

Seeking Refuge: The U.S. Asylum Process

by Regina Germain

This article describes the sources of U.S. asylum law and discusses the definition of “refugee.” The article explains the U.S. asylum process, including both affirmative and defensive procedures.

The word “refugee” conjures up many different images. One image might be that of a mass outpouring of refugees from Darfur into neighboring Chad. Another image could be that of Somalis in refugee camps in Kenya. Still another image might be of the Cuban and Haitian boat people desperately trying to reach U.S. shores. These are images of people fleeing desperate situations; however, that is not to say they all can be classified as or meet the legal definition of “refugees.”

Outside the United States, the United Nations High Commissioner for Refugees (“UNHCR”) determines who will be classified as a refugee. In the United States, asylum officers in the U.S. Department of Homeland Security (“DHS”) and immigration judges in the U.S. Department of Justice (“DOJ”) make that determination.

Who qualifies as a refugee is a complicated issue. This article will provide a summary of the refugee definition and the basics of the U.S. asylum process.

Sources of U.S. Asylum Law

U.S. asylum law has evolved since 1980 through case law, regulations, and numerous administrative guidelines and policy memoranda. Asylum officers and immigration judges are bound by U.S. Supreme Court decisions, decisions from the federal circuit court of appeals having jurisdiction over the state in which they sit, and decisions from the Board of Immigration Appeals (“BIA”).¹

Federal asylum regulations address many procedural aspects of applying for asylum, such as jurisdiction,² where to file,³ interview procedures,⁴ failure to appear,⁵ the one-year filing deadline,⁶ and

Department of State comments.⁷ In addition to regulations, both asylum officers and immigration judges rely on policy memoranda and guidelines drafted by the Asylum Division of the U.S. Citizenship and Immigration Service (“USCIS”) or by the Office of the Chief Immigration Judge. These memoranda and guidelines address issues such as the adjudication of children’s asylum claims⁸ and the confidentiality of asylum claims.⁹

Definition of “Refugee”

The definition of “refugee” under U.S. law is derived directly from the 1951 United Nations Convention¹⁰ and 1967 Protocol Relating to the Status of Refugees¹¹ (“Protocol”). The United States signed the Protocol in 1968. To ensure compliance with its international obligations, the United States enacted the Refugee Act of 1980.¹²

The basic definition of “refugee” can be found at 8 U.S.C. § 1101(a)(42)(A):

The term “refugee” means . . . any person who is outside any country of such person’s nationality . . . and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

This definition, not surprisingly, is almost identical to the United Nations definition.¹³

In 1996, the U.S. Congress modified the definition of “refugee” to include:

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 a political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or [be] subject to persecution for such failure, refusal or resistance shall be deemed to have a well-



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founded fear of persecution on account of political opinion.¹⁴ This modification is one example in which U.S. asylum law is broader in scope than international law.

The refugee definition can be divided into seven elements. The asylum-seeker must demonstrate that he or she is: (1) outside his or her country of nationality or last habitual residence and (2) unable or unwilling to return (3) because of past or (4) a well-founded fear of (5) persecution (6) on account of (7) a protected ground, that is, race, religion, nationality, membership in a particular social group, or political opinion.¹⁵

Outside Country of Nationality Or Last Habitual Residence

Sometimes it is easy to determine an asylum-seeker's nationality, through a passport or a birth certificate that shows his or her place of birth. More complicated issues arise when an asylum-seeker may have dual citizenship or no nationality at all. Sometimes the country of an asylum-seeker's birth no longer exists.

To determine whether an asylum applicant had dual nationality, the BIA has

looked to the Immigration and Nationality Act's ("INA") definition of the term "national."¹⁶ According to the INA, a "national" is a person owing a permanent allegiance to a state. In its unpublished opinion in *Matter of Fatoumata Toure*,¹⁷ the BIA concluded that an asylum applicant who was a citizen of Guinea and feared persecution there was eligible for asylum despite the fact that she possessed a passport from the Ivory Coast. In reaching this conclusion, the BIA relied on the definitions of "national" and "refugee" in the UNHCR's *Handbook on Procedures and Criteria for Determining Refugee Status* ("*Handbook*").¹⁸ The court found that a contrary result would require the deportation of an asylum applicant to a country where he or she had little or no connection.¹⁹

The refugee definition specifically allows for protection of individuals who have no nationality and who are outside their country of last habitual residence. The United Nations defines "stateless person" as "a person who is not considered a national by any State under the operations of its law."²⁰ Such persons are afforded protection under U.S. asylum law if

they establish past persecution or a well-founded fear of persecution in their country of last habitual residence. For example, Palestinians who resided in Saudi Arabia, Qatar, and the United Arab Emirates and who, following the Persian Gulf War, were expelled, denied re-entry, or had their property confiscated, were eligible for asylum in the United States.²¹

Unable or Unwilling to Return

Unwillingness to return relates to the asylum applicant's fear of persecution. According to the UNHCR *Handbook*: "As long as [the asylum applicant] has no fear in relation to the country of nationality, [the applicant] can be expected to avail himself of that country's protection."²² A more unusual situation may be an applicant who is unable to return to his or her home country. In some instances, countries have refused to accept their own citizens or nationals and have refused to issue a passport to them. UNHCR has recognized that denial of a passport or extension of its validity or denial of admittance to the home territory may constitute a refusal of protection by the applicant's home country.²³

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Past Persecution

An applicant for asylum may establish eligibility by presenting evidence of past persecution alone. To establish eligibility based on past persecution, an applicant must prove past harm that:

- 1) rises to the level of persecution;
- 2) is on account of one of the five protected grounds; and
- 3) is committed by the government or a group the government is unable or unwilling to control.²⁴

If the applicant establishes past persecution, he or she is presumed to have a well-founded fear, unless a preponderance of the evidence establishes there has been a fundamental change in circumstances or the applicant reasonably could be expected to relocate to another part of his or her home country.²⁵ Even if a preponderance of the evidence demonstrates a fundamental change in circumstances or an internal relocation alternative, an applicant still may be granted asylum in the discretion of the adjudicator if:

- 1) the applicant has demonstrated compelling reasons for being unwilling or unable to return to the country that arise out of the severity of the past persecution; or
- 2) the applicant has established a reasonable possibility that he or she may face other serious harm on removal to that country.²⁶

Well-Founded Fear

Even if an asylum applicant has suffered little or no harm in the past, he or she still may be eligible for asylum based on a "well-founded fear" of persecution in the future. To establish a well-founded fear of persecution, an asylum applicant must show that a reasonable person in the same circumstances would fear persecution if deported to his or her home country.²⁷ A well-founded fear has both subjective and objective components; an applicant's subjective fear of persecution must be objectively reasonable. The BIA in *Matter of Mogharrabi*²⁸ set forth the following four elements that an applicant must show to establish a well-founded fear:

- 1) the applicant possesses a belief or characteristic that the persecutors seek to overcome in others by means of punishment of some sort;
- 2) the persecutors are aware or could become aware that the applicant possesses this belief or characteristic;
- 3) the persecutor has the capability of punishing the applicant; and

- 4) the persecutor has the inclination to punish the applicant.

Persecution

An asylum applicant must show that the harm he or she fears or has experienced in the past rises to the level of persecution. This can be difficult. "Persecution" is not defined in the INA or in the regulations. The BIA has defined "persecution" as the "infliction of harm or suffering by a government, or persons a government is unable or unwilling to control, to overcome a characteristic of the victim."²⁹ The term persecution, however, does not encompass all treatment that society may regard as "unfair, unjust, or even unlawful or unconstitutional."³⁰ Harassment does not rise to the level of persecution,³¹ and general conditions of hardship that affect entire populations do not constitute persecution.³²

"On Account Of"

An asylum applicant also must demonstrate that the persecution he or she fears is "on account of" his or her race, religion, nationality, membership in a particular social group, or political opinion. The "on account of" requirement was addressed by the U.S. Supreme Court in *INS v. Elias-Zacarias*.³³ The Court held that the persecution must be "on account of" the victim's political opinion or other enumerated grounds—that is, the persecutor must be motivated by the protected ground. An asylum applicant is not required to prove the exact motivation of the

persecutor; however, he or she must provide "some evidence of it, direct or circumstantial."³⁴

Courts have recognized that persecutors may have more than one motive for persecuting an individual.³⁵ Some motives may be tied to a protected ground and others not. The BIA has recognized that an asylum applicant does not bear the burden of proving the exact motivation of a persecutor, but must produce some evidence from which it is reasonable to believe that the harm was motivated, at least in part, by a protected ground.³⁶ This "mixed motive" standard was modified to some degree by the REAL ID Act of 2005,³⁷ which provides that an asylum applicant "must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for persecuting the applicant."

The Protected Grounds

The harm the asylum applicant suffered or fears must be on account of one of the following protected grounds set forth in the refugee definition: race, religion, nationality, membership in a particular social group, or political opinion.³⁸ Each one of these five grounds will be addressed below. It is noteworthy that the USCIS also recognizes that any of the five grounds may be imputed to the applicant.³⁹ In other words, an applicant who does not hold a particular political opinion or is not a follower of a particular religion may be eligible for asylum if the applicant's persecu-

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tors erroneously believe that he or she does.

Race: The term “race” in the refugee definition has been interpreted in its widest sense to include many different ethnic groups.⁴⁰ U.S. courts have found, for example, that members of the indigenous Quiche ethnic group in Guatemala, as well as an Indo-Fijians, faced persecution on account of race.⁴¹ The Immigration and Naturalization Service, the predecessor to USCIS, also took the position that persecution on account of race included apartheid in South Africa, the Holocaust, and slavery.⁴²

Religion: Many asylum applicants reach U.S. shores seeking freedom to practice and worship as they choose. They are, in a sense, America’s modern day Pilgrims and Quakers. Persecution on account of religion can take various forms, including prohibiting membership in a religious community, prohibiting worship in public or private, prohibiting religious instruction, or other discriminatory measures.⁴³

In 1998, the International Religious Freedom Act (“IRFA”) was signed into law.⁴⁴ The IRFA requires the Department of State to prepare an annual report on religious freedom throughout the world and called for the creation of the U.S. Commission on International Religious Freedom, an independent federal government agency that also publishes reports on religious freedom. These reports are useful documents to asylum applicants who must prove that they have faced religious persecution in their home countries. Countries that have been found to persecute individuals on account of their religion include China,⁴⁵ Iran,⁴⁶ and Sudan.⁴⁷

Nationality: The term “nationality” may include ethnic and linguistic groups⁴⁸ and sometimes overlaps with “race” in the refugee definition. Conflicts due to the presence of two or more ethnic groups within the same country have resulted in the persecution of such groups as ethnic Albanians in the former Yugoslavia,⁴⁹ Kurds in Iraq, indigenous populations in Central America, and ethnic groups in the former Soviet Union.⁵⁰ In many cases, applicants fearing persecution on account of nationality may belong to a national minority; however, there also have been cases in which persons belonging to a majority group may fear persecution by a dominant minority.⁵¹

Membership in a Particular Social Group: The category that is the least defined and perhaps the broadest under the

refugee definition is “membership in a particular social group.” In 1985, the BIA interpreted the phrase “persecution on account of membership in a particular social group” to mean:

persecution that is directed toward an individual who is a member of a group of persons all of whom share a common, immutable characteristic. The shared characteristic may be an innate one such as sex, color, or kinship ties, or in some circumstances it may be a shared past experience such as former military leadership or landownership. The particular kind of characteristic that will qualify under this construction remains to be determined on a case-by-case basis. However, whatever the common characteristic that defines the group, it must be one that the members of the group either cannot change, or should not be required to change because it is fundamental to their individual identities or consciences.⁵²

Courts that have interpreted the term “particular social group” have found it to include: former child soldiers,⁵³ families,⁵⁴ women who have experienced or fear female genital mutilation,⁵⁵ parents of student dissidents,⁵⁶ members of a Somali clan,⁵⁷ homosexuals,⁵⁸ government employees,⁵⁹ and union members,⁶⁰ to name just a few.

Political Opinion: Although it is common to hear “asylum” referred to as “political asylum,” this can be misleading. Political opinion is just one of the five protected grounds set forth in the refugee definition, and many asylum-seekers have not engaged in any political activity at all in their home countries. Political opinion, in the most traditional sense, includes an individual’s actual political beliefs. Often those beliefs are expressed through political activity, usually membership in an opposition party.

A person also may express political opinion through actions, as well as words. In *Chang v. INS*,⁶¹ the Third Circuit held that an asylum applicant had manifested his political opinion in defying the orders of the Chinese authorities to return to China. The court reasoned that “simply because he did not couch his resistance in terms of a particular ideology renders his opposition no less political.”⁶²

Neutrality also has been found to be a political opinion when it is a conscious choice by the applicant.⁶³ As noted above, the U.S. Congress changed the definition of refugee to include individuals who have experienced or fear forced abortion, steril-

ization, or other harm due to coercive population control policies.⁶⁴ The BIA also has found that the spouse of an individual forced to undergo sterilization has suffered past persecution due to his political opinion.⁶⁵

Many times, a political opinion has been imputed to the applicant. For example, if an individual is erroneously thought to hold anti-guerrilla beliefs and is persecuted by the guerrillas because of those imputed beliefs, he or she still may qualify for asylum.⁶⁶ Courts have recognized that persecution based on an imputed political opinion also can satisfy the refugee definition.⁶⁷

Application and Adjudication Process

This overview of the refugee definition only scratches the surface of the voluminous case law and regulations on the topic. Once a determination is made that a person may qualify for asylum, the next step is determining whether the person might be barred from asylum.

Bars include not just criminal or terrorist-related grounds, but also a one-year filing deadline and firm resettlement in a third country.⁶⁸ After determining that an asylum-seeker is not barred from asylum, the next step is the application and adjudication process.

Asylum Application—Form I-589

A claim for asylum is initiated by filing an asylum application. With a few exceptions, an asylum applicant who is not in removal proceedings would file the asylum application with a USCIS Service Center in Nebraska, Texas, California, or Vermont. If the applicant is in removal proceedings, the applicant will file the asylum application with the immigration court having jurisdiction over the applicant’s removal case. The current Application for Asylum and Withholding of Removal, Form I-589,⁶⁹ has thirteen pages of instructions and is eleven pages long. A completed application form, however, with affidavits from the applicant, witnesses, and experts, along with country condition information, could contain 500 or more pages. Although the statute allows for a fee to be charged,⁷⁰ currently there is no fee to apply for asylum in the United States.

Adjudication Process

After the application is received, the affirmation process begins. An applicant is

fingerprinted and an interview is scheduled within forty-five to sixty days. In Colorado, the applicant sends the application to the Texas service center and an asylum officer from the Houston asylum office interviews the applicant at the USCIS office in Denver. The asylum officer is an employee of the DHS and USCIS.

An attorney representing an applicant has a limited role in the asylum interview or affirmative application process. The asylum officer conducts the interview, allowing the attorney to ask any follow-up questions at the end. The attorney may make a closing statement to the officer.⁷¹ Attorneys are encouraged to submit their closing statements in writing after giving them orally.

Two weeks after the interview, the applicant will receive a letter granting, denying, or referring the case. A grant means that the applicant is allowed to stay in the United States and eventually apply for legal permanent residence and citizenship. A denial means that an applicant who was in lawful status before applying is able to continue in the status until it expires.⁷² There is no appeal, but an applicant who is denied may file a motion to re-

open or reconsider. A referral is given to a person who is no longer in lawful status or who does not have lawful status in the United States. The case is referred to an immigration court for removal proceedings, in which the applicant may re-apply for asylum before an immigration judge.⁷³

Immigration Court Asylum Hearing

An asylum application filed with the immigration court also is known as a "defensive application" for asylum. In this administrative proceeding, the asylum claim is adjudicated by an immigration judge, who is an employee of the DOJ and appointed by the Attorney General. The applicant has the right to counsel, as in the affirmative process, but counsel must be at no expense to the government.⁷⁴ In other words, there is no right to appointed counsel in removal proceedings. In immigration court, the U.S. government is represented by an attorney from the DHS office of Immigration and Customs Enforcement ("ICE").

Immigration judges are required to complete asylum cases within 180 days,⁷⁵ but that time period may be waived by

the applicant. The immigration court process commences with a preliminary hearing, known as a "Master Calendar" hearing, in which the applicant pleads to the allegations in the charging document—the Notice to Appear—and a date is set for the merits hearing. At the merits hearing, the applicant may present evidence, testify, present the testimony of other witnesses, and cross-examine witnesses presented by the government.⁷⁶ At the conclusion of the hearing, the immigration judge issues an oral decision, granting or denying relief. If the asylum claim is denied, the applicant has thirty days to file an appeal with the BIA in Falls Church, Virginia.⁷⁷ If the applicant loses on appeal to the BIA, a petition for review can be filed with the U.S. Federal Court of Appeals that has jurisdiction over the location of the immigration court where the asylum hearing took place.

Conclusion

An asylum-seeker arriving in the United States is confronted by myriad procedural and legal obstacles to gaining asylum in the country. The applicant must

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file within one year of entry, must show that he or she meets the definition of refugee and must also show that none of the bars to asylum is applicable. It is a process that involves several branches of the U.S. government, including the DHS, the DOJ, and the Department of State. It is a task that is daunting to attorneys and even more daunting to the unrepresented asylum-seeker. Many asylum-seekers could use the help of a volunteer attorney.

Representing an asylum-seeker or torture survivor can be one of the most rewarding experiences in an attorney's career. Attorneys in Colorado who are interested in representing an asylum applicant on a *pro bono* basis may contact the Rocky Mountain Survivors Center at (303) 321-3221, ext. 220, or visit its website at <http://www.rmscdenver.org> for more information.

NOTES

1. The regulations relating to asylum law and the asylum process are found at 8 C.F.R. §§ 1208 *et seq.*
2. 8 C.F.R. § 1208.2.
3. 8 C.F.R. § 1208.4(b).
4. 8 C.F.R. § 1208.9.
5. 8 C.F.R. § 1208.10.
6. 8 C.F.R. § 1208.4(a)(2).
7. 8 C.F.R. § 1208.11.
8. Jeff Weiss, Acting Director, Immigration and Naturalization Service Office of International Affairs, "Guidelines for Children's Asylum Claims" (Dec. 10, 1998), available at http://www.uscis.gov/graphics/lawsregs/handbook/10a_ChldrnGdlns.pdf, and Office of Chief Im-

migration Judge, "Interim Operating Policies and Procedures Memorandum No. 04-07, Guidelines for Immigration Court Cases Involving Unaccompanied Children" (Sept. 16, 2004), available at <http://www.usdoj.gov/eoir/efoia/ocij/oppm04/04-07.pdf>.

9. Joseph Langlois, Director, Asylum Division, Fact Sheet on Confidentiality (June 15, 2005), available at <http://www.uscis.gov/graphics/lawsregs/handbook/FctSheetConf061505.pdf>.

10. Convention Relating to the Status of Refugees, *opened for signature* (July 28, 1951) (*entry into force* April 22, 1954), 19 U.S.T. 6577, 189 U.N.T.S. 150 (1951), available at http://www.unhcr.ch/html/menu3/b/o_c_ref.htm.

11. Protocol Relating to the Status of Refugees, *opened for signature* (Jan. 31, 1967) (*entry into force* Oct. 4, 1967), 19 U.S.T. 6223, T.I.A.S. No. 6577, 606 U.N.T.S. 267 (1967), available at http://www.ohchr.org/english/law/proto_colrefugees.htm.

12. Refugee Act of 1980, Pub.L. No. 96-212, 94 Stat. 103 (1980); Immigration and Nationality Act of 1952 ("INA"), Pub.L. No. 82-414, 66 Stat 163 (codified as amended at 8 U.S.C. §§ 1101 *et seq.*).

13. *See, e.g., INS v. Cardoza-Fonseca*, 480 U.S. 421, 439 n.22 (1987) (finding United Nations High Commission for Refugees *Handbook on Procedures and Criteria for Determining Refugee Status* ("Handbook") provides significant guidance in construing U.S. obligations under the United Nations Protocol Relating to the Status of Refugees), available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=PUBL&id=3d58e13b4#search=%22Handbook%20on%20Procedures%20and%20Criteria%20for%20Determining%20Refugee%20Status%22>.

14. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42), revised under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub.L. No. 104-208, 110 Stat. 3009 (1996).

15. INA § 101(a)(42), 8 U.S.C. § 1101(a)(42).

16. INA § 101(a)(21), 8 U.S.C. § 1101(a)(21).

17. *Matter of Fatoumata Toure*, A24-876-244, 8 *Immigration Reporter*, B1-105 (BIA 1990) (unpublished).

18. *See Handbook, supra* note 13.

19. *Fatoumata Toure, supra* note 17.

20. United Nations Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117 (1954) Art. I(1).

21. Office of Legal Counsel, Legal Opinion: Palestinian Asylum Applicants (Oct. 27, 1995), reprinted in 72 *Interpreter Releases* 1553 (Nov. 13, 1995). *See also Ouda v. INS*, 324 F.3d 445 (6th Cir. 2003) (granting asylum to a Palestinian forced to leave Kuwait).

22. *Handbook, supra* note 13 at para. 90.

23. *Handbook, supra* note 13 at para. 99.

24. *Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004).

25. 8 C.F.R. § 1208.13(b)(1)(i).

26. 8 C.F.R. § 1208.13(b)(1)(iii).

27. *Matter of Mogharrabi*, 19 I&N Dec. 439, 445 (BIA 1987).

28. *Id.* at 446. *See also* 8 C.F.R. § 1208.13(b)(2)(i).

29. *Matter of Kasinga*, Int. Dec. 3278 (BIA 1996) (finding that female genital mutilation is a form of persecution).

30. *See, e.g., Fatin v. INS*, 12 F.3d 1233, 1240 (3d Cir. 1993) (finding that the applicant failed to establish that the harm she feared if returned to Iran amounted to persecution).

31. *See, e.g., Matter of A-E-M*, Int. Dec. 3338 at 3-4 (BIA 1998) (finding that a painted threat on the door of the applicant's house, while regrettable, was not persecution).

32. *See, e.g., Capric v. Ashcroft*, 335 F.3d 1075, 1084 (7th Cir. 2004).

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

34. *Id.* at 482-83.

35. *Matter of S-P*, Int. Dec. 3287 (BIA 1996).

36. *See, e.g., Matter of Fuentes*, 19 I&N Dec. 685, 662 (BIA 1988).

37. INA § 208(b)(1)(B)(i), 8 U.S.C. § 1158(b)(1)(B)(i) (emphasis added). This amendment became effective on May 11, 2005, and applies to applications made on or after that date.

38. INA § 101(a)(42), U.S.C. § 1101(a)(42).

39. Asylum Officer Basic Training Course, Eligibility Part III: Nexus (Dec. 5, 2002) at 11, available at <http://www.rmscdenver.org/aobtc/Elig3nexus3dec02lplinks.pdf>

40. *See Handbook, supra* note 13 at para. 68.

41. *Duarte de Guinac v. INS*, 179 F.3d 1156, 1159 n.5 (9th Cir. 1999); *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996).

42. U.S. Immigration and Naturalization Service, Office of the General Counsel, Asylum Division, *Basic Law Manual, U.S. Law and INS Refugee/Asylum Adjudications* (1994) at 37.

43. *See Handbook, supra* note 13 at para. 72.

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44. Pub.L. No. 105-292.
45. *Guo v. Ashcroft*, 361 F.3d 1194 (9th Cir. 2004).
46. *Bastanipour v. INS*, 359 F.2d 1129 (7th Cir. 1992).
47. *Abdel-Masieh v. INS*, 73 F.3d 579 (5th Cir. 1996).
48. *Handbook*, *supra* note 13 at para. 74.
49. *Perkovic v. INS*, 33 F.3d 615 (6th Cir. 1994) (granting asylum to ethnic Albanian from Yugoslavia).
50. *Matter of O-Z- & I-Z-*, Int. Dec. 3346 (BIA 1998) (finding anti-Semitic threats and beatings rise to the level of persecution on account of "Jewish" nationality).
51. *Handbook*, *supra* note 13 at para. 76.
52. *Matter of Acosta*, 19 I&N Dec. 211, 233 (BIA 1985).
53. *Lukwago v. Ashcroft*, 329 F.3d 157, 178-79 (3d Cir. 2003).
54. *See, e.g., Mgoian v. INS*, 184 F.3d 1029, 1036-37 (9th Cir. 1999); *Iliev v. INS*, 127 F.3d 638, 642 (7th Cir. 1997).
55. *Kasinga*, *supra* note 29.
56. *Lwin v. INS*, 144 F.3d 505, 512 (7th Cir. 1998).
57. *Matter of H-*, Int. Dec. 3276 (BIA 1996).
58. *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (BIA 1990).
59. *Aguilera-Cota v. INS*, 914 F.2d 1375, 1380 n.3 (9th Cir. 1990).
60. *Bernal-Garcia v. INS*, 852 F.2d 144 (5th Cir. 1988).
61. *Chang v. INS*, 119 F.3d 1055, 1063 (3d Cir. 1997).
62. *Id.*
63. *See, e.g., Rivera-Moreno v. INS*, 213 F.3d 481, 483-84 (9th Cir. 2000); *Umanzor-Alvarado v. INS*, 896 F.2d 14, 15 (1st Cir. 1990).
64. INA § 101 (a)(42), 8 U.S.C. § 1101(a)(42).
65. *Matter of C-Y-Z-*, Int. Dec. 3319 (BIA 1997).
66. *See, e.g., Ventura v. INS*, 264 F.2d 1150, 1156 (9th Cir. 2001).
67. *See, e.g., Mulanga v. Ashcroft*, 349 F.3d 123, 133 n.7 (3d Cir. 2003); *Matter of S-P-*, Int. Dec. 3287 (BIA 1996).
68. For more information on bars to asylum, *see* Germain, *AILA's Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure*, (Washington, D.C., American Immigration Lawyers Association, 4th Ed., 2005) at 77-100.
69. Form I-589 is available online at <http://www.uscis.gov/graphics/formsfee/forms/files/i-589.pdf>.
70. INA § 208 (d)(3), 8 U.S.C. § 1108(d)(3).
71. 8 C.F.R. § 1208.9(b) and (d).
72. 8 C.F.R. § 1208.14(c)(1).
73. 8 C.F.R. § 1208.14(c).
74. INA § 240 (b)(4), 8 U.S.C. §§ 1229a(b)(4) and 1362.
75. INA § 208 (d)(5)(a)(iii), 8 U.S.C. § 1108(d)(5)(a)(iii).
76. INA § 240 (b)(4), 8 U.S.C. § 1229a(b)(4).
77. 8 C.F.R. §§ 1003.3(a)(1) and 1003.38(b). n

A Lawyer's Principles of Professionalism*

The hallmark of a civilized society is its ability to maintain a judicial system that is fair, effective, and efficient. As lawyers, we have a predominant role in assuring that the judicial system fulfills these goals. Toward that end, each lawyer should aspire to fulfill these Principles of Professionalism.*

A lawyer owes, to the judiciary, to the client, and to opposing counsel, candor, diligence, respect, courtesy, cooperation, and competence.

In serving the client, a lawyer must be ever-conscious of the broader duty to the judicial system of which both attorney and client are a part.

A client has no right to demand that counsel abuse any participant in the judicial system or indulge in offensive conduct. Effective advocacy requires neither.

A lawyer should not use any form of discovery, the scheduling of discovery, or any other part of the dispute resolution process as a means of harassing opposing counsel or opposing counsel's client or as a means of impeding the timely, efficient, and cost-effective resolution of a dispute.

A lawyer will be punctual in communications with others and in honoring scheduled appearances, and will recognize that neglect and tardiness are demeaning to the lawyer and to the judicial system.

If a fellow member of the Bar makes a just request for cooperation or seeks scheduling accommodations, a lawyer will not arbitrarily or unreasonably withhold consent.

A lawyer owes to the public a devotion to the public good and to public service; a commitment to the improvement of the administration of justice; a duty to abide by and report violations by others of any disciplinary rules; and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

Above all, a lawyer owes to all with whom the lawyer comes in contact, civility, professional integrity, and personal dignity.

**Developed by the Colorado Bar Association Professionalism Committee*