

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution</i>
Field Performance Objective	Given a request for asylum to adjudicate, the asylum officer will correctly apply the law to determine eligibility for asylum in the United States.
Interim (Training) Performance Objectives	<ol style="list-style-type: none"> 1. Identify the elements necessary to establish that an individual is a refugee. 2. Identify eligibility issues raised by facts presented in an asylum case. 3. Identify how to determine nationality, if any, of an asylum applicant. 4. Describe how to identify a persecutor, for purposes of determining whether harm that an asylum applicant experienced constitutes persecution. 5. Identify factors to consider in determining whether an act(s) is sufficiently serious to constitute persecution. 6. Identify factors to consider when deciding whether an applicant is eligible for asylum based on past persecution alone.
Student Materials/References	<i>UNHCR Handbook</i> , Participant Workbook, <i>Matter of Chen</i> , 20 I&N Dec. 16 (BIA 1989), <i>Matter of H-</i> , 21 I&N Dec. 337 (BIA 1996); <i>Matter of N-M-A-</i> , 21 I&N Dec. 337 (BIA 1998)
Background Reading	<ol style="list-style-type: none"> 1. Langlois, Joseph, INS Office of International Affairs, <i>Persecution of Family Members</i>, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 30 June 1997), 5 p. (attached) 2. Martin, David A. INS Office of General Counsel. <i>Asylum Based on Coercive Family Planning Policies -- Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996</i>, Memorandum to Management Team (Washington, DC: 21 October 1996), 6 p. (attached) 3. Martin, David A. INS Office of General Counsel. <i>Legal Opinion: Palestinian Asylum Applicants</i>, Memorandum to Asylum Division,

Office of International Affairs (Washington, DC: 27 October 1995), 7 p. (attached)

4. Melville, Rosemary. INS Office of International Affairs. *Follow Up on Gender Guidelines Training*, Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 7 July 1995), 8 p. (See, lesson, *Female Asylum Applicants and Gender-Related Claims*)
5. Coven, Phyllis. INS Office of International Affairs. *Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Gender Guidelines)*, Memorandum to INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p. (See, lesson, *Female Asylum Applicants and Gender-Related Claims*)
6. Aleinikoff, T. Alexander. "The Meaning of 'Persecution' in United States Asylum Law," *International Journal of Refugee Law* (Vol. 3, No. 1, 1991), p. 411-434. (attached)

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Presentation**I. INTRODUCTION**

Asylum may be granted in the discretion of the Attorney General if an applicant establishes that he or she is a refugee and that no mandatory bars apply. The asylum officer first must determine whether an applicant meets the statutory definition of refugee. The next step is deciding whether the applicant is subject to any mandatory bar. If the applicant meets the statutory definition of refugee and no mandatory bars apply, the asylum officer must determine whether discretion should be exercised to grant asylum to the applicant.

This is the first lesson in a series of five lessons on eligibility for asylum. This lesson provides an overview of the legal requirements an asylum seeker must meet in order to establish that he or she is a refugee. It covers, in detail, the following topics: the definition of refugee, how to determine the nationality of the applicant, agents of persecution, the definition of persecution, and eligibility based on past persecution.

[Subsequent lessons on asylum eligibility discuss eligibility based on fear of future persecution, *Asylum Eligibility Part II, Well-Founded Fear*; the motive of the persecutor and the five protected characteristics in the refugee definition, *Asylum Eligibility Part III, Nexus and the Five Protected Characteristics*; the burden of proof and evidence, *Asylum Eligibility Part IV, Burden of Proof, Standards of Proof, and Evidence*; and mandatory reasons to deny asylum and the role of discretion, *Mandatory Bars to Asylum and Discretion*.]

II. BASIC DEFINITION OF “REFUGEE”

Statute provides that an alien may be granted asylum in the discretion of the Attorney General if the alien is a refugee within the meaning of section 101(a)(42)(A) of the INA. Therefore, a firm understanding of the definition of refugee is critical to determine whether an alien is eligible for asylum.

A. Section 101(a)(42)(A) of the Act

1. 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 last habitually resided, and who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of

References**OH #1; #2
Objectives**

Note: The applicability of bars to *applying* for asylum, including the one year filing deadline, are considered at the same time as the applicability of bars to asylum eligibility.

[INA § 208](#)

**OH #3
Definition of Refugee**

Under U.S. law, "refugee" may also include a person within the country of nationality or, if stateless,

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, or political opinion."

last habitual residence, under special circumstances, if designated by the President. [INA § 101\(a\)\(42\)\(B\)](#). This enables the US to conduct in-country refugee processing in Russia, Cuba, and Vietnam.

2. The statute further provides that "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."
3. "Refugee" does *not* include any person who ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

[INA § 101\(a\)\(42\)](#)
This provision was added in 1996 by [section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act \(IIRIRA\)](#).

[INA § 101\(a\)\(42\)](#). Note that this is also specifically listed as a basis of ineligibility for asylum under [INA § 208\(b\)\(2\)](#).

See, lesson, *Mandatory Bars to Asylum and Discretion*, section IV.A., *Persecution of Others*

B. Comparison with Convention Definition

As explained in previous lessons, the modern U.S. definition of refugee was derived from the definition of "refugee" in the *1951 Convention relating to the Status of Refugees (1951 Convention)*, as amended in the *1967 Protocol relating to the Status of Refugees (1967 Protocol)*. The *1951 Convention* definition of refugee, as modified, is

Any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership in a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

OH #4
Comparison of U.S. Definition and Convention Definition

Instructor Note #1

[The 1967 Protocol](#) modified the definition of refugee in [the 1951 Convention](#), by removing the language that limited refugee status to individuals who became refugees as a result of events occurring before January 1, 1951.

The 1980 Refugee Act and the IIRIRA expanded the Convention definition in the following aspects.

1. Past persecution

The U.S. definition recognizes refugee status based on ***either*** past persecution ***or*** a well-founded fear of future persecution.

In contrast, the UN definition focuses on well-founded fear. The *1951 Convention* does provide in its cessation clause that there may be some cases where a refugee who no longer fears future persecution should still be given protection due to compelling reasons arising from previous persecution.

[*1951 Convention relating to the Status of Refugees, Art. 1, paras. \(C\)\(5\) and \(C\)\(6\).*](#)

2. Statutory requirement that a particular type of serious harm is deemed to be on account of political opinion.

The INA specifies that "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." There are no such provisions in the Convention definition.

[INA § 101\(a\)\(42\).](#)

3. Location of individual

To meet the Convention definition of "refugee," an individual must be outside of his or her country of nationality or, if stateless, country of last habitual residence. The US definition allows, under special circumstances specified by the President, inclusion of a person within the country of nationality or, if stateless, last habitual residence.

4. Persecutors

The U.S. definition explicitly excludes from the refugee definition anyone who has persecuted or assisted in the persecution of others on account of a protected characteristic. This exclusion from the refugee definition is not present in the *1951 Convention* definition.

See lesson, [*Mandatory Bars to Asylum and Discretion.*](#)

Persecutors may be barred from receiving protection consistent with exclusion provisions found in Article 1 F of the *1951 Convention*.

C. Elements of the Refugee Definition

For asylum adjudication purposes, the following are the pertinent elements of the refugee definition:

1. Is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of the country of nationality (or if stateless, the country of last habitual residence);
- 2a. Because of persecution

or
- 2b. Because of a well-founded fear of persecution;
3. On account of race, religion, nationality, membership in a particular social group, or political opinion.

An applicant must establish all three elements (1, 2 (a or b), and 3) to be a refugee. The applicant can establish that he or she is a refugee by demonstrating *either* actual past persecution *or* a well-founded fear of future persecution, but does not need to establish both.

OH #5
Basic Elements in Refugee Definition

[INA § 101\(a\)\(42\)\(A\)](#)

See, [8 C.F.R. § 208.13\(b\)](#)

III. DETERMINING COUNTRY OF NATIONALITY OR, IF STATELESS, COUNTRY OF LAST HABITUAL RESIDENCE

A. Definition of Nationality

For purposes of the first part of the refugee definition -- "outside any country of such person's nationality" -- nationality refers to "citizenship."

(Contrast this with the definition of "nationality" in the second part of the refugee definition -- "on account of nationality." In the second part of the definition, "nationality" is *not* to be understood only as "citizenship," but also refers to ethnic or linguistic groups.)

The INA defines "national" as a person owing permanent allegiance to a State. Asylum officers must consider how the State views the applicant to determine whether the applicant is a national of the State or is stateless. See discussion below on statelessness.

OH #6
Country of Nationality

[UNHCR Handbook, para. 87; INA § 101\(a\)\(22\)](#)

[UNHCR Handbook, para. 74](#)

[INA § 101\(a\)\(22\)](#)

B. Identifying Nationality

1. Passports

a. presumption of nationality

Possession of a passport creates a presumption that the holder is a national of that country, unless the passport states otherwise.

[UNHCR Handbook, para. 93](#)

b. overcoming the presumption of nationality

(i) There may be reliable information that a travel document or passport does not establish citizenship. The asylum officer must consider the circumstances under which the applicant obtained the passport and available information on whether a country issues passports to non-nationals.

Instructor Note #2

(ii) Some countries have issued passports to non-nationals for the sole purpose of allowing that non-national to leave the country issuing the passport.

Instructor Note #3

(iii) Some applicants have obtained passports through misrepresentation.

(iv) An unsupported assertion by the holder that a passport was issued only for travel purposes is generally insufficient to rebut the presumption of nationality. However, an assertion that a passport is a travel document only, combined with information indicating that the issuing country issues passports to non-nationals for travel purposes, and a consistent and detailed explanation of the circumstances in an interview could rebut the presumption of nationality established by the passport.

[UNHCR Handbook, para. 93](#)

2. Inability to establish nationality

a. An applicant is not required to establish nationality in order to be eligible for asylum. If nationality is not established, then the applicant should be considered stateless and eligibility will be determined based on the country of last habitual residence. (See section D,

See, Dulane v. INS, 46 F.3d. 988 (10th Cir. 1995)

below for a discussion of statelessness).

- a. There is no precedent caselaw directly on point describing the standard of proof required to establish nationality. The *UNHCR Handbook* indicates that when nationality cannot be clearly established an applicant is considered stateless. The UNHCR does not appear to be speaking to a standard of proof in this paragraph, but to the more practical issue that a person who cannot establish nationality should be considered "stateless."
- b. In general the evidentiary standard to establish a fact in asylum adjudications is a preponderance of the evidence. If the adjudicator finds upon consideration of all available evidence that it is more likely than not that a fact is true, then the fact is established. Therefore, for purposes of asylum adjudications, nationality must be established by a preponderance of the evidence, or an applicant is treated as stateless.

[UNHCR Handbook, para. 89](#)

C. Multiple Nationality

1. Eligibility

The refugee definition provides that the applicant must be unable or unwilling to return to "*any* country of such person's nationality..." A dual citizen must establish persecution or a well-founded fear of persecution in *both* countries of nationality to be eligible for asylum.

[See, INA § 101\(a\)\(42\)\(A\); 1951 Convention relating to the Status of Refugees, Article 1 A\(2\); UNHCR Handbook, para. 106](#)

2. Residency requirement and/or personal ties

The asylum officer must evaluate asylum eligibility with respect to any country of which the applicant is a citizen, even if the applicant never resided in, or established personal ties to, a country of citizenship.

Rationale: National protection takes precedence over international protection, where available. [UNHCR Handbook, para. 106](#)

Example: An applicant is a citizen of country X and lived there from birth until coming to the United States. She is a citizen of country Y through her mother. To be eligible for asylum, she would need to establish persecution or a well-founded fear of persecution in both country X and country Y.

3. Distinction between issue of multiple nationality and firm resettlement

The fact that an applicant became a resident in a third country after fleeing his or her country of nationality does not make that applicant a national or citizen of that country, or a dual citizen.

Residency does not necessarily indicate citizenship. The fact that an applicant resided in a country could mean that the applicant was firmly resettled in that country; which is a bar to asylum, or it could have no impact on the adjudication if the applicant was not firmly resettled. Firm resettlement is a separate and distinct issue from multiple nationality.

Firm resettlement ([8 C.F.R. § 208.15](#)) will be covered in lesson, [Mandatory Bars to Asylum and Discretion](#).

Instructor Note #4

D. Statelessness

If stateless, the applicant must establish persecution or a well-founded fear of persecution in the country of last habitual residence. The fact that an applicant is stateless is not in itself sufficient to establish eligibility for asylum.

OH #7

Statelessness

See, [INA § 101\(a\)42](#); *Faddoul v. INS*, 37 F.3d 185 (5th Cir. 1994); [UNHCR Handbook, para. 102](#)

1. Definition of statelessness

The UN has defined “stateless person” as “a person who is not considered as a national by any State under the operation of its law.” The INA defines “national” as a person owing permanent allegiance to a State. Both definitions should be considered when determining whether an individual is stateless for purposes of the asylum adjudication. Even if the applicant believes he or she owes allegiance to a State, if the State does not consider the applicant to be a national of that State, the applicant should be considered stateless.

[Convention relating to the Status of Stateless Persons, Art. I, para 1](#), United Nations Treaty series, No. 5158, Vol 360, p. 117
[INA § 101\(a\)\(22\)](#)

2. Country of last habitual residence

a. No requirement of firm resettlement

Last habitual residence is distinct from firm resettlement. An applicant may have habitually resided in a country, even if he or she has not been firmly resettled there.

Example: A Palestinian born in the Israeli Occupied

Territories, who then moved to Kuwait, where he worked legally but did not receive permanent residency rights. The applicant is stateless, and the country of last habitual residence is Kuwait.

b. ***Last*** habitual residence

A stateless person may have formerly resided in more than one country and may fear persecution in more than one of those countries. However, eligibility for asylum should be analyzed based on the country of ***last*** habitual residence only.

[UNHCR Handbook, para. 104](#). See also [INA § 101\(a\)\(42\)](#), referring to ***country of last*** habitual residence.

c. Case-by-case determination

There is no clear case law indicating how to determine the country of last habitual residence. Determinations must be made on a case-by-case basis. When the country of last habitual residence is not readily apparent, the SAO and QA/Trainer should be consulted. HQ Quality Assurance is available if the issue requires further review.

Instructor Note #5

IV. UNABLE OR UNWILLING TO RETURN

A. General Principles

To meet refugee definition requirements, the asylum applicant must establish that he or she is unable *or* unwilling to return to his or her country of past or feared persecution. In most cases, the fact that the applicant applied for asylum is evidence that the applicant is unwilling to return to that country.

OH #8
Return to Country of Persecution

There may be cases in which the applicant is willing to return, despite a risk, but is unable to do so. For example, the applicant may be stateless and the country of last habitual residence will not allow the applicant to return, or the country may have denied the applicant travel documents or refused to renew a passport and therefore the applicant cannot return.

B. Return to Country of Past or Feared Persecution

An asylum applicant can meet the unable or unwilling to return component of the refugee definition even after a temporary visit to the country of past or feared persecution. The reasons that motivated the applicant's temporary visit and the circumstances surrounding that visit must be evaluated to determine if the applicant still is unable or unwilling to return.

Instructor Note #6
Procedurally, asylum applicants who return to the country of feared persecution, absent "compelling reasons" are considered to have

abandoned their asylum applications. The presumption of abandonment is overcome by a preponderance of the evidence indicating that application is not abandoned. [8 C.F.R. § 208.8\(b\)](#) The applicant's appearance at the asylum office generally establishes that he or she has not abandoned the application.

Does return indicate that the applicant is able and willing to return?

The fact that the applicant returned to the country of claimed persecution, on its face, seems to indicate that he or she is both willing and able to return. However, there may be circumstances that compel the applicant to return. For example; one of the applicant's immediate family members may have died or may have been in a grave situation that compelled return. The applicant remained unwilling to return, but the circumstances compelled him or her to return.

The asylum officer must elicit and evaluate information concerning the applicant's reasons for return. The officer should not conclude that return due to compelling factors establishes that the applicant is able and willing to return.

What happened when the applicant returned?

The asylum officer must also elicit information to determine if harm or threats occurred after the applicant returned to the country of claimed persecution, or if circumstances have subsequently occurred that put the applicant at risk. Such subsequent harm, threats, or risk, may establish that the applicant is no longer willing and able to return.

See also, lesson, [Asylum Eligibility Part II, Well-Founded Fear](#).

V. UNABLE OR UNWILLING TO AVAIL ONESELF OF PROTECTION

In most cases, the fact that an individual has applied for asylum in the United States is sufficient proof that he or she is *unwilling* to seek protection in the country from which he or she fled. The definition of refugee requires that the applicant be unable *or* unwilling to avail him or herself of protection. Therefore, the applicant is not required to prove that he or she is *unable* to avail himself or herself of protection

See, also, [Section VI.A., Identifying a Persecutor](#), below, discussing the requirement that an applicant establish that the persecutor is either the government, or an entity that the government is unable or unwilling to control.

if he or she is *unwilling* to avail himself or herself of that protection.

Note that whether an applicant is unable or unwilling to avail himself or herself of the protection of the country from which he or she fled could be important to determining whether it would be reasonable for the applicant to internally relocate within that country. Whether there is a reasonable internal relocation option relates to whether the applicant has a well-founded fear of persecution and is discussed in lesson *Asylum Eligibility II: Well-Founded Fear*.

VI. PERSECUTION

To establish past persecution an applicant must show that:

1. The entity that harmed the applicant (the persecutor) is either;
 - an agent of the government,
 - or an entity that the government is unable or unwilling to control; and,
2. The harm that the applicant experienced amounts to persecution.

Both the identity of the persecutor and the degree of harm experienced must be addressed before an asylum officer may find past persecution.

To establish that he or she is a refugee based on past persecution, an applicant must prove that the persecutor was motivated to harm him or her on account of his or her race, religion, nationality, membership in a particular social group or political opinion. Some courts evaluate the motivation of the persecutor as part of the inquiry into whether the applicant endured persecution. Asylum officers should separate the analysis of motivation from the evaluation of whether the harm is persecution, in order to make the basis of their decision as clear as possible.

Whether an applicant could have avoided persecution by relocating to another part of the country he or she fled from is *not* relevant in determining whether that applicant suffered past persecution. Instead, such information is relevant to whether the applicant's risk of future persecution is well-founded. Evidence that the applicant could avoid future persecution through internal relocation could rebut the presumption of a well-founded fear established by proof of past persecution, if such internal relocation is reasonable under all the circumstances.

Evaluating whether the persecutor is motivated to harm the applicant on account of one of the protected characteristics in the refugee definition is discussed in detail in lesson, [*Asylum Eligibility Part III, Nexus and the Five Protected Characteristics*](#).

See, [8 C.F.R. 208.13\(b\)\(3\)](#)

A. Identifying a Persecutor

Inherent in the meaning of persecution is the principle that the harm that an applicant suffered or fears must be inflicted either by the *government* of the country where the applicant fears persecution, or by a *person or group that the government is unable or unwilling to control*. The entity that harmed the applicant must be a government actor, or a non-government actor that the government is unable or unwilling to control, or the applicant has not established past persecution.

The *UNHCR Handbook*, para. 65 provides context:

Persecution is normally related to the action by the authorities of a country. It may also emanate from sections of the population that do not respect the standards established by the laws of the country concerned. A case in point may be religious intolerance, amounting to persecution, in a country otherwise secular, but where sizable fractions of the population do not respect the religious beliefs of their neighbors. Where serious discriminatory or other offensive acts are committed by the local populace, they can be considered as persecution if they are knowingly tolerated by the authorities, or if the authorities refuse, or prove unable, to provide effective protection.

1. The Government

If the applicant was harmed by an agent or agents of the government of the country from which he or she is seeking asylum, and the harm is sufficiently serious to constitute persecution, then the applicant has established that he or she was persecuted within the meaning of the refugee definition. Agents of the government may include police, military, civilian death-squads or other paramilitary units controlled by the government, etc.

2. Entity the government is unable or unwilling to control

a. General Principles

An applicant may establish that he or she suffered past persecution by a non-government actor, if the applicant demonstrates that, at the time of the incident, the government of the country from which

OH #9 Persecution: Identifying a Persecutor

See, Matter of Villalta, 20 I.&N. Dec. 142, 147 (BIA 1990); [Matter of H-](#), 21 I.&N. Dec. 337 (BIA 1996); [Matter of Kasinga](#), 21 I.&N. Dec. 357 (BIA 1996) ([en banc](#)).

OH #10 Persecution: Non-Government Agent of Persecution

the applicant fled is unable or unwilling to control the entity doing the harm. To meet this burden, the applicant is not required to show direct government involvement or complicity in the action that harmed him or her.

In determining whether the government is unable or unwilling to control the entity that harmed the applicant, the following issues should be addressed:

- (i) Whether there are reasonably sufficient governmental controls and restraints on the action[s] that harmed the applicant;
- (i) Whether the government had the ability and will to enforce those controls and restraints with respect to the entity that harmed the applicant; and
- (ii) Whether the applicant had access to those controls and constraints.
- (iii) Whether the applicant attempted to obtain protection from the government and the government's response, or failure to respond, to those attempts.

See [UNHCR Handbook, paragraphs 98 and 99.](#)

See, *Surita v. INS*, 95 F.3d 814, 819-820 (9th Cir. 1996)

b. Guidance From Federal Courts

In determining whether a government is unable or unwilling to protect, the 9th Circuit Court of Appeals looks at both general country conditions and the applicant's specific circumstances:

Andriasian v. INS, 180 F.3d 1033, 1042 (9th Cir. 1999)

While the acts of persecution were not perpetrated directly by government officials, the widespread nature of the persecution of ethnic Armenians documented by the State Department Country Report, combined with the police officer's response when Mr. Andriasian turned to him for help, clearly establishes that the government of Azerbaijan either could not or would not control.

The Court of Appeals, Seventh Circuit, states that, in cases where the applicant was harmed by a non-government entity, the applicant must show that the

Roman v. INS, 233 F.3d 1027; citing *Galina v. INS*, 213 F.3d 955, 958 (7th Cir.2000)

government "condoned it [the action against the applicant] or at least demonstrated a complete helplessness to protect the victims."

- c. Affirmative effort to gain the protection of the government

To demonstrate that the government is unable or unwilling to protect an asylum applicant, the applicant must show that he or she sought the protection of the government, or provide a reasonable explanation as to why he or she did not seek that protection.

Reasonable explanations for not seeking government protection include evidence that the government has shown itself unable or unwilling to act in similar situations, or that the applicant would have increased his or her risk by affirmatively seeking protection.

In determining whether an applicant's failure to seek protection is reasonable, asylum officers should consult and consider country conditions information, in addition to the applicant's testimony.

- d. *Unwilling to Control*

There may be situations in which the government is unwilling to control the persecutor for reasons enumerated in the refugee definition (the government shares, or does not wish to oppose, the persecutor's opinion about the applicant's race, religion, etc.).

A government may be also be unwilling to intervene in what are perceived to be domestic disputes within a family, or in disputes between tribes, or in a dispute that involves societal customs. The asylum officer may need to evaluate country conditions information concerning relevant laws and the enforcement of those laws, as well as the applicant's testimony, to determine if the government is unwilling to control the persecutor.

- e. *Unable to Control*

No government can guarantee the safety of each of its citizens or control all potential persecutors at all times. In most cases, the determination of whether a

government is unable to control the entity that harmed the applicant requires careful evaluation of the most current country conditions information available, as well as an evaluation of the applicant's circumstances.

A government in the midst of a civil war, or one that is unable to exercise its authority over portions of the country (e.g. Colombia, Indonesia, Somalia) will be unable to control the persecutor in areas or the country where its influence does not extend. An evaluation of how people similarly situated to the applicant are treated, even in portions of the country that the government does exercise its authority over, may lead to the conclusion that the government is unable to control the entity that persecuted the applicant.

B. Whether the Harm Experienced Amounts to Persecution

1. Guidance from the Board of Immigration Appeals (BIA)

In an often-cited BIA decision, the BIA defined persecution as "[h]arm or suffering inflicted upon an individual in order to punish the individual for possessing a belief or characteristic the entity inflicting the harm or suffering seeks to overcome."

The BIA later modified this definition and explicitly recognized that a "punitive" or "malignant" intent is *not* required for harm to constitute persecution. The BIA concluded that persecution can consist of objectively serious harm or suffering that is inflicted to overcome a characteristic (or perceived characteristic) of the victim.

2. Guidance from the Department of Justice

In a proposed rule providing guidance on the definition of persecution, the Department of Justice indicated its approval of the conclusion in *Kasinga* that the existence of persecution does not require a malignant or punitive intent. The Department also emphasized that the victim must experience the treatment as harm in order for persecution to exist. Thus, in an FGM case, whether the applicant at hand would experience or has experienced the procedure as serious harm, not whether the perpetrator means it as

OH #11 Persecution: Guidance from Authorities

[Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\)](#). This is only somewhat helpful, as there are varying degrees of harm. For example, a single slap on the face causes harm, but would not be considered persecution.

[Matter of Kasinga, 21 I&N Dec. 357 \(BIA 1996\)](#); [Pitcherskaia v. INS, 118 F.3d 641 \(9th Cir. 1997\)](#)

Intent is discussed in greater length in lesson, [Asylum Eligibility Part III, Nexus and the Five Protected Characteristics](#).

Federal Register, Volume 65 Number 236, page 76590 (December 7, 2000)

punitive, is a key inquiry.

3. Guidance from federal courts

The Supreme Court has held that "persecution" is a broader concept than threats to "life or freedom."

[*INS v. Stevic*, 467 U.S. 407, 104 S.Ct. 2489 \(1984\)](#)

"Persecution" has been defined as infliction of suffering or harm upon those who differ in a manner regarded as offensive and "oppression which is inflicted on groups or individuals because of a difference that the persecutor will not tolerate."

See e.g., [*Kovac v. INS*, 407 F.2d 102 \(9th Cir. 1969\)](#); [*Hernandez-Ortiz v. INS*, 777 F.2d 509, 516 \(9th Cir. 1985\)](#)

The violation of an individual's fundamental beliefs may, in some circumstances, constitute persecution.

[*Fatin v. INS*, 12 F.3d 1233 \(3rd Cir. 1993\)](#)

There is no requirement that an individual suffer "serious injuries" to be found to have suffered persecution.

[*Asani v. INS*, 154 F.3d 719 \(7th Cir. 1998\)](#)

Persecution is described as "punishment or the infliction of harm for political, religious, or other reasons that this country does not recognize as legitimate." Although the term "persecution" includes actions less severe than threats to life or freedom, "actions must rise above the level of mere harassment to constitute persecution."

[*Tamas-Mercea v. Reno*, 222 F.3d 417, 424 \(7th Cir. 2000\)](#)

Serious threats made against an applicant may constitute persecution even if the applicant was never physically harmed.

[*Andriasian v. INS*, 180 F.3d 1033, 1042 \(9th Cir. 1999\)](#)

Cumulative instances of harassment or discrimination, considered in totality, may constitute persecution.

[*Chand v. INS*, 222 F.3d 1066, 1073 \(9th Cir. 2000\)](#)

4. Guidance from the *UNHCR Handbook*

The *UNHCR Handbook* explains the following:

- a. A threat to life or freedom, or other serious violation of human rights on account of any of the protected grounds constitutes persecution.
- a. Other, less serious harm, may constitute persecution depending on the circumstances.
- b. Acts that do not amount to persecution when considered separately can amount to persecution when considered cumulatively. Asylum officers should

The Ninth Circuit has held that death threats and threats of violence can constitute persecution. [*Garrovillas v. INS*, 156 F.3d 1010 \(9th Cir. 1998\)](#), See also, [*Sangha v. INS*, 103 F.3d 1482 \(9th Cir. 1997\)](#)

See, [*Singh v. INS*, 95 F. 3d 1353 \(9th Cir. 1996\)](#); and [*Korablina v. INS*, 158 F. 3rd](#)

evaluate the entire scope of harm experienced by the applicant to determine if he or she was persecuted.

1038 (9th Cir. 1998); [Matter of O-Z- & I-Z-, Int. Dec. #3346 \(BIA 1998\)](#)

5. General considerations

a. individual circumstances

It is important to take into account the individual circumstances of each case and to consider the feelings, opinions, and physical and psychological characteristics of the applicant.

[UNHCR Handbook, para. 52](#)

Example: The harm caused to a physically healthy individual who is forced to stand in the sun without water for several hours may be less severe than that caused to an elderly, weak individual for whom such punishment may be life threatening.

a. no set number of incidents required

There is no minimum number of acts or incidents that must occur in order to establish persecution. One serious incident may constitute persecution, or there may be several incidents or acts, which considered together, constitute persecution.

See, e.g., Vaduva v. INS, 131 F.3d 689 (7th Cir. 1997)(Court found single serious beating to constitute persecution.)

C. Human Rights Violations

1. Certain violations of “core” or “fundamental” human rights, as prohibited by customary international law, constitute harm amounting to persecution (Note that the harm must be connected to one of the five grounds in the refugee definition for the applicant to be eligible for asylum):

a. genocide

a. slavery

b. torture and other cruel, inhuman, or degrading treatment

Torture can take a wide variety of forms. It can include severe physical pain, by beating or kicking, or pain inflicted with the help of objects such as canes, knives cigarettes or metal objects that transmit electric

OH #12

Core Rights

“Core” rights are rights that a government cannot violate, even in time of national emergency. *See, Guy S. Goodwin-Gill, The Refugee in International Law Second Edition* (New York: Oxford University Press, 1998) pp.68-69; James C. Hathaway, *The Law of Refugee Status* (Toronto: Butterworths, 1992) p. 109

See, J. Herman Burgers & Hans Danelius, A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 117-18 (1988)

shock. It can also include severe harm from not satisfying certain basic needs, such as deprivation of food, water, or sleep, or prolonged isolation, perhaps in darkness. It can include deliberate infliction of mental as well as physical harm. The suffering inflicted must be severe.

c. prolonged detention without notice of and an opportunity to contest the grounds for detention

d. rape and other severe sexual violence

2. Other fundamental rights are also protected by customary international law, such as the right to recognition as a person in the law, and freedom of thought, conscience, and religion. Deprivation of these rights may also constitute persecution.

Example: The Third Circuit has found that compelling an individual to engage in conduct that is abhorrent to that individual's deepest beliefs may constitute persecution.

A policy with which an individual merely disagrees or finds contrary to his or her notion of fairness or freedom is not, without more, considered persecutory.

See also, discussion of the [Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), covered in [lesson, International Human Rights Law](#). Note that, for purposes of determining whether the act constitutes persecution, certain Convention provisions, such as the requirement that the perpetrator be a government actor, is not required.

This may also constitute torture.

See, Guy S. Goodwin-Gill, *The Refugee in International Law Second Edition* (New York: Oxford University Press, 1998) p.69

[Fatin v. INS, 12 F.3d 1233 \(3rd Cir. 1993\)](#)

D. Discrimination and Harassment

1. Less preferential treatment and other forms of discrimination and harassment generally are not considered persecution but discrimination or harassment may amount to persecution if the adverse practices or treatment accumulates or increases in severity to the extent that it leads to consequences of a substantially prejudicial nature.
2. As mentioned above, in determining whether the applicant was persecuted, the asylum officer should consider whether all of the discrimination experienced by the applicant, in its totality, constitutes persecution.

For Example: Discrimination against an Armenian living in Russia, including harassment and pushing by Russian officers because of her ethnicity and being denied a job

[UNHCR Handbook, paras. 54-55](#); See also, [Matter of Toboso-Alfonso, 20 I&N Dec. 819 \(BIA 1990\)](#); [Matter of A-E-M-, 21 I&N Dec. 1157 \(BIA 1998\)](#) (single instance of harassment – threat painted on house – did not rise to the level of persecution). See also, *Baka v. INS*, 963 F.2d 1376 (10th Cir. 1992) (harassment); *Mikhailevitch v. INS*, 146 F.3d 384 (6th Cir. 1998) *Sangha v. INS*, 103 F.3d 1482 (9th Cir. 1997) *Avetova-Eliseva v. INS*, 213 F.3d 1192 (9th Cir. 2000)

because "there were no jobs for Armenians," did not rise to the level of past persecution because incidents of hostility alone do not constitute persecution. Note, however, that evidence of these incidents, and of the applicant's friend's daughter (who was also Armenian) being raped and beaten by police officials, and of the general pattern of mistreatment of Armenians in Russia, was deemed sufficient to establish that the applicant had a well-founded fear of persecution.

3. General factors to consider:

- a. How long has the discrimination or harassment lasted?
- a. Which human rights were affected?
- b. How has the discrimination or harassment affected the particular applicant?
- c. How many types of discriminatory practices or how much harassment has been imposed on the applicant, cumulatively?

OH #13
Discrimination – General
Factors to Consider

4. Some specific, significant factors to consider in determining whether discrimination or harassment amounts to persecution:

- a. serious restrictions on the right to earn a livelihood
- a. serious restrictions on the access to normally available educational facilities
- b. arbitrary interference with privacy
- c. relegation to substandard dwellings
- d. enforced social or civil inactivity
- e. passport denial
- f. constant surveillance
- g. pressure to become an informer
- h. confiscation of property (If the individual is paid

OH #14
Discrimination – Specific
Factors to Consider

compensation or property was taken pursuant to a neutral national redistribution plan, then the act probably is not persecution.)

Instructor Note #7**E. Arrests and Detentions**

1. In evaluating whether a detention is persecution, consider:
 - a. The length of the detention
 - a. The legitimacy of the government action
 - b. Whether the applicant was mistreated during the detention
 - c. Whether the applicant was ever brought before a judge, given access to an attorney, or accorded other due process rights

**OH #15
Arrests and Detentions**

2. Generally, a brief detention, for legitimate law enforcement reasons, without mistreatment, will not constitute persecution. Prolonged detention is a deprivation of liberty, which in some circumstances constitutes the violation of a fundamental human right. Evidence of mistreatment during detention may establish persecution.

This is relevant in evaluating whether the harm is connected to a protected ground, which is discussed in lesson, [Asylum Eligibility Part III: Nexus and the Five Protected Characteristics](#).

See, Asani v. INS, 154 F.3d 719, (7th Cir. 1998); and *compare to Zalega v. INS*, 916 F.2d 1257 (7th Cir.1990); *See also, Nelson v. INS*, 232 F.3d 258 (1st Cir. 2000)

F. Economic Harm

Persecution may take the form of economic sanctions. The statement by an applicant that “I left my country because I can’t work” is insufficient to judge the merits of a case and should lead to further inquiry. A diminished earning, capacity, standing alone, does not constitute persecution. To be considered persecution, economic harm must be substantial, but need not be so severe as to deprive the individual of all means of earning a livelihood. Mere economic detriment is not sufficient (e.g., deprivation of a government job or a job of one's choice).

**OH #16
Economic and Psychological Harm**

[Kovac v. INS](#), 407 F.2d 102 (9th Cir. 1969); [Minwalla v. INS](#), 706 F.2d 831, 835 (8th Cir. 1983); [Borca v. INS](#), 77 F.3d 210 (7th Cir. 1996), [Ambati v. Reno](#), 233 F.3d 1054, 1060.

G. Psychological Harm

Harm need not be physical to constitute persecution. In evaluating psychological harm, the asylum officer should consider the psychological and emotional characteristics of the

See lesson, [Interviewing Part V: Interviewing Survivors](#).

applicant.

1. Severe mental suffering

The definition of torture includes severe mental suffering. Some examples of mental suffering that fall within the definition of torture are:

- a. mental harm caused by threat of severe physical pain
- b. administration or threatened administration of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality
- c. threat of imminent death, or threat that another person will imminently be subjected to death or torture

136 Cong. Rec. at S17, 491-2 (daily ed. October 27, 1990) (explaining torture definition in the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*)

2. Other forms of mental harm

- a. receipt of threats over a prolonged period of time, causing the applicant to live in a state of constant fear
- b. being forced to witness the harm of others

H. Sexual Harm

1. Rape and other sexual abuse

- a. As noted above, rape and other severe sexual harm constitutes harm amounting to persecution, as they are forms of serious physical harm.
- b. Less severe sexual harm or harassment may also constitute harm amounting to persecution. Consideration should be given to the entire circumstances of the case, including any cumulative effects, the social or cultural ramifications, and other effects on the particular applicant.

OH #17

Sexual Harm

See, Coven, Phyllis. INS Office of International Affairs. [Considerations For Asylum Officers Adjudicating Asylum Claims From Women \(Gender Guidelines\)](#), Memorandum to INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p.; *Lopez-Galarza v. INS*, 99 F.3d 959 (9th Cir. 1996)

See e.g., *Angoucheva v. INS*, 106 F.3d 781 (7th Cir. 1997)

2. Forced female circumcision and other forced genital mutilation

The BIA has held that female genital mutilation imposed against one's will may constitute persecution.

[Matter of Kasinga, 21 I&N Dec. 357 \(BIA 1996\)](#)

I. Coercive Population Control

Forced abortion and forced sterilization performed on an applicant or the applicant's spouse constitutes persecution on account of political opinion within the meaning of the refugee definition.

For the harm to constitute persecution, the applicant must establish that he or she (or his or her spouse) was forced to undergo the procedure. The Office of the General Counsel has advised that "the procedure should be considered 'forced' only when the applicant demonstrates that he or she was physically coerced or would have faced harm rising to the level of persecution if he or she had failed or refused to undergo the procedure."

J. Harm to Family Members or Other Third Parties

Harm to an applicant's family member or another third party may constitute persecution of the applicant, depending on the circumstances. For example, as noted above, a forced abortion performed on an applicant's spouse or sterilization of an applicant's spouse may constitute persecution of the applicant.

In other situations, an applicant may suffer severe psychological harm from the knowledge that another individual has been harmed as an effort to threaten or harm the applicant, or from being forced to witness the harm of another person. As noted above, the definition of torture includes threats that another person would be imminently subjected to death or torture.

VII. ELIGIBILITY BASED ON PAST PERSECUTION

A. Presumption of Well-Founded Fear

1. If an applicant has established past persecution on account of a protected characteristic, the applicant is not required to separately establish that his or her fear of future persecution based on the original persecution is well founded. It is presumed that the applicant's fear of future persecution is well founded, and the burden of proof shifts to the Service to establish by a preponderance of the evidence that,

- a. due to a fundamental change in circumstances, the fear is no longer well founded, or
- b. The applicant could avoid future persecution by

OH #18

Coercive Population Control

[INA §101\(a\)\(42\)](#), as amended by §601 of IIRIRA, effective September 30, 1996; *See also*, Martin, David A. INS Office of General Counsel. [Asylum Based on Coercive Family Planning Policies -- Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996](#), Memorandum to Management Team, (Washington, DC: 21 October 1996) 6 p.

OH #19

Harm to Others

For greater detail on the circumstances under which harm to a third party constitutes persecution, *see*, Langlois, Joseph, INS Office of International Affairs, [Persecution of Family Members](#), Memorandum to Asylum Office Directors, SAOs, AOs (Washington, DC: 30 June 1997), 5 p.

See lesson, [Interviewing Part V: Interviewing Survivors](#).

OH #20

Analysis When Past Persecution Found

[8 C.F.R. § 208.13\(b\)\(1\)](#)
This is discussed in lessons, [Asylum Eligibility Part II: Well-Founded Fear](#) and [Asylum Eligibility Part IV: Burden of Proof, Standards of Proof, and Evidence](#).

Instructor Note #8

[8 C.F.R. § 208.13\(b\)\(1\)\(i\)\(A\)](#)

relocating to another part of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the applicant to do so.

[8 C.F.R. § 208.13\(b\)\(1\)\(i\)\(B\)](#)

2. If the Service does not meet this burden, it must be concluded that the applicant's fear is well founded. If a preponderance of the evidence does establish that the applicant's fear is not well founded, the applicant must still be found to be a refugee based on the past persecution.

For a discussion of what factors to consider in evaluating reasonableness of the internal relocation option *see* lesson, [Asylum Eligibility Part II, Well-Founded Fear, Section XI.C.](#)

B. Exercise of Discretion to Grant Based on Past Persecution, No Well-Founded Fear

OH #21 Analysis when Past Persecution Found, No Well-Founded Fear

If past persecution on account of a protected characteristic is established, then the applicant meets the statutory definition of refugee. Regulation and case law provide guidelines on the exercise of discretion to grant asylum to a refugee who has been persecuted in the past, but who no longer has a well-founded fear of persecution.

1. Regulation

Regulations direct that the adjudicator's discretion should be exercised to deny asylum to an applicant whose fear of future persecution is no longer well founded, unless

[8 C.F.R. § 208.13\(b\)\(1\)\(iii\)](#)

- a. the applicant "has demonstrated compelling reasons for being unwilling to return to his country of nationality or last habitual residence arising out of the severity of the past persecution," or
- b. the applicant has established that there is a reasonable possibility that the applicant may suffer other serious harm upon removal to that country.

[8 C.F.R. § 208.13\(b\)\(1\)\(iii\)\(A\)](#)

[8 C.F.R. § 208.13\(b\)\(1\)\(iii\)\(B\)](#)

2. Factors to consider when evaluating when to exercise discretion to grant asylum based on past persecution alone:

OH #22 – Eligibility Based on Past Persecution - No Well-Founded Fear

- a. duration of persecution
- b. intensity of persecution
- c. persecution of family members

- d. individual circumstances and compelling considerations: age, health, psychological characteristics of the applicant, family ties
- e. whether it would be unduly frightening or painful for the applicant to return to the country of persecution
- f. other serious harm the applicant may experience if returned, which is not persecution on account of a protected ground

[Matter of H-, 21 I&N Dec. 337 \(BIA 1996\)](#)

3. Severity of past persecution

Several BIA decisions provide guidance on the type of persecution that has been so severe as to provide compelling reasons to grant asylum in the absence of a well-founded fear.

Note: There are several federal court cases that also recognize eligibility in the absence of a well-founded fear.

a. *Matter of Chen*

In *Matter of Chen*, the BIA held that discretion should be exercised to grant asylum to an applicant for whom there was little likelihood of future persecution. The applicant in that case related a long history of persecution suffered by both himself and his family during the Cultural Revolution in China.

[Matter of Chen, 20 I&N Dec. 16 \(BIA 1989\)](#)

Instructor Note #9

The facts in *Matter of Chen* do not establish a threshold of severity. In other words, the harm does not have to reach the severity of the harm in *Matter of Chen* for asylum to be granted based on past persecution alone. However, if the harm described is comparable to the harm suffered by Chen, an exercise of discretion to grant asylum may be warranted.

b. *Matter of H-*

In *Matter of H-*, the BIA held, “Central to a discretionary finding in past persecution cases should be careful attention to compelling, humanitarian considerations that would be involved if the refugee were to be forced to return to a country where he or she was persecuted in the past.”

[Matter of H-, 21 I&N Dec. 337 \(BIA 1996\)](#)

c. *Matter of B-*

In *Matter of B-*, the BIA found that an Afghani who had suffered persecution under the previous Communist regime was no longer at reasonable risk of persecution. Nevertheless, the BIA held that discretion should be exercised to grant asylum based on the severity of the persecution the applicant had suffered in the past, and the current civil strife in Afghanistan.

[Matter of B-, 21 I&N Dec. 66 \(BIA 1995\)](#)

Past persecution included 13 months in prison with deplorable conditions, torture, psychological abuse, inadequate diet and medical care, integration of political prisoners with criminal and mentally ill prisoners, separation from family, and ignorance of fate of father, who also had been arrested.

4. "Other serious harm"

By "other serious harm," the Department means harm that may not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but is so serious that it equals the severity of persecution. Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as "other serious harm."

[8 C.F.R. 208.13\(b\)\(1\)\(iii\)\(B\)](#)

Note: This provision was added to the regulations on December 6, 2000. To date there are no precedent decisions issued subsequent to promulgation of this provision. The BIA did consider current civil strife in Afghanistan in exercising discretion to grant asylum in [Matter of B-, 21 I&N Dec. 66 \(BIA 1995\)](#).

VIII. SUMMARY

A. Definition of Refugee

For purposes of asylum adjudication, a refugee is an individual in the United States or at a port of entry who is unable or unwilling to return to his or her country of nationality (or if stateless, the country of last habitual residence) because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

Note that asylum may be granted based on a finding of *either* past persecution *or* well-founded fear of future persecution.

OH #23
Summary A

B. Country of Nationality

In the first part of the refugee definition, nationality refers to citizenship. Unless it explicitly states otherwise, a passport creates a presumption of citizenship. This presumption may be overcome by credible evidence that the passport was issued only

OH #24
Summary B

so that the holder could travel and that the passport does not accord rights of nationality or citizenship. The presumption could also be overcome by proof the passport was obtained through misrepresentation.

If the applicant is a dual national, he or she must establish past persecution or a well-founded fear of persecution in each country of nationality.

If an applicant is stateless, the claim must be evaluated based on the country of the applicant's last habitual residence.

C. Return to Country of Feared Persecution

OH #25
Summary C

An asylum applicant can meet the unable or unwilling to return component of the refugee definition even after a temporary visit to the country of past or feared persecution. The reasons that motivated the applicant's temporary visit and the circumstances surrounding that visit must be evaluated to determine if the applicant still is unable or unwilling to return.

The asylum officer must elicit and evaluate information concerning the applicant's reasons for return. The officer should not conclude that return due to compelling factors establishes that the applicant is able and willing to return.

D. Persecution

1. To establish persecution, an applicant must prove that the harm he or she experienced was inflicted by the government or an entity the government was unable or unwilling to control.
2. To establish persecution, the level and type of harm experienced by the applicant must be sufficiently serious to constitute persecution.
3. There is no single definition of persecution. Guidance may be found in precedent decisions, the proposed rule, the *UNHCR Handbook*, and international human rights law. The determination of whether an act or acts constitute persecution must be decided on a case-by-case basis, taking into account all the circumstances of the case including the physical and psychological characteristics of the applicant.
4. Serious violations of core or fundamental human rights that are prohibited by customary international law almost

OH #26
Summary D, 1

OH #27 Summary D, 2-5

always constitute persecution. Less severe human rights violations may also be considered persecution. Discrimination, harassment, and economic harm may be considered persecution, depending on the severity and/or duration of the harm. The harm may be psychological, such as the threat of imminent death, or the threat that another person will imminently be subjected to death or torture.

5. Acts that in themselves do not amount to persecution may, when considered cumulatively, constitute persecution.

E. Eligibility Based on Past Persecution

If an applicant establishes past persecution, it is presumed that his or her fear of future persecution is well founded. The burden of proof shifts to the Service to establish that the applicant no longer has a well-founded fear of future persecution or that it would be reasonable for the applicant to relocate to another part of the country of claimed persecution to avoid future persecution.

A refugee may be granted asylum based on past persecution, even when there is no reasonable possibility of future persecution, if he or she demonstrates compelling reasons arising out of the severity of the past persecution for being unwilling to return to the country of persecution, or there are reasons to believe that the applicant would suffer some other serious harm if returned to the country of persecution.

OH #28
Summary E