
Lesson Plan Overview

Course	Asylum Officer Basic Training Course
Lesson	<i>The International Religious Freedom Act (IRFA) and Religious Persecution Claims</i>
Field Performance Objective	Given a request for asylum (including Credible Fear and Reasonable Fear interviews) 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 the training requirements of IRFA for those adjudicating asylum cases.2. Identify statutory and regulatory requirements for the consideration of asylum cases based on religious persecution.3. Identify appropriate – and inappropriate – methods of conducting interviews involving issues of religious persecution.4. Identify legal rulings that bear upon the adjudication of claims based on religious persecution.5. Identify major characteristics of specific religious groups that have experienced persecution.

**Student
Materials/References**

1. *The International Religious Freedom Act of 1998*. HR 2431 P.L. 105-292 (27 October 1998), 112 Stat. 2787. (Title VI is included in the training materials.)
2. Elwood, Kenneth J., Deputy Executive Associate Commissioner, INS Office of Field Operations. *Implementation of the International Religious Freedom Act of 1998*, Memorandum for Jeffrey L. Weiss, Acting Director, office of International Affairs. (Washington, DC: 5 April 1999), 3 p. (attached)
3. Langlois, Joseph E., Deputy Director, Asylum Division. *Religious Persecution*, [with two attachments: letter to William Bartlett, Office of Asylum Affairs, Department of State, concerning training conducted for Asylum Officers on religious persecution; list of documentation distributed by the Resource Information Center on religious persecution, 1992-1998] Memorandum for Asylum Office Directors. (Washington, DC 5 May, 1998), 12p. (attached)
4. Pearson, Michael A., Executive Associate Commissioner, INS Office of Field Operations. *Amendment to the Immigration and Nationality Act (the Act) adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom*, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p. (attached)
5. U.S. Department of State. "Preface," "Introduction," and "Executive Summary," *2001 Annual Report on International Religious Freedom* (Washington, DC: 26 October 2001), 17 p. (attached)
6. U.S. Commission on International Religious Freedom. *Report of the U.S. Commission on International Religious Freedom*. (Washington, DC: 1 May 2001), 198 p. (The Executive Summary and the first section of the report are attached).
7. U.S. Commission on International Religious Freedom. *Addendum to the Report of the U.S. Commission on International Religious Freedom*. (Washington, DC: 14 May 2001), 21 p. (attached)

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Presentation

I. INTRODUCTION

The purpose of this lesson is to introduce the student to the International Religious Freedom Act (also referred to as “IRFA”) and to look at how claims of religious persecution may be analyzed in light of IRFA.

Sections II and III of this lesson provide an overview of IRFA and a detailed analysis of Title VI, the section of IRFA that is most relevant to refugee and asylum adjudicators. Sections IV, V, VI, and VII of this lesson discuss the nature of religion and violations of religious freedom, and explore the issues that an adjudicator should consider when analyzing whether a particular act may constitute persecution on account of religion. Finally, Section VIII of this lesson lists resource materials students may find useful when dealing with claims of religious persecution.

II. OVERVIEW OF IRFA

In 1998, Congress adopted the International Religious Freedom Act (IRFA) in response to growing concerns about the persecution of various religious groups throughout the world. IRFA was signed into law on October 27, 1998.

Although IRFA specifically noted Congressional concern for Christians in the Sudan and China, Tibetan Buddhists, and the Bahai in Iran, Congress recognized the importance of protecting religious freedom throughout the world. In its findings, Congress cited, among other reasons, the following as a basis for adopting such an act:

The right to freedom of religion undergirds the very origin and existence of the United States. Many of our Nation’s founders fled religious persecution abroad, cherishing in their hearts and minds the ideal of religious freedom. They established a law, as a fundamental right and as a pillar of our Nation, the right to freedom of religion. From its birth to this day, the United States has prized this legacy of religious freedom and honored this heritage by standing for religious freedom and offering refuge to those suffering religious persecution.

IRFA seeks to address two different, though equally important issues. First, IRFA addresses the issues of religious freedom and religious persecution directly, and includes a series of diplomatic and foreign

References

OH #1&2: Objectives

The International Religious Freedom Act of 1998. HR 2431 P.L. 105-292 (Oct. 27, 1998), 112 Stat. 2787

Note: Participants should review this lesson in conjunction with the lesson, *Asylum Eligibility III, Nexus and Five Protected Characteristics, Part V*.

OH #3: The International Religious Freedom Act

The International Religious Freedom Act of 1998. HR 2431 P.L. 105-292 (Oct. 27, 1998), 112 Stat. 2787 at Section 2(a)(1).

policy provisions designed to enhance the ability of the United States to promote religious freedom and to speak out and act against religious persecution around the globe. Second, IRFA addresses perceived problems within our own system - - specifically within the Department of State (DOS) and the Immigration and Naturalization Service (INS) - - that may lead to diminished attention to the problems of religious persecution.

IRFA is divided into seven titles. For refugee and asylum adjudicators, Title VI is the most important and will be the focus of this lesson. It is helpful, however, to briefly review the scope of the entire law:

A. Title I – Department of State (DOS) Activities

- Establishes within DOS an Office on International Religious Freedom and an Ambassador-at-Large for International Religious Freedom.
- Requires DOS to provide specific training and outreach to Foreign Service Officers, including instruction on internationally recognized human rights and religious freedoms.
- Requires DOS to set up a website for religious freedom and to maintain country-by-country lists of prisoners of conscience. The website can be found at http://www.state.gov/www/global/human_rights/drl_religion.html.
- Requires DOS to publish various papers on religious freedom and an annual report that documents religious persecution throughout the world. The annual report may be found on the website for religious freedom at http://www.state.gov/www/global/human_rights/irf/irf_rpt/.

OH #4: Overview of IRFA

Note: These are just the highlights of the provisions in each Title of IRFA. Inform students to read the entire law for a complete understanding of all its provisions.

B. Title II – Commission on International Religious Freedom

- Creates a Commission on International Religious Freedom comprised of nine members from outside the U.S. Government in order to evaluate U.S. Government policies and make recommendations with respect to matters involving international religious freedom. The Commission maintains a website: www.uscirf.gov.

C. Title III – National Security Council (NSC)

- Creates an NSC Special Advisor to the President on

International Religious Freedom. The Special Advisor serves as a resource for executive branch officials and makes policy recommendations.

D. Title IV – Presidential Actions

- Provides the President with the power to sanction violators of religious freedom.
- Requires the President to designate as “count[r]ies of particular concern for religious freedom” countries where the government has engaged in or tolerated certain violations. The designated countries may be found on the website of the Commission on International Religious Freedom at <http://www.uscirf.gov>.

Instructor Note #1

E. Title V – Promotion of Religious Freedom

- Requires the United States to promote religious freedom through broadcasts, international exchanges, and foreign service awards.

F. Title VI – Refugee, Asylum, and Consular Matters

[This title is discussed in detail at Section III, Title VI of IRFA in subsections B through E.]

G. Title VII – Miscellaneous Provisions

- States that it is the sense of Congress that transnational corporations operating overseas should adopt codes of conduct that encourage respect of employees’ religious beliefs and practices.

III. TITLE VI OF IRFA

Title VI contains five sections, that each refugee and asylum adjudicator must know in order to adjudicate refugee and asylum claims. A description of each section follows.

Note: Students should read Title VI for the complete provisions in each section. These are just the highlights.

A. Section 601. Use of Annual Report

This section specifically mandates the use of the DOS annual report on religious persecution and other country conditions information by immigration judges, asylum officers, and refugee and consular officers when analyzing claims for asylum or

OH #5: Title VI of IRFA

Note: Publication of the annual report is a requirement under Title I.

refugee status on account of religion. More importantly, this section specifically prohibits the denial of a refugee or asylum claim solely because the conditions of religious persecution as stated by an applicant do not appear in the DOS annual report.

B. Section 602. Reform of Refugee Policy

This section contains four important components:

OH #6: Title VI of IRFA

1. Mandates training for refugee adjudicators that is the same as asylum adjudicators' training and that includes country conditions information and information on religious persecution.
2. Mandates training for consular officers on refugee law and adjudication, and religious persecution.
3. Requires DOS and INS to jointly create guidelines to ensure interpreters and other foreign personnel who come into contact with refugee applicants do not show improper bias on account of an individual's religion, race, nationality, membership in a particular social group, or political opinion.
4. Requires greater scrutiny of the manner in which refugee cases are screened and prepared and interviews are conducted to ensure that the files contain information that is unbiased and accurate.

Note: Component #3 extends protection against bias toward or against each of the protected grounds, not just religion.

C. Section 603. Reform of Asylum Policy

This section contains two important components:

OH #7: Title VI of IRFA

1. Requires DOS and INS to jointly create guidelines to ensure that individuals possibly biased against a person's race, religion, nationality, membership in a particular social group, or political opinion are not permitted to act as interpreters between aliens and inspection or asylum officers. This includes interpreters and employees of airlines owned by governments known for persecutory actions.
2. Requires immigration judges, asylum officers, and any immigration officers working in the expedited removal context to receive training on religious persecution.

D. Section 604. Inadmissibility of Foreign Government Officials who have Engaged in Particularly Serious Violations of Religious Freedom

This section creates a new ground of inadmissibility to prevent religious persecutors from entering the United States. This ground, codified in Section 212(a)(2)(G) of the INA, makes inadmissible any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section three of IRFA. This inadmissibility ground also includes the spouse and children of any such individual. The inadmissibility ground applies only to aliens seeking admission on or after October 27, 1998, the date of the enactment of IRFA.

OH #8: Title VI of IRFA

INS has issued a policy memorandum on how to handle applications for admission from individuals who may fall within this section of the INA. For specific instructions, see Michael A. Pearson. INS Office of Field Operations. *Amendment to the Immigration and Nationality Act (the Act) adding section 212(a)(2)(G), relating to the inadmissibility of foreign government officials who have engaged in particularly serious violations of religious freedom*, Memorandum to Regional and Service Center Directors, (Washington, DC: 9 July 1999), 4 p.

E. Section 605. Studies on the Effect of Expedited Removal Provisions in Asylum Claims

The Commission on International Religious Freedom has the ability to request from the Attorney General a study by the Comptroller General on certain aspects of the expedited removal process. On September 1, 2000, the General Accounting Office (GAO) released a report on the Expedited Removal Process as required under IRFA; however, it did not specifically address the issue of how the INS handles the religious-based claims of individuals in the expedited removal process.

The GAO found that the INS generally followed procedures for documenting the Expedited Removal at Selected Ports of Entry and the Credible Fear Process at selected asylum offices.

General Accounting Office.
ILLEGAL ALIENS: Opportunities Exist to Improve the Expedited Removal Process.
GAO/GGD-00-176.
(Washington, DC: 1 September 2000) 107p.
[Internet] <URL: <http://www.gao.gov/>> (to access report go to GAO Reports, September 2000, Month In Review).
[Accessed on 11 January 2000].

IV. THE NATURE OF RELIGION

A. Identifying Religious Beliefs and Practices

IRFA refers to religious freedom without defining what makes a particular practice or belief a religion, or placing any particular religious group in a position of privilege over any other. While many applicants base their claim to refugee or asylum status on their inclusion in a faith group that is recognizable to the adjudicator (e.g. Hindus, Christians, or Muslims), other individuals may seek protection based upon their inclusion in a faith group with which an adjudicator is not familiar.

For the purpose of establishing asylum eligibility, persecution suffered or feared on account of an untraditional belief system may be considered to be persecution “on account of religion.” The mere fact that an individual’s faith or faith group is not familiar to an adjudicator, or that a particular practice or belief seems strange, does not mean that the particular faith group or set of practices and beliefs are not “religious.”

In the text of IRFA, Congress evokes the language of the Universal Declaration of Human Rights proclaiming freedom of “thought, conscience, and religion” in its findings. This notion of “religion” as including an individual’s thought, conscience, beliefs, etc. allows for a broad interpretation of the protected ground in asylum adjudications.

A Supreme Court Justice has noted that determination of a religious faith by a tribunal is fraught with complexity because true belief is not readily justiciable. Therefore, the role of the asylum officer is not to determine whether a belief system can be considered a “religion,” but to determine whether the applicant has or might suffer persecution on account of those beliefs.

The protection granted by the First Amendment provides a valuable comparison to the protection from persecution on account of religion guaranteed by immigration law, and discussions on the topic shed light on the views of the court regarding whether a particular religion (and its members) merit protection. Courts have stated that “a religious belief can appear to every other member of the human race as preposterous, yet merit the protections of the Bill of Rights.” Popularity, as well as verity, are inappropriate criteria, and neither courts nor adjudicators may inquire into the truth, validity, or reasonableness of a claimant’s religious beliefs.

OH #9: The Nature of Religion: Identifying Religious Beliefs and Practices

The International Religious Freedom Act of 1998. HR 2431 P.L. 105-292 (Oct. 27, 1998), 112 Stat. 2787 at Section 2(a)(3).

United States v. Ballard, 322 U.S. 78, 93-94, 64 S.Ct. 882, 889-90, 88 L.Ed. 1148 (1944) (Jackson, J., dissenting).

Instructor Note #2

Stevens v. Berger, 428 F. Supp. 896 (E.D.N.Y. 1977); *U.S. v. Ballard*, 322 US 78 (1944); and *Callahan v. Woods*, 658 F.

2d 679 (9th Cir. 1981).**Instructor Note #3**

The following sources are useful reference tools for understanding different faith groups around the world:

- Bowker, John [Ed.], The Oxford Dictionary of World Religions
- Crim, Keith [Ed.], The Perennial Dictionary of World Religions
- Ederman's Handbook to World Religions
- Hinnells, J.R.[Ed.], Penguin Dictionary of Religions
- Smith, J.Z. The Harper Collins Dictionary of Religion

B. Assumptions about Religious Practices

All asylum officers bring certain assumptions and biases with them to the adjudication. In order to serve properly as a neutral adjudicator, the asylum officer must be aware of these assumptions and biases and do his or her best to set aside or overcome them during the interview and decision-making process.

Instructor Note #4

1. Refrain from judging the validity of a belief system

Asylum officers should not question the validity of a sincerely held belief, even if the belief appears to be strange, illogical, or absurd.

OH #10: The Nature of Religion: Assumptions about Religious Practices

2. Distinguish between the sincerity of belief and the validity of belief

It is appropriate for an asylum officer to evaluate whether an individual adopted a belief system solely for the purposes of trying to obtain asylum. Such an evaluation requires the asylum officer to determine whether the beliefs are sincerely held. However, officers must recognize that an examination of the sincerity of the belief does not grant license to question whether the belief system is of merit.

3. Lack of knowledge of religious tenets does not necessarily test religious identity

Just as no individual's personal religious experience could be summed up in the history of his or her church, the words of a few prayers, or a description of his or her place of worship, a religious identity cannot be verified solely on a test of religious tenets conducted by an asylum officer.

- a. religions are practiced differently around the world

Distance, time, and culture will produce variations in any religion or belief system practiced in different areas.

Example: An asylum officer familiar with the practices of the Pentecostal church finds unbelievable an applicant's claim that he was baptized into a Pentecostal church in an indoor baptismal font rather than a natural body of water, as is the church custom. However, the inconsistency is explained by the fact that the applicant lives in a near-Arctic climate in which the temperature of the bodies of water never rises above 45 degrees, too cold for a baptism.

- b. suppression of a religious group affects practice

Many persons who fear harm on account of religion have been forced to practice their faith in secret or not practice their faith at all. Sometimes these groups have been without a formal leader and have simply passed on traditions from one generation to the next. Often absent formal religious education, such individuals will be unaware of larger issues of church history and the theological significance of particular practices.

Example: A 35 year-old woman claiming to be Ukrainian Catholic cannot describe how she would receive the Eucharist. This could be explained by the fact that in her rural town there were very few families who were Catholic and they had not had a priest since 1925.

- c. the perceptions of the asylum officer may not accurately reflect the religion

The asylum officer is not expected to be a theological scholar. Good research on a particular religion, and how it is practiced in a particular region, is crucial to conduct a thorough interview. However, even officers who are familiar with a religion through personal study must be careful when questioning applicants.

This is particularly important when the claimant is a

member of the same faith group as the adjudicator. He or she may be tempted to rely on his or her personal experiences in the faith to evaluate the testimony of the applicant. It is unlikely that applicants for asylum will have practiced their religion as it is practiced in the United States.

4. Religious beliefs can be imputed to an applicant

An applicant may also fear persecution on account of beliefs a persecutor perceives him or her to hold. An adjudicator must, therefore, look at the totality of the claimant's circumstances when assessing either a claimed membership in a particular faith or a claimed imputation of a particular religious belief.

See, lesson, Asylum Eligibility III, Nexus and the Five Protected Characteristics, Part VII, D., Imputed Political Opinion.

V. RELIGIOUS FREEDOMS

In Section 2 of IRFA, Congress acknowledged that freedom of religious belief and practice is a universal human right and fundamental freedom articulated in numerous international instruments. Some of the important provisions in international instruments are as follows.

OH #11: Religious Freedoms, International Instruments

Instructor Note #5

A. United Nations Charter

Article 1 of the *United Nations Charter* provides that one of the purposes of the United Nations is to achieve international cooperation in “promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Charter of the United Nations. (San Francisco: 26 June 1945).

B. Universal Declaration of Human Rights

Article 18 of the *Universal Declaration of Human Rights* states that “[e]veryone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.”

Universal Declaration of Human Rights. G.A. Res. 217(a)(III), U.N. GAOR, Dec. 10, 1948.

C. International Covenant on Civil and Political Rights

Article 18 of the *International Covenant on Civil and Political Rights* provides that:

International Covenant on Civil and Political Rights. GA Res. 2200A (XXI), UN GAOR, Dec. 16, 1966.

1. Everyone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice, and teaching.
2. No one shall be subject to coercion, which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals, or the fundamental rights and freedoms of others.

D. Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* reaffirms the provisions in Article 18 of the *International Covenant on Civil and Political Rights*.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. GA. Res. 36/55, UN GAOR, Nov. 25, 1981.

Article 2 addresses issues of discrimination based on religion or other beliefs and defines religious discrimination and intolerance as follows:

1. No one shall be subject to discrimination by any State, institution, or group of persons on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 5 addresses the rights of parents and children to choose the belief or religion in which they desire the children to be raised and to have access to education in that belief.

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child serving as the guiding principle. **Instructor Note # 6**
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He or she shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of others to practice a religion or belief, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care of either of his parents or legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes regarding the religion or belief in which they would have wished their child to be raised, the best interests of the child serving as the guiding principle.
5. Practices of a religion or belief in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account Article 1, paragraph 3, of the present Declaration.

Article 6 states that the right to freedom of thought, conscience, religion, or belief shall include, among others, the following:

1. To worship or assemble in connection with a religion or a belief, and to establish and maintain places for these purposes;
2. To establish and maintain appropriate charitable or humanitarian institutions;
3. To make, acquire and use to an adequate extent the

- necessary articles and materials related to the rites and customs of a religion or belief;
4. To write, issue and disseminate relevant publications in these areas;
 5. To teach a religion or belief in places suitable for these purposes;
 6. To solicit and receive voluntary financial and other contributions from individuals and institutions;
 7. To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
 8. To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and
 9. To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

Other international instruments that promote the right to religious freedom include the *European Convention for the Protection of Human Rights and Fundamental Freedoms*, the *African Charter of Human and People's Rights*, the *American Convention on Human Rights*, and the *Final Act of the Conference on Security and Cooperation in Europe* (the "Helsinki Accords").

VI. VIOLATIONS OF RELIGIOUS FREEDOM ACCORDING TO IRFA

Section 3 of IRFA defines "violations of religious freedom" and "particularly severe violations of religious freedom" in order to give the President a vehicle for identifying and sanctioning abuse of religious freedom by other countries.

OH #12: Violations of Religious Freedom

The codification of this categorical framework does not affect the persecution analysis of an asylum adjudication in any way. Whether or not a particular violation of religious freedom (either particularly severe or not) could be considered persecution on account of religion depends upon the degree of harm imposed. Just because a particular type of harm appears in IRFA as a violation of religious freedom does not mean that it rises to the level of persecution. Similarly, the

OH #13: Violations of Religious Freedom

omission from IRFA of a type of harm does not mean that it cannot amount to persecution.

These categories generally reflect the rights enshrined in the international instruments discussed above and compose the framework used to determine if countries will be designated as “countries of particular concern.”

See section V. Religious Freedoms, above

A. Particularly Severe Violations of Religious Freedom

Particularly severe violations are systemic, ongoing, egregious violations of religious freedom, including violations such as - -

- Torture or cruel, inhuman, or degrading treatment or punishment;
- Prolonged detention without charges;
- Causing the disappearance of persons by the abduction or clandestine detention of those persons; or
- Other flagrant denial of the right to life, liberty, or the security of person.

B. Violations of Religious Freedom

Violations of religious freedom are violations of the internationally recognized right to freedom of religion and religious belief and practice, including violations such as - -

1. Arbitrary prohibitions on, restrictions of, or punishment for:

- assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements;
- Speaking freely about one’s religious beliefs;
- Changing one’s religious beliefs and affiliation;
- Possession and distribution of religious literature, including Bibles; or
- Raising one’s children in the religious teachings and practices of one’s choice.

Note: An example of a registration requirement occurred during the Nazi regime, when all Jews were required to register with the local authorities (this was not arbitrary, but is merely an example of a registration requirement).

2. Any of the following acts are violations of religious freedom if committed on account of an individual’s religious belief or practice:

- Detention
- Interrogation
- Imposition of an onerous financial penalty

- Forced labor
- Forced mass resettlement
- Imprisonment
- Forced religious conversion
- Beating
- Torture
- Mutilation
- Rape
- Enslavement
- Murder
- Execution

Note: Being forced to change one's religion and being prohibited from voluntarily changing one's religion are both considered violations of religious freedom.

VII. RELIGIOUS PERSECUTION – GENERAL CONSIDERATIONS

A. General Forms of Religious Persecution

Referring to international human rights law, the *UNHCR Handbook* explains that persecution on account of religion takes various forms, some of which may include:

1. Prohibition of membership in a religious community;
2. Prohibition of worship in private or in public;
3. Prohibition of religious instruction; or
4. Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community.

In *Burcur v. INS*, the U.S. Court of Appeals for the Seventh Circuit held that “it is virtually the definition of religious persecution that the votaries of a religion are forbidden to practice it...If a person is forbidden to practice his religion, the fact that he is not imprisoned, tortured, or banished, and is even allowed to attend school, does not mean that he is not a victim of religious persecution.” That having been said, the court stated that acknowledgement that members of a religious group had been persecuted does not lead to the conclusion that so to has the individual in question. Each case requires an analysis of whether the individual in question had suffered persecution.

However, in *Sofinet v. INS*, the respondent claimed to having suffered persecution because he was reprimanded for not

OH #14 General Forms of Religious Persecution

UNHCR Handbook, para. 72

Burcur v. INS, 109 F. 3d 399 (7th Cir. 1997) at 405

Burcur v. INS, 109 F. 3d 399 (7th Cir. 1997), citing *Dobrican v. INS*, 77 F.3d 164 (7th Cir. 1996), see section VII.B., *Membership in a Religious Community*, below

Sofinet v. INS, 196 F. 3d. 742 (7th Cir. 1999)

working on Saturdays, which was considered the Sabbath day for Seventh Day Adventists. The U.S. Court of Appeals for the Seventh Circuit held that although the applicant claimed to have been occasionally reprimanded for failing to work as a police officer on Saturdays, he enjoyed steady employment for the five years between his conversion and his departure from Romania, and he failed to provide any evidence that he sought work that did not require Saturday hours.

The Court further added that the totality of Sofinet’s submitted record contained evidence insufficient to demonstrate his claimed religious persecution – “In fact, the evidence highlights only that Sofinet, at worst, experienced ridicule, harassment and self-initiated job termination because of his religious beliefs.”

B. Membership in a Religious Community

Generally, mere membership in a religious community will normally not be enough to establish a *prima facie* case of religious persecution.

In many countries of the world politics and religion intertwine, making the analysis of nexus more difficult. In such cases, the office must determine whether the applicant was targeted on account of his or her religious beliefs, political opinion, in the course of legitimate government investigation of crimes, or some combination of all three. Motivation of the persecutor is a critical element in the analysis of nexus.

In two separate cases before the Board of Immigration Appeals (BIA), *Matter of R-* and *Matter of K-S-*, each respondent based his asylum claim upon the premise that the Indian authorities persecute Sikhs on account of religion. In *Matter of R-*, the BIA held that harm suffered incidental to the government’s pursuit of Sikh militant separatists was not persecution on account of religion. In *Matter of K-S-*, which affirmed *Matter of R-*, the BIA relied heavily on a State Department opinion which stated that the government of India does not take action against individuals solely on account of their membership in the Sikh

OH #15: Membership in a Religious Community

Refahiyat v. USDOJ, INS, 29 F. 3d 553 (10th Cir. 1994) and *Burcur v. INS*, 109 F. 3d 399 (7th Cir. 1997) (an individual who had not himself been targeted on account of his religion cannot establish past persecution on the basis that other members of his religious group had been persecuted.)

Matter of R-, Int. Dec. 3195 (BIA 1992) and *Matter of K-S-*, Int. Dec. 3209 (BIA 1993).

Note: Contrast these cases with *Singh v. Ilchert*, 63 F. 3d 1501 (9th Cir. 1995). Although the case was based upon imputed political opinion and not religion, it rejected the

faith, but against those accused of committing acts of violence.

BIA's reasoning in *Matter of R-*.

In both cases the BIA rejected the notion that the respondents' membership in the Sikh faith was the reason ("on account of") for the harm suffered.

C. Forced Compliance With Laws or Punishment for Violation of Laws

1. General issues to consider:

- a. Is the law neutral in intent?
- b. Is the law neutrally or unequally enforced?
- c. How does the persecutor view those who violate the law? and
- d. How does compliance with the law affect the applicant's own religious beliefs?

OH #16: Forced Compliance/Punishment for Violation of Laws

2. Laws of neutral intent that affect religious practices

Laws that require punishment for holding a particular belief would almost always be considered a violation of religious freedom. However, when a law requires punishment for a particular action or practice that may be associated with a religion, the punishment may or may not amount to persecution on account of a protected ground.

A neutral law that impacts a particular religious group more harshly than the general population ordinarily is not considered to be persecution.

When determining whether enforcement of a law that inhibits religious practices is persecution, the asylum officer must assess whether a law was designed with neutral intent, or whether the law was enacted to target a particular religious group.

Article 18 of the United Nations International Covenant on Civil and Political Rights provides assistance in making that determination: "The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights of others."

Fisher v. INS, 79 F.3d 955 (9th Cir. 1996), vacating 61 F.3d 1366, superseding 37 F.3d 1371.

Example: A curfew imposed during a period of civil strife may prevent individuals from attending evening religious services. Since the law was not intended to overcome a characteristic, but rather to protect public safety, no nexus to religion would be established. Contrast this with a law that specifically prohibited a particular religious sect from meeting. Such a law would not be neutral in intent.

3. Unequal enforcement of the law

Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. For example, if a law that prohibits proselytizing on public property is enforced only against members of one particular religion, but not against members of other religions, that would be evidence that the persecutor's intent is to punish members of a particular religious group because of their religious beliefs.

4. Laws based on religious principles

Punishment for refusal to comply with religious norms or laws (such as dress codes or gender roles based on religious principles) may, in some cases, constitute persecution on account of religion.

In *Matter of S-A-*, the BIA held that harm suffered by the respondent at the hands of her father amounted to past persecution on account of religion. As a woman with liberal Muslim beliefs, she differed from her father's orthodox Muslim views concerning the proper role of women in Moroccan society and refused to comply with religious norms. The BIA found that because the respondent refused to share or submit to her father's religion-inspired restrictions and demands, she was treated differently from her brothers and was, therefore, persecuted on account of religion.

Matter of S-A-, Int. Dec. #3433 (BIA 2000)

When a civil or criminal law is itself based on religious laws or principles in a country where there is little separation between church and state, the evaluation of the persecutor's intent may be complex. A thorough understanding of country conditions will help the asylum officer evaluate how the authorities view individuals who violate religious laws.

5. Forced compliance with religious laws or practices that are abhorrent to an applicant's beliefs

The U.S. Court of Appeals for the Third Circuit has indicated that forced compliance with laws that fundamentally are abhorrent to a person's deeply held religious convictions may constitute persecution.

Fatin v. INS, 12 F. 3d 1233 (3rd Cir. 1993)

Example: Being forced to renounce religious beliefs or to desecrate an object of religious importance might be persecution if the victim holds strong religious beliefs.

Note: The persecutor's motive would still need to be established.

D. Conversion

In some countries, it may be illegal to convert from one religion to another, and the penalties may be severe. For example, in some Islamic countries, the conversion from Islam to another religion is considered apostasy (renunciation of faith), which may be punishable by death. Punishment for conversion in such cases may be considered persecution on account of religion, depending on the degree of the harm imposed.

See e.g., Bastanipour v. INS, 980 F.2d 1129 (7th Cir. 1992) (prosecution under law against apostasy found to be "on account of" religion).

Instructor Note #7

E. Mixed Motive for Persecution

A persecutor may have mixed motives in seeking to harm an individual. An applicant is not required to establish an exact motivation of the persecutor where different reasons for actions are possible. An adjudicator must, therefore, explore all possible grounds when assessing whether the harm the applicant suffered or fears could be on account of religion in addition to another of the protected grounds in the refugee definition.

See e.g., Matter of S-P-, Int. Dec. 3287 (BIA 1996) (an applicant bears the burden of "establishing facts on which a reasonable person would fear that the danger arises on account of" a protected ground). *See also Borja v. INS*, 175 F.3d 732 (9th Cir. 1999).

In *Matter of D-V-*, the Immigration Judge determined that the applicant had failed to demonstrate a well-founded fear of persecution on the basis of her political opinion because the evidence did not show her to be a prominent supporter of Aristide. The BIA, however, reversed the immigration judge and found that the applicant suffered harm on account of her political opinion and religion – "Clearly, the applicant was an active member of a church group, which provided funds for projects endorsed by Aristide. She thus could be considered one of Aristide's activist supporters. The evidence reflects that her attackers, who knew her by name and knew of her membership, targeted her previously because of her political and religious opinion ..."

Matter of D-V-, Int. Dec. 3252 (BIA 1993)

F. Persecution at Hands of Members of Applicant's Religion

It is important to note that there may be cases in which the persecutor belongs to the same religious group as the applicant, but believes that the applicant is not sufficiently complying with religious tenets.

OH #17: Persecution at Hands of Group Members

Recall that in *Matter of S-A-* (see above Section VII, C, 3, *Laws based on religious principles*) the BIA found that the applicant had been persecuted by her father because her beliefs regarding the role of Muslim women differed from his. In this case both the applicant and her father practiced Islam.

Matter of S-A-, Int. Dec. #3433 (BIA 2000)

Further, in *Maini v. INS* the petitioners argued that despite the fact that the Communist Party Marxist (CPM) of India is comprised of both Sikhs and Hindus, they were persecuted on account of their interfaith marriage. The U.S. Court of Appeals for the Ninth Circuit overturned a decision by the BIA finding that “if an applicant can establish that others in his group persecuted him because they found him insufficiently loyal or authentic to the religious, political, national, racial, or ethnic ideal they espouse, he has shown persecution on account of a protected ground. Simply put, persecution aimed at stamping out an interfaith marriage is without question persecution on account of religion.”

Maini v. INS, 212 F.3d 1167, 1175 (9th Cir. 2000)

VIII. RESOURCE MATERIALS

In conjunction with the implementation of IRFA a body of resource materials have been developed to provide documentation on the status of religious freedom in the world.

OH #18: Resource Materials on Religious Persecution

A. Countries of Particular Concern

The President is required to designate as “countries of particular concern” those countries where the government has engaged in or tolerated violations of religious freedom. These countries are so designated in order to use sanctions to encourage the countries to improve their treatment of religious groups. In October 1999 and again in September 2000, the President designated five such countries – Burma, China, Iran, Iraq, and Sudan. In addition, the Taliban regime of Afghanistan (not currently recognized as a country under IRFA) have been noted for committing particularly severe violations of religious freedom.

Instructor Note #8

U.S. Department of State. “Executive Summary,” *2001 Annual Report on International Religious Freedom* (Washington, DC: 26 Oct. 2001), 14 p. (attached). [Internet] [URL: http://www.state.gov/g/drl/rfs/irf/2001](http://www.state.gov/g/drl/rfs/irf/2001).

These designations are made as a matter of foreign policy for the purpose of imposing sanctions and other restrictions on foreign countries. The designations do not have any bearing on the asylum adjudication other than to make known the widespread abuse of religious groups in these countries.

B. The US Department of State Annual Report on International Religious Freedom

In October 2001, DOS issued its third annual Report on International Religious Freedom. This report provides information on the treatment of religious organizations in most countries of the world, much in the same way as the annual *Country Reports on Human Rights Practices*. In its Executive Summary, the report breaks down the countries of the world into a system of categorization according to the severity of treatment of religious organizations and their members. These categories are not statutorily recognized and the countries listed in each are not necessarily those designated as countries of particular concern.

- *Totalitarian or Authoritarian Attempts to Control Religious Belief or Practice* – Countries included in this category seek to control any form of dissent in thought or expression. In these countries religious expression is often considered as a threat to the political ideology. The countries in this category include Afghanistan, Burma, China, Cuba, Laos, North Korea, and Vietnam.
- *State Hostility Toward Minority or Non-approved Religions* – This category includes countries that are hostile toward minority religions and often implement policies to intimidate the groups, cause their members to convert, or to flee the country. These countries are Iran, Iraq, Pakistan, Saudi Arabia, Sudan, Turkmenistan, and Uzbekistan.
- *State Neglect of the Problem of Discrimination Against, or Persecution of, Minority or Non-approved Religions* – Countries in this category have laws against the discrimination of religious groups or individuals, but fail to enforce those laws against the actions of nongovernmental entities or local law enforcement officials. These countries include Egypt, India, Indonesia, and Nigeria.
- *Discriminatory Legislation or Policies Disadvantaging Certain Religions* – Countries in this category, typically

U.S. Department of State.
“Executive Summary,”
2001 Annual Report on International Religious Freedom (Washington, DC: 26 Oct. 2001), 14 p. (attached). [Internet] [URL: http://www.state.gov/g/drl/r/ls/irf/2001](http://www.state.gov/g/drl/r/ls/irf/2001).

having a history of one dominant religion in the country, place minority religions at a disadvantage by favoring the dominant religion in their laws and regulations. These mostly post-Communist countries are Belarus, Brunei, Bulgaria, Eritrea, Georgia, Israel and the Occupied Territories, Jordan, Malaysia, Romania, Russia, Turkey, and Yugoslavia.

- *Stigmatization of Certain Religions by Wrongfully Associating Them with Dangerous “Cults” or “Sects”* – These countries have investigated minority religions for wrongdoing, as well as launching disinformation campaigns against them. These countries, all European, are Austria, Belgium, France, and Germany.

Some of the examples of mistreatment of believers listed in the DOS report include: execution (North Korea); harassment, extortion, prolonged detention, and physical abuse (China); incarceration in reeducation labor camps (China); involuntary commission to psychiatric care (North Korea); forced desecration of sacred religious symbols (Burma); the destruction of monasteries (Burma); surveillance, infiltration, and harassment of clergy (Cuba); forbidding the construction of places of worship (Afghanistan); imposing mandatory atheistic political ideology training for monks (Laos); ordering members of minority religious groups to identify their houses (Afghanistan); and closure of places of worship (China).

The DOS report also noted improvements in the respect for religious freedom in many countries, with the most significant improvements taking place in Mexico. The Executive Summary also lists those countries that have made smaller strides in improving the climate of religious freedom.

C. US Commission on International Religious Freedom Reports

Established by the International Religious Freedom Act, the US Commission on International Freedom (USCIRF) monitors the status of religious freedom in other countries and advises the President and Congress on how best to promote religious freedom.

1. Annual reports

On May 1, of each year the US Commission on International Religious Freedom issues its Annual Report.

USCIRF. *Frequently Asked Questions* (Washington, DC: 7 March 2001) [Internet] <http://www.uscirf.gov/cirfPages/faqs.php3>

U.S. Commission on International Religious Freedom (USCIRF). *Report of the U.S. Commission on*

Mindful of its mandate to make recommendations on how to make use of policy designed to combat violations of religious freedom in the world, its reports focus on particular countries that it sees as “priorities” in the fight for global religious freedom.

International Religious Freedom (Washington, DC: 1 May 2000). [Internet] <URL: http://www.uscirt.gov/reports/01May00Report_Body.pdf> [Accessed on 2 January 2001].

In its first annual report issued in May 2000, the Commission focused on Sudan, China, and Russia.

- *Sudan* – Over the course the 17-year civil war in Sudan, the Islamist government has attempted to force Islamic law on the people of the south of Sudan and has called for an extremist interpretation of Islam on all Muslims. The government has deliberately bombed civilian buildings, including churches and buildings housing aid organizations.
- *China* – The Commission enumerated the known abuses of religious activists in China, including arrests, three-year sentences to labor camps without trial, lengthy prison terms, and beatings at the hands of police.
- *Russia* – Though its human rights record with respect to religion is not as poor as that of Sudan or China, Russia is a priority for combating violations of religious freedom because of its influence in the region. The potential for “liquidation” of non-registered churches and the vulnerability of smaller churches to the whims of local officials cause concern.

In May 2001 the Commission released its second report focusing on the countries of the People’s Republic of China, India, Indonesia, Iran, the Democratic People’s Republic of Korea, Nigeria, Pakistan, Russia, Sudan, Vietnam, and an addendum to the report focusing on Egypt and Saudi Arabia.

See, USCIRF. *Report of the U.S. Commission on International Religious Freedom* (Washington, DC: 1 May 2001) [Internet] www.uscirt.gov/reports/01May01/2001annRpt.pdf; and USCIRF. *Addendum to the Report of the U.S. Commission on International Religious Freedom* (Washington, DC: 14 May 2001) [Internet] http://www.uscirt.gov/reports/01May01/addendum_051501.pdf,

2. Individual country reports, hearings, and testimony

In addition to its annual report, the Commission periodically publishes reports dealing with a particular country. Quite often these reports are issued in response to particular issues or incidents of violations of religious freedom in that country. Individual country reports have focused on North Korea, Sudan, and others countries.

In addition, the Commission organizes hearings on issues of religious freedom when it feels that greater examination of the situation in a country is required. Human rights monitors, religious scholars, and other interested parties have presented their views to the Commission in such fora.

Finally, Commission members on occasion testify before Congress on issues of religious freedom and concerns of threats to that freedom around the world.

3. Comments on the DOS Annual Report on International Religious Freedom

Each year the US Commission on International Religion Freedom responds to the statements made by the Department of State in its *Annual Report*. These comments may be published in a separate report (as they were in December 2000), or as part of the USCIRF *Annual Report* (as was done in the *Second Annual Report*). The comments intend to balance the body of material on International Religious Freedom by pointing out omissions of information and to critique the implementation of policy on international religious freedom.

attached in part.

These reports can be accessed on the USCIRF website at www.uscirf.gov

U.S. Commission on International Religious Freedom. *Report on the International Religious Freedom Act & the State Department's Annual Report on International Religious Freedom -- 2000*. (Washington, DC: 8 December 2000). [Internet] <http://www.uscirf.gov/reports/08Dec00/IRFA.php3>

IX. SUMMARY

A. Overview of IRFA

IRFA, the International Religious Freedom Act, was enacted on October 27, 1998 to promote religious freedom and call attention to its abuse worldwide. IRFA also created new foreign policy mechanisms for use by the United States to act against religious persecution.

IRFA also established new responsibilities for government agencies in order to increase the amount of accessible

OH #19: Summary A

information on religious persecution, expand the consideration of issues of religious persecution in matters of foreign policy and national security, and improve the treatment of religious individuals by US government officials.

B. Title VI of IRFA

OH #20: Summary B

Title VI of IRFA speaks directly to the role of the INS and asylum officers in improving the US government response to religious persecution.

1. Section 601 mandates that immigration judges, asylum officers, and immigration officers refer to the Department of State Annual Report on International Religious Freedom when adjudicating requests for asylum or refugee status.
2. Section 602 requires greater attention to issues of refugee law and religious persecution by those involved in the processing of refugees overseas, including DOS consular officers, immigration officers, and interpreters.
3. Section 603 requires greater scrutiny of the potential biases of those individuals used as interpreters during inspection or asylum interviews. The section also requires training on religious persecution for all those involved in the expedited removal process.
4. Section 604 creates a new ground of inadmissibility for any foreign government official who has been responsible for or has directly carried out severe violations of religious freedom over the twenty-four month period preceding entry.
5. Section 605 provides the Commission on International Religious Freedom to request studies by the Comptroller General on certain aspects of the expedited removal process.

C. The Nature of Religion

OH #21: Summary C

1. For the purposes of establishing asylum eligibility, persecution suffered or feared on account of an untraditional belief system may be considered “on account of religion.”
2. Asylum officers must put aside preconceived notions of what can be considered a religion and how religions are

practiced across the globe.

D. Religious Freedoms

OH #22: Summary D

Internationally-recognized standards regarding religious freedom are codified in various international instruments. These instruments, such as the UN Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, provide invaluable guidance to the asylum officer in determining what actions may be considered violations of religious freedom.

E. Violations of Religious Freedom

OH #23: Summary E

IRFA developed a hierarchical structure of violations of religious freedom to be used as a guide in the process of designating countries as being of “particular concern for religious freedom.” While the list of these violations of religious freedom may be helpful for reminding the asylum officer what types of harm often befall believers in various countries, the codification of this categorical framework does not affect the persecution analysis of an asylum adjudication in any way.

Whether or not a particular violation of religious freedom (either particularly severe or not) could be considered persecution on account of religion depends upon the degree of harm imposed.

F. Religious Persecution – General Considerations

1. Prohibition of religious activities can, without physical mistreatment, rise to the level of persecution.
2. Membership in a religious community will not normally be enough to establish a *prima facie* case of religious persecution. The motivation of the persecutor must be examined to determine if
 - a. the applicant has been targeted or could be targeted; and
 - b. the applicant’s religion is the targeted characteristic.
3. The enforcement of certain laws that inhibit religious practice can be considered persecution. The officer must analyze the intent of the law, the purpose of the law, the

OH #24: Summary F; 1, 2

OH #25: Summary F; 3

uniformity in enforcing the law, and whether the law requires the individual to act in a manner abhorrent to his or her deeply held beliefs.

4. Laws that impose harsh penalties for conversion from one religion to another may be considered persecution.
5. It is possible for individuals to establish that they have been persecuted on account of their religion by members of the same faith community. For example, an individual could be harmed because he or she is perceived by others to be failing in the faith.

OH #26: Summary F; 4, 5

G. Resource Materials

OH #27: Summary G

Asylum officers have at their disposal a number of tools to aid in the adjudication of cases of claimed religious persecution. IRFA requires that officers consider the information contained in the Department of State Annual Report on International Religious Freedom when adjudicating such cases. In addition, officers should consult other resources, such as the reports and press releases issued by the US Commission on International Religious Freedom.

The absence of information on persecution of a particular group in either of the above-mentioned reports, or the fact that a refugee-producing country is not designated as a country of particular concern, should not lead to assumption that a claim to persecution is unfounded.