

Statutes & Regulations

STATUTES

Asylum

sections 208(b)(1)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. §1158(b)(1).

Withholding of removal

Section 241(b)(3)(A) of the Immigration and Nationality Act (“INA”), 8 U.S.C. §1231(b)(3)(A).

ELIGIBILITY

In order to establish a “well-founded fear” of persecution, an asylum applicant need only show a reasonable possibility that she will be persecuted. *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). An applicant who establishes past persecution by the government (or an entity the government cannot or will not control) on account of one of the five protected grounds has met that test and established a rebuttable presumption that she has a well-founded fear of future persecution. See 8 C.F.R. § 208.13(b)(1).

An applicant can also establish asylum eligibility by demonstrating an independent well-founded fear of future persecution, i.e., a reasonable possibility that she will be persecuted by the government (or an entity the government cannot or will not control) on account of one of the five protected grounds. See 8 C.F.R. § 208.13(b)(2); *Ayele v. Holder*, 564 F.3d 862, 868 (7th Cir. 2009).

The Supreme Court has stated that the following is sufficient to establish a well-founded fear: 1. “having a fear of an event happening when there is less than a 50% chance that it will take place, and 2. “establishing a 10% chance of being shot, tortured, or...otherwise persecuted.” *Cardoza-Fonseca*, 480 U.S. 421.

REGULATIONS

8 CFR §1208.4 Filing the application

8 CFR § 1208.4(a)(4) Changed Circumstances

(i) The term “changed circumstances” in section 208(a)(2)(D) of the Act shall refer to circumstances materially affecting the applicant's eligibility for asylum. They may include, but are not limited to:

(A) Changes in conditions in the applicant's country of nationality or, if the applicant is stateless, country of last habitual residence;

(B) Changes in the applicant's circumstances that materially affect the applicant's eligibility for asylum, including changes in applicable U.S. law and activities the applicant becomes involved in outside the country of feared persecution that place the applicant at risk; or

(C) In the case of an alien who had previously been included as a dependent in another alien's pending asylum application, the loss of the spousal or parent-child relationship to the principal applicant through marriage, divorce, death, or attainment of age 21.

(ii) The applicant shall file an asylum application within a reasonable period given those “changed circumstances.” If the applicant can establish that he or she did not become aware of the changed circumstances until after they occurred, such delayed awareness shall be taken into account in determining what constitutes a “reasonable period.”

8 CFR § 1208.13 Establishing asylum eligibility.

8 CFR §1208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention

Against Torture.

8 CFR §1208.17 Deferral of removal under the Convention Against Torture.

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