

The ABC's of Immigration: Grounds for Asylum and Refuge

by Greg Siskind

For most of its history, the US had no law providing for the admission of refugees. Following World War II, the US, along with many other countries, realized the need for comprehensive laws on the subject. Numerous laws were passed to allow the admission of war refugees, but the programs they created tended to provide only for emergencies and were effective for only short periods. In 1965, a seventh preference immigration category was created that provided for the annual admission of 17,400 people as refugees. To be considered a refugee under this law, the person must have been persecuted or fear persecution on the basis of race, religion or political opinion. In 1980, the Refugee Act was passed. This law implemented the United Nations Protocol on the Status of Refugee, which the US had joined in 1968. It created a permanent procedure for the admission and resettlement of refugees.

What is a refugee?

Under the 1980 Act, a refugee was defined as "any person who is outside of any country of such person's nationality . . . who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."

What is the difference between refugees and asylees?

Both refugees and asylees must satisfy this definition. Indeed, in almost every way, the requirements for refugee status and asylum are the same. The most important difference is that an asylee makes their application while in the US, while the refugee applies outside of their home country, but also outside of the US.

In this article, we discuss the five grounds for asylum and refuge: race, religion, nationality, membership in a particular social group, or political opinion.

How can I be granted asylum or refuge because of my race?

There have been few cases dealing with this ground for refuge. Winning refuge on this basis requires proof that the government either engaged in persecution or encouraged others to persecute someone because of their race. One factor that makes this ground difficult to prove is that the persecution must be individualized; that is, the applicant must be singled out of persecution. This has the effect, in some cases, of denying eligibility to members of groups that are subject to widespread persecution, because the applicant cannot prove that they individually face danger instead of simple a generalized risk.

How can I be granted asylum or refuge because of my religion?

Persecution on the basis of religious beliefs is a much more common basis on which asylum and refuge are granted. Here again, though, the applicant must prove that the persecution comes from the government or is motivated by the government. Discrimination or harm the applicant experiences that comes from individuals, even if because of the applicant's religion, will not support an asylum application unless the government makes clear that it supports the activity.

How can I be granted asylum or refuge because of my nationality?

This is an infrequently used basis for asylum and refuge. Even if people in their country of residence harm members of a certain nationality, they still must show that the government of that country either engaged in persecution or encouraged it, or that it is unwilling to provide protection. Also, if a country discriminates equally against all non-nationals, asylum cannot be granted.

How can I be granted asylum or refuge because of my membership of a particular social group?

This is the most litigated basis for asylum. Determining what constitutes a social group has proven difficult. Some courts have defined it to mean an identifiable group of people seen as a threat to the country from which they are seeking refuge. Others define it to encompass groups of people tied together because of a common characteristic that they cannot or should not be expected to change. One court has even found that a family unit constitutes a social group. The Board of Immigration Appeals defines social group to be people who share a common, immutable characteristic, whether an innate part of their existence such as gender, or a common experience, such as military service.

In recent years, this category has seen significant expansion, particularly in the area of persecution based on gender. The INS recently developed rules for cases of gender-based persecution. Homosexuality has also recently become a basis for membership in a particular social group.

How can I be granted asylum or refuge because of my political opinion?

This is the most often used basis for an asylum or refuge application. In 1992, the Supreme Court issued an opinion significantly restricting this basis, ruling that the political opinion that matters is that of the victim, and that merely resisting government action is not alone enough to show persecution. Nor, according to the Board of Immigration Appeals, is being caught up in general civil unrest sufficient for a claim of asylum or refuge unless the government knows that the person disagrees with it politically.

One important development in this area is the idea of an imputed political opinion. In these cases, when it is obvious that the government is acting on the basis of what it believes to be an opposing political opinion, no evidence of the applicant's actual opinion or that the government knew it, is required.

In 1996, Congress adopted a law making coercive family planning a form of persecution based on political opinion. Under this law, if a person can show they were forced to terminate a pregnancy or be sterilized, they are deemed to have shown persecution on the basis of political opinion. There is an annual limit of 1,000 people who can be granted asylum on this basis.

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