PRACTICING DEFENSIVE ASYLUM IN THE ERA OF TRUMP

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ROAD MAP

- Eligibility for asylum
- Affirmative v. defensive filing
- Obstacles to asylum: created by Trump Administration
- Strategy during CFI process
- Strategy in immigration court

ELIGIBILITY FOR ASYLUM

- **INA § 208(b)(1):**

The Attorney General may grant asylum to an individual who has applied for asylum . . . If the Attorney General determines that the individual is a refugee within the meaning of INA § 101(a)(42)(A).

- **INA § 101(a)(42(A):**

A refugee is "any 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 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 (PSG), or political opinion.

ELIGIBILITY FOR ASYLUM: BURDEN OF PROOF

- An applicant must prove that he or she is a refugee under the INA. 8 CFR § 208.13(a).
- An applicant may qualify as a refugee by showing that he or she suffered past persecution or has a well-founded fear of future persecution. 8 CFR § 208.13(b).
- There is a rebuttable presumption that an applicant has a well-founded fear of future persecution if he or she has established past persecution. 8 CFR § 208.13(b)(1).
- The presumption may be rebutted if the IJ finds by a preponderance of evidence a fundamental change in circumstances or that applicant could reasonably relocate within his or her country of origin. 8 CFR § 208.13(b)(1)(i).

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