing that although past experience is immutable, “that does not mean that any past experience that may be shared by others suffices to define a particular social group for asylum purposes”). Under Matter of C-A-, a particular social group must also have “social visibility.” 23 I&N Dec. at 959. In other words, the group must be recognizable and distinct in the society; often, a distinctive trait shared among group members will be an indication that the group is perceived as socially visible or distinct. See id. As an example, the Board cited the Marehan subclan in Somalia, members of which would likely be “recognizable [as Marehan] to others in Somalia.” Id. (citing Matter of H-, 21 I&N Dec. 337 (BIA 1996)); see also Castellano-Chacon v. INS, 341 F.3d 533, 548 (6th Cir. 2003) (noting that a society’s “external perception” of a group may provide evidence that a particular social group exists); Gomez v. INS, 947 F.2d 660, 664 (2d Cir. 1991) (“A particular social group is comprised of individuals who possess some fundamental characteristic in common which serves to distinguish them in...the eyes of the outside world in general.”). Members of the Marehan share the distinct trait of being members of a particular clan in a society in which social distinctions are drawn based on membership in a clan. Clan membership might not form a particular social group in a country where social distinctions are not based on clan membership, but rather on closer family relationships, such as the nuclear family. Thus, the group not only must share a common relationship or characteristic, narrowing it from the general population, but also must be socially recognizable or distinct. The Board clarified, however, that neither a voluntary associational relationship among group members nor cohesiveness or homogeneity among group members is required. Matter of C-A-, 23 I&N Dec. at 956-57.

Applying the social distinction test, the Board determined in Matter of C-A- that the proffered trait of being noncriminal informants was not sufficiently distinct or recognizable in Colombian society to constitute a “particular social group” under INA 101(a)(42)(A). According to the Board, the record reflected that noncriminal informants (and noncriminal informants “who act out of some sense of civic duty rather than for compensation”) were not distinguished by this characteristic in Colombian society. See 23 I&N Dec. at 960-61.

Thus, under this part of the particular social group analysis, an asylum officer must examine whether the society in question finds the group to be recognizable and distinct. A particular social group is not cognizable in cases where, although the persecutor personally views the victim’s characteristic as significant, there are no broader social perceptions of the victim’s status.

C. Social “Visibility” or “Distinction” Requirement is in Addition to Requirements of “Immutable or Fundamental Characteristic” Test

The social “visibility” or “distinction” test is not an alternate test for establishing a social group, when an immutable or fundamental characteristic is not present. Some international guidance might be read as applying it as an alternate test. Guidance on the meaning of a particular social group from the United Nations High Commissioner for Refugees (UNHCR), for example, is cited in Matter of C-A- and states that a particular social group is:

A group of persons who share a common characteristic other than their risk of being persecuted, or who are perceived as a group by society. The characteristic will often be one which is innate, unchangeable, or which is otherwise fundamental to identity, conscience or the exercise of one's human rights.

23 I&N Dec. 956 (quoting "Guidelines on International Protection: 'Membership of a particular social group' within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, U.N. Doc. HCR/GIP/02/02 (May 7, 2002)). The Board, however, did not adopt the UNHCR approach in Matter of C-A-. Rather, the Board made clear that the Acosta test imposes an absolute requirement that, in order for a particular social group to exist, members of the group must, at a minimum, share a common trait that is either immutable or fundamental to the identity or conscience. Under Matter of C-A-, a social group must also be visible within the society such that a distinction is drawn between group members and the rest of society.

D. Particular Social Group Cannot be Defined by Terrorist, Criminal or Persecutory Activity or Association, Past or Present

Under general principles, the shared characteristic of terrorist, criminal or persecutory activity or association, past or present, cannot form the basis of a particular social group. See Bastanipour v. INS, 980 F.2d 1129, 1132 (7th Cir. 1992) ("Whatever its precise scope, the term 'particular social groups' surely was not intended for the protection of members of the criminal class in this country."); see also Elien v. Ashcroft, 364 F.3d 392 (1st Cir. 2004) (holding that "deported Haitian nationals with criminal records in the United States" is not a particular social group). The facts of Matter of C-A- did not involve such activity or association, and the Board therefore did not have occasion to discuss this limitation on the social group definition. Asylum officers, however, should keep this requirement in mind, in addition to the requirements that a social group must be defined by an "immutable or fundamental characteristic" and must reflect social distinctions such that the persecutor's motives are not purely personal.

II. The "On Account Of" or "Nexus" Element in the Context of Police, Soldiers, and Government Informers

In addition to guidance on the meaning of a particular social group, Matter of C-A- also contains significant reasoning that specifically addresses fact patterns involving police officers, soldiers or government informants. The concepts raised in this aspect of the decision in Matter of C-A- relate primarily to the "on account of" or "nexus" element of the refugee definition and relate particularly to situations involving participants in law enforcement or military conflicts.

The Board specifically recognized, in both Matter of C-A- and Matter of Fuentes, that it may be possible, under some circumstances, for an applicant to establish membership in a viable particular social group consisting of "former police officers" or "former soldiers." See Matter of C-A-, 23 I&N Dec. at 959; Matter of Fuentes, 19 I&N Dec. at 662. As noted above, the past experience is immutable, and therefore meets the test from Acosta. Similarly, as discussed above, current service as a police officer, soldier or government informant, under some circumstances, could define a particular social group if that service is so fundamental to the applicant's identity that he or she should not be required to change it. The applicant, of course, would also have to

demonstrate that the purported social group has a distinct, recognizable identity in the society.² See Matter of C-A-, 23 I&N Dec. at 960-61. If this additional requirement is also met, it is possible, depending upon the facts, that an applicant could establish a cognizable social group in such circumstances. Even if membership in a particular social group is established in such a case, however, the determination that the persecution was or will be “on account” of the particular social group is especially difficult and requires special scrutiny. This would be true whether the group is defined by past or present service.

The specific question at issue in Matter of C-A- was whether a former government informant on a drug cartel in Colombia could establish a particular social group-based asylum claim based on a fear of retribution by the cartel on account of the applicant’s unalterable characteristic of having informed on the cartel’s illicit activity. As discussed above, the Board found the applicant’s status as a former informant not to be a particular social group. Furthermore, the Board held that he could not establish that the persecution would be “on account of” his membership in that group, likening the applicant’s situation to that of the applicant in Matter of Fuentes. See Matter of C-A-, 23 I&N Dec. at 958 (citing Matter of Fuentes, 19 I&N Dec. 658).

In Matter of Fuentes, the Board held that a former member of the national police of El Salvador could not demonstrate persecution on account of membership in a particular social group or on account of any other protected ground based on attacks by guerillas while performing his official duties as a police officer. See 19 I&N Dec. at 661; see also Matter of C-A-, 23 I&N Dec. at 958-59 (describing holding in Matter of Fuentes). The Board observed, “Police [officers] are by their very nature public servants who embody the authority of the state . . . [and] are often attacked either because they are (or are viewed as) extensions of the government’s military forces or . . . embodiments of the power of the state.” Matter of Fuentes, 19 I&N Dec. at 661. “In such circumstances,” the Board continued, “the dangers the police face are no more related to their personal characteristics or political beliefs than are the dangers faced by military combatants. Such dangers are perils arising from the nature of their employment and domestic unrest rather than ‘on account of’ immutable characteristics or beliefs.” Id.

Thus, harm inflicted on a police officer or a soldier in order to prevent the victim from carrying out his or her role in law enforcement or in a war is not persecution on account of social status as a police officer or soldier. Likewise, harm inflicted on a former police officer or soldier in order to seek revenge for actions he or she took in the past is not on account of the victim’s status as a former police officer or soldier. See Matter of C-A-, 23 I&N Dec. at 959; see also Matter of Fuentes, 19 I&N Dec. at 662-63.

This reasoning is ultimately relevant to the determination that the harm suffered or feared has a nexus to a protected characteristic. Thus, even if an applicant establishes that police officers or soldiers, current or former, are a particular social group, this nexus element will require exacting analysis. In order to succeed in such a claim, the applicant would have to demonstrate that at least one central reason motivating the alleged persecutor is the social *status* that attaches to the applicant by virtue of his or her current or former service. See Matter of C-A-, 23 I&N Dec. at 959; see also Matter of Fuentes, 19 I&N Dec. at 662. If, on the other hand, the persecutor targets a former police officer principally out of reprisal for the former officer’s role in disrupting particular criminal activity, the persecution would not be considered to be on account of the applicant’s membership in

² The Board concluded in Matter of C-A- that the applicant had not demonstrated that former noncriminal informants working against the Cali cartel had such “social visibility” in Colombia. 23 I&N Dec. at 960-61. The Board’s “visibility” analysis is discussed in section I.B above.

a group of “former police officers.” Similarly, when viewed from the perspective of current service, if the persecutor targets a police officer in order to prevent or frustrate the victim’s performance of his or her duties, the harm is not on account of the applicant’s membership in a group of current “police officers.” Such a claim would therefore fail on the “nexus” element, even if the applicant has established membership in a group that constitutes a particular social group.

Matter of C-A- makes clear that this same type of reasoning applies to former government informants, paid or unpaid, as well. The evidence in Matter of C-A- indicated that the Cali cartel was not and is not influenced by any social status or distinction of informants, but rather that it targets informants simply to seek revenge and sow terror. 23 I&N Dec. at 960-61. Specifically, the Board observed:

The Cali cartel and other drug cartels [in Colombia] have directed harm against anyone and everyone perceived to have interfered with, or who might present a threat to, their criminal enterprises. In this sense, informants are not in a substantially different situation from anyone who has crossed the Cali cartel or who is perceived to be a threat to the cartel’s interests . . . [, including] politicians, labor organizers, human rights monitors, and—overwhelmingly—peasant farmers.

Id. (internal citations omitted).

Thus, even if informants did constitute a particular social group in this case, it was not on account of membership in the group that the applicant in Matter of C-A- was targeted.

III. Summary

Under current precedent, including Matter of C-A-, there are three basic questions that must be answered in order to conclude that individuals are members of a particular social group. First, is the trait asserted to define the group one that is either immutable or fundamental, within the meaning of the test set out in Acosta? Second, is the group socially visible or distinctive, as opposed to being a group that has significance only to the persecutor? And third, is the asylum officer satisfied that the group is not defined by terrorist, criminal or persecutory activity or association, past or present?

Under Matter of C-A-, when evaluating claims based on membership in a group of police officers, soldiers, or government informants, asylum officers must pay close attention to the “nexus” or “on account of” element. If the persecutor is motivated to harm the applicant solely in order to gain revenge for actions that the applicant took as part of former service as a police officer, soldier or informant, the “nexus” requirement is not met. If, on the other hand, the persecutor is motivated to harm the applicant on account of a social status that the applicant has because of the former service, then the harm may be on account of group membership.

Of course, the applicant must also satisfy all the other elements of the refugee definition in order to be granted asylum. The asylum officer must examine each element separately, even though certain types of evidence may be relevant to several elements. For example, evidence relevant to evaluating social distinctions for the purpose of deciding whether a particular social group exists will often also be relevant to whether the past or feared harm is “on account of” the applicant’s membership (or imputed membership) in the particular social group. The same evidence might also be relevant to the state’s willingness or ability to protect an applicant from a non-state persecutor. Social attitudes often may affect both an individual persecutor’s motivations and government

policies and practice. While there may be some facts that are relevant to more than one aspect of the analysis, however, those facts must be analyzed separately, using the appropriate standard, for each element.