

the applicant directly to an immigration judge in removal proceedings under section 240 of the Act, without conducting a separate credible fear interview pursuant to §1208.30. If such applicant is not found to have a credible fear based on information elicited at the asylum interview, an asylum officer will conduct a credible fear interview and the applicant will be subject to the credible fear process specified at §1208.30(b).

(B) *Inadmissible on other grounds.* In the case of an applicant who was paroled into the United States on or after April 1, 1997, and will be charged as inadmissible to the United States under provisions of the Act other than, or in addition to, sections 212(a)(6)(C) or 212(a)(7), the asylum officer shall refer the application to an immigration judge for adjudication in removal proceedings.

(d) *Applicability of §103.2(b) of this chapter.* No application for asylum or withholding of deportation shall be subject to denial pursuant to §103.2(b) of this chapter.

(e) *Duration.* If the applicant is granted asylum, the grant will be effective for an indefinite period, subject to termination as provided in §1208.24.

(f) *Effect of denial of principal's application on separate applications by dependents.* The denial of an asylum application filed by a principal applicant for asylum shall also result in the denial of asylum status to any dependents of that principal applicant who are included in that same application. Such denial shall not preclude a grant of asylum for an otherwise eligible dependent who has filed a separate asylum application, nor shall such denial result in an otherwise eligible dependent becoming ineligible to apply for asylum due to the provisions of section 208(a)(2)(C) of the Act.

(g) *Applicants granted lawful permanent residence status.* If an asylum applicant is granted adjustment of status to lawful permanent resident, the Service may provide written notice to the applicant that his or her asylum application will be presumed abandoned and dismissed without prejudice, unless the applicant submits a written request within 30 days of the notice, that the asylum application be adjudicated. If

an applicant does not respond within 30 days of the date the written notice was sent or served, the Service may presume the asylum application abandoned and dismiss it without prejudice.

[62 FR 10337, Mar. 6, 1997, as amended at 63 FR 12986, Mar. 17, 1998; 64 FR 27875, May 21, 1999; 65 FR 76134, Dec. 6, 2000; 70 FR 4754, Jan. 31, 2005; 85 FR 80397, Dec. 11, 2020; 87 FR 18221, Mar. 29, 2022]

#### § 1208.15 Definition of “firm resettlement.”

(a) An alien is considered to be firmly resettled if, after the events giving rise to the alien's asylum claim:

(1) The alien resided in a country through which the alien transited prior to arriving in or entering the United States and—

(i) Received or was eligible for any permanent legal immigration status in that country;

(ii) Resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status but excluding status such as of a tourist); or

(iii) Resided in such a country and could have applied for and obtained any non-permanent but indefinitely renewable legal immigration status in that country;

(2) The alien physically resided voluntarily, and without continuing to suffer persecution in any one country for one year or more after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, provided that time spent in Mexico by an alien who is not a native or citizen of Mexico solely as a direct result of being returned to Mexico pursuant to section 235(b)(2)(C) of the Act or of being subject to metering would not be counted for purposes of this paragraph; or

(3)(i) The alien is a citizen of a country other than the one where the alien alleges a fear of persecution and the alien was present in that country after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, or

(ii) the alien was a citizen of a country other than the one where the alien

alleges a fear of persecution, the alien was present in that country after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, and the alien renounced that citizenship after arriving in the United States.

(b) The provisions of 8 CFR 1240.8(d) shall apply when the evidence of record indicates that the firm resettlement bar may apply. In such cases, the alien shall bear the burden of proving the bar does not apply. Either DHS or the immigration judge may raise the issue of the application of the firm resettlement bar based on the evidence of record. The firm resettlement of an alien's parent(s) shall be imputed to the alien if the resettlement occurred before the alien turned 18 and the alien resided with the alien's parents at the time of the firm resettlement unless he or she could not have derived any permanent legal immigration status or any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status but excluding status such as of a tourist) from the alien's parent.

[85 FR 80397, Dec. 11, 2020]

**§ 1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.**

(a) *Consideration of application for withholding of removal.* Consideration of eligibility for statutory withholding of removal and protection under the Convention Against Torture by a DHS officer is as provided at 8 CFR 208.16. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) *Eligibility for withholding of removal under section 241(b)(3) of the Act; burden of proof.* The burden of proof is on the applicant for withholding of removal under section 241(b)(3) of the Act to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient

to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) *Past threat to life or freedom.* (i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) *Future threat to life or freedom.* An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his