

REAL ID ACT

LONG FORM BOILERPLATE LANGUAGE

I. Asylum

To qualify for a grant of asylum, Respondent bears the burden of demonstrating that she meets the statutory definition of a refugee as set out in section 101(a)(42)(A) of the INA. See INA § 208(b)(1); 8 CFR § 208.13(a). The INA defines “refugee” as any person who is outside their country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail herself of the protection of that country because of “past persecution” or a “well-founded fear” of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 CFR § 1208.13(b). Further, the INA makes clear, through amendments by the Real ID Act, that the protected ground must be “at least one central reason for persecuting the applicant.” INA § 208(b)(1)(B)(i). If an applicant demonstrates that she has suffered past persecution, she is considered a refugee and a rebuttable presumption of a well-founded fear of future persecution will be triggered. 8 CFR § 208.13(B)(1)(i).

A. Past Persecution

To establish past persecution, an applicant must show an incident, or incidents, that rise to the level of persecution; that is on account of a protected ground; and was committed by the government or forces the government was either unable or unwilling to control. *Navas v. INS*, 217 F.3d 646, 655-56 (9th Cir. 2000). Although not defined in the INA, persecution has been defined as “the infliction of suffering or harm upon those who differ in a way that is regarded as offensive.” *Fisher v. INS*, 79 F.3d 955, 961 (9th Cir. 1996)(en banc). It is a threat to the life or freedom of, or the infliction of suffering or harm upon, those who differ in a way regarded as offensive. *Sangha v. INS*, 103 F.3d 1482, 1487 (9th Cir. 1997). Persecution may be emotional or psychological, as well as physical. See *Duarte de Guinac v. INS*, 179 F.3d 1156, 1163 (9th Cir. 1999); see also *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1097-98 (9th Cir. 2000). Not every act of discrimination or harassment rises to the level of persecution, as persecution is “an extreme concept that does not include every sort of treatment that our society regards as offensive.” *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998). However, considering the aggregate effect of all the incidents to which a respondent has been subjected, the cumulative treatment may rise to the level of persecution. *Korablina v. INS*, 158 F.3d at 1044 (citing *Singh v. INS*, 134 F.3d 962, 967 (9th Cir. 1998)); *Matter of O-Z- and I-Z-*, 22 I&N Dec. 23 (BIA 1998).

B. Well-Founded Fear

If an applicant cannot demonstrate past persecution, she must demonstrate she has a well-founded fear of future persecution to show refugee status. An individual who premises an asylum claim on a well-founded fear of future persecution must demonstrate both a subjectively genuine and an objectively reasonable fear. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430-1 (1987); *Arriaga-Barrientos v. INS*, 937 F.2d 411, 413 (9th Cir. 1991). The subjective component is satisfied by the individual presenting credible testimony that she genuinely fears persecution. The objective component can be established by showing a good reason to fear future persecution by providing credible, direct, and specific testimony and evidence in the record of facts that would support a reasonable fear of persecution. See generally, *Duarte de Guinac*, 79 F.3d at 1159. A well-founded fear may exist even when there is as little as a one-in-ten chance of future persecution. *Cardoza-Fonseca*, 480 U.S. at

431; *Arteaga v. INS*, 836 F.2d 1227, 1233 (9th Cir. 1988). Said another way, if a reasonable person in similar circumstances would fear persecution upon return to the native country, the standard is satisfied. *Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987).

In determining whether there is a reasonable fear of persecution, the "conditions in the [applicant's] country of origin, its laws, and the experience of others" are relevant. *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1283 n.11 (9th Cir. 1984). The applicant's "desire to avoid a situation entailing the risk of persecution" may be enough to prove a well-founded fear and thus, establish eligibility for asylum relief. *Id.* Acts of violence against an applicant's family members and friends may establish a well-founded fear of persecution. See *Korablina*, 158 F.3d at 1044-45. However, the violence must "create a pattern of persecution closely tied to the petitioner." *Arriaga-Barrientos*, 937 F.2d at 414.

C. Nexus

In order to establish eligibility for asylum, an applicant must show that her past persecution or well-founded fear is on account of one or more of the five enumerated grounds as set out in the Act: race, religion, nationality, membership in a particular social group, or political opinion. INA § 208(b)(1)(B)(i). In order to show that an alien was persecuted "on account of" a protected ground, the Supreme Court held that the asylum applicant must provide some evidence, direct or circumstantial, that the persecutor is motivated to persecute the victim because the victim possesses or is believed to possess the protected characteristic. *INS v. Elias-Zacarias*, 502 U.S. 478, 482-84 (1992). This "nexus" requirement is a separate analytical element of the refugee definition. *Id.* Proving the actual, exact reason for persecution or feared persecution may be impossible in many cases; hence, an asylum applicant must only establish facts on which a reasonable person would fear that the danger "arises on account of one of the protected grounds." *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988). The Real ID Act specifies that the respondent must show that this nexus was "at least one central reason" for the persecution. INA § 208(b)(1)(B)(i). This standard "does not require that the persecutor be motivated solely by the victim's possession of a protected characteristic" and still allows for a persecutor to have "mixed motives." Conference Report on the Real ID Act, H.R. Rep. No. 109-13, at 163 (2005) (Conf. Rep.)

D. Credibility

As a threshold matter, an applicant seeking asylum and withholding of removal must persuade the Court that her evidence is credible. *Saballo-Cortez v. INS*, 761 F.2d 1259, 1262 (9th Cir. 1984). The Real ID Act of 2005, Pub.L. No. 109-13, 119 Stat. 231 (2005), has codified the standards for assessing credibility in asylum and withholding of removal applications. The Conference Report on the Real ID Act, H.R. Rep. No. 109-13, at 166-67 (2005) (Conf. Rep.), explains that these amendments codify the credibility factors identified in the existing case law, in particular as set out in *Matter of S-M-J-*, 21 I&N Dec. 722, (BIA 1977), in order to create a more consistent body of law. *Id.*

The Real ID Act amended sections 208 and 241 of the INA to provide that the Court may base a credibility determination on the demeanor, candor, or responsiveness of the applicant, the inherent plausibility of the applicant's account, the consistency between the applicant's written and oral statements (whenever made and whether or not made under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record, and any inaccuracies or falsehoods in such statements, or any other relevant factor. INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C). An adverse credibility determination

can be based on any of these factors, but it must be reasonable and take into consideration the individual circumstances of the specific witness. H.R. Rep. No. 109-713, at 167. The Real ID amendments further provide that this Court may make a credibility determination without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim. INA § 208(b)(1)(B)(iii). The testimony of an applicant may be sufficient to sustain the applicant's burden of proving eligibility for asylum or withholding of removal without corroboration, as long as the Court is satisfied that the testimony is credible, persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee. However, there is no presumption of credibility and if the Court determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided "unless the applicant does not have the evidence and cannot reasonably obtain the evidence." H.R. Rep. No. 109-13 at 166. It would not be unreasonable to expect the applicant to produce "documentary support for material facts which are central to his or her claim and easily subject to verification, such as evidence of his or her place of birth, media accounts of large demonstrations, evidence of a publicly held office, or documentation of medical treatment" *Id.* at 167. Further, even the excused lack of corroborating evidence "does not relieve the applicant from sustaining the burden of proof, that is to say, the aline must satisfy his burden through other evidence." *Id.* at 166. Congress stated that "[w]hile the trier of fact is not required to state expressly that the trier has considered each factor in assessing credibility, Congress expects that the trier of fact will describe those factors that form the basis of the trier's opinion. This is true even when the trier of fact bases a credibility determination in part or in whole on the demeanor of the applicant." *Id.* at 167.

II. Withholding of Removal

An individual is entitled to withholding of removal if she would be persecuted on account of her race, religion, nationality, membership in a particular social group, or political opinion upon return to his home country. INA § 241(b)(3)(A); 8 C.F.R. § 1208.16(b). The U.S. Supreme Court has held that "an alien must establish a clear probability of persecution " to qualify for withholding of removal. *INS v. Stevic*, 467 U.S. 407, 413 (1984). An applicant must demonstrate that it is "more likely than not" that she will be persecuted upon return to her country, a standard that is higher than that required for asylum. See *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). The Ninth Circuit has held that "general evidence of violence in the alien's native country is insufficient alone to establish a clear probability of persecution." *Platero-Cortez v. INS*, 804 F.2d 1127, 1130 (9th Cir. 1986). The Attorney General has no discretion to deny withholding to eligible individuals and such relief must be granted if an alien demonstrates she qualifies for such relief. See generally, *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1985).

III. CAT

An applicant for protection under Article III of the Convention Against Torture ("CAT") must prove that it is more likely than not that she will be tortured if removed to the country designated for removal. Such torture must be inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official or other person acting in an official capacity. The regulations setting forth the standards for adjudication of applications for deferral and restriction on removal pursuant to CAT are found at 8 CFR §§ 208.16 through 208.18. Note that an applicant for relief under CAT need not show a nexus to a protected ground. In assessing whether it is more likely than not that the alien would be tortured, the Court should consider, among other things: evidence of past torture inflicted on the alien; evidence that the applicant could relocate to another part of the country of removal where

she is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information regarding conditions in the country of deportation. 8 C.F.R. § 1208.16(c)(3)(i). An applicant can establish her burden of proof by testimony without corroboration if the testimony is credible. 8 C.F.R. § 208.16(c)(2); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).