

Department of Homeland Security

§ 208.1

- 208.21 Admission of the asylee's spouse and children.
- 208.22 Effect on exclusion, deportation, and removal proceedings.
- 208.23 Restoration of status.
- 208.24 Termination of asylum or withholding of removal or deportation.
- 208.25 Severability.
- 208.26–208.29 [Reserved]

Subpart B—Credible Fear of Persecution

- 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.
- 208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

AUTHORITY: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

SOURCE: 62 FR 10337, Mar. 6, 1997, unless otherwise noted.

Subpart A—Asylum and Withholding of Removal

§ 208.1 General.

(a) *Applicability*—(1) *General*. Unless otherwise provided in this chapter I, this subpart A shall apply to all applications for asylum under section 208 of the Act or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture, whether before an asylum officer or an immigration judge, regardless of the date of filing. For purposes of this chapter I, withholding of removal shall also mean withholding of deportation under section 243(h) of the Act, as it appeared prior to April 1, 1997, except as provided in § 208.16(d). Such applications are referred to as “asylum applications.” The provisions of this part 208 shall not affect the finality or validity of any decision made by a district director, an immigration judge, or the Board of Immigration Appeals in any such case prior to April 1, 1997. No asylum application that was filed with a district director, asylum officer, or immigration judge prior to April 1, 1997, may be reopened or otherwise reconsidered under the provisions of this part 208 except by motion granted in the exercise of discretion by the Board

of Immigration Appeals, an immigration judge, or an asylum officer for proper cause shown. Motions to reopen or reconsider must meet the requirements of sections 240(c)(6) and (c)(7) of the Act, and 8 CFR parts 103 and 1003, as applicable.

(2) *Commonwealth of the Northern Mariana Islands*. The provisions of this subpart A shall not apply prior to January 1, 2030, to an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands seeking to apply for asylum. No application for asylum may be filed prior to January 1, 2030, pursuant to section 208 of the Act by an alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands. Effective on the transition program effective date, the provisions of this subpart A shall apply to aliens physically present in or arriving in the CNMI with respect to withholding of removal under section 241(b)(3) of the Act and withholding and deferral of removal under the Convention Against Torture.

(b) *Training of asylum officers*. The Associate Director of USCIS Refugee, Asylum, and International Operations (RAIO) shall ensure that asylum officers receive special training in international human rights law, nonadversarial interview techniques, and other relevant national and international refugee laws and principles. The Associate Director of USCIS Refugee, Asylum, and International Operations (RAIO) shall also, in cooperation with the Department of State and other appropriate sources, compile and disseminate to asylum officers information concerning the persecution of persons in other countries on account of race, religion, nationality, membership in a particular social group, or political opinion, torture of persons in other countries, and other information relevant to asylum determinations, and shall maintain a documentation center with information on human rights conditions.

(c) *Particular social group*. For purposes of adjudicating an application for asylum under section 208 of the Act or an application for withholding of removal under section 241(b)(3) of the Act, a particular social group is one

that is based on an immutable or fundamental characteristic, is defined with particularity, and is recognized as socially distinct in the society at question. Such a particular social group cannot be defined exclusively by the alleged persecutory acts or harms and must also have existed independently of the alleged persecutory acts or harms that form the basis of the claim. The Secretary, in general, will not favorably adjudicate claims of aliens who claim a fear of persecution on account of membership in a particular social group consisting of or defined by the following circumstances: Past or present criminal activity or association (including gang membership); presence in a country with generalized violence or a high crime rate; being the subject of a recruitment effort by criminal, terrorist, or persecutory groups; the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence; interpersonal disputes of which governmental authorities were unaware or uninvolved; private criminal acts of which governmental authorities were unaware or uninvolved; past or present terrorist activity or association; past or present persecutory activity or association; or status as an alien returning from the United States. This list is nonexhaustive, and the substance of the alleged particular social group, rather than the precise form of its delineation, shall be considered in determining whether the group falls within one of the categories on the list. No alien shall be found to be a refugee or have it decided that the alien's life or freedom would be threatened based on membership in a particular social group in any case unless that person articulates on the record, or provides a basis on the record for determining, the definition and boundaries of the alleged particular social group. A failure to define, or provide a basis for defining, a formulation of a particular social group before an immigration judge shall waive any such claim for all purposes under the Act, including on appeal. Any waived claim on this basis shall not serve as the basis for any motion to reopen or reconsider for any reason, including a claim of ineffective assistance of counsel unless the alien

complies with the procedural requirements for such a motion and demonstrates that counsel's failure to define, or provide a basis for defining, a formulation of a particular social group constituted egregious conduct.

(d) *Political opinion.* For purposes of adjudicating an application for asylum under section 208 of the Act or an application for withholding of removal under section 241(b)(3) of the Act, a political opinion is one expressed by or imputed to an applicant in which the applicant possesses an ideal or conviction in support of the furtherance of a discrete cause related to political control of a State or a unit thereof. The Secretary, in general, will not favorably adjudicate claims of aliens who claim a fear of persecution on account of a political opinion defined solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior in furtherance of a cause against such organizations related to efforts by the State to control such organizations or behavior that is antithetical to or otherwise opposes the ruling legal entity of the State or a legal sub-unit of the State. A person who has been forced to abort a pregnancy or to undergo involuntary sterilization, or who has been persecuted for failure or refusal to undergo such a procedure or for other resistance to a coercive population control program, shall be deemed to have been persecuted on account of political opinion, and a person who has a well-founded fear that he or she will be forced to undergo such a procedure or subject to persecution for such failure, refusal, or resistance shall be deemed to have a well-founded fear of persecution on account of political opinion.

(e) *Persecution.* For purposes of screening or adjudicating an application for asylum under section 208 of the Act or an application for withholding of removal under section 241(b)(3) of the Act, persecution requires an intent to target a belief or characteristic, a severe level of harm, and the infliction of a severe level of harm by the government of a country or by persons or an organization that the government was unable or unwilling to control. For

purposes of evaluating the severity of the level of harm, persecution is an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat. Persecution does not encompass the generalized harm that arises out of civil, criminal, or military strife in a country, nor does it encompass all treatment that the United States regards as unfair, offensive, unjust, or even unlawful or unconstitutional. It does not include intermittent harassment, including brief detentions; threats with no actual effort to carry out the threats, except that particularized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution; or, non-severe economic harm or property damage, though this list is nonexhaustive. The existence of laws or government policies that are unenforced or infrequently enforced do not, by themselves, constitute persecution, unless there is credible evidence that those laws or policies have been or would be applied to an applicant personally.

(f) *Nexus*. For purposes of adjudicating an application for asylum under section 208 of the Act or an application or withholding of removal under section 241(b)(3) of the Act, the Secretary, in general, will not favorably adjudicate the claims of aliens who claim persecution based on the following list of nonexhaustive circumstances:

- (1) Interpersonal animus or retribution;
- (2) Interpersonal animus in which the alleged persecutor has not targeted, or manifested an animus against, other members of an alleged particular social group in addition to the member who has raised the claim at issue;
- (3) Generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations absent expressive behavior in furtherance of a discrete cause against such organizations related to control of a State or expressive behavior that is antithetical to the State or a legal unit of the State;
- (4) Resistance to recruitment or coercion by guerilla, criminal, gang, terrorist or other non-state organizations;

(5) The targeting of the applicant for criminal activity for financial gain based on wealth or affluence or perceptions of wealth or affluence;

(6) Criminal activity;

(7) Perceived, past or present, gang affiliation; or,

(8) Gender.

(g) *Evidence based on stereotypes*. For purposes of adjudicating an application for asylum under section 208 of the Act or an application for withholding of removal under section 241(b)(3) of the Act, evidence offered in support of such an application which promotes cultural stereotypes about a country, its inhabitants, or an alleged persecutor, including stereotypes based on race, religion, nationality, or gender, shall not be admissible in adjudicating that application, provided that nothing in this paragraph shall be construed as prohibiting the submission of evidence that an alleged persecutor holds stereotypical views of the applicant.

[64 FR 8487, Feb. 19, 1999, as amended at 74 FR 55736, Oct. 28, 2009; 76 FR 53784, Aug. 29, 2011; 85 FR 29310, May 14, 2020; 85 FR 80385, Dec. 11, 2020]

§ 208.2 Jurisdiction.

(a) *Jurisdiction of U.S. Citizenship and Immigration Services (USCIS)*. (1) Except as provided in paragraph (b) or (c) of this section, USCIS shall have initial jurisdiction over:

(i) An asylum application filed by an alien physically present in the United States or seeking admission at a port-of-entry; and

(ii) Interviews provided in accordance with section 235(b)(1)(B)(ii) of the Act to further consider the application for asylum of an alien, other than a stow-away or alien physically present in or arriving in the Commonwealth of the Northern Mariana Islands, found to have a credible fear of persecution or torture in accordance with § 208.30(f) and retained by USCIS, or referred to USCIS by an immigration judge pursuant to 8 CFR 1003.42 and 1208.30 after the immigration judge has vacated a negative credible fear determination. Interviews to further consider applications for asylum under this paragraph