

Lesson Plan Overview

Course	Asylum Officer Basic Training
Lesson	<i>Credible Fear</i>
Field Performance Objective	When a case is referred to an asylum officer to make a “credible fear” determination, the asylum officer will correctly determine whether the applicant has established a credible fear of persecution or a credible fear of torture.
Instructional Methods	Lecture, Practical Exercise
Training Aids	Overhead Transparencies
Student Materials/References	Participant Workbook <ol style="list-style-type: none">1. Sections 235(b)(1)(A)(i) and (ii), 235(b)(1)(B)-(F) of the Immigration and Nationality Act (INA) as amended by the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA)2. 8 C.F.R. § 208.303. Form I-860: Notice and Order of Expedited Removal4. Form I-867-A&B: Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act and Jurat5. Form I-869: Record of Negative Credible Fear Finding and Request for Review by Immigration Judge6. Form I-870: Record of Determination/Credible Fear Worksheet7. Form M-444: Information about Credible Fear Interview

Reading required prior to conducting Credible Fear interviews

(Any documents not included in the training materials can be obtained from your office APSO supervisor.)

1. Perryman, Brian R. Office of Field Operations. *Security and Privacy Provisions for Credible Fear Interviews Under Expedited Removal*, Memorandum to Regional Directors, District Directors, Assistant District Directors for Detention and Deportation, Asylum Office Directors (Washington, DC: 1 July 1997), 3 p.
2. Virtue, Paul. Office of Programs. *Unaccompanied Minors Subject to Expedited Removal*, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, Director Policy Directives and Instructions, ODTF Glynco, ODTF Artesia (Washington, DC: 21 August 1997), 4p.
3. Langlois, Joseph. INS Office of International Affairs. *Role of Consultants in the Credible Fear Interview*, Memorandum to Asylum Directors, Supervisory Asylum Officers, Asylum Officers (Washington, DC: 14 November 1997), 2 p.
4. Virtue, Paul. Office of Programs. *Withdrawal of Application for Admission (IN 98-05)*, Memorandum to Management Team, Regional Directors, District Directors, Officers-in-Charge, Chief Patrol Agents, Asylum Office Directors, Port Directors, ODTF Glynco, ODTF Artesia (Washington, DC: 22 December 1997), 5p.
5. Pearson, Michael. Office of Field Operations. *Interim Guidance – Nicaraguan Adjustment and Central American Relief Act*, Memorandum to Regional Directors, Regional Counsel, District Directors, Officers in Charge (including SPCs), Sector Chiefs, Asylum Directors (Washington, DC: 18 December 1997) 6p. (Includes as attachments, Pullen, Thomas L., Acting Chief Immigration Judge, *Enactment of the Nicaraguan Adjustment and Central American Relief Act*, Memorandum to All Immigration Judges, All Court Administrators, All Judicial Law Clerks, All Court Personnel (Washington, DC: 24 November 1997) 8p.

6. Langlois, Joseph. INS Office of International Affairs. *Implementation of Amendments to Asylum and Withholding of Removal Regulations, Effective March 22, 1999*, (Washington, DC: 18 March 1999) 17 p. and attachments. (included in *International Human Rights Law*)
7. INS Office of International Affairs. *Procedures Manual - Credible Fear Process, Draft* (Washington, DC: December 2000) 39p and Appendices.
8. Bach, Robert L., Executive Associate Commissioner, Office of Policy and Planning. *Non-Nationals Applying for Admission Under the Visa Waiver Pilot Program*, Memorandum to Field (Washington, DC: August 27, 1999) 2p.
9. Pearson, Michael A. , Executive Associate Commissioner, Office of Field Operations. *Visa Waiver Pilot Program (VWPP) Contingency Plan, Wire #2* (Washington, DC: 28 April 2000) 6p.
10. Pearson, Michael A., Executive Associate Commissioner, Office of Field Operations. *Visa Waiver Permanent Program; Revised Processing Procedures, Action Wire* (Washington, DC: 31 October 2000) 5p.

Supplemental Reading
(Documents not included in the training materials can be obtained from your office APSO supervisor.)

1. Cooper, Bo. "Procedures for Expedited Removal and Asylum Screening under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996," *Connecticut Law Review* (Vol. 29, No.4, Summer 1997), pp. 1501-1524.
2. Dugger, Celia W. "In New Deportation Process, No Time, or Room, for Error," *New York Times* (New York: 20 September, 1997), pp. A1 and B4.
3. Dugger, Celia W. "Albanian Seeking Asylum Is Allowed to Return to U.S.," *New York Times* (New York: 04 January 1998), p. B5.

4. Pearson, Michael A. *Expedited Removal: Additional Policy Guidance*, Memorandum to Regional Directors, District Directors, Asylum Office Directors (Washington, DC: December 30, 1997) 6p.
5. Inspector's Field Manual, Chapter 17.15, *Expedited Removal*

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Presentation**References****I. INTRODUCTION****OH # 1, 2, 3, 4 Objectives**

The purpose of this lesson is to explain how to determine whether an arriving alien subject to expedited removal, an arriving stowaway, or a detainee has a credible fear of persecution or torture using the credible fear standard defined in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).

II. BACKGROUND**OH # 5**

The Expedited Removal provisions of the Immigration and Nationality Act (INA) as amended by IIRIRA, became effective April 1, 1997. Certain arriving aliens seeking admission to the United States are subject to these provisions.

INA § 235(b)(1)(B)(v);
INA § 235(a)(2)**OH # 6**

Under IIRIRA and its implementing regulations, arriving stowaways and certain arriving aliens at ports of entry who are inadmissible under INA Section 212(a)(6)(C) (because they have presented fraudulent documents or made a false claim to US citizenship or other material misrepresentations to gain admission or other immigration benefits) or 212(a)(7) (because they lack proper documents to gain admission) are immediately removable from the United States by the Immigration and Naturalization Service (INS), unless they indicate an intention to apply for asylum or articulate a fear of return to their home country.

Those arriving aliens who indicate an intention to apply for asylum or articulate a fear of return to their home country are referred to asylum officers to determine whether they have a credible fear. For all such arriving aliens, asylum officers determine whether they have a credible fear of persecution. Pursuant to regulation implementing the Convention against Torture and the Foreign Affairs Reform and Restructuring Act of 1998, for those who do not have a credible fear of persecution, asylum officers determine

INA § 235(b)(1)(B)(ii), 8
C.F.R. 208.30.Sec. 2242(b) of the Foreign
Affairs Reform and
Restructuring Act of 1998
(Pub. L. 105-277, Div. G,
October 21, 1998) and 8

whether they have a credible fear of torture.

C.F.R. § 208.30

A. Arriving Aliens Subject to Expedited Removal

OH# 6 cont.,

The following categories of arriving aliens are subject to expedited removal:

1. Aliens coming or attempting to come into the United States at a port of entry or an alien seeking transit through the United States at a port of entry.
2. Aliens who are interdicted in international or United States waters and brought to the United States by any means, whether or not at a port of entry.

This does not include aliens interdicted at sea who are interviewed outside the United States and are never brought to the United States.

3. Aliens who have been paroled under INA, section 212(d)(5) on or after April 1, 1997, are subject to expedited removal upon termination of their parole.

This provision encompasses those aliens paroled for urgent humanitarian or significant public benefit reasons, including those paroled in between May 1, 2000 and October 29, 2000 pursuant to the Visa Waiver Pilot Program Contingency Plan.

It does not include those who were given advance parole as described in Subsection B (6) below.

B. Arriving Aliens Exempt from Expedited Removal OH# 6 cont.,

The following categories of arriving aliens are exempt from expedited removal:

1. Cubans who arrive at a port of entry by air
2. Persons granted asylum status under INA Section 208
3. Persons admitted to the United States as refugees under INA Section 207
4. Persons admitted to the United States as lawful permanent residents
5. Persons paroled into the United States prior to April 1, 1997
6. Persons paroled into the United States pursuant to a grant of advance parole that the alien applied for and obtained in the United States prior to the alien's departure from and return to the United States
7. Persons denied admission on charges other than or in addition to INA Section 212(a)(6)(C) or 212(a)(7).
8. Persons applying for admission under INA Section 217, Visa Waiver Permanent Program (VWPP)(effective October 30, 2000) and those applying for admission under the Visa Waiver *Pilot* Program (also known as VWPP)(expired April 30, 1999). This includes nationals of non-VWPP countries who attempt entry by posing as nationals of VWPP countries. Individuals seeking admission under the expired Visa Waiver Pilot Program (from May 1, 2000 through October 29, 2000) were paroled

See, Matter of Kanagasundram, Int. Dec. #3407 (BIA 1999); See also, Draft Procedures Manual: Credible Fear Process (Washington, DC: December 2000) and Pearson, Michael A. Executive Associate Commissioner, Office of Field Operations. Visa Waiver Pilot Program (VWPP) Contingency Plan, Wire #2 (Washington DC: April 28, 2000).

into the United States and *are* subject to Expedited Removal.

C. Historical Perspective

1. In 1991, the INS developed the credible fear of persecution standard in order to screen the large number of Haitian migrants who were interdicted at sea during the mass exodus following a coup d'etat in Haiti, to determine if they were potential refugees.
2. The credible fear standard as it is applied to interdicted migrants outside the United States is somewhat different from that applied to aliens who are stowaways or in expedited removal proceedings, and is beyond the scope of this lesson plan.
3. Prior to implementation of IIRIRA, credible fear interviews were first conducted by INS trial attorneys and later by asylum officers, to assist the district director in making parole determinations for detained aliens.
4. As part of the implementation of IIRIRA, one function of all credible fear interviews conducted with aliens subject to the expedited removal provisions of IIRIRA is to assist the district director when making parole determinations.
5. Asylum officers also may be asked to conduct credible fear interviews to assist parole determinations for detained aliens not subject to expedited removal. The same IIRIRA credible fear standard is used for both non-expedited and expedited removal cases.

6. The credible fear screening process was expanded to include the credible fear of torture standard with the promulgation of the Regulations Concerning the Convention Against Torture that were published in the Federal Register on February 19, 1999, and became effective March 22, 1999.
- 64 Fed. Reg. 8478 (February 19, 1999)

III. FUNCTION OF CREDIBLE FEAR SCREENING

OH # 7

In applying the credible fear standard, it is critical to understand the function for which the standard was developed. According to a member of the Conference Committee that crafted the standard, “[t]he standard...is intended to be a low screening standard for admission into the usual full asylum process.” Similarly the credible fear of torture standard was designed to “ensure that no alien is removed from the United States under circumstances that would violate Article 3 [of the Convention against Torture] without unduly disrupting the issuance and execution of removal orders consistent with Article 3.”

142
Cong. Rec. S11491-02
(statement of Sen. Hatch)

Regulations Concerning the
Convention Against Torture;
Interim Rule, 64 Federal
Register 8479 (Feb. 19,
1999)(effective March 22,
1999).

It may be helpful to think of the standard as a net that will capture all potential refugees and individuals who would be subject to torture if returned to their country of feared persecution or harm. Such a protective net may also capture non-refugees and individuals that may not be subject to torture. The purpose of this standard is to guarantee the identification of all persons who could be classified as refugees or who require protection from torture under the United States’ international obligations.

OH # 8

IV. DEFINITION OF CREDIBLE FEAR OF PERSECUTION AND CREDIBLE FEAR OF TORTURE

A. Definition of Credible Fear of Persecution

OH # 9

According to statute, the term credible fear of persecution means that “there is a significant possibility, taking into account the credibility of

INA § 235 (b)(1)(B)(v)

the statements made by the alien in support of his or her claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under Section 208” of the INA.

B. Definition of Credible Fear of Torture

OH # 10

Regulations provide that the applicant will be found to have a credible fear of torture if the applicant could establish that there is a significant possibility that he or she is eligible for withholding of removal or deferral of removal under the Convention against Torture.

8 C.F.R. §3.42 as amended by Regulations Concerning the Convention Against Torture 64 Fed. Reg. 8487 (February 19, 1999) (effective March 22, 1999)

The asylum officer should find a significant possibility that the applicant is eligible for withholding of removal or deferral of removal under the Convention against Torture if:

OH # 11

1. There is a significant possibility the applicant’s claim is credible;
2. The applicant fears that he or she would be intentionally subjected to serious physical or mental harm in a country to which the applicant may be removed; and
3. There is a significant possibility that the applicant could establish that the harm feared would be inflicted by or at the instigation of, or with the consent or acquiescence of, a government official or other person acting in an official capacity.

V. STANDARD OF PROOF TO ESTABLISH A CREDIBLE FEAR OF PERSECUTION

The standard of proof necessary to establish a credible fear of persecution is a “significant possibility” that the applicant could establish that he or she has been persecuted on account of a protected ground; or a

OH # 12

significant possibility that the applicant could establish that he or she has a well-founded fear of persecution on account of a protected ground.

A. General Considerations

OH # 13

1. The standard of proof required to establish a credible fear of persecution is lower than the standard of proof required to establish past persecution or well-founded fear of future persecution.
2. The officer should draw all reasonable inferences in favor of the applicant. The officer is to accord the “benefit of the doubt” to the applicant.
3. When there is reasonable doubt regarding an issue, that issue should be decided in favor of the applicant. When there is reasonable doubt regarding the decision, the applicant should be determined to have a credible fear of persecution.
4. Disputed, close, or novel questions of law should be resolved in the manner most favorable to the applicant.
5. Where there is disagreement among the United States Circuit Courts of Appeal as to the proper interpretation of a legal issue, or where the claim otherwise raises an unresolved issue of law, the interpretation most favorable to the applicant is used when determining whether the applicant meets the credible fear standard.
6. Questions as to how the standard is applied should be resolved by considering that it is

a low-threshold test designed to screen all persons who could qualify for asylum into the hearing process.

B. Identity

1. An applicant must establish his or her identity with a reasonable degree of certainty. Credible testimony alone can establish identity.

See lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution, Section III.A. Definition of Nationality; Section III.B. Identifying Nationality; Section III.B.1. Passports; and Section III.D. Statelessness.
2. In many cases, an applicant will not have documentary proof of identity or nationality. The officer must elicit information in order to establish that there is a significant possibility that the applicant is who he or she claims to be. Documents such as birth certificates and passports are accepted into evidence if available.
3. After the credible fear interview, the information obtained by the asylum officer may be used by the district director in determining whether to parole a detained alien. The district director must be satisfied that identity is established before granting parole. Therefore, the asylum officer should thoroughly explore identity issues.

Note: Although asylum officers and immigration judges may determine that an asylum applicant has established identity solely on the basis of credible testimony, a district director may require documentary evidence for the purpose of granting parole.

C. Definition of Persecution on Account of a Protected Ground

1. Persecution on account of a protected ground is serious harm or suffering inflicted upon an individual on account of race, religion, nationality, membership in a

See lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution, Section VII.

particular social group, or political opinion. The agent of persecution may be either the government or a non-governmental entity that the government is unwilling or unable to control.

Definition of Persecution, for a more complete discussion of persecution.

2. A determination whether the harm suffered or feared is persecution on account of a protected ground has two components:
 - a. The harm must be serious.
 - b. The harm must be on account of race, religion, nationality, membership in a particular social group, or political opinion.

D. Credible Fear Considerations

OH ## 13,14

1. When deciding whether an applicant has a credible fear, the officer need not determine conclusively that the harm described by the applicant constitutes persecution on account of a protected ground.
2. There must be a significant possibility that the harm could be considered persecution on account of a protected ground in an asylum hearing.
3. There must be a significant possibility that the past or feared harm is serious enough to constitute persecution.
4. There must be a significant possibility that the past or feared harm will be found to be on account of race, religion, nationality, membership in a particular social group, or political opinion.

5. The following are examples of past or feared harm serious enough in some instances to be deemed persecution (assuming the harm is on account of a protected ground) and therefore at a level sufficient to establish a credible fear of persecution:
 - a. Sexual assault
 - b. Rape
 - c. Deliberate imposition of serious economic hardship
 - d. Surveillance
 - e. Purposeful interference with a person's privacy, family, home, or correspondence
 - f. Arrests and detention
 - g. Coercive pressure to become an informer
 - h. Discrimination
 - i. Harassment
 - j. Threats
 - k. Verbal abuse.

E. Past Harm

1. When determining credible fear, an asylum officer does not need to determine that the harm experienced by the applicant is at a level that constitutes "persecution." Instead, the officer must find that there is a *See lesson, Asylum Eligibility Part I: Definition of Refugee; Definition of Persecution; and Eligibility Based on Past Persecution.*

“significant possibility” that the harm is serious enough that it could be considered persecution in a full asylum hearing.

2. A finding that there is a significant possibility that harm experienced in the past could be considered persecution on account of a protected ground in a full asylum hearing completes the assessment of harm necessary for a credible fear determination.
3. Factors such as the applicant’s risk of future harm, changed conditions in the applicant’s country or in the applicant’s circumstances, and the applicant’s ability to safely relocate within the country are not relevant to the credible fear determination, if past harm that meets the standard has occurred.

F. Future Harm

1. An asylum officer does not need to determine that the applicant has a well-founded fear of persecution; rather, the asylum officer must determine whether there is a significant possibility the applicant’s fear could be determined to be well-founded.
2. The applicant does not need to show that he or she may be singled out or targeted for persecution; a credible fear is established if there is a significant possibility that the applicant could establish that individuals to whom he or she is similarly situated have been persecuted.

See lesson, Asylum Eligibility Part II: Well-Founded Fear.

G. Nexus to One of the Five Grounds Listed in the Refugee Definition

OH# 15

1. There must be a significant possibility of establishing a nexus between the harm experienced or feared by the applicant, and a protected ground, in order to establish a credible fear. *See lesson, Asylum Eligibility Part III: Nexus and the Five Protected Characteristics.*
2. The nexus to a protected ground must be identifiable and articulated, but the standard of proof is lower than the standard in an asylum interview.
3. Any evidence that the persecutor was or is motivated to harm the applicant on account of a protected ground is sufficient to find a credible fear.
4. The evidence can be either direct or circumstantial and either from the applicant's testimony or other evidence provided by the applicant or from country conditions information.
5. If there is a possibility that the harm relates to a protected ground and the applicant otherwise meets the credible fear requirements, the officer should find a nexus to a protected ground and determine that there is a credible fear. The benefit of the doubt goes to the applicant.
6. Both during the interview and when evaluating the case, the officer must explore all possible nexus issues. For cases where no nexus is immediately apparent, the asylum officer should ask questions related to all five grounds to ensure that no nexus issues are missed.

7. Officers should be aware of issues that have not been completely developed by case law, such as issues surrounding whether harm is on account of membership in a particular social group or whether a political opinion is imputed to the applicant. (These developing areas may include issues such as: domestic violence, other gender-related claims, and claims involving fear of harm from criminal organizations or gangs.)
8. If the applicant makes the requisite showing of past or future harm and the evidence indicates a significant possibility that the harm or feared harm is on account of a protected ground, then the applicant has met the credible fear standard.
- See lesson, *Female Asylum Applicants and Gender-Related Claims, Section VII, Legal Analysis-Nexus.*

H. Firm Resettlement

Issues related to whether the applicant has been firmly resettled should be explored, but not decided, at the interview. The asylum officer should decide whether the applicant has a credible fear of persecution in any country to which the applicant might be returned. The fact that the applicant may have been firmly resettled in a third country should not be taken into account when making a credible fear determination.

I. Statelessness/Last Habitual Residence

The asylum officer does not need to make a determination as to whether an applicant is stateless or what the applicant's country of last habitual residence is. The asylum officer should determine whether the applicant has a credible fear of persecution in any country to which the applicant might be returned.

VI. STANDARD OF PROOF TO ESTABLISH A CREDIBLE FEAR OF TORTURE

As explained above, credible fear of torture is defined as a **significant possibility** that the applicant could establish eligibility for withholding of removal or deferral of removal under the *Convention against Torture*. An individual may be eligible for withholding of removal or deferral of removal to a country if it is more likely than not that the applicant would be tortured in that country.

64 Federal Register 8478, 8484.

OH # 16

A. Definition of Torture

OH # 17

The Convention against Torture defines "torture" as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

Article 1, *Convention against Torture*

B. General Considerations

OH# 18

Although the Convention definition of torture requires that several elements be met before an act may constitute torture, many of those elements are not relevant for the credible fear determination. This is because the purpose of the credible fear determination is to cast a wide net to identify all those who *might* require protection under the Convention, and many elements of the Convention

definition of torture require complex legal and factual analyses that may be more appropriately considered in a full hearing before an immigration judge.

The asylum officer should find a significant possibility that the applicant is eligible for withholding of removal or deferral of removal under the Convention against Torture if the following three criteria are met:

OH # 18

1. There is a significant possibility that the applicant's claim is credible (a significant possibility that the facts underlying the claim are true); and
2. The applicant fears that he or she would be intentionally subjected to serious physical or mental harm in a country to which the applicant may be removed; and
3. There is a significant possibility that the applicant could establish that the person(s) he or she fears is a government official, someone acting in an official capacity or someone who would act at the instigation of or with the consent or acquiescence of a government official or someone acting in an official capacity.

See discussion on section VIII below regarding significant possibility of establishing credibility.

The asylum officer does not need to take into account other elements of the torture definition, such as whether the individual would be in the offender's custody or control, or whether the feared harm would arise from lawful sanctions.

C. Intent

OH # 19

In evaluating whether an individual has established a credible fear of torture, the asylum officer must

determine whether the applicant fears he or she would be intentionally harmed. For purposes of the credible fear determination, this does not mean that the feared offender intends to inflict serious harm on the applicant, only that the applicant fears the offender intends to take some action that would result in serious harm to the applicant.

Example: Applicant credibly fears she will be subject to forced female genital mutilation (FGM) by members of her tribe. She does not need to show that she fears that members of her tribe intend to cause her serious harm, only that she fears that their actions in subjecting her to FGM would be intentional and would cause her serious harm.

Example: Applicant credibly testifies that she fears she will be subjected to serious harm because of famine in her country, or because a medical procedure she requires is unavailable in her country. Neither scenario would meet the credible fear of torture standard, because the applicant does not fear *intentional* infliction of harm.

Important Note: This standard regarding intent is different from the standard that will be applied in eligibility determinations for withholding of removal under the Convention against Torture. To be eligible for protection under the Convention against Torture, it would be necessary to show that the offender intends to inflict severe pain or suffering upon the victim. In the screening process, however, the lower standard will be applied so that the screening may serve as a broad net to ensure that all individuals who have a significant possibility of establishing eligibility are permitted to present their claims before the immigration judge.

D. Serious Harm

The harm the applicant fears may be physical or

mental, but it must be serious enough that the applicant *may* be able to establish that it amounts to torture. This does not mean the harm must be as severe as that required to meet the Convention definition of torture (“severe pain or suffering”), but it must be more serious than certain types of harm that may be sufficient to meet the credible fear of persecution standard. For example, fear of discrimination or harassment would not be sufficient to meet the credible fear of torture standard.

Example: Applicant fears he will be intentionally deprived of the right to education because of his religion. The feared harm would not be serious enough to meet the credible fear of torture standard.

Example: Applicant fears he will be jailed because he broke the law and will be beaten because guards routinely beat inmates. The feared harm would be serious enough to meet the credible fear of torture standard.

Important Note: As noted above, the purpose of the screening is to cast a broad net to identify those who may be eligible for protection under the Convention against Torture. Thus, individuals who later are found not to be eligible for protection as refugees may nevertheless be found to have a credible fear of torture.

E. Identity of the Feared Person or Persons

There must be a significant possibility that the applicant can establish that the harm he or she fears would be inflicted by a person who is a government official, or a person acting in an official capacity, or who would act at the instigation of or with the consent or acquiescence of a public official on either

a national or local level. This may include persons who have affiliations, either formal or informal, with the government or government officials on either the national and local levels.

F. Past Harm

Although protection under the Convention Against Torture is based solely on an applicant's fear of future harm, credible evidence of past torture is strong evidence in support of a claim for protection based on fear of future torture. For that reason, an applicant who proves that he or she suffered past serious harm will establish a Credible Fear of Torture, unless there is compelling evidence that the applicant no longer has a credible fear of serious harm.

G. Internal Relocation

For purposes of the credible fear determination, the applicant does not need to show that the threat of serious harm exists throughout the country to which the applicant may be returned or that the applicant could reasonably relocate within that country to avoid future persecution. It is sufficient for the applicant to fear serious harm in any part of the country. Questions of whether there is in fact an area of the country where the applicant would not be tortured and whether the applicant therefore does not require protection under the Convention against Torture will be examined by the immigration judge in the context of the eligibility determination.

VII. ROLE OF COUNTRY CONDITIONS INFORMATION**OH # 20**

Pursuant to the credible fear of persecution definition, the officer may take account of “such other facts as are known to the officer.” Such “other facts” include relevant and factual country conditions information. Similarly, country conditions information should be considered when evaluating credible fear of torture. The Convention against Torture and implementing regulations require consideration of “evidence of gross, flagrant or mass violations of human rights within the country of removal, where applicable, and other relevant information regarding conditions in the country of removal.”

See lesson, *Country Conditions Research and the Resource Information Center (RIC)*. See also 8 C.F.R. §§ 208.1 (b), 208.11, 208.12 (a), 208.16(c)(3), and 208.30.

See INS Office of International Affairs. *Credible Fear Procedures Manual*, Draft (Washington, DC: 22 March 1999) at p. 35.

A. Proper Use of Country Conditions Information in the Credible Fear of Persecution and Torture Process

1. Country conditions information may assist the asylum officer in formulating questions that fully develop the applicant’s claim.
 - a. An officer who has a good understanding of country conditions can identify the most relevant parts of the testimony more clearly and ask specific questions to develop the relevant issues further.
 - b. A good understanding of country conditions information is especially important when eliciting information from a confused or inarticulate applicant.
2. Country conditions information may add relevant information that can assist the asylum officer’s evaluation of the claim and the applicant’s eligibility.

- a. Country conditions information may indicate groups of persons who could be subjected to harm.
 - b. Country conditions information may also assist in the identification of applicants who may be persecutors or security risks.
3. Country conditions information may assist the asylum officer in developing a sufficient record to evaluate the applicant's credibility appropriately.
- a. Knowledge of country conditions information helps the asylum officer to ask appropriate, probing questions to evaluate credibility.
 - b. Knowledge of country conditions can help an officer uncover false claims more effectively and fairly.
 - c. Knowledge and proper use of country conditions information prevents credibility findings erroneously based on the officer's personal experiences, biases, or expectations of how people behave.

B. Changed Conditions

If the applicant has shown a significant possibility that he or she experienced past harm that could constitute persecution on account of a protected ground, changes in the conditions in the applicant's country or the applicant's circumstances are irrelevant to the credible fear of persecution decision. Proof of past harm, by

itself, establishes a credible fear of persecution.

Since a credible fear of torture determination looks at prospective harm, changes in conditions in the applicant's country or circumstances could affect the credible fear of torture determination, but only in rare cases. If an applicant has suffered serious harm inflicted by a government actor, the applicant usually will be found to have a credible fear of torture. Changes in the conditions in the applicant's country or circumstances can lead to a negative credible fear of torture decision only when the changes, as they affect the applicant, are so substantial that the applicant has no significant possibility of future harm as a result.

VIII. CREDIBILITY

OH # 21

A. Credibility Standard

To meet the credible fear standard, an applicant must establish that there is a significant possibility that the assertions underlying his or her claim could be found credible in a full asylum or withholding of removal hearing.

B. Evaluating Credibility in a Credible Fear Interview

1. Guidelines
 - a. The screening function of the credible fear determination is important to remember when evaluating credibility.
 - b. As long as there is a significant possibility that the applicant's claim is credible, then he or she should not be screened out as not credible, even if there are material

inconsistencies or other serious credibility flaws.

- c. Because it is a screening process, the asylum officer does not make the final determination as to whether the applicant meets the asylum or withholding standard for credibility. The immigration judge makes that determination in the full hearing on the merits of the claim.
- d. The officer should be focused on gathering sufficient information to establish whether the alien has a credible fear of persecution or torture. Credibility should be evaluated only after the claim is completely developed.
- e. Further inquiries into credibility issues are not necessary once the applicant has credibly established the material elements of his or her claim to the extent necessary to establish a significant possibility of asylum or withholding of removal eligibility.
- f. There is no moral component to credibility determinations. The purpose of evaluating an applicant's credibility is solely to determine eligibility. Personal reaction should not affect the decision.

2. Elements to Consider

The same elements that are considered when determining credibility in an asylum or withholding of removal interview are

evaluated in the credible fear interview, but the threshold to warrant a positive credibility finding is less rigorous for the applicant.

a. Detail

In the credible fear interview, the applicant is required to provide a reasonably sufficient and detailed description of the facts material to his or her claim. Factors that can inhibit an applicant's ability to recall in detail include:

See lesson, Interviewing Part IV: Cross-Cultural Communication and Other Factors That May Impede Communication at an Asylum Interview.

- (i) trauma the applicant has endured;
- (ii) passage of a significant amount of time since the described events occurred;
- (iii) certain cultural factors; and,
- (iv) detention of the applicant.

See also lesson, Interviewing Part V: Interviewing Survivors.

Detention can especially affect applicants who were detained and mistreated in the past, triggering memories of past trauma.

The factors listed above and any other factors relevant to the applicant's ability to recall events must be considered when evaluating whether there is sufficient detail to find the testimony credible.

b. Plausibility

- (i) To find testimony not plausible in a credible fear

determination, the officer must determine that the events could not have occurred as described.

- (ii) There must be specific, reliable country conditions information from two or more sources that explicitly contradicts the applicant's statement for the statement to be determined implausible.
- (iii) Testimony is not considered implausible because there is an absence of corroborating country conditions information.

c. Consistency

Testimony must be reasonably internally consistent and reasonably consistent with documentation given the constraints of the credible fear process.

An applicant must be given an opportunity to explain apparent inconsistencies.

- (i) Apparent inconsistencies may reflect problems with the interpreter. *See lesson, Interviewing Part VI: Working with an Interpreter.*
- (ii) Interviewers need to be aware of such problems as differences in dialect or accent.

- (iii) Ethnic or class conflict may affect the objectivity of the interpreter or the applicant's comfort level.
- (iv) The strangeness of speakerphone technology with which the applicant is unfamiliar, the use of an interpreter the applicant cannot see, or the use of an interpreter that the applicant does not know personally, must be considered.

C. Making a Negative Credibility Determination

Each element listed below must be present before a negative credibility determination is permitted.

1. The officer must use the lower credible fear standard outlined above.
2. The officer may only consider testimony material to the claim that is insufficiently detailed, inconsistent, or implausible when evaluating credibility.
3. The officer must provide the applicant a clear articulation of each portion of the testimony that raises credibility questions.
4. The applicant must be provided with an opportunity to resolve all credibility issues.
5. Any reasonable explanation is sufficient to resolve credibility issues.
6. The applicant may be found not credible only if he or she was unable to provide a reasonable explanation for the portions

found not credible and there is no apparent reasonable explanation.

7. The questions used to inform the applicant of material credibility issues and the applicant's responses to those questions must be clearly recorded in the officer's notes.
8. A negative credibility finding may be made only if the material elements found not credible are specifically indicated in the written case analysis. The officer must specify which portions of the testimony were credible, which were not, and why.
9. If information that impugns the applicant's testimony becomes available after the interview but prior to the credible fear determination, in most cases the applicant should still be found credible. In rare cases, re-interview is appropriate provided that the applicant is given the opportunity to address the newly available information.
10. Note-taking procedures for negative decisions as described in the Credible Fear Procedures Manual must be followed.

See Procedures Manual, Credible Fear Process (Draft), p.18.

IX. FAILURE TO MEET THE CREDIBLE FEAR OF PERSECUTION STANDARD

Refer to Procedures Manual, Credible Fear Process (Draft), pp. 18-23.

A finding of no credible fear of persecution may result from the any one of the following:

- The applicant's testimony is found not credible under the lower credible fear standard.
- The applicant has not experienced any past harm, and has failed to establish any basis for a fear of

future harm.

- The harm experienced or feared by the applicant is clearly not on account of one of the five grounds.

X. FAILURE TO MEET THE CREDIBLE FEAR OF TORTURE STANDARD

A finding of no credible fear of torture may result from the any one of the following:

- The applicant's testimony is found not credible under the lower credible fear standard.
- The applicant has failed to establish that he or she fears intentional infliction of serious physical or mental harm.
- The applicant has failed to establish that there is a significant possibility that he or she could establish that the harm feared would be inflicted by, or at the instigation of, or with the consent or acquiescence of, a government official or other person acting in an official capacity.

XI. APPLICABILITY OF BARS TO ASYLUM AND WITHHOLDING OF REMOVAL

OH # 24

A. No Bars Apply

Finding evidence that the applicant is, or may be, subject to a bar to asylum or withholding of removal does not have an impact on a credible fear finding.

8 C.F.R. § 208.30(e)(3)
See also lesson, *Mandatory Bars to Asylum and Discretion*, for a discussion of bars to asylum.

B. Asylum Officer Must Elicit Testimony

In the credible fear interview, the interviewing officer is responsible for eliciting and making note of all information relevant to whether or not a bar to asylum or withholding applies. The immigration judge is responsible for finally adjudicating whether or not the applicant is barred from asylum or withholding of removal in the INA Section 240 hearing.

8 C.F.R. § 208.30(d)
See also INS Office of International Affairs. *Credible Fear Procedures Manual*, Draft (Washington, DC: 22 March 1999) at pp. 31-32.

Information should be elicited about whether the applicant:

1. Participated in the persecution of others;
2. has been convicted by a final judgment of a particularly serious crime (including aggravated felony), and therefore constitutes a danger to the community of the US;
3. is a danger to the security of the US;
4. is a representative of a terrorist organization as designated by the Department of State or has participated in terrorist activities;
5. has committed a serious non political crime;
6. is a dual or multiple national who can avail himself or herself of the protection of a third state; and,
7. has been firmly resettled.

C. “Flagging” Potential Bars

The officer must keep in mind that the applicability of these bars requires further evaluation that will take place in the INA Section 240 hearing if the applicant otherwise has a credible fear of persecution or torture. In such a case, the officer should consult with the supervisory asylum officer in charge and follow procedures on “flagging” such information for the hearing, and should prepare the appropriate paperwork for a positive credible fear finding.

See INS Office of International Affairs. *Credible Fear Procedures Manual*, Draft (Washington, DC: 22 March 1999) at pp. 31-32.

XII. TREATMENT OF DEPENDENTS

8 C.F.R. § 208.30(b)

A spouse or child of an alien may be included in the alien's credible fear evaluation and determination, if the spouse or child:

- arrived in the United States concurrently with the principal alien; and
- desires to be included in the principal alien's determination.

Any alien also has the right to have his/her credible fear evaluation and determination made separately, and it is important for asylum officers to question each member of the family to be sure that, if any member of the family has a credible fear, his or her right to apply for asylum or withholding of removal is preserved. When questioning family members, special attention should be paid to the privacy of each family member and to the possibility that victims of domestic abuse, rape and other forms of persecution might not be comfortable speaking in front of other family members.

The regulatory provision that allows a dependent to be included in a principal's determination does not change the statutory rule that any alien subject to expedited removal who has a credible fear has the right to be referred to an immigration judge. (See the Credible Fear

Procedures Manual for further guidance.)

XIII. SUMMARY

A. Function of Credible Fear Screening

OH # 25 Summary A-C

To identify all persons who might ultimately be classified as refugees or require protection under the Convention against Torture.

B. Definition of Credible Fear of Persecution

“Credible fear of persecution” means that there is a “significant possibility,” taking into account the credibility of the alien’s statements and such other facts as are known to the officer, that the alien could establish eligibility for asylum on account of a protected ground.

C. Definition of Credible Fear of Torture

“Credible fear of torture” means that there is a “significant possibility” that the applicant is eligible for withholding of removal or deferral of removal under the Convention against Torture. The asylum officer should find that there is a “significant possibility” that the applicant would be eligible for withholding of removal or deferral of removal.

D. Standard of Proof - Significant Possibility of Establishing Eligibility for Asylum

1. The “significant possibility of establishing eligibility” standard is lower than the asylum standard.
2. For past persecution, the standard is met by finding that there is a significant possibility the past harm endured could be found to be

OH # 26 Summary D

persecution on account of a protected ground. For future fear, the credible fear standard is met by a finding that there is a significant possibility the applicant could establish a well founded fear of persecution on account of a protected ground.

3. All reasonable inferences should be drawn in favor of the applicant. **OH # 27 Summary D, cont.,**
 - a. Disputed, close or novel questions of law should be resolved in the manner most favorable to the applicant.
 - b. The credible fear standard functions as a low-threshold test to screen for persons with promising asylum claims.
4. Applicant must establish identity; that there is a significant possibility that he or she is who he or she claims to be.
5. The officer need not determine if harm described constitutes persecution. It is sufficient that there is a “significant possibility” that the harm could be considered persecution.
6. If there is a significant possibility that the past harm endured could be found to be persecution on account of a protected ground, credible fear is established, regardless of changed country conditions, ability to relocate or any other factors. **OH # 27, 28 Summary D, cont.,**
7. There must be a significant possibility that the applicant could establish a nexus to a protected ground in an asylum hearing. If

doubts exist, the officer should resolve the issue in favor of the applicant.

E. Standard of Proof - Significant Possibility of Establishing Eligibility for Protection under the Convention against Torture

OH # 29 Summary E

1. There is a significant possibility the applicant is credible;
2. The applicant fears that he or she would be intentionally subjected to serious physical or mental harm in a country to which the applicant may be removed; and
3. There is a significant possibility that the applicant could establish that the harm feared would be inflicted by or at the instigation of, or with the consent or acquiescence of, a government official or other person acting in an official capacity.

F. Role of Country Conditions Information

Knowledge of country conditions information informs the credible fear interview and assists the interviewing officer in developing the applicant's claim.

OH # 30 Summary F

G. Credibility

Considerations:

OH # 31 Summary G

1. Materiality of testimony

Only credibility issues material to the claim may be considered.
2. Consistency of testimony

Testimony must be reasonably consistent internally and with file documents.

3. Detail of testimony

Testimony must be reasonably detailed, considering all factors that affect applicant's ability to recall events, such as previous trauma, detention, length of time passed, interpreter difficulties and cultural constraints.

4. Plausibility of testimony

a. The absence of supporting information in available country conditions reports cannot be used as the basis of a negative credibility determination.

b. Only direct, factual contradictions between the applicant's testimony and known country conditions, as determined by consultation of at least two reliable sources may lead the officer to find the applicant not plausible.

5. The applicant must be given an opportunity to explain any inconsistency, implausibility or lack of detail before a negative credibility determination is made.

6. Personal opinions or moral views may not be considered when making a negative credibility determination.

H. Failure to Meet Credible Fear of Persecution

Standard

Considerations:

OH # 33 Summary I

1. Testimony not credible.
2. No fear of return.
3. No past harm; no basis for fear of future harm.
4. No possibility of nexus.

I. Failure to Meet Credible Fear of Torture Standard

Considerations:

OH # 34 Summary J

1. Testimony not credible.
2. No fear of intentional infliction of serious mental or physical harm.
3. No significant possibility that the applicant could establish that the harm feared would be inflicted by or at the instigation of, or with the consent or acquiescence of, a government official or other person acting in an official capacity.

J. Bars to Asylum and Withholding of Removal

1. Not determinative of credible fear.
2. Must be explored and flagged for the record.

OH # 35 Summary K

K. Treatment of Dependents

A dependent (spouse or child) who arrives concurrently with a “principal” applicant for admission may be included in the credible fear evaluation of the “principal” if the spouse or child requests to do so. All aliens also have a right to have their credible fear determinations done separately.

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