



PREPARING YOUR ASYLUM FILING IN LIGHT OF MATTER OF A-B-

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LEARNING OBJECTIVES

- Articulate and document Particular Social Groups post A-B-
- Identify other theories for asylum post A-B-
- Address state protection through expert witnesses and country conditions post A-B-
- Remember internal relocation, humanitarian asylum and discretion

PARTICULAR SOCIAL GROUPS POST *MATTER OF A-B-*



PERSIST – AND EXPAND – YOUR PSGS

- Articulate any and all social groups, along with all relevant facts
 - *Matter of W-Y-C- & H-O-B-*, 27 I. & N. Dec. 189 (BIA 2018)
- Gender + Nationality
- Gender + Age
- Gender + Shared Past Experience
- viewed as property by virtue of status in a relationship (*Matter of L-R*)
- inability to leave a domestic relationship (*Matter of R-A*)
- Family membership PSGs

PSG FOR GENDER/GANG CLAIMS

- Gangs target women & girls to be girlfriends and sometimes sex slaves.
- Nationality + gender + childhood/youth should satisfy the PSG tests. (e.g., El Salvadoran girls/girl children).
- Nationality + gender + childhood + lack of parental protection, living in female headed household, or living in a particular neighborhood
- See *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010)
- Gangs target LGBTQ individuals

THE BOTTOM LINE ON PSGS

- A-B- attempts, but should not, and cannot, stop the application of case law to your facts
- Back to basics
 - Immutable – *Matter of Acosta*, 19 I. & N. Dec. 211 (BIA 1985)
 - Particular – particular doesn't have to mean small!
 - Socially distinct – *Matter of M-E-V-G-*, 26 I. & N. Dec. 227 (BIA 2014), and *Matter of W-G-R-*, 26 I. & N. Dec. 208 (BIA 2014)
- Be creative, be bold, and throw in the non-frivolous kitchen sink

EXPLORING AND SUPPORTING PSG THROUGH YOUR CLIENT'S DECLARATION



DECLARATION'S OVERARCHING GOALS

- Present most relevant facts in the most relevant light
- Guide for direct examination
- Or, completely eliminate the need for direct examination
- Minimize the opportunity for damaging cross examination

IMPORTANT BACKGROUND INFORMATION

- Supports the shared common characteristics element of your PSG
- Ethnicity, nationality, race, language...
- How can people identify that characteristic
 - E.g. last name
- Who is the abuser? Is he powerful (a tribal chief)? Is he a gang member? Is he a police officer?

WOMEN VIEWED AS PROPERTY

- Include facts about your client's childhood
 - E.g. abuse during childhood
- Include facts about your client's experience outside of her marriage/abusive relationship
 - Was she targeted for sexual assault, trafficking?
- Forced or non-consensual marriage/relationship
 - How old was your client when she entered the relationship, was she pregnant, what is the age difference between your client and her abuser, were her parents involved in the marriage?
- Explore the reasons why your client got married/entered the relationship
 - Was it to escape an abusive household, was she pregnant, etc...

WOMEN VIEWED AS PROPERTY/INABILITY TO LEAVE THE RELATIONSHIP

- Explore the reasons why the abuser harmed your client
 - Did he say anything
 - How did he refer to her
- Avoid focusing on what triggered particular episodes of violence (e.g. “he was drunk” or “he did not like my food”)
- Instead, focus on his attitude towards women and toward her, how he behaved differently with his friend, family, co-workers, etc...

FAMILY AS A SOCIAL GROUP

- Did he abuse anyone else in his family (children)?
- Did he harm anyone else outside of his family?



EXPLORING AND SUPPORTING PSG THROUGH EXPERT WITNESSES

What you want to show:

- Applicant's PSG consists of:
 - immutable/fundamental characteristics;
 - The group is socially distinct and particular; and
 - Her membership in the group was at least one central reason the persecutor targeted her.

What you want your expert to address or do:

- Immutability of characteristics within her society
- How group is treated by society
- What are some of the markers (lines in the sand) of the group?
- Does the country have a “whole of government” approach to protection of group members?



EXPLORING AND SUPPORTING PSG THROUGH COUNTRY CONDITIONS

ICE Memorandum, Litigating Domestic Violence-Based Persecution Claims Following *Matter of A-B* (July 11, 2018):

“Given that A-R-C-G- has now been overruled, with the AG mandating more fulsome analysis of the requirements for cognizable particular social group status in future cases, OPLA attorneys can expect to see an increase of voluminous, pre-packaged country/society-specific materials bearing on these requirements. To the extent that an OPLA attorney uncovers deficiencies in such materials, or Department of State reports or similarly available country conditions evidence undercut such materials, this information should be submitted....”



EXPLORING AND SUPPORTING PSG THROUGH COUNTRY CONDITIONS (CONT'D)

- Persecution can occur even in the context of generalized violence, but avoid reports of randomized harm.
 - USCIS Policy Memorandum (July 11, 2018) references *“societies where virtually everyone is at risk of crime—or broad swaths of society are at risk of crime.”*
- Documentation of high levels of violence against group members relevant, but go beyond stats.
 - ICE Memorandum: *“[I]n terms of application materials concerning the prevalence of private criminal activity...keep in mind that the BIA has observed that ‘a purely statistical showing’ of who is being harmed ‘is not by itself sufficient proof of existence of a persecuted group....”*



EXPLORING AND SUPPORTING PSG THROUGH COUNTRY CONDITIONS (CONT'D)

Document, for example:

- Religious, social, economic, cultural, or legal barriers to changing characteristic (e.g. marital status)
- Cultural or societal views towards group (e.g. patriarchal norms viewing women as subordinate to men)
- Police refusal to intervene because of group status
- Laws/policies defining terms or other commonly accepted definitions of terms in society (e.g. domestic partner)*
- Laws/policies/specialized units directed at group members (e.g. law against femicide)
 - But remember to document these do not establish state ability or willingness to protect!

OTHER THEORIES FOR ASYLUM: POLITICAL OPINION, RELIGION, ETC.

EXPRESSION OF POLITICAL OPINION

- It's not just for activists and dissidents
- Feminism is a political opinion – *Fatin v. I.N.S.*, 12 F.3d 1233, 1242 (3d Cir. 1993)
- Through actions – attending a protest, joining a political party.
- Through overt expressions of opinion – public oral expression of an opinion for or against something
- Less overtly symbolic acts – i.e. defying custom, refusing to conform to cultural norms. See *Saldarriaga v. Gonzalez*, 402 F.3d 461 (4th Cir. 2005).

POLITICAL OPINION IN YOUR CLIENT'S DECLARATION

Has your client:

- Resisted male authority?
- Resisted sex with her husband?
- Sought economic independence?
- Expressed a desire to behave in a way outside of cultural norms/expectations for a woman in her setting?
- Actually behaved outside of cultural norms? (dating, sex before marriage, child outside wedlock, clothing, etc.)
- Expressed a belief in gender equality contrary to her culture?

Did she experience an *escalation* of harm after she expressed her political opinion/beliefs in any of the above ways?



POLITICAL OPINION IN EXPERT WITNESS REPORTS

What you want to show:

- Applicant's political opinion was at least one central reason the persecutor targeted her.

What you want your expert to address or do:

- As a cultural interpreter for the adjudicator, how do the actions of the persecutor demonstrate she was targeted due to her actual or imputed opinion?
- Mirror and explain terminology used by persecutor
- Does the country have a “whole of government” approach to protection of those with this political opinion?



POLITICAL OPINION IN COUNTRY CONDITIONS

Document, for example:

- Whether view is contrary to cultural norms
- Whether conduct is viewed as subversive in society
- Treatment of other individuals who have expressed similar views or acted similarly
- Whether private actor acts as de facto government in part of the country such that defiance is politicized (e.g. MS-13)

GENDER AND RELIGION

- The applicant's religious beliefs differ from her husband or male relative's religious beliefs concerning the proper role of women in society.
- A father's abuse of a daughter on account of her refusal to confirm to his conservative interpretation of Islamic religion – views regarding women's behavior and attire. *In Re S-A-*, 22 I&N Dec. 1328 (BIA 2000).

RELIGION IN YOUR CLIENT'S DECLARATION

- Does her views of religion differ from her abuser?
- Did she seek help and was rejected by her pastor/faith leader?
- Did her husband force her to get pregnant or terminate a pregnancy against her religious beliefs?
- Did she convert?
- Was she prevented from practicing her faith, going to church, etc... or pass it along to her children
- Or was she forced to practice another form of religion or to do something contrary to her own beliefs (e.g. widow rituals, FGM...)

RELIGION IN EXPERT WITNESS REPORTS

What you want to show:

- Applicant's religious beliefs were at least one central reason the persecutor targeted your client.

What you want your expert to address:

- Explain her religion within the cultural and societal context
- Confirm that her religious practices are consistent with the religion and offer logical explanations if they differ
- Does the country have a “whole of government” approach to protection of members of this religion?

RELIGION IN COUNTRY CONDITIONS

Document, for example:

- Whether applicant's views and practices are consistent with religion she identifies with
- Whether gender role, behavioral code, or harmful practice imposed on applicant is often justified in the name of religion
- Views espoused by local religious leaders
- Treatment of certain religious groups
- Treatment of individuals failing to abide by religious norms
- Treatment of inter-faith couples/families



GENDER AND RACE/ETHNICITY (NATIONALITY)

- Woman who are also ethnic minorities i.e. indigenous women in Central America.
- Mixed race relationships
- *Shoafera v. INS*, 228 F3d 107- (9th Cir. 2000).

RACE/ETHNICITY IN YOUR CLIENT'S DECLARATION

- Has your client experienced discrimination at large (e.g. Garifuna of Honduras)?
- Has the abuser used this experience to manipulate/abuse your client?
- Is the abuser from a different ethnic group and what is the hierarchy of ethnic groups?

RACE/ETHNICITY IN EXPERT WITNESS REPORTS

What you want to show:

- Applicant's race or ethnicity was at least one central reason the persecutor targeted her.

What you want your expert to address or do:

- As a cultural interpreter for the adjudicator, what does it mean to be perceived as this race/ethnicity?
- Mirror and explain terminology used by persecutor
- Does the country have a “whole of government” approach to protection of that race/ethnicity?

RACE/ETHNICITY IN COUNTRY CONDITIONS

Document, for example:

- Higher rates of gender-based violence against women in ethnic group
- Higher rates of impunity for crimes against members of the ethnic group
- Cultural practices and norms of ethnic group
- Treatment of ethnic group by society at large
- Prejudice based on skin color, even within same ethnic group

ADDRESSING STATE PROTECTION POST *MATTER OF A-B-*



UNABLE OR UNWILLING TO PROTECT

Dicta in *Matter of A-B-*, 27 I. & N. Dec. 316 (A.G. 2018):

- “The applicant must show that the government condoned the private actions or at least demonstrated a complete helplessness to protect the victim.” *Id.* at 337.
- The fact that the local police may not have acted on a particular report of an individual crime does not mean that the government is unwilling or unable to control crime, any more than it would in the United States. There may be many reasons why a particular crime is not successfully investigated and prosecuted.” *Id.*



UNABLE OR UNWILLING TO PROTECT (CONT'D)

USCIS Policy Memorandum, PM-602-0162, Guidance for Processing Reasonable Fear, Credible Fear, Asylum, and Refugee Claims in Accordance with *Matter of A-B-* (July 11, 2018):

- *“The applicant must show the government condoned the private actions or at least demonstrated a complete helplessness to protect the victim.” Id. at 6.*
- *“The mere fact that a country...has problems effectively policing certain crimes, like domestic violence or gang-related activities” is insufficient. Id.*



UNABLE OR UNWILLING TO PROTECT (CONT'D)

- Argue proper interpretation should not be heightened standard:
 - Actual holdings in A-B- are narrow; most statements are dicta
 - Outlier cases citing “complete helplessness” don’t require heightened standard
- Highlight fact-intensive nature of the analysis
- Continue to document evidence of failure to respond to requests for protection
 - AG claims failure to respond is insufficient on its own.
 - But should not be read as irrelevant! Explore underlying reasons.
- Demand consideration of both elements of the disjunctive standard (unable or unwilling)



FAILURE OF STATE PROTECTION IN YOUR CLIENT'S DECLARATION

- Has your client asked for help?
 - How many times?
 - What happened?
 - Did the abuser comply?
- If she has not called the police, why not?
- Stories from similarly situated women as a deterrent (e.g. “my neighbor called the police, her husband was not arrested, and he then beat her worse)
- Potential loss of children (especially in some Middle Eastern countries)



FAILURE OF STATE PROTECTION IN EXPERT WITNESS REPORTS

What you want to show:

- Government has not taken reasonably effective steps to control harm or suffering
- Applicant's attempts to seek government assistance would be futile.

What you want your expert to address:

- How does the country approach protection of survivors of DV?
- Does the country have a “whole of government” approach to protection?
- Futility of going to police and inability to control persecutor



FAILURE OF STATE PROTECTION IN COUNTRY CONDITIONS

Document, for example:

- Failure to pass laws to protect rights
- Seemingly protective laws are ineffective as they exist on paper
- Violations of obligations in international treaties
- Cultural or societal norms resulting in police/judiciary not enforcing laws
- Police/judicial/governmental corruption
- Collusion of police/judicial/government officials with individual/group engaging in harm
- Lack of funding for programs/shelters
- Lack of accessibility to police/judicial system
- Lack of power in gang-controlled areas

REMINDERS + Q & A



JURISDICTIONAL ARGUMENT AGAINST APPLICATION OF *A-B-*

- The AG did not have the jurisdiction to certify the case to himself or to decide it in this manner. The case had been decided by the BIA and was pending before the immigration judge (IJ) for a final decision. The AG should not have taken a case off the desk of an IJ.



ADDRESS WHY INTERNAL RELOCATION IS UNSAFE AND UNREASONABLE

- Dicta in *Matter of A-B-*:
 - “When the applicant has suffered personal harm at the hands of only a few specific individuals, internal relocation would seem more reasonable than if the applicant were persecuted, broadly, in her country’s government.” *Id.* at 345.
- USCIS Policy Memorandum:
 - “All officers must...consider whether internal relocation in the alien’s home country presents a reasonable alternative....”

DON'T FORGET, HUMANITARIAN ASYLUM – BASED ON PAST PERSECUTION ALONE

- Asylum may be granted in the absence of a well-founded fear of future persecution if there are:
 - Compelling reasons arising out of severity of past persecution. See *Matter of Chen*, 20 I. & N. Dec. 16, 19 (BIA 1989); or
 - A reasonable possibility of *other serious harm* upon return.



DON'T FORGET, DISCRETION

- Only the most egregious factors should outweigh risk of persecution. *Matter of Pula*, 19 I. & N. Dec. 467 (BIA 1987)
- Explore positive equities:
 - Is your client volunteering?
 - Does she have children – include their school records?
 - Does your client have any medical condition? Do her children?
 - In what other way is your client *deserving* of asylum?



CGRS RESOURCES

- To request CGRS resources and technical assistance in your case, please fill out a request at: <http://cgrs.uchastings.edu/assistance>
- CGRS is collecting information on trends in post-A-B- adjudication. To report outcomes, email CGRS at: CGRS-Abtracking@uchastings.edu
- Interested in non-legal advocacy? Visit: ImmigrantWomenToo.org



Questions?

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