



U.S. Citizenship
and Immigration
Services

RAIO DIRECTORATE – OFFICER TRAINING

RAIO Combined Training Course

**NEXUS AND THE PROTECTED
GROUNDS***

1-21-16

TRAINING MODULE

***Note:** There are five protected grounds in the refugee definition. “Particular social group” (PSG) is one of these grounds but is not discussed in this module. PSG is covered in a separate module, *Nexus – Particular Social Group*.

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RAIO Directorate – Officer Training / *RAIO Combined Training Course*

NEXUS AND THE PROTECTED GROUNDS

Training Module

MODULE DESCRIPTION:

This module discusses the definition of a refugee as codified in the Immigration and Nationality Act (INA), including the five protected grounds and their interpretation in administrative and judicial case law. The primary focus of this module is the determination as to whether an applicant has established that past harm suffered or future harm feared is on account of one of the five protected grounds. Only four of the grounds are discussed in this module; the fifth ground, “particular social group” is the topic of another module: *Nexus – Particular Social Group*.

TERMINAL PERFORMANCE OBJECTIVE(S)

Given a request to adjudicate either a request for asylum or a request for refugee status, the officer will be able to apply the law (statutes, regulations and case law) to determine whether an applicant is eligible for the requested relief.

ENABLING PERFORMANCE OBJECTIVES

1. Summarize factors to consider in evaluating the motive of the persecutor.
2. Explain factors to consider in determining whether persecution or feared persecution is on account of one or more of the protected grounds, i.e., race, religion, nationality, (membership in a particular social group), or political opinion.
3. Analyze factors to consider in determining whether an applicant possesses, or is imputed to possess, a protected belief or characteristic.

INSTRUCTIONAL METHODS

- Interactive Presentation
- Discussion
- Practical Exercises

METHOD(S) OF EVALUATION**REQUIRED READING**

Division-Specific Required Reading - Refugee Division

Division-Specific Required Reading - Asylum Division

Division-Specific Required Reading - International Operations Division

ADDITIONAL RESOURCES

1. INS v. Elias-Zacarias, 502 U.S. 478 (1992).
2. United Nations High Commissioner for Refugees, Note on Refugee Claims Based on Coercive Family Planning Laws or Policies (Aug. 2005)
3. United Nations High Commissioner for Refugees, Guidelines on International Protection: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees. HCR/GIP/04/06, 28 April 2004, 12 pp. See RAI0 Training Module, The International Religious Freedom Act (IRFA) and Religious Persecution Claims.
4. David A. Martin. INS Office of General Counsel. Asylum Based on Coercive Family Planning Policies – Section 601 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Memorandum to Management Team (Washington, DC: 21 October 1996), 6 p. See RAI0 Training Module, Refugee Definition.
5. Phyllis Coven. INS Office of International Affairs. Considerations For Asylum Officers Adjudicating Asylum Claims From Women (Gender Guidelines), Memorandum to all INS Asylum Officers, HQASM Coordinators (Washington, DC: 26 May 1995), 19 p. See also RAI0 Training Module, Gender-Related Claims.
6. Grover Joseph Rees III. INS Office of General Counsel. Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion – Addendum, Memorandum to John Cummings, INS Office of International Affairs (Washington, DC: 4 March 1993), 3 p.
7. Grover Joseph Rees III. INS Office of General Counsel. Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion, Memorandum to Jan Ting, INS Office of International Affairs (Washington, DC: 19 January 1993), 12 p.

Division-Specific Additional Resources - Refugee Division

Division-Specific Additional Resources - Asylum Division

Division-Specific Additional Resources - International Operations Division

CRITICAL TASKS

Task/ Skill #	Task Description
ILR6	Knowledge of U.S. case law that impacts RAIO (3)
ILR9	Knowledge of policies and procedures for processing lesbian, gay, bisexual and transgender (LGBT) claims (3)
ILR10	Knowledge of policies and procedures for processing gender-related claims (3)
ILR14	Knowledge of nexus to a protected characteristic (4)
ILR15	Knowledge of the elements of each protected characteristic (4)
DM2	Skill in applying legal, policy and procedural guidance (e.g., statutes, precedent decisions, case law) to information and evidence (5)
RI1	Skill in identifying issues of claim (4)
RI2	Skill in identifying the information required to establish eligibility (4)

SCHEDULE OF REVISIONS

Date	Section (Number and Name)	Brief Description of Changes	Made By
12/12/12	Entire Lesson Plan	Lesson Plan published	RAIO Trainng
4/29/13	2.1 Establishing Motive: (Mixed Motive section); Asylum Supplement	Language modified; ASM Supplement section "At Least One Central Reason" added and linked from section 2.1	JKochman, RAIO Trng
1/21/16	Throughout document	Fixed links, added some new case citations	RAIO Trng

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Throughout this training module you will come across references to division-specific supplemental information located at the end of the module, as well as links to documents that contain division-specific, detailed information. You are responsible for knowing the information in the referenced material that pertains to your division. Officers in the International Operations Division who will be conducting refugee interviews are also responsible for knowing the information in the referenced material that pertains to the Refugee Affairs Division.

For easy reference, each division's supplements are color-coded: Refugee Affairs Division (RAD) in pink; Asylum Division (ASM) in yellow; and International Operations Division (IO) in purple.

1 INTRODUCTION

The refugee definition at INA § 101(a)(42) states that an individual is a refugee if he or she establishes past persecution or a well-founded fear of future persecution on account of one or more of the five protected grounds. All of the elements of the refugee definition are reviewed in the RAIO Training Module on *Refugee Definition*. The requirements for an applicant to establish eligibility based on past persecution are discussed in the module on *Past Persecution*. The elements necessary to establish a well-founded fear of future persecution are discussed in the *Well-Founded Fear* module.

This module provides you with an understanding of the requirements needed to establish that persecution or feared persecution is “on account of” one or more of the five protected grounds in the refugee definition: race, religion, nationality, membership in a particular social group, or political opinion. Note: “particular social group” is not being discussed in this module; it is covered in a separate module, *Nexus – Particular Social Group*.

To properly determine whether persecution is on account of a protected ground, you must identify: 1) the persecutor; 2) the harm suffered or feared; 3) the applicant's characteristic or belief (actual or imputed); and 4) the motivation of the persecutor.

2 “ON ACCOUNT OF” (NEXUS) – ANALYZING MOTIVE

The persecution the applicant suffered in the past, or fears in the future, must be “on account of” at least one of the five protected grounds. This means the applicant must establish that the persecutor was, or will be, motivated to harm the applicant because of his or her race, religion, nationality, membership in a particular social group, or political opinion.¹ The persecutor may be motivated to harm the applicant because the applicant

¹ INA § 101(a)(42); *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

actually possesses a protected belief or characteristic, or because the persecutor wrongly believes that the applicant possesses a protected belief or characteristic.

2.1 Determining Motive

Exact Motive Need Not Be Established

Although the applicant must establish that the persecutor harmed or will harm him or her because of one of the five protected grounds, the applicant does not “bear the unreasonable burden of establishing the [persecutor’s] exact motivation.”² The BIA has recognized that “[p]ersecutors may have differing motives for engaging in acts of persecution.”³ You should make reasonable inferences, keeping in mind the difficulty, in many cases, of establishing with precision a persecutor’s motives.

Mixed Motives

The persecutor may have several motives to harm the applicant, some of which may be unrelated to any protected ground. There is no requirement that the persecutor be motivated *only* by the protected belief or characteristic of the applicant.

The “on account of” requirement focuses on the motivation of the persecutor. The persecutor must be motivated to harm the applicant on account of a protected characteristic. However, the persecutor may have mixed motivations in harming the applicant. In refugee processing cases, the persecutor must be motivated, at least in part, by a protected characteristic.⁴ In asylum adjudications, as long as at least one central reason motivating the persecutor is the applicant’s possession or perceived possession of a protected characteristic, the applicant may establish the harm is “on account of” a protected characteristic.⁵ This “one central reason” standard was added to the statute by the REAL ID Act, and applies only to asylum adjudications. The Board has explained, however, that the “one central reason” language should be interpreted consistent with prior Board precedent that allows nexus to be established where the persecutor has mixed motivations.⁶ These are the same cases governing mixed motivation cases in refugee

² *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988).

³ *Matter of S-P-*, 21 I&N Dec. at 489.

⁴ If you are processing refugee applications overseas, you must determine if “a reasonable person would fear that the danger arises on account of one of the five grounds.” *Matter of Fuentes*, 19 I&N Dec. at 662.

⁵ INA § 208(b)(1)(B)(i), as amended by Section 101(a) of the Real ID Act of 2005, as part of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, P.L. 109-13 (2005) (hereinafter, “REAL ID Act”). The REAL ID Act added the words “at least one central reason” to describe the extent to which persecution must be on account of a protected ground. See *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 211 (BIA 2007), reversed in part by *Ndayshimiye v. Att’y Gen. of the U.S.*, 557 F.3d 124, 129–30 (3d Cir. 2009). This provision of the REAL ID Act applies to asylum applications filed on or after May 11, 2005.

⁶ *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214 (“Having considered the conference report and the language of the REAL ID Act, we find that our standard in mixed motive cases has not been radically altered by the amendments.”)

processing; thus, the analysis in cases involving mixed motivation is essentially the same in both the refugee and asylum contexts.

The conclusion that a cause of persecution is economic does not necessarily imply that there cannot exist other causes of persecution.⁷ For example, a rebel group may extort money to fund its operations, but target its political opponents for extortion based on their political opinion.

For further discussion, see ASM Supplement – At Least One Central Reason.

Persecutor’s Perception of the Applicant

The persecution must be motivated by a protected belief or trait possessed by *the applicant*. The persecutor’s own political goals or representation of a political entity is not sufficient in itself, nor is it necessary, to establish persecution on account of political opinion. Rather, the evidence must show that the persecutor is motivated to persecute the applicant because *the applicant* possesses (or is believed to possess) a protected belief or trait.⁸

Initial Motivation Not Determinative

The persecutor’s motives may change over time. There is no requirement that the persecutor’s harmful contact with the applicant be initially motivated by the applicant’s possession of a protected belief or characteristic.⁹

Example

In *Sharma v. Holder*, Maoists in Nepal first contacted the applicant and kidnapped him in order to recruit him. At the point when he was abducted, there was no evidence that the Maoists were motivated to harm him because of a protected ground.

After he was abducted, the applicant expressed his opposition to the Maoists and his support for a group that opposed them, the Nepal Student Union (NSU). The Maoists did not directly state that they were motivated by the applicant’s expression of his political opinion, but he was then subjected to harsher mistreatment and a longer detention than other individuals who had been abducted at the same time.

Although the Maoists had attempted to force the applicant to join them and work for them for reasons unrelated to a protected ground and there was no direct evidence of a

⁷ *Osorio v. INS*, 18 F.3d 1017, 1028 (2d Cir. 1994).

⁸ *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992); See also *Pedro-Mateo v. INS*, 224 F.3d 1147 (9th Cir. 2000)(holding that the evidence did “not indicate that the Kanjobal Indians have been recruited *because* of their race, political opinion, or any other protected ground”)(emphasis in original).

⁹ See *Sharma v. Holder*, 729 F.3d 407, 412–13 (5th Cir. 2013).

protected ground, the Fifth Circuit Court of Appeals found that the escalation of the abuse and the prolonged detention after he expressed his views was evidence of a nexus between the persecution and his political opinion.¹⁰

No Punitive or Malignant Intent Required

In most cases, the persecutor intends to harm or punish the applicant. Punitive or malignant intent, or an intent to overcome the protected trait, however, is not required for an applicant to establish a nexus to a protected ground.¹¹ For example, the persecutor may believe that he or she is helping the applicant by attempting to change the protected characteristic or that he or she has the right to harm the applicant because the applicant has the protected characteristic.¹² The relevant inquiry regarding motivation, therefore, is whether the persecutor has committed an intentional action, or intends to commit an intentional action, because of a characteristic (or perceived characteristic) of the victim.¹³

Examples

- The applicant was detained, harassed, beaten, and forced to undergo psychiatric treatment because of her sexual orientation. The court found that it was improper to conclude that the applicant did not suffer persecution when the authorities' intent was to "cure" the applicant, not "punish" her.¹⁴ "The fact that a persecutor believes the harm inflicted is 'good for' his victim does not make it any less painful to the victim, or, indeed, remove the conduct from the statutory definition of persecution."¹⁵
- The applicant established the required motive by showing that female genital mutilation (FGM), as described in her case, was practiced "in some significant part, to overcome sexual characteristics of young women of the tribe who have not been, and do not wish to be, subjected to FGM."¹⁶ The required persecutory motive was

¹⁰ *Id.* at 412.

¹¹ For additional information on whether "harm" is "persecution," see RAO Training Module, *Definition of Persecution*. See also Dea Carpenter, USCIS Deputy Chief Counsel, *Guidance on Demiraj v. Holder*, 631 F.3d 194 (5th Cir. 2011), Memorandum to Ted Kim, Acting Director, Asylum Division (Washington, DC: February 23, 2012).

¹² See, e.g., *DHS's Supplemental Brief in Matter of L-R*, April 13, 2009 (arguing that an individual in the particular social groups of "Mexican women in domestic relationships who are unable to leave" or "Mexican women who are viewed as property by virtue of their positions within a domestic relationship" could establish a nexus to a particular social group if the persecutor believed that he had the right to abuse the victim because she possessed the characteristics that defined the group).

¹³ *Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996). See also *Pitcherskaia v. INS*, 118 F.3d 641, 648 (9th Cir. 1997).

¹⁴ *Pitcherskaia v. INS*, 118 F.3d at 647-48.

¹⁵ *Id.* at 648.

¹⁶ *Matter of Kasinga*, 21 I&N Dec. at 367.

established even though the FGM was inflicted by the applicant's tribe with a "subjectively benign intent."¹⁷

Prosecution vs. Persecution

All countries have the right to investigate, prosecute, and punish individuals for violations of legitimate laws.¹⁸ This can create serious complications in refugee and asylum adjudication, as government actors often use the guise of legitimate prosecution to harm applicants on account of a protected ground.¹⁹ Conversely, applicants may also claim that a government has instituted criminal prosecution against them because of a protected ground when, in fact, the government is seeking to punish the applicant because he or she violated a criminal law of general applicability. It is also possible that the government has mixed motives and punished the applicant for both a violation of a criminal law and on account of his or her possession of a protected belief or characteristic. You must consider all the facts in the case, along with relevant country of origin information, in determining the government's motivation in instituting criminal processes against an applicant.

Laws of General Applicability

You must also determine if the law that is being used to punish the applicant is a law of general applicability, in that it is neutral in intent. If the law is generally applicable, then, you must determine if the government in question enforces the law fairly. In general, fear of prosecution for a law that is fairly administered is not a basis for asylum or refugee status. Under certain circumstances, *i.e.*, where the law punishes an individual because of a protected ground and the punishment rises to the level of persecution, a person may qualify for protection.²⁰

Examples

¹⁷ *Id.*

¹⁸ *UNHCR Handbook*, para. 56; *Dinu v. Ashcroft*, 372 F.3d 1041, 1044–45 (9th Cir. 2004) (harassment resulting from an investigation does not give rise to an inference of political persecution where police are trying to find evidence of criminal activity and there is a logical reason for pursuit of the individual).

¹⁹ *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996); *UNHCR Handbook*, para. 57–59.

²⁰ See, e.g., *Long Hao Li v. Holder*, 633 F.3d 136, 141 (3d Cir. 2011); *Chang v. INS*, 119 F.3d 1055 (3d Cir. 1997) (determining that "if the law itself is based on one of the enumerated factors and if the punishment under that law is sufficiently extreme to constitute persecution, the law may provide the basis for asylum or withholding of deportation even if the law is "generally" applicable."); *Cruz-Samayoa v. Holder*, 607 F.3d 1145, 1152 (6th Cir. 2010); *Perkovic v INS*, 33 F.3d 615 (6th Cir. 1994) (holding that prosecution for violation of laws against expressing political opinions hostile to the government or engaging in political activity outside of country constitutes persecution on account of political opinion). But see *Kimumwe v. Gonzales*, 431 F.3d 319, 322 (8th Cir. 2005) (finding that expulsion from school and arrest did not amount to persecution on account of the applicant's homosexuality where the applicant had been accused of sexual misconduct prohibited for straight as well as gay people).

- A law prohibits all religious groups from meeting on Fridays. This law would be considered a law of general applicability. However, because the law would punish Muslims, whose day of prayer is on Friday, the harm inflicted by the government under this law would be considered harm inflicted on account of religion.
- A law prohibits all political rallies in a certain city square. In practice, many political rallies are held in the square, but only members of the Socialist Party are arrested and prosecuted under the law. Unequal enforcement of a law that appears neutral may be evidence of persecutory intent. Here, the harm inflicted on a member of the Socialist Party under the law would be considered harm inflicted on account of the member's political opinion.
- A law that criminalizes attending unregistered religious group meetings is not a law of general applicability and harm suffered by an applicant under such a law would be considered harm suffered on account of his or her religion.

However, it is important to remember that simply because a law has some impact on one of the protected grounds, does not mean the law is not a law of general applicability.²¹

Examples

In Germany, all children are required by law to attend public or state-sanctioned private schools. Parents who fail to ensure their children's attendance may be subject to fines, imprisonment, or loss of custody. In *Romeike v. Holder*, a German couple who homeschooled their children in accordance with their religious values claimed that they feared persecution on account of their religion for violating the compulsory attendance law. The Sixth Circuit Court of Appeals held that because the law applies equally to all parents who fail to comply, is not intended to target the applicants' religion, and does not impose disproportionately harsh penalties on parents who homeschool for religious reasons or homeschoolers in general, no nexus had been established.²²

A curfew imposed during a period of civil unrest prevents individuals from attending evening religious services. If the law is not intended to target individuals because of their religious beliefs, but rather to ensure public safety, no nexus to religion would be established.

Unduly Harsh Punishment

Punishment that is unduly harsh or disproportionately severe given the nature of the offense committed may be evidence that a government was motivated to harm an applicant on account of one of the protected grounds. In such cases, you should examine country conditions for information on how the country's law enforcement community

²¹ See *Romeike v. Holder*, 718 F.3d 528 (6th Cir. 2013).

²² *Id.* at 533–34.

generally handles violations of the same or similar laws. If the applicant's treatment is significantly worse, this may show that the government harmed the applicant on account of a protected ground.

The government's deprivation of an applicant's basic due process rights, along with serious harm inflicted during detention, suggests the government may have been motivated to harm the applicant on account of a protected ground. However, a showing that an applicant did not receive the due process expected in the United States, without more, does not establish that the investigation or prosecution is pretextual.

The BIA has provided the following list of considerations to aid in identifying motive in this context:²³

- Indications that the abuse was directed toward modifying or punishing opinion rather than conduct. This includes statements or actions by the government out of proportion to legitimate government functions
- Treatment of others in the population who might be confronted by government agents in similar circumstances
- Conformity to procedures for criminal prosecution or military law, including developing international norms regarding the law of war
- The extent to which anti-terrorism laws are defined and applied to suppress political opinion as well as illegal conduct (e.g., an act may broadly prohibit "disruptive" activities and be applied to peaceful as well as violent expressions of views)
- The extent to which suspected political opponents are subjected to arbitrary arrest, detention, and abuse

Some general issues to consider in evaluating claims involving the use of law-enforcement mechanisms include:

- Is the law generally applicable?
- Is the law equally or unequally enforced?
- How does the persecutor view those who violate the law?
- How does compliance with the law affect the applicant's life with regard to the protected characteristics?

Violation of Departure Laws

²³ *Matter of S-P*, 21 I&N Dec. 486, 494 (BIA 1996).

Punishment for violating departure laws does not, without more, establish an applicant's eligibility for asylum or refugee resettlement. A government has legitimate authority to establish and enforce laws governing departure from the country.²⁴

Punishment for violation of travel laws might be used as a pretext to persecute the individual on account of one of the protected grounds.²⁵ Evidence that the punishment is used as a pretext for persecution may include punishment disproportionate to the crime or country of origin information showing the country in question views individuals who violate departure laws as traitors or subversives.²⁶

2.2 Evidence of Motive

Both direct and circumstantial evidence are relevant to determining whether a persecutor was motivated to harm an applicant on account of a protected ground.

Duty to Elicit Testimony

Asylum and refugee applicants are not expected to understand the complexities of the law and may not realize that they are required to establish the motive of the persecutor.²⁷ Applicants may not know what evidence is relevant to establishing the persecutor's motive. Applicants may not understand the scope of the five protected grounds, and they may be unable to articulate which ground motivated the persecutor.

Although the applicant bears the burden of proof to establish a nexus between the harm, or feared harm, and a protected ground, you have an affirmative duty to elicit all information relevant to the nexus determination.²⁸ You should fully explore the motivations of any persecutor involved in a case. Reasonable inferences regarding the motivations of persecutors should be made, taking into consideration the culture and patterns of persecution within the applicant's country of origin.

²⁴ *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983); *Nazaraghaie v. INS*, 102 F.3d 460 (10th Cir. 1996).

²⁵ See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para. 61, which states:

The legislation of certain States imposes severe penalties on nationals who depart from the country in an unlawful manner or remain abroad without authorization. Where there is reason to believe that a person, due to his illegal departure or unauthorized stay abroad is liable to such severe penalties his recognition as a refugee will be justified if it can be shown that his motives for leaving or remaining outside the country are related to the reasons enumerated in Article 1 A (2) of the 1951 Convention . . .

²⁶ See *Rodriguez-Roman v. INS*, 98 F.3d 416, 430 (9th Cir. 1996) (“[A] state which severely punishes unlawful departure views persons who illegally leave as disloyal and subversive and seeks to punish them accordingly.”); *Chang v. INS*, 119 F.3d 1055 (3rd Cir. 1997).

²⁷ See *Jacinto v. INS*, 208 F.3d 725, 733–34 (9th Cir. 2000) (“Applicants for asylum often appear without counsel and may not possess the legal knowledge to fully appreciate which facts are relevant.” IJs “are obligated to fully develop the record in [such] circumstances...”).

²⁸ 8 C.F.R. § 208.9(b). See also *Matter of S-M-J*, 21 I&N Dec. 722 (BIA 1997); RAI0 Training Module, *Evidence*.

You may use country of origin information to help you determine the motivation of the persecutor to harm the applicant, especially if the applicant is having difficulty answering your questions regarding motivation.

Many applicants may not know a belief or characteristic is the basis for a refugee or asylum claim and may be reluctant to share information for a variety of reasons, including fear, shame, and ignorance. This is especially true where applicants are not represented. They may only put forward the elements of their past experiences that their family or members of their communities recommend. It is important to explore all possible grounds, despite the applicant's difficulty in articulating a basis for the claim.

The UNHCR *Handbook* points out that the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the adjudicator. Your role is to "ensure that the applicant presents his case as fully as possible and with all available evidence."²⁹

Direct Evidence

Sometimes an applicant is able to provide direct evidence of motive.

Examples of Direct Evidence of Motive

- The persecutor warned the applicant to stop all political activities or face arrest.
- The persecutor's statements and actions are evidence of motive. For example, in a case where a police officer arrested an asylum applicant after having asked if the applicant was gay, and made statements about the applicant's sexuality during a sexual assault, the Ninth Circuit held that these facts constituted sufficient grounds to establish that the officer was motivated to target the applicant on account of his homosexuality.³⁰
- The persecutor uses derogatory language, such as a racial, ethnic, or religious slur, when harming or threatening the applicant.
- There are laws in the applicant's country prohibiting the practice of certain religions or punishing apostasy.
- There are laws in the applicant's country that punish homosexual activity.

Circumstantial Evidence

²⁹ *UNHCR Handbook*, para.196.

³⁰ *Boer-Sedano v. Gonzales*, 418 F.3d 1082, 1089 (9th Cir. 2005).

Often an applicant will not be able to provide direct evidence of motive, since persecutors do not generally announce their motives or explain their actions. However, motive may be established by circumstantial evidence.³¹

Examples of Circumstantial Evidence of Motive

- Evidence that the persecutor has harmed other individuals who share the applicant's protected belief or characteristic may support an applicant's claim that he or she was targeted on account of a protected characteristic.³² While evidence that the persecutor seeks to harm others is relevant, it is not required.
- Close proximity in time of arrest to participation in an opposition party meeting may be circumstantial evidence of a connection between the arrest and the applicant's political opinion.
- Country of origin information may provide circumstantial evidence of motive. For example, a reliable report may establish that the persecutor views individuals who are similarly situated to the applicant (e.g., human rights workers or student activists) as political opponents.

Circumstantial evidence may be sufficient to satisfy the nexus requirement, even when the identity of the persecutor cannot be proven precisely. In *Bace v. Ashcroft*, the Court of Appeals for the Seventh Circuit pointed to both the proximity in time between the applicant's political activity and the harm he suffered, as well as his attackers' statements suggesting that they were likely members of the opposing political party.³³ Although the applicant could not establish the identity of the attackers, he provided sufficient evidence that he was harmed on account of his political opinion.

3 PROTECTED GROUNDS

3.1 Broad Construction

The five protected grounds should be construed broadly. They often include attributes that may not fit an everyday understanding of the terms.

Examples

³¹ *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992).

³² See *Garcia-Martinez v. Ashcroft*, 371 F.3d 1066, 1076 (9th Cir 2004) (evidence that every family in a Guatemalan village lost a male member to the guerrillas and that the military raped a woman every eight to fifteen days, based on the mistaken belief that the villagers had voluntarily joined the guerrillas, compelled a finding that the applicant's rape by soldiers was on account of a political opinion imputed to her).

³³ *Bace v. Ashcroft*, 352 F.3d 1133, 1139 (7th Cir. 2003).

- An individual may face persecution on account of religion, even if he does not characterize his belief, identity, or way of life, as a “religion.”³⁴ Additionally, an individual may establish a nexus based on his choice not to participate in religion.
- Persecution based on political opinion can encompass a much broader array of actions beyond political party membership, including whistleblowing,³⁵ refusal to follow orders to commit human rights abuses,³⁶ and, in some instances, opposition to gang violence or recruitment.³⁷
- Persecution that at first glance may appear to be based on a personal vendetta or dispute may actually be on account of a protected ground. For example, this may be true in cases where the persecution feared is an honor killing by a family member.³⁸

You should analyze the existence of a protected ground in the context of the culture of the country of origin. To the extent possible, you should avoid viewing the case through the prism of your own experiences and world view. However, claims based on purely personal matters, criminal activity, economic gain and laws of general applicability fall outside the protection of asylum and refugee law.³⁹

3.2 Duty to Elicit Information regarding all Potential Connections to Protected Ground

An applicant may be unable to articulate a connection to a particular protected characteristic. He or she may state that the claim is based on one ground, while the facts indicate that there is an alternative connection to another ground, or that a connection to another ground may be more relevant to whether the applicant is a refugee. You must determine which protected ground, if any, has a relation to the experiences of the applicant.

Example

If the applicant states that he or she fears harm on account of religion, but the facts of the case indicate that the persecutor was motivated by the applicant’s political opinion, then you must evaluate the claim based on political opinion as well as religion.

3.3 Imputation of Protected Ground

³⁴ See *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (per curiam) (holding that Falun Gong practitioner faced persecution on account of his spiritual and religious beliefs even though Falun Gong does not consider itself a religion).

³⁵ *Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005).

³⁶ *Barraza Rivera v. INS*, 913 F. 2d 1443 (9th Cir. 1990).

³⁷ *Marroquin-Ochoma v. Holder*, 574 F. 3d 575 (8th Cir. 2009).

³⁸ *Sarhan v. Holder*, 658 F.3d 649, 656 (7th Cir. 2011)

³⁹ For more information on crime and personal disputes, see below Section 9.7, Crime and Personal Disputes.

An applicant is not required to actually possess the protected trait that motivates the persecutor. Persecution inflicted on an applicant because the persecutor attributes to the applicant a protected ground constitutes persecution “on account of” that characteristic, regardless of whether the applicant actually possesses the characteristic.⁴⁰ Any of the five protected grounds can be imputed to an applicant.

Examples

- In *Amanfi v. Ashcroft*, the Third Circuit held that an applicant who was targeted because his persecutors believed he was gay could establish persecution on account of imputed membership in a particular social group defined as “homosexuals in Ghana” although “he testified that he was not in fact a homosexual.”⁴¹
- An individual who has relatives belonging to the Baha’i religious sect is arrested and badly beaten by the police during a government crackdown on the Baha’i movement. If the evidence supports the conclusion that the authorities believed she was Baha’i, the harm she experienced would be considered to have been inflicted on account of her imputed religion, even though she is not a believer.

The determinative inquiry is whether the persecutor believes the applicant possesses a protected belief or characteristic and whether the persecutor is motivated to harm the applicant because of that imputed belief or characteristic. Some factors to consider include:

- Actions the applicant has taken that would lead the persecutor to believe that he or she possesses a protected belief or characteristic

Example

During the exile of President Aristide, the *de facto* government in Haiti associated members of neighborhood improvement committees with President Aristide. In the eyes of the Haitian military and their supporters, sweeping a street or participating in a literacy campaign indicated support for the exiled president.

- Statements the persecutor makes that may constitute evidence that he or she believes the applicant, or persons similarly situated to the applicant, possesses a protected trait
- Treatment of similarly situated individuals

⁴⁰ See Grover Joseph Rees III, INS Office of General Counsel, *Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion*, Memorandum to Jan Ting, Acting Director, Office of International Affairs, at 12 (Jan. 19, 1993).

⁴¹ *Amanfi v. Ashcroft*, 328 F.3d 719, 730 (3d Cir. 2003).

- Country of origin information that may provide an understanding of the overall situation in the applicant's country, and provide a context for the persecutor's actions
- Severity of any punishment the applicant received or fears, which may be so far out of proportion "as to seem obviously directed at real or perceived enemies rather than at ordinary lawbreakers"⁴²
- Reasons, unrelated to a protected ground, for the persecutor to harm the applicant⁴³

4 RACE

4.1 Definition

"Race" should be understood broadly to include all kinds of ethnic groups that are "referred to as races in common usage."⁴⁴ Race sometimes overlaps with nationality as a protected ground.

While the idea of "race" is often popularly understood to involve distinct biological groupings, such ideas are scientifically discredited.⁴⁵ National and regional cultures vary greatly in their construction of racial groupings. You should, to the extent possible, avoid viewing the case through the prism of your own experiences and world view regarding which "race" an applicant belongs to. The relevant inquiry is how the country of origin or segments of the population delineate racial groupings, and where the applicant fits into that delineation.

4.2 Harm Suffered Because of the Applicant's Disregard of Racial Barriers

Harm suffered because of an applicant's violation of or refusal to adhere to legal or cultural racial barriers within a society may be considered to have been inflicted on account of the applicant's race.⁴⁶

⁴² See Grover Joseph Rees III, INS Office of General Counsel, "Legal Opinion: Continued Viability of the Doctrine of Imputed Political Opinion," Memorandum to Jan Ting, Acting Director, Office of International Affairs, at 12 (Jan. 19, 1993).

⁴³ *Matter of S-P*, 21 I & N Dec. 486, 495-96 (BIA 1996) (finding that although the applicant may have been initially detained for intelligence gathering purposes, the severity and duration of harm suffered exceeded any legitimate intelligence motive).

⁴⁴ UNHCR Handbook, para. 68. See, e.g., *Duarte de Guinac v. INS*, 179 F.3d 1156, 1159 n.5 (9th Cir. 1999).

⁴⁵ "Scientific and Folk Ideas about Heredity," Jonathan Marks, available at http://www.pbs.org/race/000_About/002_04-background-01-12.htm

⁴⁶ See, e.g., UNHCR Handbook, para. 69; cf. *Bob Jones University v. United States*, 461 U.S. 574, 612 (1983) (concluding, in the civil rights context, that a university's ban on interracial relationships constituted racial discrimination).

Example

A statute prohibits interracial marriage. A black applicant is arrested and prosecuted when she attempts to marry a person of a different race. Any harm she suffers related to this incident is on account of her race.

Depending on the facts of the case, a finding that the harm was inflicted on account of the applicant's political opinion may also be appropriate.

5 RELIGION**5.1 Definition**

The protected ground of religion has been broadly defined to include the right to freedom of thought, conscience, and belief. Religion, as a protected ground, is not limited to familiar religious beliefs and practices. For purposes of establishing refugee and asylum eligibility, persecution suffered or feared on account of a non-traditional belief system may be considered persecution "on account of religion."⁴⁷ The International Religious Freedom Act (IRFA) refers to religious freedom without defining what makes a particular practice or belief a religion and does not place any particular religious group in a position of privilege over any other.⁴⁸ While many applicants base their claim to refugee or asylum status on their inclusion in well-known faith groups (*e.g.*, Hindus, Christians, or Muslims), other individuals may seek protection based on religious beliefs and practices that may be unfamiliar or based on their non-belief. The protected ground of religion includes the individual's right to be an atheist, an agnostic, or to otherwise reject religious practice.

If an individual's faith or faith group is not familiar to you or a particular practice or belief appears unusual to you, do not allow your unfamiliarity to affect your judgment. Neither courts nor adjudicators may inquire into the popularity, truth, validity, or reasonableness of an applicant's religious beliefs or choice not to believe.

The Universal Declaration of Human Rights and the *International Covenant on Civil and Political Rights* proclaim the right to freedom of religion. This includes the right to have or adopt a religion of one's choice; the freedom, either individually or in a community with others and in public or private, to manifest a religious belief in worship observance, practice, and teaching; and the right not to be subjected to coercion that would impair freedom to have or adopt a religion or belief of one's choice.⁴⁹ Accordingly, the applicant

⁴⁷ See UNHCR Guidelines on International Protection: Religion-Based Claims under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees. HCR/GIP/04/06 Section II (Apr. 28, 2004).

⁴⁸ International Religious Freedom Act of 1998, Pub. L. 105-292. For additional information on the IRFA, see RAI0 Training Module, *IRFA (International Religious Freedom Act) and Religious Persecution*.

⁴⁹ Universal Declaration of Human Rights art. 18; the International Covenant on Civil and Political Rights art. 18(1).

has the right to live an openly religious life in his or her country of origin, and there is no requirement that an applicant conceal his or her religion to be eligible for protection.

In 1998 Congress passed IRFA, which expressed concern about religious freedom throughout the world and established an Annual Report on International Religious Freedom to be prepared by the Department of State.⁵⁰ IRFA requires that the Annual Report, with other relevant documentation, serve as a resource for you in cases involving claims of persecution on the grounds of religion.⁵¹ However, you may not deny an applicant's claim solely because the Annual Report does not confirm the conditions described by the applicant.

5.2 General Forms of Religious Persecution

Drawing from international human rights law, the UNHCR Handbook explains that persecution on account of religion takes a number of different forms. Some examples of harm that may be found to have been inflicted on account of an applicant's religion are:

- Prohibition of membership in a religious community
- Prohibition of worship in private or in public
- Prohibition of religious instruction
- Forced renunciation of religious beliefs or desecration of objects of religious importance
- Serious measures of discrimination imposed on persons because they practice their religion or belong to a religious community⁵²

5.3 Conversion

In some countries it may be illegal to convert from one religion to another, and the penalties may be severe. For example, in Iran, conversion from Islam to another religion is considered apostasy (renunciation of faith), which is punishable by death. Such punishment is persecution on account of religion.⁵³

5.4 Laws Based on Religious Principles

⁵⁰ International Religious Freedom Act of 1998, Pub. L. 105-292, Section 102(b).

⁵¹ Id. Section 601.

⁵² UNHCR Handbook, para. 72.

⁵³ See, e.g., *Bastanipour v. INS*, 980 F.2d 1129 (7th Cir. 1992) (prosecution under law against apostasy found to be persecution "on account of" religion).

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

Note that in some countries, religious principles are inseparable from civil and criminal laws. In such countries harm on account of religion may overlap with harm on account of political opinion.

You should focus on whether the persecutor sees the applicant as a simple law-breaker, or as someone who should be punished for possessing “improper” religious values. In many cases the persecutor will view the applicant as both a law-breaker and as an individual possessing “improper” religious values. Although the persecutor may have mixed motives, if the applicant’s real or perceived religious values are “at least one central reason” motivating the persecutor,⁵⁴ such motivation may be sufficient to establish that the harm is on account of religion in asylum adjudications. In refugee processing, you need to determine if “a reasonable person would fear that the danger arises ‘on account of’ one of the five grounds,”⁵⁵ in this case real or perceived religious values. For further discussion, see ASM Supplement – At Least One Central Reason.

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

5.5 Differing Interpretation of the “Same” Religion

The persecutor does not have to adhere to a different religion from the applicant. Large religious groupings such as Christianity, Islam, and Buddhism have a wide variety of sects and denominations. Even within smaller religious groupings, individual members may differ greatly as to what practices or beliefs are required by their religion. Harm suffered on account of these differences is harm suffered on account of religion.

Example

Where a daughter’s religious opinions were different from her father’s concerning how she should dress and with whom she should associate, and the father attempted to impose his religious opinion on his daughter through physical force, the serious harm that the daughter suffered was “persecution on account of religion.”⁵⁶ Although the daughter and

⁵⁴ See *infra* Section 2.1 on “Mixed Motives.”

⁵⁵ For further discussion, see RAD Supplement – Motivation. You should not rely on case law that interprets the “one central reason” standard, but you may find such cases helpful in understanding general principles of the nexus requirement. These standards are not the same. You should follow your division’s guidance on how to analyze this issue.

⁵⁶ Matter of S-A-, 22 I&N Dec. 1328 (BIA 2000).

father both practiced Islam, the father harmed his daughter because her religious beliefs did not conform to his, particularly with respect to the way women should behave.⁵⁷

6 NATIONALITY

6.1 Definition

For purposes of asylum and refugee adjudications, the term “nationality” is defined more broadly than it is in the first part of the refugee definition (that defines a refugee as someone outside his or her country of “nationality,” i.e. citizenship). “Nationality,” as a protected ground, is a broad concept that includes ethnic groups, linguistic groups, and groups defined by common cultures.

Note that harm on account of nationality may also overlap with harm on account of race or religion.

Examples

- In the former Soviet Union, “Jewish” was considered a nationality and marked as such on identification documents. A Jewish father and son from the Ukraine, who were attacked by a member of a nationalistic, pro-Ukrainian movement were targeted because of their Jewish nationality.⁵⁸
- Consider a K’iche’ (Quiché) applicant from Guatemala. Country conditions reports indicate that the characteristic of being K’iche’ may be perceived by the persecutor or feared persecutor as a racial characteristic, an ethnic characteristic (nationality), an immutable characteristic shared with other members of a distinct group (particular social group), a religious characteristic (some communities still practice indigenous religions), or a political characteristic (indigenous communities were often perceived to be linked with guerrilla organizations). The important inquiry is whether the persecutor is motivated to harm the applicant on account of his or her being K’iche’; if so, several protected characteristics may apply.⁵⁹

6.2 Conflicts Between National Groups

When conflict between two or more national (ethnic, linguistic) groups exists in a country, persecution on account of nationality may overlap with persecution on account

⁵⁷ *Id.* at 1336.

⁵⁸ *Matter of O-Z- & I-Z-*, 22 I&N Dec. 23 (BIA 1998).

⁵⁹ See *Duarte de Guinac v. INS*, 179 F.3d 1156, 1159 n.5 (9th Cir. 1999) (noting that ethnicity may be analyzed as both race and nationality).

of political opinion, particularly where a political movement is identified with a specific nationality.⁶⁰

In some conflicts, members of an ethnic group may be at risk of harm even though they are not directly involved in the conflict. Such cases involve persecutors who associate all members of a cultural grouping with the limited pool of persons from that cultural grouping who are involved in the hostilities.

When there is conflict between one or more “nationalities,” you should not assume that claims arising from the conflict are based solely on civil strife. Rather, you must consider carefully the nature of the strife and determine whether the harm the applicant suffered or fears is connected to his or her nationality.⁶¹

6.3 Examples of Claims Based on Nationality

As noted above, claims based on nationality often overlap with other protected grounds. In the former Soviet Union, nationalities were listed on citizens’ passports, including entries for Jews, Germans, Chechens, Russians, and, at one point, 168 others.⁶² Other examples of individuals who have been harmed on account of nationality include Armenians in Azerbaijan (may overlap with religion); Bosniaks, Croats, and Serbs in the former Yugoslavia (may overlap with religion); Tibetans in the People’s Republic of China (may overlap with religion); or Roma in Bulgaria (may also be analyzed as a particular social group).⁶³

7 PARTICULAR SOCIAL GROUP (PSG)

NOTE: Particular Social Group is one of the five grounds in the refugee definition, but it is not being discussed in this module. It is covered in a separate module, *Nexus – Particular Social Group*.

8 POLITICAL OPINION

8.1 Definition

Expression of a political opinion should not be viewed only in the narrow sense of participation in a political party or the political process. The meaning of “political

⁶⁰ UNHCR Handbook, para. 75.

⁶¹ See Civil Strife section, below; see also *Matter of H-*, 21 I&N Dec. 337 (BIA 1996).

⁶² See Sven Gunnar Simonsen, *Inheriting the Soviet Policy Toolbox: Russia’s Dilemma Over Ascriptive Nationality*, 51 *Europe-Asia Studies* 1069 (1999).

⁶³ *Mihalev v. Ashcroft*, 388 F.3d 722 (9th Cir. 2004).

opinion” in the refugee definition “should be understood in the broad sense, to incorporate . . . any opinion on any matter in which the machinery of state, government and police may be engaged.”⁶⁴

The Fourth Circuit has described political opinion as “prototypically” exhibited by “evidence of verbal or openly expressive behavior by the applicant in furtherance of a particular cause.”⁶⁵ In recognizing that “less overtly symbolic acts may also reflect a political opinion,” the court set as a baseline that “whatever behavior an applicant seeks to advance as political, it must be motivated by an ideal or conviction of sorts before it will constitute grounds for asylum.”⁶⁶ Of course, an action could be imputed as political, even if the applicant does not hold an ideal or conviction.

Expression of a political opinion may take various forms, and many types of opinions or views may fall within the broad category of “political.” Examples of expression of political opinions outside the traditional political process include:

- Expression of feminist beliefs⁶⁷
- Exposure of government human rights abuses⁶⁸
- Activities to protect or establish the right to association (such as union membership), workers’ rights, or other civil liberties⁶⁹
- Participation in certain student groups⁷⁰
- Participation in community improvement organizations or cooperatives, or movements for land reform⁷¹
- Opposition to a political group’s strategy for promoting its ideology⁷²

⁶⁴ Guy Goodwin-Gill, *The Refugee in International Law* 30 (1983).

⁶⁵ *Saldarriaga v. Gonzales*, 402 F.3d 461, 466 (4th Cir. 2005).

⁶⁶ *Id.*

⁶⁷ *Fatin v. INS*, 12 F.3d 1233 (3d Cir. 1993).

⁶⁸ *Gao v. Gonzales*, 407 F.3d 146, 153 (3d Cir. 2005).

⁶⁹ *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1993); *Bernal-Garcia v. INS*, 852 F.2d 144 (5th Cir. 1988).

⁷⁰ *Osorio v. INS*, 18 F.3d 1017 (2d Cir. 1993); *Matter of Villalta*, 20 I&N Dec. 142 (BIA 1990).

⁷¹ See, e.g., *Zamora-Morel v. INS*, 905 F.2d 833 (5th Cir. 1990); *Yera-Valera v. INS*, 147 F.3d 1036 (9th Cir. 1998).

⁷² *Regalado-Escobar v. Holder*, 717 F.3d 724, 729 (9th Cir. 2013) (“When a political organization has a pattern of committing violent acts in furtherance of, or to promote, its politics, such strategy is political in nature. . . . Therefore, opposition to the strategy of using violence can constitute a political opinion that is a protected ground for asylum purposes.”)

- Opposition to gangs and drug cartels

Opposition to a gang may have a political dimension, but a general aversion to gangs and their criminal activity or refusal to join the gang is not necessarily politically motivated.⁷³ The mere refusal to join a gang, without more, does not establish that the gang's threats against the applicant were on account of an imputed political opinion.⁷⁴ Cases involving refusal to join gangs, however, may be mixed motive cases. The fact that an applicant refuses to join a gang, while not alone sufficient to support a conclusion that he was perceived to be politically opposed to gangs, certainly does not undermine such a conclusion. There may well be cases where refusal to join a gang is an element of a cognizable political opinion claim.

To show that violence inflicted by gang members has a nexus to the applicant's actual or imputed political opinion, an applicant needs evidence that he or she was politically or ideologically opposed to the gang's particular ideals or to gangs in general (or that the gang believes this) and not merely that he or she did not want to be personally involved in or had an aversion to specific activities of the particular gang.⁷⁵ Even if the applicant shows that he or she possesses an anti-gang political opinion, the applicant must show that the gang targeted him or her on account of that political opinion, and not merely to grow its ranks or to increase its wealth.

- Refusal to follow orders to commit human rights abuses⁷⁶

For more information, see Section below on "Refusal to serve in a military or commit an action that is condemned by the international community."

- Whistleblowing or otherwise exposing government corruption

In some circumstances, opposition to state corruption may be motivated by an applicant's political convictions, or may cause a persecutor to impute such convictions to the applicant.⁷⁷ However, showing retaliation for opposing governmental corruption is not by

⁷³ *Santos-Lemus v. Mukasey*, 542 F.3d 738, 747 (9th Cir. 2008) (holding that a "general aversion to gangs does not constitute a political opinion"); *Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009).

⁷⁴ *Marroquin-Ochoma v. Holder*, 574 F.3d 574, 578–79 (8th Cir. 2009).

⁷⁵ *Santos-Lemus v. Mukasey*, 542 F.3d 738, 747 (9th Cir. 2008); *Barrios v. Holder*, 581 F.3d 849, 855 (9th Cir. 2009).

⁷⁶ See, e.g., *Barraza Rivera v. INS*, 913 F.2d 1443 (9th Cir. 1990).

⁷⁷ *Ruqiang Yu v. Holder*, 693 F.3d 294 (2d Cir. 2012); *Zhang v. Gonzales*, 426 F.3d 540 (2d Cir. 2005); *Hu v. Holder*, 652 F.3d 1011, 1019–20 (9th Cir. 2011) ("... the Chinese police officials who arrested Hu did not accuse him of illegally gathering without a permit. Rather, they accused him of 'gathering a crowd to cause trouble and disturb the order of society, [and] acting against the government and against the party.'"); *Grava v. INS*, 205 F.3d 1177 (9th Cir. 2000) ("When the alleged corruption is inextricably intertwined with governmental operation, the exposure and prosecution of such an abuse of public trust is necessarily political."); *Baghdasayan v. Holder*, 592 F.3d 1018 (9th Cir. 2010) ("Whistle-blowing against government corruption is an expression of political opinion."); *Reyes Guerrero v. INS*, 192 F.3d 1241, 1245 (9th Cir. 1999).

itself sufficient to establish a nexus to a political opinion. You also should consider the variety of reasons that persecutors act in such cases. In *Matter of N-M-*, the BIA held that the following factors should be considered when analyzing nexus in whistleblowing cases:

- Whether and to what extent the individual engaged in activities that could be perceived as expressions of anti-corruption beliefs;
- Any direct or circumstantial evidence that the persecutor was motivated by the individual's actual or perceived anti-corruption beliefs; and
- Any evidence regarding the pervasiveness of corruption within the governing regime.⁷⁸

State actors may be motivated to harm whistleblowers for a variety of reasons that are not related to protected grounds, including a desire for revenge. Personal motivation does not preclude a grant of asylum or refugee status, however, if the state actor is also motivated by the applicant's efforts to "expose" corruption.⁷⁹ Even in cases where the applicant's reasons for exposing corruption were purely personal, there may be evidence indicating that state actor perceived the applicant as having a political motive.⁸⁰ In other words, state actors may have mixed motives in harming whistleblowers.

Also, campaigning against state corruption through classic political activities such as being active in a political party that opposes state corruption, attending or speaking at rallies against corruption, or writing pamphlets criticizing state corruption would constitute the expression of a political opinion.⁸¹

Harm suffered for having provided the government information about individuals involved in illegal activities may, or may not, constitute harm suffered on account of a political opinion. Providing the government with information about a guerrilla group, for example, where the guerrilla group would see informing as an expression of opposition, would be considered expressing a political opinion.⁸² Providing information on more

⁷⁸ *Matter of N-M-*, 25 I&N Dec. 526, 532–33 (BIA 2011). See also *Ruqiang Yu v. Holder*, 693 F.3d 294 (2d Cir. 2012) (rejecting the BIA's finding that the applicant opposed "aberrational" corruption where the applicant protested several months of nonpayment of wages and personally escorted 10 employees to confront factory officials).

⁷⁹ *Antonyan v. Holder*, 642 F.3d 1250, 1256 (9th Cir. 2011).

⁸⁰ *Khudaverdyan v. Holder*, 778 F.3d 1101, 1107 (9th Cir. 2015).

⁸¹ *Id.* But see *Liu v. Holder*, 692 F.3d 848 (7th Cir. 2012) (writing an anonymous letter asserting corruption in layoffs does not transform an economic protest into a political one where the applicant never acknowledged he wrote the letter or testified that anyone knew he wrote it).

⁸² *Saldarriaga v. Gonzales*, 402 F.3d 461, 467 (4th Cir. 2005). See also *Antonyan v. Holder*, 642 F.3d 1250, 1255 (9th Cir. 2011) ("In pursuing Andranik's prosecution, Antonyan sought more than an end to his drug-dealing and violence in her community; she also hoped to expose his crooked ties to law enforcement agencies who refused to protect the citizenry.").

routine criminal matters, outside of a political context, however, likely would fail to satisfy the nexus requirement for political opinion.⁸³

- **Neutrality**

Political neutrality may include the absence of any political opinion. Neutrality can be established by pronouncement or actions. In certain refugee and asylum claims, the refusal to take sides in a political controversy may be considered expressing a political opinion. The critical issue is how the persecutor views the applicant's decision to remain neutral, and whether he or she targets the applicant because of that decision.⁸⁴ During periods of conflict, a persecutor may believe that no one can be neutral. In such cases, the persecutor may impute an opposition political opinion to anyone who remains neutral.

Although the BIA has not granted asylum or withholding based on an applicant's decision to remain neutral, the BIA has analyzed claims under the principle that, in some cases, neutrality may be a political opinion.⁸⁵

The First and Ninth Circuits have held that neutrality may constitute a political opinion.⁸⁶ The Eighth Circuit has indicated that neutrality might, in some cases, form a political opinion.⁸⁷ The Ninth Circuit follows the doctrine of "hazardous neutrality."⁸⁸ Remaining neutral in an environment where neutrality brings hazards from a persecutor is an expression of political opinion.⁸⁹ For example, the failure to favor either side in a civil war may be perceived as opposition by participants from either side of the conflict. The Sixth Circuit has noted that expression of a political opinion may be affirmative or negative; in some circumstances, refusal to join or express support for a political party may be perceived as an expression of opposition to that party.⁹⁰

- **Professional Activities or Associations**

Harm inflicted on an applicant because of his or her profession or occupation at the time the harm occurred is generally not, in itself, sufficient to establish that the applicant was

⁸³ *Thuri v. Ashcroft*, 380 F.3d 788 (5th Cir. 2004) (the evidence did not compel a finding that reporting a single incident of crime by police officers was viewed by the government as an expression of political opinion).

⁸⁴ *Ramos-Vasquez v. INS*, 57 F.3d 857 (9th Cir.1995); *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991).

⁸⁵ See *Matter of Vigil*, 19 I&N Dec. 572 (BIA 1988); *Matter of Maldonado-Cruz*, 19 I&N Dec. 509, 516 (BIA 1988); *Novoa-Umania v. INS*, 896 F.2d 1 (1st Cir. 1990) (indicating BIA used neutrality analysis).

⁸⁶ *Umanzor-Alvarado v. INS*, 896 F.2d 14 (1st Cir. 1990); *Arriaga-Barrientos v. INS*, 937 F.2d 411 (9th Cir. 1991).

⁸⁷ *Lopez-Zeron v. INS*, 8 F.3d 636 (8th Cir. 1993).

⁸⁸ *Rivera-Moreno v. INS*, 213 F.3d 481, 483 (9th Cir. 2000).

⁸⁹ *Id.*; See also *Sangha v. INS*, 103 F.3d 1482, 1488 (9th Cir. 1997).

⁹⁰ *Mandebvu v. Holder*, 755 F.3d 417, 429 (6th Cir. 2014).

persecuted on account of one of the protected grounds.⁹¹ Ideologically motivated groups often seek to harm government employees, such as police officers or members of the military forces, in order to frustrate their official duties or to publicly undermine the regime. Members of other professions may be targeted for recruitment because the persecutors have particular need of their services, or for extortion, because they are perceived to be wealthy.

In such cases, “the mere existence of a generalized political motive underlying the persecutor’s actions” is inadequate to establish the requisite nexus.⁹² Rather, the applicant must demonstrate that the persecutor is targeting the applicant on account of a belief or characteristic that the applicant possesses or is imputed to possess.

The fact that an applicant is targeted in relation to his or her professional status, however, does not preclude him or her from establishing the requisite nexus to a protected ground.⁹³ An applicant’s profession may cause the persecutor to impute a protected characteristic to him or her, or an applicant may express the belief or opinion that causes him or her to be targeted in the course of his or her official duties. Applicants who work for or have close professional associations with the government may sometimes be targeted as supporters of the government or the ruling political party, whether or not their work is political in nature.

Examples

- A Pakistani “special police officer” began receiving threatening letters and phone calls after, in the course of his official duties, he began going to mosques and social spaces to encourage citizens to oppose the Taliban. The immigration judge found that he was targeted because of his work as a police officer and, therefore, he had not established a nexus to a protected ground, and the BIA affirmed the IJ’s decision. The First Circuit Court of Appeals vacated and remanded the case, holding that the fact that the applicant expressed the political views for which he was targeted while on duty did not preclude him from establishing the requisite nexus.⁹⁴

A Colombian applicant owned a catering business that supplied food to governmental and military institutions. The Revolutionary Armed Forces of Colombia (FARC) made

⁹¹ See *Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985); *Matter of Fuentes*, 19 I&N Dec. 658, 662 (BIA 1988). Note, however, that several courts have found groups defined by former occupation to constitute particular social groups. In some circumstances, moreover, a group defined by a current profession or occupation may be sufficiently fundamental to its members’ identity, distinct in society, and defined with particularity to constitute a particular social group. In such cases, it is necessary to analyze whether the applicant was targeted or fears harm on account of his or her membership in that group. See RAI0 Training Module, *Nexus – Particular Social Group*.

⁹² *INS v. Elias-Zacarias*, 502 U.S. 478, 482 (1992).

⁹³ See *Acharya v. Holder*, 761 F.3d 289, 301 (2d Cir. 2014); *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000).

⁹⁴ *Khattak v. Holder*, 704 F.3d 197, 204–05 (1st Cir. 2013).

several threatening phone calls in which they attempted to recruit him as an informant and demanded that he stop providing services to the Colombian military, but the applicant repeatedly refused their demands. The immigration judge found that the FARC was motivated to recruit the applicant because he would be useful to them rather than because of any protected ground.⁹⁵ The Third Circuit Court of Appeals held that the IJ's decision was not supported by substantial evidence; given the applicant's long association with and economic dependence on Colombian government and political institutions and the fact that he had repeatedly refused the FARC's overtures, the court was compelled to find that the FARC was motivated by an imputed political opinion.⁹⁶

Governments may also impute opposing political opinions to applicants because of their professional associations. For example, in *Javed v. Holder*, a Pakistani attorney who represented an opposition political party in litigation was threatened and beaten by a faction of the governing party. The applicant testified that he was not a supporter of either group but that, as a result of his representation of the opposition party, the governing party thought of him as their enemy. The First Circuit Court of Appeals held that this testimony established that the persecutors imputed a political opinion to the applicant.⁹⁷

8.2 Opinion Must Be Applicant's or Attributed to Applicant

Persecution on account of political opinion means persecution on account of the *applicant's* political opinion, or one attributed to the applicant.⁹⁸

Showing that the persecutor is motivated by political goals or represents a political entity does not in itself establish that the persecution is on account of political opinion. The persecutor must be motivated by the applicant's opinion or perceived opinion.

8.3 Attempts to Overthrow the Government

Prosecution for an attempt to overthrow a government may constitute persecution on account of political opinion if there are no legitimate political means in place to change the government.⁹⁹ Legitimate government investigation and punishment of individuals who fight against the government, however, is generally not persecution on account of political opinion.¹⁰⁰

⁹⁵ *Espinosa-Cortez v. Att'y Gen. of U.S.*, 607 F.3d 101, 104–05 (3d Cir. 2010).

⁹⁶ *Id.* at 111–12.

⁹⁷ *Javed v. Holder*, 715 F.3d 391, 397 (1st Cir. 2013).

⁹⁸ *INS v. Elias-Zacarias*, 502 U.S. 478, 482–83 (1992).

⁹⁹ *Chanco v. INS*, 82 F.3d 298 (9th Cir. 1995); *Matter of Izatula*, 20 I&N Dec. 149 (BIA 1990); *Perlera-Escobar v. EOIR and INS*, 894 F.2d 1292 (11th Cir. 1990); *Dwomoh v. Sava*, 696 F. Supp. 970 (S.D.N.Y. 1988).

¹⁰⁰ *Perlera-Escobar v. EOIR and INS*, 894 F.2d 1292, 1299 (11th Cir. 1990) (noting a duly established government's internationally recognized right to defend itself against attack and rebellion).