

POLITICAL ASYLUM

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“Asylum”

- ▣ “Asylum” is a safe place or refuge.
- ▣ Traditionally, a church or other religious institution.

Ancient

- ▣ Many ancient peoples, including the Egyptians, the Greeks, and the Hebrews, recognized a religious "right of asylum," protecting criminals (or those accused of crime) from legal action to some extent. This principle was later adopted by the established Christian church, and various rules developed to qualify for protection and just how much protection it was.



One of four medieval stone boundary markers for the sanctuary of Saint John of Beverley in the East Riding of Yorkshire

Political Asylum Today

- ▣ In contemporary international law, asylum is the protection granted to a foreign citizen by a state against that individual's home state
- ▣ **Political asylum** is the granting of refuge to a person from another country. Asylum may be temporary or permanent.

Modern

- ▣ Political asylum is the granting of refuge to a person from another country
- ▣ Not an automatic right of an individual.
- ▣ An individual wanted for a crime will not normally receive asylum.
- ▣ Asylum is designed to protect individuals accused of political offenses or suffering persecution at the hands of their own government.

Not a First Choice

- ▣ Although political asylum is a positive situation for one whose life would otherwise be in danger, to live away from one's homeland is not ideal.
- ▣ Most would prefer that their home country conditions changed and allowed them to return safely.

Famous Asylum Seekers

- ▣ Zeituni Onyango, 57 – U.S. (Kenya)
- ▣ Jorge Luis Aguirre, Mexican journalist ("You're next")
- ▣ Chen Yonglin – Australia (China – foreign affairs minister)
- ▣ Rody Alvarado – U.S. (Guatemala – domestic violence)
- ▣ Karl Marx – England (Russia)

Americans seeking political asylum

- ▣ During the Vietnam War, many U.S. citizens who were conscientious objectors and wished to avoid the draft sought political asylum in Canada.

Right of Asylum in United States

- ▣ The United States honors the right of asylum of individuals as specified by international and federal law. A specified number of legally defined refugees, who apply for refugee status overseas and then asylum after arriving in the U.S., are admitted annually.

Legal Bases for U.S. Asylum Policy

- ▣ The legal bases for United States recognition of valid claims for asylum include the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.
- ▣ This commitment was codified and expanded with the passing of the Refugee Act of 1980, by the United States Congress.

Kinds of people granted asylum in U.S.

- ▣ Soviet dissidents
- ▣ Cubans (Special Law)
- ▣ Other Eastern Block Countries
- ▣ German scientists WWII

Origins



UNHCR

- ▣ Refugees were defined as a legal group in response to the large numbers of people fleeing Eastern Europe following World War II. The lead international agency coordinating refugee protection is the Office of the United Nations High Commissioner for Refugees (UNHCR),

UNHCR

- ▣ UNHCR was awarded the Nobel Peace Prize in 1954 and 1981. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide.
- ▣ Many celebrities are associated with the agency as UNHCR Goodwill Ambassadors, currently including Angelina Jolie, Giorgio Armani and others. The individual who has raised the most money in benefit performances and volunteer work on behalf of UNHCR was Luciano Pavarotti







What is a Refugee?

- ▣ Under the United Nations Convention Relating to the Status of Refugees from 1951, a **refugee** is a person who (according to the formal definition in article 1A of this Convention), "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country".^[1]

Refugees Outside U.S.

- ▣ The majority of applications for resettlement to the United States are made to U.S. embassies in foreign countries and are reviewed by employees of the State Department. In these cases, refugee status has normally already been reviewed by the United Nations High Commissioner for Refugees and granted by the host country.
- ▣ For these refugees, the U.S. preferred order of solutions are: (1) repatriation of refugees to their country of origin, (2) integration of the refugees into their country of asylum and, last, (3) resettlement to a third country, such as the U.S., when the first two options are not viable. The minority of applications that are made by individuals who have already entered the U.S. are judged solely on if they have a valid claim for asylum.

Camps and Quotas

- ▣ A refugee camp is a place built by governments or NGOs (such as the ICRC) to receive refugees. People may stay in these camps, receiving emergency food and medical aid, until it is safe to return to their homes or until they get retrieved by other people outside the camps
- ▣ Globally, about 17 countries (Australia, Benin, Brazil, Burkina Faso, Canada, Chile, Denmark, Finland, Iceland, the Republic of Ireland, Mexico, the Netherlands, New Zealand, Norway, Sweden, the United Kingdom, and the United States)^[49] regularly accept **quota refugees** from places such as refugee camps. Usually these are people who have escaped war.

How many immigrants are refugees?

- ▣ Refugees compose about one-tenth of the total annual immigration to the United States.
- ▣ Since World War II, more refugees have found homes in the U.S. than any other nation
- ▣ Of the top ten countries accepting resettled refugees in 2006, the United States accepted more than twice as many as the next nine countries combined.

How is the number of refugees determined?

- ▣ Each year, the President of the United States sends a proposal to the Congress for the maximum number of refugees to be admitted into the country for the upcoming fiscal year, as specified under section 207(e) (1)-(7) of the Immigration and Nationality Act.

How many refugees admitted?

- ▣ State
- ▣ Quota
- ▣ Year established
- ▣ United States
- ▣ 80,000
- ▣ 1980
- ▣ Canada
- ▣ 11,000
- ▣ 1978
- ▣ Australia
- ▣ 15,000
- ▣ Unknown
- ▣ Norway
- ▣ 1,500
- ▣ Unknown

- ▣ The minority of applications that are made by individuals who have already entered the U.S. These cases are judged solely on if they have a valid claim for asylum.

What is an asylum seeker?

- ▣ An asylum-seeker is also a person fleeing persecution, but he or she applies for protection once inside the United States. Individuals can be granted asylum if they can prove a well-founded fear of persecution.

Is there a limit to the number of persons who can be granted asylum?

- ▣ There are no limits to the number of individuals who may be granted asylum, but about 69% of applicants are denied
- ▣ Anyone who is deemed to pose a threat to national security is barred from receiving asylum, as well as anyone who has committed acts of terrorism, human rights abuses, or other serious crimes.

Who receives asylum in the United States?

- ▣ Asylum may be granted after a hearing before an immigration judge or an interview by an officer from the Department of Homeland Security. If the individual can prove a fear of persecution, he or she can be granted asylum.

Life and Death Decision

- ▣ The 9th Circuit has recognized that this is an “area where administrative decisions can mean the difference between freedom and oppression and quite possibly, life and death.” *Rodriguez-Roman v. INS* 98 F.3d 416, 432 (9th Cir. 1996).

Asylum Procedure – Two Postures

- ▣ Affirmative Applications with the Asylum Office
 - Persons in U.S. who have not been arrested or referred to immigration court
- ▣ Defensive Applications in Removal Proceedings
 - Referred from Asylum Office
 - Expedited removal/Credible Fear
 - Charged with removable offense after entry

Defensive Process

- ▣ Called Removal Proceedings, see INA § 240
- ▣ Local Court Rules:
<http://www.usdoj.gov/eoir/sibpages/ICadr.htm>
 - An immigration officer puts you in removal proceedings because:
 - ▣ Your case was referred to court by the asylum officer
 - ▣ Immigration believes you are inadmissible or deportable (usually because you have no immigration papers)
 - This is an adversarial process-government trial attorney (TA) plays a prosecutorial role, trying to show that the applicant should not receive asylum
 - The emphasis of the judge and the TA is on the applicant's credibility

Administrative and Federal Court Decisions

- ▣ Immigration Judge (“IJ”) and Board of Immigration Appeals (“BIA”) decisions
- ▣ BIA Precedent Decisions

http://www.usdoj.gov/eoir/vll/intdec/lib_indecitnet.html

- ▣ Federal Court Decisions (9th Circuit is binding precedent for cases pending in Seattle)

Breaking down the definition of refugee

- ▣ Persecution and “well-founded fear”
- ▣ “On account of” requirement
- ▣ Credibility and corroboration
- ▣ Bars to asylum
- ▣ Withholding of removal and Convention Against Torture

Two ways to establish objective fear of persecution

- (1) Through past persecution
- (2) By establishing well-founded fear of future persecution

“On account of” requirement

- ▣ Race, religion, nationality, political opinion, or membership in a particular social group
- ▣ Must establish nexus between persecution and protected ground
- ▣ Can be “some evidence, direct or indirect”
- ▣ Mixed motives suffice

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

Sangha v. INS, 103 F.3d 1482 (9th Cir. 1997)

Ratnam v. INS, 154 F.3d 990 (9th Cir. 1998)

On account of political opinion

- ▣ Political opinion can be actual or imputed
- ▣ Where government is the persecutor and there is no other logical explanation for the persecution, the persecution is presumed political

Hernandez-Ortiz v. INS, 777 F.2d 509 (9th Cir. 1985)

Credibility

- ▣ Generally, must provide specific, consistent, and plausible testimony
- ▣ REAL ID considerations

Vilorio-Lopez v. INS, 852 F.2d 1137 (9th Cir. 1988)

Bars to asylum

- ▣ Firm resettlement
- ▣ Particularly serious crime/conviction for aggravated felony
- ▣ Persecutor of others
- ▣ Previously denied asylum
- ▣ Serious nonpolitical crime outside the United States
- ▣ Danger to national security/ terrorism grounds
- ▣ Failure to apply within one year of last arrival

Hearing on the Merits

- ▣ Pre-hearing – briefs and written materials

Merits hearing

- ▣ As a general rule, neither opening nor closing statements take place.
- ▣ Pre-hearing memorandum is important to present the issues of your case and build a foundation for the record.
- ▣ Direct examination of client
- ▣ Cross examination by DHS attorney
- ▣ Immigration Judges often will actively question witnesses.

Africa

- ▣ Since the 1950s, many nations in Africa have suffered civil wars and ethnic strife, thus generating a massive number of refugees of many different nationalities and ethnic groups.
- ▣ The number of refugees in Africa increased from 860,000 in 1968 to 6,775,000 by 1992.^[131] By the end of 2004, that number had dropped to 2,748,400 refugees, according to the United Nations High Commission for Refugees.^[132]
- ▣ Many refugees in Africa cross into neighboring countries to find haven; often, African countries are simultaneously countries of origin for refugees and countries of asylum for other



Numbers of Refugees

- ▣ [Angola](#): 228,838
- ▣ [Burundi](#): 485,764
- ▣ [Cameroon](#): 7,629
- ▣ [Central African Republic](#): 31,069
- ▣ [Chad](#): 52,663
- ▣ [Côte d'Ivoire](#): 23,655
- ▣ [Democratic Republic of Congo](#): 462,203
- ▣ [Eritrea](#): 131,119
- ▣ [Ethiopia](#): 63,105
- ▣ [Ghana](#): 14,767
- ▣ [Liberia](#): 335,467
- ▣ [Nigeria](#): 23,888
- ▣ [Republic of the Congo](#): 28,152
- ▣ [Rwanda](#): 63,808
- ▣ [Senegal](#): 8,332
- ▣ [Sierra Leone](#): 41,801
- ▣ [Somalia](#): 389,272
- ▣ [Sudan](#): 930,612
- ▣ [Togo](#): 10,819
- ▣ [Uganda](#): 31,963
- ▣ [Zimbabwe](#): 9,568

ERITREA



Mr. Berhane Gebremichael Tewolde

Mr. Berhane Gebremichael Tewolde, a citizen of Eritrea, is statutorily eligible for a grant of asylum under INA § 208 (b)(1) because of past persecution on account of imputed and actual political opinion and the well-founded fear that it would reoccur should he be forced to return to Eritrea. (He is also eligible for withholding of removal under the Convention Against Torture.)

- ▣ Mr. Tewolde was born in Addis Ababa, Ethiopia, on June 5, 1974. His parents are from Asmara, Eritrea.
- ▣ Mr. Tewolde attended Catholic School until eighth grade and then attended a public high school. After finishing high school, he worked as a mechanic. In 1998, when Mr. Tewolde was 24 years old, Mr. Tewolde and his family were deported from Ethiopia to Asmara, Eritrea.

Military Service

- ▣ In 1998, after Mr. Tewolde was deported to Eritrea, he was forced to join the Eritrean military. Although mandatory service is supposed to be 18 months, it is common practice to indefinitely extend the period of service. After he served 18 months, Mr. Tewolde was told that he could not leave the military.
- ▣ In the military, Mr. Tewolde served in Division 36, Third Battalion. After serving time fighting on the front lines, Mr. Tewolde was sent for medical training and became an army medic.

Persecution of Person Perceived to Be Against Government Policy

Minor mistakes, asking questions, or expressing any negative opinions about the Eritrea government or military could, and often did, result in harsh punishment.

- e.g. tied by their hands and legs and left in the hot sun for long periods of time.
- Those who spoke up about harsh treatment or tried to help fellow soldiers undergoing harsh discipline were punished severely.
- Those who fled military service and were captured were tortured, put in prison, or killed.

Imputed Political Opinion

- ▣ Mr. Tewolde tried to keep his opinions to himself to avoid being tortured or killed. On one occasion, a soldier who tried to flee military service was brought back and killed as an example to the others.
- ▣ Out of a sense of decency, Mr. Tewolde and his colleagues buried the body . For doing this, Mr. Tewolde and his colleagues had their pay taken away and were put in jail. They were forced to walk on the ground on their forearms until their arms were bleeding. Mr. Tewolde was also forced to carry a heavy stone and walk back and forth in the hot sun until he collapsed from exhaustion.
- ▣ After this incident, Mr. Tewolde's supervisor kept a close watch on him.

Missing Government Ministers

- ▣ The Eritrean government had detained some former members of the ministry who had spoke out against the regime. Military leaders called Mr. Tewolde and other soldiers to a meeting. They were asked what they thought should be done with the former ministers. Mr. Tewolde raised his hand and said that if they were going to judge them, the government should first hear what they had to say.
- ▣ After that, Mr. Tewolde's supervisors kept a closer watch on him. He was no longer allowed to go home on leave.
- ▣ The detained ministers subsequently disappeared.

- ▣ In April 2003, when Mr. Tewolde was checking dead bodies, he recognized one of them as Berhane Gebregzabehier, a former general and one of the 11 members of the G-15 arrested by the government in September 2001. He had been shot.
- ▣ Mr. Tewolde knew that the leaders did not want him or others to know that the two men had been killed by them. The Minister of Defense was in the camp talking to Mr. Tewolde's Division Commander who asked Berhane what he saw. Mr. Tewolde attempted to act surprised and said nothing. Mr. Tewolde could tell they were suspicious and he was scared.

Escape

- ▣ Soon after the above incident, a friend of Mr. Tewolde's who was a radio operator told him that he overheard communications from leaders indicating that they did not want the secret to come out and wanted Mr. Tewolde killed. As soon as he had a chance, Mr. Tewolde slipped out and ran away to Sudan.

Mr. Tewolde did not plan on staying in Sudan for very long because many Eritreans in Sudan are kidnapped in cross border raids by Eritrean Security Agents and taken back to Eritrea.

Travel to U.S.

- ▣ After three months in Sudan, Mr. Tewolde moved to Kenya. He was able to find work as a bus coordinator. He did not feel safe so he applied to the United Nations High Commissioner for Refugees for refugee status which was granted.
- ▣ However, Eritrean officials in Kenya kept checking on him.
- ▣ Corrupt officials in Kenya sometimes accept bribes to turn refugees over to officials of the countries they have fled.
- ▣ In light of the confrontations and threats from representatives of the Eritrean government and the lack of help from the Kenyan police and the UNHCR, Mr. Tewolde did not feel safe in Kenya.

Arrival

He left Kenya and travelled to Columbia. He then traveled to Nicaragua, Guatemala, and Mexico then the United States. Mr. Tewolde entered the United States without inspection near Hidalgo, Texas on December 27, 2008.

Credible Fear Interview

- ▣ During Mr. Tewolde's credible fear interview, the interviewer found that there is a significant possibility that the assertions underlying Mr. Tewolde's claim could be found credible in a full asylum or withholding of removal hearing. The interviewer also found that Mr. Tewolde established a credible fear of torture.

Eritrea – Country Conditions

- Earlier this year, Country Conditions in Eritrea were grimly summarized by the U.S. Department of State:

“Human rights abuses included abridgement of citizens’ right to change their government through a democratic process; unlawful killings by security forces; torture and beating of prisoners, sometimes resulting in death; abuse and torture of national service evaders, some of whom reportedly died from their injuries while in detention; harsh and life-threatening prison conditions; arbitrary arrest and detention, including of national service evaders and their family members; executive interference in the judiciary and the use of a special court system to limit due process; and infringement on privacy rights, including roundups of young men and women for national service, and the arrest and detention of the family members of service evaders.”



Argument

- ▣ Mr. Tewolde meets the requirements for asylum under INA § 208 (b)(1).
- ▣ Berhane Gebremichiel Tewolde meets the requirements for asylum under INA § 208(b)(1). INA § 208(b)(1) allows for a grant of asylum when an individual is a refugee within the meaning of INA § 101(a)(42)(A). A refugee is an individual who is unable or unwilling to avail himself of the protection of his home country due to persecution or a well-founded fear of persecution on account of political opinion, membership in a particular social group, religion, and other protected grounds. INA § 101(a)(42)(A).

Mr. Tewolde suffered past persecution on account of actual and imputed political opinion.

- ▣ Detention alone can form a basis for a finding of past persecution. Mr. Tewolde suffered much more than simply being detained however. He suffered severe physical abuse and a threat to his life.
- ▣ Mr. Tewolde's abuse at the hands of the Eritrean government is consistent with the country conditions reported by the U.S. Department of State. There were reports of summary executions and of individuals shot on sight near the Djibouti border, allegedly for attempting to cross the border.

“On account of...political opinion”

- ▣ Mr. Tewolde was persecuted on account of his actual and imputed political opinion against the government. Mr. Tewolde made clear his opposition to the government's policies when he told the military leaders that the detained ministry of the members should be given an opportunity to speak and when he escaped from the military in 2003.
- ▣ Desertion from military service can be a basis for asylum where the refusal or desertion could lead to disproportionate punishment because of actual or imputed political opinion.

Imputed Political Opinion

- ▣ An imputed political opinion is a political opinion attributed to the applicant by his persecutors. That his persecutors imputed an anti-government sentiment to Mr. Tewolde is clear from his supervisors increased oversight and not allowing him to visit his family after he spoke up saying the detained ministers should be given the opportunity to speak

Persecution

- ▣ Mr. Tewolde has established the presumption of his well-founded fear of persecution because he suffered physical abuse on account of actual and imputed political opinion
- ▣ His fear of future persecution is well founded because representatives of the Eritrean government communicated that they wanted Mr. Tewolde killed and then pursued him in Sudan and Kenya after he fled from Eritrea.

No Bars

- ▣ Mr. Tewolde has committed no crime while here in the United States (§ 208(b)(2)(ii)). There is no evidence to support the idea that Mr. Tewolde is a terrorist, engaged in terrorist activity, or belongs to any terrorist organization (§ 208(b)(2)(v)). Mr. Tewolde has not committed any crimes while in the US and there is no reason to believe that he has committed a serious non-political crime prior to his arrival in the United States (§ 208(b)(2)(iii)). Mr. Tewolde is also not subject to the persecutor bar found in § 208(b)(2)(A)(i).
- ▣ Finally, Mr. Tewolde has not firmly resettled in any other country following his escape from Eritrea (§ 208(b)(2)(vi)). In order to find **firm resettlement**, there must be direct or indirect evidence of an offer of permanent residence in a third country where the applicant lived peacefully and without restriction.

Decision of the Immigration Judge

- ▣ The Immigration Judge usually gives her/his decision orally at the close of the hearing
- ▣ After the decision has been given, each side is asked whether they would like to reserve appeal.

What happens after they are granted?

After being granted asylum, an asylum-seeker becomes an asylee. An asylee can:

- 1) apply to work in the United States,
- 2) petition to bring a spouse and/or children to the United States.
- 3) After one year the asylee and his or her family can apply to become lawful permanent residents – but usually there are significant delays

Can they ever become U.S. citizens?

Yes, after five years as a lawful permanent resident or three years of marriage to a U.S. citizen. They must also meet other naturalization requirements and pass a naturalization test.

Concerns about Asylum Process

- ▣ Access to asylum procedures outside of U.S.
- ▣ Arbitrariness in asylum adjudication; that is, does the identity of the adjudicator, rather than the strength of the asylum seeker's claim, determine the outcome of an asylum claim?