

# HUMANITARIAN /DISCRETIONARY ASYLUM GRANT

Asylum granted for humanitarian reasons in the IJ's discretion, even if the applicant has not met their burden of proof as to the likelihood of future harm but *only* if the applicant establishes that they suffered past persecution so severe that returning to their country would be inhumane. **This is based on compelling reasons arising out of the severity of the past persecution.**

- Relevant Regulation 8 CFR § 208.13(b)(1)(ii) (Dec. 16 (BIA 1989) is a key precedent decision establishing the basis for humanitarian asylum due to

# **Humanitarian Grant Case Law**

## **Humanitarian Grants**

*Matter of L-S-*, 25 I&N Dec. 705 (BIA 2012)

**(1) An asylum applicant who has established past persecution but no longer has a well-founded fear of persecution may nevertheless warrant a discretionary grant of humanitarian asylum based not only on compelling reasons arising out of the severity of the past persecution, but also on a “reasonable possibility that he or she may suffer other serious harm” upon removal to his or her country under 8 C.F.R. § 1208.13(b)(1)(iii)(B) (2011).**

**(2) “Other serious harm” may be wholly unrelated to the applicant’s past harm and need not be inflicted on account of race, religion, nationality, membership in a particular social group, or political opinion, but the harm must be so serious that it equals the severity of persecution.**

**(3) In determining whether an applicant has established a “reasonable possibility” of “other serious harm,” adjudicators should focus on current conditions that could severely affect the applicant, such as civil strife and extreme economic deprivation, as well as on the potential for new physical or psychological harm that the applicant might suffer.**

# Asylum Grant Discretion & Humanitarian Asylum

If an applicant meets the statutory definition of a refugee and is not subject to any mandatory bars to asylum, the grant of asylum is ultimately discretionary.

## Discretionary Grant

The Immigration and Nationality Act states that the Attorney General (and by delegation, Immigration Judges and Asylum Officers) *may* grant asylum to an alien who is found to be a refugee. This means that even if an applicant is eligible, asylum is not guaranteed. Adjudicators consider positive and negative factors in exercising discretion.

**Relevant Law:** INA § 208(b)(1)(A), 8 U.S.C. § 1158(b)(1)(A).

**Relevant Case Law:** *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987) outlines factors considered in the exercise of discretion, such as the seriousness of any criminal or immigration violations, family ties in the U.S., and humanitarian concerns.

## Humanitarian Asylum

**This is a specific basis for granting asylum even if the applicant does not demonstrate a well-founded fear of *future* persecution. Humanitarian asylum can be granted if the applicant establishes that they suffered past persecution so severe that returning to their country would be inhumane, even if there is no likelihood of future harm. This is based on compelling reasons arising out of the severity of the past persecution.**

**Relevant Regulation: 8 CFR § 208.13(b)(1)(iii).**

**Relevant Case Law: *Matter of Chen*, 20 I&N Dec. 16 (BIA 1989) is a key precedent decision establishing the basis for humanitarian asylum due to exceptionally severe past persecution.**