

of proving by a preponderance of the evidence that he did not so act.

[55 FR 30680, July 27, 1990, as amended at 59 FR 62300, Dec. 5, 1994]

§208.14 Approval, denial, or referral of application.

(a) An immigration judge may grant or deny asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act unless otherwise prohibited by paragraph (d) of this section.

(b) (1) An asylum officer may grant asylum in the exercise of discretion to an applicant who qualifies as a refugee under section 101(a)(42) of the Act, 8 U.S.C. 1101(a)(42), unless otherwise prohibited by paragraph (d) of this section.

(2) In the case of an alien (other than a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c)) who shall appear to be deportable under section 241 of the Act, 8 U.S.C. 1251, or excludable under section 212 of the Act, 8 U.S.C. 1182, the asylum officer shall either grant asylum or refer the application to an immigration judge for adjudication in deportation or exclusion proceedings commenced in accordance with part 236 or part 242 of this chapter. An asylum officer may refer such an application after an interview conducted in accordance with §208.9 or if, in accordance with §208.10, the applicant is deemed to have waived his or her right to an interview.

(3) In the case of a crewman, stowaway, or alien temporarily excluded under section 235(c) of the Act, 8 U.S.C. 1225(c), the asylum officer may grant or deny asylum in accordance with the procedures set forth in §253.1(f) of this chapter. In addition, where an application filed by such a person is not granted, the asylum officer shall issue a Notice of Intent to Deny to the applicant stating the reasons why the application would be denied. The applicant shall be given a period not less than 10 days to rebut the Notice of Intent to Deny.

(4) In the case of a person other than described in paragraphs (b) (2) and (3) of this section, the asylum officer may grant or deny asylum.

(5) No application for asylum or withholding of deportation shall be subject

to denial under the authority contained in §103.2(b) of this chapter.

(c) If the evidence indicates that one or more of the grounds for denial of asylum enumerated in paragraph (d) of this section may apply, the applicant shall have the burden of proving by a preponderance of the evidence that such grounds do not apply.

(d) *Mandatory denials.* An application for asylum shall be denied if:

(1) The alien, having been convicted by a final judgment of a particularly serious crime in the United States, constitutes a danger to the community;

(2) The applicant has been firmly resettled within the meaning of §208.15;

(3) There are reasonable grounds for regarding the alien as a danger to the security of the United States; or

(4) The alien has been convicted of an aggravated felony, as defined in section 101(a)(43) of the Act, 8 U.S.C. 1101(a)(43).

(e) *Discretionary denials.* An application from an alien may be denied in the discretion of the Attorney General if the alien can and will be deported or returned to a country through which the alien traveled en route to the United States and in which the alien would not face harm or persecution and would have access to a full and fair procedure for determining his or her asylum claim in accordance with a bilateral or multilateral arrangement with the United States governing such matter.

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§208.15 Definition of "firm resettlement."

An alien is considered to be firmly resettled if, prior to arrival in the United States, he entered into another nation with, or while in that nation received, an offer of permanent resident status, citizenship, or some other type of permanent resettlement unless he establishes:

(a) That his entry into that nation was a necessary consequence of his flight from persecution, that he remained in that nation only as long as was necessary to arrange onward travel, and that he did not establish significant ties in that nation; or

(b) That the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of refuge that he was not in fact resettled. In making his determination, the Asylum Officer or Immigration Judge shall consider the conditions under which other residents of the country live, the type of housing made available to the refugee, whether permanent or temporary, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges, such as travel documentation including a right of entry and/or reentry, education, public relief, or naturalization, ordinarily available to others resident in the country.

§ 208.16 Entitlement to withholding of deportation.

(a) *Consideration of application for withholding of deportation.* With the exception of cases that are within the jurisdiction of an asylum officer pursuant to § 253.1(f) of this chapter, and aliens classified pursuant to section 101(a)(15)(S) of the Act, an asylum officer shall not decide whether an alien is entitled to withholding of deportation under section 243(h) of the Act, 8 U.S.C. 1253(h). If the application for asylum is granted, no decision on withholding of deportation will be made unless and until the grant of asylum is later revoked or terminated, and exclusion or deportation proceedings at which a new request for withholding of deportation is made are commenced. In such proceedings, an immigration judge may adjudicate both a renewed asylum claim and a request for withholding of deportation simultaneously whether or not asylum is granted.

(b) *Eligibility for withholding of deportation; burden of proof.* The burden of proof is on the applicant for withholding of deportation to establish that his life or freedom would be threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible in light of general conditions in the applicant's country of nationality or last

habitual residence, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) The applicant's life or freedom shall be found to be threatened if it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.

(2) If the applicant is determined to have suffered persecution in the past such that his life or freedom was threatened in the proposed country of deportation on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that his life or freedom would be threatened on return to that country unless a preponderance of the evidence establishes that conditions in the country have changed to such an extent that it is no longer more likely than not that the applicant would be so persecuted there.

(3) In evaluating whether the applicant has sustained the burden of proving that his life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the Asylum Officer or Immigration Judge shall not require the applicant to provide evidence that he would be singled out individually for such persecution if:

(i) He establishes that there is a pattern or practice in the country of proposed deportation of persecution of groups of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) He establishes his own inclusion in and identification with such group of persons such that it is more likely than not that his life or freedom would be threatened upon return.

(4) In addition, the asylum officer or immigration judge shall give due consideration to evidence that the life or freedom of nationals or residents of the country of claimed persecution is threatened if they leave the country without authorization or seek asylum in another country.

(c) *Approval or denial of application.* The following standards shall govern