

What If My Client Doesn't Qualify for Asylum? Withholding of Removal and Protection Under the UN Convention Against Torture

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“Everyone has the right to seek and to enjoy in
other countries asylum from persecution.”

Article 14 of the Universal Declaration of
Human Rights (1948)

Asylum: refugee definition

“[A]ny person who is outside any country of such person’s nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, 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”

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

Bars to asylum eligibility

Firm resettlement in another country

Failure to file within one year of last entry to US (with exceptions)

Conviction of an aggravated felony or “particularly serious crime”

Committed a “serious nonpolitical crime” outside US

Passed through a “Safe third country” which has a bilateral agreement with US (so far only Canada)

Terrorism/danger to security of US

Prior asylum denial in Immigration Court or by BIA

Participation in persecution of others

What relief does your client have if she is barred from Asylum?

Withholding of Removal, INA §241(b)(3)

Withholding of Removal under CAT

Deferral of Removal under CAT

How do you apply for these forms of relief?

Can only be applied for in removal proceedings

- Affirmative application referred to the IJ (non-detained)
- Expedited Removal - CFI/RFI process (detained)

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First appeared as part of the conference materials for the
2018 A Practical Guide to Immigration Removal Proceedings session
"Asylum"