



July 11, 2018

PM-602-0162

Policy Memorandum

SUBJECT: Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with *Matter of A-B-*

Purpose

This policy memorandum (PM) provides guidance to U.S. Citizenship and Immigration Services (USCIS) officers for determining whether a petitioner is eligible for asylum or refugee status in light of the Attorney General's decision in *Matter of A-B-*. The guidance in this memorandum supersedes all previous guidance dealing specifically with asylum and refugee eligibility that is inconsistent with this guidance.

Scope

This PM applies to and shall be used to guide determinations by all USCIS employees. USCIS personnel are directed to ensure consistent application of the reasoning in *Matter of A-B-* in reasonable fear, credible fear, asylum, and refugee adjudications.

Authority

Sections 101(a)(42), 207, 208, and 235 of the Immigration and Nationality Act (INA) (8 U.S.C. §§ 1101(a)(42), 1157, 1158, 1225); Section 451 of the Homeland Security Act of 2002 (6 U.S.C. § 271); Title 8 Code of Federal Regulations (8 C.F.R.) Parts 207, 208, and 235.

I. Background

On June 11, 2018, the Attorney General published *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), which addresses how to adjudicate protection claims based on “membership in a particular social group” and clarifies the substantive elements of eligibility. The purpose of this memorandum is to provide guidance to asylum and refugee officers on the application of this decision while processing reasonable fear, credible fear, asylum, and refugee claims.¹

In the decision, the Attorney General overruled the Board of Immigration Appeals' (BIA) precedent decision in *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014), on which the BIA had relied in finding

¹ Although the alien in *Matter of A-B-* claimed asylum and withholding of removal, the Attorney General's decision and this PM apply also to refugee status adjudications and reasonable fear and credible fear determinations. See INA §§ 207(c)(1), 208(b)(1), 101(a)(42)(A), 235(b)(1); 8 C.F.R. § 208.31.

A-B- eligible for asylum. The Attorney General found that, in analyzing the particular social group at issue in *A-R-C-G-*, “married women in Guatemala who are unable to leave their relationship,” the BIA failed to correctly apply the legal standards for a cognizable particular social group set forth in *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014), *aff’d in relevant part and vacated in part on other grounds in Reyes v. Lynch*, 842 F.3d 1125 (9th Cir. 2016); *cert. denied*, 138 S. Ct. 736 (2018), which require that a group be composed of members who share a common immutable characteristic, be defined with particularity, and be socially distinct within the society in question.

In addition, the Attorney General stressed the requirement that membership in the particular social group must be a central reason for the persecution, and that officers must consider, where applicable and consistent with the regulations, whether internal relocation is reasonably available to avoid future persecution before granting asylum. *See Matter of A-B-*, 27 I&N Dec. at 337-39, 343-45. In cases where the persecutor is a non-government actor, the applicant must show the harm or suffering was inflicted by persons or an organization that his or her home government is unwilling or unable to control, [REDACTED].

Section 103(a) of the INA provides that “determination and ruling by the Attorney General with respect to all questions of law shall be controlling.” Further, under 8 C.F.R. §§ 103.10(b) and 1003.1(g), “decisions of the [BIA], and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security” and “shall serve as precedents in all proceedings involving the same issue or issues.” Accordingly, the decision in *Matter of A-B-* was effective immediately and is binding on all USCIS officers. Officers should not cite or rely upon *Matter of A-R-C-G-* in any adjudications going forward. Officers should continue to follow other binding precedents [REDACTED] including *Matter of M-E-V-G-* and *Matter of W-G-R-*, both of which were cited favorably in the Attorney General’s decision.

II. USCIS Officers’ General Duties

To be eligible for asylum or refugee status, the alien must establish in part that he or she was persecuted or has a well-founded fear of persecution on account of one of the protected grounds, is unable or unwilling to avail himself or herself of the protection of his or her country of nationality (or, if stateless, country of last habitual residence), and does not fall within one of the grounds for ineligibility. Second, if eligibility is established, the USCIS officer must then consider whether or not to exercise discretion to grant the application.

In *Matter of A-B-*, the Attorney General reaffirmed the duty to determine whether the facts of each case satisfy all the elements for asylum. *Matter of A-B-*, 27 I&N Dec. at 340 (“The respondent must present facts that undergird each of these elements, and the asylum officer, immigration judge, or the Board has the duty to determine whether those facts satisfy all of the legal requirements for asylum.”). The officer must determine the applicant’s credibility in making findings of fact. *Id.* at 341–42. If an asylum application is fatally flawed on one essential ground—“for example, for failure to show membership in a proposed social group”—then a USCIS officer need not examine the remaining elements for asylum. *Id.* at 340.

III. Proving Persecution or a Well-Founded Fear of Persecution Based on Membership in a Particular Social Group

[REDACTED]

[REDACTED] Claims based on membership in a particular social group require [REDACTED]: (1) membership in a particular group, which is composed of members who share a common immutable characteristic, is defined with particularity, and is socially distinct within the society in question; (2) that her membership in that group is a central reason for her persecution; and (3) that the alleged harm is inflicted by the government of her home country or by persons that the government is unwilling or unable to control. INA § 208(b)(1)(B)(i); *Matter of A-B-*, 27 I&N Dec. at 320.

A. Legal Framework for Analysis of Particular Social Group Claims

i. Immutability

The members of a proposed social group must have “a common immutable characteristic.” *Matter of A-B-*, 27 I&N Dec. at 320; *see also Matter of M-E-V-G-*, 26 I&N Dec. at 237-38 (“Our interpretation of the phrase ‘membership in a particular social group’ incorporates the common immutable characteristic standard set forth in *Matter of Acosta*, 19 I&N Dec. [211,] 233 [(BIA 1985)], because members of a particular social group would suffer significant harm if asked to give up their group affiliation, either because it would be virtually impossible to do so or because the basis of affiliation is fundamental to the members’ identities or consciences.”).

ii. Particularity

The Attorney General reaffirmed that the particular social group also must be defined with particularity. *Matter of A-B-*, 27 I&N Dec. at 320, 335-36. A group is particular if the “group can accurately be described in a manner sufficiently distinct that the group would be recognized, in the society in question, as a discrete class of persons.” *Id.* at 330 (citing *Matter of E-A-G-*, 24 I&N Dec. 591, 594 (BIA 2008)). A particular social group must not be “amorphous, overbroad, diffuse, or subjective,” and “not every ‘immutable characteristic’ is sufficiently precise to define a particular social group.” *Id.* at 335 (citing *Matter of M-E-V-G-*, 26 I&N Dec. at 239).

[REDACTED]

[REDACTED] Officers must analyze each case on its own merits in the context of the society where the claim arises. [REDACTED]



iii. Social Distinction

The Attorney General also reaffirmed that to satisfy the social distinction requirement, a particular social group “must be perceived as a group by society.” *Id.* at 330. “[I]f the common immutable characteristic were known, those with the characteristic in the society in question would be meaningfully distinguished from those who do not have it.” *Id.* (citing *Matter of M-E-V-G-*, 26 I&N Dec. at 238). In other words, “[m]embers of a particular social group will generally understand their own affiliation with that group, as will other people in their country.” *Id.*

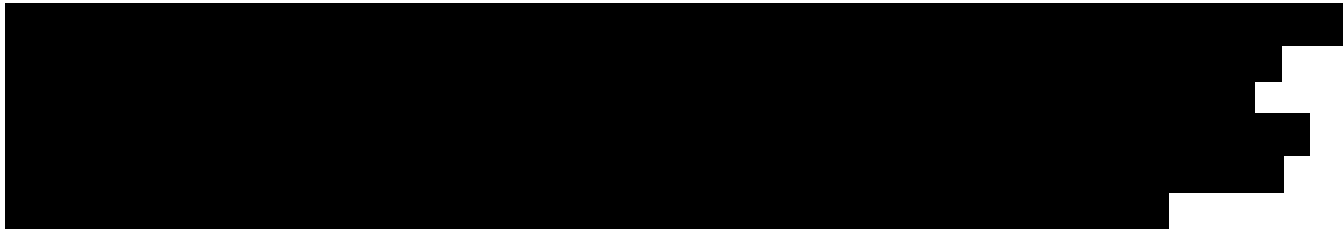


As with all proposed particular social groups, officers should carefully apply the statutory factors to determine whether the group qualifies under the law.

² Asylum officers are reminded that interviews are to be conducted in a nonadversarial manner with the purpose to elicit all relevant and useful information bearing on the applicant’s eligibility for asylum. *See* 8 C.F.R. § 208.9(b).

iv. Defined Independently of the Persecution at Issue

The Attorney General reaffirmed in *Matter of A-B-* that, to be cognizable, a particular social group “must exist independently of the harm asserted.” 27 I&N Dec. at 334; *see also id.* at 335 (“The individuals in the group must share a narrowing characteristic other than their risk of being persecuted” (quoting *Rreshpja v. Gonzales*, 420 F.3d 551, 556 (6th Cir. 2005))). This requirement is essential because otherwise, “the definition of the group moots the need to establish actual persecution.” *Id.*



B. Proving Persecution, Nexus, and Internal Relocation

i. Persecution

Applicants must demonstrate past persecution or the requisite likelihood of future persecution.³ The Attorney General observed that “persecution” consists of three elements: (1) it involves “an intent to target a belief or characteristic,” (2) “the level of harm must be severe,” and (3) “the harm or suffering must be inflicted either by the government of a country or by persons or an organization that the government was unable or unwilling to control.” *Matter of A-B-*, 27 I&N Dec. at 337 (quotation marks omitted); *see also id.* (observing that “private criminals are more often motivated by greed or vendettas than by an intent to ‘overcome the protected characteristic of the victim’” (quoting *Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996) (alterations omitted))).

³ Persecution is defined as “a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive.” *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985), *modified on other grounds, Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987). As used in section 101(a)(42)(A) of the INA, the word “persecution” “clearly contemplates that harm or suffering must be inflicted upon an individual . . . for possessing a belief or characteristic a persecutor seeks to overcome.” *Id.* at 223, *as modified by Matter of Kasinga*, 21 I&N Dec. 357, 365 (BIA 1996); *see Matter of A-B-*, 27 I&N Dec. at 337 (citing *Matter of Kasinga*). It “does not embrace harm arising out of civil strife or anarchy,” a definition specifically rejected by Congress by excluding the term “displaced persons” from the Senate’s version of the Refugee Act of 1980. *Id.*

In a case where the alleged persecutor is not affiliated with the government, the applicant must show the government is unable or unwilling to protect him or her. *Id.* at 337.

[REDACTED]

[REDACTED]

[REDACTED]

ii. Nexus

Membership in the particular social group must also be a central reason for the persecution. Aliens may suffer threats to their lives or freedom, or experience suffering or harm for a number of reasons, including social, economic, family, or personal circumstances. But, as the Attorney General emphasized in *Matter of A-B-*, “the asylum statute does not provide redress for all misfortune.” *Id.* at 318. The asylum statute was not intended as a remedy for “the numerous personal altercations that invariably characterize economic and social relationships.” *Id.* at 322. As such, when a private actor inflicts violence based on a personal relationship with the victim, the victim’s membership in a larger group often will not be “one central reason” for the abuse. *Id.* at 338–39. In a particular case, the evidence may establish that a victim of domestic violence was attacked based solely on her preexisting personal relationship with her abuser. Also, even if the persecutor is a member of the government, there is no governmental nexus if the dispute is a “purely personal matter.” *Id.* at 339 n.10.

iii. Internal Relocation

All officers must also consider whether internal relocation in the alien’s home country presents a reasonable alternative before granting asylum or refugee status. *Id.* at 345 (“Beyond the standards that victims of private violence must meet in proving refugee status in the first instance, they face the

additional challenge of showing that internal relocation is not an option (or in answering DHS's evidence that relocation is possible). When the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, by her country's government."). If an asylum applicant does not show past persecution, then he or she "bear[s] the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecution is by a government or government-sponsored." 8 C.F.R. § 208.13(b)(3)(i). If the asylum applicant does establish past persecution or if the persecutor is a government or is government-sponsored, then the officer must presume that internal relocation is unreasonable "unless the Service establishes by a preponderance of the evidence that, under all the circumstances, it would be reasonable for the applicant to relocate." *Id.* § 208.13(b)(3)(ii). In cases where internal relocation presents a reasonable solution, the officer should deny the applicant's claim consistent with the regulations. *Id.* § 208.13(b)(1)(i)(B), (b)(2)(ii).

C. Evaluating Credibility

An officer must also take into account an applicant's overall credibility when adjudicating a reasonable fear, credible fear, asylum, or refugee claim. There is no presumption of credibility for such claims. Rather, the applicant must demonstrate that he or she is credible. A negative credibility determination alone is sufficient to deny an asylum application and, consequently, to issue a negative credible fear or reasonable fear determination. *See* INA §§ 208(b)(1)(B)(iii), 235(b)(1)(B)(v), 241(b)(3)(C).

To determine whether an applicant or a witness is credible, the officer must consider the totality of the circumstances and all relevant factors, including the demeanor, candor, or responsiveness of the applicant; the inherent plausibility of the applicant's account; the consistency between the applicant's written and oral statements; and any inaccuracies or falsehoods in such statements. INA § 208(b)(1)(B)(iii); *see also Matter of J-Y-C*, 24 I&N Dec. at 262. Whether the inconsistencies, inaccuracies, or falsehoods go to the heart of the applicant's claim are irrelevant. INA § 208(b)(1)(B)(iii); *see also Matter of J-Y-C*, 24 I&N Dec. at 262.

IV. Exercising Discretion

Finally, the Attorney General emphasized in *Matter of A-B-* that asylum is a *discretionary* form of relief from removal. Therefore, once an officer has determined that an applicant is eligible for asylum, he or she must then decide whether to favorably exercise discretion by granting asylum. "[A] favorable exercise of discretion is a discrete requirement for the granting of asylum and should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum eligibility under the INA." *Id.* at 345 n.12.

In exercising discretion, officers should consider any relevant factor, including but not limited to: "the circumvention of orderly refugee procedures; whether the alien passed through any other countries or arrived in the United States directly from her country; whether orderly refugee procedures were in fact available to help her in any country she passed through; whether he or she made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; and his or her living conditions, safety, and potential for long-term residency there." *Id.* (citing *Matter of Pula*, 19 I&N Dec. 467, 473–74 (BIA 1987)). Of particular note, the BIA has held that unlawful entry

“is a proper and relevant discretionary factor” and can even be a “serious adverse factor,” but “should not be considered in such a way that the practical effect is to deny relief in virtually all cases” and that “the totality of the circumstances and actions of an alien in his flight from the country where he fears persecution should be examined in determining whether a favorable exercise of discretion is warranted.” *Pula*, 19 I&N at 473. The BIA has also instructed that “[t]he danger of persecution will outweigh all but the most egregious adverse factors.” *Matter of Kasinga*, 21 I&N Dec. 357, 367 (BIA 1996).

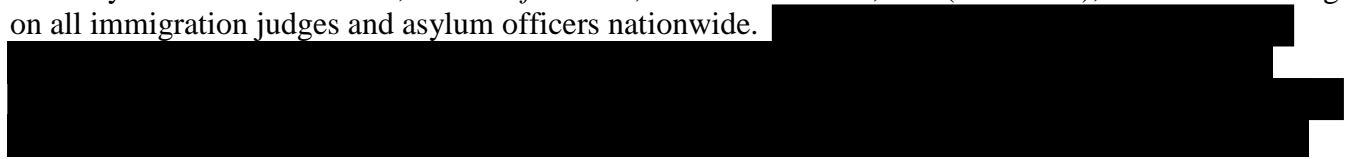
Specifically, USCIS personnel may find an applicant’s illegal entry, including any intentional evasion of U.S. authorities, and including any conviction for illegal entry where the alien does not demonstrate good cause for the illegal entry, to weigh against a favorable exercise of discretion. In particular, “the circumvention of orderly refugee procedures” factor may take into account whether the alien entered the United States without inspection and, if not, whether the applicant had other ways to lawfully enter this country. For example, the applicant might show that the illegal entry was necessary to escape imminent harm and that he or she was thereby prevented from presenting himself or herself at a designated United States POE. An officer should consider whether the applicant demonstrated ulterior motives for the illegal entry that are inconsistent with a valid asylum claim that the applicant wished to present to U.S. authorities.

V. Credible Fear and Reasonable Fear Interviews

When aliens who are inadmissible under INA § 212(a)(6)(C) or § 212(a)(7) indicate either an intention to apply for asylum under INA § 208 or a fear of persecution or torture, an asylum officer will conduct a credible fear interview. INA § 235(b)(1)(A)(ii). Credible fear means a “significant possibility, taking into account the credibility of the statements made by the alien in support of the alien’s claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 208.” *Id.* § 235(b)(1)(B)(v).

An asylum officer will conduct a reasonable fear interview when an alien is subject to either, (1) a final administrative removal order under INA § 238(b) or (2) a prior reinstated order of removal, exclusion, or deportation under INA § 241(a)(5), and indicates a fear of persecution or torture. The “reasonable possibility” standard is the same standard required to establish eligibility for asylum (the “well-founded fear” standard). The reasonable fear standard in this context is used not as part of an eligibility determination for asylum, but rather as a screening mechanism to determine whether an individual may be able to establish entitlement in Immigration Court to INA § 241(b)(3) withholding of removal, or withholding or deferral of removal pursuant to the regulations implementing the U.S. obligations under Article 3 of the Convention against Torture.

When conducting a credible fear or reasonable fear interview, an asylum officer must determine what law applies to the applicant’s claim. The asylum officer should apply all applicable precedents of the Attorney General and the BIA, *Matter of E-L-H-*, 23 I&N Dec. 814, 819 (BIA 2005), which are binding on all immigration judges and asylum officers nationwide.



[REDACTED]

[REDACTED]

Matter of A-B-, as discussed above in Section III, explained the standards for “eligibility for asylum under section 208” based on a particular social group. Therefore, if an applicant claims asylum based on membership in a particular social group, then officers must factor the above standards into their determination of whether an applicant has a credible fear or reasonable fear of persecution based on membership in a particular social group. Asylum officers should bear in mind that in considering credible or reasonable fear claims, they must “consider whether the alien’s case presents novel or unique issues that merit consideration in a full hearing before an immigration judge.” 8 C.F.R. § 208.30(a)(4).

VI. Summary

Under current precedent, including *Matter of A-B-*, *Matter of M-E-V-G-*, and *Matter of W-G-R-*, there are at least five basic inquiries that an officer must make in cases involving membership in a particular social group.

First, the officers must consider whether [REDACTED] the applicant is a member of a clearly-defined particular social group, which is composed of members who share a common immutable characteristic, is defined with particularity, is socially distinct within the society in question, and is not defined by the persecution on which the claim is based.

Second, the officer must require the applicant to prove that membership in the group is a central reason for the applicant’s persecution.

Third, if the alleged persecutor is not affiliated with the government, the officer must require the applicant to show that the applicant’s home government is unwilling or unable to protect him or her.

Fourth, the officer must analyze whether internal relocation in the applicant’s home country is possible, would protect the applicant from the feared persecution, and presents a reasonable alternative to a grant of asylum or refugee status.

Fifth, apart from the eligibility standards above, the officer must determine whether the applicant merits a grant of asylum or refugee status in the officer’s discretion.

Of course, the applicant must also satisfy all the other elements of the refugee definition in order to be granted asylum or refugee status. The 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 distinction for the purpose of deciding whether a particular social group exists is often also 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 government’s willingness or ability to protect an applicant from a non-government persecutor. Social attitudes often may affect both an individual persecutor’s motivations and government policies and practice. While there are often facts that are relevant to more than one aspect of the analysis, those facts must be analyzed separately, using the appropriate standard, for each element.



VII. Contact

Questions or suggestions regarding this PM should be addressed through appropriate channels to the Office of Chief Counsel.

VIII. Use

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