

CONVENTION AGAINST TORTURE (CAT)

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What is the U.N. Convention Against Torture?

- **An international human rights treaty aimed at preventing torture worldwide.**
- **The U.S. ratified the treaty in 1994.**
- **Under the CAT, the Government cannot send a noncitizen back to a country where it is more likely than not that they will be tortured.**
- **The U.S. may remove the noncitizen to a safe third country.**
- **Status may be terminated if the Government establishes that the noncitizen is no longer likely to be tortured in their home country.**

An applicant must establish that it is more likely than not that they would be tortured if removed to the proposed country of removal.

- Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment.**
- Proscribed purposes include, but are not limited to: intimidation, coercion, punishment, or discrimination.**
- Unlike persecution, torture does not require a nexus to statutorily protected grounds.**

References: 8 C.F.R. §§ 1208.16(c), 1208.17, 1208.18(a)

CAT

Under international and U.S. law, individuals cannot be sent back to a country where they are at risk of torture. The United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (referred to as "CAT" or "the Convention") mandates that countries which are signatories condemn and prohibit torture.

Article III of the Convention specifies that a nation that has signed it must refrain from "expelling, returning, or extraditing" individuals to a country where there are "substantial grounds for believing that they would be in danger of being subjected to torture." The United States became a signatory to CAT in 1988, and Congress ratified the treaty in 1994. In 1998, as part of the Foreign Affairs Reform and Restructuring Act (FARRA), the U.S. formally announced its plan to implement CAT. The former Immigration and Naturalization Service established regulations in 1999, outlining the standards and procedures for protection under the Convention. These

regulations can be found in 8 C.F.R. §§ [1]208.16 to [1]208.18.

Protection under Article III of the Convention is a critical avenue for noncitizens who do not meet the criteria for asylum but can demonstrate that they would face torture upon returning to their home country. Relief under the Convention is not subject to discretion. For those who meet the eligibility requirements, the immigration judge (IJ) is obliged to grant protection.

There are two types of CAT protection, both of which can only be pursued in Immigration Court: withholding of removal under CAT and deferral of removal under CAT. Both forms of relief rely on the same general legal standard above, but withholding of removal under CAT is only available to those who are not barred from withholding of removal under the Immigration and Nationality Act (INA). CAT withholding of removal⁵ under 8 CFR § 1208.16 is only available to individuals who have not: been convicted of a “particularly serious crime” or an aggravated felony for which the term of imprisonment was five years or more; engaged in the persecution of others; committed a serious non-political crime outside of the U.S.; and/or been deemed a danger to the security of the United States.

The second type of CAT protection, deferral of removal under 8 CFR § 1208.17(a), offers protection under CAT for those individuals who are ineligible for withholding due to one or more grounds for mandatory denial. The only difference in the benefits conferred by withholding under CAT versus deferral under CAT is that the procedures for terminating deferral of removal benefits is easier for the government than terminating withholding under CAT. Otherwise, both allow the individual to stay in the United States and apply for work authorization.

CAT protection can never be denied as a matter of discretion.⁷ 8 C.F.R. § 1208.16(c)(2) provides that to prove eligibility for CAT protection, “[t]he burden of proof is on the applicant . . . to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal.” If that standard is met, the IJ must grant withholding of removal if one of the mandatory denial grounds listed above do not apply. If one of the mandatory denial grounds applies, the IJ must grant deferral of removal.

An IJ can consider a CAT application in two contexts: (1) removal proceedings (or old deportation or exclusion proceedings that are still pending); and (2) withholding-only proceedings where the government seeks to reinstate a prior removal order⁸ or seeks to enter an administrative order of removal against a noncitizen who has been convicted of an aggravated felony.⁹ In removal proceedings, a respondent’s intent to apply for CAT relief should be stated at the master calendar hearing when pleadings are entered.¹⁰ In withholding-only proceedings, the respondent’s options for relief will be limited to withholding of removal under the INA and/or CAT relief, and only with respect to the country or countries previously designated in the original removal order if a prior removal order is being reinstated.

TORTURE

8 CFR § 1208.18(a)(1)

Torture is defined 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 her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her 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.

Torture has three essential elements:

(1) the intentional infliction, (2) of severe pain and suffering (physical or mental),

(3) committed by or at the acquiescence of the government.

The regulation goes on to provide the following limitations to the definition:

- Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture.**
- Torture does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. Lawful sanctions include judicially imposed sanctions and other enforcement actions authorized by law, including the death penalty, but do not include sanctions that defeat the object and purpose of the Convention Against Torture to prohibit torture.**

