

Basics of Asylum Law and Beyond

What you need to know when preparing affirmative and defensive asylum cases

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Overview of Training

- Overview of Elements of Asylum,
- Bars to Asylum
- Eligibility for Related Relief
- Changes in Procedure and Practice
- Migrant Protection Protocols
- Credible & reasonable fear interviews
- Case law updates



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SOURCES OF LAW

1951 Refugee Convention & 1967 Refugee Protocol

- Defines who is a refugee
- Provides for *non-refoulement*, prohibition on return of refugees to countries of persecution

Refugee Act of 1980

- Incorporates international definition of refugee (INA § 101(a)(43))
- Incorporates and adds additional bars to asylum
- Creates statutory and regulatory system for seeking asylum (INA § 208; 8 C.F.R. § 208)



WHO IS A REFUGEE?

Outside country of nationality (or last residence if no nationality)

Unable and unwilling to return or to avail self of the protection of that country

Because of persecution or a well-founded fear of persecution

On account of...

His or her race, religion, nationality, membership in a particular social group, or political opinion



PERSECUTION

- **What constitutes persecution?**

- Not defined in the INA
- Case law has given some guidance:
 - “the infliction of suffering or harm upon those who differ in a way regarded as offensive”
- Covers a range of forms of harm (including both physical and non-physical forms of violence)
- Severe harassment/discrimination can rise to the level of persecution
- Cumulative acts can rise to the level



WELL-FOUNDED FEAR

PAST = rebuttable presumption of future persecution

FUTURE = well-founded fear of future persecution

- Applicant must show a “reasonable possibility of persecution”
 - Subjective requirement (credibility is at issue)
 - Objective requirement (corroboration with objective evidence)
- Applicant must show fear of persecution is nationwide.
 - Rebuttable presumption where persecutor is government actor or where the applicant has established past persecution.



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