
Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Asylum Eligibility Part II: Well-Founded Fear</i>
Field Performance Objective	Given an asylum application to adjudicate, the asylum officer will be able to 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 standard of proof to establish well-founded fear of persecution.2. Identify factors to consider in determining whether fear of future persecution is well founded.3. Identify the four basic criteria to establish “well-foundedness.”4. List factors to consider in determining whether internal relocation is reasonable.5. Explain the presumption raised by a finding of past persecution.
Student Materials/References	Participant Workbook, <i>INS v. Cardoza-Fonseca</i> , 480 U.S. 421, 107 S. Ct. 1207 (1987); <i>Matter of N-M-A-</i> , Int. Dec. # 3368 (BIA 1998)

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ELEMENTS OF WELL-FOUNDED FEAR	1
	A. Subjective Element	1
	B. Objective Element.....	1
III.	FOUR BASIC CRITERIA FOR WELL-FOUNDED FEAR (MOGHARRABI-TEST, MODIFIED).....	2
	A. Possession (or Imputed Possession).....	3
	B. Awareness.....	3
	C. Capability.....	3
	D. Inclination.....	4
IV.	PATTERN OR PRACTICE OF PERSECUTION OF INDIVIDUALS SIMILARLY SITUATED TO THE APPLICANT	4
	A. General Rule	4
	B. "Pattern or Practice"	4
	C. Group or Category of Individuals Similarly Situated.....	5
	D. Evidence	6
V.	PERSECUTION OF INDIVIDUALS CLOSELY RELATED TO THE APPLICANT	6
	A. Objective Evidence Supporting Fear	6
	B. Connection Must Be Established	6
VI.	THREATS	7
	A. Threat May Be Sufficient Without Harm.....	7
	B. Considerations	7
VII.	SIGNIFICANT LAPSE OF TIME BETWEEN OCCURRENCE OF EVENT(S) AND FLIGHT.....	8
	A. General Rule	8
	B. Exceptions	8
	C. Considerations	8
VIII.	RETURN TO COUNTRY OF FEARED PERSECUTION	9
	A. Effect on Well-Founded Fear Evaluation	9
	B. Considerations	10
IX.	POSSESSION OF TRAVEL DOCUMENTS.....	10
	A. General Rule	10
	B. Considerations	10
X.	REFUGEE SUR PLACE.....	11
	A. Definition.....	11
	B. Analysis	11
	C. Factors to Consider	11
	D. Example	12
XI.	INTERNAL RELOCATION	12
	A. General Rule	12
	B. Avoiding Persecution.....	13
	C. Considerations in Evaluating What is Reasonable.....	13
	D. Burden of Proof	15
	E. Applicant Relocated before Leaving Country of Feared Persecution	16
XII.	COUNTRY CONDITIONS INFORMATION	16
XIII.	PRESUMPTION RAISED BY PAST PERSECUTION.....	17
	A. General Rule	17
	B. Explanation (Burden Shift)	17
	C. Consideration Regarding Source of Persecution.....	18
	D. Fundamental Changes Must Affect Applicant's Situation	18
XIV.	SUMMARY.....	19

PresentationReferences**I. INTRODUCTION**

This lesson presents the standard of proof needed to establish a well-founded fear of future persecution and the factors to consider in making the determination. The lesson focuses on the standard of proof (risk of harm the applicant must establish) necessary to establish that the fear is well founded. It does not address the requirement that the persecution the applicant fears be on account of a protected characteristic in the refugee definition. That is discussed in lesson, *Asylum Eligibility Part III, Nexus and the Five Protected Characteristics*.

OH #1, #2 Objectives**II. ELEMENTS OF WELL-FOUNDED FEAR**

There are two elements to a well-founded fear of persecution: 1) a subjective element; and 2) an objective element. Both elements must be established for the fear to be considered well founded within the meaning of the refugee definition.

[UNHCR Handbook, para. 38;](#)
[8 C.F.R. § 208.13\(b\)\(2\)](#)

A. Subjective Element**OH #3 Elements of WFF, Subjective**

1. The subjective element is satisfied if the applicant's fear of persecution is genuine. In the asylum context, fear has been defined as an apprehension or awareness of danger.
2. General dissent or disagreement with a government or the desire for more personal freedom or an improved economic situation, without more, does not satisfy this element.
3. Fear of famine or natural disaster fails to meet this element.
4. A genuine fear of persecution must be the applicant's primary motivation in seeking asylum. However, it need not be the only motivation. An applicant may fear persecution *and* desire more personal freedom or economic advantage.

[UNHCR Handbook, para. 39; Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\)](#)

[UNHCR Handbook, para. 39](#)
[Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\);](#)
[UNHCR Handbook, para. 39](#)

B. Objective Element**OH #4 Elements of WFF, Objective**

1. Regulations

Regulations provide that, for the fear to be considered well founded, the applicant must establish that there is a **reasonable possibility** that he or she will actually suffer

See, [8 C.F.R. § 208.13\(b\)\(2\)\(i\)\(B\)](#)

the feared persecution.

2. Cardoza-Fonseca

Defining well-founded:

In *Cardoza-Fonseca*, the Supreme Court distinguished between the "more likely than not" (withholding of removal) standard and the well-founded fear (asylum) standard: "One can certainly have a well-founded fear of an event happening when there is less than a 50% chance of the occurrence taking place."

[INS v. Cardoza-Fonseca, 480 U.S. 421, 107 S. Ct. 1207 \(1987\)](#); *See also, INS v. Stevic, 467 U.S. 407, 104 S. Ct. 2489 (1984)*

Cardoza-Fonseca points to the following example to illustrate:

In a country where every tenth adult male is put to death or sent to a labor camp, "it would be only too apparent that anyone who has managed to escape from the country in question will have 'well-founded fear of being persecuted' upon his eventual return.

[INS v. Cardoza-Fonseca](#), at 430, citing to 1 A.Grahl-Madsen, *The Status of Refugees in International Law* 180 (1966).

Instructor Note #1

The determination of whether a fear is well-founded does not ultimately rest on the statistical probability of persecution occurring to an applicant in the future, but rather on whether the applicant's fear is based on facts that would lead a reasonable person in similar circumstances to fear persecution.

See Matter of Mogharrabi, Int. Dec. No. 3028 (BIA 1987); *Guevara Flores v. INS*, 786 F.2d 1242 (5th Cir.1986), *M.A. v. I.N.S.*, 899 F.2d 304, 311 (4th Cir. 1990).

III. FOUR BASIC CRITERIA FOR WELL-FOUNDED FEAR (MOGHARRABI-TEST, MODIFIED)

In *Matter of Acosta* and *Matter of Mogharrabi*, the BIA held that four basic criteria were required to establish a well-founded fear of future persecution. Subsequent case-law has modified the basic criteria. The four basic criteria, as modified, are as follows:

OH #5 Four-Pronged Test

[Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\)](#); [Matter of Mogharrabi, 19 I&N Dec. 439 \(BIA 1987\)](#);

Note: Although *Mogharrabi* states that the applicant must establish that the persecutor seeks to overcome the characteristic by means of *punishment*, more recent case law holds that the persecutor need not intend to punish or have any malignant intent. *See D. Inclination*, below; *See, Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996)* *See also,*

[Pitcherskaia v. INS, 118 F.3d 641 \(9th Cir. 1997\)](#)

A. Possession (or Imputed Possession)

The applicant must establish that he or she possesses or is believed to possess a characteristic the persecutor seeks to overcome.

(To establish refugee status, the applicant must establish that the characteristic falls within one of the protected grounds listed in the refugee definition. *See* lesson, *Asylum Eligibility Part III, Nexus and the Five Protected Characteristics*.)

B. Awareness

The applicant must establish that the persecutor is aware or could become aware that the applicant possesses (or is believed to possess) the characteristic.

Matter of Acosta (which was decided before *Cardoza-Fonseca*), required a finding that the persecutor could "easily" become aware that the applicant possessed the characteristic. The "easily" was dropped by the BIA in *Matter of Mogharrabi*, in order to bring the well-founded fear analysis into compliance with the Supreme Court ruling in *Cardoza-Fonseca*.

The applicant must establish that there is a reasonable possibility that the persecutor could become aware that the applicant possesses the characteristic; mere speculation that the persecutor could become aware is insufficient.

[See, Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\); Matter of Mogharrabi, 19 I&N Dec. 439 \(BIA 1987\)](#)

If the claim is based on a characteristic the applicant does not actually possess, but that the persecutor might attribute to the applicant ("imputed characteristic"), then the proper consideration is whether there is a reasonable possibility the persecutor might believe the applicant possesses the characteristic. Imputed characteristics are discussed in lesson, [Asylum Eligibility Part III, Nexus and the Five Protected Characteristics](#).

C. Capability

The applicant must establish that the persecutor has the capability to persecute the applicant. Some factors to consider in evaluating capability include:

1. whether the persecutor is a government entity and, if so, the extent of that government entity's power or authority;
2. whether the persecutor is a non-governmental entity, and if so, the extent to which the government is able or willing to control it; and

Instructor Note #2

See also, lesson, [Eligibility Part I, Definitions: ... Past Persecution, section](#)

[VI.A.2, Entity the Government is Unable or Unwilling to Control](#)

3. the extent to which the persecutor has the ability to enforce its will throughout the country.

See, [Section XI, Internal Relocation](#), below

D. Inclination

The applicant must establish that the persecutor has the inclination to persecute him or her. Note that the applicant need not establish either that the persecutor is inclined to *punish* the applicant, or that the persecutor's actions are motivated by a malignant intent.

Factors to consider when evaluating inclination include any previous threats or harm from the persecutor and the persecutor's treatment of individuals similarly situated to the applicant.

As noted above, although *Mogharrabi* states that the applicant must establish that the persecutor seeks to overcome the characteristic by means of *punishment*, more recent case law holds that the persecutor need not intend to punish or have any malignant intent. See, [Matter of Kasinga, 21 I&N Dec. 357 \(BIA 1996\)](#) and [Pitcherskaia v. INS, 118 F.3d 641 \(9th Cir. 1997\)](#).

The motive of the persecutor is discussed in detail in lesson, [Asylum Eligibility Part III, Nexus and the Five Protected Characteristics](#).

Instructor Note #3

OH #6 Pattern or Practice of Persecution

IV. PATTERN OR PRACTICE OF PERSECUTION OF INDIVIDUALS SIMILARLY SITUATED TO THE APPLICANT

A. General Rule

The applicant need *not* show that he or she will be singled out individually for persecution, if the applicant shows that:

1. There is a pattern or practice of persecution on account of any of the protected grounds against a group or category of persons similarly situated to the applicant; *and*
2. The applicant belongs to or is identified with the persecuted group, so that a reasonable person in the applicant's position would fear persecution.

[8 C.F.R. § 208.13\(b\)\(2\)\(iii\)\(A\)](#)

[8 C.F.R. § 208.13\(b\)\(2\)\(iii\)\(B\)](#)

B. "Pattern or Practice"

There is no established definition of "pattern or practice." This

Makonnen v. INS, 44 F.3d

must be evaluated on a case-by-case basis. The Court of Appeals for the Eighth Circuit has interpreted “pattern or practice” to mean something “on the order of organized or systematic or pervasive persecution,” but held that it does not require a showing of persecution of all the members of the group.

1378, 1383 (8th Cir. 1995); *Feleke v. INS*, 118 F.3d 594 (8th Cir. 1997)

Note that, even if there is no systematic persecution of members of a group, persecution of some group members may support an applicant’s fear of being singled out in the future, if the applicant is similarly situated to those members. The Court of Appeals for the Ninth Circuit explained, “if the applicant is a member of a ‘disfavored’ group, but the group is not subject to systematic persecution, this court will look to (1) the risk level of membership in the group (i.e., the extent and the severity of persecution suffered by the group) and (2) the alien’s individual risk level (i.e., whether the alien has a special role in the group or is more likely to come to the attention of the persecutors making him a more likely target for persecution).”

Mgoian v. INS, 184 F.3d 1029, 1035 (9th Circuit 1999); citing to *Kotasz v. INS*, 31 F.3d 847, 853 (9th Cir. 1994); See also, *Singh v. INS*, 94 F.3d 1353 (9th Cir. 1996)

The Ninth Circuit went on to state, “[t]he relationship between these two factors is correlational; that is to say, the more serious and widespread the threat of persecution to the group, the less individualized the threat of persecution needs to be.”

Mgoian at 1035: See also *Kotasz and Singh*

In *Mgoian* the Ninth Circuit focused on a prominent intellectual family within the Kurdish minority in Armenia:

Mgoian at 1035

Thus, it should now be clear that a pattern of persecution targeting a given family that plays a prominent role in a minority group that is the object of widespread hostile treatment supports a well-founded fear of persecution by its surviving members.

C. Group or Category of Individuals Similarly Situated

There is no established rule regarding the type of group or category with which the applicant must be identified. The group could include a few individuals or many. However, the members of the group or category must share some common characteristic that the persecutor seeks to overcome and that falls within one of the protected grounds in the refugee definition.

See, *Meguenine v. INS*, 139 F.3d 25 (1st Cir. 1998) (Applicant failed to establish well-founded fear based on pattern or practice of individuals similarly situated to him, because evidence indicated that those targeted were not persecuted because of the characteristic they shared with the applicant, but rather a characteristic the

The group of "similarly situated persons is not necessarily the same as the more limited 'social group' category mentioned in the asylum statute."

applicant did not possess – prominent opposition to Islamic fundamentalists.)

Mgoian at 1036

D. Evidence

To determine whether there is a pattern or practice of a group of individuals similarly situated to the applicant, the asylum officer should ask the applicant about the treatment of others with whom the applicant is associated. The asylum officer should also consult country conditions reports to determine whether the applicant belongs to a group at risk of harm and the extent to which that group is at risk.

Instructor Note #4

V. PERSECUTION OF INDIVIDUALS CLOSELY RELATED TO THE APPLICANT

A. Objective Evidence Supporting Fear

The persecution of family members or other individuals closely associated with the applicant may provide objective evidence that the applicant's fear of future persecution is well founded, even if there is no pattern or practice of persecution of such individuals.

[UNHCR Handbook, para. 43](#); *Matter of Villalta*, 20 I&N Dec. 142 (BIA 1990); 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 also*, *Mgoian v. INS*, 184 F.3d 1029, (9th Cir. 2000)

On the other hand, continued safety of individuals similarly situated to the applicant may, in some cases, be evidence that the applicant's fear is not well founded.

See, Matter of A-E-M-, 21 I&N Dec. 1157 (BIA 1998); but *see also*, *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994).

B. Connection Must Be Established

The applicant must establish a connection between the persecution of the family member or associate and the harm that the applicant fears.

Example: An applicant's sister was arrested on account of her membership in a union that was considered subversive. However, she had little contact with the applicant, did not live in the same city as the applicant, and the applicant had no association with the union. The sister's arrest must be considered in evaluating the applicant's claim, but without more,

See e.g., Arriaga-Barrientos v. INS, 937 F.2d 411 (9th Cir. 1991) (abduction of geographically distant relatives by unknown gunmen for unknown reason failed to provide objective basis for fear); *Matter of E-P-*, 21 I&N Dec. 860 (BIA 1997)(applicant presented

it probably will not carry much weight.

no evidence that military was interested in her due to her relatives' political activities.)

Instructor Note #5

VI. THREATS

A. Threat May Be Sufficient Without Harm

A threat (anonymous or otherwise) may be sufficient to establish a well-founded fear of persecution, depending on all the circumstances of the case. There is no requirement that the applicant be harmed in the past or wait to see whether the threat will be carried out. The fact that an applicant has not been harmed in the past is not determinative of whether his or her fear of future persecution is well founded.

OH #7 Threats

Matter of Villalta, 20 I&N Dec. 142 (BIA 1990); *Arteaga v. INS*, 836 F.2d 1227 (9th Cir. 1988); *Sotelo-Aquije v. Slattery*, 17 F.3d 33 (2nd Cir. 1994); *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994) (To infer that an applicant is unlikely to be persecuted because he was not killed during attempts to terrorize him leads to the absurd result of denying asylum to those who were fortunate enough to survive.)

However, the evidence must show that the threat is serious and that there is a reasonable possibility the threat will be carried out.

B. Considerations

Threats must be evaluated in light of the conditions in the country and the circumstances of the particular case. Anonymous threats could be a result of personal problems unrelated to any of the protected characteristics in the refugee definition. On the other hand, persecutors may use anonymous threats to terrorize those over whom they seek control. The fact that a threat is anonymous does not necessarily detract from the seriousness of the threat. Further inquiry should be made regarding the circumstances and content of the threat to evaluate whether it provides a basis for a well-founded fear. In many cases, the content of an anonymous threat sheds light on the identity of the source of the threat.

See e.g., Aguilera-Cota v. INS, 914 F.2d 1375 (9th Cir. 1990); *Cordero-Trejo v. INS*, 40 F.3d 482 (1st Cir. 1994); *Gailius v. INS*, 147 F.3d 34 (1st Cir. 1998)

In determining whether a threat or threats establish a well-founded fear of persecution, the asylum officer should elicit information from the applicant about the entire circumstances relating to the threat. Factors to consider may include:

Instructor Note #6

OH #8 Threats - Factors to Consider

1. Who may have received similar threats (if any), and what happened to them;

2. The authority or power of the individual or group that made the threat;
3. Any activities that may have placed the applicant at risk;
4. Country conditions reports.

VII. SIGNIFICANT LAPSE OF TIME BETWEEN OCCURRENCE OF EVENT(S) AND FLIGHT

A. General Rule

A significant lapse of time between the occurrence of incidents that form the basis of the claim and an applicant's departure from the country may be evidence that the applicant's fear is not well founded. The lapse of time may indicate that:

1. The applicant does not possess a genuine fear of harm; and/or
2. The persecutor does not possess the ability or the inclination to harm the applicant.

B. Exceptions

There may be valid reasons why the applicant did not leave the country for a significant amount of time after receiving threats or suffering harm. For example, the applicant may not have had the funds to arrange for departure from the country, or may have needed to arrange for the safety of family members. The applicant may have thought the situation would improve or may have wanted to continue promoting a cause within his or her country. Also, there may have been reasons why the persecutor was temporarily disinclined or unable to harm the applicant that later became inapplicable.

C. Considerations

To evaluate the weight to be given to this factor, the asylum officer should consider all the circumstances, including:

1. The amount of time the applicant remained (A relatively short period, such as days or a weeks may not be significant, whereas years certainly would be significant.)
2. The reason for the delay (There may have been a lack of

OH #9 Significant Lapse of Time

Castillo v. INS, 951 F.2d 1117 (9th Cir. 1991)

Instructor Note #7

OH #10 Significant Lapse of Time (cont.)

opportunity to escape or the applicant may have had other legitimate reasons for deciding to remain in the country.)

3. The applicant's location during that time (Did the applicant remain at home? Move about from place to place?)
4. The applicant's activities during that time (Was the applicant in hiding or going to work or school as usual?)
5. The persecutor's activities during that time, if known

VIII. RETURN TO COUNTRY OF FEARED PERSECUTION

As a procedural matter, the regulations provide that an alien who returns to the country of feared persecution with a grant of advance parole is presumed to have abandoned his or her asylum claim. This presumption is overcome if there are compelling reasons for the applicant's return to that country. In addition, even if the presumption is not overcome by compelling reasons for the return, events that occurred during the time that the applicant was in his country could be the basis for a new claim. Procedurally, the applicant whose experiences upon return provide the basis for a new claim would not be required to submit a new I-589, but would be required to testify about events that occurred during the return to the country of feared persecution.

As a substantive matter, an applicant's return to the country of feared persecution, and the events that occur during that return also create issues regarding whether or not the applicant has a well-founded fear of return to that country.

A. Effect on Well-Founded Fear Evaluation

Depending on the circumstances, an applicant's return to the country of feared persecution may indicate that the applicant does not possess a genuine (subjective) fear of persecution or that the applicant's fear is not objectively reasonable. However, return to the country of feared persecution does not necessarily defeat an applicant's claim.

Procedurally, an alien who leaves the United States without advance parole is presumed to have abandoned his or her asylum claim, regardless of which country he or she travels to. The presumption is generally overcome by the applicant's appearance at the asylum office.

[8 C.F.R. § 208.8\(b\)](#).

Return to country of feared persecution is also addressed in lesson, [Asylum Eligibility Part I, Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution](#). In this section, students should focus on how the applicant's return factors into the analysis of well-founded fear.

OH #11 Return to Country

B. Considerations

1. Subjective Fear--Why did applicant return?

In evaluating the weight to be given to an applicant's return, the asylum officer must consider the reason(s) the applicant returned. There may be compelling reasons for an applicant to return. For example, the Ninth Circuit held that the fact that applicant returned to the country of feared persecution to get her child, whose custodian had died, did not undercut the genuineness of her fear.

Rodriguez v. INS, 841 F.2d 865 (9th Cir. 1987); See also [Damaize-Job v. INS](#), 787 F.2d 1332 (9th Cir. 1986) (Applicant's return to country of feared persecution because he wanted to help his uncle and sister who had been arrested was not inconsistent with a well-founded fear.)

2. Objective Fear -- What happened upon return?

It is also important to consider what happened to the applicant after he or she returned to the country of feared persecution. Threats or harm experienced upon return would strengthen the applicant's claim that he or she faces a reasonable risk of persecution. However, the ability to return to and remain safely in the country of feared persecution would undercut the reasonableness of the applicant's fear, particularly if the applicant remained there a significant amount of time and lived openly (not in hiding).

IX. POSSESSION OF TRAVEL DOCUMENTS

A. General Rule

Possession of a valid national passport and other official travel documents is not a bar to asylum. However, possession of such documents may be considered in evaluating whether the applicant is at reasonable risk of harm from the government, because it may be evidence that the government is not inclined to harm the applicant.

OH #12 Possession of Travel Documents

B. Considerations

To evaluate the weight to be given to the applicant's possession of travel documents, the circumstances surrounding the acquisition of the documents should be elicited and considered. Factors to consider include:

OH #13 Possession of Travel Documents – Considerations

1. Whether the passport-issuing or exit control agency is separate from the branch of government that seeks to harm the applicant and whether that agency is aware of the

applicant's situation

2. Whether the applicant obtained the documents surreptitiously (e.g., through a bribe or with the help of a friend)
3. Whether the government issued the documents so that the applicant would go into exile
4. Whether the applicant obtained the documents prior to the incidents that gave rise to the applicant's fear

X. REFUGEE *SUR PLACE*

A. Definition

The UNHCR defines a “refugee *sur place*” as a “person who was not a refugee when he left his country, but who becomes a refugee at a later date.” An individual may become a refugee due to circumstances arising in the country of origin after the individual left, or due to actions the individual took while outside his or her country.

[UNHCR Handbook, paras. 94-96](#)

B. Analysis

To evaluate a claim, the asylum officer should apply the *Mogharrabi* four-pronged test, as modified by recent case law, just as in any other claim of well-founded fear. A common issue that arises in such cases is whether there is a reasonable possibility the persecutor could become aware that the applicant possesses a characteristic that the persecutor seeks to overcome, or might attribute to the applicant a characteristic the persecutor seeks to overcome.

C. Factors to Consider

1. The applicant's status in the country prior to departure (e.g., was the applicant well-known in the country or otherwise known to the persecutor?)
2. The applicant's status outside the country of feared persecution (e.g., does the applicant hold a particularly visible position?)
3. The visibility of the applicant's activities outside the country of feared persecution (e.g., does the applicant speak at large rallies, attend small rallies, simply give money to

OH # 14 Refugees *Sur Place*

Instructor Note #8

an organization, or has the applicant been exposed by the press?)

4. The extent of the feared persecutor's network outside the country of feared persecution (e.g., does the applicant's government closely monitor nationals abroad?)
5. The persecutor's opinion of those who have resided in other countries (e.g., is the applicant's government suspicious of those who have resided in countries viewed as political opponents?)

D. Example

An Iranian national had an altercation with an Iranian official at the Iranian Interests Section of the Algerian Embassy in the United States. The applicant accused the official of robbing Iran and being a religious fascist. In response, the official pulled a gun and threatened the applicant. The BIA found that a reasonable person in the applicant's situation would fear persecution on account of political opinion, because the applicant's opposition to the authorities was known to an Iranian official, and it was not disputed that the Iranian regime persecutes its opponents.

[Matter of Mogharrabi, 19 I&N Dec. 439 \(1987\)](#); *See also, Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (for another example)

Instructor Note #9

XI. INTERNAL RELOCATION

A. General Rule

1. An applicant does not have a well-founded fear of persecution if the applicant
 - could avoid persecution by relocating to another part of the applicant's country of nationality or, if stateless, the applicant's country of last habitual residence,
 - and
 - if under all the circumstances it would be reasonable to expect the applicant to do so.
2. Whether an applicant could have avoided persecution by relocating is *not* relevant in determining whether that applicant suffered past persecution on account of a protected characteristic.
3. If an applicant suffered persecution on account of a

OH #15 Internal Relocation

[8 C.F.R. § 208.13\(b\)\(2\)\(ii\)](#)

[Matter of Acosta, 19 I&N Dec. 211 \(BIA 1985\)](#); [Matter of C-A-L- 21 I&N Dec. 754 \(BIA 1997\)](#); [UNHCR Handbook, para. 91](#)

Note: The applicant's ability to avoid future persecution by internally relocating may rebut the presumption of a well-founded fear that an applicant establishes by

protected characteristic, then the applicant is a refugee, irrespective of whether the persecutor would have had the ability to harm the applicant if the applicant had relocated.

demonstrating past persecution, provided that under all the circumstances, it is reasonable for the applicant to relocate. [8 C.F.R. §](#)

[208.13\(b\)\(1\)\(i\)\(B\)](#).

See also, lessons, [Asylum Eligibility Part I, Definition of Refugee; Definition of Persecution; Eligibility Based on Past Persecution](#) and [Asylum Eligibility Part IV, Burden of Proof, Standards of Proof, and Evidence](#)

B. Avoiding Persecution

In order to find that the applicant could avoid persecution by relocating, it must be determined that the applicant does not have a well-founded fear of persecution in the area of relocation.

Relevant factors to this inquiry include:

1. whether the persecutor has the ability and willingness to persecute the applicant elsewhere in the applicant's country, and
2. whether the government has the ability and willingness to control the persecutor.

Example: The persecutor may be a local rebel group whose scope of power is limited to a remote area of a country, while the applicant has the support of family in an area where the rebels are inactive, or the government has effectively protected individuals from rebel threats. On the other hand, the persecutor may be a rebel group that has control of, and access to, a substantial part of the country.

See, e.g., [Matter of C-A-L-21 I&N Dec. 754 \(BIA 1997\)](#)

C. Considerations in Evaluating What is Reasonable

The regulations provide that internal relocation should only be expected "if under all the circumstances it would be reasonable" for the applicant to relocate.

[8 C.F.R. § 208.13\(b\)\(2\)\(ii\)](#)

The Supplemental Information to the proposed rule adding this provision to the regulations (now codified in the final rule) provides some guidance on what is contemplated by "reasonable." The Department explained, "We would expect . . .

[63 Federal Register 31945, 31948 \(June 11, 1998\)](#)

Instructor Note #10

that the difficulties associated with an internal relocation option would have to be substantial to render relocation unreasonable.”

To determine whether it would be reasonable for the applicant to relocate within the country of feared persecution, the asylum officer should consider, but is not limited to considering, the following:

[8 C.F.R. § 208.13\(b\)\(3\)](#)
See also, [UNHCR Handbook, para. 91](#)

1. Whether the applicant would face other serious harm in the place of suggested relocation

In the Supplemental Information to the final rule, “other serious harm” is described as “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.” The Supplemental Information further provides, “Mere economic disadvantage or the inability to practice one's chosen profession would not qualify as ‘other serious harm.’”

[63 Federal Register 31945, 31947 \(June 11, 1998\)](#)

This factor may overlap with the other factors described below. For example, it may be unreasonable for an applicant to relocate to another part of the country because of ongoing civil strife, which would cause the applicant other serious harm.

2. Any ongoing civil strife within the country

There may be a civil war occurring in parts of the country, making it unreasonable for the applicant to relocate.

Examples: The only place where the persecutor has no authority is in the war-torn area; or the applicant would have to travel through unsafe areas to try to get to a place not controlled by the persecutor.

3. Administrative, economic, or judicial infrastructure

Instructor Note #11

There may be circumstances under which aspects of the infrastructure may make relocation difficult. Depending on the circumstances, such infrastructure may make it very difficult for an individual to live in another part of the country. For example, in certain situations the fact that women may not have the same legal rights as men may hinder her ability to relocate.

4. Geographical limitations

There may be situations in which geographical limitations, such as mountains, deserts, jungles, etc., would present barriers to accessing a safe part of a country. Or, there may be cases in which the only safe places in a country are places in which an individual would have difficulty surviving due to the geography (e.g., an uninhabitable desert).

5. Social and cultural constraints, such as age, gender, health, and social and familial ties

Examples: In some countries, a woman may be unable to live safely or survive economically without a husband or other family members. A member of a particular tribe may be unable to live safely among other tribes because of social and cultural constraints in the country.

6. Any other factors specific to the case that would make it unreasonable for the applicant to relocate.

Instructor Note #12

D. Burden of Proof

In determining who bears the burden of proof regarding internal relocation, the officer must consider whether:

1. the applicant has established past persecution;

[8 C.F.R. § 208.13\(b\)\(3\)\(i\)](#)

In cases in which the applicant suffered past persecution, the burden is on the Service to establish that the applicant could avoid future persecution through internal relocation and that it is reasonable to do so.

This is true whether the feared persecutor is a government or non-government actor.

2. the feared persecution is by the government or is government sponsored;

[8 C.F.R. § 208.13\(b\)\(3\)\(ii\)](#)

In cases in which the feared persecutor is a government or is government-sponsored, it shall be presumed that there is no reasonable internal relocation option, and the burden shifts to the Service to overcome this presumption.

[8 C.F.R. § 208.13\(b\)\(3\)\(ii\)](#)

This presumption may be overcome if a preponderance of the evidence shows that the applicant could reasonably

For factors to consider in evaluating what is

relocate to a part of the country where he or she would not be at risk of persecution and, under all the circumstances, it would be reasonable for the applicant to do so.

“reasonable,” see [section XI.C., *Considerations in Evaluating What is Reasonable*](#), above.

For example, the evidence may establish that the persecutor is a rogue officer who acts without the knowledge or consent of the national government and has no ability to harm the applicant in a different part of the country. In this situation, the officer must consider whether it would be reasonable for the applicant to relocate, in light of all the circumstances, even those beyond the persecutor’s ability to harm the applicant.

[8 C.F.R. § 208.13\(b\)\(3\)](#)

If the persecutor is a government, The presumption that internal relocation is not reasonable is not overcome merely by the inefficiency of those in power.

3. the feared persecution is by a non-government actor.

[8 C.F.R. § 208.13\(b\)\(3\)\(i\)](#)

If the persecutor is not the government and is not government-sponsored, the applicant bears the burden to establish that he or she could not avoid persecution in his or her country by relocating, or that under all the circumstances, it would be unreasonable for the applicant to do so.

E. Applicant Relocated before Leaving Country of Feared Persecution

There is no requirement that an applicant first attempt to relocate in his or her country before flight. However, the fact that an applicant lived safely in another part of his or her country for a significant time before leaving the country may be evidence that the applicant can reasonably relocate within the country to avoid future persecution.

[Matter of C-A-L- 21 I&N Dec. 754 \(BIA 1997\)](#)

It is important to consider the applicant’s circumstances in the place the applicant relocated. Considerations include whether the applicant was able to live a relatively normal life in that location or was forced to live in hiding; whether the persecutor knew of the applicant’s relocation; and the length of time the applicant lived in the new location.

XII. COUNTRY CONDITIONS INFORMATION

Information regarding the conditions in an applicant's country is critical in evaluating whether the applicant's fear of future persecution

This will be discussed in

is well founded. The asylum officer is required to remain knowledgeable about current country conditions in refugee producing countries and to research available country conditions information in evaluating requests for asylum.

greater detail in lesson, [Country Conditions Research and the Resource Information Center \(RIC\)](#).

XIII. PRESUMPTION RAISED BY PAST PERSECUTION

A. General Rule

If past persecution on account of a protected characteristic is established, then the applicant is a refugee and

1. it is presumed that the applicant has a well-founded fear of future persecution on the basis of the original claim,
2. unless it is established by a preponderance of the evidence that
 - a. there has been a fundamental change in circumstances such that the applicant no longer has a well-founded fear of persecution, or
 - b. the applicant could avoid future persecution through internal relocation and under all the circumstances it would be reasonable for the applicant to do so.

**Instructor Note #13
OH #16: Presumption Raised by Past Persecution**

[8 C.F.R. § 208.13\(b\)\(1\)](#)

This is also discussed in lesson, [Asylum Eligibility Part IV, Burden of Proof, Standards of Proof, and Evidence](#).

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

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

B. Explanation (Burden Shift)

This means that once the applicant has established past persecution, the asylum officer must presume that the applicant's fear of future persecution is well founded. This is a presumption that may be rebutted. However, the burden of proof shifts to the Service to establish by a preponderance of the evidence that the fear of future persecution is no longer well founded.

OH #17 Burden Shift

The asylum officer must weigh all available evidence to determine whether a preponderance of the evidence shows that there has been a fundamental change in circumstances such that the applicant's fear of persecution is no longer well founded, or the applicant could reasonably avoid future persecution through internal relocation. This will require a thorough knowledge and understanding of current country conditions in the applicant's country.

The asylum officer should consider not only country conditions, but other aspects of the applicant's circumstances, as well, to evaluate whether a preponderance of the evidence establishes that the applicant's fear of persecution is not well founded. See, [section XI.D., Fundamental Changes Must Affect](#)

Applicant's Situation,
below.

C. Consideration Regarding Source of Persecution

The presumption raised by a finding of past persecution applies only to a fear of future persecution based on the original persecution and does not apply to fear of persecution from a new source of persecution, unrelated to the past persecution. The applicant bears the burden of demonstrating a well-founded fear of persecution from any new source.

[8 C.F.R. § 208.13\(b\)\(1\)](#)
See also, Matter of N-M-A-,
Int. Dec. #3368 (BIA 1998)

The BIA has made clear, however, that a change in regime does not automatically shift the burden of proof back on an applicant to show well-founded fear of persecution from the changed regime or its successor. (See discussion below regarding what constitutes a change in circumstances sufficient to overcome the presumption.)

Matter of N-M-A-, Int. Dec.
#3368 (BIA 1998)

D. Fundamental Changes Must Affect Applicant's Situation

The fundamental change in circumstances may relate to country conditions in the applicant's country or to the applicant's personal circumstances. However, the change must directly affect the risk of harm the applicant fears in order to overcome the presumption.

The BIA has emphasized that simply demonstrating a change, such as a change in regime, cannot substitute for careful analysis of the facts of each applicant's individual circumstances. Similarly, the First Circuit has held that the "abstract" materials indicating fundamentally changed circumstances "do not automatically trump the specific evidence presented by the applicant."

Matter of N-M-A-, Int. Dec.
#3368 (BIA 1998); *Fergiste v. INS*, 138 F.3d 14, 19 (1st Cir. 1998); *See also, Vallecillo-Castillo v. INS*, 121 F.3d 1237, 1240 (9th Cir. 1996); [Osorio v. INS](#), 99 F.3d 928, 932-33 (9th Cir. 1996)

For example, a despot may be removed from a seat of government, but still wield enough influence to pose a threat to an applicant, or a new government may harbor the same animosities towards an applicant as the old regime. Those types of changes would not rebut the presumption of well-founded fear. The determinative issue is whether the changes are such that the particular applicant's fear of persecution is no longer well-founded.

Evidence that an applicant may still be at risk despite a change in circumstances includes, but is not limited to, evidence that the applicant or individuals similarly situated to the applicant continued to be threatened after circumstances have changed.

See e.g., Gailius v. INS,
147 F.3d 34 (1st Cir. 1998)

Instructor Note #14

XIV. SUMMARY

OH #18 Summary A, B

A. Elements of a Well-Founded Fear

To establish a well-founded fear of persecution, the applicant must show that the fear is genuine and that it has an objective basis in fact.

B. No Requirement of Past Harm

There is no requirement that the applicant have suffered harm in the past to establish a well-founded fear of future persecution.

C. Objective Basis for Fear

OH #19 Summary C

The requirement of an objective basis is met if the applicant establishes that the fear of persecution is reasonable; i.e., that there is a reasonable possibility of suffering persecution in the future.

D. Mogharrabi Test, Modified

OH #20 Summary D

If an applicant establishes all four prongs of the *Mogharrabi* test, as modified, then the fear of persecution is well founded. The elements of the four-prong test are 1) applicant possesses (or is believed to possess) a protected characteristic; 2) persecutor is aware or could become aware that applicant possesses the characteristic; 3) persecutor is capable of persecuting applicant; 4) persecutor is inclined to persecute applicant.

E. Pattern or Practice

OH #21 Summary E

An applicant does not need to show that he or she will be singled out if there is 1) a pattern or practice of persecution of a group or category of individuals similarly situated to the applicant, and 2) the applicant belongs to or is identified with the group or category of persons such that a reasonable person in the applicant's position would fear persecution.

F. Persecution of Family Members or Close Associates

OH #22 Summary F

Persecution of family members or others associated with the applicant may be objective evidence that the applicant's fear is well founded. However, the applicant must establish some connection between such persecution and the persecution the applicant fears.

G. Threats

OH #23 Summary G

Threats (anonymous or otherwise) may be sufficient to establish a well-founded fear if the applicant establishes that there is a reasonable possibility the threats will be carried out. If the threat is anonymous, the asylum officer should consider all possible sources of the threat, the content of the threat, circumstances surrounding the threat, and country conditions information.

H. Applicant Remains in Country after Threats or Harm

OH #24 Summary H

A significant lapse of time between the incidents that give rise to the claim and the applicant's departure from the country may indicate that the fear is not well founded. However, the reasons and circumstances for delayed departure must be considered.

I. Return to Country of Persecution

OH #25 Summary I

An applicant's return to the country of feared persecution generally weakens the applicant's claim of a well-founded fear of persecution. Consideration must be given to the reasons the applicant returned and what happened to the applicant once he or she returned. Return to country of feared persecution does not necessarily defeat an applicant's claim.

J. Possession of Travel Documents

OH #26 Summary J

Possession of valid travel documents is not a bar to asylum, but may indicate that the applicant's government does not have the inclination to harm the applicant. Entire circumstances surrounding acquisition of such documents must be considered.

K. Refugee Sur Place

OH #27 Summary K

An applicant may become a refugee due to events that occur while the applicant is outside his or her country. These events may be changed circumstances in the applicant's country, or actions the applicant takes while outside of his or her country that put him at risk if the applicant returns to the country.

L. Internal Relocation

OH #28 Summary L

Fear is not well-founded if, under all the circumstances, it would be reasonable for the applicant to relocate in his or her country to avoid future persecution. Asylum officers must consider whether the persecutor is the government or is government-sponsored; the extent of the authority of the persecutor; and any factors that

may make it unreasonable for the applicant to relocate. The burden of proof shifts to the Service to show that the applicant could reasonably relocate to avoid future persecution if past persecution has been established or the persecutor is the government or is government-sponsored.

M. Country Conditions

OH #29 Summary M

Asylum officers must consider current conditions in the applicant's country to evaluate whether an applicant's fear of future persecution is well founded.

N. Presumption Raised by Past Persecution

OH #30 Summary N

If an applicant establishes past persecution, it is presumed that the applicant's fear of future persecution is well founded. Once an applicant has established past persecution, the burden of proof shifts to the Service to show, by a preponderance of the evidence that due to a fundamental change in circumstances, the fear is no longer well-founded or the applicant could reasonably avoid future persecution through internal relocation.