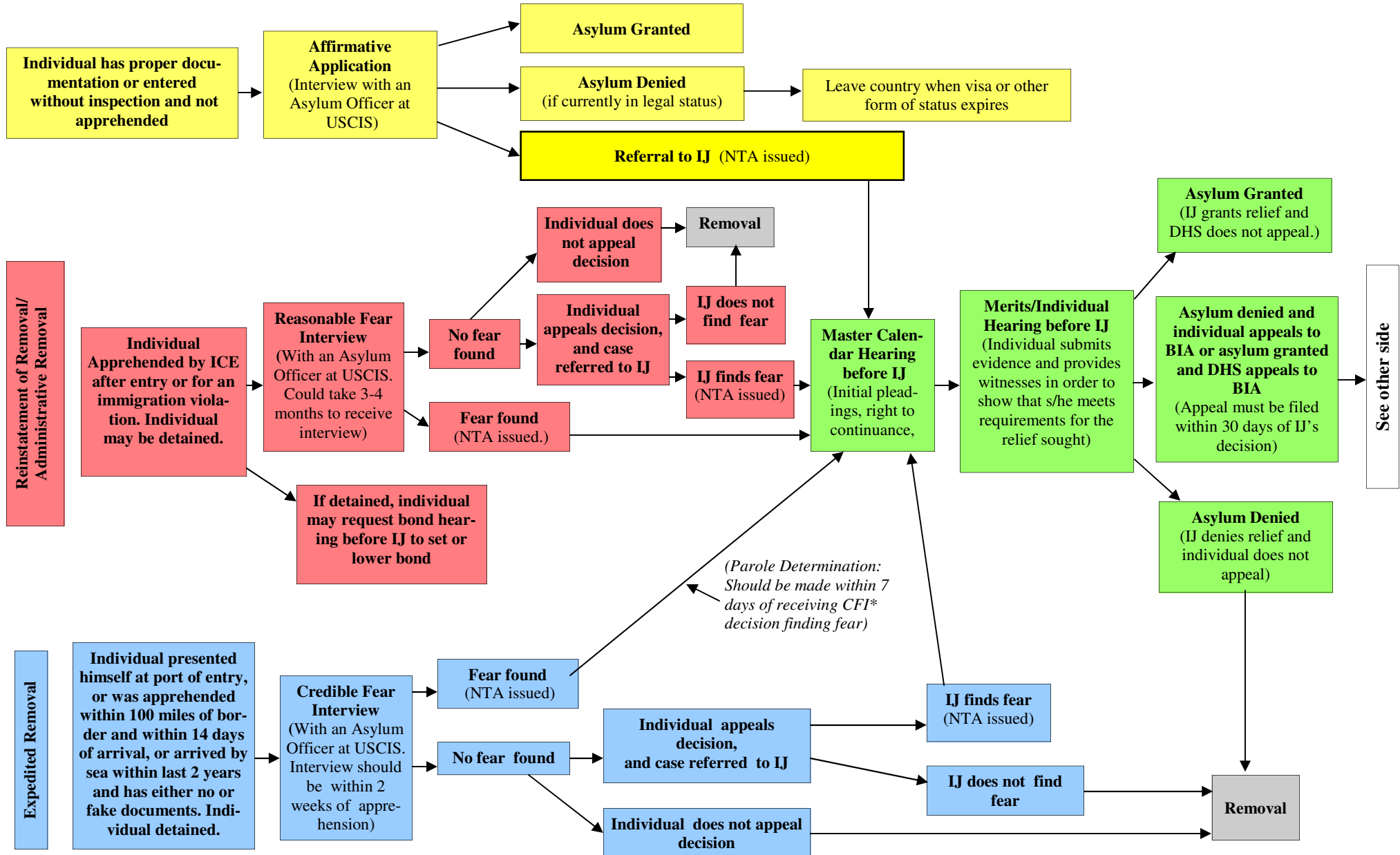


- * USCIS: U.S. Citizenship and Immigration Services
- * IJ: Immigration Judge
- * CFI: Credible Fear Interview
- * ICE: Immigration and Customs Enforcement
- * NTA: Notice to Appear Document
- * BIA: Board of Immigration Appeals
- * DHS: Department of Homeland Security

Overview of Asylum Processes





Forms of Relief

1. Asylum

Asylum is a protection granted to foreign nationals, who are afraid of returning to their country, and are already in the United States or at the border. For families who arrive in the U.S. without a “visa” or a valid permission document to enter the U.S., it is almost the only option available to stay in the country.

- In summary, the person seeking asylum must meet the definition of “refugee” under the Immigration and Nationality Act, which is a person who is unable or unwilling to return to his home country because of persecution on account of a protected ground, or a well-founded fear of such persecution.

Elements of Asylum:

- Past persecution or Well founded fear of future persecution:
 - Unable or unwilling to return to the home country because of either past persecution experience or fear of future persecution (“well founded fear of persecution.”)
 - Past persecution = presumed fear of future persecution: If a person was persecuted in the past, there is an presumption that he has well founded fear of persecution in the future unless the government proves otherwise (change of country conditions or being able to seek safety by internal relocation)
 - This has both subjective and objective elements components to it: Is the fear genuine? Is the fear a objectively reasonable?

What counts as persecution?

- Persecution is not defined by statute. It has developed over the course of different case decisions. Physical and/or mental harm should rise to the level of persecution.
- Examples of Persecution: Serious threat to life or freedom; death threats, imminent credible threats, torture, rape, forced abortion or sterilization, imprisonment, constant surveillance, pressure to engage in illegal activities, interference with privacy or family, discrimination, observing harm to a family member, and verbal and mental abuse
- Not all discrimination and unjust treatment will suffice. However, cumulative harm taken together can constitute persecution. For example, harassment by itself is usually not enough; it rises to level of persecution when it is combined with other types of harm.
- Age and mental state/development of the applicant should be considered when determining persecution. There is a lower threshold for young children.

Source of Persecution?

- Persecution can come from the home country's government or other authorities like police or security forces. It can also come from private actors that the government is unable or unwilling to control such as gangs or guerilla groups.

Nexus (BECAUSE element):

- Just saying "I was harmed" is not enough to get asylum. Past persecution or fear of future persecution must be based on one of the five protected grounds:

RACE

- Indigenous – always ask, especially if from Guatemala, African descent, or Garifuna (Honduras). Pay attention to skin tone (darker skin) or native language.
- In some cases, indigenous individuals are not comfortable to openly and publicly identify their race due to the oppression they have suffered in home country.

RELIGION

- Church activities opposing gang activities such as actively encouraging youth staying out of gangs
- Evangelical – this can motivate gang violence
- Catholic in some countries
- Witchcraft ("brujeria")

NATIONALITY

- This is citizenship plus ethnicity or linguistic identity. This element may overlap with race element.

POLITICAL OPINION

- This can be actual or imputed.
- Ex.) Feminist; Supporter of law and order / anti-gang; Human rights activist; Named political party; Gang norm violators (refusing to pay extortion/renta; refusal to join gangs; refusal to move or give up property to the gangs; reporting to the police or other authority).
- Ex.) Journalist that spoke out, environmental activist, electrical politics, electoral politics (door to door candidates for political party), "active involvement in anti-corruption efforts"

Membership in "Particular Social Group" (PSG)

- PSG is a technical/legal way of saying that there is something different about this particular member from the rest of society. It is based on "common, immutable characteristics" that "members of the group either cannot or should not be required to change." Whether a social group exists depends upon perception of

the society in question rather than the persecutor.

- Ex.) Sexual orientation (or imputed sexual orientation); Sexual or gender identity; Women considered a property by a partner; Women targeted by gangs as involuntary “girlfriends”; Child unable to leave a relationship (family abuse cases).
- Ex.) Child lacking adult protection or parental protection; Family (many times threats are extended to the whole family, e.g., if you (child) don’t join the gang, we will kill your whole family).
- Ex.) Female headed households (mom and kids); single parent; female heads of households (mom being targeted); particularly gang violence (can be discussed as a political opinion as well); people who report crime to police

***Practice Tip:** On PSG, the Asylum Officer will ask if society views them as different in any way. If there is a PSG claim, advise and ask the client this question to ensure the appropriate answer.*

- Government and/or Police:
 - An applicant must show that the government was unwilling or unable to provide protection and/or reasonable relief.
- Relocation:
 - An applicant will not have a well-founded fear of persecution if internal relocation in their home country would be safe and reasonable. The applicant has the burden to prove that relocation is unreasonable and would not protect him from violence.

2. Withholding of Removal

If the Applicant has a prior immigration history (prior removal or deportation order) the Applicant is not eligible for asylum, but is eligible for another form of relief called “Withholding of Removal.”

Note: Individuals who fail to submit a formal asylum application (form I-589) within 1 year of their date of entry to the U.S. are barred from asylum, therefore the applicant will only be eligible for “withholding of removal” or “CAT” protection.

- Compared to Asylum: Elements of Withholding of Removal are similar to asylum; the persecution must be based on one of five protected grounds:
 - Race, religion, nationality, political opinion, and particular social group.
- The major differences are:
 - Higher burden of proof. “More likely than not,” as in a 50 percent or higher chance of getting harmed.
 - Does not lead to permanent residency and citizenship in long term.
 - Applicant whose removal is withheld cannot petition for family members to

immigrate, nor can the applicant include dependent family members in their claim.

- Withholding of removal is a country specific relief, meaning that the U.S. government withholds the removing to the individual's country of nationality. If the government can find a third country where the applicant may be removed, then the government can remove the individual to that country instead.

3. Convention Against Torture (CAT)

The burden of proof that the applicant must show is: “*more likely than not.*” In other words, the applicant would be tortured if returned to the home country.

Elements of CAT:

- *Any intentional unlawful infliction of severe suffering or pain:*
 - Torture: Physical or mental. It is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment that do not amount to torture.
- *By consent of a public official:*
 - At request of government or government acquiescence. Government acquiescence is willful blindness of government officials, and can also include harm by an individual government official acting under the “color of law” (i.e. rogue police officer).
- *For a specific punishment:*
 - For CAT, unlike asylum, the applicant does not need to prove nexus on account of one of five protected grounds. The fear of torture can be torture for any reason.
 - Ex.) A confession, intimidation, or discrimination.
- *Not arising out of lawful sanctions.*
 - When gangs control the neighborhood, it can be argued that the gang is de facto government.
 - Ex.) Applicant testifying to collusion between gangs and government; Being told by authorities that gov't would not help her/him.

4. Summary

- Applicants in CFI are eligible for asylum or CAT.
- Applicants in RFI are eligible for withholding of removal or CAT.
- Asylum and withholding of removal must be connected to one of the five protected grounds.
- Do not forget about CAT claims, especially if you find it difficult in a case to connect the harm to one of the protected grounds. In such cases, prepare the client to explain why the harm they fear would occur with the acquiescence of the government.

COMMON ASYLUM/WITHHOLDING OF REMOVAL CLAIMS

The claims below are in rough order of strongest to weakest.
Reach theories are marked with an **R**.

Remember: any of the protected grounds can be imputed.

Basis of Claim Reference Guide	
	Race
	Indigenous
	African descent
	Garifuna
	Dark-skinned
	Religion
	Evangelical
	Catholic
	Brujeria (witchcraft)
	Nationality
	Haitians in Brazil
	Haitians in Dominican Republic
	Ethnic groups (eg Tutsis in Democratic Republic of Congo who are associated with Rwanda)
	Political Opinion
	Current (and former) member of named political party or social movement
	Journalists and human rights defenders
	Women's rights activists/Feminist beliefs
	Supposed subversive
R	Supporter of law and order/anti-gang
R	Gang norm violators (examples: refusing to pay extortion/renta; refusal to join gangs; refusal to move or give up property to the gangs; reporting to the police or other authority)
	Particular Social Group
	Sexual or gender identity. <i>Matter of Toboso-Alfonso</i> 20 I&N Dec. 819 (BIA 1994); <i>Velasquez-Banegas v Lynch</i> (7 th Cir. 2018) (<i>HIV leads to imputed homosexuality</i>).
	Woman unable to leave a relationship (includes spouse, partner, girlfriend/boyfriend, and even imputed relationship such as stalking or gang's involuntary girlfriend). Look

	for DV/sexual assault. <i>Grace v. Whitaker</i> , No. 18-cv-01853 (D.D.C. Dec. 19, 2018, Sullivan, J.)
	Women considered property by a partner or gang. Look for DV/sexual assault. <i>Matter of A-R-C-G-</i> , 26 I&N Dec. 388 (BIA 2014).
	HIV/AIDS status. <i>Manani v. Filip</i> F.3d, 2009 U.S. App. LEXIS 1980 (8th Cir. 2009) (implicitly accepts HIV status as a PSG).
	Child unable to leave a relationship. (Family abuse cases)
	Informants, witnesses, and victims of crimes committed by gangs and other organized criminal groups or by members of the security forces—especially if the case was prosecuted. <i>Henriquez-Rivas v. Holder</i> , 707 F.3d 1081 (9th Cir. 2013) (PSG: people who testify against gang members); <i>Garcia v. U.S. Att’y Gen.</i> , 665 F.3d 496 (3d Cir. 2011) (PSG: individuals who testify against gang members); <i>Crespin-Valladares v. Holder</i> , 632 F.3d 117 (4th Cir. 2011) (PSG: family members of those who actively oppose gangs in El Salvador by agreeing to be prosecutorial witnesses).
	Family-based persecution. <i>Matter of L-E-A-</i> , 27 I&N Dec. 40 (BIA 2017); <i>Cantillano Cruz v. Sessions</i> , 853 F.3d 122 (4th Cir. 2017) (nuclear family of X targeted or harmed by gang).
	Members of indigenous, Afro-Latino, and peasant communities involved in land disputes
	Former members of police and/or armed forces. <i>Matter of Fuentes</i> , 19 I&N Dec. 658 (BIA 1988).
	Former gang members. <i>Martinez v. Holder</i> , 740 F.3d 902 (4th Cir. 2014); <i>Ramos v. Holder</i> , 589 F.3d 426 (7th Cir. 2009).
	Teachers and educators working in public schools and education institutions
R	Persons in professions or positions susceptible to extortion (i.e. business owners, transportation workers, public sector employees)
R	Female heads of households (mom being targeted); female-headed households (mom and kids being targeted)
R	People who witness crimes or report crime to police
R	Loan shark-related violence

Credible Fear Prep

Explain the purpose of the CFI and confidentiality

The CFI is an interview with an USCIS Asylum Officer (AO) who will ask questions to determine if the reasons you fear returning to your country may be sufficient for you to qualify for asylum in the U.S. All of the information you provide is confidential and will not be shared with your government. The interpreters are also bound by confidentiality. It's very important to tell the truth because this might be your only opportunity to provide information about why you fear going back to your country.

Give a brief overview of asylum law

Asylum is not available to everyone who has been or will be harmed in their home country. It only protects people who are harmed due to their race, religion, political opinion, nationality or membership in a particular social group. Examples of a particular social group may include gender, family, and sexual orientation.

If you fear a private actor (not a government agent), you also must show that the government is unable or unwilling to protect you from harm. Specific examples are most helpful – for example, a police report was made and the police did not investigate the incident or did not make an arrest.

Explain the format of the interview, which has 3 main parts:

- Biographic information about you and your family. It's important for you to disclose family members in the U.S., even if they have no legal status. USCIS will not go looking for your family members or detain them.
- Questions about past harm and your fear of return – see the credible fear interview sheet
- Questions about bars to asylum, including whether you have been a member of or supported terrorist organizations or have persecuted others. Be sure to explain that the AO is required to ask everyone these questions.

Tips for the interview:

- Provide brief answers so the interpreter can keep up
- If you do not understand the interpreter, speak up right away and ask for a new interpreter
- Refer to people by name, not "he/she/they"
- Give specific examples of how you were threatened or harmed
- Think about why you were harmed: did the person say anything specific that might reveal the motive for harming you?

Check-out Procedure for Students Doing CFI/RFI Preps

I instruct my students that clients are not to leave the visitation area until the student checks out with me. When the student thinks s/he is done, we have a quick chat and I verify the following:

1. Basic description of claim identifying nexus.
2. I ask about reports to authorities and if none, why not?
3. For DV and gang-based claims, I ask how the client articulates nexus.
4. For cases involving gangs or organized criminal groups, I ask about any known or perceived links to the gov't or police.

If any of those areas are underdeveloped, then I have them go back and prep a bit more.

Karnes Case Tracking and Time Keeping

Name(s): _____

Date	Last 3 digits of A#	Assistance Provided – list all that apply (Intake, CFI/RFI prep, Declaration draft/review NCFI/NRFI prep, CFI rep, IJ review rep, Release charla, Stay, status check, other)	Total time on task (.25 increments)	Initials of partner if applicable

Total Hours: _____