U.S. Citizenship and Immigration Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

NEXUS AND THE PROTECTED GROUNDS*

TRAINING MODULE

***Note:** There are five protected grounds in the refugee definition. "Particular social group" (PSG) is one of these grounds but is not discussed in this module. PSG is covered in a separate module, *Nexus – Particular Social Group.*

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

NEXUS AND THE PROTECTED GROUNDS

Training Module

MODULE DESCRIPTION:

This module discusses the definition of a refugee as codified in the Immigration and Nationality Act (INA), including the five protected grounds and their interpretation in administrative and judicial case law. The primary focus of this module is the determination as to whether an applicant has established that past harm suffered or future harm feared is on account of one of the five protected grounds. Only four of the grounds are discussed in this module; the fifth ground, "particular social group" is the topic of another module: *Nexus – Particular Social Group*.

TERMINAL PERFORMANCE OBJECTIVE(S)

Given a request to adjudicate either a request for asylum or a request for refugee status, the officer will be able to apply the law (statutes, regulations and case law) to determine whether an applicant is eligible for the requested relief.

ENABLING PERFORMANCE OBJECTIVES

1. Summarize factors to consider in evaluating the motive of the persecutor.
2. Explain factors to consider in determining whether persecution or feared persecution is on account of one or more of the protected grounds, i.e., race, religion, nationality, (membership in a particular social group), or political opinion.
3. Analyze factors to consider in determining whether an applicant possesses, or is imputed to possess, a protected belief or characteristic.

INSTRUCTIONAL METHODS

- Interactive Presentation
- Discussion
- Practical Exercises

METHOD(S) OF EVALUATION

REQUIRED READING

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

2. United Nations High Commissioner for Refugees, *Note on Refugee Claims Based on Coercive Family Planning Laws or Policies* (Aug. 2005)

3. United Nations High Commissioner for Refugees, *Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*. HCR/GIP/04/06, 28 April 2004, 12 pp. See RAIO Training Module, The International Religious Freedom Act (IRFA) and Religious Persecution Claims.

4. David A. Martin. INS Office of General Counsel. *Asylum Based on Coercive Family Planning Policies -- Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, Memorandum to Management Team (Washington, DC: 21 October 1996), 6 p. *See* RAIO Training Module, Refugee Definition.

5. Phyllis Coven. INS Office of International Affairs. *Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Gender Guidelines)*, Memorandum to all INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p. *See also* RAIO Training Module, Gender-Related Claims.

6. Grover Joseph Rees III. INS Office of General Counsel. *Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion -- Addendum*, Memorandum to John Cummings, INS Office of International Affairs (Washington, DC: 4 March 1993), 3 p.

7. Grover Joseph Rees III. INS Office of General Counsel. *Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion*, Memorandum to Jan Ting, INS Office of International Affairs (Washington, DC: 19 January 1993), 12 p.

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR9	Knowledge of policies and procedures for processing lesbian, gay, bisexual and transgender (LGBT) claims (3)
ILR10	Knowledge of policies and procedures for processing gender-related claims (3)
ILR14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence) (5)
RI1	Skill in identifying issues of claim (4)
RI2	Skill in identifying the information required to establish eligibility (4)

SCHEDULE OF REVISIONS

Date	**Section (Number and Name)**	**Brief Description of Changes**	**Made By**
12/12/12	Entire Lesson Plan	Lesson Plan published	RAIO Trainng
4/29/13	2.1 Establishing Motive: (Mixed Motive section); Asylum Supplement	Language modified; ASM Supplement section "At Least One Central Reason" added and linked from section 2.1	JKochman, RAIO Trng
1/21/16	Throughout document	Fixed links, added some new case citations	RAIO Trng

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

The refugee definition at INA § 101(a)(42) states that an individual is a refugee if he or she establishes past persecution or a well-founded fear of future persecution on account of one or more of the five protected grounds. All of the elements of the refugee definition are reviewed in the RAIO Training Module on *Refugee Definition.* The requirements for an applicant to establish eligibility based on past persecution are discussed in the module on *Past Persecution*. The elements necessary to establish a well-founded fear of future persecution are discussed in the *Well-Founded Fear* module.

This module provides you with an understanding of the requirements needed to establish that persecution or feared persecution is "on account of" one or more of the five protected grounds in the refugee definition: race, religion, nationality, membership in a particular social group, or political opinion. Note: "particular social group" is not being discussed in this module; it is covered in a separate module, *Nexus – Particular Social Group*.

To properly determine whether persecution is on account of a protected ground, you must identify: 1) the persecutor; 2) the harm suffered or feared; 3) the applicant's characteristic or belief (actual or imputed); and 4) the motivation of the persecutor.

2 "ON ACCOUNT OF" (NEXUS) – ANALYZING MOTIVE

The persecution the applicant suffered in the past, or fears in the future, must be "on account of" at least one of the five protected grounds. This means the applicant must establish that the persecutor was, or will be, motivated to harm the applicant because of his or her race, religion, nationality, membership in a particular social group, or political opinion.[1] The persecutor may be motivated to harm the applicant because the applicant

[1] INA § 101(a)(42); *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

actually possesses a protected belief or characteristic, or because the persecutor wrongly believes that the applicant possesses a protected belief or characteristic.

2.1 Determining Motive

Exact Motive Need Not Be Established

Although the applicant must establish that the persecutor harmed or will harm him or her because of one of the five protected grounds, the applicant does not "bear the unreasonable burden of establishing the [persecutor's] exact motivation."[2] The BIA has recognized that "[p]ersecutors may have differing motives for engaging in acts of persecution."[3] You should make reasonable inferences, keeping in mind the difficulty, in many cases, of establishing with precision a persecutor's motives.

Mixed Motives

The persecutor may have several motives to harm the applicant, some of which may be unrelated to any protected ground. There is no requirement that the persecutor be motivated ***only*** by the protected belief or characteristic of the applicant.

The "on account of" requirement focuses on the motivation of the persecutor. The persecutor must be motivated to harm the applicant on account of a protected characteristic. However, the persecutor may have mixed motivations in harming the applicant. In refugee processing cases, the persecutor must be motivated, at least in part, by a protected characteristic.[4] In asylum adjudications, as long as at least one central reason motivating the persecutor is the applicant's possession or perceived possession of a protected characteristic, the applicant may establish the harm is "on account of" a protected characteristic.[5] This "one central reason" standard was added to the statute by the REAL ID Act, and applies only to asylum adjudications. The Board has explained, however, that the "one central reason" language should be interpreted consistent with prior Board precedent that allows nexus to be established where the persecutor has mixed motivations.[6] These are the same cases governing mixed motivation cases in refugee

[2] *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

[3] *Matter of S-P-*, 21 I&N Dec. at 489.

[4] If you are processing refugee applications overseas, you must determine if "a reasonable person would fear that the danger arises on account of one of the five grounds." *Matter of Fuentes*, 19 I&N Dec. at 662.

[5] INA § 208(b)(1)(B)(i), as amended by Section 101(a) of the Real ID Act of 2005, as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, P.L. 109-13 (2005) (hereinafter, "REAL ID Act"). The REAL ID Act added the words "at least one central reason" to describe the extent to which persecution must be on account of a protected ground. *See Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211(BIA 2007*), reversed in part by Ndayshimiye v.Att'y Gen. of the U.S.*, 557 F.3d 124, 129–30 (3d Cir. 2009). This provision of the REAL ID Act applies to asylum applications filed on or after May 11, 2005.

[6] *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214 ("Having considered the conference report and the language of the REAL ID Act, we find that our standard in mixed motive cases has not been radically altered by the amendments.")

processing; thus, the analysis in cases involving mixed motivation is essentially the same in both the refugee and asylum contexts.

The conclusion that a cause of persecution is economic does not necessarily imply that there cannot exist other causes of persecution.[7] For example, a rebel group may extort money to fund its operations, but target its political opponents for extortion based on their political opinion.

For further discussion, see ASM Supplement – At Least One Central Reason.

Persecutor's Perception of the Applicant

The persecution must be motivated by a protected belief or trait possessed by ***the applicant***. The persecutor's own political goals or representation of a political entity is not sufficient in itself, nor is it necessary, to establish persecution on account of political opinion. Rather, the evidence must show that the persecutor is motivated to persecute the applicant because ***the applicant*** possesses (or is believed to possess) a protected belief or trait.[8]

Initial Motivation Not Determinative

The persecutor's motives may change over time. There is no requirement that the persecutor's harmful contact with the applicant be initially motivated by the applicant's possession of a protected belief or characteristic.[9]

Example

In *Sharma v. Holder*, Maoists in Nepal first contacted the applicant and kidnapped him in order to recruit him. At the point when he was abducted, there was no evidence that the Maoists were motivated to harm him because of a protected ground.

After he was abducted, the applicant expressed his opposition to the Maoists and his support for a group that opposed them, the Nepal Student Union (NSU). The Maoists did not directly state that they were motivated by the applicant's expression of his political opinion, but he was then subjected to harsher mistreatment and a longer detention than other individuals who had been abducted at the same time.

Although the Maoists had attempted to force the applicant to join them and work for them for reasons unrelated to a protected ground and there was no direct evidence of a

[7] *Osorio v. INS*, 18 F.3d 1017, 1028 (2d Cir. 1994).

[8] *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992); *See also Pedro-Mateo v. INS*, 224 F.3d 1147 (9th Cir. 2000)(holding that the evidence did "not indicate that the Kanjobal Indians have been recruited *because* of their race, political opinion, or any other protected ground")(emphasis in original).

[9] *See Sharma v. Holder*, 729 F.3d 407, 412–13 (5th Cir. 2013).

protected ground, the Fifth Circuit Court of Appeals found that the escalation of the abuse and the prolonged detention after he expressed his views was evidence of a nexus between the persecution and his political opinion.[10]

No Punitive or Malignant Intent Required

In most cases, the persecutor intends to harm or punish the applicant. Punitive or malignant intent, or an intent to overcome the protected trait, however, is not required for an applicant to establish a nexus to a protected ground.[11] For example, the persecutor may believe that he or she is helping the applicant by attempting to change the protected characteristic or that he or she has the right to harm the applicant because the applicant has the protected characteristic.[12] The relevant inquiry regarding motivation, therefore, is whether the persecutor has committed an intentional action, or intends to commit an intentional action, because of a characteristic (or perceived characteristic) of the victim.[13]

Examples

- The applicant was detained, harassed, beaten, and forced to undergo psychiatric treatment because of her sexual orientation. The court found that it was improper to conclude that the applicant did not suffer persecution when the authorities' intent was to "cure" the applicant, not "punish" her.[14] "The fact that a persecutor believes the harm inflicted is 'good for' his victim does not make it any less painful to the victim, or, indeed, remove the conduct from the statutory definition of persecution."[15]

- The applicant established the required motive by showing that female genital mutilation (FGM), as described in her case, was practiced "in some significant part, to overcome sexual characteristics of young women of the tribe who have not been, and do not wish to be, subjected to FGM."[16] The required persecutory motive was

[10] *Id*. at 412.

[11] For additional information on whether "harm" is "persecution," see RAIO Training Module, *Definition of Persecution*. *See also* Dea Carpenter, USCIS Deputy Chief Counsel, *Guidance on Demiraj v. Holder*, 631 F.3d 194 (5th Cir. 2011), Memorandum to Ted Kim, Acting Director, Asylum Division (Washington, DC: February 23, 2012).

[12] *See, e.g.*, *DHS's Supplemental Brief in Matter of L-R-*, April 13, 2009 (arguing that an individual in the particular social groups of "Mexican women in domestic relationships who are unable to leave" or "Mexican women who are viewed as property by virtue of their positions within a domestic relationship" could establish a nexus to a particular social group if the persecutor believed that he had the right to abuse the victim because she possessed the characteristics that defined the group).

[13] *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). *See also* *Pitcherskaia v. INS*, 118 F.3d 641, 648 (9th Cir. 1997).

[14] *Pitcherskaia v. INS*, 118 F.3d at 647–48.

[15] *Id*.at 648.

[16] *Matter of Kasinga*, 21 I&N Dec. at 367.

established even though the FGM was inflicted by the applicant's tribe with a "subjectively benign intent."[17]

Prosecution vs. Persecution

All countries have the right to investigate, prosecute, and punish individuals for violations of legitimate laws.[18] This can create serious complications in refugee and asylum adjudication, as government actors often use the guise of legitimate prosecution to harm applicants on account of a protected ground.[19] Conversely, applicants may also claim that a government has instituted criminal prosecution against them because of a protected ground when, in fact, the government is seeking to punish the applicant because he or she violated a criminal law of general applicability. It is also possible that the government has mixed motives and punished the applicant for both a violation of a criminal law and on account of his or her possession of a protected belief or characteristic. You must consider all the facts in the case, along with relevant country of origin information, in determining the government's motivation in instituting criminal processes against an applicant.

Laws of General Applicability

You must also determine if the law that is being used to punish the applicant is a law of general applicability, in that it is neutral in intent. If the law is generally applicable, then, you must determine if the government in question enforces the law fairly. In general, fear of prosecution for a law that is fairly administered is not a basis for asylum or refugee status. Under certain circumstances, *i.e.*, where the law punishes an individual because of a protected ground and the punishment rises to the level of persecution, a person may qualify for protection.[20]

Examples

[17] *Id*.

[18] *UNHCR Handbook*, para. 56; *Dinu v. Ashcroft*, 372 F.3d 1041, 1044–45 (9th Cir. 2004) (harassment resulting from an investigation does not give rise to an inference of political persecution where police are trying to find evidence of criminal activity and there is a logical reason for pursuit of the individual).

[19] *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996); *UNHCR Handbook*, para. 57–59.

[20] *See*, *e.g.*, *Long Hao Li v. Holder*, 633 F.3d 136, 141 (3d Cir. 2011); *Chang v. INS*, 119 F.3d 1055 (3d Cir. 1997) (determining that "if the law itself is based on one of the enumerated factors and if the punishment under that law is sufficiently extreme to constitute persecution, the law may provide the basis for asylum or withholding of deportation even if the law is "generally" applicable."); *Cruz-Samayoa v. Holder*, 607 F.3d 1145, 1152 (6th Cir. 2010); *Perkovic v INS*, 33 F.3d 615 (6th Cir. 1994) (holding that prosecution for violation of laws against expressing political opinions hostile to the government or engaging in political activity outside of country constitutes persecution on account of political opinion). *But see* *Kimumwe v. Gonzales*, 431 F.3d 319, 322 (8th Cir. 2005) (finding that expulsion from school and arrestdid not amount to persecution on account of the applicant's homosexuality where the applicant had been accused of sexual misconduct prohibited for straight as well as gay people).

- A law prohibits all religious groups from meeting on Fridays. This law would be considered a law of general applicability. However, because the law would punish Muslims, whose day of prayer is on Friday, the harm inflicted by the government under this law would be considered harm inflicted on account of religion.

- A law prohibits all political rallies in a certain city square. In practice, many political rallies are held in the square, but only members of the Socialist Party are arrested and prosecuted under the law. Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. Here, the harm inflicted on a member of the Socialist Party under the law would be considered harm inflicted on account of the member's political opinion.

- A law that criminalizes attending unregistered religious group meetings is not a law of general applicability and harm suffered by an applicant under such a law would be considered harm suffered on account of his or her religion.

However, it is important to remember that simply because a law has some impact on one of the protected grounds, does not mean the law is not a law of general applicability.[21]

Examples

In Germany, all children are required by law to attend public or state-sanctioned private schools. Parents who fail to ensure their children's attendance may be subject to fines, imprisonment, or loss of custody. In *Romeike v. Holder*, a German couple who homeschooled their children in accordance with their religious values claimed that they feared persecution on account of their religion for violating the compulsory attendance law. The Sixth Circuit Court of Appeals held that because the law applies equally to all parents who fail to comply, is not intended to target the applicants' religion, and does not impose disproportionately harsh penalties on parents who homeschool for religious reasons or homeschoolers in general, no nexus had been established.[22]

A curfew imposed during a period of civil unrest prevents individuals from attending evening religious services. If the law is not intended to target individuals because of their religious beliefs, but rather to ensure public safety, no nexus to religion would be established.

Unduly Harsh Punishment

Punishment that is unduly harsh or disproportionately severe given the nature of the offense committed may be evidence that a government was motivated to harm an applicant on account of one of the protected grounds. In such cases, you should examine country conditions for information on how the country's law enforcement community

[21] *See Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013).

[22] *Id.* at 533–34.

generally handles violations of the same or similar laws. If the applicant's treatment is significantly worse, this may show that the government harmed the applicant on account of a protected ground.

The government's deprivation of an applicant's basic due process rights, along with serious harm inflicted during detention, suggests the government may have been motivated to harm the applicant on account of a protected ground. However, a showing that an applicant did not receive the due process expected in the United States, without more, does not establish that the investigation or prosecution is pretextual.

The BIA has provided the following list of considerations to aid in identifying motive in this context:[23]

- Indications that the abuse was directed toward modifying or punishing opinion rather than conduct. This includes statements or actions by the government out of proportion to legitimate government functions
- Treatment of others in the population who might be confronted by government agents in similar circumstances
- Conformity to procedures for criminal prosecution or military law, including developing international norms regarding the law of war
- The extent to which anti-terrorism laws are defined and applied to suppress political opinion as well as illegal conduct (e.g., an act may broadly prohibit "disruptive" activities and be applied to peaceful as well as violent expressions of views)
- The extent to which suspected political opponents are subjected to arbitrary arrest, detention, and abuse

Some general issues to consider in evaluating claims involving the use of law-enforcement mechanisms include:

- Is the law generally applicable?
- Is the law equally or unequally enforced?
- How does the persecutor view those who violate the law?
- How does compliance with the law affect the applicant's life with regard to the protected characteristics?

Violation of Departure Laws

[23] *Matter of S-P-*, 21 I&N Dec. 486, 494 (BIA 1996).

Punishment for violating departure laws does not, without more, establish an applicant's eligibility for asylum or refugee resettlement. A government has legitimate authority to establish and enforce laws governing departure from the country.[24]

Punishment for violation of travel laws might be used as a pretext to persecute the individual on account of one of the protected grounds.[25] Evidence that the punishment is used as a pretext for persecution may include punishment disproportionate to the crime or country of origin information showing the country in question views individuals who violate departure laws as traitors or subversives.[26]

2.2 Evidence of Motive

Both direct and circumstantial evidence are relevant to determining whether a persecutor was motivated to harm an applicant on account of a protected ground.

Duty to Elicit Testimony

Asylum and refugee applicants are not expected to understand the complexities of the law and may not realize that they are required to establish the motive of the persecutor.[27] Applicants may not know what evidence is relevant to establishing the persecutor's motive. Applicants may not understand the scope of the five protected grounds, and they may be unable to articulate which ground motivated the persecutor.

Although the applicant bears the burden of proof to establish a nexus between the harm, or feared harm, and a protected ground, you have an affirmative duty to elicit all information relevant to the nexus determination.[28] You should fully explore the motivations of any persecutor involved in a case. Reasonable inferences regarding the motivations of persecutors should be made, taking into consideration the culture and patterns of persecution within the applicant's country of origin.

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[24] *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983); *Nazaraghaie v. INS*, 102 F.3d 460 (10th Cir. 1996).

[25] *See* UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para. 61, which states:

The legislation of certain States imposes severe penalties on nationals who depart from the country in an unlawful manner or remain abroad without authorization. Where there is reason to believe that a person, due to his illegal departure or unauthorized stay abroad is liable to such severe penalties his recognition as a refugee will be justified if it can be shown that his motives for leaving or remaining outside the country are related to the reasons enumerated in Article 1 A (2) of the 1951 Convention . . .

[26] *See Rodriguez-Roman v. INS*, 98 F.3d 416, 430 (9th Cir. 1996) ("[A] state which severely punishes unlawful departure views persons who illegally leave as disloyal and subversive and seeks to punish them accordingly."); *Chang v. INS*, 119 F.3d 1055 (3rd Cir. 1997) .

[27] *See Jacinto v. INS*, 208 F.3d 725, 733–34 (9th Cir. 2000) ("Applicants for asylum often appear without counsel and may not possess the legal knowledge to fully appreciate which facts are relevant." IJs "are obligated to fully develop the record in [such] circumstances…").

[28] 8 C.F.R. § 208.9(b). *See also Matter of S-M-J-*, 21 I&N Dec. 722 (BIA 1997); RAIO Training Module, *Evidence*.

You may use country of origin information to help you determine the motivation of the persecutor to harm the applicant, especially if the applicant is having difficulty answering your questions regarding motivation.

Many applicants may not know a belief or characteristic is the basis for a refugee or asylum claim and may be reluctant to share information for a variety of reasons, including fear, shame, and ignorance. This is especially true where applicants are not represented. They may only put forward the elements of their past experiences that their family or members of their communities recommend. It is important to explore all possible grounds, despite the applicant's difficulty in articulating a basis for the claim.

The UNHCR *Handbook* points out that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the adjudicator. Your role is to "ensure that the applicant presents his case as fully as possible and with all available evidence."[29]

Direct Evidence

Sometimes an applicant is able to provide direct evidence of motive.

Examples of Direct Evidence of Motive

- The persecutor warned the applicant to stop all political activities or face arrest.
- The persecutor's statements and actions are evidence of motive. For example, in a case where a police officer arrested an asylum applicant after having asked if the applicant was gay, and made statements about the applicant's sexuality during a sexual assault, the Ninth Circuit held that these facts constituted sufficient grounds to establish that the officer was motivated to target the applicant on account of his homosexuality.[30]
- The persecutor uses derogatory language, such as a racial, ethnic, or religious slur, when harming or threatening the applicant.
- There are laws in the applicant's country prohibiting the practice of certain religions or punishing apostasy.
- There are laws in the applicant's country that punish homosexual activity.

Circumstantial Evidence

[29] *UNHCR Handbook*, para.196.

[30] *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1089 (9th Cir. 2005).

Often an applicant will not be able to provide direct evidence of motive, since persecutors do not generally announce their motives or explain their actions. However, motive may be established by circumstantial evidence.[31]

Examples of Circumstantial Evidence of Motive

- Evidence that the persecutor has harmed other individuals who share the applicant's protected belief or characteristic may support an applicant's claim that he or she was targeted on account of a protected characteristic.[32] While evidence that the persecutor seeks to harm others is relevant, it is not required.

- Close proximity in time of arrest to participation in an opposition party meeting may be circumstantial evidence of a connection between the arrest and the applicant's political opinion.

- Country of origin information may provide circumstantial evidence of motive. For example, a reliable report may establish that the persecutor views individuals who are similarly situated to the applicant (e.g., human rights workers or student activists) as political opponents.

Circumstantial evidence may be sufficient to satisfy the nexus requirement, even when the identity of the persecutor cannot be proven precisely. In *Bace v. Ashcroft*, the Court of Appeals for the Seventh Circuit pointed to both the proximity in time between the applicant's political activity and the harm he suffered, as well as his attackers' statements suggesting that they were likely members of the opposing political party.[33] Although the applicant could not establish the identity of the attackers, he provided sufficient evidence that he was harmed on account of his political opinion.

3 PROTECTED GROUNDS

3.1 Broad Construction

The five protected grounds should be construed broadly. They often include attributes that may not fit an everyday understanding of the terms.

Examples

[31] *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

[32] *See Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1076 (9th Cir 2004) (evidence that every family in a Guatemalan village lost a male member to the guerrillas and that the military raped a woman every eight to fifteen days, based on the mistaken belief that the villagers had voluntarily joined the guerrillas, compelled a finding that the applicant's rape by soldiers was on account of a political opinion imputed to her).

[33] *Bace v. Ashcroft*, 352 F.3d 1133, 1139 (7th Cir. 2003).

- An individual may face persecution on account of religion, even if he does not characterize his belief, identity, or way of life, as a "religion."[34] Additionally, an individual may establish a nexus based on his choice not to participate in religion.

- Persecution based on political opinion can encompass a much broader array of actions beyond political party membership, including whistleblowing,[35] refusal to follow orders to commit human rights abuses,[36] and, in some instances, opposition to gang violence or recruitment.[37]

- Persecution that at first glance may appear to be based on a personal vendetta or dispute may actually be on account of a protected ground. For example, this may be true in cases where the persecution feared is an honor killing by a family member.[38]

You should analyze the existence of a protected ground in the context of the culture of the country of origin. To the extent possible, you should avoid viewing the case through the prism of your own experiences and world view. However, claims based on purely personal matters, criminal activity, economic gain and laws of general applicability fall outside the protection of asylum and refugee law.[39]

3.2 Duty to Elicit Information regarding all Potential Connections to Protected Ground

An applicant may be unable to articulate a connection to a particular protected characteristic. He or she may state that the claim is based on one ground, while the facts indicate that there is an alternative connection to another ground, or that a connection to another ground may be more relevant to whether the applicant is a refugee. You must determine which protected ground, if any, has a relation to the experiences of the applicant.

Example

If the applicant states that he or she fears harm on account of religion, but the facts of the case indicate that the persecutor was motivated by the applicant's political opinion, then you must evaluate the claim based on political opinion as well as religion.

3.3 Imputation of Protected Ground

[34] *See Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (per curiam) (holding that Falun Gong practitioner faced persecution on account of his spiritual and religious beliefs even though Falun Gong does not consider itself a religion).

[35] *Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005).

[36] *Barraza Rivera v. INS*, 913 F. 2d 1443 (9th Cir. 1990).

[37] *Marroquin-Ochoma v. Holder*, 574 F. 3d 575 (8th Cir. 2009).

[38] *Sarhan v. Holder*, 658 F.3d 649, 656 (7th Cir. 2011)

[39] For more information on crime and personal disputes, see below Section 9.7, Crime and Personal Disputes.

An applicant is not required to actually possess the protected trait that motivates the persecutor. Persecution inflicted on an applicant because the persecutor attributes to the applicant a protected ground constitutes persecution "on account of" that characteristic, regardless of whether the applicant actually possesses the characteristic.[40] Any of the five protected grounds can be imputed to an applicant.

Examples

- In *Amanfi v. Ashcroft*, the Third Circuit held that an applicant who was targeted because his persecutors believed he was gay could establish persecution on account of imputed membership in a particular social group defined as "homosexuals in Ghana" although "he testified that he was not in fact a homosexual." [41]

- An individual who has relatives belonging to the Baha'i religious sect is arrested and badly beaten by the police during a government crackdown on the Baha'i movement. If the evidence supports the conclusion that the authorities believed she was Baha'i, the harm she experienced would be considered to have been inflicted on account of her imputed religion, even though she is not a believer.

The determinative inquiry is whether the persecutor believes the applicant possesses a protected belief or characteristic and whether the persecutor is motivated to harm the applicant because of that imputed belief or characteristic. Some factors to consider include:

- Actions the applicant has taken that would lead the persecutor to believe that he or she possesses a protected belief or characteristic

  ### *Example*

During the exile of President Aristide, the *de facto* government in Haiti associated members of neighborhood improvement committees with President Aristide. In the eyes of the Haitian military and their supporters, sweeping a street or participating in a literacy campaign indicated support for the exiled president.

- Statements the persecutor makes that may constitute evidence that he or she believes the applicant, or persons similarly situated to the applicant, possesses a protected trait

- Treatment of similarly situated individuals

[40] *See* Grover Joseph Rees III, INS Office of General Counsel, *Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion,* Memorandum to Jan Ting, Acting Director, Office of International Affairs, at 12 (Jan. 19, 1993).

[41] *Amanfi v. Ashcroft*, 328 F.3d 719, 730 (3d Cir. 2003).

- Country of origin information that may provide an understanding of the overall situation in the applicant's country, and provide a context for the persecutor's actions
- Severity of any punishment the applicant received or fears, which may be so far out of proportion "as to seem obviously directed at real or perceived enemies rather than at ordinary lawbreakers"[42]
- Reasons, unrelated to a protected ground, for the persecutor to harm the applicant[43]

4 RACE

4.1 Definition

"Race" should be understood broadly to include all kinds of ethnic groups that are "referred to as races in common usage."[44] Race sometimes overlaps with nationality as a protected ground.

While the idea of "race" is often popularly understood to involve distinct biological groupings, such ideas are scientifically discredited.[45] National and regional cultures vary greatly in their construction of racial groupings. You should, to the extent possible, avoid viewing the case through the prism of your own experiences and world view regarding which "race" an applicant belongs to. The relevant inquiry is how the country of origin or segments of the population delineate racial groupings, and where the applicant fits into that delineation.

4.2 Harm Suffered Because of the Applicant's Disregard of Racial Barriers

Harm suffered because of an applicant's violation of or refusal to adhere to legal or cultural racial barriers within a society may be considered to have been inflicted on account of the applicant's race.[46]

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[42] *See* Grover Joseph Rees III, INS Office of General Counsel, "Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion," Memorandum to Jan Ting, Acting Director, Office of International Affairs, at 12 (Jan. 19, 1993).

[43] *Matter of S-P-*, 21 I & N Dec. 486, 495–96 (BIA 1996) (finding that although the applicant may have been initially detained for intelligence gathering purposes, the severity and duration of harm suffered exceeded any legitimate intelligence motive).

[44] UNHCR Handbook, para. 68. *See, e.g.*, *Duarte de Guinac v. INS*, 179 F.3d 1156, 1159 n.5 (9th Cir. 1999).

[45] "Scientific and Folk Ideas about Heredity," Jonathan Marks, available at http://www.pbs.org/race/000_About/002_04-background-01-12.htm

[46] *See, e.g.*, UNHCR Handbook, para. 69; *cf. Bob Jones University v. United States*, 461 U.S. 574, 612 (1983) (concluding, in the civil rights context, that a university's ban on interracial relationships constituted racial discrimination).

Example

> A statute prohibits interracial marriage. A black applicant is arrested and prosecuted when she attempts to marry a person of a different race. Any harm she suffers related to this incident is on account of her race.

Depending on the facts of the case, a finding that the harm was inflicted on account of the applicant's political opinion may also be appropriate.

5 RELIGION

5.1 Definition

The protected ground of religion has been broadly defined to include the right to freedom of thought, conscience, and belief. Religion, as a protected ground, is not limited to familiar religious beliefs and practices. For purposes of establishing refugee and asylum eligibility, persecution suffered or feared on account of a non-traditional belief system may be considered persecution "on account of religion."[47] The International Religious Freedom Act (IRFA) refers to religious freedom without defining what makes a particular practice or belief a religion and does not place any particular religious group in a position of privilege over any other.[48] While many applicants base their claim to refugee or asylum status on their inclusion in well-known faith groups (*e.g.*, Hindus, Christians, or Muslims), other individuals may seek protection based on religious beliefs and practices that may be unfamiliar or based on their non-belief. The protected ground of religion includes the individual's right to be an atheist, an agnostic, or to otherwise reject religious practice.

If an individual's faith or faith group is not familiar to you or a particular practice or belief appears unusual to you, do not allow your unfamiliarity to affect your judgment. Neither courts nor adjudicators may inquire into the popularity, truth, validity, or reasonableness of an applicant's religious beliefs or choice not to believe.

The *Universal Declaration of Human Rights* and the *International Covenant on Civil and Political Rights* proclaim the right to freedom of religion. This includes the right to have or adopt a religion of one's choice; the freedom, either individually or in a community with others and in public or private, to manifest a religious belief in worship observance, practice, and teaching; and the right not to be subjected to coercion that would impair freedom to have or adopt a religion or belief of one's choice.[49] Accordingly, the applicant

[47] *See* UNHCR*Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*. HCR/GIP/04/06Section II (Apr. 28, 2004).

[48] International Religious Freedom Act of 1998, Pub. L. 105-292. For additional information on the IRFA, see RAIO Training Module, *IRFA (International Religious Freedom Act) and Religious Persecution*.

[49] Universal Declaration of Human Rights art. 18; the International Covenant on Civil and Political Rights art. 18(1).

has the right to live an openly religious life in his or her country of origin, and there is no requirement that an applicant conceal his or her religion to be eligible for protection.

In 1998 Congress passed IRFA, which expressed concern about religious freedom throughout the world and established an Annual Report on International Religious Freedom to be prepared by the Department of State.[50] IRFA requires that the Annual Report, with other relevant documentation, serve as a resource for you in cases involving claims of persecution on the grounds of religion.[51] However, you may not deny an applicant's claim solely because the Annual Report does not confirm the conditions described by the applicant.

5.2 General Forms of Religious Persecution

Drawing from international human rights law, the UNHCR Handbook explains that persecution on account of religion takes a number of different forms. Some examples of harm that may be found to have been inflicted on account of an applicant's religion are:

- Prohibition of membership in a religious community
- Prohibition of worship in private or in public
- Prohibition of religious instruction
- Forced renunciation of religious beliefs or desecration of objects of religious importance
- Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community[52]

5.3 Conversion

In some countries it may be illegal to convert from one religion to another, and the penalties may be severe. For example, in Iran, conversion from Islam to another religion is considered apostasy (renunciation of faith), which is punishable by death. Such punishment is persecution on account of religion.[53]

5.4 Laws Based on Religious Principles

[50] International Religious Freedom Act of 1998, Pub. L. 105-292 , Section 102(b)..

[51] *Id.* Section 601.

[52] *UNHCR Handbook*, para. 72.

[53] *See, e.g.*, *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (prosecution under law against apostasy found to be persecution "on account of" religion).

Punishment for refusal to comply with religious norms or laws, such as dress codes or gender roles based on religious principles, may constitute persecution on account of religion.

Note that in some countries, religious principles are inseparable from civil and criminal laws. In such countries harm on account of religion may overlap with harm on account of political opinion.

You should focus on whether the persecutor sees the applicant as a simple law-breaker, or as someone who should be punished for possessing "improper" religious values. In many cases the persecutor will view the applicant as both a law-breaker and as an individual possessing "improper" religious values. Although the persecutor may have mixed motives, if the applicant's real or perceived religious values are "at least one central reason" motivating the persecutor,[54] such motivation may be sufficient to establish that the harm is on account of religion in asylum adjudications. In refugee processing, you need to determine if "a reasonable person would fear that the danger arises 'on account of' one of the five grounds,"[55] in this case real or perceived religious values. For further discussion, *see* ASM Supplement – At Least One Central Reason.

When a civil or criminal law is itself based on religious laws or principles in a country with little separation between church and state, the evaluation of the persecutor's intent may be complex. A thorough understanding of country of origin information will help you evaluate how the authorities view individuals who violate religious laws.

5.5 Differing Interpretation of the "Same" Religion

The persecutor does not have to adhere to a different religion from the applicant. Large religious groupings such as Christianity, Islam, and Buddhism have a wide variety of sects and denominations. Even within smaller religious groupings, individual members may differ greatly as to what practices or beliefs are required by their religion. Harm suffered on account of these differences is harm suffered on account of religion.

Example

Where a daughter's religious opinions were different from her father's concerning how she should dress and with whom she should associate, and the father attempted to impose his religious opinion on his daughter through physical force, the serious harm that the daughter suffered was "persecution on account of religion."[56] Although the daughter and

[54] *See infra* Section 2.1 on "Mixed Motives."

[55] For further discussion, *see* RAD Supplement – Motivation. You should not rely on case law that interprets the "one central reason" standard, but you may find such cases helpful in understanding general principles of the nexus requirement. These standards are not the same. You should follow your division's guidance on how to analyze this issue.

[56] *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

father both practiced Islam, the father harmed his daughter because her religious beliefs did not conform to his, particularly with respect to the way women should behave.[57]

6 NATIONALITY

6.1 Definition

For purposes of asylum and refugee adjudications, the term "nationality" is defined more broadly than it is in the first part of the refugee definition (that defines a refugee as someone outside his or her country of "nationality," i.e. citizenship). "Nationality," as a protected ground, is a broad concept that includes ethnic groups, linguistic groups, and groups defined by common cultures.

Note that harm on account of nationality may also overlap with harm on account of race or religion.

Examples

- In the former Soviet Union, "Jewish" was considered a nationality and marked as such on identification documents. A Jewish father and son from the Ukraine, who were attacked by a member of a nationalistic, pro-Ukrainian movement were targeted because of their Jewish nationality.[58]

- Consider a K'iche' (Quiché) applicant from Guatemala. Country conditions reports indicate that the characteristic of being K'iche' may be perceived by the persecutor or feared persecutor as a racial characteristic, an ethnic characteristic (nationality), an immutable characteristic shared with other members of a distinct group (particular social group), a religious characteristic (some communities still practice indigenous religions), or a political characteristic (indigenous communities were often perceived to be linked with guerrilla organizations). The important inquiry is whether the persecutor is motivated to harm the applicant on account of his or her being K'iche'; if so, several protected characteristics may apply.[59]

6.2 Conflicts Between National Groups

When conflict between two or more national (ethnic, linguistic) groups exists in a country, persecution on account of nationality may overlap with persecution on account

[57] *Id*. at 1336.

[58] *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998).

[59] *See Duarte de Guinac v. INS*, 179 F.3d 1156, 1159 n.5 (9th Cir. 1999) (noting that ethnicity may be analyzed as both race and nationality).

of political opinion, particularly where a political movement is identified with a specific nationality.[60]

In some conflicts, members of an ethnic group may be at risk of harm even though they are not directly involved in the conflict. Such cases involve persecutors who associate all members of a cultural grouping with the limited pool of persons from that cultural grouping who are involved in the hostilities.

When there is conflict between one or more "nationalities," you should not assume that claims arising from the conflict are based solely on civil strife. Rather, you must consider carefully the nature of the strife and determine whether the harm the applicant suffered or fears is connected to his or her nationality.[61]

6.3 Examples of Claims Based on Nationality

As noted above, claims based on nationality often overlap with other protected grounds. In the former Soviet Union, nationalities were listed on citizens' passports, including entries for Jews, Germans, Chechens, Russians, and, at one point, 168 others.[62] Other examples of individuals who have been harmed on account of nationality include Armenians in Azerbaijan (may overlap with religion); Bosniaks, Croats, and Serbs in the former Yugoslavia (may overlap with religion); Tibetans in the People's Republic of China (may overlap with religion); or Roma in Bulgaria (may also be analyzed as a particular social group).[63]

7 PARTICULAR SOCIAL GROUP (PSG)

NOTE: Particular Social Group is one of the five grounds in the refugee definition, but it is not being discussed in this module. It is covered in a separate module, *Nexus – Particular Social Group*.

8 POLITICAL OPINION

8.1 Definition

Expression of a political opinion should not be viewed only in the narrow sense of participation in a political party or the political process. The meaning of "political

[60] UNHCR Handbook, para. 75.

[61] *See* Civil Strife section, below; *see also* *Matter of H*-, 21 I&N Dec. 337 (BIA 1996).

[62] *See* Sven Gunnar Simonsen, *Inheriting the Soviet Policy Toolbox: Russia's Dilemma Over Ascriptive Nationality*, 51 Europe-Asia Studies1069 (1999).

[63] *Mihalev v. Ashcroft*, 388 F.3d 722 (9th Cir. 2004).

opinion" in the refugee definition "should be understood in the broad sense, to incorporate . . . any opinion on any matter in which the machinery of state, government and police may be engaged."[64]

The Fourth Circuit has described political opinion as "prototypically" exhibited by "evidence of verbal or openly expressive behavior by the applicant in furtherance of a particular cause."[65] In recognizing that "less overtly symbolic acts may also reflect a political opinion," the court set as a baseline that "whatever behavior an applicant seeks to advance as political, it must be motivated by an ideal or conviction of sorts before it will constitute grounds for asylum."[66] Of course, an action could be imputed as political, even if the applicant does not hold an ideal or conviction.

Expression of a political opinion may take various forms, and many types of opinions or views may fall within the broad category of "political." Examples of expression of political opinions outside the traditional political process include:

- Expression of feminist beliefs[67]
- Exposure of government human rights abuses[68]
- Activities to protect or establish the right to association (such as union membership), workers' rights, or other civil liberties[69]
- Participation in certain student groups[70]
- Participation in community improvement organizations or cooperatives, or movements for land reform[71]
- Opposition to a political group's strategy for promoting its ideology[72]

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[64] Guy Goodwin-Gill, *The Refugee in International Law* 30 (1983) .

[65] *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005).

[66] *Id*.

[67] *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).

[68] *Gao v. Gonzales*, 407 F.3d 146, 153 (3d Cir. 2005).

[69] *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1993); *Bernal-Garcia v. INS*, 852 F.2d 144 (5th Cir. 1988).

[70] *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1993); *Matter of Villalta*, 20 I&N Dec. 142 (BIA 1990).

[71] *See, e.g.*, *Zamora-Morel v. INS*, 905 F.2d 833 (5th Cir. 1990); *Vera-Valera v. INS*, 147 F.3d 1036 (9th Cir. 1998).

[72] *Regalado-Escobar v. Holder*, 717 F.3d 724, 729 (9th Cir. 2013) ("When a political organization has a pattern of committing violent acts in furtherance of, or to promote, its politics, such strategy is political in nature…Therefore, opposition to the strategy of using violence can constitute a political opinion that is a protected ground for asylum purposes.")

- Opposition to gangs and drug cartels

Opposition to a gang may have a political dimension, but a general aversion to gangs and their criminal activity or refusal to join the gang is not necessarily politically motivated.[73] The mere refusal to join a gang, without more, does not establish that the gang's threats against the applicant were on account of an imputed political opinion.[74] Cases involving refusal to join gangs, however, may be mixed motive cases. The fact that an applicant refuses to join a gang, while not alone sufficient to support a conclusion that he was perceived to be politically opposed to gangs, certainly does not undermine such a conclusion. There may well be cases where refusal to join a gang is an element of a cognizable political opinion claim.

To show that violence inflicted by gang members has a nexus to the applicant's actual or imputed political opinion, an applicant needs evidence that he or she was politically or ideologically opposed to the gang's particular ideals or to gangs in general (or that the gang believes this) and not merely that he or she did not want to be personally involved in or had an aversion to specific activities of the particular gang.[75] Even if the applicant shows that he or she possesses an anti-gang political opinion, the applicant must show that the gang targeted him or her on account of that political opinion, and not merely to grow its ranks or to increase its wealth.

- Refusal to follow orders to commit human rights abuses[76]

  For more information, see Section below on "Refusal to serve in a military or commit an action that is condemned by the international community."

- Whistleblowing or otherwise exposing government corruption

In some circumstances, opposition to state corruption may be motivated by an applicant's political convictions, or may cause a persecutor to impute such convictions to the applicant.[77] However, showing retaliation for opposing governmental corruption is not by

[73] *Santos-Lemus v. Mukasey*, 542 F.3d 738, 747 (9th Cir. 2008) (holding that a "general aversion to gangs does not constitute a political opinion"); *Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009).

[74] *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 578–79 (8th Cir. 2009).

[75] *Santos-Lemus v. Mukasey*, 542 F.3d 738, 747 (9th Cir. 2008); *Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009).

[76] *See, e.g.*, *Barraza Rivera v. INS*, 913 F. 2d 1443 (9th Cir. 1990).

[77] *Ruqiang Yu v. Holder*, 693 F.3d 294 (2d Cir. 2012); *Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005); *Hu v. Holder*, 652 F.3d 1011, 1019–20 (9th Cir. 2011) (". . . the Chinese police officials who arrested Hu did not accuse him of illegally gathering without a permit. Rather, they accused him of 'gathering a crowd to cause trouble and disturb the order of society, [and] acting against the government and against the party."); *Grava v. INS*, 205 F.3d 1177 (9th Cir. 2000) ("When the alleged corruption in inextricably intertwined with governmental operation, the exposure and prosecution of such an abuse of public trust is necessarily political."); *Baghdasayan v. Holder*, 592 F.3d 1018 (9th Cir. 2010) ("Whistle-blowing against government corruption is an expression of political opinion."); *Reyes Guerrero v. INS*, 192 F.3d 1241, 1245 (9th Cir. 1999).

itself sufficient to establish a nexus to a political opinion. You also should consider the variety of reasons that persecutors act in such cases. In *Matter of N-M-*, the BIA held that the following factors should be considered when analyzing nexus in whistleblowing cases:

- Whether and to what extent the individual engaged in activities that could be perceived as expressions of anti-corruption beliefs;
- Any direct or circumstantial evidence that the persecutor was motivated by the individual's actual or perceived anti-corruption beliefs; and
- Any evidence regarding the pervasiveness of corruption within the governing regime.[78]

State actors may be motivated to harm whistleblowers for a variety of reasons that are not related to protected grounds, including a desire for revenge. Personal motivation does not preclude a grant of asylum or refugee status, however, if the state actor is also motivated by the applicant's efforts to "expose" corruption.[79] Even in cases where the applicant's reasons for exposing corruption were purely personal, there may be evidence indicating that state actor perceived the applicant as having a political motive.[80] In other words, state actors may have mixed motives in harming whistleblowers.

Also, campaigning against state corruption through classic political activities such as being active in a political party that opposes state corruption, attending or speaking at rallies against corruption, or writing pamphlets criticizing state corruption would constitute the expression of a political opinion.[81]

Harm suffered for having provided the government information about individuals involved in illegal activities may, or may not, constitute harm suffered on account of a political opinion. Providing the government with information about a guerrilla group, for example, where the guerrilla group would see informing as an expression of opposition, would be considered expressing a political opinion.[82] Providing information on more

[78] *Matter of N-M-*, 25 I&N Dec. 526, 532–33 (BIA 2011). *See also* *Ruqiang Yu v. Holder*, 693 F.3d 294 (2d Cir. 2012) (rejecting the BIA's finding that the applicant opposed "aberrational" corruption where the applicant protested several months of nonpayment of wages and personally escorted 10 employees to confront factory officials).

[79] *Antonyan v. Holder*, 642 F.3d 1250, 1256 (9th Cir. 2011).

[80] *Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015).

[81] *Id*. *But see* *Liu v. Holder*, 692 F.3d 848 (7th Cir. 2012) (writing an anonymous letter asserting corruption in layoffs does not transform an economic protest into a political one where the applicant never acknowledged he wrote the letter or testified that anyone knew he wrote it).

[82] *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005). *See also* *Antonyan v. Holder*, 642 F.3d 1250, 1255 (9th Cir. 2011) ("In pursuing Andranik's prosecution, Antonyan sought more than an end to his drug-dealing and violence in her community; she also hoped to expose his crooked ties to law enforcement agencies who refused to protect the citizenry.").

routine criminal matters, outside of a political context, however, likely would fail to satisfy the nexus requirement for political opinion.[83]

- Neutrality

Political neutrality may include the absence of any political opinion. Neutrality can be established by pronouncement or actions. In certain refugee and asylum claims, the refusal to take sides in a political controversy may be considered expressing a political opinion. The critical issue is how the persecutor views the applicant's decision to remain neutral, and whether he or she targets the applicant because of that decision.[84] During periods of conflict, a persecutor may believe that no one can be neutral. In such cases, the persecutor may impute an opposition political opinion to anyone who remains neutral.

Although the BIA has not granted asylum or withholding based on an applicant's decision to remain neutral, the BIA has analyzed claims under the principle that, in some cases, neutrality may be a political opinion.[85]

The First and Ninth Circuits have held that neutrality may constitute a political opinion.[86] The Eighth Circuit has indicated that neutrality might, in some cases, form a political opinion.[87] The Ninth Circuit follows the doctrine of "hazardous neutrality."[88] Remaining neutral in an environment where neutrality brings hazards from a persecutor is an expression of political opinion.[89] For example, the failure to favor either side in a civil war may be perceived as opposition by participants from either side of the conflict. The Sixth Circuit has noted that expression of a political opinion may be affirmative or negative; in some circumstances, refusal to join or express support for a political party may be perceived as an expression of opposition to that party.[90]

- Professional Activities or Associations

Harm inflicted on an applicant because of his or her profession or occupation at the time the harm occurred is generally not, in itself, sufficient to establish that the applicant was

[83] *Thuri v. Ashcroft*, 380 F.3d 788 (5th Cir. 2004) (the evidence did not compel a finding that reporting a single incident of crime by police officers was viewed by the government as an expression of political opinion).

[84] *Ramos-Vasquez v. INS*, 57 F.3d 857 (9th Cir.1995); *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991).

[85] *See* *Matter of Vigil*, 19 I&N Dec. 572 (BIA 1988); *Matter of Maldonado-Cruz*, 19 I&N Dec. 509, 516 (BIA 1988); *Novoa-Umania v. INS*, 896 F.2d 1 (1st Cir. 1990) (indicating BIA used neutrality analysis).

[86] *Umanzor-Alvarado v. INS*, 896 F.2d 14 (1st Cir. 1990); *Arriaga-Barrientos v. INS*, 937 F.2d 411 (9th Cir. 1991).

[87] *Lopez–Zeron v. INS*, 8 F.3d 636 (8th Cir. 1993).

[88] *Rivera-Moreno v. INS*, 213 F.3d 481, 483 (9th Cir. 2000).

[89] *Id.*; *See also* *Sangha v. INS*, 103 F.3d 1482, 1488 (9th Cir. 1997).

[90] *Mandebvu v. Holder*, 755 F.3d 417, 429 (6th Cir. 2014).

persecuted on account of one of the protected grounds.[91] Ideologically motivated groups often seek to harm government employees, such as police officers or members of the military forces, in order to frustrate their official duties or to publicly undermine the regime. Members of other professions may be targeted for recruitment because the persecutors have particular need of their services, or for extortion, because they are perceived to be wealthy.

In such cases, "the mere existence of a generalized political motive underlying the persecutor's actions" is inadequate to establish the requisite nexus.[92] Rather, the applicant must demonstrate that the persecutor is targeting the applicant **on account of** a belief or characteristic that **the applicant** possesses or is imputed to possess.

The fact that an applicant is targeted in relation to his or her professional status, however, does not preclude him or her from establishing the requisite nexus to a protected ground.[93] An applicant's profession may cause the persecutor to impute a protected characteristic to him or her, or an applicant may express the belief or opinion that causes him or her to be targeted in the course of his or her official duties. Applicants who work for or have close professional associations with the government may sometimes be targeted as supporters of the government or the ruling political party, whether or not their work is political in nature.

Examples

- A Pakistani "special police officer" began receiving threatening letters and phone calls after, in the course of his official duties, he began going to mosques and social spaces to encourage citizens to oppose the Taliban. The immigration judge found that he was targeted because of his work as a police officer and, therefore, he had not established a nexus to a protected ground, and the BIA affirmed the IJ's decision. The First Circuit Court of Appeals vacated and remanded the case, holding that the fact that the applicant expressed the political views for which he was targeted while on duty did not preclude him from establishing the requisite nexus.[94]

A Colombian applicant owned a catering business that supplied food to governmental and military institutions. The Revolutionary Armed Forces of Colombia (FARC) made

[91] *See* *Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985); *Matter of Fuentes*, 19 I&N Dec.658, 662 (BIA 1988). Note, however, that several courts have found groups defined by former occupation to constitute particular social groups. In some circumstances, moreover, a group defined by a current profession or occupation may be sufficiently fundamental to its members' identity, distinct in society, and defined with particularity to constitute a particular social group. In such cases, it is necessary to analyze whether the applicant was targeted or fears harm on account of his or her membership in that group. *See* RAIO Training Module, *Nexus – Particular Social Group*.

[92] *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

[93] *See* *Acharya v. Holder*, 761 F.3d 289, 301 (2d Cir. 2014); *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000).

[94] *Khattak v. Holder*, 704 F.3d 197, 204–05 (1st Cir. 2013).

several threatening phone calls in which they attempted to recruit him as an informant and demanded that he stop providing services to the Colombian military, but the applicant repeatedly refused their demands. The immigration judge found that the FARC was motivated to recruit the applicant because he would be useful to them rather than because of any protected ground.[95] The Third Circuit Court of Appeals held that the IJ's decision was not supported by substantial evidence; given the applicant's long association with and economic dependence on Colombian government and political institutions and the fact that he had repeatedly refused the FARC's overtures, the court was compelled to find that the FARC was motivated by an imputed political opinion.[96]

Governments may also impute opposing political opinions to applicants because of their professional associations. For example, in *Javed v. Holder*, a Pakistani attorney who represented an opposition political party in litigation was threatened and beaten by a faction of the governing party. The applicant testified that he was not a supporter of either group but that, as a result of his representation of the opposition party, the governing party thought of him as their enemy. The First Circuit Court of Appeals held that this testimony established that the persecutors imputed a political opinion to the applicant.[97]

8.2 Opinion Must Be Applicant's or Attributed to Applicant

Persecution on account of political opinion means persecution on account of the ***applicant's*** political opinion, or one attributed to the applicant.[98]

Showing that the persecutor is motivated by political goals or represents a political entity does not in itself establish that the persecution is on account of political opinion. The persecutor must be motivated by the applicant's opinion or perceived opinion.

8.3 Attempts to Overthrow the Government

Prosecution for an attempt to overthrow a government may constitute persecution on account of political opinion if there are no legitimate political means in place to change the government.[99] Legitimate government investigation and punishment of individuals who fight against the government, however, is generally not persecution on account of political opinion.[100]

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[95] *Espinosa-Cortez v. Att'y Gen. of U.S.*, 607 F.3d 101, 104–05 (3d Cir. 2010).

[96] *Id.* at 111–12.

[97] *Javed v. Holder*, 715 F.3d 391, 397 (1st Cir. 2013).

[98] *INS v. Elias-Zacarias*, 502 U.S. 478, 482-83 (1992).

[99] *Chanco v. INS*, 82 F.3d 298 (9th Cir. 1995); *Matter of Izatula*, 20 I&N Dec. 149 (BIA 1990); *Perlera-Escobar v. EOIR and INS*, 894 F.2d 1292 (11th Cir. 1990); *Dwomoh v. Sava*, 696 F. Supp. 970 (S.D.N.Y. 1988).

[100] *Perlera-Escobar v. EOIR and INS*, 894 F.2d 1292, 1299 (11th Cir. 1990) (noting a duly established government's internationally recognized right to defend itself against attack and rebellion).

In such cases, your analysis is similar whether the applicant is a participant in an attempted *coup d'etat* or an armed insurrection. If the harm rises to the level of persecution, then you must determine the motivation of the government in harming the applicant.[101] If institutions exist to provide peaceful means to change the government, prosecution of an individual who attempts to violently overthrow the government will not usually be found to be persecution. A "duly established" government has the right to investigate suspected traitors.[102]

In analyzing an applicant's fear of prosecution for actions he or she took to overthrow the government, you should look at the legitimacy of the law being enforced. When a government does not recognize the international human right to peacefully protest, punishment for a politically motivated act against it may not constitute a legitimate exercise of authority.[103]

You must also consider the actions taken by the applicant in furtherance of the attempt to overthrow the government. Actions involving persecution or torture of others, severe harm to civilians, or terrorist activity may lead you to find that the applicant is barred or ineligible for protection. Note that this is a basis for denial that is separate from the question of whether the nexus requirement has been met.[104]

9 COMMON NEXUS ISSUES

The following section provides guidance on a number of nexus issues that have been commonly encountered in the field.

9.1 Civil Strife

Fear of general civil strife or war, and incidental harm resulting from such violence, does not, by itself, establish eligibility for asylum or refugee status. Such incidental harm is not persecution, because it is not directed at the applicant on account of a protected ground. The applicant may be caught in the middle of crossfire or other violence that would occur regardless of his or her presence.

However, the existence of civil strife or war in the applicant's country does not preclude finding the applicant eligible for asylum or refugee status if the applicant is harmed or at

[101] *See* *Chanco v. INS*, 82 F. 3d 298 (9th Cir. 1996); *Perkovic v. INS*; 33 F.3d 615 (6th Cir. 1994).

[102] *Perlera-Escobar v. EOIR and INS*, 894 F.2d 1292, 1299 (11th Cir. 1990).

[103] *Chanco v. INS*, 82 F.3d at 302.

[104] *See*, *e.g.*, *Abdoulaye v. Holder*, 721 F.3d 485, 490 (7th Cir. 2013) (upholding a determination that an applicant who had participated in an attempted coup against the military regime in Niger was barred from asylum for having engaged in terrorist activity). *See also* RAIO Training Modules, *National Security*, *Grounds of Inadmissibility*, and *Discretion*.

risk for reasons related to a protected ground.[105] The BIA has found that widespread chaos and violence caused by civil strife and the type of individualized harm that constitutes persecution on one of the five protected grounds are not mutually exclusive.[106] Indeed, persecution often occurs during civil war.

Example

Inter-clan violence in Somalia became common during a period of civil war. Harmful acts committed by members of one clan against another because of clan membership during that civil war are on account of the victims' membership in a particular social group. That a large number of people in Somalia might be at risk of clan violence is not relevant to the decision.[107]

Conditions of political upheaval that affect the populace as a whole or in large part, may not be sufficient to establish an individual claim for asylum.[108] When an applicant claims harm from a rival political group, you must determine whether the persecutor was motivated to harm the applicant because of a protected ground.

9.1.1 Considerations

To evaluate whether the harm suffered or feared is incidental to strife or whether it was or might be directed at the applicant on account of one of the protected grounds, you need a firm understanding of the applicant's specific situation and the nature of the civil strife.

- Specific threats

The significance of a specific threat against an applicant is not weakened because the applicant lives in a country where the lives and freedom of many people are threatened. To the contrary, such conditions may make the threat more serious or credible.[109]

- Targeting of non-combatants

In any situation in which non-combatants are intentionally targeted, you should try to ascertain why non-combatants are targeted, whether the non-combatants share a protected characteristic in the refugee definition, and whether the applicant also possesses that

[105] *See* *Mendoza-Pablo v. Holder*, 667 F.3d 1308 (9th Cir. 2012).

[106] *Matter of H-*, 21 I&N Dec. 337, 343 (BIA 1996).

[107] *Id.*

[108] *Meghani v. INS*, 236 F.3d 843, 847 (7th Cir. 2001) (citing *Mitev v. INS*, 67 F.3d 1325, 1330 (7th Cir.1995)); *Ali v. Ashcroft*, 366 F.3d 407 (6th Cir. 2004) (finding that a leader of the Jamaat party of Bangladesh who was detained by police as a result of his participation in violent conflicts with members of opposing political parties had not established persecution on account of his political opinion).

[109] *M.A. v. INS*, 899 F.2d 304, 315 (4th Cir. 1990); *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1985).

characteristic. Cases that at first glance appear to be isolated incidents or random acts of violence during a period of civil strife may, upon further inquiry, become valid asylum or refugee claims. For example, in some situations, the civil strife in itself may be rooted in a protected ground, such as nationality or race.[110] If so, the targeting of non-combatants on account of nationality or race would be "on account of" a protected ground.

Example

During the conflict in Iraq, fighting occurred between Sunni and Shi'a militias. The conflict was religious in nature, and militias targeted people of the other denomination. The applicant, a Sunni Muslim, lived in a predominantly Sunni neighborhood. During a battle between the two militias, she was shot when a stray bullet passed through the wall of her home. A witness told her and her family that it appeared the shot was fired by a Shi'a militia man. She would be able to satisfy the nexus requirement as the militia man was motivated to harm residents of the neighborhood on account of religion.

- Legitimate acts of war or violations of humanitarian law

You should consider whether the harm the applicant suffered or fears is a result of a legitimate act of war or a violation of humanitarian law. Even if the applicant is a combatant, he or she may be subject to persecution if the opponent (either government or an insurgent group) acts outside of the internationally recognized parameters of "legitimate" warfare.[111]

- Specific treatment of the applicant

Though the experiences of others mistreated during a period of civil strife are relevant to an applicant's claim, the applicant's specific experience must be considered.
For example, in *Ndom v. Ashcroft*, the Ninth Circuit overturned a decision by an immigration judge that two arrests of a Senegalese applicant living in the Casamance region of the country at the time of civil unrest were not on account of the applicant's political opinion. The immigration judge had concluded that the applicant was "indiscriminately arrested" with others living in the town and thus was a "victim of civil and military strife."[112]

In reversing this conclusion, the Ninth Circuit identified evidence showing that the applicant was targeted on account of his imputed political opinion. Though he was arrested during mass arrests in his town, the applicant was individually accused of supporting the Mouvement des forces démocratiques de Casamance (MFDC), a group

[110] *See, e.g.*, *Mendoza-Pablo v. Holder*, 667 F.3d 1308 (9th Cir. 2012) (applicant targeted because he was a member of an indigenous Mayan ethnic group).

[111] *See* RAIO Training Module, *International Human Rights Law*.

[112] *Ndom v. Ashcroft*, 384 F.3d 743, 750 (9th Cir. 2004), *superseded by statute on other grounds as recognized in Parussimova v. Mukasey*, 533 F.3d 1128 (9th Cir. 2008).

seeking independence for Casamance, and was ordered to sign a confession form stating that he participated in a "rebellious manifestation." The court found that this evidence compelled the conclusion that the applicant had been targeted on account of his political opinion.[113]

9.2 Conscription by Military

A government has a sovereign right to conscript its citizens and maintain a military.[114] Laws pertaining to required military service ordinarily are not intended to punish individuals on account of any of the protected grounds, but rather to form and maintain a military. Punishment for refusing to serve, without evidence of a nexus to a protected ground, is not persecution, but prosecution for refusing to obey the law.[115]

Draft evasion and desertion from the military are not always motivated by a person's religion, political opinion, or other protected characteristic. There are a variety of reasons why an individual might refuse to perform military service.[116]

Even when the avoidance of military service is motivated by an applicant's religion or political opinion, the government may not be motivated to harm the applicant on account of the protected ground.[117] Punishment for draft evasion or desertion, without some evidence that the government's motivation in punishing the evader or deserter is connected to something other than the act of evasion or desertion, generally is not persecution on account of any of the protected grounds.

- **Disproportionate punishment**

To make a claim based on desertion or draft evasion, the applicant must establish a nexus to a protected characteristic by demonstrating that he or she was or would be subject to disproportionate punishment for military desertion or draft evasion because of an actual or imputed protected characteristic. Disproportionate punishment in this context can be used to describe situations where the penalty for draft evasions for desertion is out of proportion with international norms or where the penalty is out of proportion with that experienced by others who do not share an applicant's protected characteristic.

If an applicant may be subject to disproportionate punishment on account of a protected characteristic he or she actually possesses or is believed to possess because of his or her

[113] *Id*. at 755.

[114] *Matter of Vigil*, 19 I&N Dec. 572, 578 (BIA 1988); *Nguyen v. Reno*, 211 F.3d 692 (1st Cir 2000), *citing Foroglou v. INS*, 170 F.3d 68, 71 (1st Cir. 1998); see also *Islami v. Gonzales*, 412 F.3d 391, 397 (2d Cir. 2005).

[115] *See Matter of A-G-*, 19 I&N Dec. 502, 507 (BIA 1987).

[116] *UNHCR Handbook*, para. 167; *Nguyen v. Reno*, 211 F.3d 692 (1st Cir 2000); *Castillo v. INS*, 951 F.2d 1117 (9th Cir. 1991); *M.A. v. INS*, 899 F.2d 305, 312 (4th Cir. 1990); *Canas-Segovia v. INS*, 970 F.2d 599, 601 (9th Cir. 1992).

[117] *Milat v. Holder*, 755 F.3d 354, 363 (5th Cir. 2014); *Zehayte v. Gonzales*, 453 F.3d 1182 (9th Cir. 2006).

refusal to serve or to perform an action during service, the applicant may be able to establish a nexus between this punishment and a protected ground.[118]

- **Refusal to serve in a military or commit an action that is condemned by the international community as contrary to basic rules of human conduct**

UNHCR guidance states that when an individual is punished for refusing to participate in a military action that is condemned by the international community, the punishment could be regarded as persecution.[119] U.S. courts have interpreted "military action" as encompassing both a specific military action that would be internationally condemned, and a refusal to serve in a military unit or army that engages in internationally condemned activities.[120] Further, the phrase "condemned by the international community as contrary to basic rules of human conduct" has been interpreted to mean that such condemnation must at a minimum come from "recognized international governmental bodies."[121]

U.S. law requires you to determine whether the evidence shows that the persecutor is motivated by the applicant's opposition to the condemned acts.[122] The Fifth Circuit emphasized the need for evidence of the persecutor's motivation in *Gomez-Mejia.* The applicant in that case never revealed his opposition to the Nicaraguan military's actions and presented no evidence that the military imputed an opposition viewpoint to him. Therefore, any punishment he faced as a result of desertion was not on account of a protected ground.[123] In contrast, the Ninth Circuit has held that an applicant who was punished after he openly voiced his opposition to internationally condemned actions was persecuted on account of his political opinion.[124]

The First Circuit upheld an immigration judge's requirement that an applicant demonstrate that he or she would not be permitted to complete the required service by performing an alternate non-combat role, rather than serving in the military.[125] In this case, the First Circuit concluded that "the record clearly establishes that the Algerian military is a military whose acts are condemned by the international community."[126] The

[118] *Matter of Vigil*, 19 I&N Dec. 572 (BIA 1988); *Vujisic v. INS*, 224 F.3d 578 (7th Cir.2000) *M.A. v. INS*, 899 F.2d 305 (4th Cir. 1990); *Mekhoukh v. Ashcroft*, 358 F.3d 118, 126 (1st Cir. 2004); *UNHCR Handbook*, para. 169.

[119] *UNHCR Handbook*, para. 171.

[120] *Mojsilovic v. INS* 156 F.3d 743, 748 (7th Cir. 1998); *M.A. v. INS*, 899 F.2d 304, 321 (4th Cir. 1990).

[121] *M.A. v. INS*, 899 F.2d 304 (4th Cir. 1990).

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[123]

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[125] *Mekhoukh v. Ashcroft*, 358 F.3d 118, 127 (1st Cir. 2004).

[126] *Id*.

court rejected the applicant's argument that it would have been futile to ask for alternate service because he failed to make any inquiry or provide a justification for his failure.[127]

9.2.1 Conscientious Objectors

Military service is generally not considered persecution. Some individuals, for reasons of religion or conscience refuse to serve in the military, but such refusal does not result in a *per se* determination that these individuals are eligible for refugee or asylum status.[128] At least one court has found an applicant eligible for asylum because he was from a country that barred adherents of his religion from conscientious objector status but granted it to adherents of other religions.[129] Another court, in *dicta*, noted that conscientious objection might be a form of protected activity that would qualify an individual for asylum but rejected the claim on other grounds.[130] Also, as noted above, refusal to participate in specific acts contrary to international standards governing human conduct may, in some cases, provide eligibility for asylum or refugee status.

U.S. asylum and refugee law regarding conscientious objection diverges from guidance in the *UNHCR Handbook*, which indicates that refusal to perform military service may be the sole basis for a claim to refugee status if the refusal is due to valid reasons of conscience.[131] U.S. law requires evidence that the persecutor is motivated to harm the applicant on account of a protected ground. You must always follow U.S. law, even where it differs from *UNHCR Handbook* guidance.

9.2.2 Assignments to Life-threatening Duties

The Seventh Circuit has held that individuals who are assigned to life-threatening duties on account of a protected characteristic may establish persecution on account of that protected trait.

In *Begzatowski v. Ashcroft*, the court found that an ethnic Albanian conscripted into the Yugoslav military who was deprived of bathing facilities, denied adequate military training, experienced physical abuse by the Serbian officers, and was sent to the front lines of battle without bullets or a shovel, suffered persecution on account of his ethnicity. The court reasoned that because the applicant was singled out to "provide a

[127] *Id*.

[128] *Matter of Canas*, 19 I&N Dec. 697 (BIA 1988); *Canas-Segovia v INS*, 970 F.2d 599 (9th Cir. 1992).

[129] *Ilchuk v. Att'y Gen. of the U.S.*, 434 F.3d 618, 626 (3d Cir. 2006) ("[I]f members of some religions may avoid service without penalty based on conscientious objection, but adherents of other religions are denied the exemption outright, resulting imprisonment is on account of religion, not failure to serve").

[130] *Najafi v. INS*, 104 F.3d 943, 947 (7th Cir. 1997)

[131] *UNHCR Handbook*, paras. 170, 172.

human shield for Serbian soldiers," he was subjected to treatment distinct from the dangerous conditions affecting an entire nation during a time of war.[132]

9.3 Recruitment by Insurgent Groups

Forced recruitment by insurgent groups and harm for refusing to join or cooperate with insurgents do not, ***per se***, satisfy the requirement that the applicant show the harm feared or experienced is on account of a protected ground.[133]

Insurgents may recruit for reasons unrelated to a protected ground, such as the need to increase their ranks or because they believe an individual possesses certain knowledge or expertise.[134] Individuals may refuse to cooperate with insurgents for a variety of reasons unrelated to a protected ground (e.g., the fear of reprisal or the need to remain home to work on the farm). Therefore, there must be some additional evidence, aside from the recruitment effort, to establish a connection to a protected ground.

9.4 Considerations in Conscription and Recruitment Cases

- Duty to elicit information

While forcible recruitment and threats or harm for refusal to cooperate do not in themselves satisfy the nexus requirement, you must elicit information from the applicant to determine whether any additional evidence connects the persecutor's actions to any of the protected grounds.

- Consider the entire record for evidence of a nexus

Consider the content of the threats and any statements the applicant made when refusing to cooperate, including relevant country of origin information.

Even if an applicant does not express an opinion to the guerrillas when refusing to cooperate, other evidence may connect the threats or harm to a protected ground. Such evidence may include:

- Accusations by the guerrillas that the applicant sympathizes with the government
- Prior utterances against the guerrillas or military

[132] *Begzatowski v. Ashcroft*, 278 F.3d 665, 670 (7th Cir. 2000). *See also* *Miljkovic v. Ashcroft*, 376 F.3d 754, 756 (7th Cir. 2004) (finding that an ethnic Croatian applicant who fled Yugoslavia because he was drafted to perform hazardous duties could be a victim of persecution even though he fled prior to being forced into service).

[133] *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); *Matter of C-A-L-* 21 I&N Dec. 754 (BIA 1997); *Miranda v. INS*, 139 F.3d 624 (8th Cir. 1998); *Pedro Mateo v. INS*, 224 F.3d 1147 (9th Cir. 2000); *Habtemicael v. Ashcroft*, 370 F.3d 774 (8th Cir. 2004).

[134] *INS v. Elias-Zacarias*, 502 U.S. 478 (1992); *Matter of C-A-L-* 21 I&N Dec. 754 (BIA 1997) (applicant testified that guerrillas contacted him to obtain information and to attempt to recruit him due to his expertise as an artillery specialist).

- Activities in support of an opposing force
- A family member's association with an opposing force[135]

You must consider all the facts in evaluating the government's or guerrillas' perception of the applicant's refusal to assist them.

Example

While beating a K'iche' (Quiché) man after he had refused to join them, the Guatemalan military accused him of being a guerrilla and demanded information about his "guerrilla friends." The Ninth Circuit found that the statements of the military together with country of origin information documenting the Guatemalan military belief that indigenous people were pro-guerrilla, was sufficient evidence to support a finding that the harm occurred on account of the applicant's (imputed) political opinion.[136]

- Country of origin information

In many conflicts the warring parties may view refusal to cooperate as opposition. Therefore, country of origin information may be useful in evaluating how a guerrilla group views those who refuse to cooperate with its cause.

9.5 Extortion

In some cases, extortion may form the basis for a valid asylum or refugee claim if evidence connects the threats or harm to one of the protected grounds.[137] However, when the persecutor is motivated solely by a desire to obtain money, the applicant will not satisfy the nexus requirement. You must consider why the persecutor chose to extort the applicant. Such cases may also be mixed-motive cases, where the persecutor is motivated both by a protected ground and a desire to obtain money. If you are adjudicating an asylum claim, remember that the protected ground must be "at least one central reason for persecuting the applicant."[138] In refugee processing, you must determine if "a reasonable person would fear that the danger arises on account of" one of the five grounds."[139]

[135] *See* *Rivas-Martinez v. INS*, 997 F.2d 1143 (5th Cir. 1993).

[136] *Chanchavac v. INS*, 207 F.3d 584 (9th Cir. 2000).

[137] *Desir v. Ilchert*, 840 F.2d 723 (9th Cir. 1988) (government-sponsored extortion found to be "on account" of victim's political opinion because people who resisted extortion were marked as subversives); *Tapiero de Orejuela*, 423 F.3d 666, 673 (7th Cir. 2005).

[138] INA § 208(b)(1)(B)(i).

[139] *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988). *See also* *In re S-P-*, 21 I&N Dec. 486 (BIA 1996).

Evidence that the extortionist is a political entity or is extorting money to support a political cause is not sufficient to establish the requisite nexus. The applicant must show that the persecutor is motivated by the applicant's protected belief or characteristic.[140]

Where the extortionist has branded the applicant a political opponent, the applicant may establish that she has been targeted on account of her political opinion, despite the likelihood that the extortionist also is interested in the applicant's wealth.[141] The Ninth Circuit held an applicant was persecuted on account of his political opinion where the extortion was instigated by the government, and the applicant belonged to an anti-government party.[142]

9.6 Coercive Population Control Policies

On September 30, 1996, the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act,[143] which added the following sentence to the statutory definition of refugee:

For purposes of determinations under this Act, a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.[144]

The amendment effectively overruled previous BIA precedent decisions in which the BIA concluded that imposition of national population-control policies (including forced sterilization and abortion) did not in itself constitute persecution on account of a protected characteristic in the refugee definition.[145]

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[140] *See* *INS v. Elias-Zacarias*, 502 U.S. 478 (1992).

[141] *De Brenner v. Ashcroft*, 388 F.3d 629, 637 (8th Cir. 2004); *Tapiero de Orejuela*, 423 F.3d 666, 672 (7th Cir. 2005).

[142] *Yazitchian v. INS*, 207 F.3d 1164 (9th Cir. 2000).

[143] Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, Section 601, 110 Stat. 3009 (Sept.30, 1996); *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996) (recognizing a change in the law and granting asylum to an applicant who was forcibly sterilized); *see generally* David A. Martin, INS Office of General Counsel, Memorandum to Management Team, et al., *Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, HQCOU 120/11.33-P, 6 (Oct. 21, 1996).

[144] INA § 101(a)(42).

[145] *See* *Matter of X-P-T-*, 21 I&N Dec. 634 (BIA 1996); *Matter of Chang*, 20 I&N Dec. 38 (BIA 1989); *Matter of G-*, 20 I&N Dec. 764 (BIA 1993).

Claims based on this amended definition of refugee typically arise only in asylum claims. They have not, to date, arisen in the refugee resettlement context. For a more detailed discussion of this type of claim, *see* ASM Supplement – Coercive Population Control.

9.6.1 Nexus to a Protected Characteristic

The applicant is not required to demonstrate that the population control program was being selectively applied to him or her on account of a protected ground. The statute requires that the harm (either the forced abortion or sterilization itself, or harm for other resistance to a coercive population-control program) be considered to be on account of political opinion. The applicant still must meet the other elements in the refugee definition to establish eligibility.[146]

9.6.2 "Other Resistance"

In *Matter of S-L-L-* the BIA indicated that "other resistance" may take many forms and cover a wide range of circumstances. Resistance can include

- expressions of general opposition;
- attempts to interfere with enforcement of government policy in particular cases; or
- other overt forms of resistance to the requirements of the family planning law.[147]

Forms of "other resistance" could include removing an IUD or failing to attend a mandatory gynecological appointment.[148] Additionally, refusing to abort a pregnancy and subsequently having a child out of wedlock in violation of Chinese law has also been found to be "other resistance" to a coercive population control program.[149]

In *Cao v. Gonzales*, the Third Circuit found that writing an article critical of population-control practices and exposing the practice of infanticide constitutes "other resistance" to a coercive population-control program. An applicant engaged in such activities could establish eligibility for asylum based on harm resulting from that resistance, even if the applicant was not personally subjected to forced abortion or sterilization.[150] The Ninth

[146] *See* David A. Martin, INS Office of General Counsel, Memorandum to Management Team, et al., *Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, HQCOU 120/11.33-P, 6 (Oct. 21, 1996).

[147] *Matter of S-L-L-*, 24 I&N Dec. 1, 11-12 (BIA 2006) (holding that the applicant's efforts in seeking waivers of the age restrictions were not indicative of resistance but rather were indicative of a desire to comply with the coercive population control program), *overruled on other grounds*, *Matter of J-S-*, 24 I&N Dec. 520, 521 (BIA 2008).

[148] *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633, 638 (BIA 2008). *See also* *Lin v. Ashcroft*, 385 F.3d 748, 757 (7th Cir. 2004); *Feng Chai Yang v. U.S. Att'y Gen.*, 418 F.3d 1198, 1205 (11th Cir. 2005).

[149] *Fei Mei Cheng v. Att'y Gen. of the U.S.*, 623 F.3d 175, 191 (3d Cir. 2010). *See also* *Nai Yuan Jiang v. Holder*, 611 F.3d 1086 (9th Cir. 2010)(cohabiting and conceiving a child in defiance of Chinese law prohibiting underage marriage and marrying in a traditional ceremony fall within the court's interpretation of "other resistance").

[150] *Cao v. Gonzales*, 407 F.3d 146, 153 (3d Cir. 2005).

Circuit has held that hardships, including economic deprivation and denial of access to education, suffered by a child as a result of her parents' resistance to a population-control program were on account of an imputation of the parents' resistance to the child.[151]

The BIA held, however, that impregnating a girlfriend or fiancée or seeking permission to marry or have children outside age limits did not constitute "resistance" under the facts of the case.[152] At least one court has held, however, that similar conduct was "other resistance."[153] In *Shi Liang Lin*, the Second Circuit held that a spouse or partner needs to demonstrate "past persecution or a fear of future persecution for 'resistance' that is directly related to his or her own opposition to a coercive family planning policy."[154] The court also held that where an applicant has not demonstrated resistance to coercive family-control policies, but his spouse or partner has, he or she may be able to demonstrate that his partner's resistance has been or will be imputed to him.[155]

9.7 Crime and Personal Disputes

Applicants who fear harm by criminals or harm related to personal disputes often have difficulties establishing a nexus.[156] If the persecutor is motivated solely by a desire for economic gain, or purely personal vengeance, there is no nexus to a protected ground.[157] For example, an applicant who fears that the victim of a car accident that he or she caused might retaliate would be unlikely to satisfy the nexus requirement. Similarly, an applicant who fears high levels of robbery in his or her country would be unlikely to establish a nexus.

Applicants who, at first glance, appear to have fear of crime or flee because of a personal dispute, may upon further inquiry prove to have a valid basis for their asylum or refugee claims.[158] For example, a woman who feared that she would be the victim of an honor killing at the hands of her brother was eligible for protection and was not the victim of a personal dispute.[159]

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[151] *Xue Yun Zhang v. Gonzales*, 408 F.3d 1239, 1246 (9th Cir. 2005).

[152] *Matter of S-L-L-*, 24 I&N Dec. at 11-12.

[153] *Nai Yuan Jiang v. Holder*, 611 F.3d 1086 (9th Cir. 2010)

[154] *Shi Liang Lin v. United States Dep't. of Justice*, 494 F.3d 296, 313 (2d Cir. 2007) (en banc).

[155] *Id. See also* *Xu Ming Li v. Ashcroft*, 356 F.3d 1153 (9th Cir. 2004) (en banc).

[156] *See* *Cruz-Funez v. Gonzales*, 406 F.3d 1187 (10th Cir. 2005) (finding that applicants who feared an unscrupulous private creditor connected to the allegedly corrupt Honduran government did not fear harm on account of membership in a particular social group, especially where the applicants' debt was settled by a court, which ordered them to pay their creditor back).

[157] *See e.g.*, *Cuevas v. INS*, 43 F.3d 1167 (7th Cir. 1995); *Kozulin v. INS*, 218 F.3d 1112 (9th Cir. 2000).

[158] *See* *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011).

[159] *Id*. at 656.

The persecutor may have more than one motive for threatening or harming the applicant. One motive may be a protected belief or characteristic that the applicant possesses or that the persecutor imputes to the applicant and one may be a personal or criminal reason. The persecutor's additional personal or criminal reason does not render the claim invalid.

Personal relationship with persecutor

Having a personal relationship with the persecutor does not, in itself, mean the applicant cannot satisfy the nexus requirement.[160] In many cases, the persecutor is a spouse or other family member.

When the persecutor and the applicant have a personal relationship, the persecutor might target the applicant because of a belief or trait that is not immediately obvious to the adjudicator. You should carefully consider whether the applicant is in fact being targeted because of a belief or trait that might define a social group.[161] Characteristics to consider include the applicant's social status based on his or her position within a domestic relationship, a physical trait, a voluntary association, past experience, beliefs about religion and cultural practices, and cultural identity.

9.8 Minorities and Majorities

Claims based on persecution or feared persecution on account of nationality are often brought by individuals who belong to a national minority.[162] However, in some situations, individuals belonging to a national majority have reason to fear persecution by a minority.[163]

Examples

- Hutu is the majority ethnic group in Rwanda, while Tutsi, the minority group, controls the government. Both Hutus and Tutsis have presented valid claims for asylum and refugee status.

- In Iraq, Shi'a Muslims comprise about 60 percent of the population while Sunni Muslims comprise about 37 percent. Both Shi'a and Sunni Muslims from Iraq have presented valid claims for asylum and refugee status.

10 CONCLUSION

[160] *See, e.g.*, *Sarhan v. Holder*, 658 F.3d 649 (7th Cir. 2011); *Matter of S-A-*, 22 I&N Dec. 1328 (BIA 2000).

[161] For more information, see RAIO Training Module, *Nexus – Particular Social Group*.

[162] *UNHCR Handbook*, para. 76.

[163] *Id*.

You must determine whether or not persecution or feared persecution is "on account of" one or more of the five protected grounds in the refugee definition: race, religion, nationality, membership in a particular social group, or political opinion.

To properly determine whether persecution is on account of a protected ground, the officer must understand 1) the "on account of" requirement, which involves the motive of the persecutor, and 2) the parameters of the five grounds for refugee status listed in the refugee definition.

While the burden of proof is on the applicant to prove a nexus to a protected ground, you must elicit sufficient information from the applicant about any possible connection to protected grounds so that you are able to make a determination.

11 SUMMARY

11.1 General Principles Regarding Nexus

11.1.1 Nexus

To be eligible for asylum or refugee status, the applicant must establish that the persecutor harmed or seeks to harm the applicant because the ***applicant*** possesses, or is believed to possess, one or more of the protected grounds.

11.1.2 Motive of the Persecutor

The motive of the persecutor is determinative in evaluating whether a nexus to one of the protected grounds has been established. The applicant's possession or imputed possession of a protected characteristic must be part of the motivation for persecuting the applicant. Motive may be established by either direct or circumstantial evidence.

11.1.3 Exact Motive Need Not Be Established

The applicant does not bear the burden of establishing the exact motive of the persecutor. If you are adjudicating asylum applications under INA § 208, you must determine whether the applicant's actual or imputed possession of one of the five protected grounds is at least one central reason motivating the persecutor. If you are processing refugee applications overseas under INA § 207, you must determine that a ***reasonable person*** would fear that the danger arises on account of the applicant's actual or imputed possession of a characteristic connected to one of the protected grounds in the refugee definition.

The persecutor may be motivated by several factors; there is no requirement that the persecutor be motivated only by a desire to overcome or change a protected belief or characteristic.

11.1.4 Motive need NOT be Punitive

There is no requirement that the persecutor's motive be punitive, although it may be punitive.

11.1.5 Imputed Ground

Persecution inflicted upon an individual because the persecutor attributes to the individual one of the protected grounds constitutes persecution on account of that ground.

11.2 Protected Grounds [with Particular Social Group Omitted]

11.2.1 Race

"Race" includes all kinds of ethnic groups and may also entail membership in a specific social group of common descent. Serious harm imposed for disregard of racial barriers may also constitute persecution on account of race.

11.2.2 Nationality

"Nationality" as a protected ground refers to membership in an ethnic or linguistic group as well as country of citizenship. Persecution on account of nationality often overlaps with persecution on account of other protected grounds, such as race, membership in a particular social group, and political opinion.

In some ethnically-based conflicts, members of an ethnic group may be at risk of harm, even though they are not themselves directly involved in the conflict, because the persecutor associates them with the members of their ethnic group who are involved in a conflict.

11.2.3 Religion

Some forms of persecution on account of religion may include actions that seriously impede an individual's ability to practice his or her religion; serious harm for conversion from one religion to another; punishment for violating religious-based laws; and forced compliance with religious laws that are abhorrent to an applicant's own beliefs.

11.2.4 Political Opinion

"Political opinion" should not be interpreted narrowly to include only participation in a political party or the political process. It should be interpreted broadly and may include opinions regarding women's rights, workers' rights, and other human and civil rights. The persecutor's association with a political entity does not establish that the harm or feared harm is on account of political opinion. Persecution on account of political opinion means persecution on account of the ***applicant's*** opinion or one that has been attributed to the applicant.

Forced abortion or forced sterilization, persecution for refusal to undergo such procedures, and persecution for resistance to population control policies, by law are

considered to be persecution on account of political opinion. Coercive family planning cases do not require specific evidence of motivation.

11.3 Common Nexus Issues

Generally, U.S. law requires specific evidence, either direct or circumstantial, that the persecutor is motivated by a protected belief or characteristic that the applicant possesses or is perceived to possess. Evidence that the applicant is in a conflict situation is generally not specific enough to establish nexus. You are responsible for eliciting evidence surrounding the circumstances of the applicant's claim to determine if such specific evidence exists.

PRACTICAL EXERCISES

Note: Practical Exercises will be added at a later time.

Practical Exercise # 1

- **Title:**
- **Student Materials:**

OTHER MATERIALS

There are no Other Materials for this module.

SUPPLEMENT A – REFUGEE AFFAIRS DIVISION

The following information is specific to the Refugee Affairs Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1.

2.

ADDITIONAL RESOURCES

1.

2.

SUPPLEMENTS

RAD Supplement - Motivation

NOTE:

The Immigration and Nationality Act (INA) is the governing statute for asylum and refugee adjudications. INA § 207 is the statutory provision for refugee admissions, and 8 C.F.R. Part 207 contains the corresponding regulations. INA § 208 is the statutory provision for asylum adjudications and 8 C.F.R. Part 208 contains the corresponding regulations.

The REAL ID Act of 2005 amended INA § 208 but did not amend INA § 207. Therefore, any changes the REAL ID Act made to asylum law do not apply in the overseas refugee processing context. The principal change the REAL ID Act makes to the law surrounding nexus is the requirement that asylum applicants establish that one of the five protected grounds was, or would be, at least one central reason in motivating the persecutor. Refugee officers should disregard the word "central" when they see it in this context and should refrain from making it part of their analysis. In the refugee processing context, you must determine whether a reasonable person would fear that the danger arises on account of one of the five grounds.

SUPPLEMENT B – ASYLUM DIVISION

The following information is specific to the Asylum Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1.

2.

ADDITIONAL RESOURCES

1. Joseph E. Langlois, USCIS Asylum Division. Updates to Asylum Officer Basic Training Course Modules as a Result of Amendments to the INA Enacted by the REAL ID Act of May 11, 2005, *Memorandum to Asylum Office Directors, et al (Washington, DC: 11 May 2006), 8 p.*

2. Memorandum from David A. Martin, INS Office of General Counsel, to Management Team, et al., *Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, (21 Oct. 1996) (HQCOU 120/11.33-P).

3. UNHCR, *Note on Refugee Claims Based on Coercive Family Planning Laws or Policies* (Aug. 2005).

SUPPLEMENTS

ASM Supplement - Coercive Population Control

General Overview

In 1996, Congress amended the refugee definition to allow for claims based upon certain types of harm related to coercive population control programs.[164] Under the amended INA:

> a person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well founded fear of persecution on account of political opinion.[165]

According to the BIA, the amended refugee definition created four new and specific classes or categories of refugees:[166]

- persons who have been forced to abort a pregnancy;
- persons who have been forced to undergo involuntary sterilization;[167]
- persons who have been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program; and
- persons who have a well-founded fear that they will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance.

Forced abortion and forced sterilization (the first two categories above) constitute persecution on account of political opinion within the meaning of the refugee definition. Individuals who have not physically undergone forced abortion or sterilization procedures may qualify for refugee status under the third category above, if they show persecution for failure or refusal to undergo these procedures, or persecution inflicted because of other resistance to a coercive population control program. A well-founded fear of forced abortion, sterilization, or other persecution for failing or refusing to undergo such a procedure, or for resisting a coercive

[164] *See* David A. Martin, INS Office of General Counsel, Memorandum to Management Team, et al., *Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996*, HQCOU 120/11.33-P (Oct. 21, 1996).

[165] INA § 101(a)(42).

[166] *Matter of J-S-*, 24 I&N Dec 520 (AG 2008).

[167] *See* *Matter of X-P-T-*, 21 I&N Dec 634 (BIA 1996) (recognizing change in law and granting asylum to applicant who was forcibly sterilized).

population control program, may provide a basis for refugee status under the fourth category above.

Element of "force"

In order for an abortion or sterilization procedure to constitute persecution, the applicant must establish that he or she was "forced" to undergo the procedure. In *Matter of T-Z-*,[168] the BIA held that a procedure is "forced" within the meaning of the INA when:

- a reasonable person would objectively view the threats for refusing the procedure to be genuine, and
- the threatened harm, if carried out, would rise to the level of persecution.

The applicant does not have to demonstrate physical harm or threats of physical harm because "persecution" is not limited to physical harm or threats of physical harm. However, the applicant must demonstrate that the harm he or she feared, if carried out, would rise to the level of persecution.[169]

Threats of economic harm, for example, could suffice, "so long as the threats, if carried out, would be of sufficient severity that they amount to past persecution."[170] However, not all threats involving economic sanctions will rise to the level of persecution. The harm must involve:

- the deliberate imposition of *severe* economic disadvantage; or
- the deprivation of liberty, food, housing, employment or other essentials of life.

However, "pressure" or persuasion applied to submit to a course of action not preferred is not "force" unless the harm suffered or feared rises to the level of persecution. Thus, for example, economic harm that would not rise to the level of persecution would constitute pressure but would not make an abortion "forced." In *Yuqing Zhu v. Gonzales*,[171] a case involving an unmarried woman who underwent

[168] *Matter of T-Z-*, 24 I&N Dec. 163, 168 (BIA 2007) (considering whether undergoing two abortions because of the threat of job loss established that the procedures were forced).

[169] *Id*. at 170-72. *See also* *Matter of M-F-W- & L-G-*, 24 I& N Dec. 633, 636-40 (BIA 2008) (holding that the insertion or removal of an IUD in a routine medical procedure does not rise to the level of persecution, unless aggravating circumstances exist, because unlike sterilization and abortion, the insertion of an IUD is not a permanent measure).

[170] *Matter of T-Z-*, 24 I&N Dec. at 169-70 (rejecting *Lidan Ding v, Ashcroft*, 387 F.3d 1131, 1139 (9th Cir. 2004) and *Wang v. Ashcroft*, 341 F.3d 1015 (9th Cir. 2003) in so far as those decisions suggest that economic harm that does not rise to the level of persecution could establish that an abortion was "forced").

[171] *Yuqing Zhu v. Gonzales*, 493 F.3d 588 (5th Cir. 2007).

an abortion before the authorities discovered that she was pregnant, the Fifth Circuit adopted the *Matter of T-Z-* standard for determining whether an abortion was "forced," but reversed the BIA's finding that the applicant's abortion was not forced. The applicant underwent an abortion because she believed that the law required abortion, and she feared: (1) a later physically compelled abortion; (2) loss of her job, benefits and housing; (3) imprisonment; (4) sterilization; (5) that her child would not be recognized as a Chinese citizen; and (6) her child would be denied services. The court held that the applicant's "abortion was indeed forced, as a reasonable person in Zhu's position 'would objectively view the threats for refusing the abortion to be genuine,' and that harm, 'if carried out, would rise to the level of persecution.'"[172] Specifically, the threat of a later physically compelled abortion or forcible sterilization rose to the level of persecution. The fact that the applicant's boyfriend wanted her to undergo an abortion did not keep the abortion from having been "compelled" by the government.

In *Xiu Fen Xia v. Mukasey*, the Second Circuit held that an applicant's abortion was not forced, under the interpretation set forth in *Matter of T-Z-*. Fearing sterilization, a "really heavy fine," arrest, forced abortion, and arrest of her family members, the married applicant from Zhejiang Province obtained an abortion from a private hospital before government authorities knew of her pregnancy. The court held that "force" requires evidence as to the pressure actually exerted on a particular petitioner. Here, no government official was aware of Xia's pregnancy, and therefore no government official forced her to terminate her pregnancy or threatened her with other harm. Additionally, the court held that even if she would face some harm when her pregnancy was discovered, the applicant did not show that she risked anything more than modest fees or fines, which would not be severe enough to rise to the level of persecution.[173]The Ninth Circuit has held, and the BIA recognizes, that an applicant seeking to prove that he or she was subjected to a coercive population control program "need not demonstrate that he [or she] was physically restrained during a 'forced' procedure. Rather, 'forced' is a much broader concept, which includes compelling, obliging, or constraining by mental, moral, or circumstantial means, in addition to physical restraint."[174]

[172] *Id*. at 590.

[173] *Xiu Fen Xia v. Mukasey*, 510 F.3d 162 (2d Cir. 2007).

[174] *Lidan Ding v, Ashcroft*, 387 F.3d 1131, 1139 (9th Cir. 2004) (finding that an applicant who was forced from her home into a van, taken to a hospital, pulled off the floor by two officials when she refused to get up, forced onto a hospital bed, and watched over by two officials underwent a "forced" abortion, despite the fact that she was not physically restrained during the procedure). *See also Zi Zhi Tang v. Gonzales*, 489 F.3d 987 (9th Cir. 2007) (Abortion was "forced" even though applicant and wife did not express opposition to or attempt to avoid the procedure, where the gynecological test was mandatory, performed by wife's employer on whom she was economically dependent, the employer's policy required that the abortion take place, the employer actually took her to have the procedure performed, and the procedure was "barbarically" performed without the benefit of anesthetics).

Eligibility of Spouses and Partners of Persons Who Have Been Physically Subjected to a Forced Abortion or Forced Sterilization Procedure

- **No *Per Se* Spousal Eligibility**

  In 2008, the Attorney General ruled that individuals who have not physically undergone a forced abortion or sterilization procedure, such as spouses of persons forced to undergo these procedures, are no longer *per se* entitled to refugee status.[175]

  The Attorney General reasoned in *Matter of J-S-*, as did the Second Circuit in *Shi Liang Lin*, that the statutory text is limited to the person who was forced to undergo the involuntary procedure. Accordingly, the unambiguous meaning of these clauses is that *per se* refugee protection is to be afforded only to the person forced to undergo the procedure. Spouses or other partners of individuals who have been physically subjected to a procedure may be able to qualify for asylum on a case-by-case basis, but may not benefit from a presumption of eligibility. Although the Attorney General noted "that application of coercive population control procedures may constitute 'obtrusive government interference into a married couple's decisions regarding children and family' that may 'have a profound impact on both parties to the marriage,'" the Attorney General found no basis to afford automatic eligibility to the spouse who was not physically subjected to a forced procedure.[176] The Attorney General's decision in *Matter of J-S-* vacated the BIA's earlier decisions in *Matter of C-Y-Z-* and *Matter of S-L-L-*, in so far as those decisions held that an applicant whose spouse was forced to undergo an abortion or sterilization procedure was *per se* eligible for asylum on the basis of past persecution on account of political opinion.[177]

- **Eligibility of Other Family Members**

  Even before the Attorney General's decision in *Matter of J-S-*, circuit courts had found that *per se* asylum eligibility did not extend to family members, including parents, parents-in-law, and children of individuals subject to coercive population control measures.[178] These individuals may be able to qualify for asylum on a case-by-case basis, considering the factors set forth below.

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[175] *See Matter of J-S-*, 24 I&N Dec. 520 (AG 2008) (overruling BIA's *per se* rule of spousal eligibility); *Shi Liang Lin v. USDOJ*, 494 F.3d 296 (2d Cir. 2007) (en banc) (same).

[176] *Matter of J-S-*, 24 I&N Dec. at 541 (AG 2008). *See also* Definition of Resistance section, below.

[177] *Matter of J-S-*, 24 I&N Dec. 520 (AG 2008).

[178] *See Tao Jiang v. Gonzales*, 500 F.3d 137 (2d Cir. 2007) (child); *Ai Feng Yuan v. USDOJ*, 416 F.3d 192 (2d Cir. 2005) (parents and parents-in-law); *Chen v. USDOJ*, 417 F.3d 303 (2d Cir. 2005) (per curiam) (child); *Wang v. Gonzales*, 405 F.3d 134 (3d Cir. 2005) (child); *Zhang v. Gonzales*, 408 F.3d 1239 (9th Cir. 2005) (child).

- **Case-by-Case Consideration of Eligibility Based on Resistance to Coercive Population Control**

In order to determine whether an applicant who has not physically undergone a forced abortion or sterilization procedure can demonstrate eligibility for asylum, you must conduct a case-by-case assessment of the relevant factors.[179] The applicant must show that he or she meets the following three elements:

- failed or refused to undergo an abortion or sterilization procedure, or resisted a coercive population control program;
- suffered harm, or has a well-founded fear of suffering harm, rising to the level of persecution;
- the persecution was inflicted, or he or she has a well-founded fear that it would be inflicted, for resistance to the coercive population control program or for failure or refusal to undergo the procedure.[180]

Definition of "Resistance" in the Context of Coercive Population Control

In *Matter of S-L-L-* the BIA indicated that "resistance" may take many forms and cover a wide range of circumstances.[181] Resistance can include, for example:

- expressions of general opposition
- attempts to interfere with enforcement of government policy in particular cases
- other overt forms of resistance to the requirements of the family planning law

The BIA held, however, that merely impregnating a girlfriend or fiancée or seeking permission to marry or have children outside age limits does not constitute "resistance" under the refugee definition.[182]

In *Matter of M-F-W- & L-G-*, the BIA stated that removal of an intrauterine device or failure to attend a mandatory gynecological appointment could constitute other resistance to family planning policies. "[S]uch acts, while arguably not comprising

[179] *Matter of C-Y-Z-*, 21 I&N Dec. 915 (BIA 1997), *vacated in part by* *Matter of J-S-*, 24 I&N Dec. 520 (AG 2008); *Matter of S-L-L-*, 24 I&N Dec. 1, 6 (BIA 2006) (same). *See also* *Lin v. U.S. Att'y Gen.*, 555 F.3d 1310, 1315-16 (11th Cir. 2009) ("unmarried partners ….do not automatically qualify for protection under the forced abortion and sterilization provisions").

[180] *See* *Matter of J-S-*, 24 I&N Dec. 520 (AG 2008); *Shi Liang Lin v. USDOJ*, 494 F.3d 296 (2d Cir. 2007) (en banc). For additional information, see section, *Definition of Resistance in the Context of Coercive Population Control*, below

[181] *Matter of S-L-L-*, 24 I&N Dec. at 10-11.

[182] *Id*. at 11-12. *See also* *Zhang v. Ashcroft*, 395 F.3d 531 (5th Cir. 2004).

active or forceful opposition to China's family planning policy, would certainly thwart the goals of the plan and be viewed with disfavor by Chinese officials implementing the plan."[183] The Board warned, however, that the harm must rise to the level of persecution, and the applicant must establish that the harm was inflicted on account of her "resistance" to the family planning policies, not just as part of a routine procedure.

In *Xu Ming Li v. Ashcroft*, the Ninth Circuit held that the applicant demonstrated both vocal and physical resistance to a coercive population control program. The applicant "vocally resisted the marriage-age restriction when she told the village official that she wanted 'freedom for being in love' and when she publicly announced her decision to marry even after a license was refused. She also resisted the one-child policy when she told the official she intended 'to have many babies,' that she did 'not believe in the policy' limiting family size, and that she did not want him to 'interfere.' Second, she resisted physically by kicking and struggling when forced to undergo a gynecological examination."[184]

Harm Rising to the Level of Persecution

Individuals who offered "other resistance" to a coercive population control program must demonstrate that they suffered harm, or have a well-founded fear of suffering harm, rising to the level of persecution.

- **Physical Harm/Restraint**

In *Yi Qiang Yang v. Gonzales*, the Eleventh Circuit upheld the BIA's finding that the harm – a brief physical altercation with family planning officials, a summons to a local security office, and an ongoing interest in the applicant by family planning authorities – suffered by an applicant whose wife was subsequently forced to abort her pregnancy, did not rise to the level of persecution.[185]

- **Psychological Harm**

In *Matter of J-S-*, the Attorney General recognized that the application of coercive population control policies may have a profound impact on both parties to the marriage. When judging the psychological harm to an unmarried applicant based on a forced abortion or sterilization procedure performed on a partner, DHS has identified relevant factors, including:[186]

[183] *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633, 638 (BIA 2008).

[184] *Li v. Ashcroft*, 356 F.3d 1153, 1160 (9th Cir. 2004) (en banc). *See also* *Lin v. Gonzales*, 472 F.3d 1131 (9th Cir. 2007).

[185] *Yang v. U.S. Att'y Gen.*, 494 F.3d 1311 (11th Cir. 2007).

[186] *Matter of S-L-L-*, 24 I&N Dec. at 10-11 (citing to factors identified in DHS briefing to the BIA in the case).

- whether the couple has children together
- the length of cohabitation
- whether the couple holds itself out as a committed couple
- whether the couple took any steps to have the relationship recognized in some fashion
- whether the couple is financially interdependent
- whether there is objective evidence that the relationship continues while the applicant is in the United States

Other Forms of Harm Resulting from Forced Compliance with a Coercive Population Control Program

The Ninth Circuit has found that a forced gynecological exam that lasted for half an hour and was followed by threats of being subjected to a similar procedure at any time in the future was harm serious enough to rise to the level of persecution.[187]

Other measures imposed on an individual as part of a coercive population control program, such as substantial monetary fines, the denial of schooling, and forced medical examinations and procedures, may cumulatively rise to the level of persecution.[188] Claims of such experience should be examined for severity, accumulation, and effect on the individual, as would any claim of past mistreatment.

- **Continuing Nature of Harm Resulting from Forced Abortions and Sterilizations**

Forced abortion or sterilization has been found by the BIA to be a "permanent and continuing act of persecution that …deprive[s] …couple[s] of the natural fruits of conjugal life, and the society and comfort of the child or children that might eventually have been born to them."[189]

- **Harm for Resistance to Coercive Population Control**

The applicant must show that the past or threatened persecution was or would be inflicted for the resistance to a coercive population control program. In *Shi Liang Lin*, the Second Circuit held that an individual must demonstrate "past persecution

[187] *Li v. Ashcroft*, 356 F.3d 1153 (9th Cir. 2004) (en banc); *cf. Huang v. U.S. Att'y Gen.*., 429 F.3d 1002 (11th Cir. 2005)(holding that an intrusive state-ordered gynecological exam, which caused pain and discomfort, along with a 20-day detention because of her refusal to submit to a second exam, amounted to persecution).

[188] *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007).

[189] *See Matter of Y-T-L-*, 23 I&N Dec. 601, 607 (BIA 2003); *Yuqing Zhu v. Gonzales*, 493 F.3d 588 (5th Cir. 2007), *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005). For additional information, see RAIO Training Module, *Well-Founded Fear*.

or a fear of future persecution for 'resistance' that is directly related to his or her own opposition to a coercive family planning policy."[190] In *Matter of M-F-W- & L-G-*, the BIA explained that "[t]he statute requires more than proof of an act of resistance and an unconnected imposition of harm that rises to the level of persecution. There must be a link between the harm and the 'other resistance.'"[191] The BIA held that the applicant could not meet this requirement because the reinsertion of her IUD was carried out as part of a routine medical procedure, rather than to target her for her opposition or resistance to the family planning policy.

The Second Circuit held in *Shi Liang Lin* that where an applicant himself has not demonstrated resistance to coercive population control policies, but his spouse or partner has, whether by failure or refusal to undergo a procedure, or for other resistance, the applicant may be able to demonstrate, through direct or circumstantial evidence, that his partner's resistance has been or will be imputed to him.[192]

Persecution of a parent due to resistance to population control measures does not automatically make the child of that parent eligible for asylum. The child, however, may be able to establish eligibility for asylum if the child establishes that he or she suffered persecution on account of any political opinion imputed to the child based on the parent's resistance.[193]

ASM Supplement – At Least One Central Reason

The REAL ID Act requires that the protected ground be at least one central reason motivating the persecutor to harm the applicant. Asylum officers should cite this standard in their assessments.

While several courts have suggested that the "one central reason" requirement is a more onerous burden than the applicant's burden under pre-REAL ID case law,[194]

[190] *Shi Liang Lin v. USDOJ*. 494 F.3d 296, 313 (2d Cir. 2007) (en banc). *See also* *Li v. Ashcroft*, 356 F.3d 1153 (9th Cir. 2004) (en banc).

[191] *Matter of M-F-W- & L-G-*, 24 I&N Dec. 633, 643 (BIA 2008).

[192] *Shi Liang Lin v. USDOJ*, 494 F.3d 296, 313 (2d Cir. 2007) (en banc).

[193] *Zhang v. Gonzales*, 408 F.3d 1239 (9th Cir. 2005) (finding that the hardships suffered by the applicant, including economic deprivation resulting from fines against her parents, lack of educational opportunities, and trauma from witnessing her father's forcible removal from home, were on account of an imputed political opinion based on her parent's resistance to CPC measures). *But see* *Tao Jiang v. Gonzales*, 500 F.3d 137 (2d Cir. 2007) (no evidence that resistance was imputed to child of woman who was forcibly sterilized).

[194] *Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) (finding that the REAL ID Act's "one central reason" standard is more onerous than the Ninth Circuit's "at least in part" rule, and overruled the Ninth Circuit's presumption of political motivation absent a legitimate prosecutorial interest); *Singh v. Mukasey*, 543 F.3d 1, 4-5 (1st Cir. 2008).

the BIA has held that the "one central reason" standard is not a radical departure from most pre-REAL ID Act case law.[195] The BIA analyzed the legislative history of the REAL ID Act, coming to the conclusion that the "at least one central reason" standard was specifically designed to overrule certain circuit court case law.[196]

In applying the "at least one central reason" standard, the Ninth Circuit has held that, in order for a protected ground to be a central motivating factor, it must have been important enough that the persecutor would not have acted had it not existed.[197] There is no requirement that the motivation relating to the protected ground be dominant or primary.[198]

The applicant must establish that the protected ground was "at least one central reason" and played more than a "minor," "tangential," or "superficial" role.[199] While the applicant is not required to show that the protected characteristic is the sole reason for the persecutor's action, the protected characteristic cannot be tangential or incidental to the persecutor's motivation.[200] The BIA has held that a tangential motivation is one that is only "superficially relevant" and an incidental motivation is one that is minor or casual.[201]

Example: In *J-B-N- & S-M-*, the applicant and his wife, citizens of Rwanda who were born in Burundi, moved to Rwanda in 1996. In 2004, the applicant's aunt took over a valuable parcel of land that had been deeded to him by his uncle. After a legal ruling declared him the land's owner, the applicant's cousin called him and demanded that he return to Burundi. He testified that his cousin, a major in the national police, placed the calls because he could not bear to lose the property and was hostile to the applicant because the applicant was from Burundi. Later, the applicant's cousin came to the applicant's home with three other men dressed in police uniforms. They demanded that the applicant and his wife return to Burundi, which they did.

An expert witness testified that citizens of Rwanda who are born in Burundi have low social status in Rwanda, and that land disputes are common there. Country conditions also indicated that land disputes are common in Rwanda, and that the

[195] *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 214 (BIA 2007) ("Having considered the conference report and the language of the REAL ID Act, we find that our standard in mixed motive cases has not been radically altered by the amendments.").

[196] *Id*. at n.9. (Congress sought to overrule the Ninth Circuit's approach in mixed motive cases and overruled the Ninth's Circuit's presumption of political motivation absent a legitimate prosecutorial interest.)

[197] *Parussimova v. Mukasey*, 555 F.3d 734, 741 (9th Cir. 2009).

[198] *Id*.

[199] *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007).

[200] *Id*. at 213 (citing House Conf. Rpt., 109-72, 2005 USCCAN 240, 288).

[201] *Id*. at 212-13.

disputes frequently turn violent.

The applicant claimed that his aunt and cousins' motivation was his Burundian origins and because they were "old case-load" refugees. Both he and his wife testified that, before the land dispute, relations between the applicant and his family had been friendly. The BIA rejected the applicant's asylum claim, finding that he was unable to show that his Burundian origins or his status as a repatriated refugee was more than a tangential motivation for the threats against him and his wife.[202]

Asylum may not be granted if a protected ground is only an "'incidental, tangential, or superficial' reason for the persecution of an asylum applicant."[203] Notably, the Third Circuit rejected the BIA's interpretation that the protected ground may not be "subordinate" to other reasons for the persecution.[204]

[202] *Id*.

[203] *Ndayshimiye v. Att'y Gen. of U.S.*, 557 F.3d 124, 130 (3d Cir. 2009).

[204] *Id*.

SUPPLEMENT C – INTERNATIONAL OPERATIONS DIVISION

The following information is specific to the International Operations Division. Information in each text box contains division-specific procedures and guidelines related to the section from the Training Module referenced in the subheading of the supplement text box.

REQUIRED READING

1.

2.

ADDITIONAL RESOURCES

1.

2.

SUPPLEMENTS

IO Supplement - Motivation

NOTE:

The Immigration and Nationality Act (INA) is the governing statute for asylum and refugee adjudications. INA § 207 is the statutory provision for refugee admissions, and 8 C.F.R. Part 207 contains the corresponding regulations. INA § 208 is the statutory provision for asylum adjudications and 8 C.F.R. Part 208 contains the corresponding regulations.

The REAL ID Act of 2005 amended INA § 208 but did not amend INA § 207. Therefore, any changes the REAL ID Act made to asylum law do not apply in the overseas refugee processing context. The principal change the REAL ID Act makes to the law surrounding nexus is the requirement that asylum applicants establish that one of the five protected grounds was, or would be, at least one central reason in motivating the persecutor. Refugee officers should disregard the word "central" when they see it in this context and should refrain from making it part of their analysis. In the refugee processing context, you must determine whether a reasonable person would fear that the danger arises on account of one of the five grounds.

*__**Note:**__ There are five protected grounds in the refugee definition. "Particular social group" (PSG) is one of these grounds but is not discussed in this module. PSG is covered in a separate module, *Nexus – Particular Social Group*.